

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

January 13, 2012

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

REPORT TO THE BOARD REGARDING PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT CONCERNING PARKING AT THE ALA WAI SMALL BOAT HARBOR (AWSBH) AND REQUEST AUTHORIZATION TO PROVIDE A HEARING OFFICER(S) AS REQUIRED BY THE SETTLEMENT. THE BOARD MAY CONVENE INTO EXECUTIVE SESSION.

BACKGROUND:

The Division of Boating and Ocean Recreation (DOBOR) manages the State's small boat harbors, including AWSBH. There is a parking lot at AWSBH with approximately 900 parking stalls, in three general categories: free, metered, and long term for vessel owners. The lot is not gated.

DOBOR has a contract with Diamond Parking (DP) pursuant to which DP runs the AWSBH parking lot. DP collects and enforces payment and pays DOBOR a percentage of the gross. DP enforced failure to pay and unauthorized parking in two ways. First, it issued what DP called a "parking penalty." Second, DP hired a towing company and towed some vehicles – mostly vehicles remaining after 10:30 p.m. when parking was prohibited.

LAWSUIT:

In December 2010, plaintiffs filed a federal court lawsuit making essentially two claims. One, because the lot is State property, the State or DP was required to (but did not) provide constitutional due process in connection with tows. Two, there was no authority for DP to issue the parking penalties. Plaintiffs seek to pursue the case as a class action.

STATE AND DP REACTION TO THE LAWSUIT:

DOBOR directed DP to stop towing temporarily. DOBOR arranged to make post tow hearings available and to provide notice of the right to request a hearing. Towing resumed in January. Since then there have been about 15 or 20 hearings.

DP also stopped issuing parking penalties upon receipt of the lawsuit.

SETTLEMENT:

The Department of Attorney General is defending the case and has agreed in principle to settle as follows:

- A settlement class with two subclasses will be certified. The subclasses are: 1) persons towed after December 10, 2008, who did not receive notice of a right to post tow hearing and 2) persons who paid a parking penalty after December 10, 2008.
- Plaintiffs' attorney will receive \$125,000 in fees and costs (subject to court approval).
- Named plaintiffs will receive \$3000 each.
- Notice of the settlement will be published.
- Any member of the tow sub class who files a claim in response to the notice will get a hearing. DLNR will provide the hearing officer. If the hearing officer determines that the tow was wrongful, then the person will receive \$160 up to a maximum of \$100,000 for this sub class. Defendants may settle a claim in lieu of the hearing.
- Any member of the penalty sub class who files a claim will get a parking voucher and possibly cash, depending on the amount paid. The maximum total payment (voucher and cash) is \$75,000 for this sub class.

The settlement is subject to approval by the federal court (Judge Seabright). Other details of the settlement can be provided in executive session.

RECOMMENDATIONS:

That the Board authorize DLNR to provide a hearing officer or officers as required by the settlement.

Respectfully submitted,



Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL



William J. Aila, Jr.  
Chairperson and Member