

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

March 13, 2015

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: REQUEST FOR BOARD APPROVAL TO TERMINATE BY MUTUAL AGREEMENT THE 2008 BOARD-APPROVED HABITAT CONSERVATION PLAN FOR THE CONSTRUCTION AND OPERATION OF THE LANA'I METEOROLOGICAL TOWERS, LANA'I, HAWAII, AND ACCOMPANYING INCIDENTAL TAKE LICENSE.

This submittal serves as a request for the Board to authorize the termination of the 2008 Board of Land and Natural Resources (BLNR) approved habitat conservation plan (HCP) and accompanying incidental take license (ITL), as amended in 2012, issued by the Department of Land and Natural Resources (DLNR) Division of Forestry and Wildlife (DOFAW) to Castle & Cooke Resorts, LLC (Castle & Cooke). The ITL and HCP are currently set to expire March 1, 2016. However, DOFAW, Castle & Cooke, and the current landowner Pulama Lana'i, have mutually agreed that early termination of the HCP and ITL is appropriate and in the best interest of all parties involved.

BACKGROUND:

Castle & Cooke received BLNR approval of the "Habitat Conservation Plan for the Construction and Operation of the Lana'i Meteorological Towers, Lana'i, Hawai'i" and accompanying ITL on October 10, 2008. The ITL was amended twice by BLNR approval, first extending the expiration date until March 1, 2012 (approved March 11, 2010) and subsequently extending the expiration until March 1, 2016 (approved February 24, 2012). The HCP and ITL covered incidental take associated with the installation of six 50-meter tall meteorological (met) towers to collect data on wind speeds. Take covered included the following:

Common Name	Scientific Name	No. of Specimens Over Term	
		Tier 1	Tier 2
'Ua'u or Hawaiian petrel	<i>Pterodroma sandwichensis</i>	7	14
'A'o or Newell's shearwater	<i>Puffinus auricularis newelli</i>	2	N/A

Common Name	Scientific Name	No. of Specimens Over Term	
		Tier 1	Tier 2
Ae'o or Hawaiian stilt	<i>Himantopus mexicanus knudseni</i>	2	N/A
'Ope'ape'a or Hawaiian hoary bat	<i>Lasiurus cinereus semotus</i>	2	N/A

In addition, a Memorandum of Agreement (MOA) was in place between DLNR-DOFAW and Castle & Cooke for the implementation of the mitigation measures described in the HCP. The MOA was initially approved on October 14, 2008 with an expiration date of February 28, 2010, and was subsequently extended until March 1, 2016.

Five of the original six met towers were removed in February 2010, and the final tower was removed on April 29, 2014. In the interim, Castle & Cooke sold the property covered by the ITL and HCP to Pulama Lana'i (2012). In accordance with the HCP and MOA, mitigation obligations to restore habitat at Lana'ihale were completed in 2010, with ongoing monitoring and maintenance of the restoration site continuing until the end of the ITL term. Under the MOA, DOFAW was conducting monitoring and maintenance of the restoration site until the right-of-access agreement was not reissued under the new landowner. No observed take was reported during the permit term, and mortality monitoring at the site was discontinued following the decommissioning of the final tower.

DOFAW administrative staff performed a close-out site visit at both the tower sites and mitigation site on January 14, 2015. All structural components of the met towers have been removed, and monitoring at the Lana'ihale mitigation site is continuing under Pulama Lana'i.

DISCUSSION:

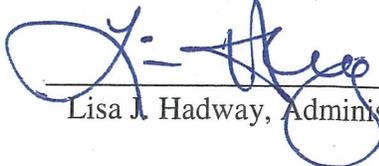
Given that all towers have been decommissioned, no take has occurred, all mitigation obligations have been fulfilled, and the new landowners have expressed no interest in continuing the HCP in the absence of a current need for it, all parties involved have agreed to terminate the agreement.

RECOMMENDATIONS:

That the Board:

1. Approve the termination of the HCP and ITL associated with the Lana'i Met Towers.

Respectfully submitted,


 Lisa J. Hadway, Administrator

ATTACHMENT II

State of Hawaii
 Department of Land & Natural Resources
 Division of Forestry and Wildlife
 1151 Punchbowl Street, Room 325
 Honolulu, Hawaii 96813

Incidental Take License No. ITL-09
 Date of Issue: October 10, 2008
 Valid Until: March 1, 2010

INCIDENTAL TAKE LICENSE

to accompany:

**Habitat Conservation Plan for the
 Construction and Operation of the Lāna‘i Meteorological Towers, Lāna‘i, Hawai‘i**

The Board of Land and Natural Resources hereby grants permission under the authority of §195D-4(g) Hawaii Revised Statutes and all other applicable laws, to:

Castle and Cooke Resorts, LLC
 P.O. Box 630310
 1311 Fraser Avenue
 Lana‘i City, Hawai‘i 96763

To: take of (if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity);

The following species:

Common Name	Scientific Name	No. of Specimens Over Term*		Location
		Tier 1	Tier 2	
‘Ua‘u, or “Hawaiian Petrel”	<i>Pterodroma sandwichensis</i>	7	14	Lands owned or otherwise controlled by Castle and Cooke Resorts, LLC on the Island of Lanai, Hawaii (2) 49-002-001
‘A‘o or “Newell's (Townsend's) Shearwater”	<i>Puffinus auricularis newelli</i>	2	NA	
Ae‘o or “Hawaiian Stilt”	<i>Himantopus mexicanus knudseni</i>	2	NA	
‘Ope‘ape‘a or “Hawaiian Hoary Bat”	<i>Lasiurus cinereus semotus</i>	2	NA	

* - See Special Conditions #1-5.

Subject to the following conditions:

I. GENERAL CONDITIONS

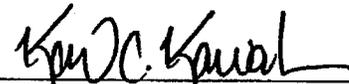
1. This license only authorizes the permittee to conduct incidental take of *Pterodroma sandwichensis*, *Puffinus auricularis newelli*, *Himantopus mexicanus knudseni*, and *Lasiurus cinereus semotus* on the lands owned or otherwise controlled by Castle and Cooke Resorts, LLC on the island of Lana'i, Hawaii (2) 49-002-001 at the time this license is issued pursuant to the "Draft Habitat Conservation Plan for the Construction and Operation of the Lanai Meteorological Towers, Lana'i, Hawaii" dated October 2008 (hereafter "HCP").
2. This license is valid only if Castle and Cooke Resorts, LLC abides by the terms and conditions of the HCP for the duration of the HCP.
3. This license is valid for species protected by federal law only if accompanied by proper federal permits. Permit number for the required permit must be provided:

USFWS 10(a)(1)(B) permit no. TE194350-0.
4. This license shall become valid upon completion of the following:
 - i. A legal representative of Castle and Cooke Resorts, LLC has acknowledged understanding and agreement to abide by its conditions by signing two copies of Attachment I, which is attached hereto and made a part of this license.
 - ii. Both copies of the signed license must be returned to the Division of Forestry and Wildlife. Upon approval by the Chairperson of the Board of Land and Natural Resources, a copy of the license will be returned to the applicant.
5. The Board may suspend or revoke this license if the HCP is suspended or revoked. The Board may also suspend or revoke this license in accordance with applicable laws and regulations in force during the term of the license.

II. SPECIAL CONDITIONS

1. The allowable incidental take authorized by this license for *Pterodroma sandwichensis* and *Puffinus auricularis newelli* includes both observed, unobserved, direct and indirect take as defined in the HCP.
2. The estimation of incidental take for *Pterodroma sandwichensis* and *Puffinus auricularis newelli* will be conducted according to adjustments made to the observed direct take according to estimates of unobserved direct take, as detailed in the HCP.
3. The allowable incidental take authorized by this license for *Himantopus mexicanus knudseni* and *Lasiurus cinereus semotus* includes only observed take, as defined in the HCP.
4. The incidental take authorized by this license for *Pterodroma sandwichensis* is defined by two tiered levels, each of which is identified in the HCP. In the event that tier 1 is reached, incidental take at the tier 2 level is authorized, provided that Castle and Cooke Resorts, LLC abides by the terms and conditions of the HCP for the tier 2 level for the duration of the HCP.

5. DLNR will be notified within 3 days of any mortalities, injuries, or disease observed on the property. Injured individuals or carcasses will be handled according to guidelines in Appendix 9 of the HCP.


for LAURA H. THIELEN, Chairperson and
Member
Board of Land and Natural Resources

C: DOFAW Maui Branch
DOCARE
USFWS Pacific Islands Office, Honolulu
Senior Resident Agent, USFWS-Law Enforcement, Honolulu

Attachment No. 1 to INCIDENTAL TAKE LICENSE No. ITL-09

The undersigned has read, understands and hereby agrees to abide by General Conditions 1 - 5 and Special Conditions 1 - 5 stipulated on pages 1 through 3 in INCIDENTAL TAKE LICENSE No. ITL-09.

CASTLE & COOKE RESORTS, LLC

By: 

Harry A. Saunders
President

By: 

Richard K. Mirikitani
Vice President & Secretary

Date: 9 OCTOBER 2008

ATTACHMENT III

State of Hawaii
Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street, Room 325
Honolulu, Hawaii, 96813

Handwritten signature or initials

Date of issue: **JAN 4 2012**
Valid until: March 1, 2012

INCIDENTAL TAKE LICENSE AMENDMENT 01

To accompany:

Incidental Take License (ITL) 09

and

Habitat Conservation Plan for the Construction and Operation of the Lanai Meteorological Towers, Lanai, Hawaii

The Board of Land and Natural Resources hereby grants permission, under the authority of Hawaii Revised Statutes § 195D-4(g), to:

Castle and Cooke Resorts, LLC
P.O. Box 630310
1311 Fraser Avenue
Lanai City, Hawaii, 96763

For the purpose of:

Amending ITL-09 to be valid from date of issue of this amendment to March 1, 2012.

GENERAL CONDITIONS:

1. All General conditions of ITL-09 remain applicable.

SPECIAL CONDITIONS:

1. All Special conditions of ITL-09 remain applicable.

This Amendment shall be attached to and made part of ITL-09.

By: W. J. Aila

Date 1.4.12

For William J. Aila, Chairperson and Member
Board of Land and Natural Resources

The undersigned has read, understands, and hereby agrees to abide by the General Conditions stipulated in this license.

Castle & Cooke Resorts, LLC

By: [Signatures]

Date DEC 27 2011

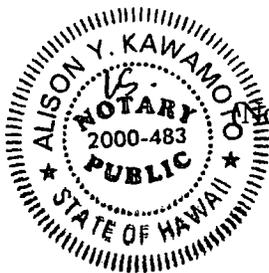
HARRY A. SAUNDERS / RICHARD K. MIRIKITANI
Its: EXECUTIVE VICE / VICE PRESIDENT &
PRESIDENT SECRETARY

Castle & Cooke Resort, LLC notarized signature is attached and made a part of this document.

Cc: DOFAW
DOCARE
USFWS

STATE OF HAWAII)
) SS.
City + COUNTY OF Honolulu)

On this 4 day of January, 20 12, before me personally appeared Law H. Kaulukukui and _____ to me known to be the person(s) described herein, and who, being duly sworn, did say that ~~he~~/she/~~they~~/is are the said Deputy Director named in the foregoing instrument, and that ~~he~~/she/~~they~~ executed said instrument as his/her/their own free act and deed.



(Notary Stamp or Seal)

Alison Y. Kawamoto

(Signature)

Alison Y. Kawamoto

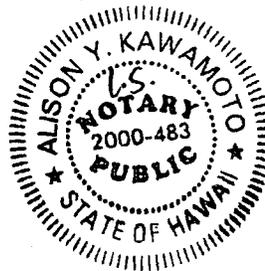
(Signature)

Notary Public, State of Hawaii

My commission expires: 10/1/12

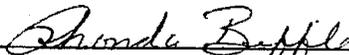
Doc. Date: <u>-</u>	# of Pages: <u>3</u>
Notary Name: <u>Alison Y. Kawamoto</u> <u>1st</u> Circuit	
Doc. Description: <u>Incidental Take License Amendment 01 to</u> <u>Accompany Incidental Take License 09</u>	
<u>Alison Y. Kawamoto</u>	<u>1/4/12</u>
Notary Signature	Date
NOTARY CERTIFICATION	

(Notary Stamp or Seal)



STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 27th day of December, 2011, before me personally appeared HARRY A. SAUNDERS and RICHARD K. MIRIKITANI, to me personally known, who being by me duly sworn, did say that they are the Executive Vice President and Vice President and Secretary, respectively, of CASTLE & COOKE RESORTS, LLC, a Hawai'i Limited Liability Company; that this 2-page Incidental Take License Amendment 01 dated December 27, 2011 was signed on behalf of said corporation by authority of its Board of Directors; and the said officers acknowledged said instrument to be the free act and deed of said corporation. Said corporation does not have a corporate seal.

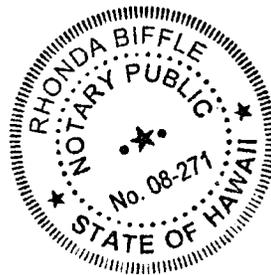


Notary Public, State of Hawaii
First Judicial Circuit

Rhonda Biffle

Printed Name of Notary

My commission expires: August 3, 2012



ATTACHMENT TO ITL-09

State of Hawaii
Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street, Room 325
Honolulu, Hawaii, 96813

FEB 28 2012

Date of issue:
Valid until: March 1, 2016

INCIDENTAL TAKE LICENSE AMENDMENT 02

To accompany:

Incidental Take License (ITL) 09

and

Habitat Conservation Plan for the Construction and Operation of the Lanai Meteorological
Towers, Lanai, Hawaii

**The Board of Land and Natural Resources hereby grants permission, under the authority of
Hawaii Revised Statutes §§ 195D-4(g) and 195D-21, to:**

Castle and Cooke Resorts, LLC
P.O. Box 630310
1311 Fraser Avenue
Lanai City, Hawaii, 96763

For the purpose of:

Amending ITL-09 to be valid from date of issue of this amendment to March 1, 2016.

GENERAL CONDITIONS:

1. All General conditions of ITL-09 remain applicable.

SPECIAL CONDITIONS:

1. All Special conditions of ITL-09 remain applicable.

This Amendment shall be attached to and made part of ITL-09.

By: William J. Aila

Date 2/28/12

William J. Aila, Chairperson and Member
Board of Land and Natural Resources

The undersigned has read, understands, and hereby agrees to abide by the General Conditions stipulated in this license.

Castle & Cooke Resorts, LLC

By: [Signature]

Date FEB 23 2012

Its: Executive Vice President

By: [Signature]

Date FEB 23 2012

Its: Vice President & Secretary

Castle & Cooke Resort, LLC notarized signature is made a part of this document.

Cc: DOFAW
DOCARE
USFWS

STATE OF HAWAII)
) SS.
City _____ COUNTY OF Honolulu)

On this 28 day of February, 20 12, before me personally appeared William J. Awa and _____ to me known to be the person(s) described herein, and who, being duly sworn, did say that ~~he~~/she/they/~~is~~ are the said Chairperson named in the foregoing instrument, and that ~~he~~/she/they executed said instrument as ~~his~~/her/their own free act and deed.

Alison Y. Kawamoto
(Signature)

Alison Y. Kawamoto
(Signature)

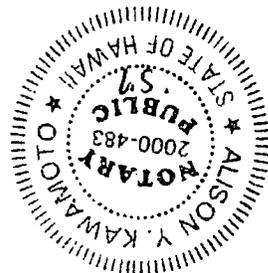
Notary Public, State of Hawaii
My commission expires: 10/11/12



(Notary Stamp or Seal)

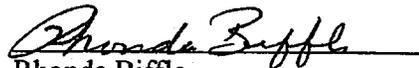
Doc. Date: <u>—</u>	# of Pages: <u>4</u>
Notary Name: <u>Alison Y. Kawamoto</u> 1st Circuit	
Doc. Description: <u>Incidental Take License Amendment 02 to accompany</u> <u>Incidental Take License (ITL) 09 of Habitat</u> <u>Conservation Plan for the Construction + Operation of the</u> <u>Lana Meteorological Towers</u>	
<u>Alison Y. Kawamoto</u>	<u>2/28/12</u>
Notary Signature	Date
NOTARY CERTIFICATION	

(Notary Stamp or Seal)

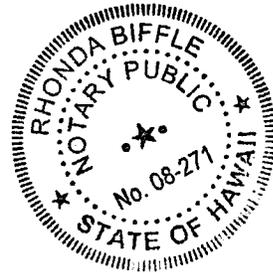


STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 24th day of February, 2012, before me personally appeared Harry A. Saunders and Richard K. Mirikitani to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed this 3 - page Incidental Take License Amendment 02 dated February 23, 2012, in the First Circuit of the State of Hawaii, as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.


Rhonda Biffle
Notary Public, State of Hawaii
First Judicial Circuit

My commission expires: 08/03/2012



Memorandum of Agreement

This MEMORANDUM OF AGREEMENT made on October 14, 2008, by and between CASTLE & COOKE RESORTS, LLC, a Hawai'i limited liability company, whose address is 100 Kahelu Avenue, Mililani, Hawai'i 96789, hereinafter referred to as "Castle & Cooke," and the STATE OF HAWAI'I, by its Department of Land & Natural Resources, Division of Forestry and Wildlife (DOFAW), whose address is 1151 Punchbowl Street, Room 325, Honolulu, Hawai'i 96813, hereinafter referred to as the "STATE," and known collectively as the "Parties:"

RECITALS

1. Castle & Cooke (Applicant) desires to develop renewable energy (including wind and solar energy) on the Island of Lāna'i, State of Hawai'i while preserving its unique environmental, cultural, and historic resources. In furtherance of this goal, Castle & Cooke has installed six (6) of the seven (7) approved meteorological (met) towers to collect data on wind speeds and patterns throughout the northern portion of the island. This data would be used to determine the suitability of the wind regime to develop the first commercially viable wind energy facility on the island. The proposed met towers will be installed on land owned by Castle & Cooke, Inc., an affiliate of Castle & Cooke Resorts, LLC.

2. On August 8, 2007, the Chairperson of the Department of Land and Natural Resources (DLNR) approved Castle & Cooke's Conservation District Use Application (CDUA) for installation of one of seven met towers (met tower 6), and conditional approval for the remaining six met towers. Approval to install the remaining six towers was granted on December 10, 2007.

3. The met towers installed by Castle & Cooke have the potential to incidentally impact four federally-listed wildlife species known or presumed to fly in the vicinity of the met towers. These species have the potential to collide with the met towers or with the associated guy wires supporting the towers, resulting in injury or mortality. The four species include the endangered Hawaiian petrel ('ua'u), Hawaiian stilt (ae'o), and Hawaiian hoary bat ('ōpe'ape'a) and the threatened Newell's (Townsend's) shearwater ('a'o) (collectively, "Subject Species"). Consequently, in accordance with the Endangered Species Act of 1973 as amended (ESA), Chapter 195D, Hawaii Revised Statutes (HRS), and the conditions imposed by the Conservation District Use Permit (CDUP) (LA-3419) issued by DLNR; Castle & Cooke is required to comply with the Incidental Taking Permit (ITP)/Incidental Take License (ITL) requirements of the U.S. Fish and Wildlife Service (USFWS) and DLNR, respectively, including the preparation of a Habitat Conservation Plan (HCP).

4. A HCP has been prepared on behalf of Castle & Cooke to fulfill application requirements for a federal Incidental Take Permit and a State of Hawai'i Incidental Take License. Upon issuance of the ITP and ITL, Castle & Cooke will be authorized for the incidental take of these four endangered or threatened species in

connection with the construction and operation of the seven met towers for a period of 2 years.

5. Castle & Cooke and the STATE, by and through DOFAW now desire to memorialize their understandings and agreements relative to implementing the mitigation measures set forth in Appendix 7 of the HCP.

NOW, THEREFORE, in consideration of the covenants and promises set forth herein, the parties hereto have agreed, and do hereby agree, as follows:

1.0 STATEMENT OF PURPOSE

The purpose of this Memorandum of Agreement ("MOA") is to establish certain commitments binding upon Castle and Cooke and DOFAW for the implementation of mitigation outlined in the *Habitat Conservation Plan for the Construction and Operation of the Lāna`i Meteorological Towers, Lāna`i, Hawai`i* (HCP) Appendix 7 Mitigation Plan Scope of Work hereby incorporated by reference.

2.0 EFFECTIVE DATE AND TERMINATION

This MOA shall take effect upon the date of its execution by the Parties and issuance of the ITP and ITL to Castle & Cooke; provided, however, if the ITP and ITL are not issued within thirty (30) days of the execution of this MOA, Castle & Cooke may terminate this MOA upon written notice to DOFAW. Upon such termination, Castle & Cooke shall have no further obligations hereunder and DOFAW rights with respect to the payment, access, and any other benefits and/or consideration described in this MOA shall be extinguished, except that any funds advanced by Castle & Cooke to DOFAW under Section 3.0 of this MOA and actually expended by DOFAW prior to termination shall not be refunded to Castle & Cooke. Likewise, any obligations owed to Castle & Cooke by DOFAW under this MOA shall be extinguished upon termination of the MOA prior to the projected February 28, 2010 termination date. Early termination shall not prejudice the obligations of the parties to each other, if any, that may have accrued prior to such termination.

Unless terminated earlier in accordance with the foregoing paragraph, this MOA shall terminate at the end of the 2-year mitigation plan described below, unless one or more incidental take of any of the Subject Species occurs as a result of the construction or operation of the met towers. In the event there is one or more incidental take of any of the Subject Species as a result of met tower construction or operation, then DOFAW shall have certain post-completion rights to enter the 'Ua'u Habitat Restoration Area ("Restoration Area") described in Section 7 of the HCP for purposes of monitoring 'ua'u colony development and performing habitat maintenance work and for no other purpose. The location of the Restoration Area is shown in Figure 1 in Appendix 7 of the HCP. This post-completion limited right of entry shall expire on February 28, 2018, or at the time nesting and fledging success in the Restoration Area is documented during

monitoring of the restoration area, whichever occurs first. All post-completion activities shall be conducted by DOFAW at its own cost and expense.

Upon fulfillment of the terms and conditions of this MOA, the parties shall provide written confirmation to each other that the commitments have been fulfilled under this MOA. These confirmations are important as a means of demonstrating to others that the efforts have been satisfactorily completed under this MOA.

3.0 RESPONSIBILITIES UNDER THE MOA

A. Castle and Cooke Responsibilities

Castle & Cooke will provide funding to implement the tiered mitigation as outlined in the HCP, as well as other consideration, for a two-year period commencing on March 1, 2008 and ending on February 28, 2010 ("Completion Date") The actions that Castle & Cooke will undertake or cause to be undertaken during the term of the agreement are as follows:

1. Tier 1, Year 1 Mitigation Funds. Castle & Cooke has provided funding in the amount of \$143,138 to implement Year 1 of the Tier 1 level mitigation measures identified in the HCP.
2. Tier 1, Year 2 Mitigation Funds. Castle & Cooke will provide funds in the amount of \$109,065 (including \$840 for traps for Hawaiian stilt predator control in or around the Lāna'i City wastewater treatment facility) to implement Year 2 of the Tier 1 level mitigation measures identified in the HCP. Payment of Tier 1, Year 2 funds will be made by Castle & Cooke within 10 working days of the Castle & Cooke's receipt of the approved ITL and ITP.
3. Tier 2 Mitigation Funds. If required in accordance with the HCP, Castle & Cooke will provide funds in the amount of \$53,214 to implement Tier 2 level mitigation measures identified in HCP. Payment of Tier 2, Year 1 funds will be made within ten (10) business days after reaching the Tier 1 take limit for the Hawaiian petrel.
4. Vehicle and Chipper. In addition to the funding mitigation measures described above, Castle & Cooke will provide DOFAW access to a 4-wheel drive vehicle and a wood chipper during the two-year mitigation period out of their existing fleet. The vehicle will be used only by DOFAW's employees for transportation to and from the Restoration Area, for predator control activities on Lāna'ihale and in or around the Lāna'i City Waste Water Treatment Plant, and for other official DOFAW business, and for no other purpose. Castle & Cooke will provide fuel for the vehicle (or, at Castle & Cooke's discretion, reimburse DOFAW for the cost thereof upon presentation of proper documentation). Castle and Cooke will

provide service and repair as needed for the chipper. The wood chipper to be provided by Castle & Cooke shall be used by DOFAW for clearing and maintenance activities in the Restoration Area. DOFAW, and not Castle & Cooke, shall be responsible for insuring that only qualified employees are allowed to operate said vehicle and chipper.

5. Conditional Post-Completion Right of Entry. In the event a taking of any of the Subject Species occurs during the 2-year mitigation period, Castle & Cooke shall provide the DOFAW access to the Restoration Area following the Completion Date set forth in Section 2.0 of this MOA. Castle & Cooke may, in its discretion, accompany DOFAW on any or all site visits conducted.
6. Complete Obligations. Except as provided for in the foregoing sections A.1 through A.5, there are no other or further obligations imposed on Castle & Cooke under this.

B. DOFAW Responsibilities

1. Implementation of Mitigation Measures. DOFAW agrees to implementing Tier 1 and Tier 2 mitigation measures, as outlined in the Scope of Work as recorded in Appendix 7 of the HCP, including without limitation implementing and overseeing habitat restoration, monitoring and maintenance in the Restoration Area and predator control on the Lānaʻihale and at the Lānaʻi City wastewater treatment facility. DOFAW will establish a base of operations at the Fog-drip Station. A locking tool storage shed and a tarp/tent for crew shelter and maintenance operations will be erected for the duration of the project.
2. Reporting. DOFAW will provide Castle & Cooke detailed monthly and annual reports that account for money spent to implement the mitigation activities and that summarize the results of the mitigation, maintenance, and monitoring activities. DOFAW will provide Castle & Cooke with monthly status reports, due the first of each month throughout the term of the HCP (March 2010). These monthly status reports will include but not be limited to include the following information: 1) number of stilts (by age class, if possible) observed during trap monitoring, 2) progress made on removing invasive vegetation from the Restoration Area; 3) number of cats trapped at the Lānaʻihale and wastewater treatment plant since the last monthly status report and total since DOFAW received Tier 1, Year 1 funds in February 2008; 4) adaptive management actions to be taken by DOFAW if the current restoration and predator control activities are not occurring according to the time frames and requirements as outlined in the HCP; and 5) status of maintenance activities occurring within the Restoration Area.

DOFAW's annual report will be submitted to Castle & Cooke by the dates identified in the HCP so that Castle & Cooke can comply with its reporting requirements as identified in the HCP.

Inadvertent Discovery of Burials or Cave Resources. In the event any inadvertent discovery of Native Hawaiian burial sites, associated remains and/or artifacts, or cave resources are inadvertently discovered, all work in the area shall stop and the DOFAW shall immediately notify Castle & Cooke and contact the State Historic Preservation Division in Honolulu at (808) 692-8015 for appropriate instructions on treatment.

3. Contractors. DOFAW shall, by contract or other appropriate written agreement, cause its contractor(s), agents or invitees entering onto Castle & Cooke lands in connection with DOFAW's work under this MOA to indemnify, defend, and hold Castle & Cooke and its affiliated companies, and their respective contractors, consultants, agents and employees, harmless from and against any and all actions, demands, suits, penalties, fines, costs and expenses, and all liabilities whatsoever arising out of the use and/or occupancy of the vehicles, equipment or any lands of Castle & Cooke or its affiliates; provided, however, that this obligation shall not apply when the Castle & Cooke is adjudged to be guilty of gross negligence or willful misconduct; provided further that this obligation shall not affect the limitations on the obligations or liability of DOFAW or any other State agency set forth in Section 4 below or otherwise provided by applicable law.
4. (a) DOFAW's Responsibility. DOFAW, as an agency of the STATE, shall be responsible, to the extent permitted by law, for damage or injury caused by the STATE's officers and employees in the scope of their employment for work in connection with this MOA, provided that the STATE's liability for such damage or injury has been determined by a court or agreed to by the STATE. The STATE shall pay for such damage and injury provided that funds are appropriated and allotted for that purpose.
(b) Castle & Cooke's Responsibility. Castle & Cooke shall be responsible, to the extent permitted by law, for damage or injury to the State's officers or employees which are caused by the negligence or willful misconduct of Castle & Cooke's officers, employees or contractors, in each case, in the scope of the employment of the State or Castle & Cooke officers or employees or Castle & Cooke contractors, provided that such damage or injury has been determined by a court or agreed to by Castle & Cooke. The parties acknowledge and agree that access across, use of and work on Castle & Cooke's lands pursuant to this Agreement shall be deemed to be use of such lands required as part of a habitat conservation plan, as contemplated by HRS Section 520-4(b), and shall be covered by the protections afforded thereby.

5. Post-Completion Obligations. In the event DOFAW is entitled to limited right of entry to the Restoration Area following the initial 2-year project period under Section 2.0 of this MOA, it will conduct periodic monitoring of the site to determine whether 'ua'u have colonized the Restoration Area and, if so, to determine whether offspring are produced and in what numbers. Periodic site visits will be conducted also to ensure that non-native plant species do not recolonize the restoration area. The DOFAW will provide Castle & Cooke a minimum of three days notice prior to all site visits and will conduct site visits only upon approval from an authorized Castle & Cooke agent. Such notice will identify the names and affiliations of all persons conducting such visits.
6. Castle & Cooke is relying upon DOFAW to timely perform its obligations under this agreement, and may be materially and adversely impacted by delay or failure of performance. Accordingly, in the event that DOFAW shall fail to timely perform its obligations or responsibilities under this agreement, except under Section 2.0, Castle & Cooke shall be entitled to (1) DOFAW refund of unspent funds in the trust fund that were deposited for that purpose, and (2) set-off from funds owing or to be owed to DOFAW all sums relating to such arrangements.

4.0 MISCELLANEOUS

A. RESERVATION OF RIGHTS

By entering into this MOA and agreeing to undertake the commitments expressed in this MOA, Castle & Cooke does not admit that Castle and Cooke facilities cause or have caused illegal take of protected species. Nothing in this MOA is intended or shall be construed to limit or preclude DOFAW from exercising its authority under any law, statute, or regulation to take enforcement against Castle & Cooke or to relieve Castle & Cooke of its obligations to comply with any applicable laws, statutes, or regulations.

B. SUCCESSORS AND ASSIGNS

The provisions of this MOA shall apply to and be binding upon the parties and their respective employees, agents, successors, and assigns

C. NOTICES

All notices required by this MOA shall be made to following representatives of the parties:

IF TO CASTLE & COOKE:

Castle & Cooke Resorts, LLC
Attn: Mr. Harry A. Saunders, President
100 Kahelu Avenue, 2nd Floor
Mililani, Hawai'i 96789-3997

With copy to:

Castle & Cooke Homes Hawaii, Inc.
Attn: Mr. Richard K. Mirikitani - Legal Department
P.O. Box 898900
Mililani HI 96789-8900

IF TO DOFAW:

Laura Thielen, Chairperson
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawai'i 96809

With a copy to

Scott Fretz, Wildlife Program Manager
Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street, Room 325
Honolulu, Hawai'i 96813

D. AMENDMENTS

This MOA may be amended, but only in writing, and only with the written approval of Castle & Cooke and DOFAW.

E. COUNTERPART SIGNATURES

The parties may execute this Agreement (and any amendment) by signing counterparts. In that event, this Agreement (or any amendment) shall take effect, and become a binding instrument, only when all of the counterparts have been signed by the parties. All such counterparts shall be deemed to constitute but one and the same instrument. Duplicate unexecuted pages of the counterparts (whether original or received by facsimile) may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

CASTLE & COOKE RESORTS, LLC
a Hawai'i limited liability company,

By: [Signature]
Its Vice President & Secretary

By: [Signature]
Its SR. VICE PRESIDENT & CONTROLLER

STATE OF HAWAI'I

By: [Signature]
for Chairperson
Department of Land & Natural Resources

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

Dated: 10/9/08

EXTENSION AND AMENDMENT TO MEMORANDUM OF AGREEMENT

THIS EXTENSION AND AMENDMENT TO MEMORANDUM OF AGREEMENT (“Amendment”) is dated effective as of February 28, 2010, between CASTLE & COOKE RESORTS, LLC, a Hawaii limited liability company (“Castle & Cooke”) and the STATE OF HAWAII, by its Department of Land & Natural Resources, Division of Forestry and Wildlife (“DOFAW”), known collectively as the “Parties.”

WITNESSETH:

WHEREAS, Castle & Cooke and DOFAW are parties to that certain Memorandum of Agreement dated October 14, 2008 (“MOA”) setting forth and establishing certain binding commitments for the implementation of mitigation measures arising out of the federal Incidental Take Permit (“ITP”) and state Incidental Take License (“ITL”) and related Habitat Conservation Plan for the Construction and Operation of the Lāna‘i Meteorological Towers, Lāna‘i, Hawai‘i (“HCP”), in HCP Appendix 7, originally approved for seven meteorological (“met”) towers on the Island of Lāna‘i in connection with a planned renewable energy wind project; and

WHEREAS, six of the seven met towers contemplated by the HCP were erected; and

WHEREAS, since erection of the met towers, there have been no incidental takes of any endangered or threatened species; and

WHEREAS, Castle & Cooke decommissioned five of the six met towers, leaving only one remaining met tower (met tower 1); and

WHEREAS, the state ITL expired on March 1, 2010; and

WHEREAS, Castle & Cooke had submitted a timely request on December 7, 2009 which requested a 2-year extension to the state ITL which, if approved, would expire on March 1, 2012; and

WHEREAS, Castle & Cooke has expressed interest in requesting an additional 4-year extension to the state ITL which would take effect upon expiration of the 2-year extension to the state ITL and would expire March 1, 2016; and

WHEREAS, Castle & Cooke has requested a 6-year extension to the federal ITP which would expire on March 1, 2016; and

WHEREAS, the MOA contemplates a termination date of February 28, 2010; and

WHEREAS, on May 16, 2011, Castle & Cooke prepared a General Amendment to the Habitat Conservation Plan for the Construction and Operation of the Lāna‘i Meteorological Towers, Lāna‘i, Hawai‘i, which is hereby incorporated by reference; and

WHEREAS, at its meeting on October 28, 2011, the State of Hawaii Board of Land and Natural Resources considered and unanimously approved as Item C-5, the after-the-fact approval of amendment to extend the State ITL, and amendment to extend the MOA; and

WHEREAS, Castle & Cooke and DOFAW desire to amend the MOA extending for a further six years its term and related time frames, in accordance with the terms and conditions set forth hereinbelow;

NOW, THEREFORE, in consideration of the above premises, the mutual covenants and promises set forth herein, the parties agree that the MOA is hereby supplemented and amended as follows:

1. **Amendments to MOA and Six Year Extension**. The term of the MOA is extended for an additional six years, ending on February 28, 2016, and in connection therewith:

(A) Section 2.0 of the MOA is amended by:

- (1) revising the reference to "February 28, 2010" in line 11 of the first paragraph of Section 2.0 to be "February 28, 2016";
- (2) revising the reference to "2-year" in line 2 of the second paragraph of Section 2.0 to be "8-year";
- (3) revising the reference to "February 28, 2018" in line 10 of the second paragraph of Section 2.0 to be "February 28, 2024";
and
- (4) inserting the following language after the third paragraph:

"Castle & Cooke requested an extension of the state ITL duration to allow continued collection of data on wind speeds and patterns by met tower 1, and approved met towers if installed.

Castle & Cooke has taken down met towers 2 through 6, but will reserve the right to install all or any of the approved met towers if determined by Castle & Cooke to be warranted. If all or any of the other met towers are erected, no new amendment would be required, and Castle & Cooke will notify USFWS and DOFAW of the installation no less than one week prior to installation. The survey interval for all erected met towers will comply with the revised monitoring and reporting protocols."

- (B) Section 3.0 A. of the MOA is amended by:
- (1) revising the reference to “two-year” in line 2 of Section 3.0 A. to be “six-year” and revising the reference to “February 28, 2010” in line 3 of Section 3.0 A. to be “February 28, 2016”;
 - (2) revising the first sentence of subsection 4. (Vehicle and Chipper) to read as follows: “In addition to the funding mitigation measures described above, Castle & Cooke will provide DOFAW use of a 4-wheel drive vehicle and a wood chipper during the first two (2) years of the mitigation period, and during Tier 2 mitigation, if and when required.”;
 - (3) revising the reference to “the 2-year mitigation period” in line 2 of subsection 5. to be “the 8-year mitigation period”; and
 - (4) subsection 6. is deleted in its entirety and replaced with the following text as separately numbered subsections:
 - “6. Changes in monitoring and reporting requirements in 2010. With concurrence from USFWS and DOFAW, in 2010 Castle & Cooke began implementing the following revised monitoring and reporting requirements:
 - (a.) Reduce the frequency of carcass surveys to be conducted to one time per month (approximately every 30 days), provided the vegetation is managed to maintain a high searcher efficiency;
 - (b.) Remove the requirement to conduct searcher efficiency trials;
 - (c.) Modify the search interval of scavenging trials such that one carcass will be placed at each active met tower at the beginning of each season, as defined in the HCP, and check on its status at the time of the next monitoring event. If the carcass has been removed, the search interval would return to once every 10 days and scavenging trials would be implemented as defined in the HCP;
 - (d.) Reduce reporting requirements to informal quarterly summaries or emails and one annual report. The informal report would include a summary of the surveys, summary of the scavenging trial and a photograph verifying vegetative management at each active tower;
 - (e.) Submit a photograph of the vegetation conditions of the

active met tower(s) at least one week prior to the beginning of the survey season (March-April) to confirm vegetative management.

Castle & Cooke will continue to comply with the other stipulations of the HCP. This includes notifying USFWS and DOFAW of observed dead or injured individuals of the four covered species within one working day by telephone and within five days by writing to the Pacific Islands Fish and Wildlife Office and DOFAW. As stated in the state ITL, DLNR will be notified within three days of any mortalities or injuries of downed wildlife.

7. Performance Bond Assurances. Castle & Cooke ensures that the Performance Bond is secured to extend the assurance that Tier 2 mitigation funds would be available should the Tier 1 take limit be reached prior to March 1, 2016.
8. Ungulate Removal. Through an extended and amended MOA, Castle & Cooke agrees to coordinate with DOFAW on ungulate removal from the Lāna‘ihale (see section 3 of amendment below).
9. Consultation on Amendment. In accordance with the procedure for amendments to the HCP as stated in HCP Section 6.8, USFWS and DLNR have been consulted on the proposed HCP amendment. According to Section 6.8, a permit amendment request is considered a minor amendment because it involves changes to the operation and management program that do not diminish the level or means of mitigation, or materially alter the terms of the ITL. The potential for incidental take to the four species covered in the HCP and ITL will be less than what was originally approved because the removal of five met towers from the project area will greatly reduce the strike probability. Thus, pursuant to Section 6.8, the amendment will not have negative cumulative effects to the covered species or their habitat.
10. Complete Obligations. Except as provided for in the foregoing subsections 1. through 9., there are no other obligations imposed on Castle & Cooke under this MOA.”

(C) Section 3.0 B. of the MOA is amended by:

- (1) revising the reference to “(March 2010)” in line 5 of subsection 2 to be “(March 2016)”; and

- (2) revising the reference to “2-year” in line 2 of subsection 5 to be “8-year”.

2. **Further Clarification of Access Rights.** In order to carry out predator control activities with the vehicle as described in subsection 4. of Section 3.0 A. of the MOA, Castle & Cooke acknowledges and agrees that DOFAW shall have right of access over and across lands owned by Castle & Cooke and its affiliates; provided, however, that DOFAW shall provide Castle & Cooke with an updated map or maps depicting in reasonable detail the locations where such activities (for example, trapping) are taking place.

3. **Ungulate Control.** Pursuant to compliance with the HCP and ITL, and in order to protect the Restoration Area from damage due to feral ungulates, Castle & Cooke agrees that DOFAW shall be allowed to engage in damage control hunting for deer and sheep in or around the Restoration Area upon not less than ten (10) days prior written notice setting forth the names, addresses, telephone numbers, and affiliations of all persons participating in such activities; provided, however, that such hunting shall not conflict or interfere with Castle & Cooke’s activities in or around Lāna‘ihale (including but not limited to commercial hunting, road repair, fencing, and other conservation activities). DOFAW shall be responsible for insuring that only properly licensed and trained hunters are employed or engaged to carry out this activity, and for providing all notices and community outreach as may be necessary and appropriate. Further, DOFAW shall provide Castle & Cooke, through its Conservation Department, with the number and location of all deer and sheep taken at the conclusion of each hunt.

4. All other terms and conditions of set forth in MOA not inconsistent with the above shall remain in full force and effect. _____

IN WITNESS WHEREOF, the Parties have duly executed this amendment effective as of the date first above written.

CASTLE & COOKE RESORTS, LLC
a Hawai'i limited liability company

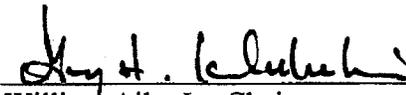
Date DEC 27 2011

By: 
Its Vice President & Secretary

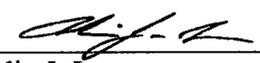
By: 
Its Executive Vice President

STATE OF HAWAI'I

Date 1.4.12

By: 
William Aila, Jr., Chairperson
for Department of Land & Natural Resources

APPROVED AS TO FORM


Colin J. Lau
Deputy Attorney General

Date 12/9/11

Extension and Amendment to Memorandum of Agreement
Met Tower Mitigation