

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

January 10, 2025

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

SUBJECT: Denial of Petition for Contested Case Hearing filed on June 24, 2024, by John Fitzpatrick regarding Item J-7 on the June 14, 2024 Board Agenda, titled: *Approve One of the Dispositions to Applicant, Secure parking Hawaii LLC, for Vehicle Parking Management in the Designated Areas Located Within the Maalaea Small Boat Harbor, Wailuku, Maui, Hawaii, Identified by Tax Map Keys: (2) 3-6-001:002 (por.) and (2) 3-8-014:028 (por.) as Follows.*

*Option A: Direct Issuance of a Parking Concession to Secure Parking Hawaii LLC, Vehicle Parking Management in the Designated Areas Located Within the Maalaea Small Boat Harbor, Wailuku, Maui, Hawaii, Identified by Tax Map Keys: (2) 3-6-001:002 (por.) and (2) 3-8-014:028 (por.) and Extend the Current Revocable Permit from June 30, 2024, Until the Concession Contract Can Be Implemented.*

OR

*Option B: Continuation of Revocable Permit No. 125 to Secure Parking Hawaii LLC for Vehicle Parking Management in the Designated Areas Located Within the Maalaea Small Boat Harbor, Wailuku, Maui, Hawaii, through June 30, 2025. Identified by Tax Map Keys: (2) 3-6-001:002 (por.) and (2) 3-8-014:028 (por.)*

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:

John Fitzpatrick (hereinafter "Petitioner") filed a contested case hearing ("CCH") petition on June 24, 2024, regarding approval of either a direct issuance of a parking concession to Secure Parking Hawaii LLC, *dba Concierge Car Wash and Traffic Monitoring Services* ("Secure"), or the continuation of the revocable permit ("RP") issued to Secure, for management of vehicular parking at Maalaea Small Boat Harbor, Wailuku, Maui. The request for direct issuance of a parking concession, as well as the option 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-7 of the June 14, 2024, Board meeting agenda. DOBOR recommends that the Board deny the CCH petition because Petitioner has not demonstrated that he is legally entitled to a CCH on the issuance of a parking concession or the continuance of the RP to Secure.

## BACKGROUND:

At the Board's June 14, 2024, meeting under agenda Item J-7, DOBOR requested approval to directly issue a parking concession to Secure or to continue the RP for parking management issued to Secure.<sup>1</sup> Petitioner was present at the Board's meeting on June 14, 2024, in-person.

After approximately one hour of consideration, the Board voted to approve DOBOR's Option A recommendation via its Staff Submittal. Petitioner was one of two individuals who verbally requested a CCH for Item J-7 at the June 14, 2024, Board meeting.<sup>2</sup> Petitioner was also one of two individuals who filed written CCH petitions regarding Item J-7. Petitioner's written CCH petition is included as **Exhibit A**. In it, Petitioner seeks a CCH to challenge the Board's approval of Item J-7. Petitioner's desired relief includes: revocation of the RP to Secure; initiating rulemaking to establish proper use and operation of a private contractor licensed to perform acts in connection with an RP; requiring the Department of the Attorney General to determine who can issue parking violation citations for State small boat harbors and requiring an EA in accordance with Hawaii law.

## DISCUSSION:

An administrative agency is only required to hold a CCH when it is required by law, which means that a CCH is required by (1) statute; (2) administrative rule; or (3) constitutional Due Process. *Mauna Kea Anaina Hou v. BLNR*, 136 Hawai'i 376, 390, 363 P.3d 224,

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<sup>1</sup> The written submittal provided by DOBOR staff in connection with the June 14, 2024 Board meeting's agenda Item J-7 is publicly available via the Board's website, at <https://dlnr.hawaii.gov/wp-content/uploads/2024/06/J-7.pdf>.

<sup>2</sup> See Audio Recording of the 6/14/24 Board Meeting at approximately 2:21:40 / 4:18:21, *available at* <https://www.youtube.com/watch?v=HQUZpZeZUHg>. The individuals who made verbal requests for a CCH did so after the Board voted to approve staff's recommendation and authorize the direct issuance of a parking concession to Secure.

238 (2015). Petitioner claims here that a CCH is warranted pursuant to due process, Hawaii Revised Statutes (HRS) Section 115-9, Obstructing access to public property; penalty, and HRS chapter 343. DOBOR staff disagrees and recommends denial of the request.

There is a two-step process in determining whether a person is constitutionally entitled to a CCH. First, a court would consider "whether the particular interest which claimant seeks to protect by a hearing is 'property' within the meaning of the due process clauses of the federal and state constitutions." *Flores v. BLNR*, 143 Hawai'i 114, 125, 424 P.3d 469, 480 (2018) (citation and internal brackets omitted). Second, if a court "concludes that the interest is 'property,' th[e] court analyzes what specific procedures are required to protect it." *Id.*

Step one merely requires the court to determine whether a petitioner seeks to protect a constitutionally cognizable property interest. *Id.* To have such a property interest, a person "must clearly have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Sandy Beach Def. Fund v. City & Cty. of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260 (1989). Legitimate claims of entitlement that constitute property interests "are not created by the due process clause itself. Instead, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law[.]" *Flores*, 143 Hawai'i at 125, 424 P.3d at 480 (citation and internal brackets omitted).

If step one of the analysis is satisfied, then step two analyzes how the government action would affect that interest with and without additional procedural safeguards. With respect to step two, the Hawai'i Supreme Court has been careful to emphasize that "[d]ue process is not a fixed concept requiring a specific procedural course in every situation." *Sandy Beach*, 70 Haw. at 378, 773 P.2d at 261. Due process "is flexible and calls for such procedural protections as the particular situation demands." *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

#### Step One Analysis: Petitioner has no Constitutionally Protected Property Interest in the Issuance of a Parking Concession or the Renewal of an RP to Secure

Hawaii Administrative Rules ("HAR") Section 13-1-29(b) provides that a formal petition for a contested-case hearing must include, among other things, a statement of "[t]he nature and extent of the requestor's interest that may be affected by board action on the subject matter that entitles the requestor to participate in a contested case[.]"

Neither HRS Section 115-9 nor HRS chapter 343 require a CCH to be held.

Petitioner alleges that the specific due process interests being affected by the subject Board action are: "adequate parking signage/notice of the parking laws and regulations in public parking ; 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." These are not constitutionally protected property interests affected by the subject Board action because Petitioner has no legitimate claim of entitlement to them. Petitioner did not participate in the original invitation for bids that DOBOR issued in March 2021, which determined the recipient of the parking RP.

Additionally, Petitioner states as justification for being considered a party entitled to a CCH: "as a person who contributes to the State Boating Special Fund as a boat ramp fee payer and I pay for a daily parking permit managed by Secure Parking Hawaii LLC."

Even if Petitioner held a mooring permit applicable to Ma'alaea Small Boat Harbor, holding a permit to moor a vessel at a small boat harbor does not establish any legitimate claim of entitlement to regarding the details of parking management and enforcement at the harbor's public parking facility. This further justifies why the Board should deny Petitioner's CCH request.

Step Two Analysis: Even if Petitioner Identified a Constitutionally Protected Property Interest, Petitioner Is Not Entitled to a CCH Based Upon the Specific Factual Situation at Issue

Any repairs and maintenance to the parking areas at Ma'alaea Small Boat Harbor would be solely within DOBOR's responsibility to fund and manage, and denying continuance of the RP to Secure would not affect this responsibility.

For the sake of argument, even if Petitioner could establish a constitutionally protected property interest in the issuance of a parking concession and the RP renewal, Petitioner would still not be entitled to a CCH. The touchstone of due process is "notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest." *Sandy Beach*, 70 Haw. at 378, 773 P.2d at 261. To determine what further process is due, if any, the administrative agency must examine and balance three factors, repeated from above:

- (1) The private interest which will be affected;
- (2) The risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and
- (3) The governmental interest, including the burden that additional procedural safeguards would entail.

*Flores*, 142 Hawai'i at 126–27, 424 P.3d at 481–82.

Even assuming the first *Flores* factor could be established, the risk of an erroneous deprivation of any property interest in the absence of a CCH is minimal, as Petitioner was already afforded sufficient due process through Sunshine Law procedures. Any *additional* procedures via an adversarial, trial-type CCH would not add significant value. Petitioner received ample notice of the June 14, 2024, Board meeting, including the

publicly available staff submittal, and Petitioner had an opportunity to be heard via the submission of public testimony, which she submitted in opposition to the agenda item. Additionally, Petitioner testified in-person and was heard by the Board prior to its decision making on Item J-7 at the June 14, 2024, meeting. Petitioner was therefore afforded ample notice *and* a substantial opportunity to be heard by providing written and oral testimony. See *Sandy Beach*, 70 Haw. at 378, 773 P.2d at 261. Petitioner has not demonstrated that there would be any significant value in being allowed to participate in the trial-type procedures of a full CCH on the same issue.

As to the third factor, the Board should find that the governmental interest, including the burden that holding a CCH would entail, weighs heavily in favor of rejecting the CCH petition. CCHs are expensive and time-consuming endeavors for the Department of Land and Natural Resources. The cost for retaining hearing officers and court reporters alone can be thousands of dollars for even single-day CCHs, and those costs are compounded when considering staff and attorney time. Petitioner has failed to justify why DOBOR should bear such costs and spend many hours of staff time on a CCH of that would have little to no significant value.

Of significant note is that if a CCH were held and issuance of RP continuance to Secure is stayed or revoked pending the outcome of the CCH, see *Mauna Kea*, 136 Hawai'i at 381, 363 P.3d at 229, there would be no entity available to perform parking lot management at Ma'alaea Small Boat Harbor, which would only serve to compound the very issues Petitioner seeks to address and would create additional issues with unmonitored and unenforced parking violations. On balance, even if Petitioner could establish a sufficient property interest, the *Sandy Beach* factors weigh in favor of denying the instant petition.

Therefore, Petitioner is not entitled to a CCH, based on the above, and staff recommends that the Board deny the pending petition.

RECOMMENDATIONS:

1. That the Board deny the CCH petition by Petitioner, pursuant to HAR Section 13-1-29.1 because Petitioner does not have a legal right, duty, or privilege entitling it to a CCH regarding issuance of a parking concession issued to Secure Parking Hawaii LLC; and
2. That the Board authorize the Chairperson to take any and all actions necessary to effectuate its decision.

Respectfully Submitted,



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MEGHAN L. STATTS, Administrator  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



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

Exhibit:

- A. June 24, 2024, Contested Case Hearing Petition by John Fitzpatrick

# Exhibit A

## 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. 6/14/2024	Division/Office

#### INSTRUCTIONS:

1. 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

RECEIVED  
 JUN 24 AM 9:31  
 DEPARTMENT OF LAND AND NATURAL RESOURCES  
 STATE OF HAWAII

2. 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.
3. 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.
4. 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.
5. 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 John Fitzpatrick	2. Contact Person John Fitzpatrick	
3. Address 85 Mokuahi St.	4. City Makawao	5. State and ZIP HI 96768
6. Email fitzformai@gmail.com	7. Phone 808-268-1073	8. Fax



B. ATTORNEY (if represented)		
9. Attorney Name NA	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	
<p>The BLNR decision on June 14, 2024, DOBOR Staff submittal J-7  <b>Subject: Approve One of the Disposition to Applicant, Secure Parking Hawaii LLC, For Vehicle Parking Management in the Designated Areas Located Within the Maalaea Small Boat Harbor, Wailuku, Maui, Hawaii, identified by Tax Map Keys: (2) 3-6-001:002 (por.) and (2) 3-8-014:028 (por.) as follows.</b>  <b>BOARD members selected OPTION A: The 5-year Direct Issuance to Secure Parking LLC for parking management and enforcement at Ma'alaea Small Boat Harbor on Maui, that can be extended to 25 years, that DLNR may terminate the contract without cause by providing sixty (60) days notice.</b></p>	
18. Board Action Date June 14, 2024	19. Item No. J-7
20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case	
<p>During the meeting it was clear that Mr. Underwood nor Secure Parking has met with the community at Ma'alaea Harbor to design rules and regulations that work for our Harbor.</p> <p>HAR 13-1-28; Hawaii constitution Article 1, Section 4 (Due Process)</p> <p>Nothing discussed between the BLNR and Secure Parking Addressed the Gathering Rights and Access to the Ocean at Ma'alaea Small Boat Harbor. By having towtruck drivers towing cars, they are obstructing access to the sea, the shoreline, or any inland public recreational area.</p> <p><b>§115-9 Obstructing access to public property; penalty.</b> (a) A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing:</p> <p>(1) A public right-of-way;</p> <p>(2) A transit area;</p> <p>(3) A public transit corridor; or</p> <p>(4) A beach transit corridor;</p> <p>and thereby obstructs access to and along the sea, the shoreline, or any inland public recreational area.</p>	



(b) Physical impediments that may prevent traversing include but are not limited to the following:

- (1) Gates;
- (2) Fences;
- (3) Walls;
- (4) Constructed barriers;
- (5) Rubbish;
- (6) Security guards;
- (7) Guard dogs or animals; and
- (8) A landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches within beach transit corridors.

(c) Obstructing access to public property is a misdemeanor.

(d) Minimum fines for violation under this section shall be as follows:

- (1) \$1,000 for a second conviction; and

**Secure Parking and DOBOR Violates Haw. Code R. § 13-233-29 - Eligibility for parking permits; fee per vehicle**

According to testimony §13-233-8 Removal of vehicles should be a last resort and not a first resort. Secure parkings "Warning" system is not going to solve the long term parking of them practicing predatory towing with Beach Front Towing.

Secure Parking Arbitrarily presented a 1-2 difference and is not following §13-233-26 Charges for parking. Charges will be made and collected for parking, stopping, or standing a vehicle in paid parking zones equal to or less than county or state rates in the county where the paid parking zone is located. [Eff 2/24/94; am and comp 4/5/08; am 11/13/14] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4). They presented no county or state rates to determine the parking rate.

Before Secure Parking can begin charging a 1-2 difference, public testimony requested reasonable permit fees like those of harbor tenants \$25 per month for employees. The justification is that unlike corporations who make thousands of dollars per day, employees make a fraction of that. Statute needs to be amended and hearings at Ma'alaea Small boat harbor need to be held in order for §13-233-29 Eligibility for parking permits; fee per vehicle to be amended in order to provide affordable permits and ocean access.

(4) An owner or employee of a firm, business, or organization operating under a lease or other agreement authorizing the owner, employee, firm, business, or organization to engage in

a business or commercial activity at the small boat harbor.

Secure Parking and DOBOR should have engaged the public and users of Ma'alaea Small boat harbor in order to develop rules, parking maps, permit prices, Kama'aina parking, and ticketing/towing procedures before they came to the BLNR for approval. Because they failed to have an open meeting with the community this permit needs to be rejected and they need to be forced by BLNR to follow administrative protocol governed by Chapter 91, Hawaii Revised Statutes (HRS).

#### Pre-Public Hearing Phase

DOBOR conducts informal outreach for a new rule or a rule it wishes to amend. The types of informal outreach used include working groups, stakeholder meetings, and requesting informal comment from any interested persons. DOBOR uses the AlertMedia notification system to reach as many stakeholders as possible through email, text messages, and calls.

DOBOR drafts a proposed rule (or amendment) in Ramseyer format using the informal comments it receives, which is reviewed by the Department of the Attorney General for legal issues. DOBOR then brings the proposal to the Board of Land and Natural Resources (BLNR) for approval to hold public hearings. DOBOR also brings the proposal to the Small Business Regulatory Review Board (SBRRB) for public hearing approval if there are small business impacts.

#### Public Hearing Phase

Public hearings are held to allow all interested persons the opportunity to provide testimony on the proposal. **Public hearings follow the process in Section 91-3, HRS, and are held in-person on the island(s) where the rules would have an impact.** Alternatively, DOBOR may also hold public hearings by Zoom Webinar.

#### Post-Public Hearing Phase

Based on public hearing testimony, the proposal may be revised, if necessary. **DOBOR then brings the proposal to BLNR for post-public hearing approval and adoption.** DOBOR also brings the proposal to SBRRB for post-public hearing review and approval if there are small business impacts.

The Governor makes the final decision to approve or deny the proposal. If approved by the Governor, the rule is filed with the Office of the Lieutenant Governor and will have the force and effect of law ten (10) days after it is filed.

HAR 13-1-8; (BLNR Chairperson's duty) regarding the custody and maintenance of the Boards official records and files. DLNR is "...headed by an executive Board of Land and Natural Resource who are responsible for managing, administering, and exercising control over public lands...and all interests therein." I believe that DNLNR Chair and DOBOR administrators have not fulfilled their duties in the transparency and maintenance of contracts, and both the DLNR Chair and the Division of Boating have inappropriately urged BLNR members to vote on division submittals when all of the relevant information and documents necessary to make the best decisions is not at their fingertips during the meeting such as: 1) a copy of the active contract (Revocable Permit or Direct Issuance already in



place), 2) accurate 'parking plan' maps of the service area, 3) incorrect information in the DOBOR submittals in spite of review by DLNR and the AG's office including wrong dates on all four of the recent submittals regarding Secure Parking 4) DOBOR has failed to hold any public informational meetings, or hearings in the past three years, and their the public is being deliberately 'kept in the dark' regarding harbor plans or issues. Note: one zoom meeting was initiated by Senator Moriwaki in 2021, and two 'listening sessions' initiated by DLNR Chair Chang in 2023. At suggested in several BLNR meetings (and at the legislature) by both Chair Chang and DOBOR Administrator Ed Underwood that they want to offer public hearings to give the public a chance to participate, yet on such public hearings have not occurred and the Board meetings ends up being the only place the public can bring up our issues and we can only respond to staff submittals, and per DLNR Chair Chang, the public can not make its own BLNR agenda item, so the default forum becomes the actual Board meeting where each member of the public receives only 2 minutes to speak (Secure Parking officials had more time in order to address issues or concerns than the public.) There was no time for the public to respond to secure parkings plans. 5) The steps the Division took to resolve public issues-complaints before Request for Proposals (RFP's) and Request for Information (RFI's) went 'out to bid' 6) full transparency regarding which laws and rules were used by the Division to select of the concessionair (permittee/vendor) such as standard procurement, HRS 102-2 or Act 163, which is based on HB 1432 that exempted certain parking lot contracts at State Boat Harbors from sealed bid requirements.

HAR 13-1-29 I made a verbal request during the BLNR meeting on June 14, 2024 for a Contested Case Hearing immediately following the board decision to allow a 5 year Direct Issuance Contract on the subject matter of J-7 DOBOR staff submittal and this this June Petition for Contested Case Hearing

**PETITION FOR A CONTESTED CASE HEARING**

HRS 290-11 and 291C 165.5 Post deprivation procedure safeguards

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

Due process rights: adequate parking signage/notice of the parking laws and regulations in public parking ; 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.

I am entitled to Due Process as a person who contributes to the State Boating Special Fund as a boat ramp fee payer and I pay for a daily parking permit for a State Harbor managed by Secure Parking Hawaii LLC. I see my 'Petitioner' role, in this case, as a person in the harbor community that recognizes the hardship of those persons whose cars were towed and continue to be towed. As victims of a violation of a law, rule, or regulation: gross mismanagement; a gross waste of funds; and abuse of authority, in this case, I believe that it was mismanagement (unethical) for the DLNR Chairperson Susanne Case Testimony, HCR176, on March 22, 2022, to testify to the legislature, seven months AFTER Secure Parking Hawaii LLC had the parking management contracts at Ma'alaea and Ala Wai State Small Boat Harbors that included, and continues to include, vehicle towing as the first and only enforcement for minor parking violations such as meter overstays, parking where signage does not match the permit map, and non-payment, from State Small Boat Harbors. The quote from Exhibit A HCR176 : "The Department's Division of Conservation and Resources Enforcement (DOCARE) provides comprehensive training to its officers so that they are equipped to handle all types of enforcement tasks, including parking enforcement and providing court testimony. The Department



therefore believes that parking enforcement authority should remain with sworn law enforcement officers only.”

As DLNR Chair Chang has a responsibility to either assign DOCARE officers to State Harbor to write parking citations or Assign the Parking Management (Secure Parking) that responsibility for which the company is already capable of and already has the infrastructure for, in terms of a web-site violation payment system already in place. Plus, Secure Parking already allows mail in payment, and Secure Parking even allows walk-in payment at their retail office (this is also 'standard' for third party parking contractors, such as Pro-Park for the major public parking area at the Honolulu Zoo). Secure Parking can already provide a fines/'ticket'/citation payment system and DLNR Chair and BLNR members can take this option of assignment of enforcement of minor parking violation, without going to legislature. The Legislature has already granted this power to the Board. The Board members need to clarify this with the AG, which I have been asking the DLNR Chair and the Board members to do since the BLNR meeting on August 11, 2023.

Furthermore, there needs to be ocean access as guided by our State Constitution, §115-9 **Obstructing access to public property; penalty**, and there needs to be Kama'aina parking like there is at Makana State Park who is also run by a online parking contractor.

I think it is unethical to say that 'only DOCARE officers can issue parking citations in State Small Boat Harbors and then not staff DOCARE officers to issue as Parking Citations. In addition, the DLNR chair has the supervisory role over the Division of Boating and Ocean Recreation Administrators who have been allowed to create a bureaucratic loophole, by which vehicle towing is the first and only method of parking enforcement.

As a person who is a recreational boat captain and boat owner, a State Harbor user and beach access user at Ma'alaea Small Boat Harbor I am first hand witness of Tow Trucks on stand by and vehicle towing. I can also provide several witnesses and victims of towing at Ma'alaea Small Boat Harbor. DCCA does not take complaints from the public regarding service providers (permittees/licenseses) that have contracts with the State of Hawaii: on this J-7 Submittal for DCCA Verification that the "Applicant is in good standing confirmed" with a X as confirmed, but this line verification should be removed because it is not relevant (impossible to submit a public complaint to DCCA regarding a vendor that holds a State Contract).

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

**Parking and Towing at State Harbors is an on-going issue for the public.**

**The latest approval of the 5 year Direct Issuance is potentially extremely harmful to the public due to this wording: XXXXXX?**

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. The CHARACTER OF USE portion of the J-7 submittal is quite disturbing. This is the entire sentence:

*Vehicle Parking Concession for vehicle parking management, including, but not limited to, managing the Division of Boating and Ocean Recreation's ("DOBOR") parking plan, issuing parking permits, parking violation enforcement, towing vehicles when necessary and participating in the required post-tow hearings.*

Issuing parking permits combined with the phrase 'parking violation enforcement' implies that 'tickets or citations' are being issued. They are not being issued for parking violations, most of the minor such as non-payment. Non-payment should not result in a \$225.00 vehicle tow, which is the case at this Harbor on Maui.

to Secure Parking Hawaii LLC, for phrase "Managing the Parking Plan" which at Ma'alaea has gone to '100% paid parking', with paying by the hour or for or boat owner's issuing parking permits, and the monthly parking permits for employees who work on tourist boats (that pay \$90.00 a month). In the current submission, J-7 the parking plan (map) is flat out wrong and this is reason enough to 'throw out' this board decision. The maps in longer term contracts should be accurate. Involving the Concessaire in the 'parking plan' allotment of the types of parking is not a good idea, this should remain fully with DOBOR/DLNR/BLNR, especially when a change in the parking stall is being considered.

Does the Attorney General even know that Secure Parking is taking complaint calls and giving refunds on their own? Secure Parking is acting as a mediator, judge, jury and financial officer refunding money from the 'overall' monthly income from parking. As a boater I don't mind missing out on the 'refund money' as much as the mind that the DOBOR/DLNR and the AG are not able to see and fix the problems that are leading to towing.

Act 163 was designed to major long term investments, such as a new building, or large renovation projects at City and County Parks allowing 5 year contracts that can be extended to 25 years. How this applies to the Secure Parking contract at Ma'alaea Small Boat Harbor parking concession was not made clear in writing to the board, or the public, in the J-7 submittal of 6-14-2024. It was implied that Secure Parking will purchase an expensive vehicle (100K) that has a camera that can scan license plates quickly, which potentially allows the human (parking attendant) the ability to write and leave a written warning. It is my belief that you can do this with a golf cart and a smartphone as the towtruck driver and the online services do this at the Maui Ocean Center. This 'solution' of a special vehicle, doesn't adequately 'address the public's concerns the public's concerns about towing of vehicles at the harbor' at J-7 submittal implies on page 8, see the section underlines by DOBOR/DLNR. The details of such a written warning were not spelled out: a sample form, would all cars receive one (including rental cars), would the warning provide a 24 delay on tow, how many warning would be given before a tow, and would it 'refresh' once a month or once a year, would cars registered to Maui residents given a warning once a year.) The details of such a 'new system' should be properly defined or a pilot project be implemented prior to seeking BLNR approval. Much of the tooted benefits of a 'special vehicle' that can read license plates is already available via that State funded PAY STATION machines (paid for with BOATING SPECIAL FUND money, and to which I contribute to with my State Harbor fees). The vehicle



license plate scanning and software is already in use. A special car with cameras that can scan plates quicker is nice but that type of investment that warrants the need for a 5 year Direct Issuance contract. Furthermore they already made hundreds of thousands of dollars towing cars. These monies should be reinvested if they want to operate in Ma'alaea. The permittee should be in the meeting document package so that Board members, at the time of agenda item review in the board meeting can compare the existing contract to the submittal (such as the contract with Secure Parking at Ma'alaea SBH and the contract between Secure Parking and Beach County Towing) and discuss the Duties may include: site inspection, complaint review, tow records, defining parameters of cooperation and proper execution of contracts, public notification, appropriate signage and striping. Though DOBOR/DLNR submitted contract recommendations and BLNR members voted to approve the recommended contracts with Mr. Tow, Secure Parking Hawaii, and Secure Parking's subcontract with Beach County Towing on Maui, Chairperson Chang and members repeatedly claim ignorance of how the contracts work independently and in cooperation with each other. In addition, Chairperson Chang denies custody and maintenance of contract records.

At the January 26 BLNR meeting Secure Parking Hawaii LLC co-owner Mr. Mauri reported that they have a direct contract with Beach County Towing and that 4 to 5 vehicles are towed each day from the harbor for parking violations, such as non-payment. Since the fee to the vehicle owner to retrieve their vehicle is \$225.00 on Maui, when their vehicle is towed from Ma'alaea State Boat Harbor. Averaging 4 vehicles a day, means the towing company is making in excess of \$1,000 per day or \$365,000 a year.

During the December 7, 2023 meeting, DOBOR staff Richard Howard reported that over 1500 vehicles were towed between January 1 and October 9th, 2023 at the Ala Wai Small Boat Harbor. Chair Chang responded as follows: *Transcript from the Dec. 7 2023 BLNR meeting: Chair Chang: "And, Amy, I would just respond. As a matter of policy. I think, the best use of DOCARE's time is to be out ma, is to be out protecting the resources, not issuing parking tick, parking citations. But so there might be some and I'm hoping through this public outreach, we're going to come up with some recommendations to the board on how best to address them, because I get what they're saying. I mean, I don't know if there's any truth to it, but what I'm hearing is somebody is waiting as soon as that parking meter expires, they're coming in with the tow truck. I'm hoping that's not happening. I'm hoping that's not happening."*

### 23. Any Relief Petitioner Seeks or Deems Itself Entitled to

1. Revocation of the permit; halt the RFI contract process until all issues raised have been 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 no result in improper removal of vehicles; and require licensees/permittees to produce monthly towing records; and
3. Require an environmental assessment in accordance with Hawaii law, before issuing the license/permit. If the only improvement is parking asphalt repavement, 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, and preserve cultural rights.

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

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**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**

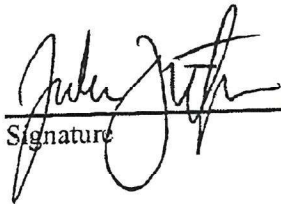
Petitioners include boat owners with boat ramp permits and other members of the Hawaii boating community that use the boating facilities at Ma'alaea & Alawai Small Boat Harbors. Petitioners include the members of Surfparking.org who use this area, which is Trust Land Status property for ocean access for surfing, sailing, paddling, swimming, and other forms of ocean recreation.

*- Excepting lands set aside for federal purposes, the equitable ownership of public land in Hawaii has always been in its people. Upon admission, trusteeship to such land was transferred to the state, and such land has remained in public trust since that time. State ex rel. Kobayashi v. Zimring, 58 Haw. 106, 566 P.2d 725 (1977). (bold emphasis added)*

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.

John Fitzpatrick  
Petitioner or Representative (Print  
Name)

  
Signature

6/23/2024  
Date