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LETTER OF TRANSMITTAL

DATE: December 30, 2010

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

RE: Kauai ATV, LLC

We enclose the following:

Copies	Description
Orig. + 15	2010 Annual Status Report of Kauai ATV, LLC, on Conditions to Decision and Order Approving Special Permit

2011 JAN -3 A 7 44
LAND USE COMMISSION
STATE OF HAWAII

- | | |
|---|---|
| <input type="checkbox"/> For your files | <input type="checkbox"/> For your signature & return |
| <input type="checkbox"/> Pursuant to our conversation | <input type="checkbox"/> For your information |
| <input type="checkbox"/> For necessary action | <input checked="" type="checkbox"/> For filing |
| <input type="checkbox"/> For review & comment | <input checked="" type="checkbox"/> See Remarks below |

Remarks:

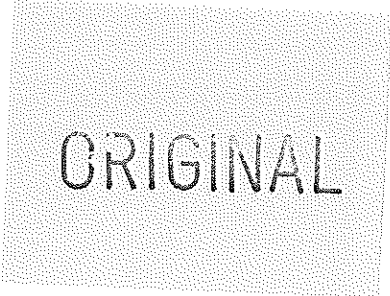
An electronic copy will be sent to you through email.

WALTON D. Y. HONG
Attorney-at-Law

By *Rudge*
Secretary

Walton D. Y. Hong
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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, for a Special Permit)	2010 ANNUAL STATUS REPORT
for recreational activities within the)	OF KAUAI ATV, LLC, ON
Agricultural District at Koloa, Island and)	CONDITIONS TO DECISION
County of Kauai, State of Hawaii, on)	AND ORDER APPROVING
parcels identified as Kauai Tax Map Keys:)	SPECIAL PERMIT;
2-9-001: por. 01; 2-9-002: por. 01;)	CERTIFICATE OF SERVICE
3-4-06: por. 01; and 3-4-01: por. 01.)	
_____)	

2011 JAN - 3 A 7 44
LAND USE COMMISSION
STATE OF HAWAII

2010 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 2010 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 presently consists of continued all-terrain vehicle (ATV) tours, water activities at the Waita Reservoir, and the makai paintball park. Although permitted under its Special Permit, the second (mauka) paintball park and the speedball tournament field, have not been implemented due to the downturn in the economy and tourism, with a resultant lack of demand at the time for the same. These activities will be placed into operation as soon as demand and market feasibility is attained.

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: As stated above, the makai paintball park and the Waita Reservoir activities have been implemented. The mauka paintball park and the speedball tournament field have not be 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, 2010:

Customer totals by months:

	<u>Kauai ATV rides</u>	<u>Paintball and Waita</u>
January	581	25
February	506	3
March	906	7
April	792	61
May	766	8
June	1,160	12
July	1,216	35

August	1,104	80
September	523	19
October	585	23
November	<u>530</u>	<u>24</u>
Total	8,669	297

Vehicular trips:

Although it does not keep exact records of every vehicle bringing its customers to the staging area, the Applicant 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 made up approximately 30% of the Applicant's business, although this number will fluctuate depending the frequency of cruise ships visiting Kauai.

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

Current Status: As noted in the Applicant's 2006 Annual Status Report, a revised Emergency Response Action Plan was prepared and sent to the Kauai Fire Department by Applicant's attorney on February 6, 2006, copies of which were attached Exhibits "A-1" and "A-2", to the 2007 Annual Status Report. To date, the Applicant and its attorney have not received any response to the submittal, and there have been no amendments to the revised Emergency Response Action Plan. The revised plan continues to be implemented and Applicant's staff and guides have been instructed as to the same.

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: As stated in the 2006 Annual Status Report, 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 was attached as Exhibits "B-1" and "B-2" to the 2006 Annual Status Report. 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. The Applicant has also installed properly sized septic tank and leach fields in accordance with plans approved by the Department of Health. These continue to remain in effect.

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: On November 3, 2010, the Applicant submitted a request to the County of Kauai Planning Commission seeking, inter alia, a five-year extension to its Special Permit. The application has been accepted for processing by the Planning Department of the County of Kauai, but no hearing date on the application has yet been set. Following any approval by the Kauai Planning Commission

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: This condition has been met, with a copy of the letter agreement between the Applicant and Grove Farm Company, Inc., having been attached as Exhibit "D" to the 2006 Annual Status Report.

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 constructed its proposed additional improvements at the staging area. All improvements which have been constructed are in compliance with 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 continues to recognize and acknowledge that the subject Special Permit is not any authority for uses in the State Land Use Conservation District other than transiting as aforesaid.

However, the Applicant has filed a request with the Kauai Planning Commission to modify one of its ATV routes to avoid Mahaulepu Valley and replace it with an alternate route to a bluff overlooking the Mahaulepu shoreline. This revised routing will avoid conflicts with the ATV riders and heavy equipment and trucks now traversing Mahaulepu Valley as a result of the new quarry which has begun operations within the valley. Once approvals are obtained from the Kauai Planning Commission, the request will be forwarded to the Land Use Commission for action.

Condition No. 13

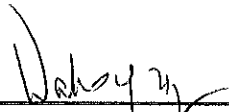
13. Applicant shall operate this special permit in substantial compliance with the representations made to the Planning Commission and the State Land Use Commission.

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.

As noted in previous annual reports, an Order to Show Cause was issued on June 6, 2007 by the State Land Use Commission as to the unpermitted construction of a staircase overlooking a waterfall on one of the Applicant's ATV routes. Following a hearing, during which process the offending staircase was removed by the Applicant, the State Land Use Commission determined that no cause existed which required further action by the Commission. The Order Dismissing Order to Show Cause was issued and filed on January 28, 2008.

Dated: Lihue, Hawaii, this 30th day of December, 2010.

Respectfully submitted,



Walton D. Y. Hong
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)	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:

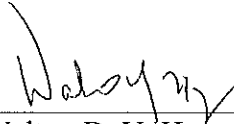
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Dated: Lihue, Hawaii, December 30th, 2010.



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