STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCESOFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

April 11, 2008

CDUP: HA-2969

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

REGARDING:	Time Extension Request for Conservation District Use Permit (CDUP) HA-2969 for Saddle Road Improvements Section II (Milepost 28-42)
APPLICANT:	U.S. Department of Transportation Federal Highway Administration Central Federal Lands Highway Division (CFLHD) State of Hawaii Department of Transportation
LANDOWNER:	State of Hawaii-Department of Land and Natural Resource Department of Hawaiian Homelands U.S. Department of the Army
LOCATION:	Saddle Road, County of Hawaii
TMK:	Portions of: (3) 3-8-001: 1, 7, 8 & 13 (3) 4-4-015: 4 & 8 (3) 4-4-016: 3, 5 & 6
AREA OF USE:	Approximately (≈) 206.7 acres or 16 miles
SUBZONE:	Protective, Resource and General

BACKGROUND:

On September 28, 2001, the Board of Land and Natural Resources (Board) approved the FINDING OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER for CDUP HA-2969; which was subject to fifteen (15) terms and conditions to make improvements to Saddle Road's Section II, known as Milepost 28 to 42 (**Exhibit 1**).

On October 22, 2004, the Department approved a request for a first time extension to complete construction by September 28, 2008.

TIME EXTENSION REQUEST:

On March 24, 2008, the Office of Conservation and Coastal Lands (OCCL) received a correspondence from the Federal Highway Administration's CFLHD requesting a time extension to complete the Section II portion of the Saddle Road Improvement project to September 28, 2010 **(Exhibit 2)**. According to the CFLHD, construction commenced in December 2001 with the demolition of the existing buildings within the proposed right-of-way through the Department of the Army's Pohakuloa Training Area (PTA). Due to federal budgetary constraints in recent years, the proposed work shall not be completed by the current deadline of September 28, 2008. This fifth and final phase of the project is scheduled to be advertised by the end of 2008 and completed by late summer of 2010. **(Exhibit 3)**.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in Section 13-5-43, Hawaii Administrative Rules (HAR), which allows for permittees to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

§13-5-43, HAR provides that time extensions may be granted by the Board upon the second or subsequent request for a time extension, based on supportive documentation from the applicant.

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a Permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a Permittee demonstrates some sort of hardship or delay in initiating work on a particular project. Moreover, the Permittee should be able to demonstrate that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project.

DISCUSSION:

In the present case, none of these factors suggest any reason to deny the requested time extension. Approval of the time extension request will hopefully provide the additional time needed to complete Section II of the Saddle Road Improvements.

RECOMMENDATION:

Staff recommends that the Board of Land and Natural Resources **APPROVE** an extension of two years to complete construction of Section II (Milepost 28 to 42) of the Saddle Road Improvement project, subject to the following conditions:

1. That condition 5 of CDUP HA-2969 is amended to provide that the Permittee has until September 28, 2010, to complete construction of Section II (Milepost 28 to 42) of the Saddle Road Improvement project; and

2. That all other conditions imposed by the Board under CDUP HA-2969, as amended, shall remain in effect.

Respectfully submitted,

K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

Laura Thielen, Chairperson
Board of Land and Natural Resources

DECISION AND ORDER

Based upon a careful review of the testimonial and documentary evidence presented at the Contested Case hearing, the arguments made by the parties to the Contested Case, and the site inspection conducted by the Hearing Officer, the Board of Land and Natural Resources approves CDUA HA-2969, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

3. The applicant shall comply with all applicable Department of Health administrative rules;

4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

EXHIBIT 1

5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department of Land and Natural Resources; further, all work and construction must be completed within three years of the approval;

6. The applicant shall notify the Land Division in writing prior to the initiation, and upon completion, of the project;

7. All mitigation measures set forth in the application materials and in the Final Environmental Impact Statement for this project, including but not limited to:

- implementation of the fire and other environmental commitments identified in the Record of Decision;
- Palila mitigation at the Ka'ohe lease area;
- Palila mitigation at Pu'u Mail;
- Palila mitigation at Kipuka 'Alala; and
- a continuing study of the *silene hawaiiensis*

are hereby incorporated as conditions of the permit.

8. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

9. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

10. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in

the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

11. In issuing this permit, the Department of Land and Natural Resources and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department of Land and Natural Resources may, in addition, institute appropriate legal proceedings;

12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;

13. The applicant shall replant or cover bare areas as soon as grading or construction are completed. New plantings may require soil amendments and fertilizers to become established;

14. Other terms and conditions as may be prescribed by the Chairperson; and

15. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

DATED: Honolulu, Hawaii SEP 28 2001

Gilbert S. Coloma-Agaran
Chairperson, Board of Land & Natural Resources

Fred C. Holschuh, M.D.
Member, Board of Land & Natural Resources

Kathryn W. Inouye
Member, Board of Land & Natural Resources

Timothy E. Johns
Member, Board of Land & Natural Resources

Lynn P. McCrory
Member, Board of Land & Natural Resources

Ted K. Yamamura
Member, Board of Land & Natural Resources

Contested Case Docket No. HA 00-9, Saddle Road Improvements CDUA HA-2969

TIME EXTENSION

TM

U.S. Department
of Transportation
**Federal Highway
Administration**

Central Federal Lands Highway Division

12300 West Dakota Avenue
Lakewood, CO 80228

March 19, 2008

2008 MAR 24 A 8: 51

STATE OF HAWAII

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Dear Mr. Lemmo:

Subject: Conservation District Use Permit, CDUP HA-2969
Request to Extend Completion of Work Deadline

The Federal Highway Administration, Central Federal Lands Highway Division (CFLHD), in cooperation with the Hawaii Department of Transportation (HDOT), and the Department of the Army is improving Saddle Road in the County of Hawaii from mile marker 6 to its intersection with State Route 190, Mamalahoa Highway (mile marker 53.5). The section of Saddle Road between mile marker 28 and 42 is within State of Hawaii conservation lands and is covered by CDUP HA-2969.

As part of the project development effort for this section of Saddle Road, a Conservation District Use Application was submitted to the Board of Land and Natural Resources in November 1999. The Board approved CDUP HA-2969 on September 28, 2001. Condition #5 of the Decision and Order required that construction be initiated within one year and be completed within 3 years of the approval date. Official construction commenced in December 2001 with the demolition of the existing buildings within the proposed right-of-way through the Department of the Army's Pohakuloa Training Area. We subsequently requested an extension of the completion deadline in a September 3, 2004 letter to you. The Board of Land and Natural Resources considered our request at its October 2004 land board meeting and granted an extension to September 28, 2008. Because of federal budgetary constraints in recent years, we will not be able to complete the Saddle Road improvements covered by HA-2969 within the amended extended deadline.

EXHIBIT 2

To date, CFLHD has awarded four construction projects at a total cost of $91 million. One final construction project is needed to complete the aforementioned section of Saddle Road covered by HA-2969. This fifth and final project is scheduled to be advertised by the end of this year and is expected to be completed by late summer 2010. We therefore request an extension of the completion date to September 28, 2010.

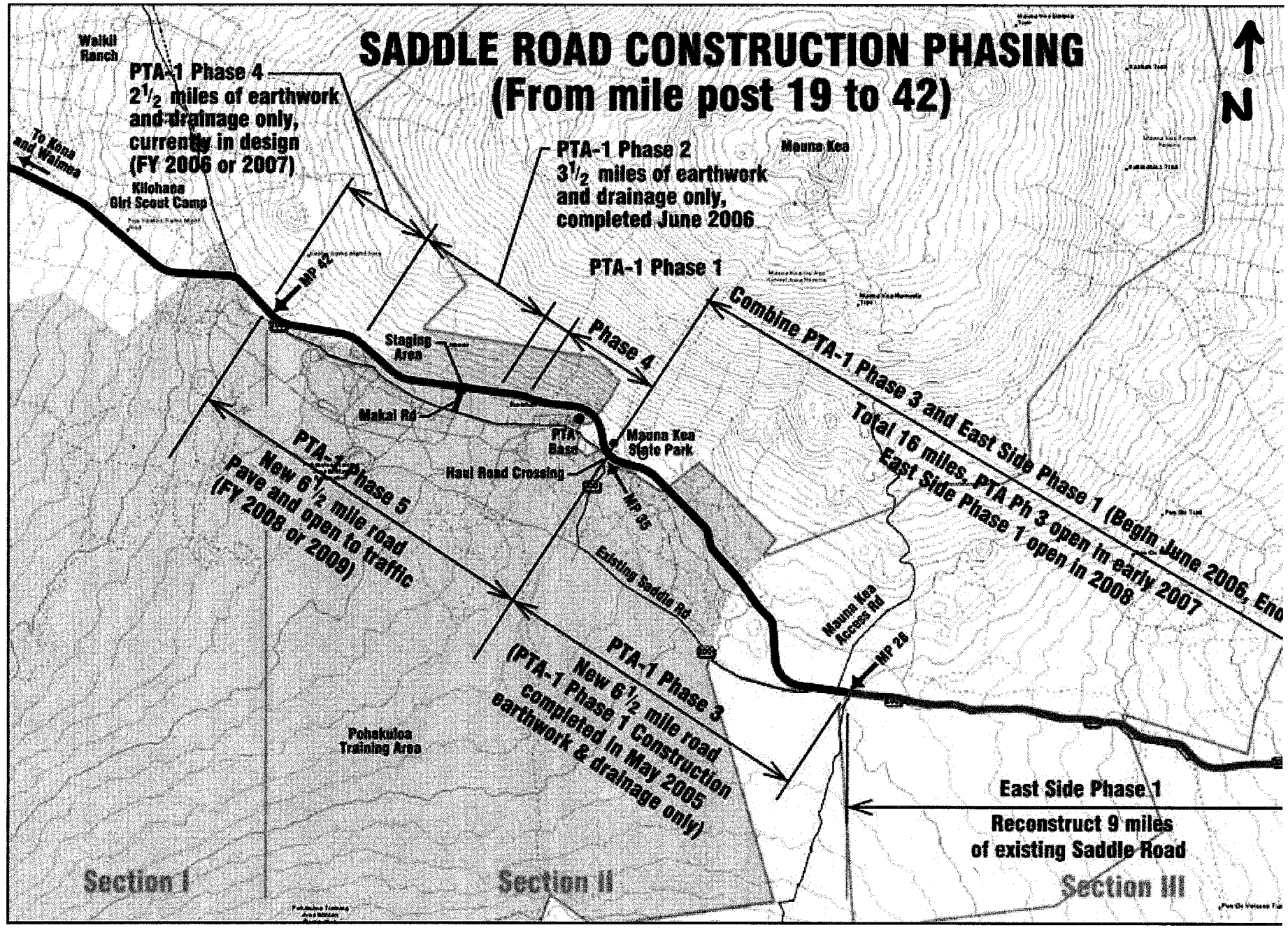
If you need additional information or have any questions, please contact me at (720) 963-3723 or via email at dave.gedeon@fhwa.dot.gov.

Sincerely,

David H. Gedeon

David H. Gedeon, P.E.
Saddle Road Project Manager

EXHIBIT 3


SADDLE ROAD CONSTRUCTION PHASING
(From mile post 19 to 42)
N
Waikii Ranch
To Kona and Waimea
Kilohana Girl Scout Camp
PTA-1 Phase 4
2 1/2 miles of earthwork and drainage only, currently in design (FY 2006 or 2007)
PTA-1 Phase 2
3 1/2 miles of earthwork and drainage only, completed June 2006
Mauna Kea
PTA-1 Phase 1
MP 42
Phase 4
Combine PTA-1 Phase 3 and East Side Phase 1 (Begin June 2006, End
Total 16 miles, PTA Ph 3 open in early 2007
East Side Phase 1 open in 2008
Staging Area
Makai Rd
PTA Base
Mauna Kea Sigte Park
Haul Road Crossing
MP 35
PTA-1 Phase 5
New 6 1/2 mile road
Pave and open to traffic
(FY 2008 or 2009)
Existing Saddle Rd
Mauna Kea Access Rd
MP 28
PTA-1 Phase 3
New 6 1/2 mile road
(PTA-1 Phase 1 Construction completed in May 2005 earthwork & drainage only)
Pohakuloa Training Area
East Side Phase 1
Reconstruct 9 miles of existing Saddle Road
Section I
Section II
Section III