

*Castle & Cooke
Resorts, LLC*



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Land Use Commission
Department of Business, Economic Development & Tourism
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

LAND USE COMMISSION
STATE OF HAWAII
2012 MAY 22 A 10:40

Attention: Mr. Bert Saruwateri, Interim Executive Officer

Re: 2010 & 2011 Annual Report to the Land Use Commission
Docket No. A89-649 (Manele Golf Course)
Castle & Cooke Resorts, LLC (successor to Lanai Company, Inc. / Lanai Resort Partners)

To Chairperson Lezy and Members of the Land Use Commission:

As required by Condition No. 21 of those certain Findings of Fact, Conclusions of Law, and Decision and Order, dated April 16, 1991 (the "**D&O**"), in the above-described docket, Castle & Cooke Resorts, LLC hereby submits its annual report to the Land Use Commission ("**Commission**") "in connection with the status of the project and Petitioner's progress in complying with the conditions imposed." Castle & Cooke Resorts, LLC submits this report as the successor entity to Lanai Company, Inc. and Lanai Resort Partners (collectively "**Petitioner**").

I. GENERAL PROGRESS OF THE PROJECT.

The "**Property**", as defined in the D&O, includes certain land at Manele, Lanai, Hawaii, Tax Map Key No. 4-9-01: portion of 1, covering an aggregate area of approximately 138.577 acres. Petitioner has completed an 18-hole golf course, of which most of the holes and related uses are located on the Property, with a few holes located on the adjoining land within the existing urban Manele Project District. The Challenge at Manele golf course (the "golf course") has been open for play since December 22, 1993 and the Challenge at Manele clubhouse has been open for operation and use since July, 1994.

II. PROGRESS IN COMPLYING WITH CONDITIONS IMPOSED.

As described below, Petitioner has completed nearly all actions required by the conditions imposed by the Commission.

CONDITION 1

“Petitioner shall make available to the State at no cost, on a fee simple basis, 25 acres of land with no restrictions, Of these 25 acres, 10 acres shall be in the vicinity of Lanai City and 15 acres may be located at another site both agreeable to the Office of State Planning. Development on these sites shall be at a density comparable to existing developments in Lanai City. Prior to development of any improvement on the land, the State shall gain approval of Petitioner as to the conformity and harmony of the exterior design of the proposed improvements, with neighboring sites and development of Lanai by Petitioner pursuant to its master plan. Should Petitioner withhold approval, the State may submit the matter to binding arbitration. If the land or so much thereof is not utilized within a ten-year period, the unutilized portion shall revert back to Petitioner.”

Compliance: Petitioner has complied with this Condition 1 in that it did “make available to the State” the real property described in this condition, under the terms stated in this condition. In that certain Agreement to Convey, dated June 28, 1994, by and between Dole Food Company, Inc. (“*Dole*”) and the State of Hawaii, Dole (on behalf of Petitioner) agreed to convey to the State of Hawaii’s Board of Land and Natural Resources (“*BLNR*”) a 15-acre “Proposed Industrial Parcel” and a 10-acre “Proposed Commercial Parcel” (as defined and identified therein) for the purpose of satisfying Condition 1. This agreement was amended by that certain Amendment to Agreement to Convey, dated June 29, 1994.

Both the BLNR and the Office of Planning have approved the final terms of the conveyance, as evidenced by that certain submittal to BLNR to Michael Otake, State Land Planning and Development Manager (with BLNR stamp of approval, dated December 15, 2000) and that certain letter agreement, dated February 13, 2001, addressed to Mr. David Blane, Director of Office of State Planning, from Martin Luna, Esq., as counsel to Petitioner. Petitioner has since awaited notice from the State of its election to proceed with the development of one or both of these parcels and its completion/obtainment of necessary survey work and approvals, upon which the subject parcels would be subdivided and conveyed to the State of Hawaii.

By letter dated September 27, 2010, the State Department of Land and Natural Resources notified Petitioner that (1) the State of Hawaii has not secured the necessary appropriation to fund processing of approvals required to complete the conveyance, (2) the State of Hawaii still desires to accept the sites, and (3) the Department of Hawaiian Home Lands recently expressed to the State Office of Planning and DLNR that DHHL is interested in accepting the lands from Petitioner on behalf of the State of Hawaii, subject to proper

credit to the settlement pursuant to Act 14, Special Session Laws of Hawaii 1995, as well as BLNR and Hawaiian Homes Commission approvals.

CONDITION 2

“Petitioner shall make available 100 acres of land, with an adequate supply of water, to the State Department of Agriculture and or the County of Maui, for their establishment and operation of an agricultural park for Lanai residents, at nominal rents for a 55-year term, at site(s) agreeable to the State Department of Agriculture and the County of Maui.”

Compliance: Petitioner has complied with this Condition 2. In that certain Indenture of Lease, dated July 15, 1994 and filed in the Land Court as Document No. 2165943, Dole leased to the BLNR 100 acres of real property for use as the Lanai Agricultural Park for purposes of discharging Petitioner’s obligations under Condition 2. This lease was amended by that certain Amendment of Lease, dated August 19, 1994 and filed as Land Court Document No. 2199103. With respect to an “adequate water supply”, the Lease states that the State “shall have the right to purchase from the public utility and to use up to, but not more than 0.20 MGD on the average annual basis.” The Amendment of Lease states that, notwithstanding this quoted sentence of the Lease, “the parties further agree that additional water will be allocated to the agricultural park in the future, but that the need for such additional water will be the [State’s] responsibility to justify and that any costs incurred for this additional water will be borne by the [State].”

CONDITION 3

“Petitioner shall make the golf course on the Property available to Hawaii residents at percentage discounts comparable to percentage discounts available at other private courses open to the general public in the State as reviewed and approved by the Office of State Planning.”

Compliance: Petitioner has complied with this Condition 3 and a similar condition incorporated in County of Maui Ordinance 2133 relating to zoning of the property. Petitioner makes the golf course available for play to Lanai residents at a rate of 50% of the standard rate and to State of Hawaii residents at 60% of the standard rate. Petitioner will continue to adhere to this schedule of rates and, by virtue of County Ordinance 2133, will be bound to maintain this schedule of rates. The Office of Planning approved this rate structure in that certain letter dated December 17, 1996.

CONDITION 4

“The Petitioner shall work with the State Department of Land and Natural Resources and the County of Maui to incorporate mauka pathways which may be tied to the golf course and residential area pathways which will provide alternate access routes to the accessible cliff coastline area.”

Compliance: Petitioner has complied with this condition. By letters, both dated March 8, 1994, Petitioner submitted maps of the coastal trail and mauka/makai trails to Ms. Charmaine Tavares, Director of the County of Maui Department of Parks and Recreation and Mr. Keith Ahue, Chairperson of the State of Hawaii Board of Land and Natural Resources, respectively. The attached map identified three alternative access routes to the accessible cliff coastline area, including (a) an area to be developed as the Hulopoe Beach Park (“**Beach Park**”), (b) an access point near the western border of the Property on what is known as the Quarry Access Road (“**Quarry Road Access**”) and (c) an access point near the end of a road known as the Jeep Trail and Petitioner’s golf course maintenance area (“**Jeep Trail Access**”). Just prior to these March 8, 1994 letters, an agreement, dated March 2, 1994, by and between Petitioner and Lanaians for Sensible Growth (“**LSG**”) identified these same three alternative access routes.

On June 24, 1994, a trail walk and meeting was held by interested parties, including Michael Baker of the Department of Land and Natural Resources, Division of Fish and Wildlife, Ron McOmber of LSG and Richard Albrecht and Ed Sowers of Petitioner, to clarify and agree upon, among other things, the details of and the signage for the mauka/makai access routes to the coastal trail. The agreement of the parties (as covered in the transcript) is confirmed in that certain letter, dated June 28, 1994, from Robert J. Hackman (on behalf of Petitioner) to Rick J. Eichor (Deputy Attorney General) and Arnold L. Lum (on behalf of the Native Hawaii Legal Corporation) and that certain letter, dated June 28, 1994 from Mr. Eichor to the James T. Funaki (on behalf of Petitioner). The map, attached to the transcript, identifies the Jeep Trail Access and the Beach Park as access points and, in addition the transcript references parking at the Jeep Trail Access and Quarry Road Access.

The Quarry Road Access, the Jeep Trail Access and the Beach Park have all been completed, with accompanying parking areas and appropriate signage, thereby providing three “alternate access routes to the accessible cliff coastline area”. In addition, pursuant to the County’s requirement, Petitioner has completed a paved parking lot and point of public access constructed as part of the Multi-Family Site B (The Terraces) (“**The Terraces Access**”).

CONDITION 5a

“In developing and operating the golf course and any future residential development in the Manele project district, petitioner shall protect public access along the accessible cliff coastline.”

“a. Petitioner shall dedicate a public easement along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area, which will allow public pedestrian access in perpetuity without obstruction or interference with such use, subject to reasonable rules and regulations for public safety, provided that access shall be maintained.”

Compliance: Petitioner has complied with this condition. In that certain Memorandum of Agreement, dated October 19, 1994 and filed in the Land Court as Document No. 2200658, Petitioner and DLNR (Division of Forestry and Wildlife, Na Ala Hele Trails and Access Program) agreed to a public access trail along the shoreline lands between Hulopoe and Huawai Bay, Lanai, Hawaii. Pursuant to Condition 5 of the Decision and Order and the Memorandum of Agreement, Petitioner executed a Grant of Easement, dated March 9, 1995 and filed in the Land Court as Document No. 2236005, covering Petitioner’s dedication of a public easement from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area, as prescribed by Condition 5. Further pursuant to the Memorandum of Agreement, Petitioner continues to be responsible for cleaning and performing periodic maintenance of the trail.

CONDITION 5b, c, d

“b. Petitioner shall cause to be established a setback zone of 50 feet from the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area within which there shall be no improvements of any kind, other than improvements which may be reasonably necessary for purposes of public safety, and where the property will be left in its natural state; provided that the setback for the proposed 16th hole may have a setback of less than 50 feet subject to mutual agreement between the petitioner and LSG.”

“c. Petitioner shall cause the area within 75 feet of the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the property area to remain in its natural state without improvements, except with respect to the three proposed signature holes of the golf course.”

- “d. Petitioner shall prohibit any vertical improvements, other than landscaping and improvements allowed by county variances, to be constructed or erected within 150 feet of the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area.”**

Compliance: Petitioner has complied with these conditions. Petitioner has complied with Condition 5.b’s requirement of a “setback zone” by granting to the State of Hawaii (through the BLNR) an easement for public pedestrian access in perpetuity “without obstruction or interference with such use, subject to reasonable rules and regulations regarding public safety”. Petitioner has complied with each 5.b, 5.c and 5.d by developing the Property in compliance with each of the limitations stated in these conditions and will continue to observe these limitations.

CONDITION 5e

- “e. “Petitioner shall work with Lanaians for Sensible Growth to incorporate mauka pathways which may be tied to golf course and residential area pathways which will provide alternative access routes to the accessible cliff coastline area.”**

Compliance: Petitioner has complied with this condition. LSG and Petitioner executed a “Notice of Agreement”, dated March 2, 1994, regarding mauka/makai access route trails (as shown on a map attached to the agreement). This agreement specifically states:

“This agreement fulfills the requirements set forth in the April 16, 1991 Land Use Decision & Order, Docket No. A-89-649 (“Manele D&O), Condition 5.e. the requirement is that LRP [Lanai Resort Partners, as Petitioner] work with LSG to ‘incorporate mauka pathways which may be tied to golf course and residential area pathways which will provide alternative access routes to the accessible cliff coastline area.’”

As described above with respect to Conditions 4 and 5.a above, Petitioner has complied with the Commission’s other specific conditions relating to mauka/makai access routes and the shoreline trail.

CONDITION 5f

“f. Petitioner shall adopt golf course rules and provide mutually agreeable and appropriate signage which will protect the access along the public access areas and pathways.”

Compliance: As described with respect to Condition 4 above, Petitioner has complied with this condition. The matter of signage was also a subject of the meeting and trail walk of June 24, 1994 and the agreement regarding signage is contained in the transcript of this meeting. Pursuant to this agreement, Petitioner installed the agreed upon signage, as confirmed by that certain memorandum by Richard Albrecht to Ed Sowers. These include directional signs, shoreline access signs, signs designating Fisherman’s Trail, signs with area map (with “You Are Here” designation) and a sign warning golfers to watch for hikers.

Petitioner has also adopted the United States Golf Association Rules (USGA) for the golf course. Section 1 of the USGA Rules requires golfers to take care with respect to all persons on or near the course and provides, in pertinent part:

“Safety

Prior to playing a *stroke* or making a practice swing, the player should ensure that no one is standing close by or in a position to be hit by the club, the ball or any stones, pebbles, twigs or the like that may be moved by the *stroke* or swing.”

The golf course’s score card specifically states that “USGA Rules govern all play” and, in addition, states:

Please exercise care and enjoy the course safely and responsibly. The course contains archaeological sites that should not be disturbed. Please join with all of us on Lana’i respecting Lanai’s natural environment and its cultural and historical treasures.

CONDITION 5g

“g. Petitioner shall provide Lanaians for Sensible Growth with plans for the golf course layout, location of holes, access pathways, and signage in advance of any final approval of such plans by the appropriate governmental agencies.”

Compliance: Petitioner has complied with this condition. Petitioner submitted its plans for golf course layout to LSG prior to the County of Maui’s approval of the same, as evidenced by that certain transmittal memorandum from Petitioner to LSG, dated October

12, 1992. The County of Maui approved these plans in January 1993 and Petitioner submitted the approved plans to LSG via transmittal memorandum, dated February 2, 1993.

CONDITION 5h

“h. Petitioner shall record with the appropriate governmental agency all necessary and appropriate instruments to accomplish the purposes of this paragraph.”

Compliance: As noted above, Petitioner has complied with this condition by executing and filing that certain Grant of Easement, dated March 9, 1995 and filed in the Land Court as Document No. 2236005, covering Petitioner’s dedication of a public easement from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area and that certain Memorandum of Agreement, dated October 19, 1994 by and between Petitioner and DLNR and filed in the Land Court as Document No. 2200658, requiring Petitioner to establish two trail heads and place signage on Petitioner’s lands adjacent to the coastal trail.

CONDITION 6

“Petitioner shall archaeologically data recover the significant historic sites identified as 3, 4, 5, 8, 9, 11 and CSI, and shall preserve the significant historic sites identified as 1, 6, portion of 7, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27 and at least a portion of CS2. Petitioner shall submit a revised mitigation plan to the State Historic Preservation Division for review and approval. Full execution of the mitigation plan shall be verified by the State Historic Preservation Division prior to the start of any ground-disturbing activities. Petitioner shall preserve the historic sites identified for preservation, in perpetuity, by establishing historical sites preserve area(s), with appropriate buffer zones as approved by the State Historic Preservation Division protected by a conservation easement pursuant to Chapter 198, HRS, as amended, or such other means as shall be reviewed and approved by the State Historic Preservation Division.”

“In addition, Petitioner shall immediately stop work and contact the State Historic Preservation Division should any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project’s development.”

Compliance: Petitioner’s contractor, Cultural Surveys Hawaii, Inc. (“*CSHI*”), submitted a Data Recovery Report to the State Historic Preservation Division (“*SHPD*”)

of the Department of Land and Natural Resources in 1994. SHPD, by letter dated August 26, 1994, accepted this report as satisfactory documentation of the data recovery work and verification of the successful execution of the data recovery plan. CSHI also completed an interim preservation plan that SHPD deemed acceptable, as documented in SHPD's letter, dated September 27, 1995, to David Blane, Director, County of Maui Planning Department from Don Hibbard, SHPD Administrator. CSHI has also prepared a version of an interpretative plan. Petitioner is currently working with the Lana'i Archaeological Committee on finalizing an interpretative plan, and formulating a preservation plan relating the Kapihaa Archaeological Preserve.

CONDITION 7

“Petitioner shall preserve the colony of *Canavalia pubescens*, which occur near the cluster of historic sites to be preserved, if deemed necessary by the Department of Land and Natural Resources, Division of Forestry and Wildlife (DLNR, DOFAW). Petitioner shall submit a mitigation plan (which shall include measures to ensure that these native species are not physically impacted, or their microclimate altered, including the incorporation of appropriate buffer zones) to DLNR, DOFAW for review and approval. Full execution of the mitigation plan shall be verified by DLNR, DOFAW prior to the start of any ground-disturbing activities.”

Compliance: The colony of *Canavalia pubescens* is located within the western makai portion of the undeveloped archeological preserve area and, as such, is not impacted by the golf course development. Petitioner's consultant, Char & Associates, completed a new survey verifying plant colony locations, and submitted a mitigation plan to DOFAW. By letter to Petitioner dated July 9, 2002, Vicky Caraway of DOFAW expressed approval of this mitigation plan.

CONDITION 8

“Petitioner shall only develop, construct, operate, and maintain the proposed golf course and any subsequent residential development in the Manele project district and take appropriate preventative measures so that it will not cause any deterioration in the Class AA water quality standards currently in existence for Hulopoe Bay and the coastal waters adjacent to the Manele Bay Hotel and the golf course, or any comparable standards as may be established by law in the future, taking into account, temporary perturbations from natural occurrences.

- “a. The petitioner shall fully mitigate any condition caused by its development activities which results in deterioration of the standards referred to in paragraph 3.**

- “b. The petitioner shall retain an environmental monitor, as may be mutually agreed between it and Lanaians for Sensible Growth for the purpose of monitoring the water quality standards referred to in paragraph 3. The monitor shall promptly make its results available to the State Department of Health. The monitoring program shall include baseline studies of such coastal waters and ongoing water quality monitoring on not less than a quarterly basis. The monitoring program will be conducted with a frequency and in a manner so as to be at least as effective, in the opinion of the monitor, as any other coastal water quality monitoring program for similar waters implemented in the State of Hawaii.”[1]**

Compliance: Petitioner has complied with this condition. Petitioner’s consultant, Richard E. Brock, Ph.D., doing business as Environmental Assessment Co., has been conducting an ongoing monitoring program with required reports. The reports, which have been submitted to the Commission, DOH Clean Water Branch, DLNR, Department of Public Works, Department of Planning, Ron McOmber, Councilman Sol P. Kaho’ohalahala, Hulopoe Beach Park Council, and Lanai Public Library, on a quarterly basis, demonstrate that development activities have not resulted in deterioration of the standards referenced in this Condition 8. For example in his report, dated November, 2009, entitled “A Quantitative Assessment of the Marine Communities and Water Quality in an Area Fronting the Hulopo’e –Mānele Bay Golf Course Development – Fourth Quarter 2009,” Dr. Brock concluded that the comparative analysis from the 238-month period of this study has found little or no significant change in the water quality attributable to the development and operation of The Challenge at Mānele golf course or to the recent residential construction. Further, Dr. Brock also concluded in his report that “the October 2009 survey has continued to find the quality of the waters fronting the project site as well as the controls as being typical of well-flushed, open Hawaiian coasts.”

CONDITION 9

“Petitioner shall comply with “The Eight (8) Conditions Applicable to Golf Course Development”, prepared by the State Department of Health dated April 7, 1989, introduced as the Office of State Planning’s Exhibit Number 2.”

Compliance: Petitioner has complied with all Department of Health conditions, as evidenced by that certain letter, dated July 16, 2001, addressed to Petitioner by Brewer Environmental Services.

¹ Condition 8 refers to a “paragraph 3”. We believe that this is a typographical error, with the correct reference being to “paragraph 8” or “condition 8.”

The County of Maui has also concluded that Petitioner has complied with the Department of Health conditions. The County of Maui Planning Commission approved Petitioner's request for Manele Project Phase II Development Approval, Special Management Area Use Permit and Planned Development Step I approval subject to 32 conditions, including the following condition number 18:

“Phase III approval not to be granted until the applicant has submitted a plan to the Department of Health to satisfactorily meet the requirements of the “12 Conditions Applicable to All New Golf Course Development, January, 1992 (Version 4).”

This county condition is stated in that certain letter, dated November 30, 1992, addressed to B. Martin Luna on behalf of Petitioner from Brian Miskae, Maui County Director of Planning.

Petitioner's compliance with this relevant County of Maui condition is evidenced by the County of Maui's grant of Manele Project Phase III approval.

CONDITION 10

“Petitioner shall not utilize the potable water from the high-level groundwater aquifer for golf course irrigation use, and shall instead develop and utilize only alternative non-potable sources of water (e.g., brackish water, reclaimed sewage effluent) for golf course irrigation requirements.

“In addition, Petitioner shall comply with the requirements imposed upon the Petitioner by the State Commission on Water Resource Management as outlined in the State Commission on Water Resource Management's Resubmittal - Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990.”

Compliance: The subparts of this condition are discussed in the following order: (1) development and utilization of alternative non-potable water sources, (2) the State Commission on Water Resource Management's (“*CWRM*”) Resubmittal - Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990; and (3) non-utilization of potable water from the high-level groundwater aquifer.

With respect to the development and utilization of alternative non-potable water sources (brackish water and reclaimed sewage effluent), Petitioner has developed a high capacity system for golf course irrigation. Petitioner has developed a non-potable water system for irrigation purposes that utilizes brackish well-water and stores this non-potable water in a

15-million gallon open reservoir. Petitioner also utilizes, for golf course irrigation, reclaimed water from the Manele Wastewater Treatment Plant, which provides “R-1” quality water and produces between 60,000 and 120,000 gallons per day (approximate) of reclaimed water (with an expanded capacity of 140,000 gallons per day).

The County of Maui has also concluded that Petitioner has developed an adequate brackish and nonpotable water system for the golf course. The County of Maui Planning Commission approved Petitioner’s request for Manele Project Phase II Development Approval, Special Management Area Use Permit and Planned Development Step I approval subject to 32 conditions, including the following condition number 24:

“That Phase III approval shall not be granted until a complete report substantiating that nonpotable water for the irrigation of the golf course is available and sustainable; and that the brackish water system will be constructed and operational at the time of the issuance of the building permits. Nonpotable water shall be hauled to the site for dust control and the development of the golf course in the meantime.

This county condition is stated in that certain letter, dated November 30, 1992, addressed to B. Martin Luna on behalf of Petitioner from Brian Miskae, Maui County Director of Planning.

Petitioner’s compliance with this relevant County of Maui condition is evidenced by the County of Maui’s grant of Manele Project Phase III approval. And further affirmed by Ordinance No. 2408 Bill No. 13 (1995) which amended Chapter 19.70 of the Maui County Code, pertaining to irrigation in Lanai Project District I Manele, that states:

“...Effective January 1, 1995, no potable water drawn from the high level aquifer may be used for irrigation of the golf course, driving range and other associated landscaping. The total amount of nonpotable water drawn from the high level aquifer that may be used for the irrigation of the golf course, driving range, and associated landscaping shall not exceed an average of 650,000 gallons per day expressed as a moving annualized average using 13-28 day periods rather than 12 calendar months or such other reasonable withdrawal as may be determined by the Maui county council upon advice from its standing committee on water use.”

With respect to the State Commission on Water Resource Management’s (“*CWRM*”) Resubmittal - Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990, the CWRM’s final decision did not designate the island of Lanai as a Water Management Area, but did require Petitioner to comply with certain

conditions of non-designation. The March 29, 1990 CWRM Non-Designation Decision Conditions for Petitioner are as follows (CWRM condition in bold, compliance in italics; language hereinbelow is taken from January 18, 2001 CWRM's presentation to the Lanai Public Informational Meeting):

1. **Require Lanai Company to immediately commence monthly reporting of water use to the [CWRM], under the authority of Chapter 174C-83, HRS, which would include pumpage, water level, temperature, and chloride measurements from all wells and shafts.** *Petitioner reports every 4 weeks which results in a 13-period reporting frequency in compliance with this condition.*
2. **In addition to monthly water use reporting and pursuant to Secs. 174C-43 & 44, HRS, require Lanai Company to monitor the hydrologic situation so that if and when ground-water withdrawals reach the 80-percent-of-sustainable-yield rate, the Company can expeditiously institute public informational meetings in collaboration with the Commission to discuss mitigative measures.** *Monthly water use reports provide the means for monitoring hydrologic conditions. Condition was mainly to notify the public of 174C-43 & 44 concerning the requirement of public involvement for mitigative actions when 80 percent sustainable yield actual use is occurring. The water use reports are provided to, and reviewed by, the Lanai Water Advisory Committee (LWAC) on a regular basis. Copies of these reports are also provided to CWRM and the County Department of Water Supply. It is our understanding that the Lanai Water Advisory Committee has been suspended for the time being.*
3. **Require Lanai Co. to formulate a water shortage plan that would outline actions to be taken by the Company in the event a water shortage situation occurs. This plan shall be approved by the [CWRM] and shall be used in regulating water use on Lanai if the Commission should exercise its declaratory powers of a water emergency pursuant to Section 174C-62(g) of the State Water Code. A draft of this plan should be available for public and Commission review no later than the beginning of October 1990 and shall be approved by the Commission no later than January 1991.** *Petitioner's water shortage plan was approved by CWRM on January 17, 1991 in compliance with this condition.*
4. **That the Commission shall hold annual public informational meetings on Lanai during the month of October to furnish and receive information regarding the island's water conditions. The public shall be duly notified**

of such meetings. *Public informational meetings have been held every October since 1990. The Lanai Water Committee/Working Group is now a participant in addition to the CWRM and Petitioner. It is our understanding that the Lanai Water Advisory Committee has been suspended for the time being.*

Finally, the issue of Petitioner's compliance with Condition 10's requirement that Petitioner "not utilize potable water from the high-level groundwater aquifer" was the subject of the Commission's Order to Show Cause, dated October 13, 1993. On May 17, 1996, the Commission issued its Findings of Fact, Conclusions of Law and Decision and Order that found Petitioner to be in violation of Condition 10 and ordered Petitioner to cease and desist of any use of high-level aquifer water for golf course irrigation ("**1996 Order**").

Thereafter, Petitioner appealed the 1996 Order to the Second Circuit Court, which reversed the decision of the Commission that the Petitioner's use of any water from the high-level aquifer for golf course irrigation violated Condition No. 10. This decision was subsequently appealed by the Commission and the Lanaians for Sensible Growth to the Hawaii Supreme Court.

On September 17, 2004, the Hawaii Supreme Court affirmed the circuit court's order reversing the Commission's 1996 Order. In doing so, the Court agreed with the circuit court that the Commission's finding that Petitioner had violated Condition 10 was "clearly erroneous", and determined that Condition No. 10 only prohibits use of potable water (not non-potable water) from the high level aquifer. However, the Court took the position that it could not determine from the Commission's decision whether potable water from the high level aquifer was in fact used to irrigate the golf courses (reversing the trial court's ruling in favor of Petitioner) and the Court has remanded this issue to the Commission to make a clearer finding concerning the use of potable water. On March 17, 2005, the Hawaii Supreme Court entered its judgment on appeal, remanding the case to Second Circuit Court, with instructions to remand the issue to the Commission.

In 2006, the Commission commenced evidentiary hearings pursuant the Hawai'i Supreme Court's remand order. These hearings were held in abeyance pending settlement discussions between Petitioner, LSG, the County of Maui and the State Office of Planning. On June 15, 2007, the Office of Planning filed a motion to modify Condition 10 consistent with its proposals in settlement negotiations. At a June 21, 2007 meeting, the LUC decided to hold in abeyance any evidentiary hearings before the Hearing Officer pending the hearings on potentially dispositive motions, such as the motion filed by the Office of Planning. Petitioner and LSG filed separate oppositions to this motion, and Petitioner filed a motion to modify Condition 10 and to dissolve the

cease and desist order. The motions came on for hearing before the Commission on August 23, 2007. However, the Commission deferred deciding the motions pending consultation with its counsel as to whether granting the motions would end this litigation.

On September 24, 2007 all parties submitted briefs on the issue of whether granting the motions would end the remand proceedings ordered by the Hawaii Supreme Court. The Office of Planning submitted a revised motion to amend Condition No. 10 which would adopt a 250 mg/l of chlorides but require the Petitioner to perform certain water studies within two years and allow the parties to propose amendments thereafter.

On January 8, 2010, the Commission met and voted to amend Condition No. 10 and to dissolve the 1996 Cease and Desist Order. The Commission's related decision and order also provides that (a) if chloride levels of non-potable water from the high level aquifer falls below 250 milligrams per liter, use must cease until the level goes above 250 mpls; (b) total use must be in accordance with Maui County Code Section 19.70.85 (i.e., under 650,000 per day); (c) ground water is as defined in HRS Section 175 C-3; and (d) nothing in the Decision affects other restrictions imposed by the County or State.

On February 24, 2010, the Lanaians for Sensible Growth (LSG) filed a notice of appeal from the LUC decision in the First Circuit Court, State of Hawaii. On March 30, Castle & Cooke filed a motion to dismiss the appeal on the grounds that LSG was administratively dissolved in 2004 and is statutorily prohibited from pursuing the appeal.

On May 25, 2010 Judge Sakamoto denied the motion to dismiss the appeal. At the hearing on LSG's appeal from the Commission's decision modifying Condition 10 and vacating the 1996 cease and desist order, the Court dismissed LSG's appeal for lack of jurisdiction.

LSG subsequently filed an appeal from the Circuit Court's dismissal of the appeal of the LUC decision modifying Condition No. 10. The matter is pending before the Hawaii Intermediate Court of Appeals. The parties have filed briefs and answering briefs in the appeal. In December 2011, LSG filed a motion to transfer the ICA appeal to the Hawaii Supreme Court. The Hawaii Supreme Court denied this motion, and the appeal remains with the ICA. The ICA merits panel for the case consists of Justices Foley, Fujise and Leonard.

CONDITION 11

"Petitioner shall fund the design and construction of all necessary water facility improvements, including source development and transmission, to provide adequate quantities of potable and non-potable water to service the subject property."

Compliance: Petitioner has complied with this condition and completed the construction

of all necessary water facility improvements (including source development and transmission) as part of the overall development and operation of the golf course and the Manele Project District.

With respect to potable water, Petitioner has completed the construction of all necessary water facility improvements.

With respect to nonpotable water, Petitioner has developed a non-potable water system for irrigation purposes that utilizes brackish well-water and stores this non-potable water in a 15-million gallon open reservoir. Petitioner also utilizes, for golf course irrigation, reclaimed water from the Manele Wastewater Treatment Plant, which provides “R-1” quality water and produces between 60,000 and 120,000 gallons per day (approximate) of reclaimed water (with an expanded capacity of 140,000 gallons per day).

As noted above, the County of Maui has also concluded that Petitioner has developed an adequate brackish and nonpotable water system for the golf course. The County of Maui Planning Commission approved Petitioner’s request for Manele Project Phase II Development Approval, Special Management Area Use Permit and Planned Development Step I approval subject to 32 conditions, including the following condition numbers 15, 16 and 24:

“15. That Phase III approval shall not be granted until the applicant has submitted construction drawings showing a dual water system which includes, nonpotable water system for irrigation of the golf course and surrounding landscaping.

“16. That Phase III approval shall not be granted until the applicant has submitted plans to the Planning Department for the Use of effluent at Manele which may include irrigation for the nursery and/or the golf course.

“24. That Phase III approval shall not be granted until a complete report substantiating that nonpotable water for the irrigation of the golf course is available and sustainable; and that the brackish water system will be constructed and operational at the time of the issuance of the building permits. Nonpotable water shall be hauled to the site for dust control and the development of the golf course in the meantime.”

These county conditions are stated in that certain letter, dated November 30, 1992, addressed to B. Martin Luna on behalf of Petitioner from Brian Miskae, Maui County Director of Planning.

Petitioner's compliance with these relevant County of Maui conditions is evidenced by the County of Maui's grant of Manele Project Phase III approval.

CONDITION 12

“Petitioner shall fund the design and construction of all necessary drainage improvements to the satisfaction of the State Department of Transportation and the County of Maui.”

Compliance: Petitioner has completed appropriate measures to control storm water and pollutants from storm water runoff, including (a) construction of a permanent storm water collection scheme, including seepage pits and a storm water collection system, (b) construction of the golf course as a target style course leaving some areas in a natural, undisturbed state and thereby reducing the environmental impacts, and (c) construction of a subsurface water collection system that intercepts infiltrated irrigation water and rain water from the greens and conveys such water to seepage pits or an area of the rough, as evidenced by that certain Engineer's Statement of Completion, dated January 21, 1994, by Kenneth O. Nagai of Belt Collins & Associates. Additionally, Petitioner is planning to install additional drainage infrastructure throughout the Manele Project District, including the golf course area, to enhance the capacity of the existing drainage systems. A final master drainage plan showing these additional drainage improvements was prepared by R.M. Towill Corporation and submitted to the County of Maui, Department of Public Works & Environmental Management and Department of Planning on February 27, 2004.

CONDITION 13

“Petitioner shall fund the design and construction of all transportation improvements necessitated by the proposed development identified by and to the satisfaction of the Department of Transportation.”

Compliance: This condition was amended (to read as quoted above) on December 29, 1992 by the Commission's “Order Granting Motion for Order Amending Condition 13 of Decision and Order Dated April 16, 1991”.

Petitioner has complied with this condition. It has coordinated its compliance with various transportation conditions arising from various state and county land use approvals, including the access road to the hotel and the golf course, with the State Department of Transportation (“**DOT**”).

CONDITION 14

“Petitioner shall undertake periodic monitoring of the traffic conditions within and adjacent to the Property throughout the project’s development period as required by the State Department of Transportation.”

Compliance: Petitioner’s contractor, Pacific Planning and Engineering, Inc., completed an updated and revised traffic study, dated May 1993, in compliance with this condition.

CONDITION 15

“Petitioner shall fund the design and construction of the appropriate wastewater treatment and disposal methods to the satisfaction of the State Department of Health and the County of Maui.”

Compliance: Petitioner has complied with this condition. Petitioner funded the design and construction of an appropriate wastewater system for the golf course and expanded this system because of the needs of residential development. Petitioner completed this expansion in May 1998. The current wastewater system is comprised of gravity sewer lines, sewer force mains, three (3) pump stations and the Manele Wastewater Treatment Facility, which has a treatment capacity of 0.140 million gallons per day. As noted, effluent from this facility is used to irrigate the golf course.

Through its contractor, Belt Collins & Associates, Petitioner (a) obtained the County of Maui’s approval of its plans for the wastewater facility and (b) requested a Department of Health permit (by letter dated June 1, 1998) and (c) obtained the Department of Health’s authorization to begin operation and startup of the facility (via that certain letter from the Department of Health, dated June 15, 1998).

The Mānele Wastewater Treatment Facility is now owned and operated by Mānele Water Resources, LLC, a wholly-owned subsidiary of Petitioner. In March 2007, the State Public Utilities Commission approved Mānele Water Resources, LLC’s application of a Certificate of Public Convenience and Necessity to provide sewer service to users within the Mānele Project District.

CONDITION 16

“None of the land area reclassified may be utilized for anything but a golf course and improvements directly related to golf course operations.”

Compliance: Petitioner has complied with this condition and completed construction of

the golf course. The golf course clubhouse, an amenity to the golf course, was completed in June 1994 and has been in operation and use since that time. Any other future improvement in the petition area will be related to golf course operations.

CONDITION 17

“Appropriate measures shall be taken to mitigate the short-term impact of the project relative to soil erosion from wind and rain; and ambient noise levels.”

Compliance: Petitioner has complied with this condition. Various measures were undertaken by Petitioner to mitigate the short-term impact of the project relative to soil erosion in compliance with this condition. Petitioner coordinated its efforts with the United States Soil Conservation Service (as directed by the County of Maui) and with the State Department of Health. The United States Soil Conservation Service commented favorably upon Petitioner’s efforts in mitigating soil erosion, as evidenced by that certain letter, dated August 11, 1993, from Nathaniel R. Connor of the United States Soil Conservation Service to Petitioner and that certain internal memorandum, dated February 24, 1994, by Watson T. Okubo.

Ambient noise produced by construction had little effect upon residents or visitors as there were no residences developed in the area during golf course construction and golf course construction was not close enough to the Manele Bay Hotel to significantly affect hotel guests or employees.

CONDITION 18

“Nonpotable water sources shall be used towards all nonconsumptive uses during construction of the project.”

Compliance: Petitioner has complied with this condition. Petitioner initially used nonpotable reclaimed wastewater from the Manele treatment plant for dust control during the construction of the golf course. After the water distribution system for the nonpotable water wells was completed, Petitioner used the brackish sources from the Palawai Basin during construction of the golf course.

CONDITION 19

“The Property shall be included in the Lanai Community Plan as part of the Manele Project District.”

Compliance: Petitioner has complied with this condition. The Property is included in

the Lanai Community Plan as part of the Manele Project District, as evidenced by Section 19.70 the Maui County Code (Lanai Project District - Manele) and Maui County Ordinance 2133 (1992).

CONDITION 20

“Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining reclassification of the property. Failure to so develop may result in reclassification of the property to its former land use classification.”

Compliance: Petitioner has complied with this condition. As noted, Petitioner has completed the golf course and the golf course clubhouse, being the use for which reclassification was granted.

CONDITION 21

“Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the project and Petitioner’s progress in complying with the conditions imposed.”

Compliance: Petitioner has complied with this condition. Petitioner has submitted annual reports for each calendar year since the Commission’s approval of the project and this letter constitutes Petitioner’s 2010 and 2011 Annual Reports.

CONDITION 22

“Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest or development interest in the Property covered by the approved Petition prior to visible commencement of construction on the Property.”

Petitioner has complied with this condition. No alteration of ownership or development interest in the Property occurred prior to the “visible commencement of construction on the Property”. As noted above, Petitioner has subsequently undertaken reorganizations in which Lanai Company, Inc. became the successor entity to Lanai Resort Partners and, most recently, Castle & Cooke Resorts, LLC became the successor entity to Lanai Company, Inc., as evidenced by that certain letter, dated December 28, 2000, addressed to the Esther Ueda (on behalf of the LUC) from Martin Luna and that certain letter, dated January 16, 2001, addressed to Mr. Luna from Bert Saruwatari (on behalf of the LUC),

acknowledging the merger of Lanai Company, Inc. into Castle & Cooke Resorts, LLC.

CONDITION 23

“The Commission may fully or partially release these conditions as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner. Adequate assurance of satisfaction may be evidenced by execution of a certificate of satisfaction in recordable form stating that such condition has been satisfied, in whole or in part. The Office of State Planning will certify for itself and all state departments and agencies, and the County of Maui Planning Department will certify for itself and all county departments and agencies. Any other party to the boundary amendment proceeding may be asked to indicate whether they concur in the certification of satisfaction.”

Status: To date, none of the conditions have been fully or partially released. However, given Petitioner’s compliance with nearly all of the conditions of the Commission’s approval (as described above), Petitioner may seek at least a partial release of these conditions and file an appropriate Motion for Order to Release and Delete Conditions in the future.

III. CONCLUSION.

We apologize for the delay in our submittal of the 2010 and 2011 reports. Should you have any questions or desire any additional information concerning the foregoing, please contact the undersigned at (808) 548-4890.

Very truly yours,



Richard Mirikitani
Senior Vice President & Corporate Counsel

cc: State of Hawai‘i, Office of Planning
Mr. William Spence County of Maui Planning Department