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JUN 16 2005

State of Hawaii
LAND USE COMMISSION

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition)	SPECIAL PERMIT SP-2001-5
)	
of)	TESTIMONY OF OLIE RIVERA
)	
KAUAI ATV, LLC, for a Special Permit)	
for recreational activities within the)	
Agricultural District at Koloa, Island and)	
County of Kauai, State of Hawaii, on)	
parcels identified as Kauai Tax Map Keys:)	
2-9-001: por. 01; 2-9-002: por. 01;)	
3-4-06: por. 01; and 3-4-01: por. 01.)	
_____)	

TESTIMONY OF OLIE RIVERA

Comes now OLIE RIVERA, herein "Olie", and submits this as his written testimony on behalf of Petitioner Kauai ATV, LLC, in the above referenced matter.

Background

Olie is one of two Members of Kauai ATV, LLC, a Hawaii limited liability company. The other Member of Kauai ATV, LLC, is Ronald Hamamura. However, Olie manages the business on behalf of Kauai ATV, LLC, and is authorized to appear in these proceedings on behalf of Kauai ATV, LLC.

Kauai ATV, LLC, herein "Petitioner", under a revocable license from Grove Farm Company, Incorporated, herein "Grove Farm", began providing all terrain vehicle tours on a limited and experimental basis in 1999, as a test as to the viability of such an activity. Following its beginning months of operation, it became obvious that the activity filled a need for providing alternate recreational activities for visitors and local residents.

In 2000, the Petitioner sought and was granted Special Permit SP-2001-5 from the County of Kauai for conducting all terrain vehicle tours under certain conditions, including a limitation on a maximum of four tours per day and a maximum of 14 vehicles per tour. Also included in the Special Permit was the ability to use a staging area in the vicinity of the Old Koloa Mill for storage of the vehicles, giving of instructions to the riders, and maintenance and minor servicing of the vehicles.

Current Application

Since that time, the operations of the company has grown, and the Petitioner was not able to meet the demand under the limitations of Special Permit SP-2001-5. Furthermore, hotels and activities centers in the Poipu area made continual requests to the Petitioner to provide additional recreational activities in the area for visitors.

In August of 2004, the Petitioner made application to the County of Kauai for an expansion of its permits to allow additional recreational activities on the lands under license from Grove Farm. The activities and actions for which approval was sought, included:

- (a) Increasing the maximum daily number of tours and riders per all terrain vehicle tours;

(b) Use of multi-persons all-terrain vehicles, in addition to single rider vehicles. The multi-person vehicles would include two-person and six-person vehicles. The six-person vehicles will be driven by an employee of the Petitioner, and will enable those persons incapable of operating a vehicle due to age or physical limitations, to accompany their friends and family members on the tours;

(c) Expansion of the use of the staging area to meet the needs of the company. These would include approval of two trailers, a service shed, an aluminum building for storage and work area, and the replacing of a tent with an aluminum building for vehicle storage;

(d) Conducting of water activities at the Waita Reservoir. The proposed water activities would be (i) touring the reservoir in a double-hulled Hawaiian sailing canoe, (ii) providing of sailing lessons, using two-man sailboats, and (iii) kayak rentals;

(e) Construction of a floating dock, storage shed, and picnic tables at Waita Reservoir to service the water activities;

(f) Creation of two paintball parks, the first being in an open gulley in the proximity of the "Pa'a" survey triangulation station. This "Makai Park" will entail approximately 6 acres, and be geared to the novice paintballer. The second, or "Mauka Park", will entail approximately 3-4 acres in a eucalyptus forest north of the Waita Reservoir, and will be geared to experienced paintballers in a more competitive environment; and

(g) Creation of a speedball tournament field to the northeast and in proximity to the staging area. Speedball tournaments would be held on not more than a quarterly basis, depending on the demand for the same.

A copy of the Applicant's letter to the Kauai Planning Commission, setting forth the requested approvals in greater detail, is attached hereto as Exhibit "A"..

By action taken on March 8, 2005, the Kauai Planning Commission approved the Petitioner's request to expand its permits to allow the requested additional activities. A copy of the approval letter, with the conditions attendant to the approval, is attached hereto as Exhibit "B".

The Petitioner believes that the Special Permit for the proposed activities are consistent with the objectives of the State land use law and for the issuance of the Special Permit by the Land Use Commission, for the following reasons:

(a) The all-terrain vehicle tours utilize existing roads used in the former sugar cultivation in the area. No additional lands will be taken out of current or potential agricultural production;

(b) Grove Farm currently leases other lands in the same area for a variety of agricultural activities, such as growing of seed crops, diversified agriculture, grazing, and timber. The Petitioner's proposed additional activities would not conflict with such agricultural activities;

(c) The proposed activities will not result in any significant adverse environmental or ecological impacts to the area. For example, the water activities at the Waita Reservoir involve non-motorized watercrafts (except for a pontoon boat and a jet

ski to be used for emergencies only). The paintballs used for the paintball activities are water soluble gell capsules. The all terrain vehicle tours will be staggered to minimize the number of persons on the subject parcels at any given time. The ATVs contain speed governors which limits the speed to 15 miles per hour to minimize any noise and dust disruption to the surrounding properties;

(d) The proposed activities will not unreasonably burden public agencies to provide roads, streets, water, sewers, drainage, and school improvements, as the activities do not involve such public services. While there may be some potential increase in need for police and fire protection in the rare occasion that such assistance is required, such an increase would not be significant;

(e) Since the establishing of the Agricultural district boundaries for the area, unusual conditions and trends have arisen. Among them are the unanticipated closing of the sugar industry resulting in thousands of acres of land being left uncultivated, and the growing desire and popularity of different activities for the island's visitors; and

(f) The proposed activities are compatible with and not injurious to the properties, the surrounding communities and areas.

Miscellaneous Issues

Subsequent to the approval by the Kauai Planning Commission of the said permits, several issues were raised by the Land Use Commission staff, which the Petitioner addresses as follows:

Computation of Permitted Area. In the Petitioner's original application, it was believed by the Petitioner and the County Planning Commission that the permitted area encompassed less than 15 acres. This belief was based on a calculation of the length of the various trails used in the Petitioner's activities, multiplied by the width of the roads and trails being used, plus the acreage in the staging area.

The Petitioner has since learned that although the tours are restricted to specific roads and trails, the calculation of the permitted area should not be limited only to the actual road and trails used, but should also include the areas on both sides as they contribute and become part of the tour experience.

Notwithstanding that the original permit exceeded 15 acres under the latter calculation, the Petitioner notes that the Land Use Commission has the full records of the original permit, as well as the amendments thereto which are subject of this proceeding. Accordingly, favorable action by the Land Use Commission on the amended permit would render the issue of the original permit not being brought before the Land Use Commission moot. The Petitioner has no objections to the rehabilitation of the special permit application to include the areas in excess of the 15 acres under the original Special Permit granted by the Kauai Planning Commission.

Defining of the permitted areas. The Petitioner recognizes and accepts the Land Use Commission's desire to identify the specific areas under any special permit. In the Petitioner's case, this would entail a metes and bounds survey and description of the staging area, the two paint ball parks and the speedball tournament field, which is doable but at considerable expense.

The defining of the permitted area for the all-terrain vehicle tours by metes and bounds, however, becomes complicated if the permitted areas also include the sides of the roads and trails used for the tours. In addition to the width of the road or trail, how far should the permitted area extend on both sides? In certain areas, the extension could be limited by the walls of vegetation on both sides of the road or trail. Along other parts of the same road or trail, the view experienced by the riders could extend a half mile or more.

The Petitioner proposes, as a viable solution, that the permitted area be identified by the tax key parcels, within which the proposed activities could be conducted. The landowner, Grove Farm, would still retain control over the activities of the Petitioner to prevent the latter from using portions of the properties not contemplated in the license between the parties. The limitation on number of tours, ridership, and the number and type of allowable vehicles (both land and water) imposed by the Kauai Planning Commission would also prevent unchecked expansion in the Petitioner's activities.

The use of tax key parcels to identify the permitted areas would have further advantages over specific metes and bounds described areas. It would eliminate the necessity of seeking amendments to the Special Permit if the Petitioner and Grove Farm were to substitute roads and trails to accommodate other future agricultural uses in the area. It would be a substantial cost savings to the Petitioner and Grove Farm to identify the permitted areas by tax key parcels, rather than having a surveyor undertake the extensive surveys which would be required to provide metes and bounds descriptions of the areas of use. And it would avoid or minimize the investigation of complaints and

enforcement of the permits, i.e., was there a violation because a particular tour deviated from the prescribed route to accommodate traffic, however occasional, from other agricultural activities along the tour route.

Joinder of Grove Farm. Based on the foregoing scenario, it would be logical and appropriate for Grove Farm, as the landowner, to be a master applicant for a special permit for specified open recreational activities on its lands. A master special permit for enumerated recreational activities would permit an overall evaluation of the appropriateness of the listed activities, recognize and minimize potential conflicts between the contemplated activities, and further avoid the necessity of repeated applications as new activities covered under the master special permit are instituted. Grove Farm, as the permittee, could evaluate and allow the permitted recreational activities through licenses granted to third parties.

The Petitioner has been in discussions with Grove Farm with respect to identifying the permitted areas under this application by tax map keys, and Grove Farm is agreeable to the same. As the landowner, Grove Farm is willing to join in this proceeding as an applicant so as to allow the permitted areas for use by the Petitioner in accordance with its representations to the Land Use Commission, the Kauai Planning Commission, and Grove Farm, to be identified by references to tax key parcels, rather than specific metes and bounds.

It has been further brought to the Petitioner's attention that any special permit for the Petitioner's activities, as well as other outdoor recreational activities allowed by Grove Farm on lands owned or under its control, would involve additional tax key

parcels, namely, Kauai Tax Map Key Parcels: 2-9-002:005, 2-9-003:001, 2-9-003:006, 2-8-022:024, 2-7-001:001, and 2-8-001:003.

A representative from Grove Farm will also testify on the joinder.

The Petitioner has no objections to the joinder of Grove Farm as a co-applicant in these proceedings, the addition of the appropriate tax key parcels to the Special Permit for the reasons aforesaid, and the rehabilitation of the special permit request to accommodate the Petitioner's proposed uses as well as other outdoor recreational uses as may permitted by the Land Use Commission in this proceeding.

Conclusion

Based on the foregoing, Kauai ATV, LLC, respectfully requests (1) that its application for a special permit to conduct its proposed activities at Koloa, Kauai, Hawaii, as set forth in the files of the proceedings, be approved, (2) that Grove Farm Company, Incorporated, be permitted to join the Petitioner in this application, and (3) that the permitted areas be identified by references to the tax map key parcel numbers, in lieu of specific metes and bounds descriptions.

Thank you for your consideration to this request.

Dated: Kauai, Hawaii, this 16th day of June, 2005.

Respectfully submitted,



Olie Rivera
Member, Kauai ATV, LLC

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August 27, 2004

Planning Commission of the
County of Kauai
4444 Rice Street, Suite 473
Lihue, HI 96766

Re: Application for Special Permit, Use Permit, Class IV Zoning
Permit – Kauai ATV, LLC

Dear Commissioners:

We represent Kauai ATV, LLC, which currently operates all terrain vehicle tours in the Koloa/Poipu area under Special Permit SP-2201-5, Use Permit U-2201-8, and Class IV Zoning Permit Z-IV-2001-10.

The Applicant proposes to expand its commercial recreational activities in the area, as well as modify some of its current tour options. In preliminary discussions with the Planning Department and State Land Use Commission staff, it was the consensus that a single application for the current as well as all proposed activities of the Applicant was desirable, so that the Planning Commission and the State Land Use Commission will have an overall view of the total picture as to the Applicant's uses of the properties. The State Land Use Commission's approval is required as the scope of the additional proposed activities will exceed 15 acres in the State Land Use "Agricultural" district.

It is expressly noted that the Applicant currently operates under existing permits, and files this application on the condition that should this application or any part thereof be denied for any reason, that such a denial will not affect, and the Applicant will continue to possess and operate under, the existing permits.

This application seeks the following: (a) amending the existing permits to increase the number of ATV tours/customers per day to meet demand during peak periods, (b) changing the types of vehicles used in the Applicant's operations; (c) permitting additional facilities at its staging area to meet current and future needs, (d) authorizing water activities at the Waita Reservoir, (e) authorizing the operations of two paint ball parks, and (f) authorizing the operation of a speed ball tournament field.

The Applicant submits the following for your consideration of its request:

EXHIBIT A

Background of existing permits

The Applicant is a Hawaii limited liability company, whose principals are Oli Rivera and Ronald Hamamura. The Applicant rents office space in Koloa town, from which location the customers sign up for the available activities offered. After completing the necessary paperwork at the Applicant's office, the customers are then directed or led to the Applicant's staging area in close proximity to the former McBryde Sugar Mill east of Koloa town, on real property identified as Kauai Tax Map Key: 2-9-01-por. 01.

The Applicant's current all terrain adventure tours are conducted on 22,000± acres license from Grove Farm Land Company, Incorporated. The properties involved are identified as Kauai Tax Map Keys: 2-9-01-01, 2-9-02-01, 3-4-06-01, and 3-4-01-01.

Attached hereto as Exhibits "A" to "D" and made a part hereof, are copies of the tax maps for the parcels involved in the application. Also submitted herewith as Exhibit "E" is a USGS topographic maps, upon which the various tour routes and proposed activities are noted.

As an experiment, the Applicant first began operating in August of 1999, beginning with a limited number of a single person all terrain vehicles as an alternative activity for visitors to the island. As the business kept growing, the Applicant sought, and was granted Special Permit SP-2201-5, Use Permit U-2201-8, and Class IV Zoning Permit Z-IV-2001-10 by the Planning Commission on November 21, 2000, for the ATV tours.

Over the past several years, conditions and demands of the business have indicated necessary changes to accommodate the growth and demand for increased ridership and additional activities, resulting in this request. A strong impetus for the proposed additional activities was the numerous requests of the tourism industry to provide additional adventures to complement the ATV tours. Among the activities suggested were those which could be implemented as part of team building and confidence for visitors attending corporate retreats and conferences.

Increasing number of permitted tours

The current permits issued by the County contained a number of conditions, with Condition No. 1 being the following:

“1. As represented by the applicant, the ATV tours are limited to a maximum of four (4) tours per day, with a maximum of fourteen (14) ATV vehicles per tour.”

At the time of the hearings on the original permits, the Applicant failed to fully realize the impact of the summer peak visitor season on the business. While the four tours per day limit sufficed for most of the year, the Applicant was required to turn away a number of tourists and residents during the peak summer months because of the limitation. This resulted in a number of disappointed potential riders, and caused the Applicant to reevaluate the permit condition and make the request herein.

The Applicant is requesting that it be permitted an increase in the number of total tours per day from its present maximum of sixty-four vehicles per day. The requested increase and change from the number of vehicles to the number of tours is to accommodate peak periods and afford the Applicant greater flexibility in the use of a variety of vehicles hereinafter discussed.

The Applicant submits the following in support of its request to permit an increase in the number of tours per day:

1. The increased number of allowable riders is only to accommodate the peak period during the summer months. During the remainder of year, the previous maximum of 64 vehicles per day is normally sufficient to meet the demands. However, during the summer months when the greater number of tourists are visiting and the weather is good, there is an increase in those wanting to partake of the activity;

2. Since the inception of its business, the Applicant has not received a single complaint as to any environmental or ecological adverse effects of the activity. This can be traced to the Applicant's continuing awareness of the surroundings and conducting its business in a manner to minimize any adverse effects of the tours. The Applicant will continue with this policy of awareness and consideration to the natural beauty and resources of the area. As such, the Applicant does not believe that the proposed increase in number of tours during the peak months will result in any significant environmental or ecological adverse effects;

3. To address the demand in the peak months, the Applicant is requesting that it be permitted to have a maximum of 6 tours per day using single person ATVs, with a maximum of 14 vehicles (exclusive of guides) per tour. To assure the customers' safety and proper supervision, the number of guides per tour is dependent on the number of

vehicles in each tour, with usually 1 guide for 1 to 6 vehicles, 2 guides/chasers for 7 to 10 vehicles, and 3 guides/chasers for 11 to 14 vehicles;

4. In addition to the single person ATV tours, the Applicant also proposes to offer up to 4 tours per day using multi-person ATVs, with a maximum of 10 multi-person ATVs per tour exclusive of guides/chasers. As described hereafter, there will be three types of multi-person ATVs used for the tours. The type and mix of the multi-person ATVs on each tour will vary to best meet the needs of that particular tour, as discussed hereinafter. In addition to the riders, each tour will require two guides/chasers. If a six seater ATV is used, the driver will also double up as the chaser;

5. The Applicant believes that the stated maximum of vehicles plus guides/chasers per tour is a reasonable maximum. This will still allow the members of the group to better enjoy the experience on a more personal level, while insuring that the guide and the chaser can maintain discipline and enforce the rules of the tour more effectively and efficiently. Moreover, on the tours going up to the waterfalls, the Applicant has found that there is a need for a smaller ratio of guides/vehicles to properly police and ensure that the riders stay only on the trail, do not speed, and not do anything that would endanger other riders or adversely affect the environment. The proposed use of multi-person vehicles also provides greater flexibility in determining the number of vehicles/riders a tour should have to maintain the level of experience and personal contact which has contributed to the success of the business;

6. The Applicant will be able to schedule any additional tours necessary to accommodate the peak demands and increased ridership through staggered times. This will minimize the number of vehicles being on the cane haul roads at any given time, thus also minimizing whatever impacts such additional tours may have;

7. The Applicant is cognizant that any additional tours will also increase the level of activity at the sales office in Koloa town, since the participants sign up at that location before proceeding to the staging area to be fitted and instructed. The staggering of any additional tours will minimize any chance of congestion at the sales office, i.e., there should be little reason why people from different tours would be at the sales office at the same time;

8. During the peak summer months when the additional availability is necessary to accommodate the demand, the Applicant will be required to employ additional personnel. The need for additional personnel would be minimized by staggering the tours to limit the number of tours being conducted at the same time, as well as the utilization of the multi-person ATVs. The additional tours could add up to a maximum of 16 additional guides/drivers/chasers if all tours were run simultaneously

with as few of the multi-person ATVs as possible were used. However, this is unlikely to occur on a frequent basis based on the Applicant's experience in scheduling and determining the makeup of the various tours.

9. The same reasons and compliance with the standards for the issuance of the original permits continue to apply to the request for the additional ridership per day. Past experience and the lack of complaints readily show that the use has been compatible with the surrounding area; is not detrimental to the health, safety, and general welfare of the surrounding community and properties; has not caused any substantial harmful environmental consequences; is consistent with the intent of the Comprehensive Zoning Ordinance and the General Plan; and is consistent with the objectives and standards for a special permit within the agricultural district.

Types of vehicles used

The current permits allow the use of single person ATVs. Over the years, the Applicant has become aware that such vehicles are not the optimum for a number of reasons. There are many instances where people wanting to participate are too young, too old, or otherwise incapable of operating an ATV, with frequent results of a family or group being denied the opportunity to participate together. The single person ATVs in current use pose a higher potential risk of injury because of their design, and require greater maintenance and repairs.

Accordingly, it is the Applicant's plans to phase out the use of its current 31 single person ATVs and gradually replace them with other types of ATVs. The proposed replacements are of three types: a single seater, a two-seater, and a 6-seater. The single and two seater ATVs will be operated by the customers. The six seater will be operated by an employee of the Applicant, who will also act as the chaser on a tour. The chaser is the last vehicle in line, which allows the employee to police and supervise the members of the tour for safety, environmental, and other concerns. The Applicant's present plans are to have four additional 1-seaters, twenty 2-seaters, and three 6-seaters mud buggies. Changes in the number and mix of ATVs may be required over time to adapt to market demand.

The proposed vehicles are preferred over the single person ATVs in current use, because they have built-in safety cages to minimize injury in case of a turnover or accident. The operator and rider(s) are restrained by safety belts, whereas the current ATV riders lack such protective measures. Attached hereto as Exhibits "F", "G" and "H" are photographs of the 1-person, 2-person, and 6-person ATVs.

In addition to the ATVs, the Applicant will also use other vehicles in its operations. It will use a 15-passenger van for transporting customers to and from selected hotels, as such needs arise. This eliminates the necessity for customers to rent a car to enjoy the tours offered by the Applicant, thus reducing the number of vehicles on the public roadway. The van will also be used to ferry passengers between the staging areas and the paint ball parks hereinafter described.

The Applicant also uses a flat bed truck for assistance and trail/road maintenance, as well as a jeep and a pick-up truck for rescue and recovery should the need, however infrequent, arise.

Additional structures and facilities at staging area

The Applicant runs its tours from a staging area in the vicinity of the old McBryde Sugar Mill, east of Koloa town. In addition to storing of vehicles, equipment storage, maintenance and cleaning of vehicles, and employee lounging areas, the staging area is also used to properly equip the riders with clothing and safety equipment, acquainting them with the operation of the vehicles, and testing their proficiency and ability to control the vehicles before embarking on the guided tours.

To accommodate its past and anticipated growth, the Applicant found it necessary to add structures and improvements to the staging area, in addition to the containers, lean-tos, and previously approved structures and tented areas.

The additions to the staging area sought by the Applicant are the placement of two trailers with connecting decks, a service shed, a tent to house vehicles, and a mechanics' shelter. A plot plan showing the various structures at the staging area is attached hereto as Exhibit "J" and made a part hereof.

More specifically, the structures under consideration in this application are as follows:

(a) A former military trailer became available and was acquired by the Applicant. The trailer is approximately 34 feet in length and 7 ½ feet in width, and is shown as "E" on the plot plan;

(b) The trailer used by the United States Postal Service as a temporary post office at Puhi following Hurricane Iniki also became available for acquisition by the Applicant. The Applicant acquired this vehicle, and placed it in the staging area to meet its growing needs for storage of equipment and parts. This trailer is approximately 40

feet in length and 14 feet in width, with an extension porch of 30 feet by 10 feet. to provide cover from the elements. This trailer is designated as "F", and the extension porch as "B", on the plot plan;

(c) The two trailers have been joined by a wooden deck, to avoid the necessity and inconvenience of going up and down steps to traverse between the trailers, which is also indicated on the plot plan as "A";

(d) A service shed of approximately 8 feet by 16 feet is situated on the north end of the postal trailer, designated on the plot plan as "C". This shed is used by the Applicant as office space for employee matters. The shed also has an extended roof of approximately 9 feet by 10 feet to provide shade and cover from the elements. Drawing of the shed and extended roof is submitted herewith as Exhibit "K";

(e) The Applicant proposes to construct a prefabricated portable aluminum building, to be used for storage, as well as to provide a work area for the maintenance of the vehicles. The quonset hut looking building will be approximately 26 feet by 40 feet by 12 feet at the roof peak. The location of this proposed building is designated as "D" on the plot plan. Drawings of the building are submitted herewith as Exhibit "L";

(f) To protect vehicles other than the ATVs and mud buggies, the Applicant employs a 20 feet by 60 feet tent, under which these vehicles are parked while not in use. The tent is shown at the top of the plot plan as "G". The Applicant proposes to replace this tent with another aluminum building approximately 26 feet by 60 feet to garage the vehicles not in use.

The foregoing are the result of the growth of the Applicant's business. As the Applicant's business grew, the need for additional facilities also grew. But in recognition that it operates under various permits, the structures are located and fixed to the ground in such a manner that they can be moved with minimal difficulty should the Applicant's licenses be terminated. The facilities do not result in any significant adverse environmental effect to the surrounding areas, and permit the Applicant to operate in an efficient manner by centralizing as much of its activities as possible.

Water activities at Waita Reservoir

Waita Reservoir is the largest fresh water reservoir on Kauai, containing area of approximately 400 acres. The reservoir is accessible through private roads only. A copy of a tax map attached hereto as Exhibit "B" and the USGS map attached hereto as Exhibit "E" show the location of the Waita Reservoir. A drawing, better specifying the location

of the proposed activities at the Waita Reservoir is attached hereto as Exhibit "M" The reservoir is owned by Grove Farm Company, Ltd. The Applicant leases the property abutting the reservoir from Grove Farm Company, Ltd., for use in its ATV tour operations, and has received permission from Grove Farm Company, Ltd., to submit this application. A copy of a letter of authorization from Grove Farm Company, Ltd., is attached hereto as Exhibit "N".

The Applicant is proposing three types of water activities at the Waita reservoir. They are as follows:

(a) Touring the Waita Reservoir in a custom made double-hulled Hawaiian sailing canoe. The canoe envisioned would hold six passengers in each hull, or a maximum of twelve people per sailing. The guided tour would include narrations of the Hawaiian culture associated with the twin hulled sailing canoe. A maximum of four tours per day would be provided, with a tour being of approximately 2 hours in duration. The tour would require one or two employees/guides.

(b) The availability of sailing lessons, using two-man Laser sailboats. To avoid conflicts with the other activities, the sailing lessons would be limited to the north portion of the reservoir. There will be a maximum of five sailboats per session, with one certified sailing instructor per session. The Applicant projects a maximum of 4 sessions per day. The sailing lessons would expose both the visitor and local residents to sailing, without the hazards inherent in open water (ocean) sailing.

(c) Rental of kayaks and canoes will also be made available for those persons who may want to explore the reservoir at their own pace.

To support the proposed water activities, the Applicant plan to construct a floating dock, four picnic tables with roofs, and a storage shed of approximately 230 square feet for the storage of equipment related to the activities, such as life jackets, paddles, etc. A site plan of the floating dock, picnic tables and shed is attached hereto as Exhibit "O"

The wooden floating dock will be approximately 20' by 6', from which participants can embark and disembark. The picnic tables are for use by the participants for shelter from rain and sun. The 8' by 12' storage shed will be used to store equipment related to the activities, such as life jackets, paddles, etc.

While the proposed activities above are all non-motorized, there will be a need for two motorized vehicles for safety and security purposes. The first would be a ten-passenger pontoon boat, and the second would be a jet ski. Both vehicles would be for

patrolling and rescue purposes. These two vehicles would be operated by the Applicant's employees and be used only as necessary to minimize adverse environmental effects.

In justification of the proposed use, the Applicant notes the following:

(1) The Applicant's current ATV tours skirt the Waita Reservoir. Many customers on the tour have inquired about the availability of water related activities at the reservoir as alternative activities during their stay on Kauai. In addition, Grove Farm Company, Ltd., has also requested the Applicant to explore uses which could be implemented with the reservoir. Due to the foregoing, the Applicant gave serious consideration to the matter, with the goals of providing activities that would be fun, be culturally related if possible, and be environmentally compatible.

(2) The proposed activities were selected for several reasons. First, the activities are environmentally compatible. The limited use of motorized vehicles for safety and security purposes only minimizes the possibility of fuel spills, noise, fumes and other pollutants. Second, the area has a fairly consistent wind pattern, which is necessary and conducive to sailing activities without the risks of large swells and waves found in the open ocean. Thirdly, the Waita Reservoir is only, in most parts, approximately 15 to 20 feet in depth. This creates a safer environment for the proposed activities.

(3) The Applicant has investigated whether the reservoir and surrounding banks have been used for traditional Hawaiian cultural and gathering rights and practice. The investigation consisted of inquiries to personnel at Grove Farm Company, Ltd., which owns and, prior to the close of sugar operations, used the reservoir for its sugar operations. No one can remember or has any knowledge of any traditional Hawaiian cultural and gathering practices being conducted at the reservoir or on the surrounding banks.

Paint Ball Parks

The Applicant also proposes to establish two paint ball parks on two separate parcels, approximately 2 miles apart. The proposed paint ball park, herein called the "Makai Park", is located within the parcel identified as Kauai Tax Map Key: 2-9-01-por. 01, and will encompass approximately 6 acres. It is situated to the northeast of the Koloa By-Pass Road and Poipu Road intersection, above the Hyatt Regency Hotel, and to the east of the "Pa'a" survey triangulation station. The Makai Park was formerly in cane and is presently overgrown with scrub vegetation. Exhibit "E" hereto shows the location of the Makai Park.

The second park, herein called the "Mauka Park", is located on a parcel identified as Kauai Tax Map Key: 2-9-02-por. 01. The proposed area of use contains between 3 to 4 acres, and is located within a eucalyptus forest to the northeast of the Waita Reservoir. Exhibit "E" hereto also shows the location of the Mauka Park.

The subject parcels are likewise owned by Grove Farm Company, Ltd., and the Applicant leases the subject parcels for use in its ATV tour operations. The Applicant has received permission from Grove Farm Company, Ltd., to submit this request for the paint ball parks, and a copy of a letter of authorization from Grove Farm Company, Ltd., is attached hereto as Exhibit "P".

As noted, this request is for two parks. The Mauka Park, being in a eucalyptus forest, will demand a higher level of competition and ability for the experienced paintballers. There will be little need to change the existing environment of the Mauka Park. On the other hand, the Makai Park will be geared to the family and novice participants in a more open surrounding. To provide a degree of challenge and more fun, the Applicant will create artificial barriers behind which the participants can hide and from which they must traverse to confront their opponents. The barriers will be no more than three or four feet in height, and painted to blend in with the surrounding area. This will also mitigate any visual impacts from the park, when viewed from the surrounding properties.

During the course of operating its ATV tours, the Applicant has been asked many times as to the availability of other adventure type tours to complement the ATV tours. The visitor industry has suggested other activities that could be implemented as part of team building and confidence in corporate retreats and conferences. Among the suggestions made on numerous occasions was a paintball park where participants could enjoy the thrills of competing with other participants in contests of skill and fun. Based on these suggestions, the Applicant investigated the feasibility and viability of such an activity and believes that there is a demand for such an activity.

Paintball competitions are growing in popularity nationwide. On Kauai, there are several local groups who compete on whatever lands they can find, at times without permission of the landowner. These competitions are unsupervised and unregulated.

The proposed paintball parks would provide additional venues for both local paintballers and visitors who may or may not have had prior experiences in the activity. The participants in any game will be of similar abilities. This allows the activity to be geared as a family-oriented activity for the novice paintballer, while giving experienced paintballers the opportunity to compete at their advanced levels.

The games would be regulated and refereed to insure safety while maintaining an appropriate level of competition for the participants. The Applicant will provide the paintball guns, the pellets, and all safety equipment. The paintball guns are operated by refillable CO2 gas or compressed air cylinders, so that there would be no discarded empties to litter the environment. The paintball pellets are essentially waterpaint encased in a gel similar to certain gel medications or vitamins, and is biodegradable. Any rain will dissolve the gel and wash away the contents, leaving virtually no trace of the pellets.

The safety equipment will consist of covered clothing, head and face gear, and, if desired by the participant, chest plates. The Applicant's personnel overseeing and refereeing the games will insure that all safety rules are strictly enforced, and will stop the competition and remove anyone disobeying those rules.

The participants will be transported to each of the paint ball parks by the Applicant's vans, which will also tow an equipment/supply trailer containing the closing, guns, pellets, and refreshments. The trailers will remain on site during the course of the tour, and be towed back to the staging area when the parks are closed.

As not all the participants will be involved in every game, those not participating in a particular game will remain in the rest area by the trailer. To protect these persons from stray pellets, a safety net will be necessary. The 10 feet high net for the makai park will be approximately 200 feet in length; the mauka park will be about 100 feet in length. The net will be attached to spaced poles with a pulley system, whereby the nets will be raised at the start of the games, and lowered and secured at the termination of the activities each day. The netting is a black plastic netting, similar to the materials used on agriculture hothouses. The size of the netting openings are small enough to stop stray pellets, but sufficient to observe the activities on the other side.

The Applicants will permit local participants to use their own equipment and safety clothing, provided that the same meets the safety and competition standards imposed by the Applicant. For example, before being allowed for use, their guns will be inspected and any equipment which has been modified to increase the power or range in excess of the limits imposed by the Applicant will be prohibited.

The Applicant projects the possibility of two tours per day at each of the parks. The participants would be limited to a maximum of twenty-five, as any larger number will increase the difficulty of policing and refereeing the competition. Each tour will have one referee/guide. While the games themselves will probably be approximately one hour each, the entire tour will take about three hours. This includes the time to orient the

participants as to the safety rules and the operation of the equipment, getting into and out of the safety clothing, and travel to the park from the staging area.

The Applicant has investigated whether the subject properties have been used for traditional Hawaiian cultural and gathering rights and practice. The investigation consisted of inquiries to personnel at Grove Farm Company, Ltd., which owns and, prior to the close of sugar operations, used the properties. No one can remember or has any knowledge of any traditional Hawaiian cultural and gathering practices being conducted on the properties.

Speedball Tournament Field

The Applicant lastly proposes the establishment of a speedball field, which could host speedball tournaments. Speedball is a form of paint ball, except that the teams are limited in size, the action is governed by rules, and the competition is intense and quick. Speedball teams usually contain either two, five or ten persons on each side.

The speedball tournament field is proposed to be located in front of the Old Mill and to the immediate east of the Applicant's staging area. The field ultimately could encompass three acres of land for the field(s) itself, spectator areas, and parking. Each speedball field is similar in size to a basketball court, within which inflatable obstacles of various sizes and shapes are placed for the competitors to use. Spectators observe the games from both sides of the field. Depending on the turnout for the tournaments, spectators would either stand on the sidelines while watching the games, or be seated on temporary bleachers lining the field.

As in the case of the paintball fields, protective netting would be raised to protect spectators from stray paint pellets. The netting would be on three sides of the field, and be between 15 to 20 feet in height. The netting would be raised on wooden poles placed at intervals via a pulley system, and be removed after the tournaments. While not in use, the netting, bleachers, the deflated obstacles, and other equipment would be stored in storage space to be provided in the Old Mill or in equipment trailers.

Due to the growing popularity of the sport, the Applicant expects to hold four tournaments per year, with the contestants coming from around the United States, if not the world. In the interim, if there are requests from small incentive groups on corporate retreats, etc., there could be as many as one tournament per week.

The Applicant would initially set up one field, with another field being created if demand is present for the second field.

Attached hereto as Exhibits "Q" and "R" are pictures of a speedball field and the type of obstacles used in the sport.

The Applicant does not believe that the speedball field will result in any significant adverse environment or other effects to the area. The area designated for the field is vacant and flat. The tournaments would not be a daily activity. The netting, obstacles, bleachers, and other equipment would be removed and stored out of sight when not in use.

Justification for proposed uses

As justification and support of the proposed actions, the Applicant notes the following:

1. The lands upon which the proposed activities are planned are located within the State Land Use "Urban" district and within the "Agriculture" zoning under the County's Comprehensive Zoning Ordinance. Although the proposed activities can be considered outdoor recreational activities, which are permissible uses under the current zoning, the Applicant recognizes that it is also a commercial activity that necessitates a Special Permit and Use Permit. The Class IV Zoning Permit is a procedural permit because a public hearing will be required.

2. The proposed activities are in compliance with the standards for issuance of a Special Permit, for the following reasons:

(a) The proposed uses are not contrary to the objectives sought to be accomplished by Chapter 205 and 205A, Hawaii Revised Statutes, and the rules of the State Land Use Commission. More specifically, outdoor recreational activities which require little or no change to the existing environment are permissible uses in the goal to preserve agricultural lands for future agricultural activities. The proposed uses can be discontinued in the future, if necessary, without any adverse impact and the ability to undertake other agricultural activities thereon;

(b) The proposed uses would not adversely affect surrounding properties. The staging area is already used for the Applicant's current ATV tours, and the impact of additional buildings, if any, would be minimal. The increase in number of tours would not have any significant impact as it is still relatively limited in number and scope in relation to the size (22,000± acres) of the parcels upon which the tours are conducted. The ability to use multi-person vehicles will reduce the number of vehicles

needed to accommodate demand. The Waita Reservoir, as well as the sites of the proposed paint ball parks, are surrounded on all sides by now vacant fields formerly used by the McBryde Sugar Co., Ltd.. There are no residential properties in close proximity to the reservoir;

(c) The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The activities will take place on private property, and do not involve any public services;

(d) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established. The Land Use "Urban" classification was established for the subject parcel upon implementation of Chapter 205, Hawaii Revised Statutes, in the late 1960's. At that time, the parcel was in agricultural use by the plantation. In the intervening years, the plantation has ceased operations, the old Koloa Mill has closed, and these former agricultural lands have remained basically vacant. The reservoir, formerly used to store irrigation water for the cane fields, is no longer necessary for that use. Also in the intervening years, there has been a growth of resort developments and uses in the area, which has resulted in an increase for visitor activities. The proposed uses will help address the need for such activities;

(e) The parcels within which the Waita Reservoir is located and where the proposed paint ball parks are planned, are suited for the agricultural and open recreational uses permitted within the district. However, there are no other alternative agricultural uses on the horizon for the surrounding lands that necessitate the storage of irrigation water or use of the subject parcels. As the proposed uses will involve little alterations to the land and its environment, should a viable agricultural use arise in the future, the reservoir can be regained by its owner. In such event, the proposed activities can be terminated without significant difficulty; and

(f) The proposed activity would promote the effectiveness and objectives of Chapter 205, H.R.S., as amended, by utilizing the properties in such a fashion so as not to preclude future agricultural uses, while allowing productive uses of the properties in the interim to address the needs and desires of the public for the activities..

3. The standards for the issuance of a Use Permit are applicable herein. The proposed use is a compatible use and would not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood; would not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community; and will not cause any

Planning Commission of
the County of Kauai
August 27, 2004
Page 15 of 15

substantial harmful environmental consequences to the land of the Applicant or on other lands; and will not be inconsistent with the Comprehensive Zoning Ordinance and the General Plan.

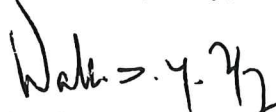
Based on the foregoing, the Applicant respectfully requests your favorable consideration to this request.

We also include our check in the amount of \$150.00 for the filing and publication fee.

Please advise us of the date and time when this matter will be heard, so that we can plan to be in attendance to respond to any questions which may arise.

Thank you for your consideration to this matter. If there are any questions, please do not hesitate to have the staff contact us.

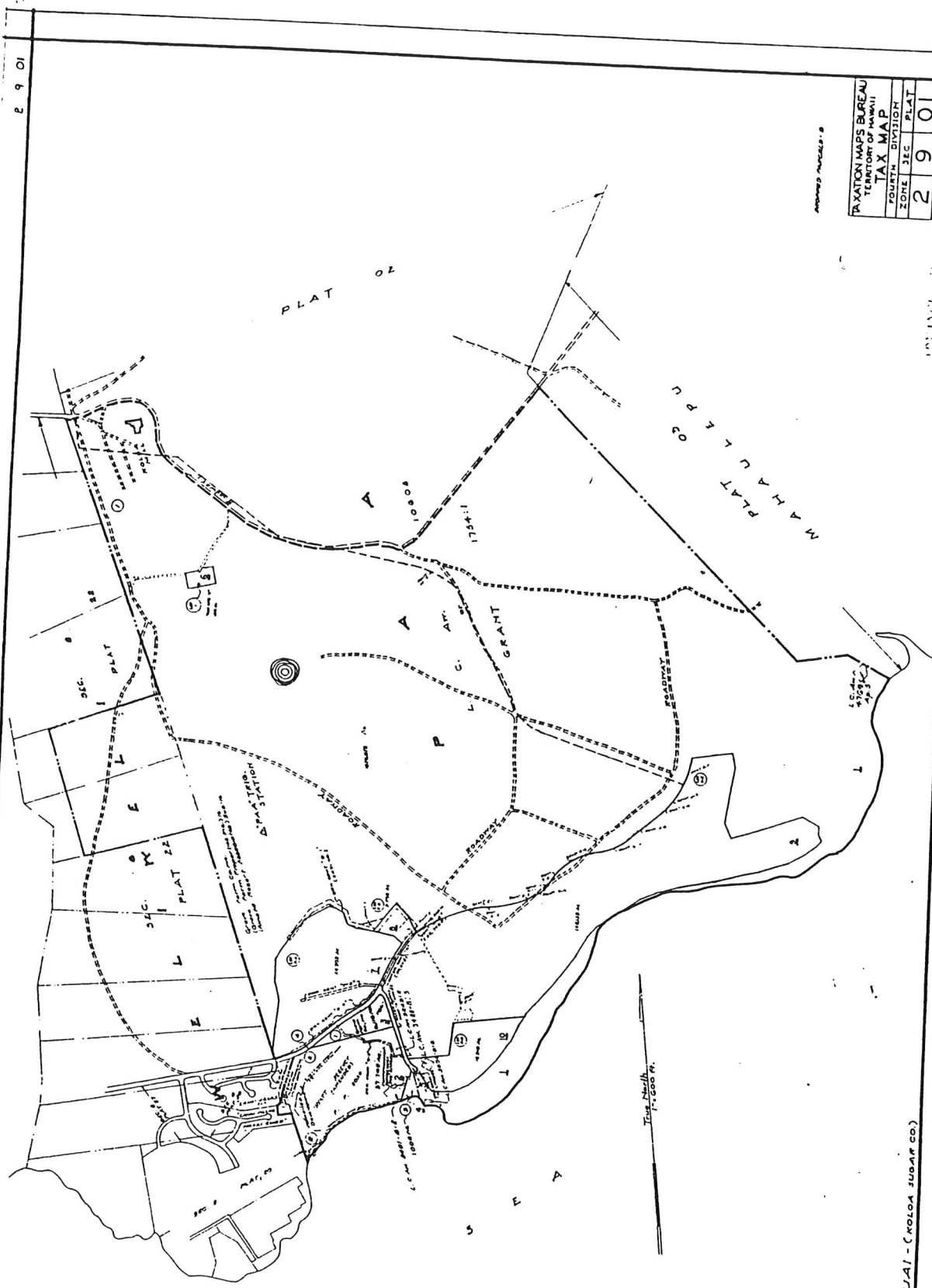
Yours very truly,


Walton D. Y. Hong

WDYH:wh

Encls.

cc: Kauai ATV, LLC
Grove Farm Company



ADJACENT PARCELS

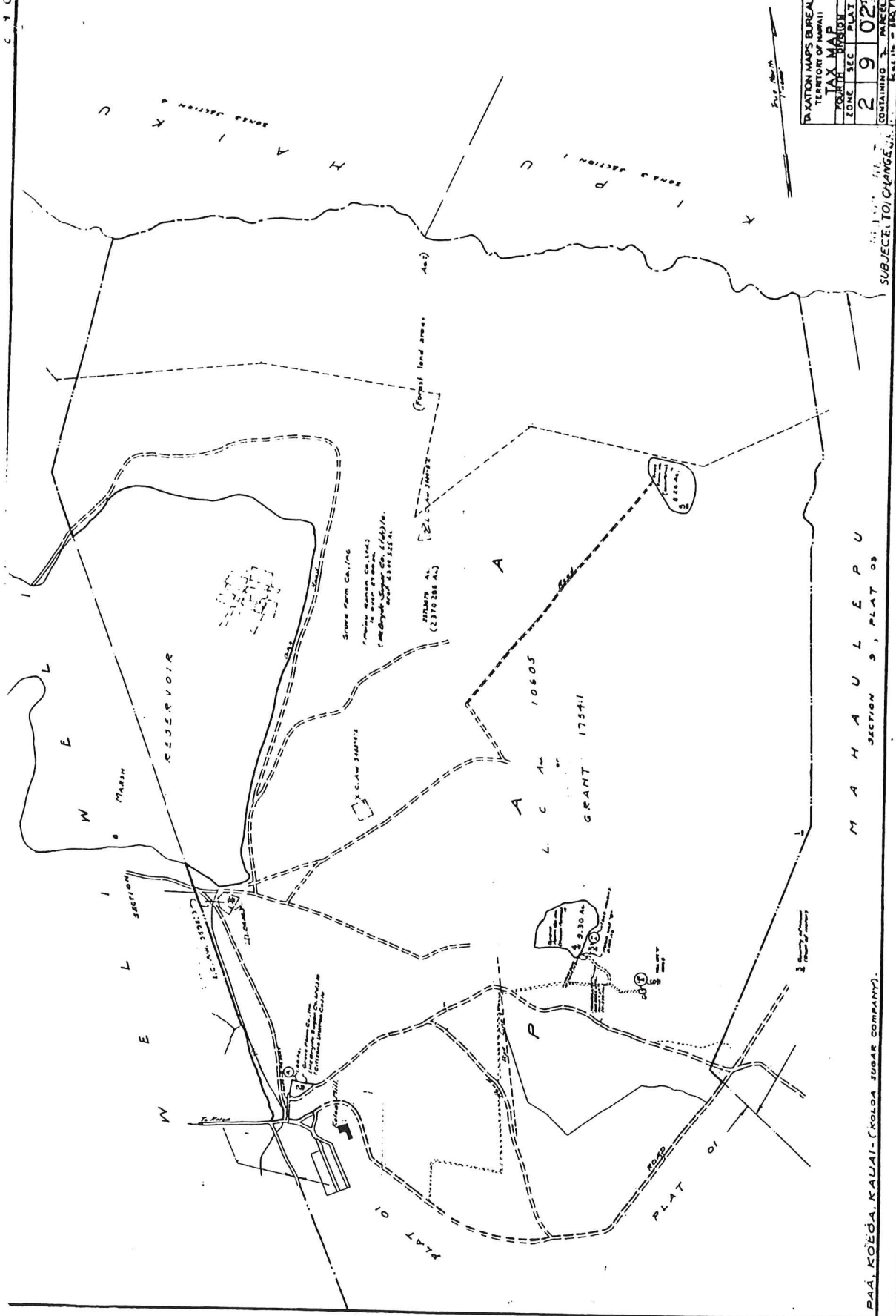
TAXATION MAPS BUREAU	
TERRITORY OF HAWAII	
TAX MAP	
FOURTH DIVISION	
ZONE SEC	PLAT
2 9 01	
CONTAINING 1 PARCELS	
SCALE: 1 IN. = 500 FT.	

DATE: 1/15/01
SUBJECT: TO CHANGE

For: PAA, KOLOA, KAUAI - (KOLOA SUGAR CO.)

EXHIBIT A

Dwg. No. 2066
Source: Tax Maps Bureau
By: G.D. & R.B. - Oct. 1901

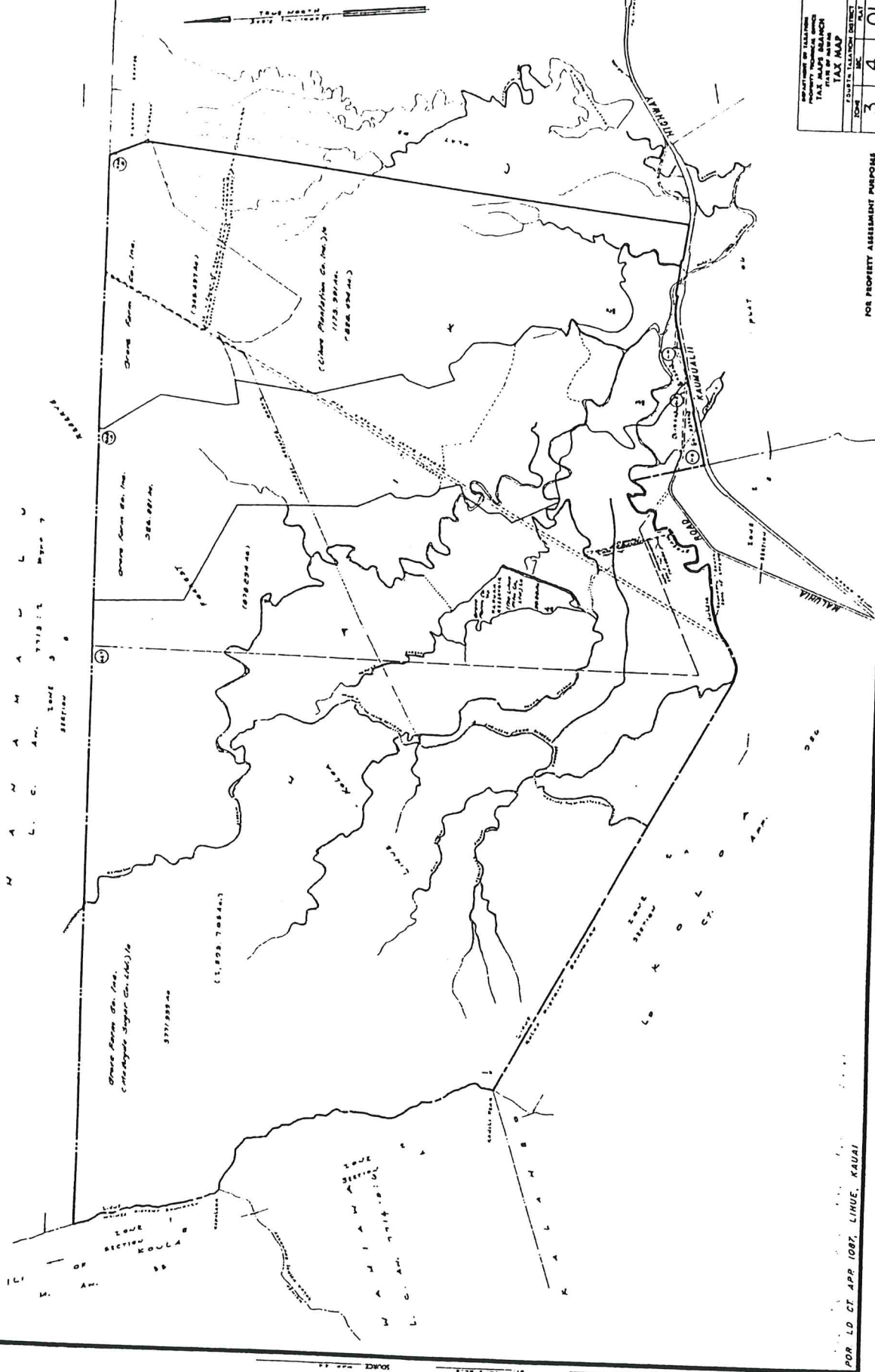


TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
PLAT	SECTION	ZONE	PLAT
2	9	02	
CONTAINING			PARCELS
SUBJECT TO CHANGE			PLATES

PAA, KOEHA, KAUAI - (KOLOA SUGAR COMPANY).
 SECTION 9, PLAT 03
 M A H A U L E P U

09 No 2000
 Drawn by _____
 Revised by _____
 Surveyed by _____
 Date of Survey _____

EXHIBIT B



DEPARTMENT OF LAND AND NATURAL RESOURCES PROPERTY TAXATION DIVISION TAX MAPS BRANCH OFFICE OF THE TAX MAPS 1450 KALANIA AVENUE HONOLULU, HAWAII	
ZONE	3
SECTION	4
PLAT	01
SCALE 1" = 660 FT.	

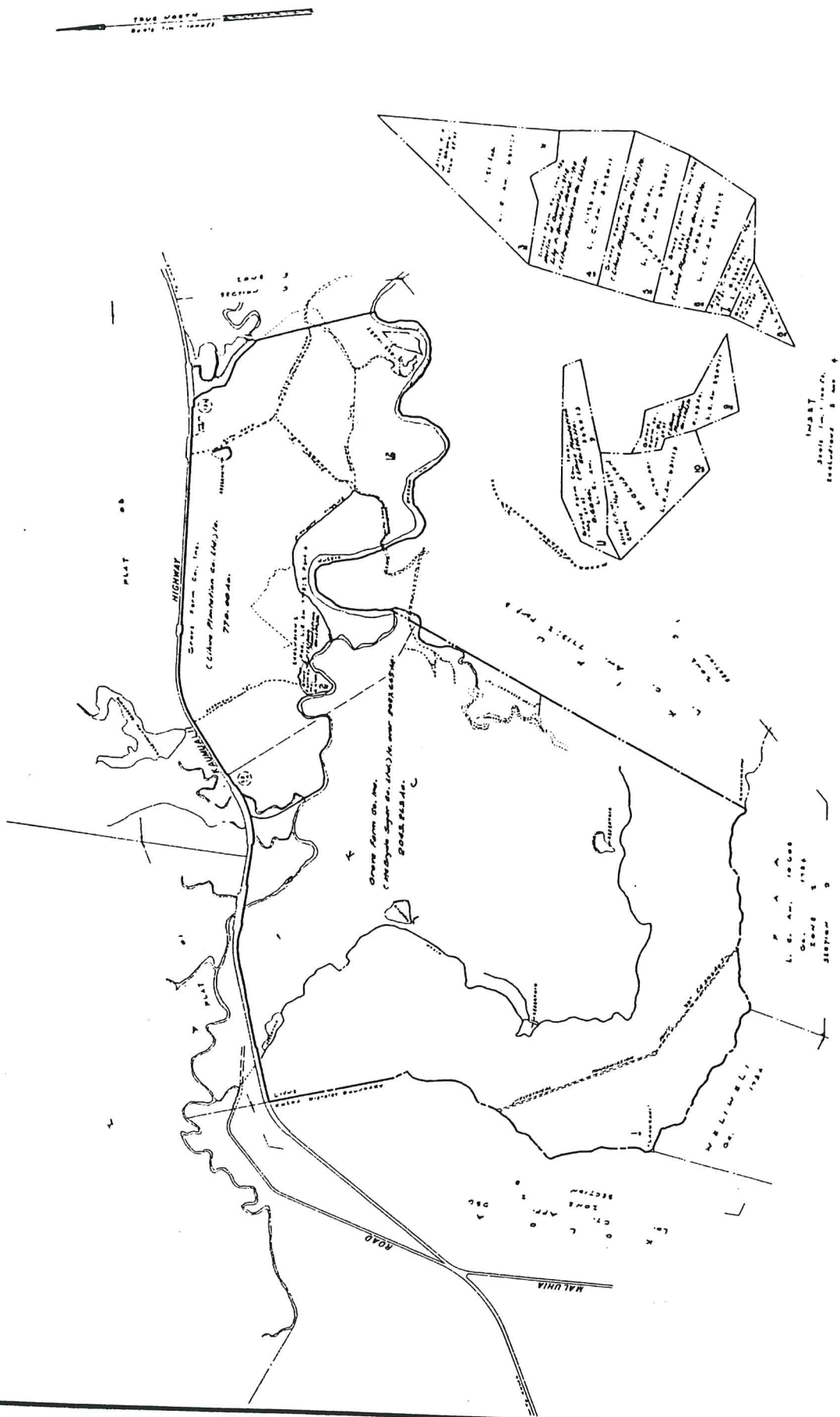
FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

FOR L.D. CT. APP. 1087, LIMUE, KAUAI

EXHIBIT C

DEPARTMENT OF LAND AND NATURAL RESOURCES STATE OF HAWAII BUREAU OF LAND MANAGEMENT TAX MAP	
SECTION	3
TOWNSHIP	4
RANGE	06
SCALE 1 IN. = 15 ACRES	

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE



EXHIBIT

FOR L.O. CT. APP. 1087, LINA, KAUAI

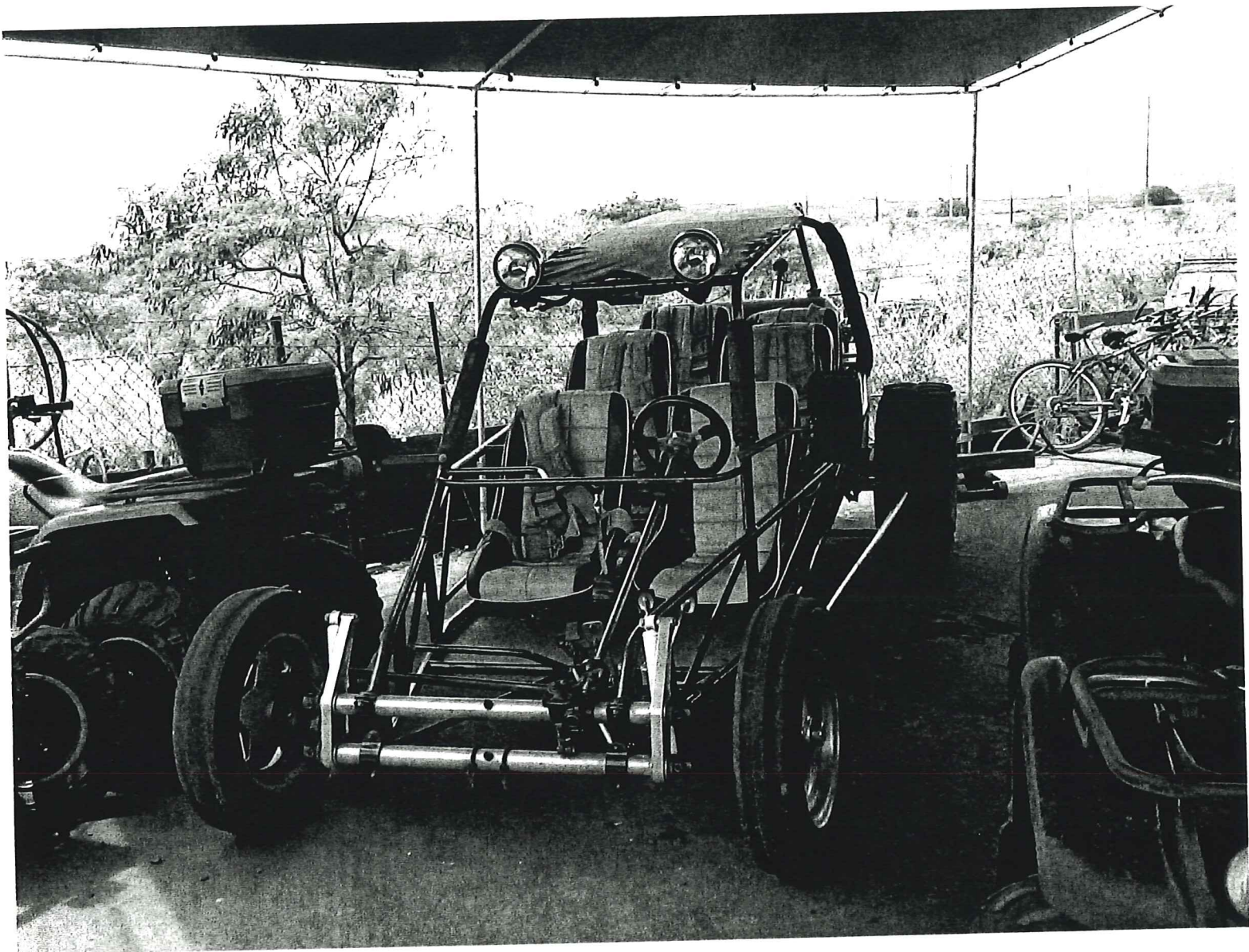
DWG. NO. 1018
DATE: 12/22/67
BY: [illegible]
SOURCE: [illegible]



EXHIBIT F



EXHIBIT G



EXHIBIT 



EXHIBIT I

STRUCTURAL DRAWING NO. 1011111111

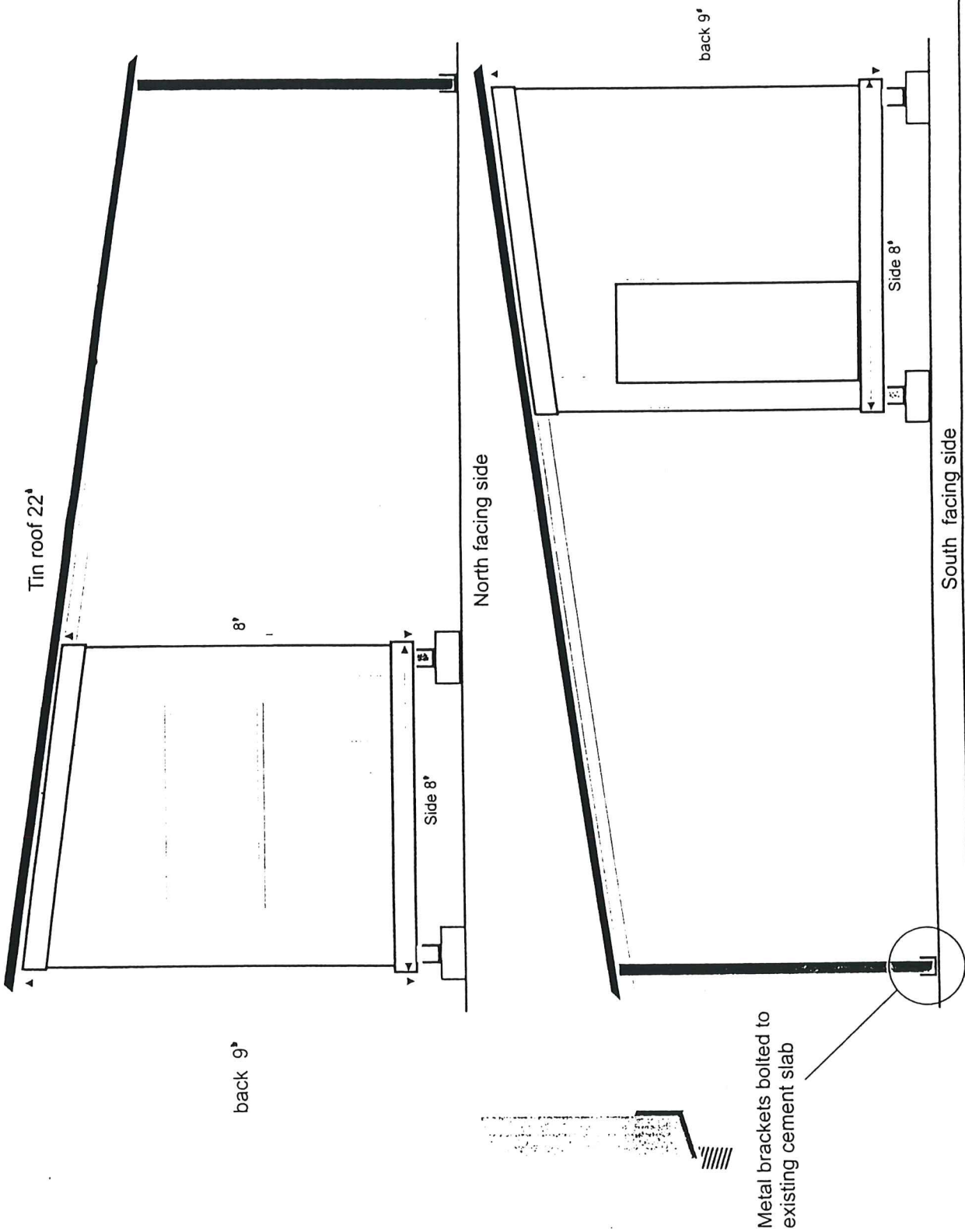


EXHIBIT K

**Cover-all Building Systems
Model 26' 130 SAS**

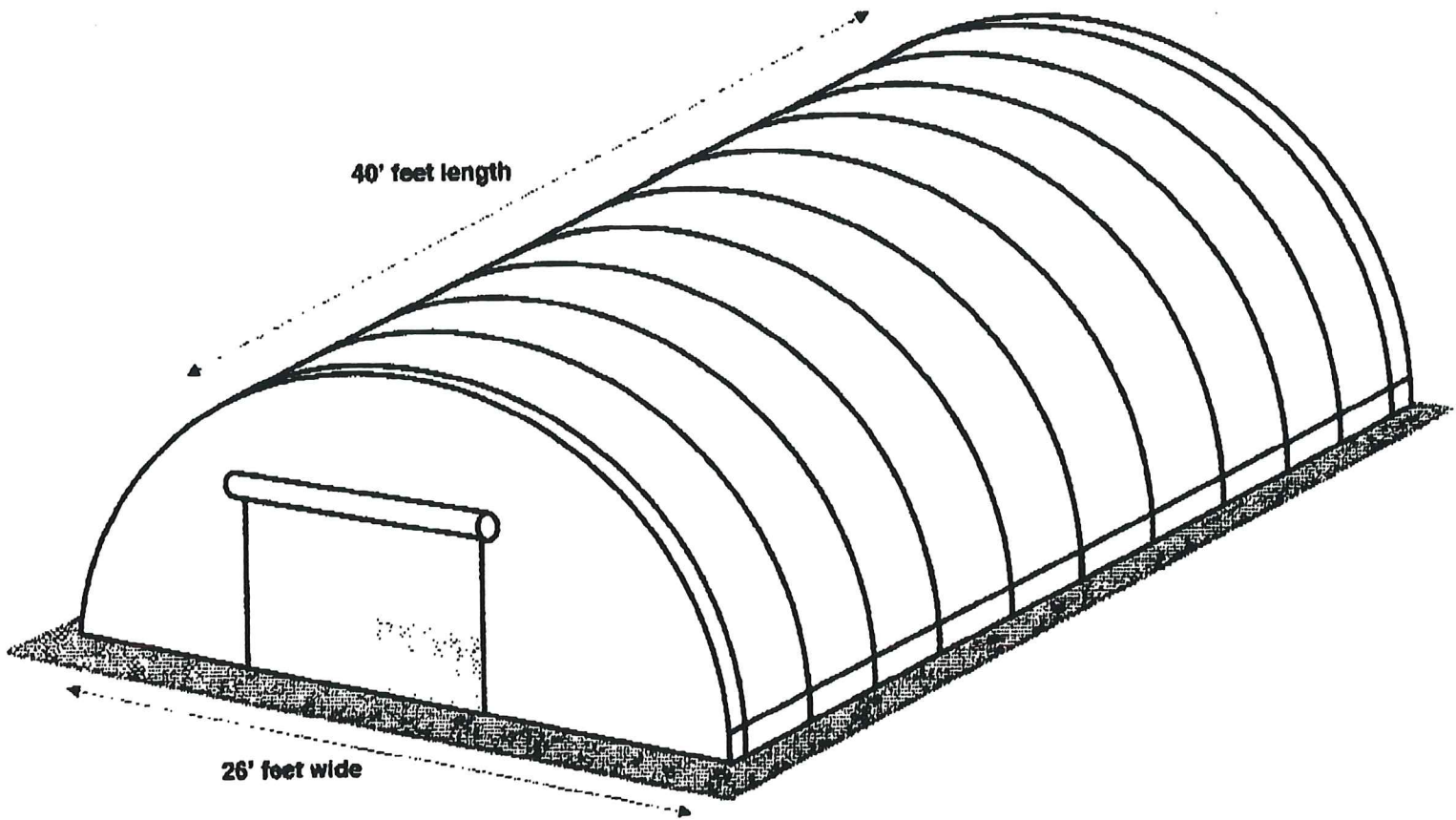
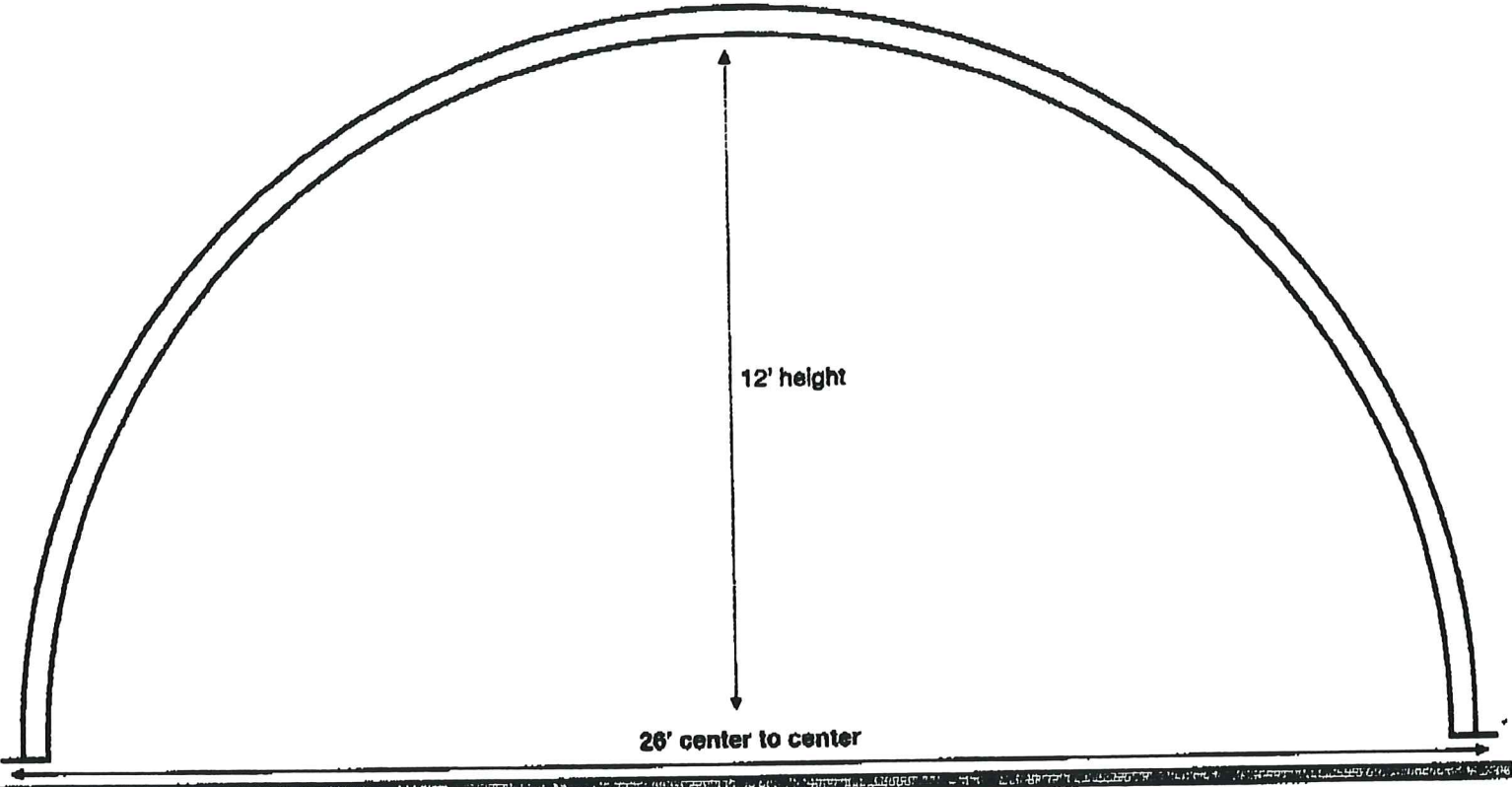


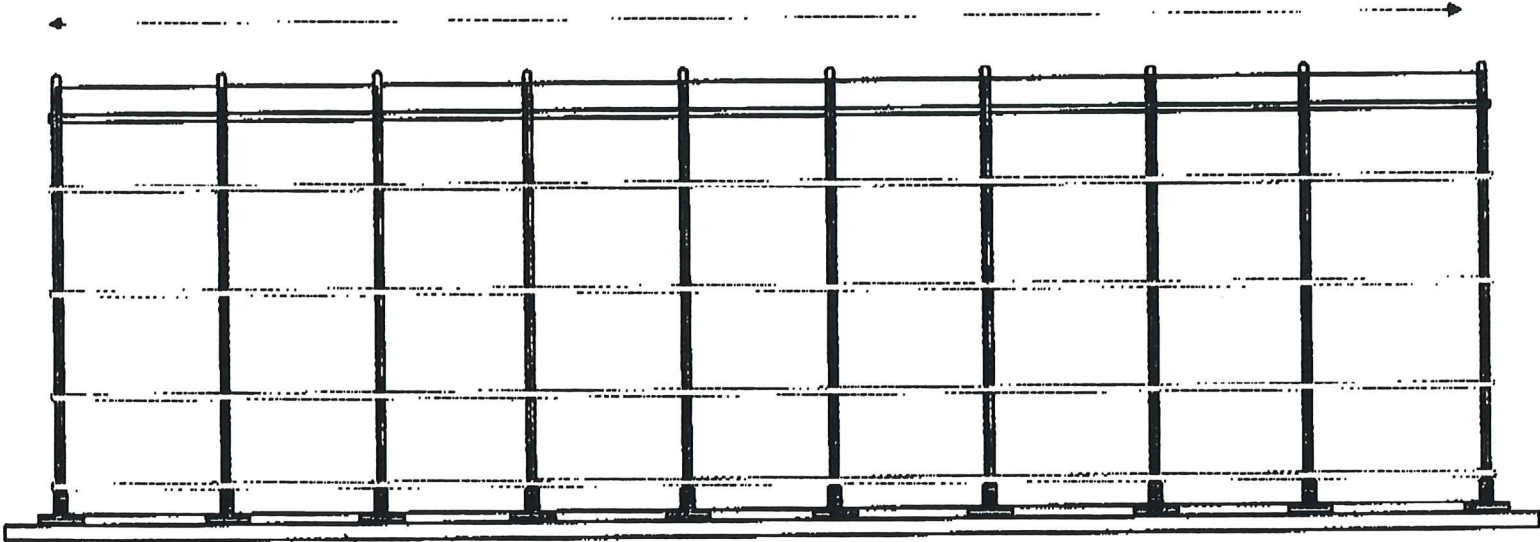
EXHIBIT L

**Cover-all Building Systems
Model 26' 130 SAS**

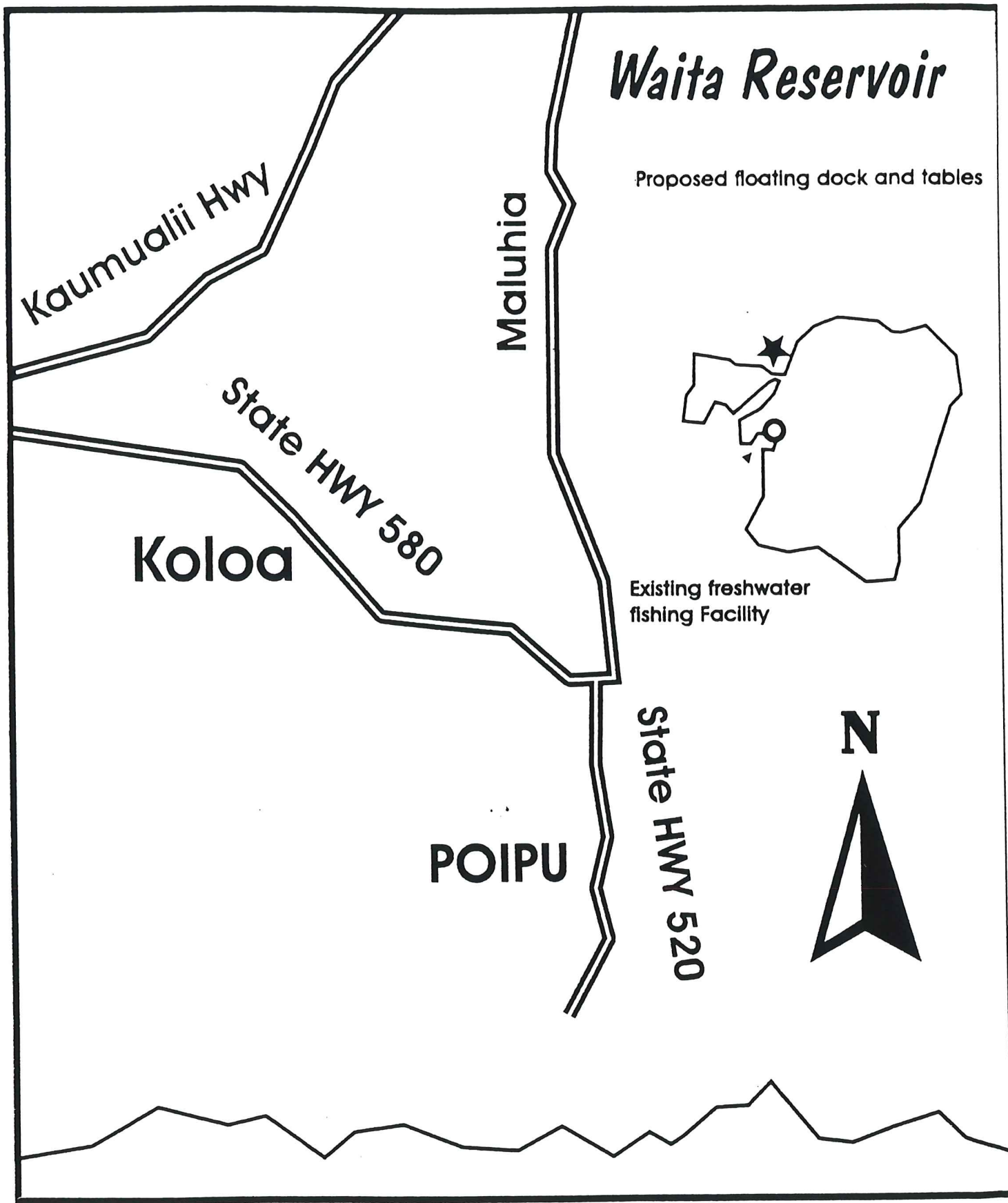


**Cover-all Building Systems
Model 26' 130 SAS**

40' feet length



Cement slab for ground brackets



Waita Reservoir

Proposed floating dock and tables

Kaumualii Hwy

Maluhia

State HWY 580

Koloa

Existing freshwater fishing Facility

POIPU

State HWY 520

N

EXHIBIT M



October 24, 2003

Mr. Ian Costa, Planning Director
County Planning Department
4444 Rice St.
Lihue, HI 96766

RE: Kauai ATV's LLC Use Permit Application

We hereby give permission to Kauai ATV's LLC to apply for a Use Permit to conduct various commercial recreational activities on the Waita Reservoir in Koloa.

Should you have any questions, please feel free to contact me.

Thank you.

Sincerely,

GROVE FARM COMPANY, INCORPORATED

A handwritten signature in black ink, appearing to read "Allan A. Smith", is written over the typed name.

Allan A. Smith
Vice President & Chief Operating Officer

EXHIBIT N

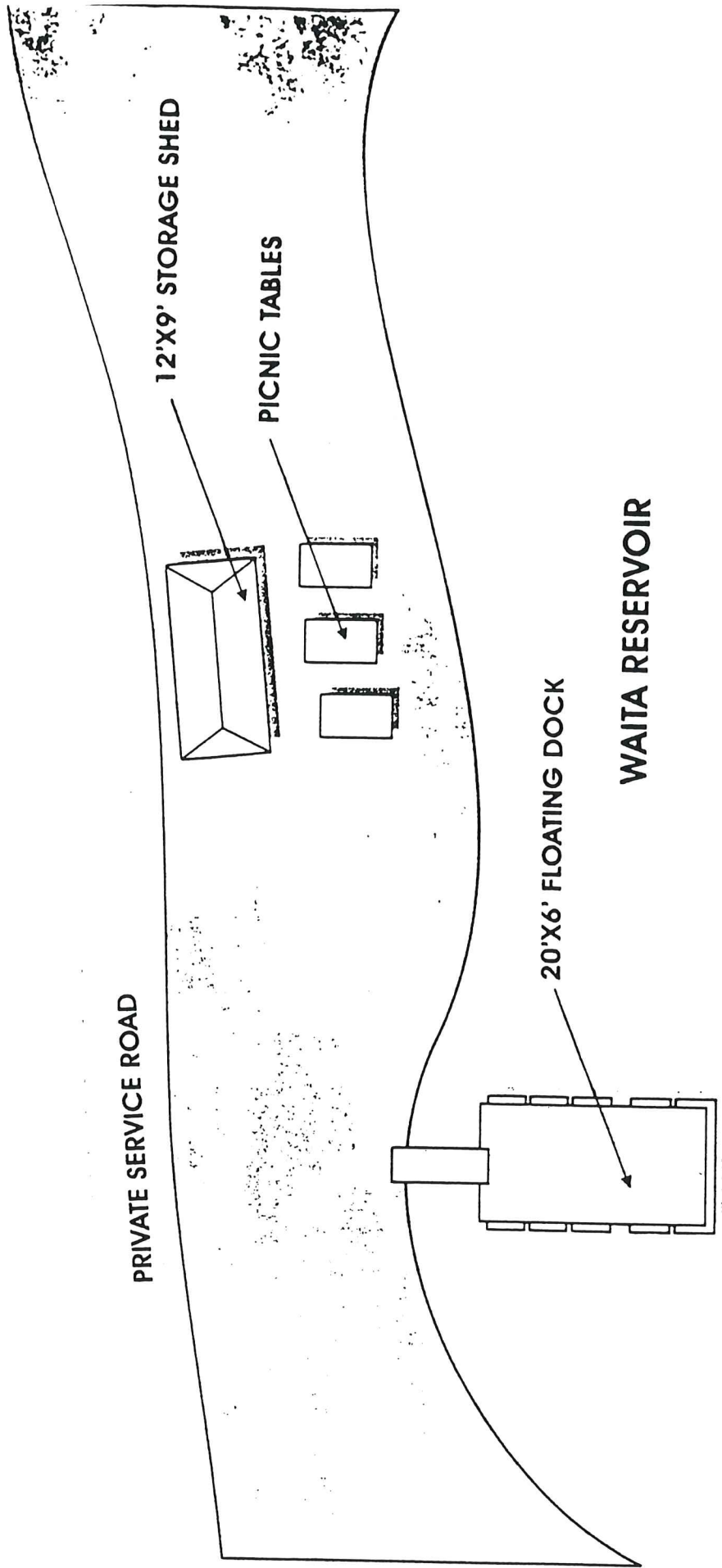
Waita Waterfront Hale and Staging area

BOATS/KAYAKS/CANOES



Olie Rivera's goat pasture

EXHIBIT 0





October 24, 2003

Mr. Ian Costa, Planning Director
County Planning Department
4444 Rice St.
Lihue, HI 96766

RE: Kauai ATV's LLC Use Permit Application

We hereby give permission to Kauai ATV's LLC to apply for a Use Permit to conduct commercial recreational paintball activities on Grove Farm agricultural lands in Koloa.

Should you have any questions, please feel free to contact me.

Thank you.

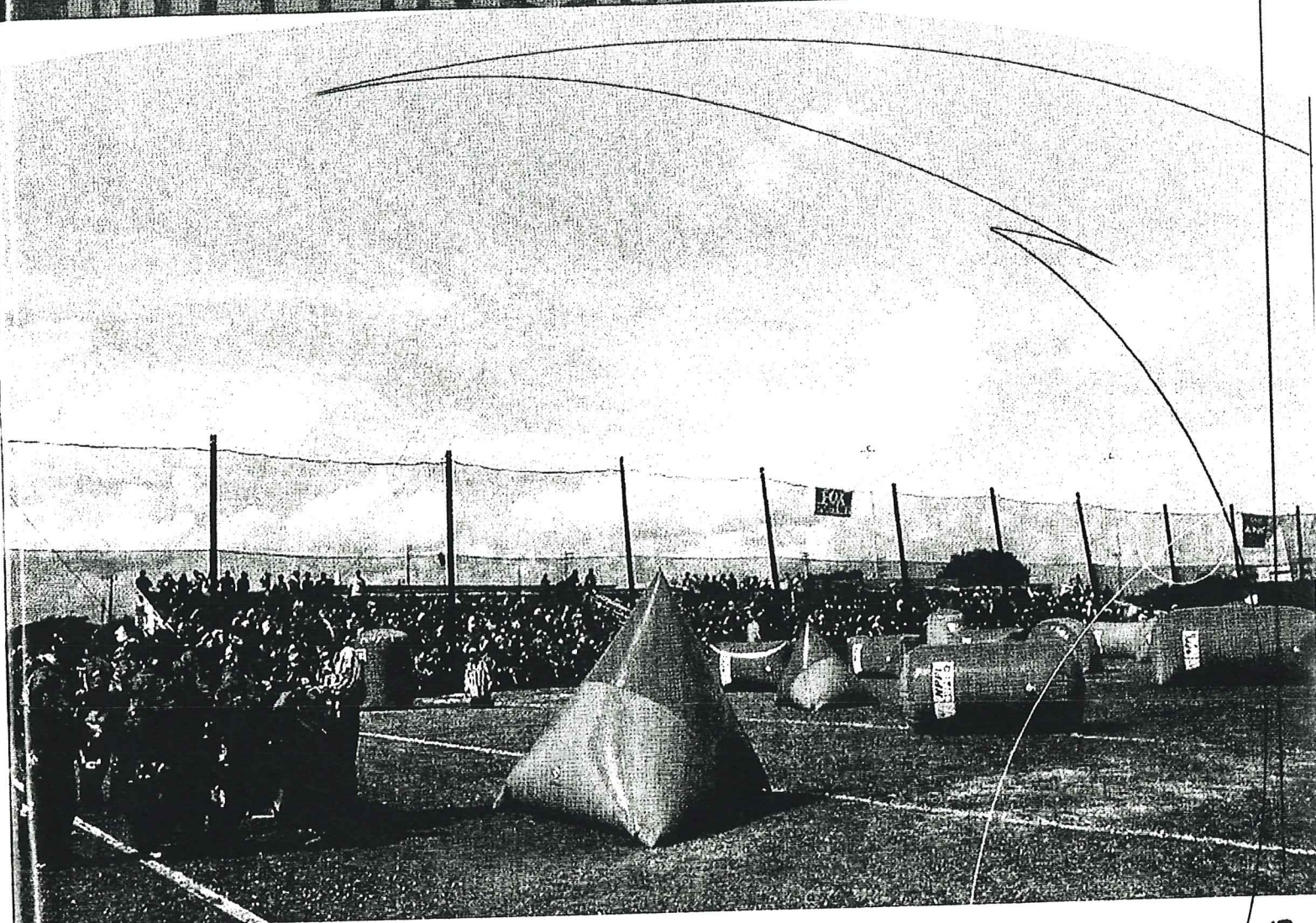
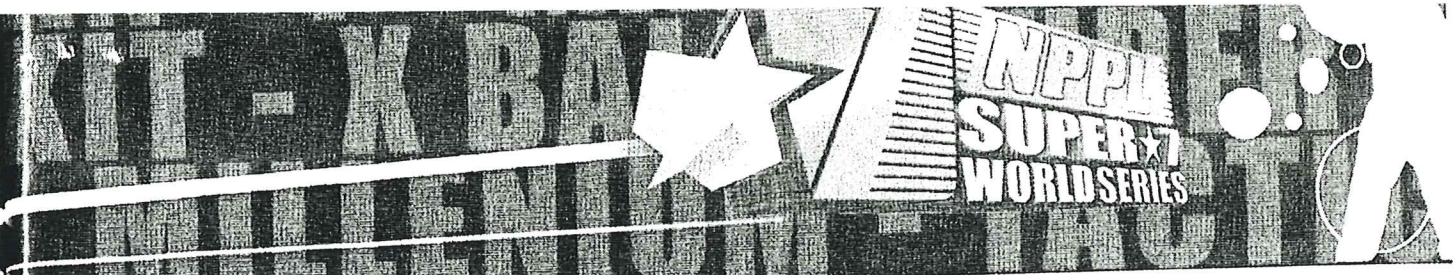
Sincerely,

GROVE FARM COMPANY, INCORPORATED


Allan A. Smith
Vice President & Chief Operating Officer

EXHIBIT P

P. O. Box 662069 Lihue, Hawaii 96766-7069
Phone: (808) 245-3678 FAX: (808) 246-9470



Color : Red and dark blue



Printing : NPPL SUPER 7



NPPL / SUP' AIRBALL 45

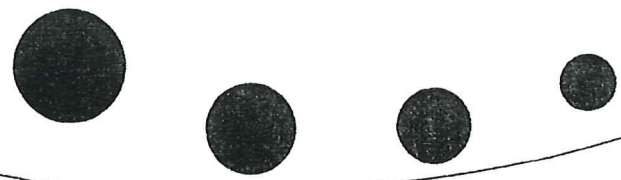


EXHIBIT Q

SPECIAL ORDER R

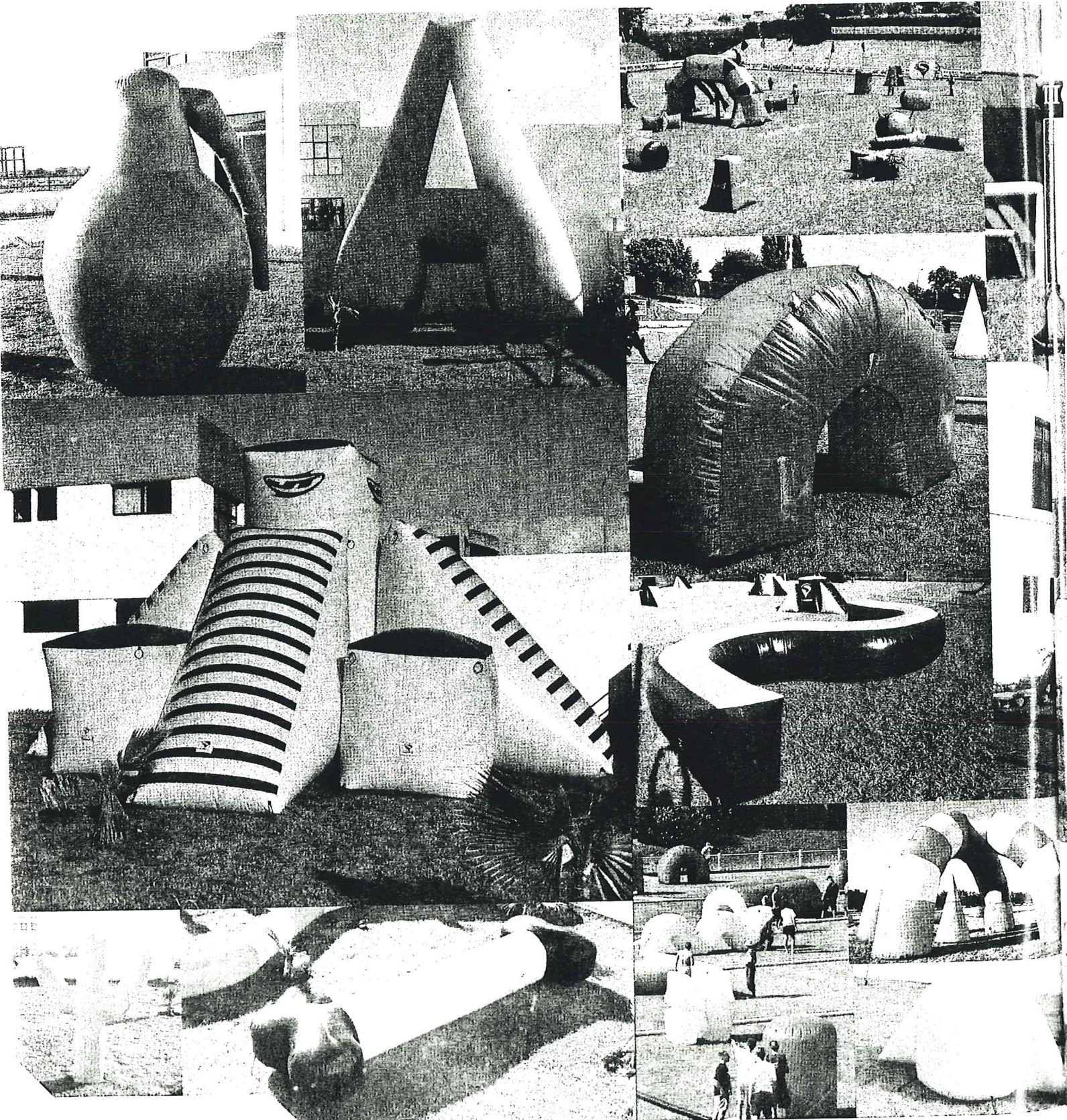


EXHIBIT R

BRYAN J. BAPTISTE
MAYOR



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

GARY L. HENNIGH
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUA'I
PLANNING DEPARTMENT**

Kapule Building
4444 Rice Street, Suite A473
Līhu'e, Hawai'i, 96766-1326

TELEPHONE: 808.241.6677
FAX: 808.241.6699

March 11 2005

Kauai ATV, LLC
c/o Walton D. Y. Hong
Attorney at Law
3135-A Akahi Street
Lihue, Hawaii 96766

Subject: Request to Amendment
Special Permit SP-2001-5
Use Permit U-2001-8
Class IV Zoning Permit Z-IV-2001-10
TMKs: 2-9-001: Por.1, 2-9-002: Por.1, 3-4-006: Por. 1, & 3-4-001: Por. 1

The Planning Commission, at its meeting held on March 8, 2005, approved the request to Amend the subject permits to allow the expansion of use and additional structures within a previously approved staging area and expansion of commercial recreational activities involving the increase and change of vehicles for guided ATV tours, water activities in the Waita Reservoir, two paint ball parks, and a speed ball tournament field. Approval is subject to the following conditions as recommended by the Planning Department and as amended by the Planning Commission

1. The structures for which approval is sought and referred to in the application are approved. The use of the Waita Reservoir, involving a combined total of 128 persons per day, for the double hull canoe, sailboats, and kayak rentals, is permitted subject to the Use Plan for the reservoir proposed by Grove Farm Company, Incorporated dated March 8, 2005. The applicant's ATV tours, consisting of single persons and multiperson vehicles, shall be limited to a maximum of 200 persons per day. The proposed Paintball Parks (Mauka and Makai Parks) shall be limited to a combined total of 100 persons per day. The proposed Speedball tournaments shall be limited to no more than four events per year with a maximum of 200 persons per tournament.

EXHIBIT B

After a period of one year from commencement of operations, the applicant shall provide the Planning Commission with a Status Report of its operation. The report shall include, but not be limited to, the number tours, customers, and customer vehicles for each of the activities allowed under the subject permits. The Commission reserves the right to modify or impose additional conditions if it is found that adverse effects are being generated by the proposed operations allowed under the subject amendment request.

2. As further represented, the applicant shall provide fire extinguishers and first-aid/CPR kits on at least one of the "lead" vehicles on the tour. In addition, the applicant shall also work with the Fire Department to establish an Emergency Response Action Plan for the portions of the tour that are not public accessible

The applicant shall provide a revised Emergency Response Action Plan for the ATV Tours and Paint Ball operations to the Fire Department for review and comments.

3. The applicant shall execute a written agreement stating that due care for public safety will be provided and that the applicant agrees to indemnify, defend, and hold harmless the County of Kauai, its officers, agents, and employees from and against all claims or demands for damage, including claims for property damage, personal injury or death arising on or about the property in connection with the ATV tours.
4. As presented by the applicant, the staging area will consist of washing, maintenance, and storage of ATV vehicles used in conjunction with the tour operation. No major engine repair work or underground storage of fuel shall be allowed in the staging area.

The applicant shall resolve the requirements for the wash down area, refueling area, and individual wastewater requirements for the staging area with the Department of Health prior to any increase in ATV tour operation or commencement of the paintball operations.

5. The applicant shall resolve and comply with all applicable requirements or conditions as recommended by the State Department of Health, the State Department of Transportation, County Water, Fire, and Public Works Departments.
6. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval.

7. The applicant is advised that prior to and/or during construction and use, additional government agency conditions, including additional conditions of the Planning Commission, may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency (ies) and to resolve those additional conditions as may be imposed by the Planning Commission.
8. If historic/cultural remains such as archaeological artifacts, charcoal deposits or human burials are found during ground clearing or construction, the applicant shall stop work in the immediate area, and shall contact the State Historic Preservation Division SHPD (Ph. No. 742-7033) and the Planning Department, to determine appropriate action.

The applicant shall provide the State Historic Preservation Division with any historic interpretive material to be provided on the tour for its review and approval prior to commencement of operations approved under the subject amendment request.

9. The applicant shall provide survey maps with metes and bounds descriptions of the paint ball parks, speed ball tournament field, and staging area to Planning Department prior to commencement of operations or any additional construction within these areas approved under the subject permit.
10. The Applicant and the owner of the property, Grove Farm Company, shall enter into an agreement for the maintenance of the cane haul roadways and trails used by the Applicant's tour operations. Said executed agreement shall be submitted to the Planning Department prior to commencement of operations allowed under the subject amendment request.



Ian K. Costa
Director of Planning

cc: Public Works
Water Dept.
State Health Dept.
State Historic Preservation Div. – DLNR
Fire Dept.
Office of Planning – State DBEDT
State Department of Agriculture
Real Property Div.