

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

June 26, 2026

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

SUBJECT: Denial of Petition for Contested Case Hearing filed on October 3, 2025, by Kate Thompson regarding Item J-1 on the September 26, 2025, Board Agenda, titled: *Delegate Authority to the Chairperson to Negotiate, Approve, Execute, Manage, and Extend a Service Contract for Parking Monitoring Service with Secure Parking Hawaii LLC, at the Ala Wai Small Boat Harbor, Kalia, Waikīkī, Honolulu, O'ahu, Hawai'i, Identified by Tax Map Keys: (1) 2-6-010 portion of :003, (1) 2-3-037 portion of :012, :024, :027, :033, :035, and :037.*

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 October 3, 2025, regarding Board of Land and Natural Resources ("Board") delegation of authority to the Chairperson to negotiate, approve, execute, manage, and extend a service contract for Parking Monitoring Service with Secure Parking Hawaii LLC ("Secure"), at the Ala Wai Small Boat Harbor, Honolulu, O'ahu. DOBOR recommends that the Board deny the CCH petition because Petitioner has not demonstrated that she is legally entitled to a CCH.

BACKGROUND:

At the Board's September 26, 2025, meeting under agenda Item J-1, DOBOR requested that the Board delegate authority to the Chairperson to negotiate, approve, execute, manage, and extend a service contract for Parking Monitoring Service with Secure at

the Ala Wai Small Boat Harbor.¹ Petitioner was present at the Board's September 26, 2025, meeting in-person.

After approximately thirty minutes of consideration, the Board voted to approve DOBOR's recommendation via its Staff Submittal.² Petitioner then verbally requested a CCH for Item J-1 at the September 26, 2025, Board meeting.³ Petitioner's written CCH petition seeks a CCH to challenge the Board's approval of Item J-1. Petitioner's desired relief includes: rescission of the delegation of authority given pursuant to Item J-1 at the September 26, 2025, Board meeting; direct DOBOR to implement a citation-first enforcement system; order an independent site review and limited financial/operational audit regarding parking lot markings and signage; initiate rulemaking to establish certain requirements regarding parking and towing in DOBOR lots; and request an opinion from the Department of the Attorney General.

DISCUSSION:

An administrative agency is only required to hold a CCH when it is required by law as follows: (1) by statute; (2) by administrative rule; or (3) by constitutional Due Process. *Mauna Kea Anaina Hou v. BLNR*, 136 Hawai'i 376, 390, 363 P.3d 224, 238 (2015). Petitioner claims here that a CCH is warranted pursuant to Hawaii Administrative Rule (HAR) Sections 13-1-28 and 13-1-29, as well as constitutional due process. DOBOR staff disagrees and recommends denial of the request.

HAR Sections 13-1-28 and 13-1-29 detail procedural requirements for a CCH and therefore do not establish any criteria for determining if a person is legally entitled to a CCH.

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

¹ The written submittal provided by DOBOR staff in connection with the September 26, 2025, Board meeting's agenda Item J-1 is publicly available via the Board's website, at <https://dlnr.hawaii.gov/wp-content/uploads/2025/09/J-1.pdf>.

² See Audio Recording of the 9/26/25 Meeting at approximately 4:00:55/ 4:22:55, available at <https://www.youtube.com/watch?v=vob5iSMguyo>.

³ See Audio, *supra* n.2, at approximately 4:01:13/ 4:22:55. Petitioner made her verbal request for a CCH after the Board had already voted to approve staff's recommendation as detailed in Item J-1.

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 a 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[.]"

Petitioner alleges that the specific due process interests being affected by the subject Board action are: "adequate notice/signage; determinations made by duly authorized State officials; fair proportionate penalties; and statutory post-tow procedures." 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. Secure was the successful bidder and was issued the initial RP for management of vehicular parking for Ala Wai Small Boat Harbor on September 10, 2021, as Board Agenda Item J-7.⁴

Additionally, Petitioner states as justification for being considered a party entitled to a CCH that she is a mooring permit holder and user in the Ala Wai Small Boat Harbor. However, neither holding a permit to moor a vessel at the Ala Wai Small Boat Harbor, nor being a harbor user, establish any legitimate claim of entitlement to, or oversight over, the details of parking management and enforcement at the harbor's public parking areas. The Board should deny Petitioner's request for a CCH on this basis alone.

⁴ Staff notes that Petitioner did not engage in the sunshine process ahead of the Board's initial RP issuance to Secure.

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

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 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 September 26, 2025, 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 decisionmaking on Item J-1 at the September 26, 2025, meeting. Petitioner was therefore afforded ample notice *and* a substantial opportunity to be heard by providing written and oral testimony. *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.

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. The costs of 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 that would have little to no significant value. Of significant note is that if a CCH were held and delegation of authority to negotiate, approve, execute, manage, and extend a service contract for Parking Monitoring Service with 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

the proposed parking lot management at the Ala Wai 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.

Additional Considerations

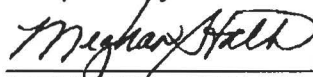
DOBOR notes that this Petitioner has submitted CCH petitions on the matter of the parking concession issued to Secure on numerous previous occasions, with each petition being denied on the basis that Petitioner had no legal right, duty, or privilege entitling her to a CCH.

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

RECOMMENDATIONS:

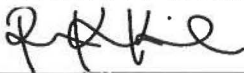
1. That the Board deny the CCH petition by Petitioner, pursuant to HAR Section 13-1-29.1 because Petitioner does not have a legal right, duty, or privilege entitling her to a CCH regarding delegation of authority to the Chairperson to negotiate, approve, execute, manage, and extend a service contract for Parking Monitoring Service with 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:



RYAN K.P. KANAKA'OLE, Acting Chairperson
Board of Land and Natural Resources