

ORIGINAL

LAND USE COMMISSION
STATE OF HAWAII

2006 DEC 18 A 8 39

Walton D. Y. Hong
A Law Corporation

WALTON D. Y. HONG
3135-A Akahi Street
Lihue, HI 96766
Tel. 245-4757

Attorney for Applicant
Kauai ATV, LLC

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition	)	LUC DOCKET NO. SP05-399
)	
of)	
	)	2006 ANNUAL STATUS REPORT
KAUAI ATV, LLC, for a Special Permit	)	OF KAUAI ATV, LLC, ON
for recreational activities within the	)	CONDITIONS TO DECISION
Agricultural District at Koloa, Island and	)	AND ORDER APPROVING
County of Kauai, State of Hawaii, on	)	SPECIAL PERMIT; EXHIBITS
parcels identified as Kauai Tax Map Keys:	)	"A-1" THROUGH "D";
2-9-001: por. 01; 2-9-002: por. 01;	)	CERTIFICATE OF SERVICE
3-4-06: por. 01; and 3-4-01: por. 01.)	
)	

2006 ANNUAL STATUS REPORT OF KAUAI ATV, LLC, ON
CONDITIONS TO DECISION AND ORDER APPROVING SPECIAL PERMIT

Comes now KAUAI ATV, LLC, a Hawaii limited liability company, and respectfully submits this as the 2006 annual report with respect to compliance with the conditions imposed by the Decision and Order Approving Special Permit, dated and filed December 6, 2005, in the above referenced docket.

I. GENERAL PROGRESS OF THE PROJECT

The project, consisting of continued all-terrain vehicle (ATV) tours, water activities at the Waita Reservoir, paintball parks, and a speedball tournament field, have been progressing slower than projected. The extraordinary inclement weather in March of 2006 and the break of the Kaloko Dam in Kilauea, Kauai, raised concerns as to the safety of the Waita Reservoir. These concerns caused Grove Farm Land Company, Ltd., to delay discussions with the Applicant until the concerns have been investigated. These

concerns have recently been addressed to the parties' satisfaction, and the Applicant is currently undertaking tryouts and training, with the expectation that the activities will become available to the public within the next few months.

The makai paint ball park has just been implemented and is currently undergoing trials and personnel training to resolve any administrative or operational problems before opening to the general public. The mauka paint ball park and the speedball field have not yet been implemented. Another reason for the late implementation of the makai paint ball park and Waita water activities, and not yet implementing the mauka paint ball park and the speedball field is the lack of willing employees in view of the tight labor market, competitive wages being paid for the limited number of workers on the island, and the cost of housing for these employees.

II. STATUS OF COMPLIANCE WITH CONDITIONS

Condition No. 1

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, Inc. dated March 8, 2005. The Applicant's ATV tours, consisting of single persons and multi-person 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.

After a period of one year from commencement of operations and every year thereafter, the Applicant shall provide the Planning Commission and the State Land Use Commission with an annual report of its operations to include, but not be limited to, the number of tours, customers, and customer vehicles for each of the activities allowed under the subject permit in addition to Applicant's compliance with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the State Land Use Commission. The Planning 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.

Current Status: For the reasons stated herein, the additional activities beyond the ATV tours have not been implemented as of this date. The following is a report on the number of tours, customers and customer vehicles for the ATV tours for the period of January 1 to November 30, 2006:

Customer totals by months:

January	1,505
February	1,023
March	1,310
April	1,780
May	1,541
June	2,167
July	2,436
August	2,326
September	1,518
October	1,384
November	<u>1,259</u>
Total	18,249

Vehicular trips:

Although the Applicant did not keep exact records of every vehicle bringing its customers to the staging area, it represents that except for the rare exception, there are at least two persons per vehicle. At the activity is family oriented, the overall average number of persons per vehicle is about three. In addition, the Applicant provides rides using the Applicant's 12-passenger vans for the customers who arrive on Kauai on the cruise ships and want to take the ATV tour. Customers from the cruise ships and transported by the Applicant's vans make up between 40-45% of the Applicant's business.

Further, building permits are currently being sought for the restroom facilities and the mechanics' repair shop.

Condition No. 2

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 Actoin Plan for the ATV Tours and Paint Ball operations to the Fire Department for review and comments.

Current Status: A revised Emergency Response Action Plan was prepared and sent to the Kauai Fire Department by Applicant's attorney on February 6, 2006. A

copy of the transmittal and the Plan are attached hereto as Exhibits "A-1" and "A-2". To date, the Applicant and its attorney have not received any response to the submittal.

Condition No. 3

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.*

Current Status: A draft of a proposed Indemnification Agreement in favor of the County of Kauai was submitted to the County Planning Department by Applicant's attorney on February 6, 2006, for review and approval. A copy of the transmittal and the proposed Indemnification Agreement are attached hereto as Exhibits "B-1" and "B-2". To date, the Applicant and its attorney have not received any response to the submittal.

Condition No. 4

As presented by the Applicant, the staging area will consist of washing, maintenance, and storage of ATV vehicles used on 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 operations or commencement of the paintball operations.

Current Status: This condition has consistently been met by the Applicant. By letter of February 6, 2006, the Applicant's attorney wrote to the Department of Health to address the requirements regarding the wash down area. These included non major engine repairs in the staging area, storage of fuel in an above-ground storage tank, construction of berms around the refueling area to contain any potential spills, and discharge of runoff from the wash down area unto the abutting coffee fields. A copy of the letter is attached hereto as Exhibit "C". The Applicant has also installed properly sized septic tank and leach fields in accordance with plans approved by the Department of Health.

Condition No. 5

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.*

Current Status: The said departments have not recommended any requirements or conditions.

Condition No. 6

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.*

Current Status: The Planning Commission has not imposed any additional conditions, nor modified or deleted conditions of the subject permit, nor proceeded to revoke the subject permit for failure of the Applicant to comply with the conditions of approval.

Condition No. 7

7. *The Applicant is advised that prior to and/or during construction and use, additional governmental 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.*

Current Status: No additional conditions have been imposed by governmental agencies.

Condition No. 8

8. *If historical/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.

Current Status: No historic/cultural remains have been found, as there has been no ground clearing or construction to date. The Applicant does not provide any historic interpretive materials on its current tours. Should historic interpretive materials be planned, the same shall be first submitted to the State Historic Preservation Division for its review and approval.

Condition No. 9

9. *The special permit is granted for a period of five (5) years commencing upon the approval of the Special Permit by the State Land Use Commission and is subject to extension upon favorable review by the Planning Commission and the State Land Use Commission. To facilitate timely review, any application for extension shall be submitted at least three months prior to expiration of this Special Permit.*

Current Status: No action on this permit is required at this time.

Condition No. 10

10. *The Applicant and the owner of the Petition Area, Grove Farm Company, Inc., 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.*

Current Status: The Applicant and Grove Farm Company, Inc., entered into a letter agreement for the maintenance of the roadways on the subject properties. A copy of that letter agreement is attached hereto as Exhibit "D".

Condition No. 11

11. *The Applicant is advised that all buildings within the staging area shall meet building setback requirements of the Kauai County Code 1987, as amended. This requirement shall be complied with at time of building permit application.*

Current Status: The Applicant has not yet constructed its proposed additional improvements at the staging area. The Applicant experienced difficulty in finding an architect on Kauai available to complete the necessary drawings, and had to use an off-island architect. Further, the Applicant has not been able to find an available local contractor within the Applicant's budget as a result of the building boom on Kauai, and similarly will need to use an off-island contractor. At such time as the Applicant is able to construct the proposed improvements, such buildings will be in compliance with all applicable setback requirements.

Condition No. 12

12. This special permit shall be restricted to only those locations and activities within the State Land Use Agricultural District as defined and represented by the Applicant to the County of Kauai and the State Land Use Commission. The State Land Use Commission acknowledges that the uses defined in this special permit may transit portions of the State Land Use Conservation District on established cane haul roads and trails as activities which are not regulated by the State of Hawaii Department of Land and Natural Resources Office of Conservation and Coastal Lands. This special permit shall not be construed as the State Land Use Commission's order granting a special permit in the State Land Use Conservation District.

Current Status: The Applicant has, and will continue to restrict its activities to the State Land Use Agricultural District. Any incursion into the State Land Use Conservation District will be only for the purposes of transiting the same on established cane haul roads and trails. The Applicant recognizes and acknowledges that the subject Special Permit is not any authority for uses in the State Land Use Conservation District other than transiting as aforesaid.

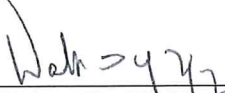
Condition No. 13

13. Applicant shall operate this special permit in substantial compliance with the representations made to the Planning Commission and the State Land Use Commission.

Current Status: The Applicant has and shall continue to conduct its activities in substantial compliance with its representations to the Planning Commission and the State Land Use Commission.

Dated: Lihue, Hawaii, this 15th day of December, 2006.

Respectfully submitted,



Walton D. Y. Hong
Attorney for Applicant Kauai ATV, LLC

LAW OFFICES OF

WALTON D.Y. HONG

TELEPHONE (808) 245-4757
TELECOPIER (808) 245-5175

WALTON D.Y. HONG

LORNA A. NISHIMITSU

ATTORNEY AT LAW
A Law Corporation
3135 AKAHI STREET, SUITE A
LIHUE, KAUAI, HAWAII 96766-1106

February 6, 2006

Kauai Fire Department
4444 Rice Street, Suite 295
Lihue, HI 96766

Re: Kauai ATV, LLC – Emergency Response Action Plan

Gentlemen:

We represent Kauai ATV, LLC, which operates various activities on agricultural lands in the Koloa area, including all-terrain vehicle tours, paintball fields, and proposed water activities in the Waita Reservoir.

Approval of the activities was granted by the Planning Commission under its Special Permit SP-2001-5, Use Permit U-2001-8, and Class IV Zoning Permit Z-IV-2001-10, as well under a special permit granted by the State Land Use Commission in its Docket No. SP05-399.

Among the conditions of approval was Condition No. 2, which states as follows:

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.

In accordance with the foregoing condition, enclosed herewith is a copy of the Emergency Response Action Plan, for your review and comments. Although only required for the ATV tours and paintball operations, the Plan further provides the emergency plan for the water-related activities at the Waita Reservoir and for future speedball tournaments.

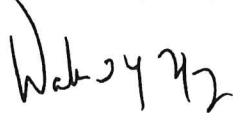
EXHIBIT A-1

Kauai Fire Department
February 6, 2006
Page 2 of 2

We would appreciate your review of and comments to the enclosed plan, so that the same can be considered and incorporated therein.

Thank you for your assistance and cooperation in this matter. If there are any questions, please do not hesitate to contact the undersigned.

Yours very truly,



Walton D. Y. Hong

WDYH:wh

Encl.

cc: Planning Department, w/ encl.
Kauai ATV, LLC
Grove Farm Company, Incorporated

EMERGENCY RESPONSE ACTION PLAN

for

KAUAI ATV, LLC

EXHIBIT A-2

EMERGENCY RESPONSE ACTION PLAN

for

KAUAI ATV, LLC

The following is an Emergency Response Action Plan (herein "Plan") for Kauai ATV, LLC, for responding to emergencies on the various tours and activities conducted at Koloa, Kauai, Hawaii.

1. ALL TERRAIN VEHICLES (ATV) TOURS

All tours are guided, with a minimum of one guide per tour. All single person and two person ATVs are driven by the guest. All six person ATVs are driven only by guides.

Equipment

At least one of the ATVs driven by a guide shall be with the following:

- (a) Cell phone or walkie talkie, for communications with the office or the staging area;
- (b) First aid kit/CPR kit;
- (c) Fire extinguisher.

In addition, the company shall have the following:

- (a) Four-wheel drive vehicle capable of traversing the tour routes;
- (b) Keys at the office or staging area for all locked gates on all tour routes.

Personnel

All tour guides shall be trained in First Aid and CPR. If available, additional training shall be given with respect to neck and back injuries.

All tour guides shall be instructed in the Plan.

In Case of Injury

In case of any INJURY, the guide shall take the following steps:

1. Stabilize the injured party as much as possible. If the injury is not serious and can be treated at the scene, take appropriate action to treat;
2. Notify the office and/or staging area of the emergency, the nature of the emergency, and whether an ambulance and/or Fire Department assistance is required;
3. The office and/or staging area is to request Fire Department assistance and/or ambulance if necessary;
4. The four-wheel drive vehicle shall be dispatched immediately to unlock and open all gates leading to the site of the emergency, and to assist in the emergency;
5. If necessary, a guide shall arrange to meet the Fire Department personnel and/or ambulance at the sales office or at the Point of Access by the staging area to lead them to the site of the emergency; and
6. A written report shall be prepared by the appropriate personnel to document the events leading up to and actions taken subsequent to the emergency.

In case of Fire

In the case of any FIRE, the guide or personnel shall take the following steps:

1. Put out the fire if possible with available equipment;
2. If the fire is too large to put out with available equipment, move guests to a safe location;
3. Notify the office and/or staging area of the fire, its location and size and the need for Fire Department assistance if required;
4. The office and/or staging area is to request Fire Department assistance if necessary.
5. If necessary, a guide shall arrange to meet the Fire Department personnel at the sales office or at the Point of Access by the staging area to lead them to the site of the fire; and
6. A written report shall be prepared by the appropriate personnel to document the events leading up to and actions taken subsequent to the fire.

2. PAINTBALL PARK ACTIVITIES

All paintball activities are supervised, with a minimum of one guide/supervisor per game. All vehicles used to transport participants from the staging area to the paint ball park shall be driven by a guide or supervisor only.

Equipment

Each vehicle used to transport game participants shall be with the following:

- (a) Cell phone or walkie talkie, for communications with the office or the staging area;
- (b) First aid kit/CPR kit;
- (c) Fire extinguisher.

In addition, the company shall have the following:

- (a) Four-wheel drive vehicle capable of traversing the routes to the paintball park;
- (b) Keys at the office or staging area for all locked gates on all routes to the paintball parks..

Personnel

All supervisors and guides shall be trained in First Aid and CPR. If available, additional training shall be given with respect to eye and head injuries.

All supervisors and guides shall be instructed in the Plan.

In Case of Injury

In case of any INJURY, the guide shall take the following steps:

1. Stabilize the injured party as much as possible. If the injury is not serious and can be treated at the scene, take appropriate action to treat;
2. Notify the office and/or staging area of the emergency, the nature of the emergency, and whether an ambulance and/or Fire Department assistance is required;

3. The office and/or staging area is to request Fire Department assistance and/or ambulance if necessary;

4. The four-wheel drive vehicle shall be dispatched immediately to unlock and open all gates leading to the site of the emergency, and to assist in the emergency;

5. If necessary, a guide shall arrange to meet the Fire Department personnel and/or ambulance at the sales office or at the Point of Access by the staging area to lead them to the site of the emergency; and

6. A written report shall be prepared by the appropriate personnel to document the events leading up to and actions taken subsequent to the emergency.

In case of Fire

In the case of any FIRE, the supervisor, guide or personnel shall take the following steps:

1. Put out the fire if possible with available equipment;

2. If the fire is too large to put out with available equipment, move participants to a safe location;

3. Notify the office and/or staging area of the fire, its location and size and the need for Fire Department assistance if required;

4. The office and/or staging area is to request Fire Department assistance if necessary.

5. If necessary, a guide shall arrange to meet the Fire Department personnel at the sales office or at the Point of Access by the staging area to lead them to the site of the fire; and

6. A written report shall be prepared by the appropriate personnel to document the events leading up to and actions taken subsequent to the fire.

2. SPEEDBALL TOURNAMENTS

All Speedball Tournaments are to be conducted in accordance with the rules established by Kauai ATV, LLC. Kauai ATV, LLC, shall provide sufficient personnel to provide adequate and reasonable security for crowd control, policing of the tournament, and parking.

Personnel

Kauai ATV, LLC, shall provide sufficient personnel trained in First Aid and CPR. If available, additional training shall be given with respect to crowd and parking control, and supervision of the tournament.

All personnel shall be instructed in the Plan.

In Case of Injury

In case of any INJURY, the personnel shall take the following steps:

1. Stabilize the injured party as much as possible. If the injury is not serious and can be treated at the scene, take appropriate action to treat;
2. Notify the office and/or staging area of the emergency, the nature of the emergency, and whether an ambulance and/or Fire Department assistance is required;
3. The office and/or staging area is to request Fire Department assistance and/or ambulance if necessary; and
4. A written report shall be prepared by the appropriate personnel to document the events leading up to and actions taken subsequent to the emergency.

4. WAITA RESERVOIR ACTIVITIES

All sailboating and double-hulled canoes shall be conducted under the supervision of Kauai ATV, LLC, personnel. Kayak rentals and use need not be under the supervision of Kauia ATV, LLC.

Equipment

All watercrafts used in the Waita Reservoir activities shall be equipped with life vests or other appropriate floatation devices.

In addition, the staging area and the standby motorized emergency vessel for the Waita Reservoir activities shall have the following readily available and accessible:

- (a) Cell phone or walkie talkie, for communications with the office or the staging area;
- (b) First aid kit/CPR kit;

- (c) Fire extinguisher; and
- (d) Supplemental floatation devices;

In addition, the company shall have the following:

- (a) Four-wheel drive vehicle capable of traversing the routes to the area of activity within the Waita Reservoir;
- (b) Keys at the office or staging area for all locked gates on all routes to the activity areas.

Personnel

All instructors and other personnel shall be trained in First Aid, CPR and water safety. If available, additional training shall be given with respect to water-related injuries.

All personnel shall be instructed in the Plan.

In Case of Injury

In case of any INJURY, the personnel shall take the following steps:

1. Stabilize the injured party as much as possible. If the injury is not serious and can be treated at the scene, take appropriate action to treat;
2. Notify the office and/or staging area of the emergency, the nature of the emergency, and whether an ambulance and/or Fire Department assistance is required;
3. The office and/or staging area is to request Fire Department assistance and/or ambulance if necessary;
4. The four-wheel drive vehicle shall be dispatched immediately to unlock and open all gates leading to the site of the emergency, and to assist in the emergency;
5. If necessary, a guide shall arrange to meet the Fire Department personnel and/or ambulance at the sales office or at the Point of Access by the staging area to lead them to the site of the emergency; and
6. A written report shall be prepared by the appropriate personnel to document the events leading up to and actions taken subsequent to the emergency.

In case of Drowning

In the case of any DROWNING or potential drowning, the personnel shall take the following steps:

1. Locate and retrieve the victim from the water and perform appropriate resuscitation efforts as quickly as possible;
2. Notify other personnel in the area of the emergency and have them assist in getting other guests in the reservoir safely to shore or out of harm's way;
3. Notify the office and/or staging area of the first, its location and the need for Fire Department assistance or ambulance if required;
4. The office and/or staging area is to request Fire Department assistance or ambulance if necessary;
5. If necessary, a guide shall arrange to meet the Fire Department personnel or ambulance at the sales office or at the Point of Access by the staging area to lead them to the site of the emergency; and
6. A written report shall be prepared by the appropriate personnel to document the events leading up to and actions taken subsequent to the fire.

LAW OFFICES OF

WALTON D.Y. HONG

TELEPHONE (808) 245-4757

TELECOPIER (808) 245-5175

WALTON D.Y. HONG

~~ORNA A. NISHIMITSU~~

ATTORNEY AT LAW
A Law Corporation
3135 AKAHI STREET, SUITE A
LIHUE, KAUAI, HAWAII 96766-1106

February 6, 2006

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

Re: Special Permit SP-2001-5
Use Permit U-2001-8
Class IV Zoning Permit Z-IV-2001-10
Land Use Special Permit Docket NO. SP05-399
Kauai ATV, LLC

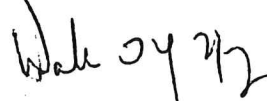
Gentlemen:

Pursuant to the conditions of approval for the above referenced permits, enclosed herewith please find a draft of a proposed Indemnification Agreement in favor of the County of Kauai, for your approval.

If the agreement meets your approval, please advise me so that Kauai ATV, LLC, can execute and return a signed copy to you.

We also enclose copies of correspondence to the First Department and the Department of Health to comply with other conditions of approval, for your information and files.

Yours very truly,



Walton D. Y. Hong

WDYH:wh

Encls.

cc: Kauai ATV, LLC
Grove Farm Company, Incorporated

EXHIBIT B-1

INDEMNIFICATION AGREEMENT

THIS AGREEMENT, made as of this _____ day of _____, 2005, by and between KAUAI ATV, LLC, a Hawaii limited liability company, whose mailing address is P. O. Box 800, Kalaheo, HI 96741, herein called "Kauai ATV", in favor of the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, care of its Planning Department, whose principal place of business and mailing address is 4444 Rice Street, Suite 473, Lihue, HI 96766, herein called the "County",

Witnesseth:

WHEREAS, Kauai ATV was granted Special Permit SP-2001-5, Use Permit U-2001,8, and Class IV Zoning Permit Z-IV-2001-10, herein collectively called the "Permits", by the Planning Commission of the County of Kauai for the purposes of operating All Terrain Vehicle tours and a staging area therefor; and

WHEREAS, Kauai ATV sought, and was granted an amendment to Permits, by action of the Planning Commission on March 8, 2005, to expand the uses under the Permits to include (a) additional ATV tours utilizing single persons and multipersons ATV vehicles, (b) water activities at the Waita Reservoir, which include double hull canoe tours, sailboats, and kayak rentals, (c) two paintball parks, and (d) speedball tournaments; and

WHEREAS, as a condition of approval for the expanded activities, Kauai ATV is required to indemnify the County against claims or demands arising out of the permitted activities,

NOW, THEREFORE, in consideration of the County's granting of the Permits to Kauai ATV for the said activities, Kauai ATV does hereby covenant and agree, for itself, its agents, contractors, successors and assigns, or any person or entity claiming by or through it, as follows:

1. Kauai ATV shall exercise due care for public safety in the operation of its activities which are covered by the Permits;

2. Kauai ATV hereby agrees that it shall indemnify, defend, and hold the County, its successors, assigns, employees, officers, agents, attorneys or any other person or legal entity connected with or legally responsible for the County, harmless from and against all claims, actions, causes of action, lawsuits, demands or liability for injuries, death or damages of whatever kind and nature, arising in connection with the County's issuance of the Permits described in this agreement or the tours, rides, activities, tournaments, or other events covered by the Permits for the expanded activities.

EXHIBIT B-2

IN WITNESS WHEREOF, KAUAI ATV, LLC, has hereunto set forth its hand as of the day and year first above-written.

KAUAI ATV, LLC, a Hawaii limited liability company

By _____
Olie Rivera
Its Member

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this _____ day of _____, 2005, before me appeared OLIE RIVERA, to me personally known, who, being by me duly sworn, did say that he is a Member of KAUAI ATV, LLC, a Hawaii limited liability company; that the foregoing instrument was signed in behalf of said limited liability company by authority of the members; and said OLIE RIVERA acknowledged the instrument to be the free act and deed of said limited liability company.

Name: _____
Notary Public, Fifth Judicial Circuit,
State of Hawaii

My Commission expires:

LAW OFFICES OF

WALTON D.Y. HONG

TELEPHONE (808) 245-4757
TELECOPIER (808) 245-5175

WALTON D.Y. HONG

~~FORNANA NISHIMITSU~~

ATTORNEY AT LAW
A Law Corporation
3135 AKAHI STREET, SUITE A
LIHUE, KAUAI, HAWAII 96766-1106

February 6, 2006

State of Hawaii Department of Health
Environmental Health Service
3040 Umi Street
Lihue, HI 96766

Re: Kauai ATV, LLC

Gentlemen:

We represent Kauai ATV, LLC, which operates various activities on agricultural lands in the Koloa area, including all-terrain vehicle tours, paintball fields, and proposed water activities in the Waita Reservoir.

Approval of the activities was granted by the Planning Commission under its Special Permit SP-2001-5, Use Permit U-2001-8, and Class IV Zoning Permit Z-IV-2001-10, as well under a special permit granted by the State Land Use Commission in its Docket No. SP05-399.

Among the conditions of approval was Condition No. 4, which states as follows:

4. As further represented 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 operations or commencement of the paintball operations.

To resolve the concerns in the said condition, we bring the following to your attention and consideration:

1. No major engine repairs will be conducted in the staging area. Fuel for the vehicles is stored in an above-ground storage tank located on a concrete slab. The

EXHIBIT C

Applicant has constructed berms surrounding the fueling area to contain any fuel spills, notwithstanding that there have been no incidents of fuel spills in the past;

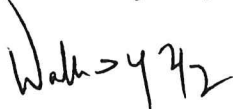
2. The wash down area is a concrete slab to the immediate west of the staging area. This wash down area has been used by the sugar plantation, and following the close of the plantation, continued to be used by other agricultural users in the area, as a wash rack for washing off of mud and dirt from trucks, tractors, and other agricultural equipment. The Applicant uses the wash down area to power-wash the bodies and tires of the all terrain vehicles used in its tour operations. The engine compartment/area of the ATVs are not washed down. The runoff from the wash down is discharged onsite, flowing into the abutting coffee field;

3. To dispose of wastewater generated by customers and staff, the Applicant installed a properly size septic tank and leach fields. The septic tank and leach fields were approved by your department and constructed in accordance with approved plans therefore.

We trust that you will find the foregoing satisfactory in addressing the condition of approval.

Thank you for your assistance and cooperation in this matter. If there are any questions, please do not hesitate to contact the undersigned.

Yours very truly,



Walton D. Y. Hong

WDYH:wh

Encl.

cc: Planning Department
Kauai ATV, LLC
Grove Farm Company, Incorporated

**KAUAI ATV, LLC
P. O. Box 800
Kalahco, HI 96741**

Grove Farm Company, Incorporated
3-1850 Kaumuali'i Highway
Puhi, HI 96766

Re: Road maintenace

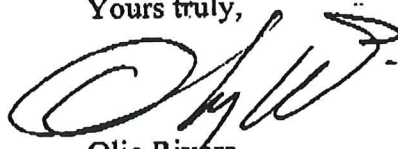
Gentlemen:

This letter is to confirm our understanding as to the obligations for maintaining the roadways used by Kauai ATV, LLC, in its tour operations over lands owned by Grove Farm Company, Incorporated.

Grove Farm Company, Incorporated will continue to be primarily responsible for the maintenance of the major roads throughout its properties at Koloa which are used by Kauai ATV, LLC, as well as other lessees or tenants of Grove Farm Company, Incorporated, in the area. Kauai ATV, LLC, will be responsible for the maintenance of the minor trails and roadways which are used primarily by Kauai ATV, LLC, in its tour operations. As has been the practice between the parties, Kauai ATV, LLC., will also continue to assist Grove Farm Company, Incorporated, in the maintenance of the major roads used by it.

If the foregoing accurately sets forth the understanding of the parties, please sign where provided below, and return a signed copy to us. This letter will be presented to the Planning Commission to address its request for confirmation as to the obligations for maintenance of the roadways in the area.

Yours truly,


Olic Rivera

APPROVED:

GROVE FARM, INCORPORATED

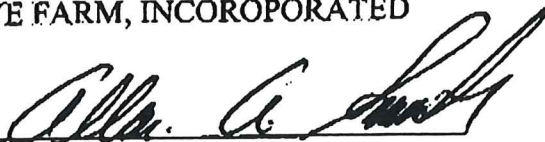
By 
Its: VP: 600

EXHIBIT D

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition	)	LUC DOCKET NO. SP05-399
)	
of	)	CERTIFICATE OF SERVICE
)	
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.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy for the foregoing Annual Status Report was served upon the following by depositing the same in the U. S. Postal Service, postage prepaid and addressed as follows, on this date:

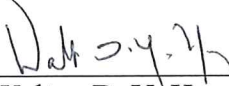
LAURA THIELEN, Director
Office of Planning
P. O. Box 2359
Honolulu, HI 96804-2359

JOHN CHANG, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
425 Queen Street
Honolulu, HI 96813

CHRISTIANE NAKEA-TRESSLER
Acting County Attorney
County of Kauai
4444 Rice Street, Suite 220
Lihue, HI 96766

IAN COSTA, Director
Department of Planning
County of Kauai
4444 Rice Street, Suite A473
Lihue, HI 96766

Dated: Lihue, Hawaii, December 15, 2016.



Walton D. Y. Hong
Attorney for Applicant Kauai ATV,
LLC