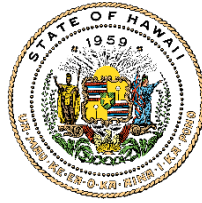


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**APPROVED BY THE
BOARD AT ITS
MEETING HELD ON
DECEMBER 7, 2023**

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621
HONOLULU, HAWAII 96809

**SUMMARY MINUTES
FOR THE MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

Audio Links: <https://files.hawaii.gov/dlnr/meeting/audio/Audio-LNR-230609-1.m4a> (1)
<https://files.hawaii.gov/dlnr/meeting/audio/Audio-LNR-230609-2.m4a> (2)

DATE: June 9, 2023
TIME: 9:15 AM
LOCATION: In person at 1151 Punchbowl St, Room 132
(Kalanimoku Building) online via ZOOM, livestream
via YouTube

MEMBERS

Dawn Chang
Vernon Char (absent)
Kaiwi Yoon
Riley Smith

Doreen Canto
Aimee Barnes
Karen Ono

STAFF

Russell Tsuji-Land
David Smith-DOFAW
Keiki Kipapa-Parks
Cathy Gewerke-DAR
David Sakoda-DAR

Kevin Moore-Land
Curt Cottrell-Parks
David Smith-DAR
Brian Neilson-DAR

OTHERS

Danica Swenson/AG
Olivia Pham/DOT HAR
Luana Froiseth/D2,D3
Chris Kiser/F1
Charlie Young/F1
Steven Barren/F1
Richard Haviland/J3

Abby Lareau/DOT AIR
Shae Kamakaala/C3
Mac Curran/D6
Inga Gibson/F1
Mark Nakachi/F1
Kate Thompson/J3
Scott Allen/J3

ITEM A-1

06.09.2023(1)/00:03:14

Chair Chang called the meeting to order. The Board members and public may join in person, via phone and via Zoom. Those who requested to provide oral and written testimony have done so in advance of the meeting. The contested case standard statement was read and Roll Call of the Members conducted. Member Char is excused today. Noted the order of the Agenda items to be heard and clarified that the Naniloa is not on the agenda. The following have been withdrawn: Item C-1, Item C-2, Item D-7, and Item F-3.

06.09.2023(1)/00:10:50

ITEM A-1 Approval of the February 24, 2023, Summary Minutes.

ITEM A-2 Approval of the March 10, 2023, Summary Minutes.

Board Discussion

Items A-1 and A-2 were taken together.

Public Testimony-None

06.09.2023(1)/00:10:59

MOTION

Approved as submitted Items A-1 and A-2 (Canto, Ono) unanimously.

06.09.2023(1)/00:11:48

ITEM M-1 Issuance of a Revocable Permit for Aircraft Parking, N4232J LLC, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-076: Portion of 023.

ITEM M-2 Issuance of a Revocable Permit for Land for Ground Service Vehicle Parking and Storage of Materials to Support Its Helicopter Tour Operations, Novictor Aviation LLC, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-072: Portion of 018.

ITEM M-3 Issuance of a Revocable Permit for Ramp Space for Ground Service Equipment Parking, Air Service Hawaii, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-012: Portion of 009.

ITEM M-4 Issuance of a Revocable Permit for Aircraft Parking, Manu Aviation LLC, Kalaeloa Airport, Tax Map Key: (1) 9-1-013: Portion of 032.

ITEM M-5 Issuance of a Revocable Permit for Aircraft Parking, William Moody, Kalaeloa Airport, Tax Map Key: (1) 9-1-013: Portion of 032.

ITEM M-6 Issuance of a Revocable Permit for an Office and Break Room, Delta Air Lines, Inc., Ellison Onizuka Kona International Airport at Keahole, Tax Map Key: (3) 7-3-043: Portion of 003.

Amendment:

Chapter 343 HRS amend Environmental Assessment, pursuant to HAR 11-200.1.16 Bravo, the Department of Transportation deems the action to issue a Month-to-Month Revocable Permit to Delta Airlines to use Building 383-102 for Office and Break room as de minimis and Exempt from the preparation of an Exemption Notice. The DOT cites Exemption Type 3 Part 1 modification of existing facilities or installation of new equipment, we're going to cite Item 9 modify existing structures and buildings and personal shelters storage facilities and carports.

- ITEM M-7** Issuance of a Revocable Permit for a T-Hangar End Room for an Office to Support Flight School Operations, Hawaii Pacific Aviation Inc., Ellison Onizuka Kona International Airport at Keahole, Tax Map Key: (3) 7-3-043: Portion of 003.
- ITEM M-8** Issuance of a Hangar Facilities Lease for Private Fixed-Wing General Aviation Operations By Notice of Public Auction, Lihue Airport, Tax Map Key: (4) 3-5-001: Portion of 158.
- ITEM M-9** Issuance of a Revocable Permit for Office Spaces and a Ticket Counter to Support Its Fixed-Base Operations, Signature Flight Support LLC, Lihue Airport, Tax Map Key: (4) 3-5-001: Portion of 147.
- ITEM M-10** Issuance of a Revocable Permit for a Concession to Sell Small Personal Electronics Through Vending Machines, Prepango LLC, Kahului Airport, Tax Map Key: (2) 3-8-001: Portion of 019.
- ITEM M-11** Issuance of a Revocable Permit for Improved, Paved Land for Storage of a Safety Cabinet, Big Island Gravity LLC, Upolu Airport, Tax Map Key: (3) 5-5-006: Portion of 007.

Abby Lareau, DOT Airports available to answer questions for Items M-1 through M-11.

Board Discussion

Item M-1, regarding Honolulu Airport does have the required Wash Rack Area for Key Hangers and Tie downs as well as Kawailoa.

Item M-2, a question regarding the company has had fatalities. This is an Operations question and not specifically for the Contract part for the use of the land. When issuing a contract, we are looking at the whole picture, they are required to provide their Certification, Air Worthy Certificate from FAA and other requirements and conditions of the contract. Applicant's permits must be up to date.

Previously, a tenant built a wall without the proper approvals and the Property Managers have been informed to ensure their tenants are in compliance.

Public Testimony-None

06.09.2023(1)/00:17:20

MOTION

Approved as submitted Items M-1, M2, M-3, M-4, M-5, M-7, M-8, M-9, M-10 and M-11 (Ono, Smith) unanimously.

Approved as amended M-6 (Ono, Smith) unanimously.

06.09.2023(1)/00:17:45

ITEM M-12 Request for Authorization to Issue three Month-to-Month Revocable Permits to Young Brothers, LLC, for a Building, Vehicle Parking, and Equipment Storage, Pier 19, Honolulu Harbor, Island of Oahu, Tax Map Key No: (1) 1-5-039: Portion of 007, (1) 1-5-039: Portion of 017, (1) 1-5-039:041, and (1) 1-5-039: Portion 063, Governor's Executive Order No. 2903.

Olivia Pham, DOT Harbors present to answer any questions.

Board Discussion-None

Public Testimony-None

06.09.2023(1)/00:17:55

MOTION

Approved as submitted (Barnes, Yoon) unanimously.

06.09.2023(1)/00:18:38

ITEM C-3 Request Approval to Authorize the Chairperson to sign a Notice of Federal Participation form required by U.S Fish and Wildlife Service to be recorded with the Purchase of Property in Māhukona, North Kohala District, Hawai'i Island, Tax Map Keys: (3) 5-7-003:002, (3) 5-7-003:003, (3) 5-7-003:010, (3) 5-7-002:011, (3) 5-7-003:001, (3) 5-7-003:018, (3) 5-7-003:007, (3) 5-7-003:008, (3) 5-7-002:027, (3) 5-7-002:036, and (3) 5-7-002:037, under Subgrant Agreement between the State of Hawai'i, Department of Land and Natural Resources, Division of Forestry and Wildlife, and Hawai'i Land Trust.

David Smith, Division of Forestry and Wildlife introduced the submittal. Shae Kamakaala (HILT) available to answer questions.

Board Discussion

Subgrant process was discussed for the Notice of Federal Participation from U.S. Fish and Wildlife Service and requirements. Cultural sites significances' were explained, and the preservation of these sites were shared.

Public Testimony

Shae Kamakaala provided additional information on the acquisition lands by her written testimony.

06.09.2023(1)/00:38:10

MOTION

Approved as submitted (Smith, Canto) unanimously.

06.09.2023(1)/00:48:35

ITEM D-1 Issuance of Right-of-Entry Permit to MC&A, Inc., for One-Day Team Building Event Purposes, Wailea, Honua'ula, Maui; Tax Map Key: (2) 2-1-023: Seaward of 007.

Russell Tsuji, Land Division presented the submittal.

Board Discussion

There should be some Notice to the public when these types of events may have an effect on public access.

Public Testimony-None

06.09.2023(1)/00:48:35

MOTION

Approved as submitted (Canto, Yoon) 6-Ayes, 1-Oppose (Barnes)

06.09.2023(1)/00:56:28

ITEM D-2 Issuance of Right-of-Entry Permit for Ten (10) total Days to O'ahu Hawaiian Canoe Racing Association Hawaii for the Hawaiian Airlines Moloka'i Hoe Long Distance Canoe Race Event to Take Place Over Two Days Each Year in October 2023, October 2024, October 2025, October 2026, and October 2027, at Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037: portion of 021.

Russell Tsuji, Land Division presented the submittal.

Board Discussion

Coordinating submittal within DLNR to create one approval for the race. Molokai Community engagement reach. Clarification on the future dates. Rent established will be good for all 5-years.

Public Testimony

Luana Froiseth, asked to have Hawaiian Airlines removed as title sponsor and provided additional information on the race asked for approval of the submittal.

Amendment:

The Board amended the recommendation section by adding a condition 2 e. to read as follows: 2 e. Notify the community in advance of the scheduled event of the temporary use of public lands on Oahu and on Molokai.

06.09.2023(1)/01:19:28

MOTION

Approved as amended (Barnes, Canto) unanimously.

06.09.2023(1)/01:23:04 Break

06.09.2023(1)/01:35:09

ITEM D-3 Issuance of Right-of-Entry Permit for One (1) Day to O'ahu Hawaiian Canoe Racing Association Hawaii for the Duke Kahanamoku Men's Long Distance Canoe Race Event to Take Place on August 20, 2023, at Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037: portion of 021.

Russell Tsuji, Land Division presented the submittal.

Board Discussion-None

Public Testimony-None

Amendment:

The Board amended the recommendation section by finding the event will likely have minimal or no significant impact on the environment and is presumed exempt from the preparation of an environmental assessment and added an exemption notification in the form attached hereto as Exhibit C to the submittal.

06.09.2023(1)/01:36:04

MOTION

Approved as amended (Barnes, Ono) unanimously.

06.09.2023(1)/01:36:04

ITEM D-4 Issuance of Right-of-Entry Permit for One (1) Day to Waikiki Roughwater Swim Committee, Inc. for the 52nd Annual Waikiki Roughwater Swim Finish Line Area on September 4, 2023, at Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037: portion of 021.

Russell Tsuji, Land Division presented the submittal.

Board Discussion-None

Public Testimony-None

06.09.2023(1)/01:37:05

MOTION

Approved as submitted (Yoon, Barnes) unanimously.

06.09.2023(1)/01:37:19

ITEM D-5 Amend Prior Board Action of March 23, 2018, (Item D-5), *Grant of Perpetual, Non-Exclusive Easement and Issuance of Construction Right-of-Entry Permit to Hawaiian Electric Company, Inc. for Utility Purposes; Mutual Cancellation of Perpetual Easement recorded as Liber 4170, page 220; Consent to the Disposition between the City and County of Honolulu and Hawaiian Electric Company, Inc. over the Lands under Governor's Executive Order No. 569 for Staging Areas; Waikīkī, Honolulu, O'ahu, Tax Map Keys: (1) 2-7-036:001, 007, and portions of Ala Wai Canal.*

This amendment is to note Governor's Executive Order No. 2036 to the City and County of Honolulu as an additional encumbrance on the land over which the easement is requested.

Russell Tsuji, Land Division presented the submittal.

Board Discussion-None

Public Testimony-None

06.09.2023(1)/01:38:49

MOTION

Approved as submitted (Barnes, Canto) unanimously.

06.09.2023(1)/01:38:49

ITEM D-6 Issuance of Right-of-Entry Permit for One (1) Day to Oahu Pentathlon LLC for the Oahu Pentathlon Swim, Run, Paddle, Bike, Ruck, and Bike Race Event to Take Place On August 26, 2023, at Castles Beach, Kailua, O'ahu, Tax Map Key: (1) 4-3-083: seaward of 016 and Laniloa/ Clissold's Beach, Lā'ie, O'ahu, Tax Map Key: (1) 5-5-002: seaward of 061.

Russell Tsuji, Land Division presented the submittal.

Board Discussion

Signage concerns, types of impacts affecting the public, time frame of the event, contact information. Notification to DOT regarding race route. Size of the event. Clean-up as far as leaving it better than you found it.

Public Testimony

Mac Curran provided information regarding the event.

Amendment:

The Recommendation Section add a Condition 2 f. to read as follows:

2 f. .Notify the community in advance of the scheduled event of the temporary use of public lands.

06.09.2023(1)/01:51:32

MOTION

Approved as amended (Barnes, Yoon) unanimously.

06.09.2023(1)/01:54:50

ITEM E-1 Amend Prior Board Action of June 9, 2022, Item E-1, Twenty (20) Year Extension of General Lease SP0006 Hawai'i Nature Center, Inc. at Makiki Valley State Recreation Area, Honolulu, O'ahu, Hawai'i, Tax Map Key: (1) 2-5-019:008 Portion to fix typographic errors; and

Amendment of General Lease No. S-97-01 Hawai'i Nature Center, Inc. for the reduction of the leased area and the proposed removal of the condition requiring the living accommodation and open and closing of the Park's gate.

Curt Cottrell, Division of State Parks presented the submittal. Keiki Kipapa (SP), available for questions.

Board Discussion

Review if a performance bond is part of their lease to be consistent within all Divisions the lease termination language. Environmental Site Assessment, Lessees reason for reducing the area were discussed and DOFAW will take over the cabin on the property.

Public Testimony-None

06.09.2023(1)/02:08:33

MOTION

Approved as submitted (Barnes, Yoon) unanimously.

06.09.2023(1)/02:09:46

ITEM F-1 Request for Approval of a Special Activity Permit (SAP 2024-27) for Chris Kiser, Ecoharvest Hawaii LLC, Project Coordinator, to Collect and Possess Regulated Organisms (Yellow Tang and Potter's Angelfish), Using Regulated Gear (Small Meshed Nets; < 2 Inches Stretched Mesh), in the Regulated Area within the West Hawai'i Regional Fishery Management Area (WHRFMA) on Hawai'i Island, for the Purpose of Researching Propagation/Aquaculture Techniques (for Aquarium Purposes*).

Brian Neilson, Division of Aquatic Resources joined by Cathy Gewecke presented the submittal. Noted that an amendment to the submittal regarding non-regulated in the submittal should be regulated. David Sakoda (DAR) also available to answer questions.

Board Discussion

Compliance of prior violations was determined to be procedural. Letter from DAR addressing the violations to the Permittee was sent, difference between a Special Use Activity Permit and an Aquarium Permit was discussed extensively. It was clarified that the Permittee, although not

selling the fishes he is collecting, is planning on selling the fishes that are propagated from the eggs of the fish collected for aquarium trade. Community outreach was addressed as not being sufficient.

Public Testimony

Chris Kiser, applicant explained how they use the collection of fish to propagate the eggs and sell the fish that are from the eggs of the fish they collect off the reef.

Charlie Young, Mark Nakachi, and Inga Gibson provided testimony in opposition.

06.09.2023(1)/03:20:33

MOTION

Denied (Smith, Ono) unanimously.

06.09.2023(1)/03:21:17 Break

06.09.2023(1)/04:05:34

ITEM F-2 Request for Approval to Hold Public Hearings on Proposed Adoption of a New Chapter under Hawaii Administrative Rules as Title 13, Chapter 13-78, "Ocean Stewardship User Fee" to Establish Provisions for the Ocean Stewardship User Fee Pursuant to Section 187A-52, Hawaii Revised Statutes, Including a Due Date for the Fees to be Submitted to the Department, Reporting Requirements for Commercial Operators, Record Keeping Requirements for Commercial Operators, and Applicable Penalties for Violations of the Chapter.

The proposed rule amendments can be reviewed in person, by appointment only, at the Division of Aquatic Resources (DAR) office on O'ahu at 1151 Punchbowl St. Room 330, Honolulu, Hawai'i 96813 from 8:00 am to 3:30 pm, Monday through Friday, except Holidays. To schedule an appointment to review the proposed rules in person, email dlnr.aquatics@hawaii.gov.

The proposed rules, including a statement on the topic of the proposed rules, can be reviewed online at: <https://ltgov.hawaii.gov/the-office/administrative-rules/proposed-changes/>.

The proposed rules can also be viewed online at: <http://dlnr.hawaii.gov/dar/rules-and-public-notice/>.

Brian Neilson, Division of Aquatic Resources, David Sakoda (DAR) provided a PowerPoint presentation.

Continuation: **06.09.2023(2)/00:00:01**

Board Discussion

Public Hearings schedule, type of penalties/criminal/enforcement when violations are cited, how and where the Ocean Stewardship User Fee would be used, compliance for Commercial operators was discussed. The nature of the new Rule was discussed at length and if or how it would apply to other areas. How the funds will be distributed and who pays DAR versus who pays DOBOR.

Public Testimony-None

06.09.2023(2)/00:20:49

MOTION

Approved as submitted (Yoon, Canto) unanimously.

06.09.2023(2)/00:22:10

ITEM F-4 Request for Approval to Enter Into a Memorandum of Agreement Between the State of Hawai'i Department of Land and Natural Resources, Division of Aquatic Resources, and the Arizona Board of Regents, on Behalf of Arizona State University and its Center for Global Discovery and Conservation Science, Regarding the Management of the Ridge to Reef Restoration Center, Located at the Hawai'i Ocean Science and Technology Park, Hawai'i Island: and

To Authorize the Chairperson to Amend, Finalize, and Execute this Memorandum of Agreement Subject to Approval as to Form by the Department of the Attorney General; and

To Delegate Authority to the Chairperson to Enter Into, Amend, Finalize, and Execute Future Non-Binding Memorandums of Agreement and Memorandums of Understanding Between the Hawai'i Department of Land and Natural Resources' Division of Aquatic Resources and other Federal, State, and Municipal Agencies, for the Purposes of Environmental Restoration, Propagation, or Natural Resource Protection, Without Formal Board Approval.

Brian Neilson, Division of Aquatic Resources presented the submittal and handed out the revised MOA to the Board.

Board Discussion

Research and Education of Coral restoration work is one of the components of the goals of ASU which DAR will be providing support. Cultural component is part of the stewardship portion of the program. Data will be available. Discussion on the amendments.

Public Testimony

Dr. Greg Asner, representing ASU provided information on the partnership and goals to be achieved.

Amendment:

See attached revised MOU.

06.09.2023(2)/00:49:23

MOTION

Approved as amended (Smith and Barnes) unanimously.

06.09.2023(2)/00:50:10

ITEM J-1 Issuance of Right-of-Entry Permit to Hawaiian International Billfish Association for the Inaugural 4 Flags 30 Pound Billfish Tournament and the 61st Annual Hawaiian International Billfish Tournament, Situated at Kailua-Kona Pier, Lanihau, North Kona, Island of Hawaii, Hawaii, Tax Map Key: (3) 7-5-006:039 (por): and

Declare Project Exempt from Requirements of Chapter 343, Hawaii Revised Statutes and Title 11, Chapter 200.1, Hawaii Administrative Rules.

Richard Howard, Division of Boating and Ocean Recreation presented the submittal. Ed Underwood and Kim Kahaleua (DOBOR) available to answer questions.

Board Discussion

Alcohol will be served, and it was clarified that they do not need a liquor license as they are not selling it, just providing the alcohol. Liability concerns to the State. DOBOR did check with the Liquor Commission, are they aware, even if they are not selling the alcohol, to participate in the tournament they have to pay to enter the fishing tournament.

Public Testimony-None

06.09.2023(2)/00:50:10

The Board decided to move on to Item F-2 while waiting for confirmation from the Hawaii Liquor Commission regarding the serving of alcohol and will return to Item F-1 after receiving that information.

MOTION-See 06.09.2023(2)/02:23:10 Below

06.09.2023(2)/00:52:15

ITEM J-3 **NON-ACTION ITEM:** Informational Briefing on DOBOR's Strategy for Conversion of Revocable Permits to Long-Term Dispositions Statewide.

Richard Howard, Division of Boating and Ocean Recreation and Kim Kahaleua provided a PowerPoint presentation on DOBOR's strategies going forward along with Ed Underwood (DOBOR) providing information on proposals on the parking and harbors.

Board Discussion

Advantage of direct leases, eleemosynary groups, moving forward with clear conditions on leases, performance bonds, robust discussion of processes and what can stay on a Revocable Permit and what you would consider as long-term disposition.

Public Testimony

Kate Thompson provided testimony on harbor parking. Richard Haviland and Scott Haviland provided testimony on the process and community engagement.

06.09.2023(2)/02:23:10

Continuation of Item J-1

Deputy AG Danica Swenson noted that under Hawaii Administrative Rule 13-232-60 typically consumption of alcoholic beverages on State Small Harbors and launching facilities are prohibited however the Department can permit the consumption of intoxicating liquor in agreement with approved designated areas.

Board Discussion

There was concern regarding protecting the State from liability,

Condition:

Add to the submittal a condition to defend, indemnify ,and hold harmless from all claims resulting from this Right-of Entry permit.

06.09.2023(2)/02:32:49

MOTION

Approved with added condition (Smith, Ono) unanimously.

06.09.2023(2)/02:33:12

There being no further business, Chair Chang adjourned the meeting. Recording(s) of the meeting and written testimonies received by the requested deadline can be found on-line with the submittal and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully Submitted:

Darlene S. Ferreira

Darlene S. Ferreira
Land Board Secretary

Approved for Submittal:



Dawn N.S. Chang, Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources

**MEMORANDUM OF AGREEMENT BETWEEN
THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES,
AND THE ARIZONA BOARD OF REGENTS,
ON BEHALF OF ARIZONA STATE UNIVERSITY AND ITS CENTER FOR GLOBAL
DISCOVERY AND CONSERVATION SCIENCE,
REGARDING THE MANAGEMENT OF THE
RIDGE TO REEF RESTORATION CENTER**

This Memorandum of Agreement (“Agreement”) is effective this day of _____ (“Effective Date”), by and between the State of Hawaii, Department of Land and Natural Resources (or “DLNR”), Division of Aquatic Resources (or “DAR”), whose mailing address is 1151 Punchbowl Street, Room 330, Honolulu, Hawaii, 96813, and the Arizona Board of Regents, a body corporate for and on behalf of Arizona State University and its Center For Global Discovery and Conservation Science, whose mailing address is 660 S. Mill Ave, Suite 310, Tempe, AZ 85281 USA, (Arizona State University or at times herein “ASU”) (DAR and ASU sometimes hereafter collectively referred to as the “Parties”), regarding the cooperation, management, and sharing of resources required for their “West Hawaii Resilient Reefs Initiative – Coral Restoration and Community Co-Management” project, and which is to be located at the Hawai‘i Ocean Science and Technology (“HOST”) Park, located in West Hawai‘i, Hawai‘i Island, at 73-4485 Kahilihili St., Kailua-Kona, Hawaii 96740.

RECITALS

WHEREAS, DLNR’s mission is to enhance, protect, conserve, and manage Hawaii’s unique and limited natural, cultural, and historic resources held in public trust for current and future generations, and does so through eight operating divisions; and

WHEREAS, DLNR’s Division of Aquatic Resources’ (“DAR”) mission is to work with the people of Hawaii to manage, conserve and restore the State’s unique aquatic resources and ecosystems for present and future generations, including coral reefs; and

WHEREAS, ASU Center for Global Discovery and Conservation Science leads spatially-explicit scientific and technological research focused on mitigating and adapting to global environmental change; and

WHEREAS, DAR currently leads a large number of efforts aimed at the long-term protection of coral reefs including fishery regulations, education, invasive species removal, coral restoration, and community co-management programs; and

WHEREAS, nearshore coral reefs provide critical habitat for important food sources, protect the coastline from erosion, support strong economic output through tourism and recreation, and are central to Hawaiian culture, history, and sense of place; and

WHEREAS, the essential services provided by coral reefs, as well as their overall health, are threatened by a multitude of factors including unsustainable fishing practices, land-based sources of pollution, physical damage, ocean acidification, climate change, and marine debris; and

WHEREAS, the task of safeguarding and restoring Hawaiian coral reef ecosystems requires an approach that incorporates diverse stakeholders and multiple complementary efforts; and

WHEREAS, a coral restoration nursery is a vital component of coral reef restoration efforts, as controlled nursery environments allow for an enhanced ability to rehabilitate and propagate broken or fragmented corals resulting from physical damage events as well as an opportunity to target resilient coral colonies; and

WHEREAS, although there are two coral facilities on the island of Hawai‘i, they are both located in Hilo, which is located on the eastern side of the island, presenting logistical challenges for responding to coral damage events in West Hawai‘i; and

WHEREAS, management of marine resources for reef resilience has the highest chance of success when approached as a collaborative effort between local communities and resource managers as well as supporting institutions; and

WHEREAS, ASU has indicated a willingness to partner with DAR in the construction and maintenance of a coral nursery facility at the HOST Park, located in West Hawai'i; and

WHEREAS, ASU has secured funding for the facility location as well as many of the initial facility components including design and permitting, modular life support units, coral raceways, and plumbing, and funding from ASU will primarily support operations including water, power, and consumables as well as facility maintenance technician salaries; and

WHEREAS, the parties and the general public would greatly benefit from a Memorandum of Agreement that clarifies the relationship between DAR and ASU and would enable DAR to access the HOST Park coral nursery to conduct its operations and store its equipment and gear in a convenient, centralized location, with a commitment of maintenance and cooperation by ASU, now both parties hereto deem it mutually advantageous and desirable to cooperate and hereby agree as follows:

Subject to the provisions of this Agreement, ASU agrees to:

1. Allow DAR employees access to the coral nursery facility located at HOST Park, including 24 coral raceways that will be utilized by DAR. The number of coral raceways available for DAR's use may be adjusted through written agreement between ASU and DAR;
2. ASU will take reasonable steps to ensure that all coral life support systems are fully operational for the duration of this agreement, including but not limited to: the operation and maintenance of coral raceways, life-support systems, pumping apparatus, and other components necessary to ensure uninterrupted use of the HOST Park coral nursery facility;
3. Allow DAR to place a mobile office container on a graded plot of land on the premises of the HOST Park coral nursery facility, which is land that ASU is currently leasing from Terraformation Inc., and which Terraformation Inc. is currently leasing from the Natural Energy Laboratory of Hawaii Authority (NELHA);
4. ASU will take reasonable steps to ensure restroom access for DAR employees, 24 hours per day, 7 days per week;

5. Provide electrical outlets, freshwater access, and internet access throughout the facility;
6. Maintain responsibility for non-DAR related coral nursery containers and their cleanliness/maintenance; and
7. Provide a written statement that shows that ASU has obtained proper permission, from the landowner and lessees, to allow DAR to operate the HOST Park coral nursey facility.

DAR agrees to:

1. Pay ASU for the services performed under this agreement in accordance with the rate schedule set forth in this paragraph, pending the successful procurement of funds by DAR for its proposed West Hawaii Resilient Reefs Initiative Support Proposal. DAR acknowledges and agrees that ASU is not obligated to commence work pending the successful procurement of funds by DAR. These services cover a 24-month period beginning on the Effective Date and may be extended at this rate upon agreement of amendment between the parties, in writing. Services and rates include:

- Monthly General Operations:
 - Raceway repairs and maintenance: \$59,930.00 (total over 24 months)
 - Funding a Facility Manager: \$204,400.00 (total over 24 months)
- Monthly Raceway Operations:
 - Seawater and Electrical/Internet Monitoring: \$97,500.00 (total over 24 months)
- Life Support System Fabrication:
 - Equipment, components, and successful test commissioning: \$99,000.000

Subtotal: \$460,830.00

ASU Surcharge (8.5%): \$39,170.00

TOTAL: \$500,000.00

All amounts due under this Agreement shall be paid by DAR upon receipt of invoices from ASU, which shall be issued monthly for the 24-month duration of this Agreement, starting on the Effective Date;

DAR will pay any additional costs incurred by the ASU as a result of any changes or alterations that are directly requested by or result from any changes or alterations requested by DAR to any aspect of the services provided under this Agreement. Such changes or alterations will be subject to the prior approval of the ASU and will be set forth in writing and signed by an authorized representative of each Party.

All fees due under this Agreement shall be made payable in U.S. dollars. DAR will be responsible for any costs of collection incurred by ASU to enforce the payment terms hereunder, including reasonable attorneys' fees and court costs.

2. Permit ASU to involve its students in the conduct and performance of the services;
3. Maintain responsibility for DAR-related containers and their cleanliness/maintenance; and
4. Hire a DAR coral restoration coordinator and other DAR technicians to conduct management-related coral restoration activities at the HOST Park coral nursery facility.

THE PARTIES FURTHER AGREE THAT:

1. This Agreement is effective as of the Effective Date and ends 24 months later ("Term"), unless the parties agree in writing to extend the Term;
2. This Agreement may be terminated by DAR or ASU upon Thirty (30) Days written notice to the other party. If this Agreement is terminated by DAR, DAR will remain responsible for payment to ASU for all work performed through the date of termination and for reimbursement to ASU of all non-cancelable commitments incurred in the performance of the Services. Any equipment purchased in furtherance of this Agreement will remain the property of the purchasing party, unless expressly specified otherwise;
3. Force Majeure.

3.1 With the exception of a party's payment obligations, neither party will be liable for the delay in performance caused by force majeure or circumstances beyond the reasonable control of the party affected including, but not limited to, acts of God, fire,

flood, substantial snowstorm or other weather condition, or of a public enemy, acts of the Government in either its sovereign or contractual capacity, war, terrorism, embargo, any United States or foreign government regulation, direction or request, accident, disease, pandemic or epidemic, mass health issues, quarantine restrictions, strike or other labor difficulties, dispute or labor trouble, civil unrest, freight embargoes, natural disasters, or any failure, disruption or delay of any transportation, utilities, power, equipment or communications system, critical electronic systems, acts of terrorism, mass shootings , other emergencies that disrupt a party's operations, or any other or similar cause beyond that party's reasonable control.

3.2 The party which is so prevented from performing shall give prompt notice to the other party of the occurrence of such event of force majeure, the expected duration of such condition and the steps which it is taking to correct such condition. This Agreement may be terminated by either party by written notice upon the occurrence of such event of force majeure which results in a delay of performance hereunder exceeding thirty (30) days;

4. Independent Contractor

4.1 Each party to this Agreement is an independent of each other; under no circumstances should any employees of one party be deemed employees of the other party for any purpose.

4.2 This Agreement does not create a partnership, joint venture, or agency relationship between the parties of any kind or nature. This Agreement does not create any fiduciary or other obligation between the parties, except for those obligations expressly and specifically set forth herein. Neither party shall have any right, power, or authority under this Agreement to act as a legal representative of the other party, and neither party shall have any power to obligate or bind the other or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever contrary to the provisions of this Agreement. Each party acknowledges that the relationship of the parties hereunder is non-exclusive.

4.3 Nothing in this Agreement shall be construed to limit the freedom of ASU or of its researchers from engaging in similar services made under other grants, contracts or agreements with parties other than DAR.

5. Each party to this Agreement will retain ownership of its pre-existing intellectual property, including any that may be incorporated into the services or deliverables under this agreement. The parties understand and agree that ASU owns any and all right, title and interest in and to any and all intellectual property developed, created or invented solely by ASU in its performance under this Agreement, including any services and/or any deliverables, and that ASU will have the exclusive right to patent, copyright, publish, distribute, disclose, use or disseminate in whole or in part any such intellectual property. In no event is any ASU intellectual property considered a “work for hire” and, except as provided in this Section 5, in no way does the provision of services, deliverables or work under this Agreement confer any license, right, title or interest in any ASU intellectual property to DAR.

6. Neither party to this Agreement will use any names, service marks, trademarks, trade names, logos or other identifying names, domain names or identifying marks of the other party in any sales promotion work or advertising, press release or any form of publicity, without written permission from the party that owns the marks. Any permitted use of a party’s Marks must comply with the owning party’s requirements, including but not limited to using the “®” indication of a registered trademark. Each party acknowledges and agrees that violation of this Section 6 is a material breach of contract. In no event shall DAR (or its successors, employees, agents and contractors) state or imply in any publication, advertisement or other medium that ASU has approved, endorsed or tested any product or service. In no event shall ASU’s performance of the services described herein be considered a test of the effectiveness or the basis for any endorsement of a product or service.

7. Each party to this Agreement will comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act.

8. If any provision of this Agreement shall for any reason be found invalid, illegal, unenforceable or in conflict with any valid controlling law:

- Such provision shall be separated from this Agreement.
- This Agreement shall be interpreted and construed as if the provision shall have been held invalid, illegal, unenforceable, or the conflict had never been contained herein.
- Such invalidity, illegality, unenforceability or conflict shall not affect any other provision.

9. Modification

9.1 Any modification or amendment of this Agreement or any scope of work hereunder will be effective only if made in writing and signed by an authorized signatory of each party. This Agreement contains the entire understanding between the parties concerning the subject matter of this Agreement and supersedes any and all prior understandings, agreements, representations, and warranties, express or implied, written or oral, between the parties concerning the subject matter of this Agreement.

9.2 This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument, and photocopy, facsimile, electronic and other copies will have the same effect for all purposes as an ink-signed original.

10. All notices, bills, demands, payments, accounting or other communications that any party desires or is required to give under the provisions of this Memorandum of Agreement shall be given in writing and shall be deemed to have been given if hand delivered, sent by facsimile, emailed, or if mailed by United States mail, prepaid to the party or parties at the address noted below or such other address as a party may designate in writing from time to time:

Department of Land and Natural Resources:
 Division of Aquatic Resources
 1151 Punchbowl Street, Room 330
 Honolulu, Hawaii 96813
 (808) 587-0115

Arizona Board of Regents, a body corporate for and on behalf of Arizona State University
 660 S. Mill Ave, Suite 310
 Tempe, AZ 85281 USA
 with a required copy to ASU.Awards@asu.edu and industryagreements@exchange.asu.edu

11. **No Warranty.** Due to the nature of research and the unpredictable and experimental nature of research outcomes, any and all deliverables or work provided by ASU hereunder are provided on an “as-is” and “with all faults” basis, with no representations or warranties of any kind whatsoever, express or implied, including, without limitation, warranties of merchantability, fitness for a particular purpose, noninfringement, validity of patent rights claims, whether issued or pending, or for the absence of latent or other defects, whether or not discoverable. ASU expressly disclaims any and all such representations or warranties and conditions of any kind, regarding any outcome obtained, deliverable or work delivered hereunder in connection with this Agreement, including any outcome desired by DAR, or concerning intellectual property rights or rights granted. ASU has no obligation to repair any damage to, or defect in the deliverables or work, or replace the same, or otherwise remedy any matter affecting the condition of the deliverables or work. Any decision regarding safety, applicability, marketability, effectiveness for any purpose, or other use or disposition of said outcome will be the sole responsibility of DAR and/or its permitted assigns and licensees.

12. **University Required Terms:**

A. **Conflict of Interest.** Notice is hereby provided of Arizona Revised Statutes (“A.R.S.”) §§ 38-511, 41-2517 and 41-753.

B. **Arbitration and Dispute Resolution.** Notice is hereby provided of A.R.S. § 12-1518 and § 12-133, as well as ABOR Policy 3-809.

C. **Records.** Notice is hereby provided of ARS § 35-214.

D. **Failure of Legislature to appropriate.** In accordance with ARS § 35-154, if ASU’s performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to DLNR and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

IN WITNESS THEREOF, the State of Hawaii, Department of Land and Natural Resources,
Division of Aquatic Resources and the Arizona Board of Regents, a body corporate for and on
behalf of Arizona State University and its Center For Global Discovery and Conservation
Science, have executed this Memorandum of Agreement on the _____ day of _____, 2023.

State of Hawaii, Department of Land and Natural Resources

Signature Line _____

Title:

Date:

Arizona Board of Regents, a body corporate for and on behalf of Arizona State University

Signature Line _____

Title:

Date: