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STATE OF HAWAII  
LAND USE COMMISSION

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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	)	KAUAI ATV, LLC'S STATEMENT
	)	OF POSITION WITH RESPECT
KAUAI ATV, LLC, for a Special Permit	)	TO ORDER TO SHOW CAUSE
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.	)	
_____)	)	

KAUAI ATV, LLC'S STATEMENT OF POSITION  
WITH RESPECT TO ORDER TO SHOW CAUSE

Comes now KAUAI ATV, LLC, by and through its undersigned counsel, and in response to the Order to Show Cause, dated and filed June 6, 2007, in the above referenced matter, states and represents to the Land Use Commission of the State of Hawaii, as follows:

1. Kauai ATV, LLC, herein the "Applicant", admits that it did construct a stairway down to a waterfall, for the purposes of providing safer access to its riders

wishing to view the waterfall and pond; that the stairway was constructed without obtaining any approvals or permits from the Land Use Commission or the County of Kauai;

2. The Applicant sincerely believed that the construction of the stairway was approved under Special Permit SPo5-399, as part of its ATV activities;

3. Upon learning that such a structure required, at the very least, a building permit issued by the County of Kauai, and approvals from the Land Use Commission and the County of Kauai Planning Department, the Applicant elected to remove the offending stairway;

4. Prior to removal of the stairway, and to assure that no further permits would be needed for such action, the Applicant, through its counsel, consulted with the County Department of Public Works and the Planning Department, and was advised that no building permit was necessary for the removal, as no permit was issued for its construction;

5. The Applicant also consulted with the State Historic Preservation Division as to whether any archaeological concerns were present with respect to the removal of the stairs and the use of the existing trail to the base of the waterfall to assist in the removal process. By letter dated June 18, 2007, Nancy McMahan, County of Kauai Archaeologist, State Historic Preservation Division, confirmed that no historic properties will be affected by proposed action; a copy of that letter is attached hereto, and made a part hereof;

6. Based on the foregoing, the Applicant began removing the stairs. Because of the size and weight of the materials to be brought from the lower portion of the site in removing the stairs, the use of the existing trails became hazardous due to its slope and width;

7. To provide for the safety of the workers in carrying out the lumber in the removal process, the Applicant caused a small portion of the face of the slope in two places to be chipped back to widen the trail;

8. Towards the bottom of the trail, and due to the slope and looseness of the soil, the Applicant also caused temporary stairs to be built, which stairs consist of placing vertical planks to be used as steps;

9. These temporary steps have almost all been removed, and the remaining one or two will be removed upon completion of the stair removal work;

10. Also attached hereto are photographs marked "A" through "E", and showing the following:

(a) Photograph "A" is from the remaining platform, pointing downwards towards the trail (lighter area on the right) used to remove the lumber from the base of the stairs;

(b) Photograph "B" is taken from the trail, shooting upwards to the platform from where Photograph "A" was taken;

(c) Photographs "C" and "D" are of portions of the trail used for the carrying of the lumber from the bottom. Due to the narrowness of the existing trail, a small bit of the hillside was chipped away to widen the trail in two places. The amount

of chipping is seen in Photograph "C", shown as the lighter, shinier area on the side of the embankment. The scale and width of the trail at that point can also be observed by comparing it to the person (Oligaro Rivera) in the background on Photograph "C";

(d) Photograph "E" shows the steepness of the trail, necessitating the installation of the temporary steps to facilitate the safe removal of the lumber. This photograph, which was taken on the afternoon of July 10, 2007, also shows one of the few remaining steps (wooden plant in foreground) still in place at that time, and which will be removed upon completion of the work, if they have not already been removed;

11. The placing of the temporary steps was necessary for the safety of the workers in the removal process, and did not result in any significant adverse environmental effects to the area;

12. The use of the temporary steps enabled the safe use of an existing trail, rather than establishing another and more circuitous route for the removal work and its potentially more significant adverse environmental effects;

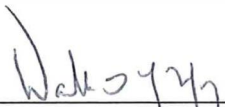
13. The use of the temporary steps help minimize erosion by stabilizing the ground conditions to accommodate the heavy traffic in the removal process;

14. The removal of the steps reasonably returns the area to its preexisting condition, without causing any environmental or ecological harm to the area;

15. The foregoing indicate the recognition of the Applicant of its unintentional failure to obtain required approvals and permits for the construction of the stairs, but also show the willingness of the Applicant to correct its oversight and error in a reasonable and safe manner;

16. In view of the foregoing, the Applicant respectfully requests that the Order to Show Cause be dismissed.

Dated: Lihue, Hawaii, this 12th day of July, 2007.

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

LINDA LINGGAK  
GOVERNOR OF HAWAII



ALAN A. NIMITI  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

PETER YOUNG  
DEPUTY DIRECTOR - LAND

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF SURVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENHANCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAMOOAHI ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

June 18, 2007

Oli Rivera  
Kauai ATV  
P.O. Box 800  
Kalaleo, Hawaii 96741

Attm: Walton

Fax#: 245-5175

From: Oli Rivera

Doc. 0706NM32.doc

Archaeology

Dear Mr. Rivera:

SUBJECT: **Chapter 6E-42 - Historic Preservation Review - [County/Kauai ATV]  
Removal of Trail #12 Stairs to Waterfall and Use of Existing Trail #12 to Waterfall  
Koloa District, Island of Kaua'i  
TMK: (4) 3-4-006: 001 por**

The aforementioned permit is removal of the stairs and use of existing trail to waterfall.

An inspection of the project area was conducted on June 18, 2007, by Nancy McMahon and Oli Rivera. The construction of the stairs did not destroy any historic sites and therefore has a "no effect" on historic properties. Therefore the stair removal will also have a "no effect" on historic properties. Mr. Rivera would like to maintenance and rehabilitate the old trail to the waterfall. No historic properties were found in the area. This project will have a "no effect" on historic properties.

We believe that "no historic properties will be affected," because:

- Intensive cultivation has altered the land
- Residential development/urbanization has altered the land
- Previous grubbing/grading has altered the land
- An accepted archaeological inventory survey (AIS) found no historic properties
- SHPD previously reviewed this project and mitigation has been completed
- Other:

In the event that historic resources, including human skeletal remains, are identified during routine construction activities, all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Division, Kauai Section, needs to be contacted immediately at (808) 742-7033.

Aloha,

*Nancy McMahon*

Nancy McMahon, County of Kauai Archaeologist  
State Historic Preservation Division

(A)





(B)







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