

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 Kate Thompson 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:

Kate Thompson (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 she 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; and requiring the Department of the Attorney General to determine who can issue parking violation citations for State small boat harbors.

## 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,

---

<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 and Hawaii Administrative Rules ("HAR") Sections 13-1-28 (Contested Case Hearings), 13-1-8 (Chairperson), and 13-1-29 (Request for Hearing), as well as Hawaii Revised Statutes ("HRS") Sections 290-11 (Vehicles left unattended on private and public property; sale or disposition of abandoned vehicles) and 291C-165.5 (Motor vehicle towing and storage; settlement; disabled vehicles). 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 the 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 *Morrisey 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

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[.]"

HAR Sections 13-1-28, 13-1-8, and 13-1-29 are the Board's rules for requesting a regulation and the Chairperson's responsibilities. None of these rules provide a basis for Petitioner's request for a CCH.

HRS sections 290-11 and 291C-165.5 regulate towing practices. Neither require contested case hearings over the issuance of a disposition to a company to engage in towing.

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 mooring permit holder and I pay for a parking permit for a State Harbor managed by Secure Parking Hawaii LLC." However, Petitioner fails to state that she pays mooring and parking fees for Ala Wai Small Boat Harbor, not Ma'alaea Small Boat Harbor. Petitioner previously requested a CCH for continuance of an RP to Secure for parking management at Ala Wai Small Boat Harbor, which was denied by the Board at its February 23, 2024 meeting. Petitioner has essentially no connection to Ma'alaea Small Boat Harbor and attempts to raise nearly the same claims that she raised in the CCH for the Ala Wai Small Boat Harbor Parking Management RP, and the Board should deny the immediate CCH petition on this basis alone.

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,



---

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

APPROVED FOR SUBMITTAL:



---

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

Exhibit:

- A. June 24, 2024 Contested Case Hearing Petition by Kate Thompson

# 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.	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

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 Kate Thomposn	2. Contact Person Kate Thompson

<b>3. Address</b> P.O. Box 342082	<b>4. City</b> Kailua	<b>5. State and ZIP</b> HI 96734
<b>6. Email</b> katet@me.com	<b>7. Phone</b> 8083870321	<b>8. Fax</b>

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

<b>C. SUBJECT MATTER</b>	
<b>17. Board Action Being Contested</b>	
<p>The BLNR decision on June 14, 2024, DOBOR Staff submittal J-7  <b>Subject: 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.</b>  <b>BOARD members <u>selected</u> 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>	
<b>18. Board Action Date</b> June 14, 2024	<b>19. Item No.</b> J-7
<b>20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case</b>	
<p>HAR 13-1-28; Hawaii constitution Article 1, Section 4 (Due Process), 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 DNLR 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 <b>not</b> at their fingertips during the meeting such as:</p> <ol style="list-style-type: none"> <li>1) a copy of the active contract (Revocable Permit or Direct Issuance already in place),</li> <li>2) accurate ‘parking plan’ maps of the service area,</li> <li>3) incorrect information in the DOBOR submittals in spite of review by DLNR and the AG’s office when wrong dates (typo’s) appeared on all four of the recent submittals regarding Secure Parking,</li> </ol>	



- 4) DOBOR has failed to hold any public informational meetings, or hearings in the past three years, and 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 in the Maui area. As suggested in several BLNR meetings (and at legislative hearing) by both Chair Chang and DOBOR Administrator Ed Underwood said that they want to offer public hearings and give the public a chance to participate, yet public hearings have not occurred and BLNR meetings end up being the only place the public can bring up our issues, and we can only respond to staff submittals, and per written communication with DLNR Chair Dawn Chang, the public can not make its own BLNR agenda item. Therefore the default 'public forum' becomes to actual BLNR meeting where each member of the public receives only 2 minutes to speak
- 5) missing is the documentation to the Board, of any steps DOBOR to resolve public issues-complaints before Request for Proposals (RFP's) and Request for Information (RFI's) went 'out to bid' (such as a Kama'aina Parking rate, 5 tickets before a tow, no towing for safety check expiration.
- 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 was it Act 163, which is based on (2022) 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's decision to allow a 5 year Direct Issuance Contract on the subject matter of J-7 DOBOR staff submittal, which meets the rule. Also, this document is my written Petition for Contested Case Hearing, turned in on time by close of business 6-24-2024.

HRS 290-11 and 291C 165.5 Post deprivation procedure safeguards. I have talked with people who have had their vehicles towed for State Harbor in the past three years and most do not know they could apply for a 'post-tow hearing', and some researched it, but missed filing by the 5 day deadline. This short deadline is significantly different from the when the City and County citation or towing appeal process.

### **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 mooring permit holder and I pay for a 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 on those persons who had their vehicle towed. As victims of the State's 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, and non-payment, from State Small Boat Harbors. The quote from Exhibit A HCR176 (Exhibit A): “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 1) assign DOCARE officers to State Harbors to write parking citations or 2) Assign the Parking Management (Secure Parking or similar) that responsibility for which the company is already capable of, and already has the infrastructure in place, to collect money for the fines via their ‘web-site violation payment system’. 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.

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 this 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 mooring permittee and beach access user at both Ala Wai and Ma’alaea Small Boat Harbors, I first hand witness Tow Trucks on stand by and the actual towing of vehicles.

Since DCCA does not take complaints from the public regarding service providers (permittees/licensees) that have contracts with the State of Hawaii: the 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) and it misleads the Board because it implies, ‘everything is alright’.

**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 harmful to the public.**

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 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, or the June 14, 2024 J-7 agenda item without first going deeper into the issues.

2. Board should not have approved the shorter term 'revocable permit' nor the longer term 'direct issuance' 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 has been allowed to make its own sub-contract with Beach County towing company. Continued violations of law and public complaints constitutes a failure of DLNR/DOBOR to properly administer the parking and towing 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. Citations are not being issued for parking violations, most of the violations are 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.

The new phrase "Managing the Parking Plan", in the submittal is concerning. At Ma'alaea, parking has gone to '100% paid parking', with paying by the hour or monthly permit for boat owners, 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. The concept of allowing the parking Concessionair to be included in the 'parking plan'

allotment of public lands, in terms 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 'type' is being considered.

Does the Attorney General even know that Secure Parking Staff are taking complaint calls from the vehicle owners (or tourist rental car owners) when the vehicle owner wants to complain about the tow, because the person sees the tow is a 'deprivation' of their property?

That Secure Parking is giving refunds on their own. Secure Parking is acting as a mediator, judge, jury and financial officer when the Secure Parking employee refunds money to the vehicle owner from the 'overall monthly income' from parking. The refund reduces the 'Boating Special Fund' contributions but as a boater myself that contributors to this same fund with my mooring fee (on Oahu, but it is the same fund), I don't mind missing out on the 'refund money' as much as **I mind that the decision making for the tow, the reason for the tow, refund are not part of monthly statement from Secure Parking to the State.**

There needs to be more oversight of DOBOR/DLNR regarding parking and towing. If the Division, Department and the AG are not able to admit to, and fix this huge 'loophole' of completely skipping the citation stage of enforcement, then the public will think the 'State is not well managed". The citation phase (and a \$35 dollar parking ticket) is proper parking enforcement. Meter overstay is a problem leading to most of the tows, **and towing could be reduced by 90%, if a 'Standard Monitoring and Ticketing phase existed'.**

**For Ma'alaea Harbor, Secure Parking reported to the Board that 4 or 5 vehicles are towed each day. This translates to about 100 tows per month. Each tow on Maui is \$225.00 and that Beach County towing receives all of the money. Secure Parking Hawaii LLC has a direct subcontract with Beach Country Towing, and the towing company is making about 25,000 a month towing from the Ma'alaea each month. This is money from the pockets of the individuals, locals and tourists, and its due to the mismanagement of this State public parking resource used for ocean access and recreation. We know that essentially no parking citations are issued by DOCARE officers, on average less than one per month.**

**On June 14, 20024, when the Board approved the 5 year Direct Issuance of a Parking Management Contract with Secure Parking LCC at Ma'alaea. By approving this contract Board Members are perpetuating the towing as the first, and only, enforcement for minor parking offenses. The Board members have heard the public outcry during board meetings over the last year, in both the written testimony and verbal testimony. There are complaints about the poor parking signage, the difficult experiences with the pay machines and the 'instant towing' without first receiving a parking citation.**

**The parking violation penalty should be THE already established \$35.00 dollar citation fee on the DOCARE officers (fully state approved) citation books. It is the duty by the DLNR Chair to either assign DOCARE officers to issue citations or to give the Parking Vendor the authority to cite cars with fines of an equal amount.**

**The DLNR Chair Case (2022) reported to the Legislature, HCR 176, that only DOCARE officers should issue parking citations, which implies that DOCARE officers are indeed assigned to issue citations. Yet, DOCARE officers have not 'give parking citations' as a work assignment for many years. This ends up victimizing the public with private property deprivation and inappropriate impounding fees.**

**DOBOR/ DLNR/ and now BLNR members are sanctioning towing on the State Harbo, public recreational lands as normal parking enforcement, when the normal penalty on city streets, or state properties that ranges from \$20.00 to \$40.00, for meter overstays or non-payment.**

**It is not PONO to tow a person's car for a minor parking violation.**

**Exhibit C: Karen Boyer's August 11 written testimony.**

In BLNR meeting of 9-10-2021, on the topic of Secure Parking Hawaii LLC as a new parking vendor (replacing the Diamond Parking permittee), Board member Tommy Oi's question to DOBOR Administrator Ed Underwood about parking enforcement: "So someone is going to be in the parking area checking out all the tickets (payment tickets on car dash), correct?" Ed Underwood response by saying "Yes, this is what Mr. Mauri's company is going to be doing, standard parking."

In this statement, Underwood implies that a human will monitor the parking area and that tickets (fines or citations) will be issued by Secure Parking staff as 'standard parking' management but Ed Underwood knew, and continues to know, that Parking Management permittees do not have the authority to issue parking citations. Therefore, Ed Underwood knew that 'instant towing', as defined by towing without the issuance of a prior parking citation, or written warning, is the only type of 'parking enforcement' that occurs in the State Boat Harbors. Therefore, Ed Underwood was misleading the Board with his answer during a formal Board of Land and Natural Resources Meeting.

My experience over there past three years of trying to work to prevent 'instant towing' in our State Boat Harbors is that time and time again, the State employees and Departments are putting the profits of the parking and towing companies before the needs and welfare of the public who are seeking recreational time at our state boat harbors.

Even simple, inexpensive remedies such as ground labels, and modifications to pole parking signage have been ignored. Even though these responsibilities are already within the scope of the concessionaire and the State.

We need a contested case hearing to get into details, beyond the 2 minute testifying time the public has during regular board meetings.

In previous denials for a Contested Case Hearing on this topic, the denial was partially based on the time and expense of such a hearing. Even if the estimated cost of a contested case hearing is \$40,000.00 that amount is less than 10 percent of what the public is paying to the tow companies due to their cars being towed each year: which is over \$250,000.00 at Ma'alaea State Small Boat Harbor and over \$400,000.00 at the Ala Wai Small Boat Harbor.

The tow companies are still demanding cash payment, or use of on-site ATM machines to obtain cash, which has been illegal since 2020, HRS 290-11 (b)(5). We have e-mail documentation of the DOBOR Administrator Meghan Statts saying in response to complaints about the tow company still demanding cash, "We are not going to tell the tow company how to run their business." When it is in fact the DOBOR/DLNR responsibility to make sure the State contracted permittees are following the law.

#### SINCE THE LAST CONTRACT, STATE SAYS IT CAN USE ACT163

Act 163 was designed to major long term investments, such as a new building, or large renovation projects at City and County Parks, and the Department of Entertainment Services (DES) to write-allow longer 5 year contracts, that can be extended to 25 years. In 2022, in a DOBOR sought to to avoid normal parking vendor procurement laws in the legislative measure SB2726, but it was shot down by legislators parting due to the testimony from City and County Director of Budget and Finance, Andrew T Kawano. Then suddenly wording was added to ACT 163 by then Rep. Silvia Luke to allow DOBOR/DLNR into the 'concessions' bidding process that DES uses. Exhibit D: Kawano testimony.

How ACT 163 applies to the Secure Parking Hawaii LLC contract at Ma'alaea Small Boat Harbor parking concession was not made clear in writing to the board, or the public, in the J-1 submittal of 4-12-2024 or the J-7 submittal of 6-14-2024. DOBOR/DLNR implied that Secure Parking will purchase an expensive vehicle (100K) that will have cameras attached to scan license plates quickly, which potentially allows the human (parking attendant) the ability to write and leave a written warning.

The solution DOBOR suggests of purchasing a special parking surveillance vehicle, doesn't adequately address the public's concerns about the towing of vehicles at the harbor, unless the Board were to grant the parking vendor permittee the right to issue fines (citations), and towing would **only** occur 24 hours after the first day of the parking violation citation was issued.

The 6-14-2024 DOBOR J-7 submittal implies a solution has been found, on page 8, with an underlined comment by DOBOR/DLNR.

“At its meeting on April 12, 2024, agenda item J-1, the board denied DOBOR’s request for the direct issuance of a parking concession contract to Secure due to concerns about the towing of vehicles at the harbor. Secure has addressed those concerns and has proposed a solution to the vehicle towing issue.”

DOBOR suggested that a written warning could be placed on vehicles but the details were not spelled out: a sample warrant form was not provided, specifically which cars receive one (including rental cars) were not provide, details regarding if the warning would create a 24 delay on towing or not, how many warnings would be given before a tow, nor was the ‘refresh’ time discussed -once a month or once a year, and would there be a distinction between cars registered to Maui residents and tourist cars or would all cars found in violations receive a paper warning on the dash, of if the warning would be a text or email for those that paid via the scan code parking payment option.

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 touted benefits of a ‘special surveillance vehicle’ that to read license plates is already available via that State funded PAY STATION machines (paid for with BOATING SPECIAL FUND money, along with already purchase ‘app support’ and camera abilities already in use at these harbors. I contributed to the purchase of Pay Stations, owned by DOBOR, since I have been paying mooring fees, and parking permit fees to the State for 25 years, The vehicle license plate scanning and parking software capabilities are already actively in use by by Secure Parking and this information and software is share the tow truck drivers.

A special car with cameras that can scan plates ‘faster’ is nice but that type of investment does not warrant the need for a 5 year Direct Issuance contract.

The document package so that Board members, at the time of agenda item review in the board meeting should include a hard copy of existing contract not just the submittal (such as the contract with Secure Parking at Ma’alaea SBH, and the contract between Secure Parking and Beach County Towing). The permittee’s daily basis Duties should be listed and clear and there should be records of the site inspections (parking signage, pay-meter conditions, pavement striping), complaint reviews, tow records, defining the parameters of agency cooperation (with DOCARE) and the proper execution of contracts, proof of public informational meetings. These documents were not available to the Board on June 14, 2024 to aid in good decision making about longer term contracts. This type of detailed agency submittals should be standard for every submittal, especially in this case, when there is ‘push-back’ from the public about getting their cars towed.

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 Country Towing on Maui,

Chairperson Chang and Boards members repeatedly claim 'innocence' and lack of facts about towing or how the subcontract to the towing company works at this Maui harbor, yet the BLNR Chair and members are not postponing the agenda to research or investigate the facts. In addition, Chairperson Chang has denied custody of the towing records, subcontract to the towing company contract, and the financial records of these companies that are under her control.

At the January 26, 2024 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 averaging \$1,000.00 income per day and at least \$300,000.00 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. "*

Furthermore, in the past three years there has never been public outreach by DOBOR/DLNR on Maui or Oahu on the topic of parking and towing. In BLNR meetings (and at the legislature) the conversation is always that the Division and the Department, DOBOR/DLNR will do public outreach, but it has not happened.

This puts the BLNR board members (who are highly qualified yet unpaid) into a strange position, of having to provide 'oversight' of a government agency that is bringing submittals to the table that have 100% opposition from the public. This demonstrates the lack of 'homework' by DOBOR, to address the issues PRIOR to coming to board with a submittal and recommendations.

In the case of towing, as first and only method of parking enforcement, it is clear that DOBOR/DLNR has not done the necessary work with both legal council and the public to find the answer to the critical question: **Who will issue the \$35.00 tickets for minor parking violations in our State Harbors?**

A contested case hearing will produce the legal answer to this question, so that policy can be implemented.



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

1. Revocation of the permit; halt the Direct Issuance to Secure Parking Hawaii LLC at Ma'alaea State Boat Harbor until the 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 the Attorney General to determine, based on existing laws, who can give the \$35.00 fine/citations for minor parking violations in our State Harbors. The authority seems to rest on the DOCARE officers, but I think the AG will agree that the Board of Land and Natural Resources already has the right and power to assign the Parking 'Concessionair/Vendor/Permittee the authority to issue the \$35.00 fine. Secure Parking Hawaii LLC has an establishment ability to perform this function, as documented on their web-site and in their testimony to the Board.

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

1. Preserve due process and first amendment rights for the public. The right to not have their vehicle seized for minor parking violation on public recreation land, especially during 'harbor open hours'. Also, preserve beach and ocean access, and preserve cultural rights.
2. The current parking management is not being done properly, or fairly, and it is not pono to tow for what would be a minor parking cost or standard small fee (\$35.): and the current policy and recent BLNR decision does not protect the public. Only a State Official such as a DOCARE Officer or an HPD Officer, should be 'calling' the need for a tow, and if the state wants allow the parking permittee, or the tow truck driver to 'make the call' than the specifics should clear, monthly towing records with the tally and the reason for the tow, should be mandatory. Ultimately the State is responsible and by having a contested case hearing shows due diligence of the State to solve this matter, before the members of public become plaintiffs and file another Federal lawsuit on this topic. (Carello vs State of Hawaii, 2011). Please be proactive and work on this situation, without a lawsuit.

**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**

I am the Petitioner, Kate Thomson: Hawaii resident for 44 years, Registered Nurse, retired State employee, long time sailor and sailboat owner, and concerned citizen who has witnessed the inappropriate towing of vehicles in our State Harbor for many years. During the past three years Secure Parking Hawaii LLC has held State Contracts for parking management at State Harbors on Oahu and Maui, and since electronic payment monitoring has been possible, the towing of vehicles has been 'instant' in that no prior citation, or normal parking ticket, is given before the tow. The public harbors are part of the public land trust and as a Hawaii resident I have the right to come forward and be heard; the 2 minutes public testimony time I was allotted at the June 14, 2024 Board of Land and Natural Resources meeting was not an adequate length time to address the depth and breadth of this ongoing issue.

The towing situation on public lands is the Kuleana of DLNR Chang Chang. By doing a contested case hearing, Chair Chang and the Board Members will be able to obtain more information than the information available at the June 14-2024 BLNR meeting when they made their decision to issue a 5-year Direct Issuance Contract to Secure Parking Hawaii LLC.

Also, by having a contested case hearing, the legal counsel can summarize the testimony, and the findings, and suggest legal solutions and make it public. These issues at hand take place on public lands and it is everyone's responsibility to 'go deeply' into the topic, with transparency and care, to find equitable and sustainable solutions.

The purpose of a contested case hearings is to provide the decision-makers with the most complete and relevant information they need to make a proper decision. These hearings are like an informal court proceeding.

Please grant me, and potential testifiers, the opportunity for a contested case hearing.

Mahalo.

*. - 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.

Kate Thompson

Petitioner or Representative (Print  
Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date