

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 22, 2023

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

Statewide

Authorize Chairperson to Negotiate, Approve and Execute a Memorandum of Agreement Between the Department of Land and Natural Resources and the Department of Agriculture Regarding the Management of Statewide Ocean Leases Issued under Chapters 171 and 190D, Hawaii Revised Statutes, and Transfer of Revenues, Less Management Expenses, to the Aquaculture Development Program Managed by the Department of Agriculture.

BACKGROUND:

Leasing of State ocean water is processed pursuant to the provisions in Sections 171-53 and 59(b), and Chapter 190D of Hawaii Revised Statutes (“HRS”). In addition, Section 190D-33, HRS mandates the revenues obtained from the leasing of state marine waters pursuant to Chapter 190D to be deposited into the special land and development fund to be used for planning, research, and development of the aquaculture industry.

At the present time, there is only one aquaculture lease managed by the Land Division (“LD”) – General Lease No. S-5721 To Keahole Point Fish LLC, who leases 90 acres of submerged lands offshore of Kalaoa, North Kona for a base rent of \$40,000.00 per year or 1% of gross revenue, whichever is greater (lessee paid an additional \$14,862.00 in percentage rent for the most recent accounting period). However, the Aquaculture Development Program (“ADP”) under the Department of Agriculture (“DOA”), which is the agency that oversees the development of aquaculture industries in the State, anticipates applications for additional aquaculture leases being submitted in the near future. ADP and LD are amenable to the transfer of certain revenues collected from mariculture leases, less the cost of issuing, managing and administering the leases, from DLNR’s special fund to ADP in accordance with Section 190D-33, HRS.

To this end, the parties seek to execute a Memorandum of Agreement (“MOA”), a draft of which is attached as **Exhibit A**. Under the proposed MOA, 20% of the total revenues collected under aquaculture or Chapter 190D, HRS, ocean leases issued by the Board will be transferred to the general fund trust holding account to contribute to the payment of the

Office of Hawaiian Affairs' share of ceded lands revenues. LD will then retain 25% of the total revenues collected, plus any third-party costs incurred in managing the leases (such as appraisal, survey or mapping costs). ADP will receive the balance of the revenue on a periodic basis.

RECOMMENDATION: That the Board authorize the Chairperson to negotiate, approve and execute the Memorandum of Agreement substantially in the form attached as Exhibit A between the Department of Land and Natural Resources and the Department of Agriculture regarding the management of aquaculture and ocean leases issued pursuant to Chapters 171 and 190D, HRS, and transfer of revenues collected from the leases described above, and further subject to the review and approval by the Department of the Attorney General.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson *KOM*

RT

MEMORANDUM OF AGREEMENT BETWEEN THE
STATE OF HAWAII, DEPARTMENT OF AGRICULTURE, AND
THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES

REGARDING THE MANAGEMENT OF CURRENT AND FUTURE
AQUACULTURE AND OCEAN LEASES

THIS MEMORANDUM OF AGREEMENT (hereinafter referred to as "Agreement") is made and entered into on this ___ day of _____, 20 __, by and between the State of Hawaii, Department of Land and Natural Resources ("DLNR") whose address is P.O. Box 621, Honolulu, Hawaii 96809-0621 and the State of Hawaii, Department of Agriculture ("DOA"), on behalf of the Aquaculture Development Program ("ADP"), whose address is 1177 Alakea Street #400, Honolulu, Hawaii 96813, (collectively "Parties").

RECITALS

WHEREAS ADP, under DOA, the agency that oversees the development of aquaculture industries in the State, anticipates applications for additional aquaculture and ocean leases being submitted in the near future. Under Section 141-52, Hawaii Revised Statutes ("HRS"), ADP is tasked with, among other things, the development and expansion of the aquaculture industry and coordination of development projects to investigate and solve biological and technical problems involved in raising certain species with commercial potential;

WHEREAS pursuant to Section 190D-33, HRS, revenues obtained from the leasing of state marine waters pursuant to Chapter 190D, HRS, shall be deposited into the Special Land and Development Fund to be used for planning, research, and development of the aquaculture industry;

WHEREAS ADP, through DOA, and DLNR are amenable to the transfer of certain revenues collected from mariculture leases, less the cost of issuing, managing and administering the leases,¹ from DLNR's special fund to ADP in accordance with Section 190D-33, HRS;

WHEREAS in the past, DLNR has transferred to ADP about \$200,000.00 for its aquaculture program; and

¹ The parties determined that it would be reasonable and equitable for DLNR to retain a 25% management fee to cover the costs of issuing and managing the leases that include, among other tasks, billing, collections and monitoring of insurance and bonding requirements, plus any third-party costs incurred, such as appraisal or ocean surveying and mapping costs.

EXHIBIT A

WHEREAS ADP will report the amount and usage of the transferred funds further described below in its annual report to the Legislature on the implementation of Chapter 190D, HRS, regarding ocean and submerged lands leasing.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term. The term of this Agreement shall begin on the Effective Date of this Agreement and shall terminate on December 31, 2024. For the purposes of this Agreement, “Effective Date” shall mean the date of execution of this agreement.
2. Revenue Apportionment. Any revenue collected from the aquaculture and ocean leases issued pursuant to Chapter 190D, HRS, shall be apportioned in the following manner:
 - A. 20% to the Office of Hawaiian Affairs.
 - B. 25% to the DLNR’s Special Land and Development Fund, plus any third-party costs incurred in managing the leases (such as appraisal, survey, or mapping costs).
 - C. 55% or the net remaining amount of revenues, whichever is less to ADP through the DOA via journal voucher transfer.
 - D. DLNR shall use its best efforts to transfer the revenue described in item 2.C above within four (4) calendar months following collection of the revenues.²
3. Amendment. This Agreement may not be amended or modified except by written agreement executed by all Parties.
4. Termination. Either party may terminate all or a portion of this Agreement upon not less than thirty days’ written notice to the other party.
5. Renewal. This Agreement shall automatically renew every year for successive one-year terms. If either Party decides not to renew the Agreement, the Party shall provide written notice to the other party no later than thirty (30) days prior to the end of the calendar year.
6. Entire Agreement. This Agreement, along with all attachments, contains the

² The parties recognize processing payments and transfers such as journal vouchers involve other departments or offices such as the fiscal/accounting offices at the Departments of Land and Natural Resources and the Accounting and General Services.

entire agreement of the Parties and supersedes any other agreements or understandings, oral or written between the Parties concerning the subject matter of this Agreement.

7. Severability. If any provision of this Agreement, or the application thereof, to any person or circumstance is invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof to other persons or circumstances will not be affected.
8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and said counterparts will together constitute one and the same agreement and shall be binding on each of the Parties notwithstanding that all of the Parties are not signatory to the original or the same counterpart. The submission of a signature page by facsimile transmission, or similar electronic submission facility (e.g., e-mail) shall be deemed to constitute an “original” signature page for all purposes (other than recordation), and facsimile or electronic copies shall be deemed to constitute duplicate originals.

IN WITNESS WHEREOF, the DOA on behalf of ADP, and the DLNR have executed this Memorandum of Agreement as of the date first above written.

Approved by the Board of Agriculture
At its meeting held on

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AQUACULTURE DEVELOPMENT
PROGRAM

Its Chairperson

Approved by the Board of Land
And Natural Resources at its
Meeting held on

STATE OF HAWAII
DEPARTMENT OF LAND AND
NATURAL RESOURCES

Its Chairperson

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____