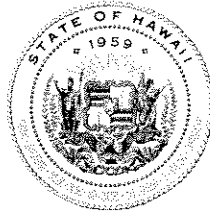
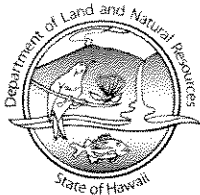


LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL ST., ROOM 325
HONOLULU, HAWAII 96813
TEL (808) 587-0166 FAX (808) 587-0160

October 10, 2008

Laura H. Thielen
Chairperson
Board of Land and Natural Resources
Commission on Water Resource Management

Russell Y. Tsuji
First Deputy

Ken C. Kawahara
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

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

Land Board Members:

SUBJECT: APPROVAL OF MEMORANDUM OF AGREEMENT (MOA) TO IMPLEMENT MITIGATION OUTLINED IN "THE FINAL HABITAT CONSERVATION PLAN FOR THE CONSTRUCTION AND OPERATION OF THE LĀNA'I METEOROLOGICAL TOWERS, LĀNA'I, HAWAI'I."

SUMMARY AND BACKGROUND:

Submitted for your consideration is the draft Memorandum of Agreement (MOA) to implement mitigation outlined in Appendix 7 of the "Habitat Conservation Plan for the Construction and Operation of the Lāna`i Meteorological Towers, Lāna`i, Hawai`i" (HCP), and as required by the Incidental Take License, between Castle & Cooke Resorts, LLC ("Castle & Cooke") and the State of Hawaii Department of Land & Natural Resources, Division of Forestry and Wildlife ("DOFAW"). The HCP itself was reviewed and approved by the Board of Land and Natural Resources on September 12, 2008.

During discussions with Castle and Cooke for the development of the HCP, DOFAW determined that it would be in the best interest of the Division's recovery program for the covered species to assume responsibility for the implementation of certain aspects of the mitigation identified in the HCP. DOFAW maintains a field team on Lanai dedicated to the recovery of HAPE and these mitigation activities can be integrated into that program. Those activities are habitat restoration, predator control, and monitoring of mitigation activities, on the Island of Lāna`i. This MOA establishes the working relationship between DOFAW and Castle and Cooke for those activities to be performed by DOFAW, with funding provided by Castle & Cooke LLC, between November 1, 2006 and March 1, 2010. Habitat restoration is to include 3 acres on the Lāna`ihale if take remains at or less than Tier 1 levels (either 7 ('Ua`u (Hawaiian petrels), 2 'A`o (Newell's shearwaters), two Ae`o (Hawaiian stilts), or one 'Ōpe`ape`a (Hawaiian hoary bat)). If Tier 1 levels are exceeded, habitat restoration is to include 6 acres. Predator control is to take

place at the Lānaʻihale site, as well as the Lānaʻi City wastewater treatment facility. DOFAW is to provide Castle & Cooke monthly updates, as well as annual reports. Castle & Cooke has provided \$143,138 to implement Year 1 at the Tier 1 level, will provide \$109,065 to implement Year 2 at the Tier 1 level, and if needed, \$53,214 to implement Tier 2 level mitigation. Castle & Cooke will also provide a vehicle and chipper for mitigation activities. If there is any incidental take during the life of the HCP, DOFAW will have right of access until February 28, 2018, in order to maintain and monitor the success of mitigation activities.

RECOMMENDATION:

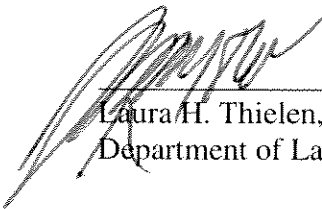
That the Land Board approves the Memorandum of Agreement to implement mitigation outlined in the “Habitat Conservation Plan for the Construction and Operation of the Lānaʻi Meteorological Towers, Lānaʻi, Hawaiʻi” subject to review and approval as to form by the Attorney General, the availability of funds, and compliance with budget execution policies.

Respectfully submitted,



Paul J. Conry, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson
Department of Land and Natural Resources

Attachment I: Draft Memorandum of Agreement

Memorandum of Agreement

This MEMORANDUM OF AGREEMENT made on _____, 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 HAWAII, by its Department of Land & Natural Resources, Division of Forestry and Wildlife, whose address is 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813, hereinafter referred to as "DOFAW":

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 State Board of Land and Natural Resources (BLNR) 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, Hawaiian stilt, and Hawaiian hoary bat and the threatened Newell's (Townsend's) shearwater (collectively, "Subject Species"). Consequently, in accordance with the Endangered Species Act (ESA), Hawaii Revised Statutes (HRS), and the conditions imposed by the Conservation District Use Permit (CDUP) (LA-3419) issued by BLNR, 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 Department of Land and Natural Resources (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

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/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.

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 Tetra Tech EC, Inc., 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.
4. Liability for Loss or Injury Caused by DOFAW. DOFAW, agrees that, as an agency of the State of Hawaii, it shall be liable, subject to the applicable provisions of Chapter 661, Hawaii Revised Statutes (Actions By and Against the State) and Chapter 662, Hawaii Revised Statutes (State Tort Liability Act) for all claims and demands for property damage, loss, personal injury or death arising out of the activities of DOFAW under this MOA or during the use and/or occupancy of land owned or controlled by Castle & Cooke (including without limitation the Restoration Area) by DOFAW caused by the negligent or wrongful act or omission of any officer or employee of DOFAW while acting within the scope of the office of employment, or persons acting for DOFAW in an official capacity, temporarily, whether with or without compensation.
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 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, 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

Honolulu, Hawaii 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, Hawaii 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: _____
Its

By: _____
Its

STATE OF HAWAII

By: _____
Chairperson
Department of Land & Natural Resources