STATE OF HAWAII
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Honolulu, Hawaii

May 23, 2008

REF:OCCL:DH CDUA KA-3121

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

REGARDING: Second Time Extension Request for Conservation District Use Application (CDUA) KA-3121 for Greg and Joanne Allen Single Family Residence (SFR), Swimming Pool, Pool Decking, Retaining Walls, Water Well, and Landscaping

LANDOWNER: Greg and Joanne Allen, 161 Wailua Road, Kapaa, Hawaii 96746

LOCATION: Wailua Ahupuaa, Kawaihau District, Island of Kauai

TMK: (4) 4-2-003:002

PARCEL AREA: 33,183 Square Feet

AREA OF USE: 3,495 Square Feet

SUBZONE: Limited

BACKGROUND:

The Office of Conservation and Coastal Lands (OCCL) notes CDUP KA-3121 was approved by the Board of Land and Natural Resources (BLNR) on May 23, 2003 regarding the construction of your Single Family Residence (SFR), swimming pool, pool decking, retaining walls, water well, and landscaping, and was subject to fifteen (15) terms and conditions (**Exhibit 1**).

Condition # 3 notes, "any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed."

On February 14, 2006, the applicant's asked and received a two year time extension for KA-3121 to complete construction by May 23, 2008 (**Exhibit 2**).

On April 25, 2008, Mr. Allen wrote to the Office of Conservation and Coastal (OCCL) and asked for a second time extension of three years (**Exhibit 3**).

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for granting time extensions is provided for in Section 13-5-43 (c), HAR, TIME EXTENSIONS, "time extensions may be granted by the Board upon the second or subsequent request for a time extension on a Board permit, based on supportive documentation from the applicant."

BASIS FOR TIME EXTENSIONS:

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

DISCUSSION:

Staff notes the applicant is asking for a second time extension of three years to extend the deadlines to complete construction. Staff notes the deadline to complete construction would be May 23, 2011 (**Exhibit 4**).

Mr. Allen notes he is under financial pressure from the other development projects that he owns. Thus, he has been unable to divert financial resources to completing the SFR.

Staff notes Mr. Allen has had considerable delay in the approval of his construction plans for the SFR due to its location and terrain next to the Wailua River. Staff notes that the economy has slowed down considerably and people may not have as much in financial resources than in the past years. Staff is agreeable to a second time extension of three years to complete construction by May 23, 2011.

RECOMMEDATION:

Staff, therefore, recommends the following:

That the Board of Land and Natural Resources **APPROVE** this request for a time extension for Conservation District Use Application Permit KA-3121, subject to the following condition:

1. That the Board approve a three year time extension request to complete construction of the SFR by May 23, 2011.

Respectfully submitted,

DAWN T. HEGGER
Senior Staff Planner

Approved for submittal:

LAURA H, THIELEN, Chairperson
Department of Land and Natural Resources

LINDA LINGLE
GOVERNOR OF HAWAII

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:PB:DH

FILE NO.: KA-3121B

JUN -3 [illegible]

Greg and Joanne Allen
161 Wailua Road
Wailua, Hawaii 96746

Dear Mr. and Mrs. Allen:

This letter is to inform you that Conservation District Use Application (CDUA) KA-3121B has been approved by the Board of Land and Natural Resources on May 23, 2003 regarding the construction of your Single Family Residence (SFR), swimming pool, pool decking, retaining walls, water well, and landscaping, and is subject to the following terms and conditions:

1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

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) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

4) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading 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 (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

EXHIBIT 1

5) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

6) The applicant, prior to construction, shall submit construction plans regarding the four (4) retaining walls to the Department of Transportation, Highways Division for approval; after approval the applicant shall submit a copy of the construction plans with DOT's approval to the Department;

7) The applicant will minimize visual impacts to Wailua River and its public users by using appropriate lighting, house color and landscaping; The landscaping plan shall be approved by the Department prior to work being undertaken on the proposed project;

8) The applicant shall submit earth tone color schemes to the State Historic Preservation Division for approval, prior to work being undertaken on the proposed project;

9) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"

10) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

11) In issuing this permit, the Department has 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 may, in addition, institute appropriate legal proceedings;

12) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (587-0013), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary.

13) Other terms and conditions as may be prescribed by the Chairperson;

14) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void; and

15) Concrete pad areas shall not be enclosed. Should this occur, enforcement proceeding will be brought.

Please acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the Office of Conservation and Coastal Lands within thirty (30) days.

If you have any questions regarding this matter please contact Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380.

Sincerely,

Dierdre S. Mamiya, Acting Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged: _____

Date: _____

Cc: Kauai Board Member
Kauai District Land Agent
Commission on Water Resource Management
Kauai County
Department of Planning
Department of Health

LINDA LINGLE
GOVERNOR OF HAWAII

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

CDUP: KA-3121

AUG 2 1 2006

Greg Allen
161 Wailua Road
Wailua, Hawaii 96746

Dear Mr. Allen,

SUBJECT: Time Extension for the Completion of Construction for Conservation District Use Permit (CDUP) KA-3121 for a Single Family Residence (SFR) and Associated Improvements Located at Wailua, Kawaihau, Island of Kauai, (4) 4-2-003:002

The Department is in receipt of your correspondence dated February 14, 2006 regarding your request for a three-year time extension to complete the construction of your SFR and associated improvements (**Exhibit 1**). According to your information, you are still awaiting county approvals. The Board of Land and Natural Resources approved CDUP KA-3121 on May 23, 2003 for the SFR and associated improvements that were subject to fifteen terms and conditions.

Condition # 3 notes, "*Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years off the approval. Thee applicant shall notify the Department in writing when construction activity is initiated and when it is completed.*"

Departmental records indicate that work was initiated in September of 2004 and construction plans were approved on June 20, 2005. However, please note condition #5 states, *The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans.* Please submit documentation of the recordation of the CDUP approval to complete your file.

The Department notes, pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), Section 13-5-43, TIME EXTENSIONS (b), "time extension may be granted as determined by the Chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant."

Therefore, the Department is granting a two (2) year time extension to CDUP KA-3121. Construction should be completed by May 23, 2008.

EXHIBIT 2

Should you have any questions regarding this matter, please contact Tiger Mills of our Office of Conservation and Coastal Lands staff at 587-0382.

Aloha,

PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

cc: County of Kauai, Department of Planning
KDLO

Greg Allen
161 Wailua Road
Kapaa, HI 96746

February 14, 2006

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2006 MAR 13 A 8:22
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

State of Hawaii
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
PO Box 621
Honolulu, HI 96809

Aloha Dawn,

I would like to request a 3-year extension of CDUP KA3121. I have enclosed timeline documents to help clarify history. I hope that an extension can be granted.

The process of constructing the residence after State approval required:

- Geotechnical evaluation completed 1/9/04
- Structural engineering completed by 4/05
- State Hwy engineering review 5/16/05
- State DLNR Plan approved 6/20/05
- County of Kauai build permit application 6/24/05
- County of Kauai zoning permit application 7/18/05
- County of Kauai building permit comments 9/14/05
- No Rise engineering study 11/2/05
- Floodway certification 11/17/05
- Flood Hazard Area certification 11/17/05
- Recording Waiver and Indemnity 11/05
- Letter from engineering regarding time to complete permit review 2/05

Thank you for your help,

Sincerely,

Greg Allen
808-821-0001

EXHIBIT 1

Greg Allen
161 Wailua Road
Kapaa, HI 96746

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2008 MAY -5 P 3:08
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

April 25, 2008

State of Hawaii
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
PO Box 621
Honolulu, HI 96809

Regarding: CDUP KA3121

Aloha Dawn,

I would like to request an additional 3-year extension of CDUP KA3121. Work is progressing on this residence. We just finished pouring the slab. I have enclosed a couple of pictures of the job site. In one you see the excavator during the process of preparing for the foundation. In the other you can see the slab and you see the same trees.

I hope you can give me a 3-year extension. I am sorry this is taking so long. I am doing the work myself and trying to pay as I go. About the time I got this permit, my family and I had also purchased the right to 10 lots in a proposed subdivision. The subdivision developers got into financial difficulty and because we also held a second position mortgage on the property, we ended up having to take over the project. We had to do this in order to avoid losing our investment. The first position mortgage holder was pursuing a foreclosure action. I have spent a lot of my time and energy trying to solve the problems with that project. The project now is looking good and we're expecting final permits for a first phase this summer. We are also trying to do a second and third phase that would provide Kauai with much needed work force housing. That process will require a zoning amendment; the GP is already in place. I also have an income property"Harbor Mall" that has required an extended period of time to get operating and properly remodeled. Both these projects have required my time and money and have caused delays to the house project. The mall and subdivision are now on solid ground and I expect to see income derived from both sources soon. I want to complete this house as soon as possible and believe that I will be able to within three years. I apologize that this has taken so long and ask for your understanding. Thank you. Hope you are all well.

Sincerely,

Greg Allen
808-645-4500

EXHIBIT 3

KOMATSU
GALEN
19422