

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 _____

By: _____
Its Vice President

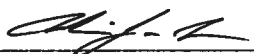
By: _____
Its Executive Vice President

STATE OF HAWAI'I

Date _____

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

APPROVED AS TO FORM



Colin J. Lau
Deputy Attorney General

Date 12/9/11