

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

180-Day Exp. Date: March 28, 2009

February 13, 2009

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

REGARDING: Conservation District Use Application (CDUA) HA-3483
Saddle Road (State Highway 200) Improvement Project-
Portion of Section III Mile Post (MP) 11-19 and
Subdivision of Land

APPLICANT: Federal Highway Administration, Central Federal Lands
Highway Division

LANDOWNER: State of Hawaii
Managed by the Division of Forestry and Wildlife

**LOCATION/
TMK:** Hilo Forest Reserve, Piihonua, South Hilo, Hawaii
(3) 2-6-018:004 & 010

AREA OF USE: Approximately 182.4 acres

SUBZONE: Protective & Resource

BACKGROUND:

On September 28, 2001, the Board of Land and Natural Resources (Board) approved the Findings of Fact, Conclusions of Law and Decision and Order for Conservation District Use Permit (CDUP) HA-2969 for Section II of the Saddle Road Improvement Project. On January 23, 2004, the Board approved CDUP HA-3137 for a portion of Section III, Mile Post 19-27. The former CDUPs and the current request for improvements are part of the overall plan to improve the 48-mile, Saddle Road.

Mitigation commitments contained in the Final Environmental Impact Statement dated August 9, 1999 are to be incorporated into the project during design or as construction contract specifications in addition to the U.S. Department of Transportation's Record of Decision Measures to Minimize Harm.

DESCRIPTION OF AREA AND CURRENT USE

Saddle Road connects East and West Hawaii through the saddle between Mauna Kea and Mauna Loa. Its eastern terminus is the Kaumana section of Hilo and its western terminus is Mamalahoa Highway (State Route 190) about six miles south of Waimea. It is the only paved road serving facilities to Mauna Kea and Mauna Loa. The US Army constructed Saddle Road in 1942. Unimproved areas do not meet current design standards. It is an important cross-island link for business, travel and the transport of goods and services (**Exhibit 1**).

The project area is a portion of Section III, noted as Mile Post (MP) 11-19. It is approximately 8-miles and lies mostly in the 1855 lava flow with a few kupuka of older vegetation. The existing unimproved portions of Saddle Road are a narrow, winding, two-lane road with steep grades, sharp curves, poor pavement and substandard drainage.

Saddle Road is the only paved road in the project area. A number of unpaved roads serve as access and/or parking areas for utility easements and hunting or hiking trails. Principal access in the proposed project area includes the Hilo Reserve Hunting Access Road, Tree Planting Road and the Kaumana Trail parking lot. Both of the State parcels have easements issued to HELCO and Hawaiian Telcom for electrical and fiber optic lines. None of these easements will be adversely affected by the proposed improvements. There are no water transmission, wastewater treatment or drainage facilities present in the project area.

The roadway defines the border between State parcels 4 and 10. Parcel 10 lies within the Protective subzone and parcel 4 lies in the Resource subzone of the Conservation District. Both parcels come under the management of the Department's Division of Forestry & Wildlife.

The average annual rainfall is \approx 5,000mm or more per year. Fog is not uncommon in the morning and afternoon hours. According to the applicant, the area may be described as open lava fields interspersed with kipuka of mixed ohia/koa forest. There are no kipuka close to the proposed alignment and very little usage of this area by endemic avian species. The project area supports vegetation dominated by the native tree ohia. A weedy mixture of introduced grasses and forbs may be found alongside the existing Saddle Road and other disturbed areas (**Exhibit 2**).

No threatened or endangered plants or invertebrates were identified during the course of botanical surveys of the area. Avifauna that may fly overhead or may forage in the area include the endangered Hawaiian Petrel, the threatened Newell's Shearwater and the endangered Hawaiian Hawk. The Nene may utilize the area and the Akiapolaau, Hawaii creeper, Hawaii Akepa, O'u may be present in the adjacent habitat outside of the project area. The Hawaiian Hoary bat was detected in moderate numbers along this portion of the roadway.

In the vicinity east of MP 14, there is a wetland occurrence. Through discussion with the Environmental Protection Agency, it was agreed that a combination of restoration and preservation measures applied within and adjacent to the ROW in this area and focusing on native habitat containing wetland micro sites would best fulfill mitigation requirements.

Two archaeological sites are present in the project area: A still used portion of the Kaumana Trail that has been built over by the existing Saddle Road; and an area of historic paving of small aa cobbles near the southern edge of the right of way. The Kaumana trail has already undergone archaeological data recovery and a report is currently in preparation. An interpretive sign is being developed pursuant to the 1999 MOA. A Memorandum of Agreement has been executed among the Advisory Council on Historic Preservation, the State Historic Preservation Office, FHWA, HDOT, DLNR and the Office of Hawaiian Affairs in regards to historic archaeological sites recommendations.

PROPOSED USE

The proposed land uses involve a public transportation improvement being undertaken by a partnership of state and federal agencies. This CDUA is meant to include road construction; all associated activities such as geotechnical exploration and clearing for surveying that is necessary to develop plans for construction; and subdivision of land.

ROAD IMPROVEMENTS

The project proposal is part of the on-going improvements to upgrade and modernize Saddle Road for a portion identified as Section III that consists of an approximately 8-mile area noted as near Milepost 19 and ending near Milepost 11. The proposed improvements would incorporate two 3.6-meter (m) travel lanes with two 2.4-m paved shoulders to create a two-lane highway with additional passing lanes in appropriate areas.

The improved Saddle Road will be designed and built to the current National and State highway design standards that require changes to the entire length of the existing road. These changes mainly include flattening the vertical curves to improve driver sight distance, straightening the horizontal curves, providing wider paved shoulders for emergency pull-offs and varying the cut and fill slopes to blend the road with the surrounding terrain.

Uphill passing lanes, trucks escape ramps, scenic pullouts and military vehicle crossings will be incorporated into the project design as needed to enhance safety and level of service. New drainage structures would minimize hazardous flooding conditions along the road after storm events. Improved pavement markings and roadway signage would be added. The new roadway will roughly follow the same route as the existing Saddle Road. The project will not involve any utility relocation.

The road shall not create a barrier to motorized, pedestrian, horse, or bicycle cross-traffic and the improved shoulders shall provide the opportunity for such uses that previously did not exist as well as provide better separation of such uses from highway traffic.

For reasons of safety and proper design and control of illegal access onto State lands, the realigned Saddle Road will not include access to every minor road that currently intersects the road. However, it is expected that access to all legal accesses and important roads and trails, including those previously listed shall be provided. Final decisions on access shall be made during final engineering design when sufficient information on topography and road requirements is available. Final design shall involve continued discussions with HELCO, DOFAW, HDOT and others with jurisdiction or legal access rights. All necessary legal access will be accommodated in a reasonable manner. The improvements will provide for safe access to and from side roads and trails that is currently lacking.

GEOTECHNICAL EXPLORATION

The applicant is requesting immediate start up of work for geotechnical exploration consisting of 14 borings. The immediate proposed work shall utilize a D-8 or D-9 bulldozer to clear a path to and around each boring hole. All areas to be cleared shall be within the project area. It is expected that 5 to 20 ohia trees shall be cleared at each site, depending on the length of access to each boring. The bulldozer operator shall try to avoid as many trees as possible (**Exhibit 4**).

A truck mounted drill rig will perform the borings and all cores will be four inches in diameter. Each borehole should take one to four hours to complete and all should be completed within 2-4 weeks from start up depending upon weather. According to the applicant, because this area is relatively young aa or pahoehoe lava, it is very porous, drains very quickly and produces little or no fines. As professional biologists and archaeologists have inspected the entire area as part of the Final Environmental Impact Statement, it is believed that there are no resources requiring preservation or mitigation. Therefore, no temporary or permanent Best Management Practices will be utilized.

Rights of Entry exist from the Department and Division of Forestry and Wildlife to conduct this preliminary work. The purpose of the work is to evaluate the existing subsurface conditions in order to complete the design and construction of the proposed improvements in this section. The applicant is requesting immediate start up of this work so as not to lose substantial funding (> \$10,000,000) as the project contract must be awarded within the next few months.

SUBDIVISION OF LAND

The applicant is also requesting subdivision of land for public purpose. The area to be subdivided shall contain the 200-foot right of way consisting of 100 feet on each side of the center alignment of the improved roadway to the extent of the State lands to the east.

MITIGATIVE MEASURES

Construction techniques that create natural-appearing roadside surfaces and roadway appurtenances will be utilized to minimize the visual impact of the project at the location of cut and fill slopes. General mitigation commitments for impacts to biological resources are to limit surface disturbance to within the ROW, ensure proper environmental awareness of construction workers, revegetate appropriate locations, prohibit night-time construction lighting and adopt construction practices that minimize dispersion of alien species. An alien plant species monitoring and control program shall be implemented. Sensitive habitats like kipuka will be fenced during construction along the right-of way.

To offset unavoidable impacts of the project to wetland and aquatic areas disturbed by the roadway footprint, mitigation commitments will incorporate restoration efforts to restore and preserve habitat within all portions of the ROW not essential to the operation and maintenance of the roadway. Restoration efforts may also include the acquisition or preservation of lands beyond those needed for ROW.

The proposed project will modify a small portion of the Critical Habitat within an area designated as Unit 29 by the US Fish & Wildlife Services (USFWS) in the vicinity of mile marker 14 and 16.9 for Palila habitat. Additionally, the USFWS had listed a species of picture-wing fly that had been previously recorded in the general project area as endangered. The FHWA has been in consultation with the USFWS to determine impacts and mitigation as required under section 7 of the Endangered Species Act. The USFWS had yet to issue a final rule regarding Critical Habitat for these species.

A Palila Mitigation Plan has been prepared and an associated Memorandum of Understanding has been developed and signed by participatory agencies. Mitigation includes the acquisition and management of area for habitat restoration and Palila translocation. A search for Hawaiian Hawk nests will be conducted within this Section III prior to construction.

Mitigation commitments for impacts to archaeological sites include avoidance through the shifting of the alignment, data recovery efforts, the installation of interpretive signs and pullouts to enhance public awareness and periodic monitoring during construction. These commitments have been agreed upon by participatory agencies and documented in an executed MOA.

Section III and IV from near MP 6 to MP 19 that includes this project area, has been partially funded for design and construction; however, actual construction completion dates are not yet certain. In areas as required, CDUAs for the remainder of Sections III & IV will be submitted as funding is appropriated.

ALTERNATIVES CONSIDERED

No feasible or practical alternatives to the existing corridor were identified within Section III. Locating the new roadway along the existing corridor is the only alternative within Section III that affords minimization of impacts to adjacent natural resources.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health; Office of Hawaiian Affairs; Office of Environmental Quality Control; Department of Transportation; Department of Land and Natural Resources Divisions of: Conservation and Resource Enforcement; Forestry and Wildlife, Hawaii District Land Office; and Historic Preservation; the **County of Hawaii**: Department of Planning; Department of Public Works; and the Fire Department; and the Hawaiian Electric Light Company. Comments were also requested from the US Fish & Wildlife Service and the Audubon Society. In addition, the application and Final Environmental Impact Statement was also sent to the nearest public libraries, the Hilo and Kailua-Kona Public Library, to make this information readily available to those who may wish to review it.

Responses were received and have been summarized from the following agencies:

STATE OF HAWAII

OFFICE OF HAWAIIAN AFFAIRS (OHA)

OHA asks that all applicable mitigations in the memorandum of understanding regarding Palila are adhered to. We also request that a copy of the manual that the Federal Highway Administration will prepare for engineers, supervisors and contractors to ensure proper environmental awareness for this project be forwarded to our Office.

There are inconsistent statements regarding archeological sites. The application states that some sites are "still in use" and then states, "Because none of the sites (archeological and cultural) have been definitely located, it is reasonable to conclude that native Hawaiian rights related to gathering, access or other customary practices will not be affected and there will be no adverse effect upon cultural practices or beliefs."

Additionally, the CDUA states that no threatened or endangered plants were identified in the project area, however the project area is designated critical habitat for two endangered plant species. Furthermore, the applicant proposed to 'modify' a portion of this critical habitat. We suggest that these areas be similarly restored as identified in the application as mitigation measures, habitat conservation plans and vegetation restoration.

Applicant's Response

1. *Historic Sites MOA.* As the project has progressed, we have been accomplishing the tasks required in the MOA.
2. *Environmental Manual.* A copy of the Environmental Manual for the overall East Side, which deals with the section of Saddle Road in this application, has been forwarded to OHA. Please note, the different sections of the roadway have different environmental commitments; therefore separate Environmental Manuals have or will be prepared for each distinct segment at appropriate times. The enclosed manual was prepared during the project development phase for the first East Side project (MP 19-28) and was used by the design team to identify commitments made in the Saddle Road Record of Decision, as well as to identify who is responsible for seeing that each commitment is carried out. Note however that the manual as written was not incorporated into the actual specifications due to the considerable likelihood for inconsistencies or conflicts with other elements of the contract documents. Therefore each specific commitment that is relevant to a particular section of road as it is being reconstructed is being directly included as a contract specification, thus thereby becomes an enforceable contractual requirement.
3. *Archaeological sites.* The ritual sites referred to in your statement were general sites in the Saddle (an area as large as Oahu) alluded to by informants that were not located during the intensive inventory survey, most likely because they were not in the vicinity of the road corridor. Regarding the statement about the Hilo-Puu Oo trail, site 50-10-33-20878, OHA is a party to the May 3, 1999 Memorandum of Agreement (MOA) that determined that this site was subject to data recovery and interpretation, which would mitigate adverse effects. Prior to the start of construction of the segment of Saddle Road between MP 19-28, our agency had prepared a data recovery report of this site and others impacted by the improvements to Saddle Road. Much of the trail within or adjacent to the existing Saddle Road corridor had already been damaged or eliminated by other construction projects and also improvements to Saddle Road made prior to 1995, thus unrelated to our construction. The remnant portion is in active use as a short trail, connecting two points on the south side of the Saddle Road. Although a short length of the trail has been eliminated as part of our Saddle Road improvements, our project included the construction of a pull off on both sides of the new road to accommodate users of the trail. We will also be installing interpretive exhibits regarding its historic nature as part of a future project. The Saddle Road improvement project has involved the most extensive historic interpretation effort of any highway project on the island of Hawaii and we will be pleased to add the Hilo-Puu Oo trail remnant to the list of interpreted sites.
4. *Endangered species.* Former and recent surveys have conclusively determined that no individuals of any threatened or endangered species will be affected by our undertaking. Concerning the critical habitat issue, we are actively coordinating with

the U.S. Fish and Wildlife Services to determine effects and, as appropriate, mitigation, per Section 7 of the Endangered Species Act.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Conservation and Resource Enforcement (DOCARE)

No comment

Division of Forestry and Wildlife (DOFAW)

The fire management plan document written by the fire ecologist to protect Palila habitat was never produced for review by DOFAW forestry management section, Hawaii Branch or the fire management officer in DOFAW Administration. In August 2006, a wild land fire burned this critical Palila habitat area at Puu Mali. The actions proposed in this section did not prevent a fire from scorching a designated Palilia habitat area. DOFAW must review the fire management document.

It is important not to limit access to the Forest Reserve on both sides of Saddle Road, as trails exist along the full length of this corridor. DOFAW has previously commented that off-road accommodations for parking is a priority to access forest managed public lands. Pullover intervals and parking at least one side of Saddle Road will provide a safe access to public forest areas along this corridor. DOFAW has also previously requested that the access area for parking be improved for the southern entrance to Puu OO trail from Saddle Road. This has not been completed.

Applicant's Response

The fire management plan is meant for areas within section II of the project in and near the Pohakuloa Training Area, along with the mitigation areas at Kaohe and Puu Mali. It is not relevant or required for the MP 11-19 section. However, we would like to provide more information about this plan in hopes of clarifying any misconceptions.

During the environmental phase of Saddle Road project development, seven federal and state stakeholder agencies agreed to the critical elements of a Palila mitigation plan to address impacts that would result from construction of the proposed improvements to Saddle Road within the general limits of the Pohakuloa Training Area. The individual agency responsibilities and the critical elements were put forward in the 1999 Palila Memorandum of Understanding (Palila MOU) to which all seven agencies, including DLNR, are signatories. One of the critical elements was the preparation of a Fire Ecology Study, which was to be prepared by the US. Geological Survey's Biological Resources Division (BRD). In accordance with the Palilia MOU, the Federal Highway Administration (FHWA) was responsible for funding this study, which it did in 2000. While BRD was admittedly slow in beginning work on this study, it is our understanding that a draft report was recently distributed to key agencies for review and comment.

FHWA met with the Hawaii Island DOFAW Chief, Mr. Roger Imoto, on November 13th to discuss the comments that office had submitted to OCCL.

At this meeting, Mr. Imoto acknowledged that they have in fact received the draft Fire Ecology Study. We wish to also clarify that there was no timeframe set forth in either the USFWS's Biological Opinion or the Saddle Road Record of Decision for the implementation of the recommendations from the Fire Ecology Study, although our goal is to have done so by the completion of the PTA phase of construction that triggered the proposed mitigation. Therefore we believe the actual implementation of the Fire Ecology Study recommendations should not prevent the approval of CDUAs that are submitted for other sections of the Saddle Road improvements. Please note that our previous construction projects have also included a number of temporary and permanent fire protection measures as stipulated in the EIS and prior CDUPs, as has the Army within PTA.

During another meeting with Mr. Imoto in mid November, it was brought to our attention that a section of DLNR fence was missing immediately above the PTA cantonment area. We subsequently met with Mr. Imoto and staff onsite to establish the location of the missing fence. While the missing section is apparently in close proximity to the current Saddle Road construction, it is not actually within the at projects construction limits. FHWA's contracted specifications strictly confine the contractor's operations and actions to within these construction limits; therefore, it is highly unlikely that the missing section of fence was removed as part of the Saddle Road construction. We also wish to note that the construction plans do not show a fence in this area as part of the existing topographic features that were mapped prior to the start of road construction. However we did bring this issue to the attention of PTA staff recently and inquired whether the Army may have removed the fence. None of their staff could recall such a fence being in the location identified by DOFAW. It is our understanding that Mr. Imoto is planning to meet with the PTA staff in the near future to discuss the missing fence and determine how to replace it as rapidly as possible.

Regarding access, the planned cross section is much safer and more user friendly for pedestrian, horse or bicycle use than the existing section. We have consulted a number of times with your Hilo office to determine the best access points for DOFAW staff and recreational users, and we will continue to do so as the project enters the final design phase. Please note that two pullouts were construction for the Puu Oo Trail site as part of the MP 19-28 construction project.

Hawaii District Land Office (HDLO)

No comments

State Historic Preservation Division (SHPD)

We concur that there are two historic properties located within the project area. There is Site 50-10-33-20856, a 7' x 2' historic paving of a'a cobbles situated on the 1855 lava

flow. No further work is required for this site and we concur that there will be no adverse affect resulting from the proposed project. Site 50-10-33-20878 is the Hilo-Puu Oo Trail, also known as the Kaumana Trail that falls under the State Na Ala Hele program. It appears that there will be an adverse affect to this trail as a good section of it appears slated for demolition resulting from the road realignment. Following the realignment, it appears that close to 1000' of the trail will be destroyed. We understand that signage for the new parking area for access to this trail will be created in coordination with Na Ala Hele; we suggest that they also be contacted with regards to any potential mitigation which could be considered in planning the road improvements such as some form of 'trail' paving or other type of indicator that could visually designate where the trail continuation lies for pedestrians.

Applicant's Response

Regarding the statement about an adverse effect determination for 50-10-33-20878, SHPD is a party to the May 3, 1999 Memorandum of Agreement (MOA) that determined that this site was subject to data recovery and interpretation, which would mitigate adverse effects. Prior to the start of construction of the segment of Saddle Road between MP 19-28, our agency had prepared a data recovery report of this site and others impacted by the improvements to Saddle Road. Much of the trail within or adjacent to the existing Saddle Road corridor had already been damaged or eliminated by other construction projects and also improvements to Saddle Road made prior to 1995, thus unrelated to our construction. The remnant portion is in active use as a short trail, connecting two points on the south side of the Saddle Road. Although a short length of the trail has been eliminated as part of our Saddle Road improvements, our project included the construction of a pull off on both sides of the new road to accommodate users of the trail. We will also be installing interpretive exhibits regarding its historic nature as part of a future project. The Saddle Road improvement project has involved the most extensive historic interpretation effort of any highway project on the island of Hawaii and we will be pleased to add the Hilo-Puu Oo trail remnant to the list of interpreted sites.

Staff notes: Later comments from SHPD indicated that mitigation requested was already in process. Specifically, the Kaumana Trail, that has already undergone archaeological data recovery and a report is currently in preparation pursuant to the 1999 Memorandum of Agreement regarding historic preservation. As a result of this, SHPD revoked the earlier stated findings of adverse affect to the trail and concurred that no historic properties will be affected.

Office of Conservation and Coastal Lands (OCCL)

The Division of Forestry & Wildlife (DOFAW) has stated that a required fire management plan to protect Palila habitat was never forwarded to DOFAW pursuant to CDUP HA-3137. Failure to comply with this condition may jeopardize this pending CDUA.

The OCCL has also become aware that a fence to protect areas from ungulates was removed. Please clarify this situation and explain how this matter was mitigated.

Staff notes: OCCL comments were addressed in the Applicant's response to DOFAW.

COUNTY OF HAWAII

DEPARTMENT OF PLANNING

We have no objections to the proposed use. The subject parcels are not located in the County's Special Management Area (SMA).

FIRE DEPARTMENT

No comment

HAWAII ISLAND CHAMBER OF COMMERCE

We support the granting of the permit. The Hawaii Island Chamber of Commerce has followed the repair and maintenance of Saddle Road for many years. We have faith and confidence in the consultants and work crews involved in the work thus far. We trust they will continue to make wise choices for our island community.

We look forward to progress on this project. Finishing the improvements will not only provide the jobs created by the construction/maintenance work but also improve the ability of our island businesses to survive in this challenging time. This ongoing project will unite our island and enhance commerce and communication between the East and West Hawaii communities.

Applicant's response

We appreciate your continued support for this project and the points made regarding the importance of the road for business travel, jobs and the economic well-being of the island.

GENERAL PUBLIC

As a member of the Saddle Road Task Force, I support the CDUA that entails improving Highway 200 from Mile Post (MP) 11 – 19 for both safety and economic reasons. Saddle Road had 209 accidents and 3 fatalities in the past 3-years. The winding road with minimal sight distances, and narrow, unforgiving shoulders, together with excessive speed for the poor conditions played a major role in causing the accidents. Improving the alignment and width of the roadway from MP11-19 will be another phase in reducing the hazards associated with the old road. Anyone who has recently driven on Highway 200 can certainly attest to the improved and safe condition of the roadway from MP19-MP35 compared to what it used to be.

Economically, the road serves as a vital link between East and West Hawaii. An improved roadway will shorten the time needed to transect the island, reduce the consumption of fuel, and lessen the congestion of Highway 19 (Hawaii Belt Road). Workers on Mauna Kea, Mauna Loa and the Pohakuloa Training Area must travel the Saddle Road and will greatly benefit from an improved highway.

FEDERAL

UNITED STATES OF THE INTERIOR

Fish & Wildlife Service

We reviewed the CDUA pursuant to the Endangered Species Act (ESA) of 1973, as amended, and the Migratory Bird Treaty Act. In 1998, our office issued a biological opinion evaluating the effects of the action on the endangered Palila and its critical habitat, and on critical habitat for the endangered plant, *Silene hawaiiensis*. In our 1998 evaluation, we agreed that proposed measures to minimize project impacts to the endangered Hawaiian Hawk, Hawaiian Hoary Bat, Hawaiian Petrel, Hawaiian Goose and the threatened Newell's Shearwater and critical habitat for two plant species, *Clermontia peleana* and *Cyanea platyphylla* were adequate to ensure the project was not likely to adversely affect these species or adversely modify their critical habitat.

As outlined in 50 CFR section 402.16, reinitiation of formal consultation is required if: 1) the amount or extent of incidental take is exceeded; 2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered; 3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in the opinion; or 4) a new species is listed or critical habitat designated that may be affected by the action. The mortality of three Hawaiian geese on the recently improved section of the Saddle Road near milepost 29, the recent listing of *Drosophila ochrobasis*, and the proposed designation of critical habitat for *D. ochrobasis* are reasons for the Federal Highway Administration (FHA) to reinitiate consultation. The FHA has been in communication with our office and is aware of the need to reinitiate formal consultation. We recommend that a condition of the Conservation District Use Permit be that ESA section 7 consultation be completed before any physical construction commences.

Applicant's response

Your suggestion to include a condition that ESA Section 7 consultation be concluded prior to start of physical construction is acceptable. Please note that prior CDUPs issued for Saddle Road include a standard condition that FHWA, as the applicant, comply with all Federal, State and local ordinances and regulations. Therefore your comment would also be covered by this condition of approval.

ANALYSIS

After reviewing the application, by correspondence dated September 30, 2008, the Department has found that:

1. The proposed uses are an identified land uses in the Protective and Resource subzone of the Conservation District, pursuant to the Hawaii Administrative Rules (HAR), §13-5-22, Hawaii Administrative Rules (HAR), P-6, PUBLIC PURPOSE USES and P-11 SUBDIVISION. Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to §13-5-40 (3), HAR, a Public Hearing shall be required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, the Final Environmental Impact Statement (FEIS) was published in Office of Environmental Quality Control's Environmental Notice on December 23, 1999; and
4. The project is not within the Special Management Area.

Notice of this CDUA was published in the October 23, 2008 issue of the Environmental Notice.

PUBLIC HEARING SUMMARY

A Public Hearing was held on the evening of November 12, 2008 at the Aupuni Center Conference Room in Hilo. Approximately 15 individuals attended the Public Hearing. All testimony was in support of the project.

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The project is considered an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

The purpose of the project is to provide a safe and efficient route for access along Saddle Road. The proposed improvements would address roadway deficiencies, capacity, safety, and bring Saddle Road up to standards in regards to meeting American Association of State Highway and Transportation Officials design standards. Therefore Staff believes that the project is consistent with the purpose of the Conservation District.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Protective subzone is to protect valuable resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas. The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. A transportation system such as Saddle Road is an identified land use in the Protective and Resource subzone pursuant to §13-5-22, P-5, Public Purpose Use.

In determining the location of the new roadway in this area, the existing corridor was the only alternative within Section III that affords minimization of impacts to adjacent natural resources. The Environmental Impact Statement, Record of Decision and Memorandum of Agreements and Understanding has addressed and proposed mitigation for the natural and cultural resources that exist in the area.

As such, Staff believes that the project is not inconsistent with the objectives of the subzones as the proposed project avoids or compensates for impacts to resources within both the Protective and Resource subzones.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

The project area is not within the Special Management Area. Staff believes the proposed project complies with provisions and guidelines contained in Chapter 205, HRS regarding Coastal Zone Management. The State Office of Planning's CZM Program has concurred that planned mitigation measures that includes a Memorandum of Agreement among a number of state and federal agencies are consistent with the CZM program to the maximum extent possible.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Staff believes the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region. The proposed land use does not change the existing use of the area.

A project engineer shall be on site at all times during construction to ensure compliance with environmental mitigation requirements. A manual shall be prepared by the FHWA and reviewed with project engineers, supervisors and contractors to ensure proper environmental awareness of construction workers.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The proposed land use is to improve an existing roadway to bring it up to standards. The improvements would create a thoroughfare that is more compatible with the topography and physical condition of the land.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

As the improved roadway will be wider than the existing Saddle Road, the primary visual concern from the project will consist of cut and fill slopes particularly in areas where the roadway follows a new alignment. In most cases the views of the setting and prominent landforms would remain dominant.

Minimizing the amount and appearance of cut and fill, revegetation and plating (using pre-existing lava material) of disturbed areas and blending of proposed improvements into surrounding landscape will reduce impacts on visual quality and character.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

Subdivision of land is proposed to accommodate construction of the new roadway for management purposes.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The implementation of the proposed improvements shall enhance public safety. The purpose of the project was to bring the roadway up to standards and to address roadway deficiencies, capacity and to reduce conflicts and hazards from military operations.

DISCUSSION

Staff notes Memorandum of Agreements and Understanding have been executed to mitigate potential affects to natural and cultural assets and resources. Mitigation

commitments contained in the Final Environmental Impact Statement are to be incorporated into the project during design or as construction contract specifications in addition to the U.S. Department of Transportation's Record of Decision Measures to Minimize Harm. As such, Staff believes that above adequate mitigation measures to protect the resources have been addressed by the applicant.

Staff further notes, Saddle Road is an important link of the East and West side of Hawaii island. The proposed improvements provide for alternative modes of transportation. Staff believes that the proposed project is necessary to provide a safe and efficient route for cross-island traffic.

The immediate work proposed for geotechnical borings is a necessary step to design the roadway. As the boring sites have been explored by biologist and archeologist and rights of entries have been secured for the boring sites, Staff has no objections to the immediate start up of geotechnical work to facilitate the design and construction of the roadway improvements.

Staff believes the proposed subdivision of land for public purpose will aid in the management of the Saddle Road Right of Way.

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application for Saddle Road improvements, immediate start up of work for geotechnical borings and subdivision of land in Section III that consists of an approximately 8-mile area noted as near Milepost 19 and ending near Milepost 11, located at Hilo Forest Reserve, Piihonua, South Hilo, Hawaii island, TMK:(3) 2-6-018:004 & 010 subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the Hawaii Administrative Rules, Chapter 13-5;
2. In regards to the subdivision, the applicant shall obtain a land disposition from the Department;
3. 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" if applicable;
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;
5. Any work done or construction to be done on the land shall be initiated within two years of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within five (5) years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
 6. All representations relative to mitigation set forth in the accepted Environmental Impact Statement and the US Department of Transportation Record of Decision for the proposed use are incorporated as conditions of the permit;
 7. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
 8. In issuing this permit, the Department 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 may, in addition, institute appropriate legal proceedings;
 9. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
 10. The applicant must complete the Endangered Species Act Section 7 consultation prior to the commencement of any physical construction;
 11. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
 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 the Historic Preservation Division;
 13. 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;
 14. The applicant shall replant or cover bare areas as soon as grading or construction are completed;

15. Other terms and conditions as may be prescribed by the Chairperson; and
16. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

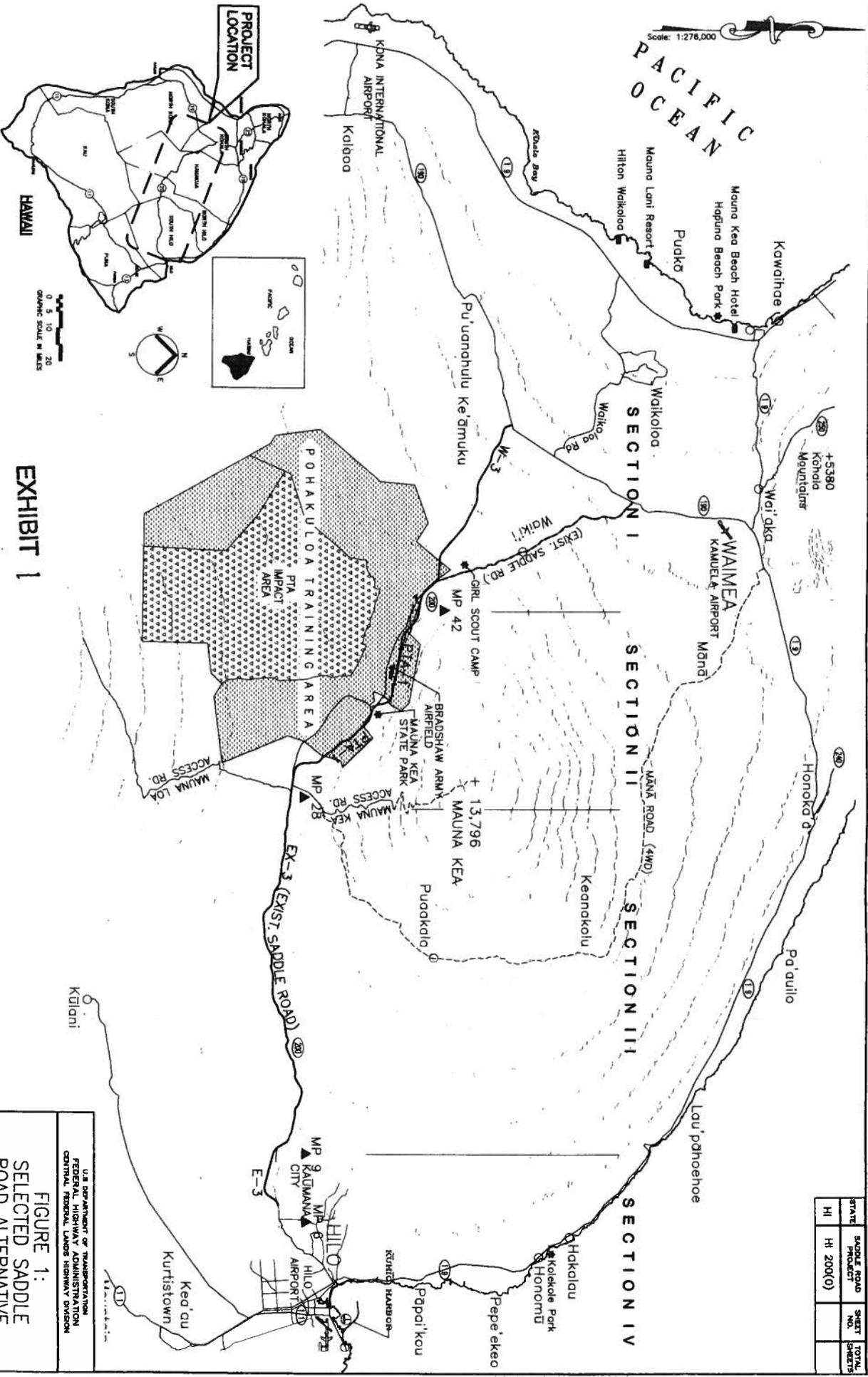


K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources



STATE	SADDLE ROAD PROJECT	SHEET NO.	TOTAL SHEETS
HI	HI 200K(0)		

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

FIGURE 1:
SELECTED SADDLE ROAD ALTERNATIVE

Scale: As Noted Date: June 3, 2008

EXHIBIT 1

Photo Figure 1
Saddle Road Near MP 12

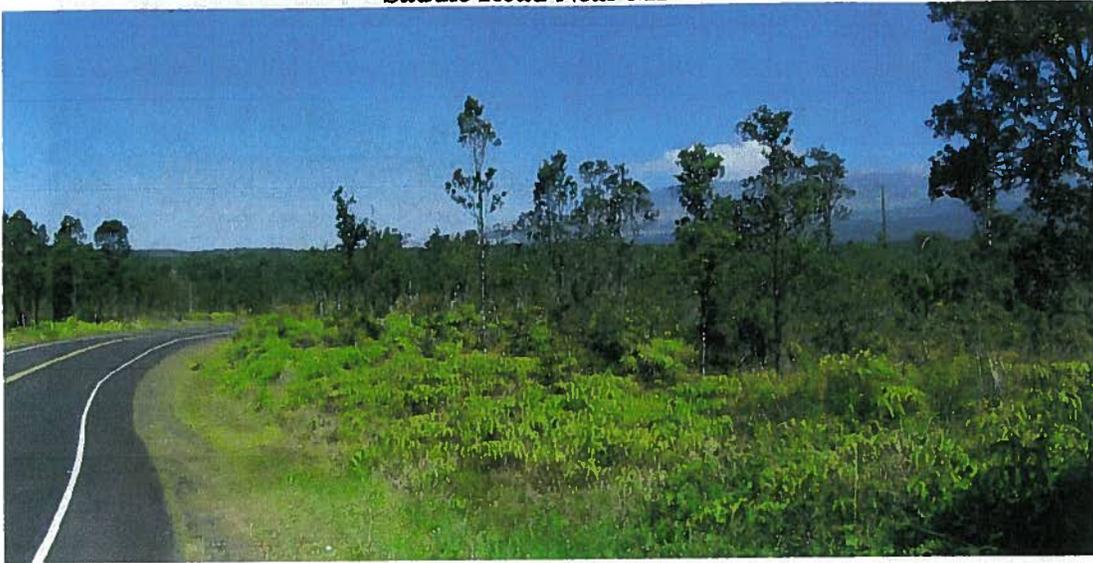


Photo Figure 2
Saddle Road Near MP 13

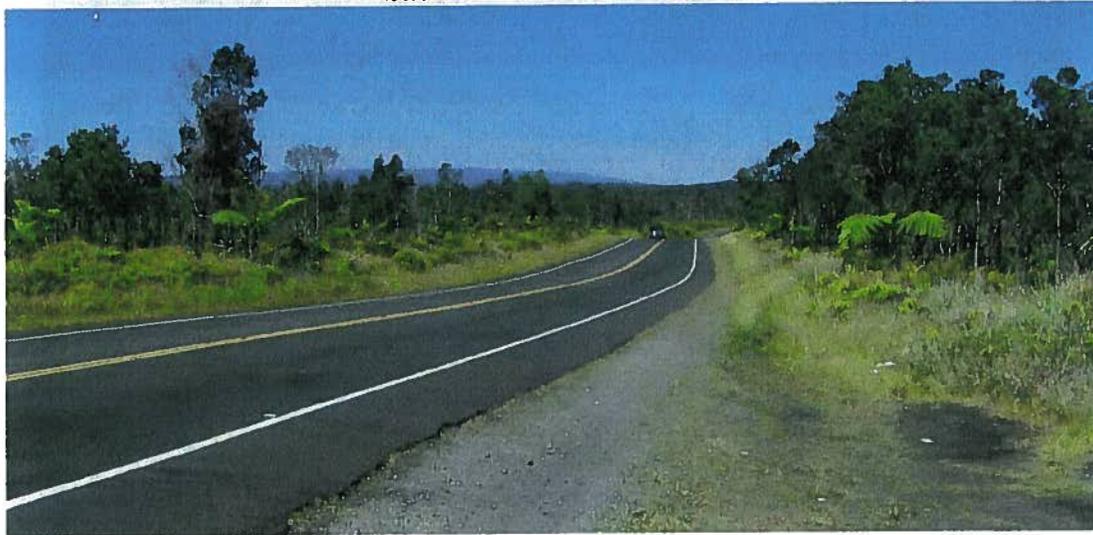


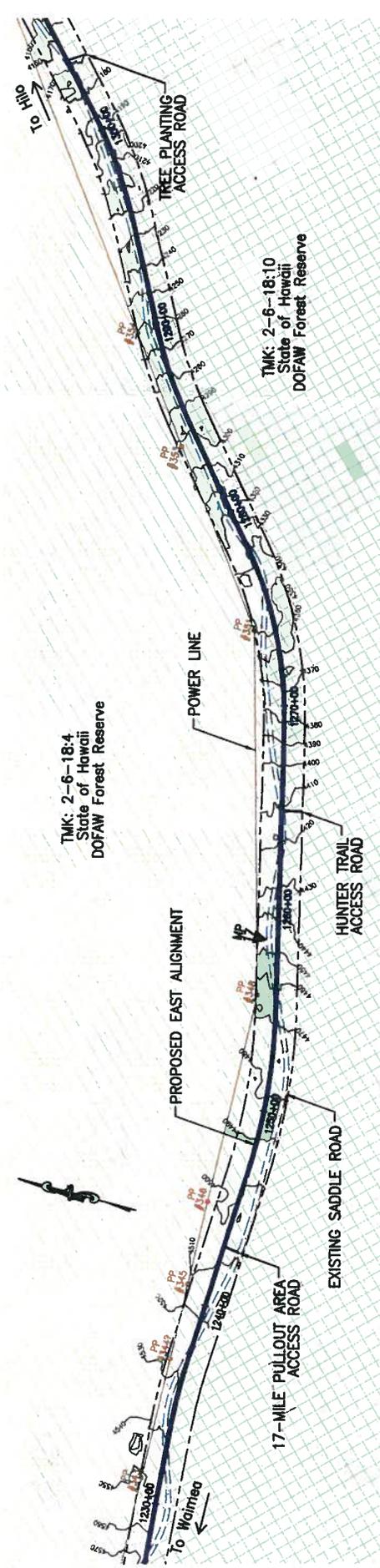
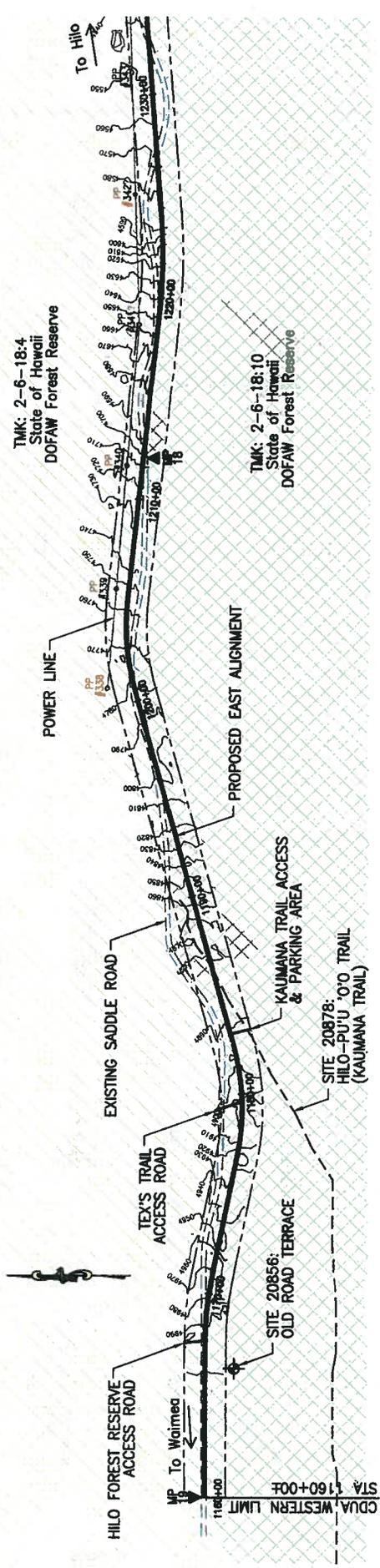
Photo Figure 3
Saddle Road Near MP 15



Photo Figure 4
Saddle Road Near MP 18



STATE	HI	PROJECT NO.	HI 200(0)
SADDLE ROAD PROJECT		DATE	



LEGEND

	PROTECTIVE
	RESOURCE

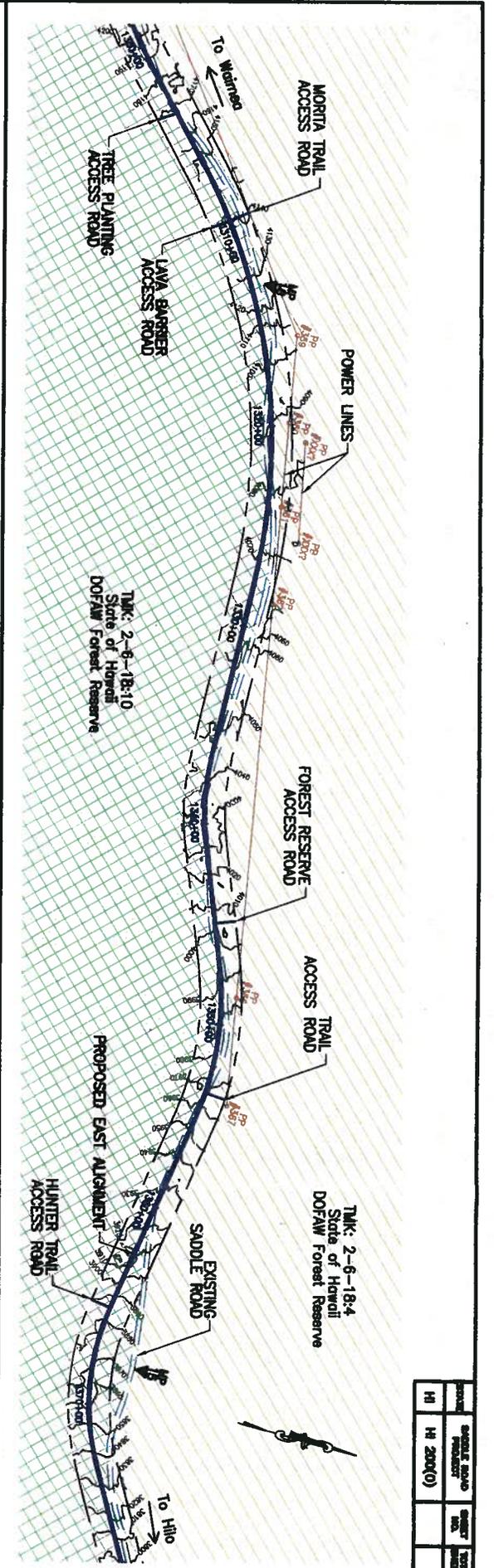
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	PROPOSED ROW
	EXISTING SADDLE ROAD
	EXISTING TRAILS
	EXISTING POWER POLE/LINE

SCALE: 1" = 500'

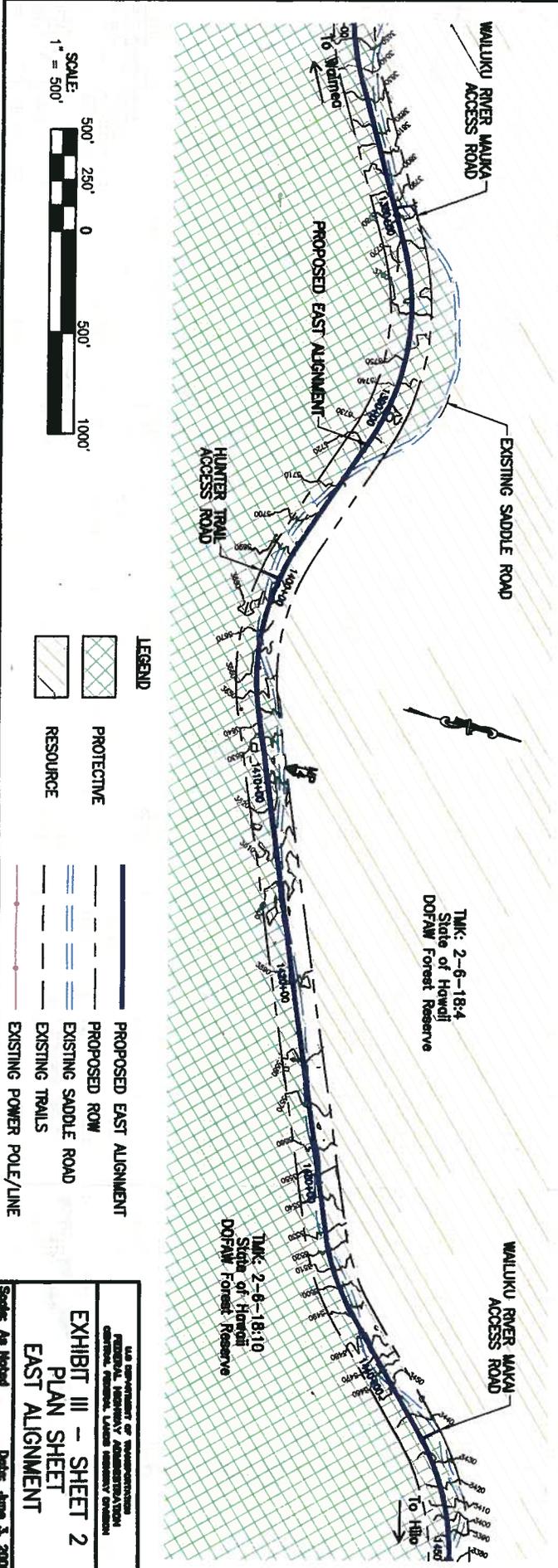
EXHIBIT 3

EXHIBIT III - SHEET 1
PLAN SHEET
EAST ALIGNMENT

Scale: As Noted Date: June 3, 2008



PROJECT	SCALE	DATE
HI	HI 2000(0)	



LEGEND

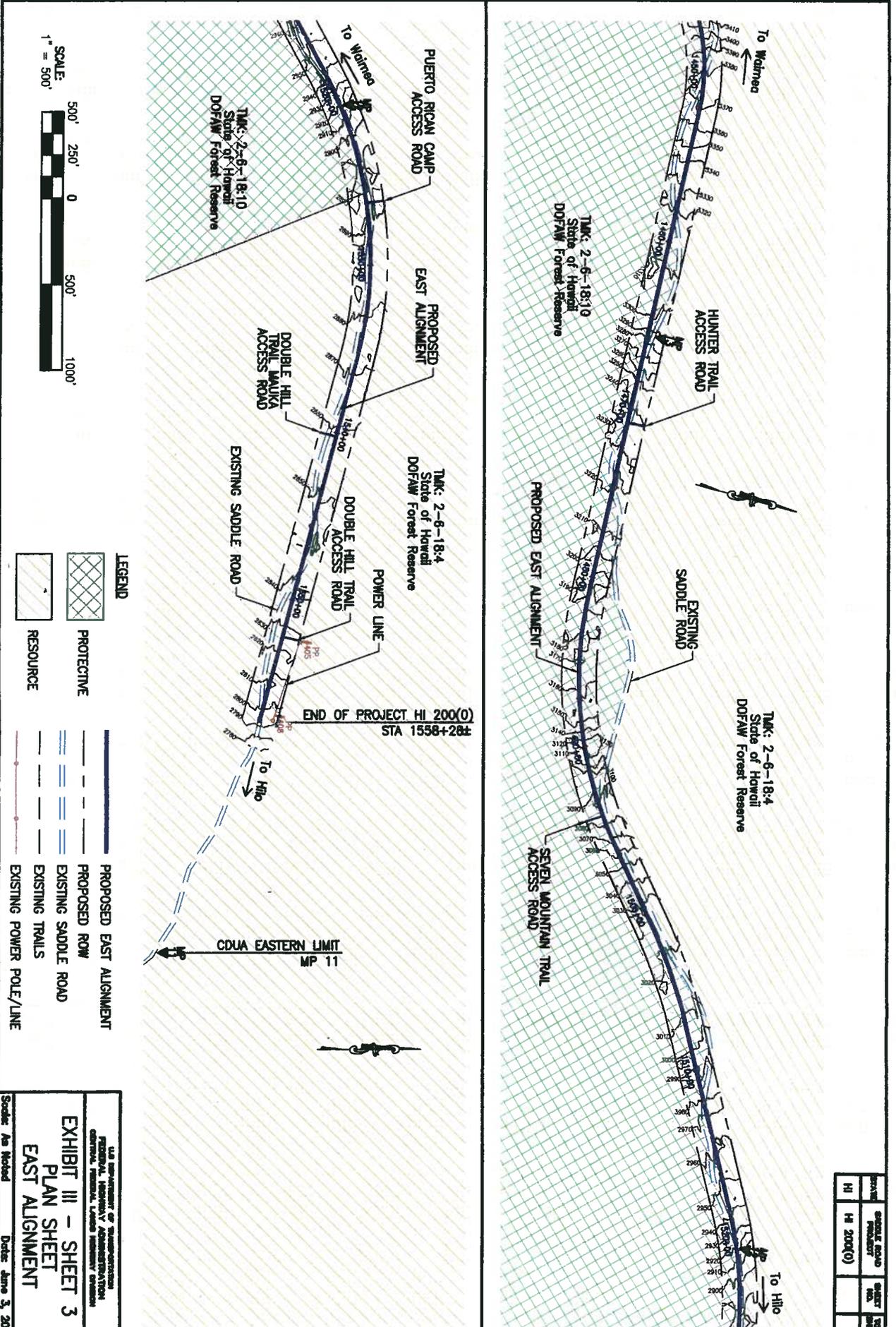
	PROTECTIVE
	RESOURCE

	PROPOSED EAST ALIGNMENT
	PROPOSED ROW
	EXISTING SADDLE ROAD
	EXISTING TRAILS
	EXISTING POWER POLE/LINE

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LAND RESERVE DIVISION

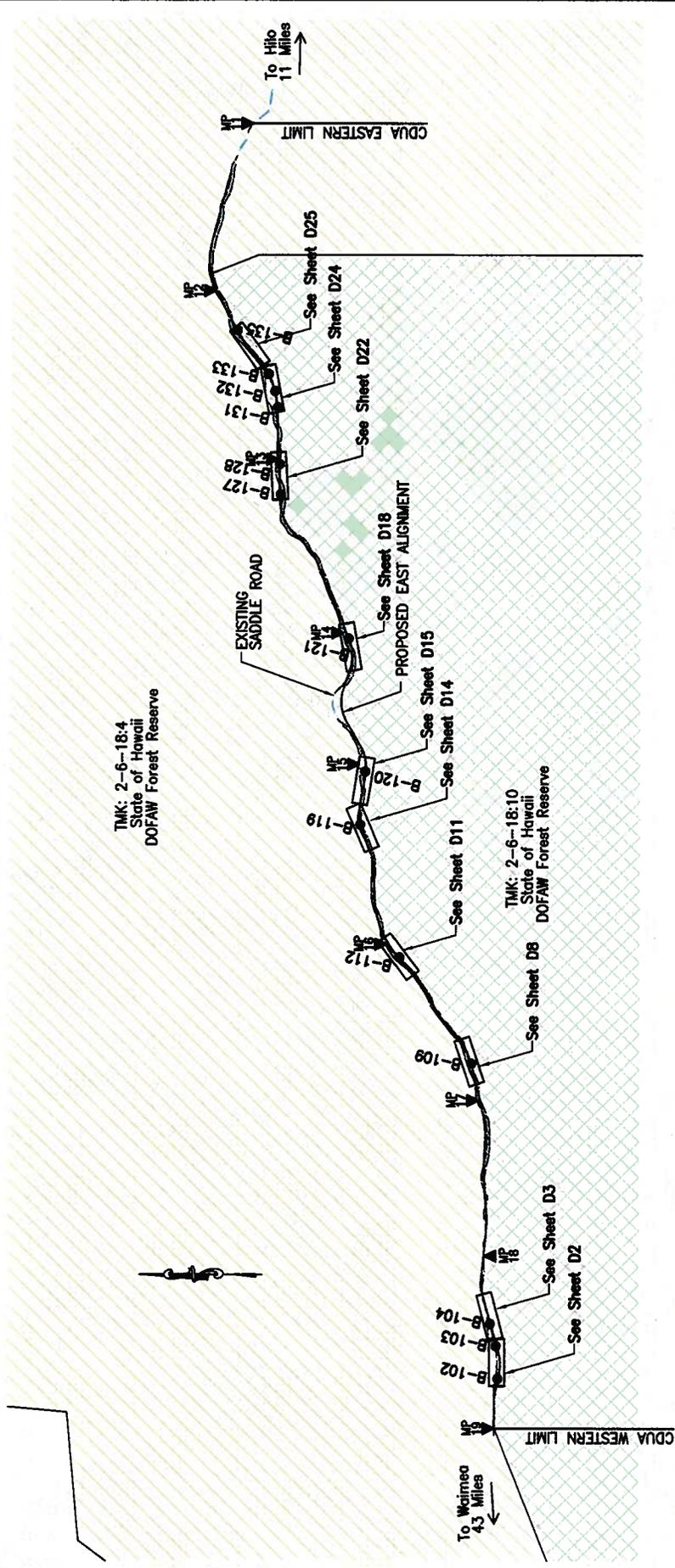
EXHIBIT III - SHEET 2
PLAN SHEET
EAST ALIGNMENT

Scale: As Noted Date: June 3, 2009



STATE	SHEET ROAD	SHEET NO.
HI	HI 200(0)	

STATE	SADDLE ROAD PROJECT	SHEET NO.	TOTAL SHEETS
HI	HI 200(0)		



U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LADES HIGHWAY DIVISION

EXHIBIT A BORING LOCATION KEY MAP

Scale: As Noted Date: June 3, 2008

LEGEND

- PROTECTIVE (Cross-hatched pattern)
- RESOURCE (Diagonal hatched pattern)
- PROPOSED EAST ALIGNMENT (Solid blue line)
- EXISTING SADDLE ROAD (Dashed blue line)
- B-102 BORING LOCATION (Black dot)



EXHIBIT 4

M:\proj\lennie\208041\CDUA\Exh.3-sheets.dwg

STATE	HI	HI SR 20012	D2	229
PROJECT	ROADWAY PLAN & PROFILE			

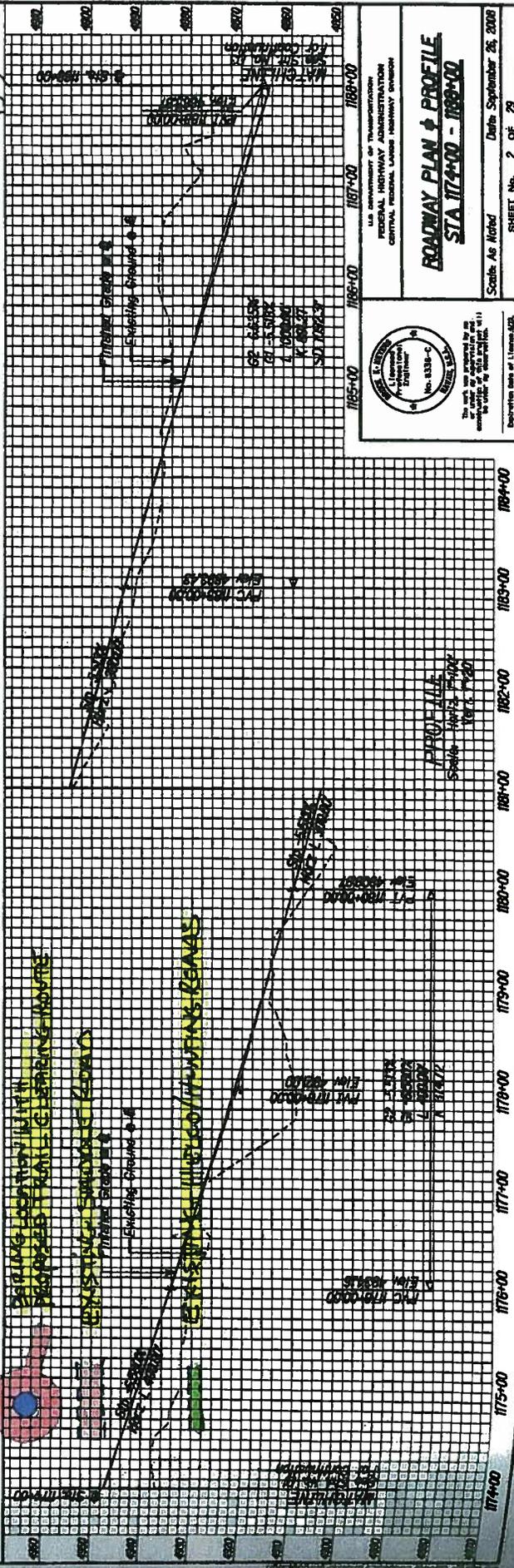
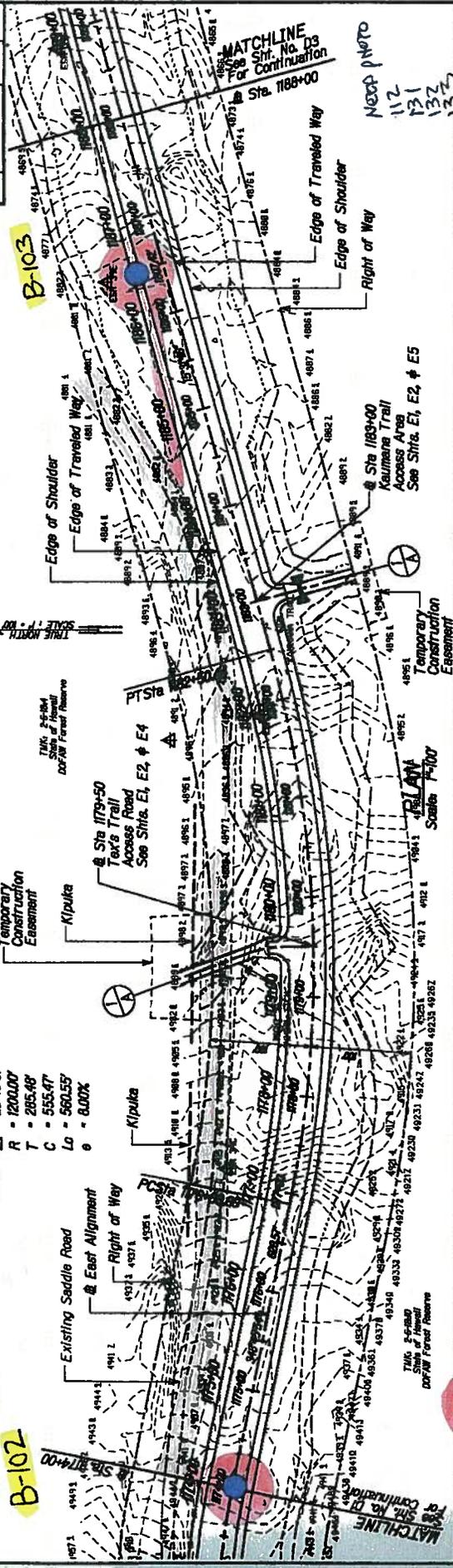
KAILUA-KONA 1-10-10

EAST & CURVE DATA

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- $T = 285.48'$
- $C = 555.47'$
- $L_c = 560.53'$
- $\theta = 0.00\%$

B-102

B-103



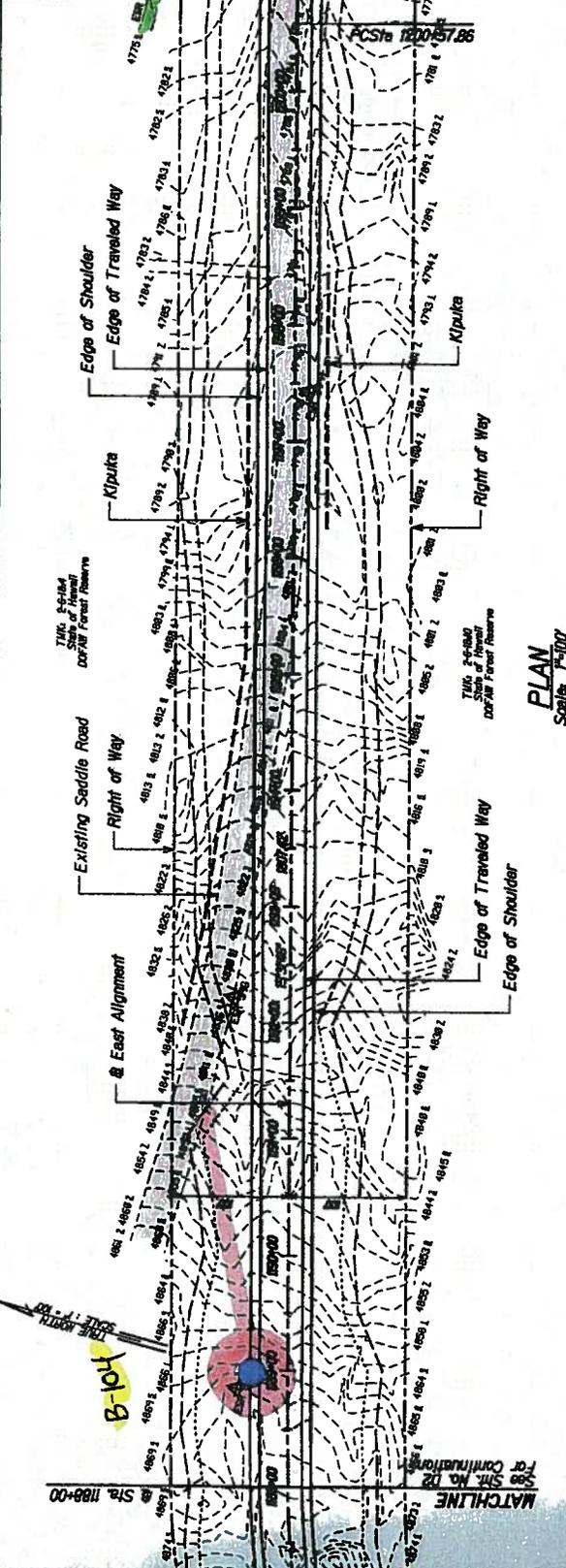
U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL REGIONAL OFFICE
 HONOLULU, HAWAII

ROADWAY PLAN & PROFILE
STA 1174+00 - 1188+00

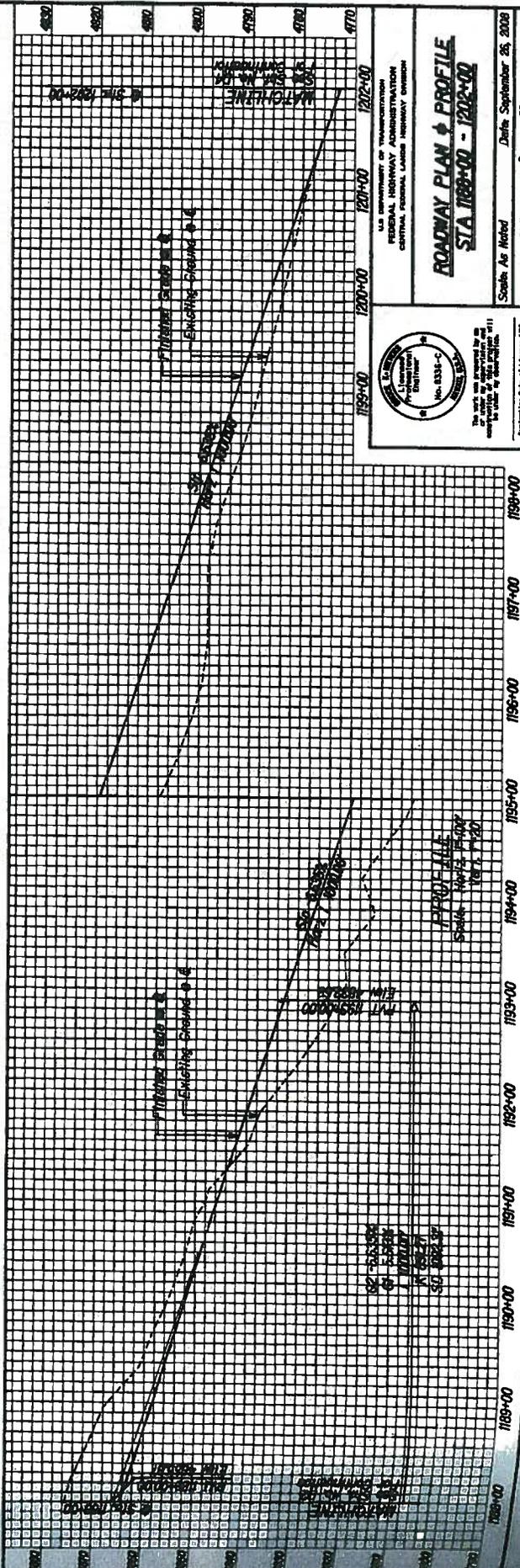
Scale As Noted Date September 26, 2009
 SHEET No. 2 OF 29

D2

STATE	HI	HI SR 200(2)	CD	TOTAL SHEETS
PROJECT				029



PLAN
Scale 1"=100'



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LAIDERS HIGHWAY DIVISION

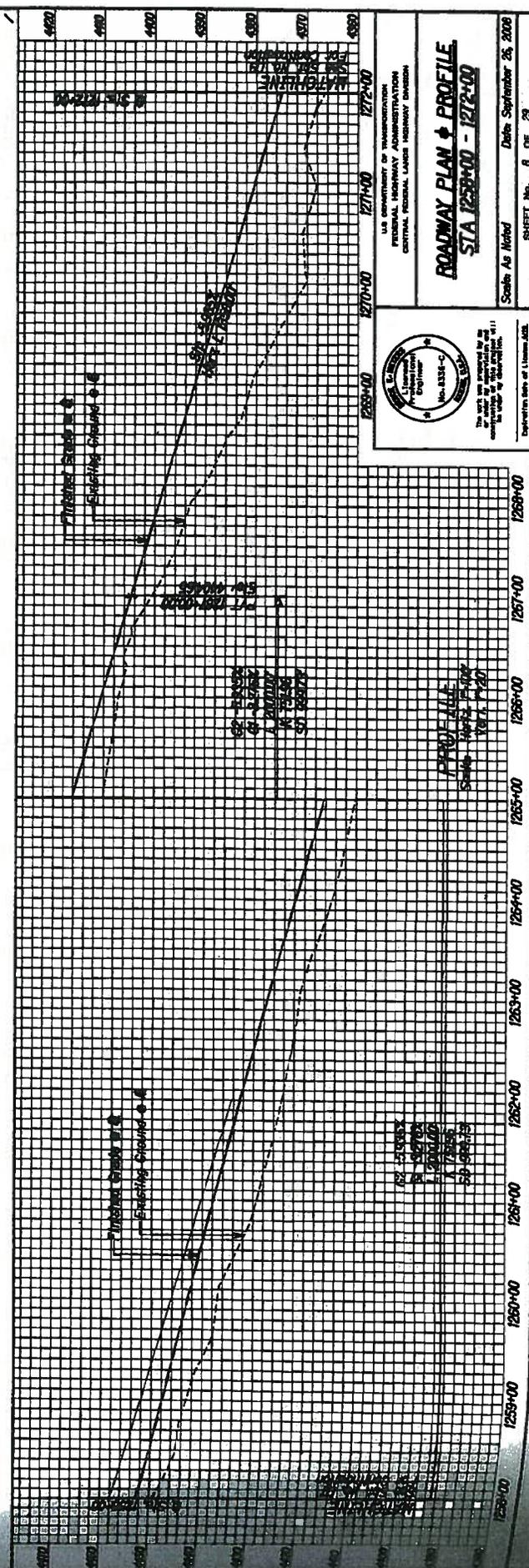
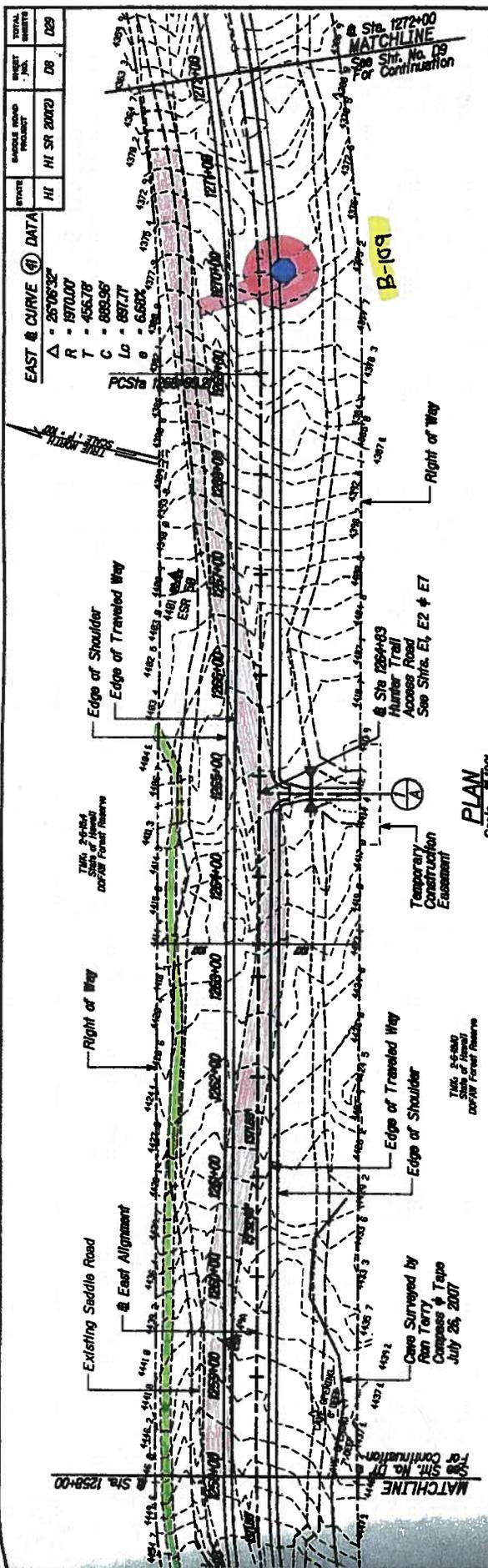
ROADWAY PLAN & PROFILE
STA 1188+00 - 1202+00

Scale As Noted
Date September 25, 2008
SHEET No. 3 OF 29

DATE	HI	HI SR 20072	DB	028
SINGLE ROAD PROJECT				
TOTAL SHEETS				

EAST & CURVE DATA

$\Delta = 2670832'$
 $R = 1970.00'$
 $T = 456.78'$
 $C = 888.96'$
 $Lc = 887.71'$
 $e = 3.28'$



U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LAUREL HIGHWAY DIVISION

ROADWAY PLAN & PROFILE
STA 1258+00 - 1272+00

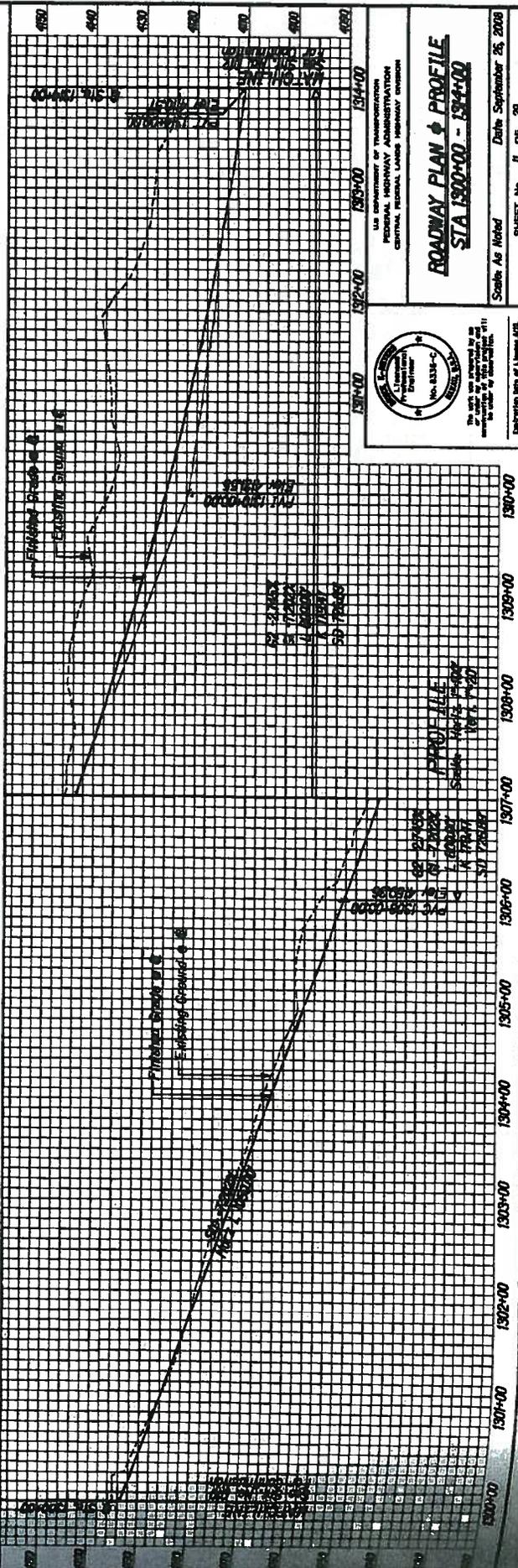
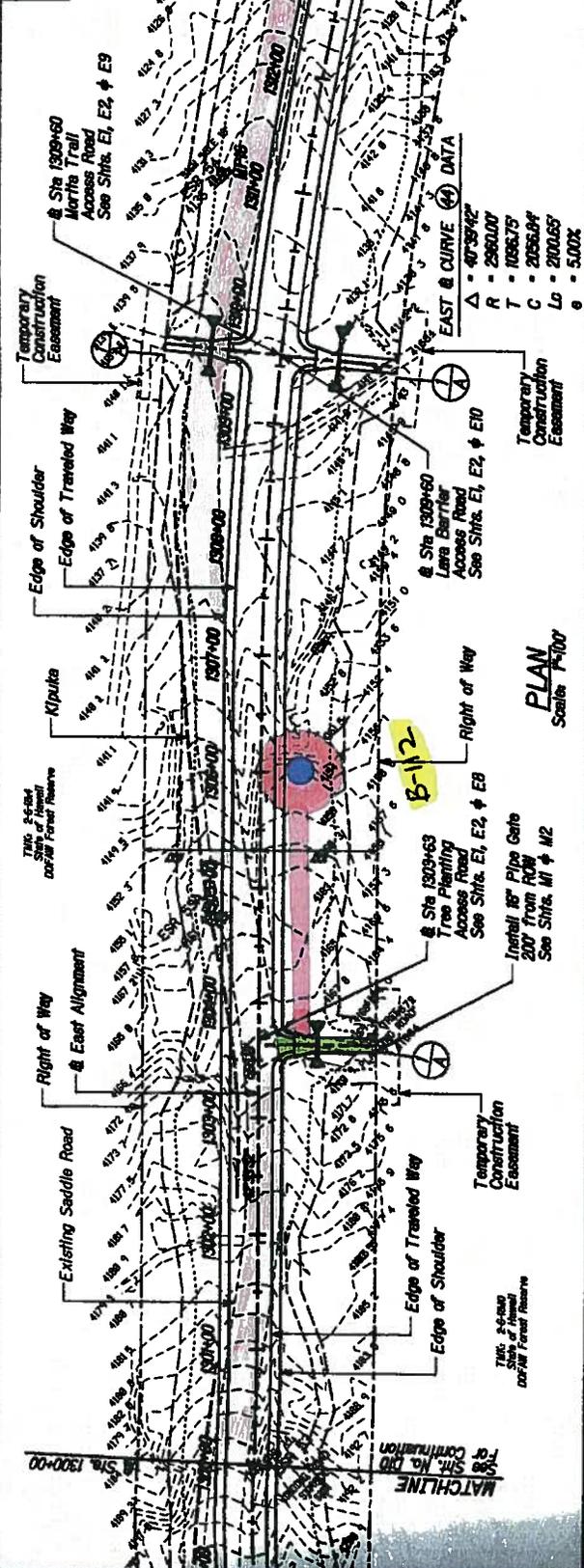
Scale As Noted Date September 25, 2008
 SHEET No. 6 OF 29

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LAUREL HIGHWAY DIVISION

ROADWAY PLAN & PROFILE
STA 1258+00 - 1272+00

Scale As Noted Date September 25, 2008
 SHEET No. 6 OF 29

STATE	HI	HI SR 200(2)	DR	029
DATE				



U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

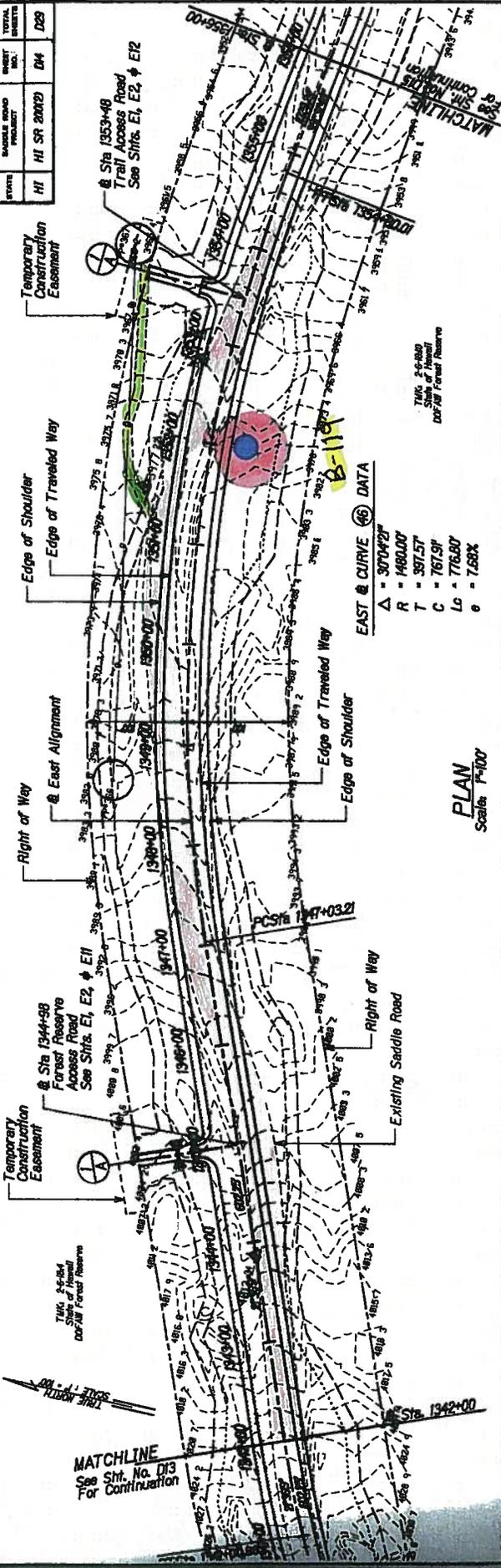
ROADWAY PLAN & PROFILE
STA 1300+00 - 1309+00

Scale As Noted Date September 25, 2008
 SHEET No. II OF 29

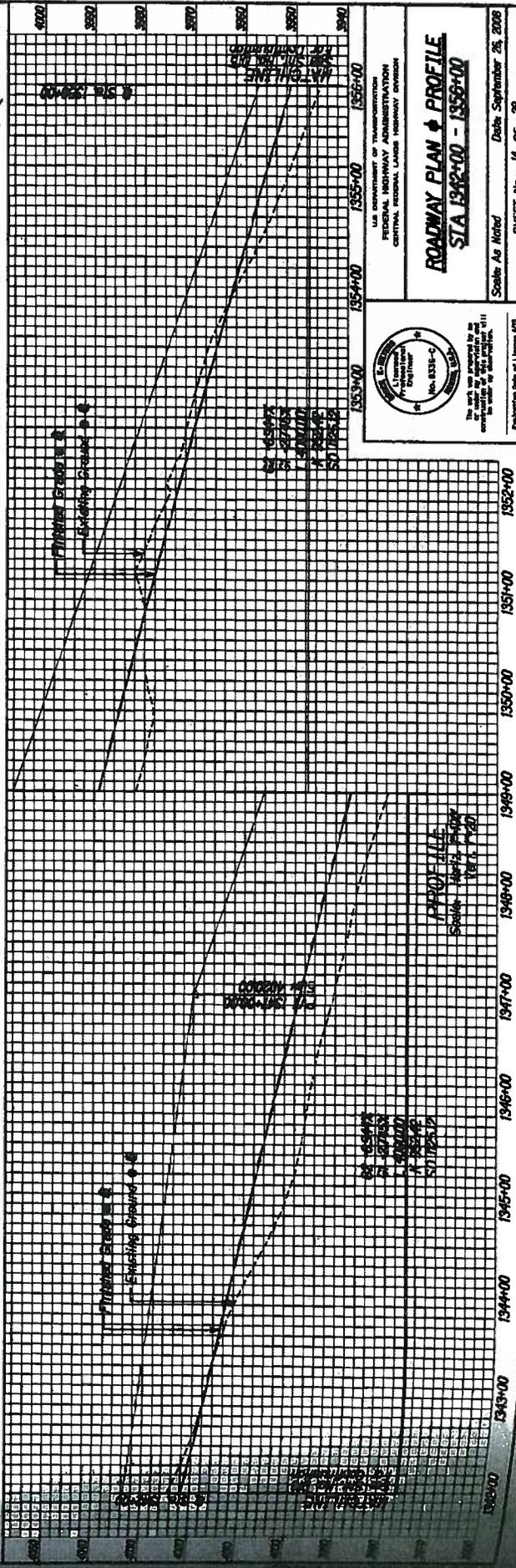
NO. 4435-C
 THE DATA WAS PREPARED BY AN
 ENGINEER REGISTERED IN THE STATE OF
 HAWAII UNDER LICENSE NO. 1111

DEPARTMENT OF TRANSPORTATION

DATE	BY	REVISION
HI	HI SR 2007D	D4
		D29



PLAN
 Scale: 1"=100'



The work was prepared by me or under my direct supervision and I am a duly Licensed Professional Engineer in the State of Michigan.

T.M.K. # 1-104
 State of Michigan
 No. 8331-C

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LABORATORY DIVISION

ROADWAY PLAN & PROFILE
STA 1342+00 - 1356+00

Scale As Noted Date September 26, 2008
 SHEET No. 14 OF 29

STATE	HI	HI SR 2002	DIS	D29	TOTAL SHEETS
					DIS

EAST & CURVE DATA

$\Delta = 39^{\circ}03'57''$

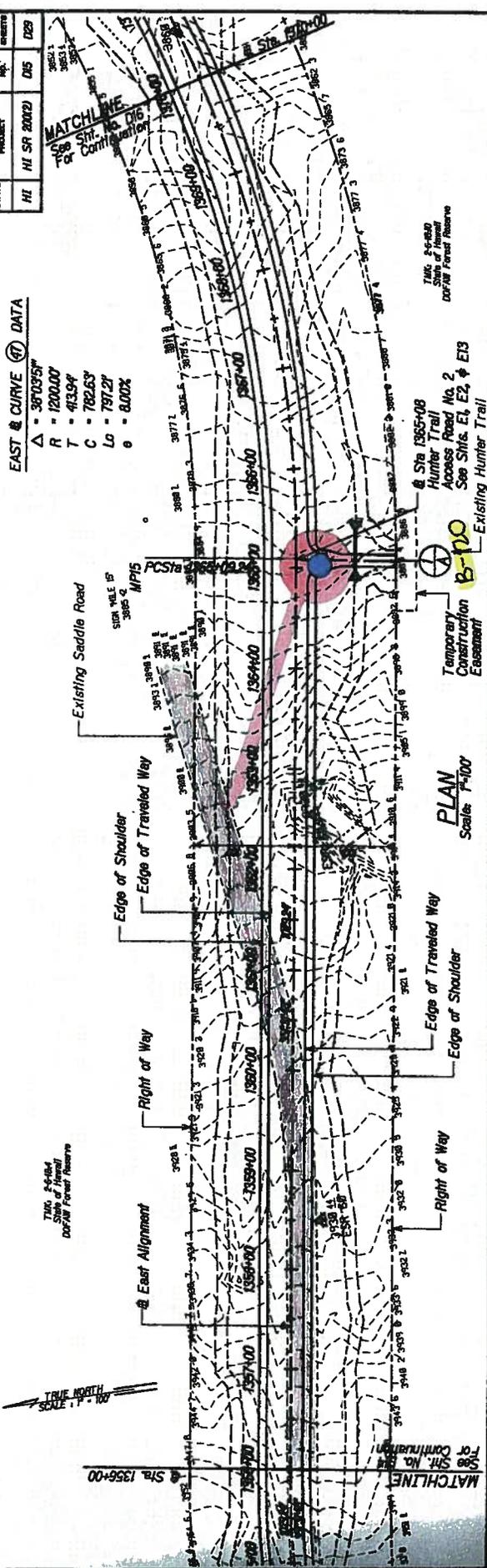
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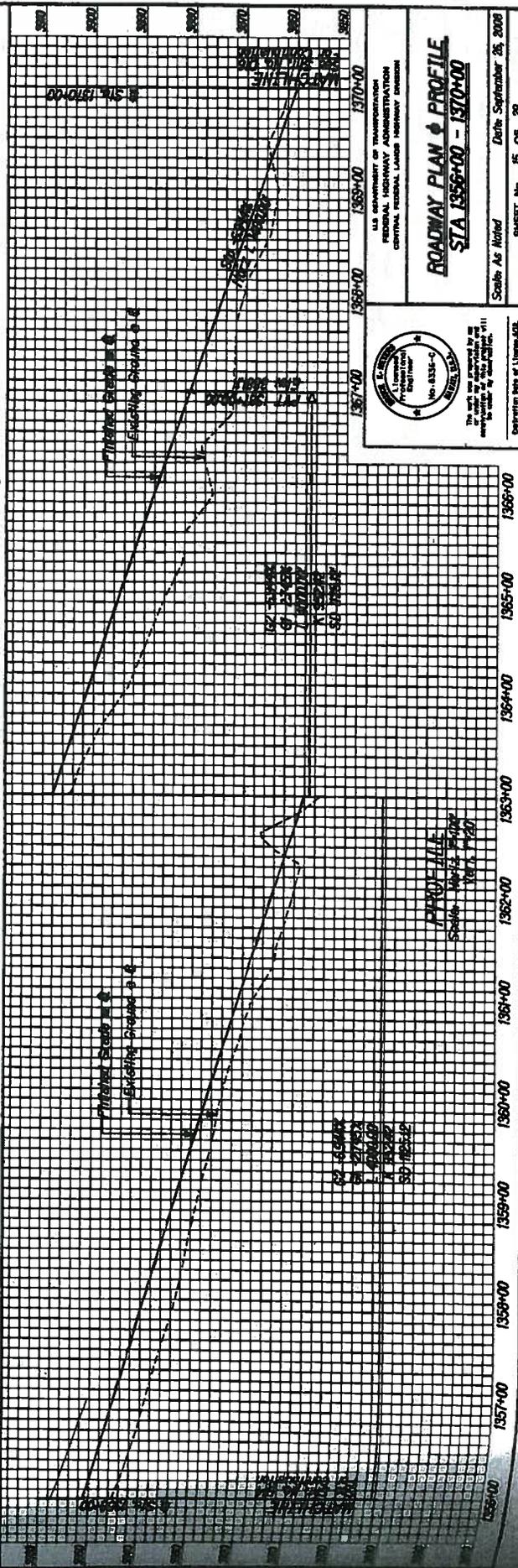
$C = 782.63'$

$Lc = 797.27'$

$e = 8.00\%$



PLAN
Scale: 1"=100'



PROFILE
Scale: 1"=40' Vert. 1"=20' Hor.



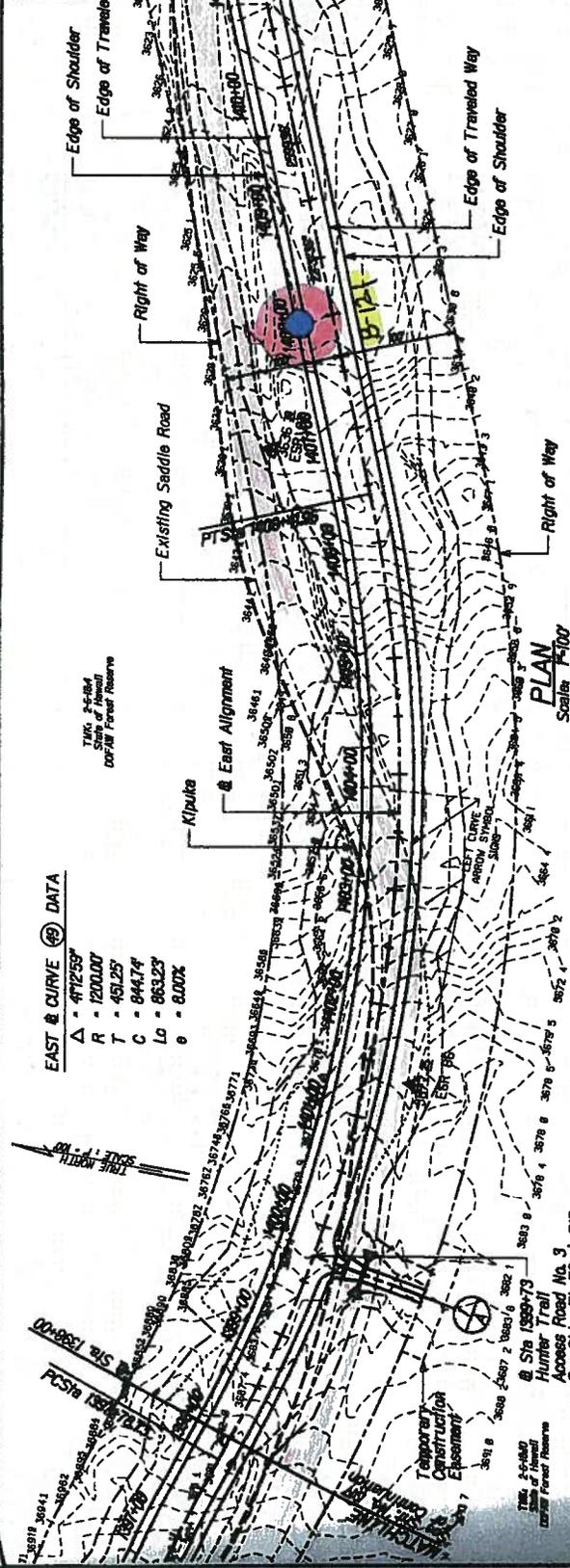
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CENTRAL REGIONAL LABORATORY DIVISION

ROADWAY PLAN & PROFILE
STA 1356+00 - 1370+00

Scales As Noted Date: September 25, 2000
SHEET No. 15 OF 29

D15

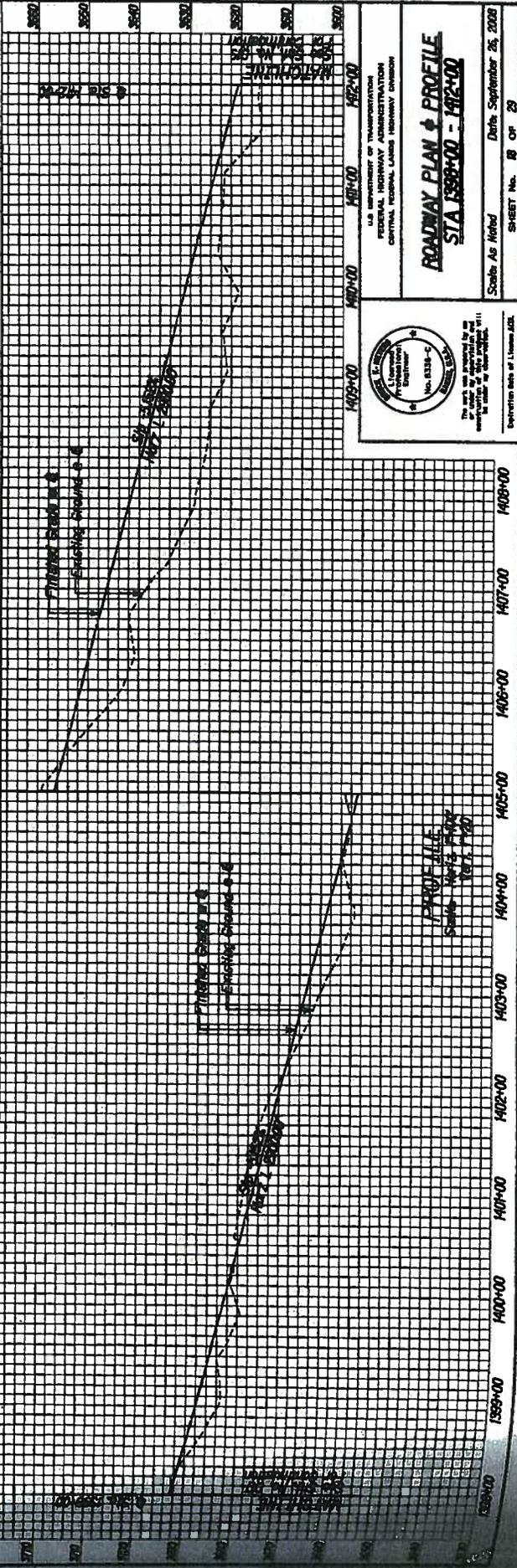
REVISION	DATE	BY	CHK
HI	HI SR 2002D	DBB	DBB
TOTAL SHEETS			DBB



EAST & CURVE DATA

$\Delta = 471259'$
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 $T = 451.25'$
 $C = 844.174'$
 $L = 863.23'$
 $e = 8.00\%$

PLAN
Scale: 1"=100'



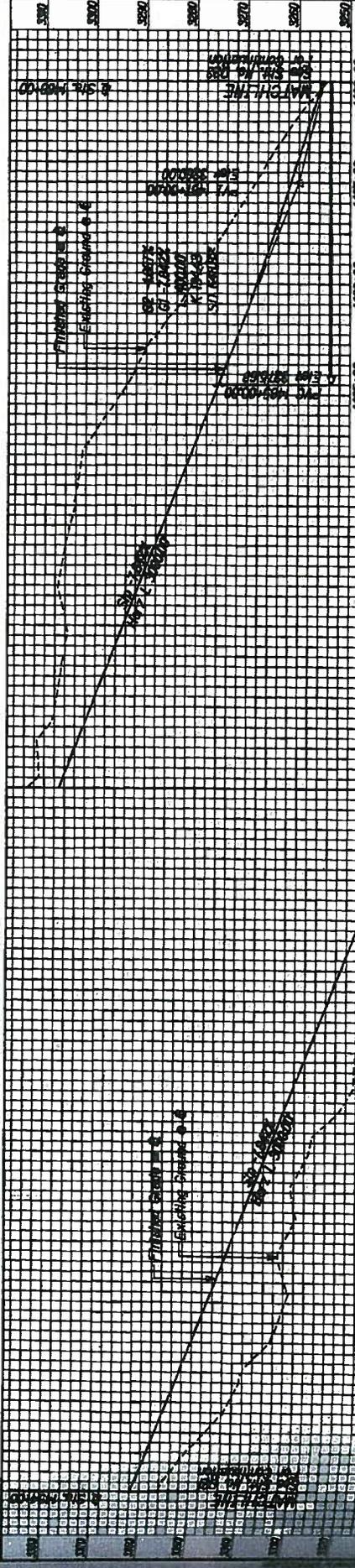
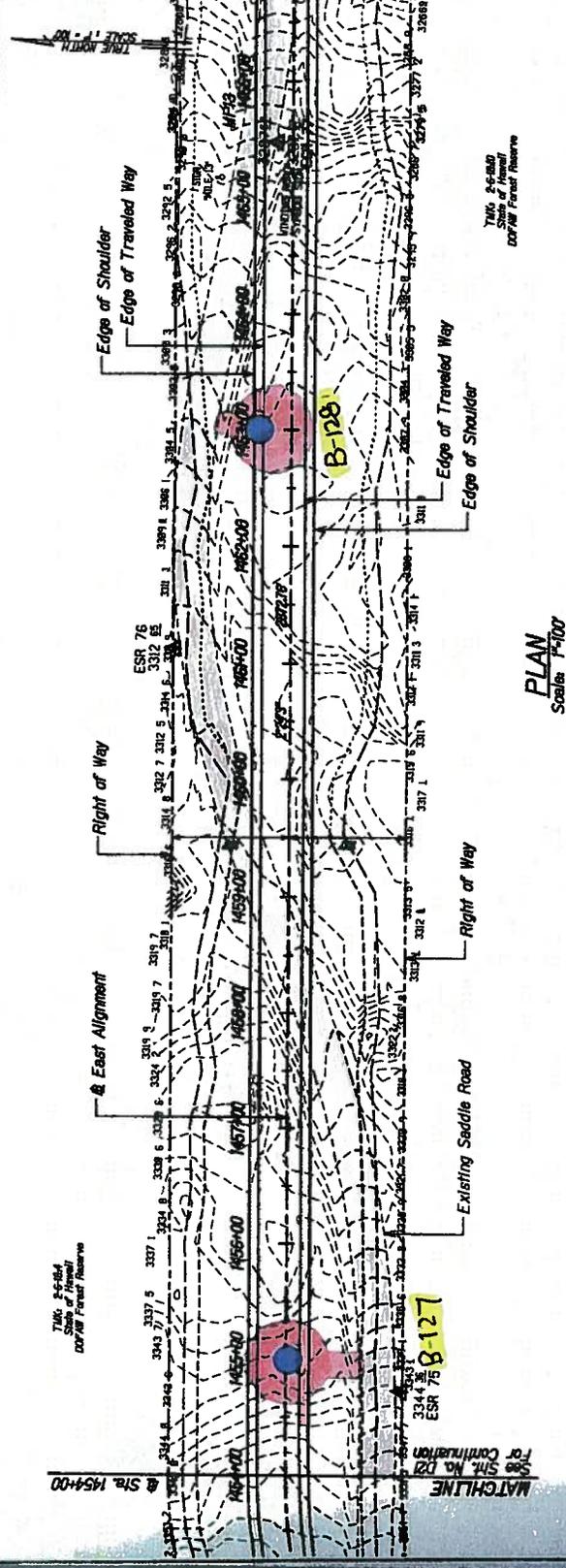
U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

ROADWAY PLAN & PROFILE
 STA 1399+00 - 1412+00

Scale: As Shown Date: September 25, 2002
 SHEET No. 18 OF 23

D18

STATE	HI	HI SR 200(2)	SHEET NO.	D22	TOTAL SHEETS	D29
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The work was prepared by me or under my direct supervision and I am a duly licensed Professional Engineer in the State of Hawaii.

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

ROADWAY PLAN & PROFILE
STA 1454+00 - 1468+00

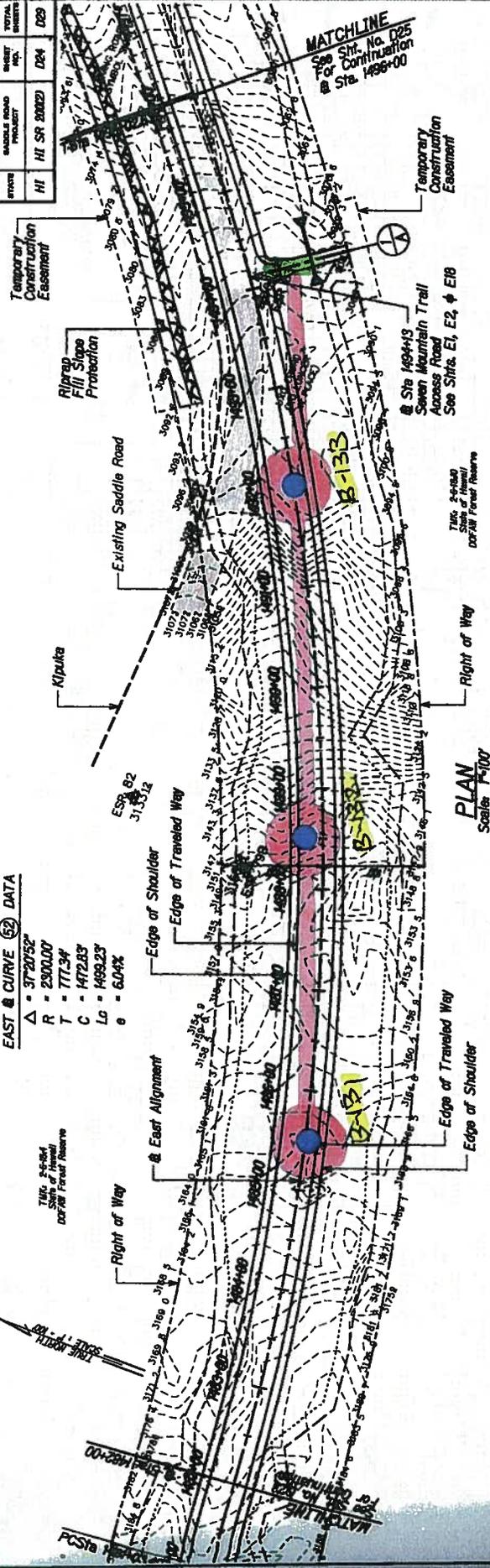
Scale As Noted Date September 26, 2009
 SHEET No. 22 OF 29

D22

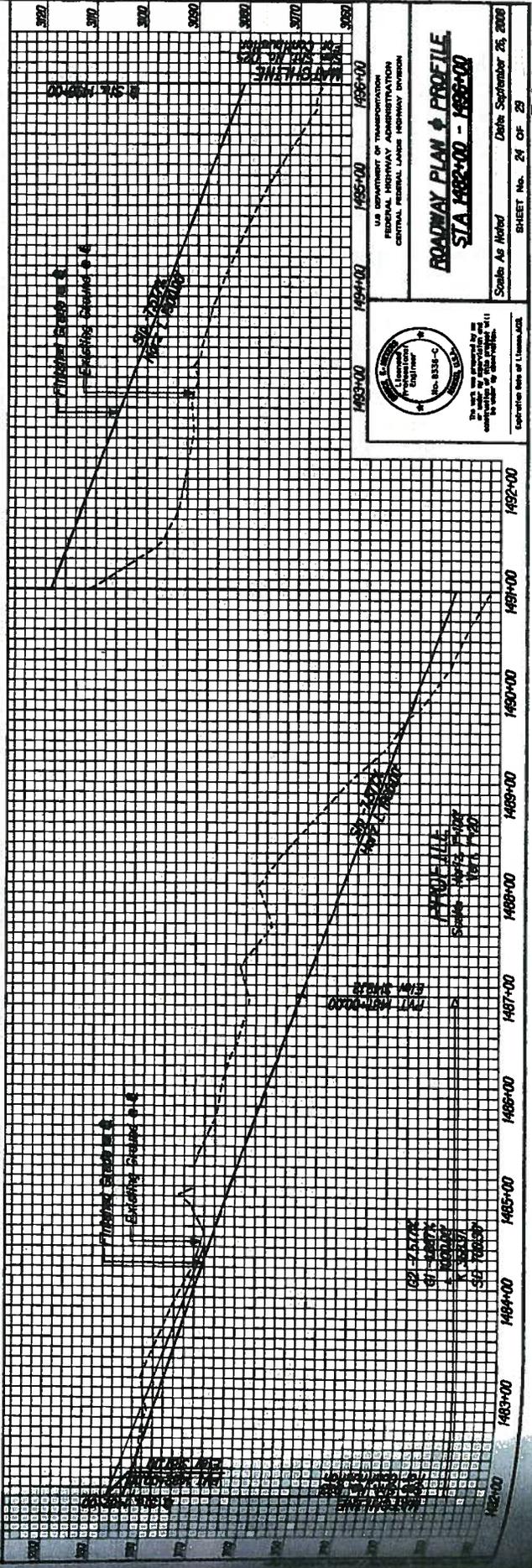
EAST & CURVE DATA

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 $Lc = 1499.23'$
 $e = 6.04\%$

TUG 3464
 South of Inverell
 DEFER Forest Reserve



PLAN
Scale: 1"=100'



This work was prepared by me
 or under my supervision and I
 am a duly Licensed Professional
 Engineer in the State of Illinois.

Expiration Date of License: 02/28

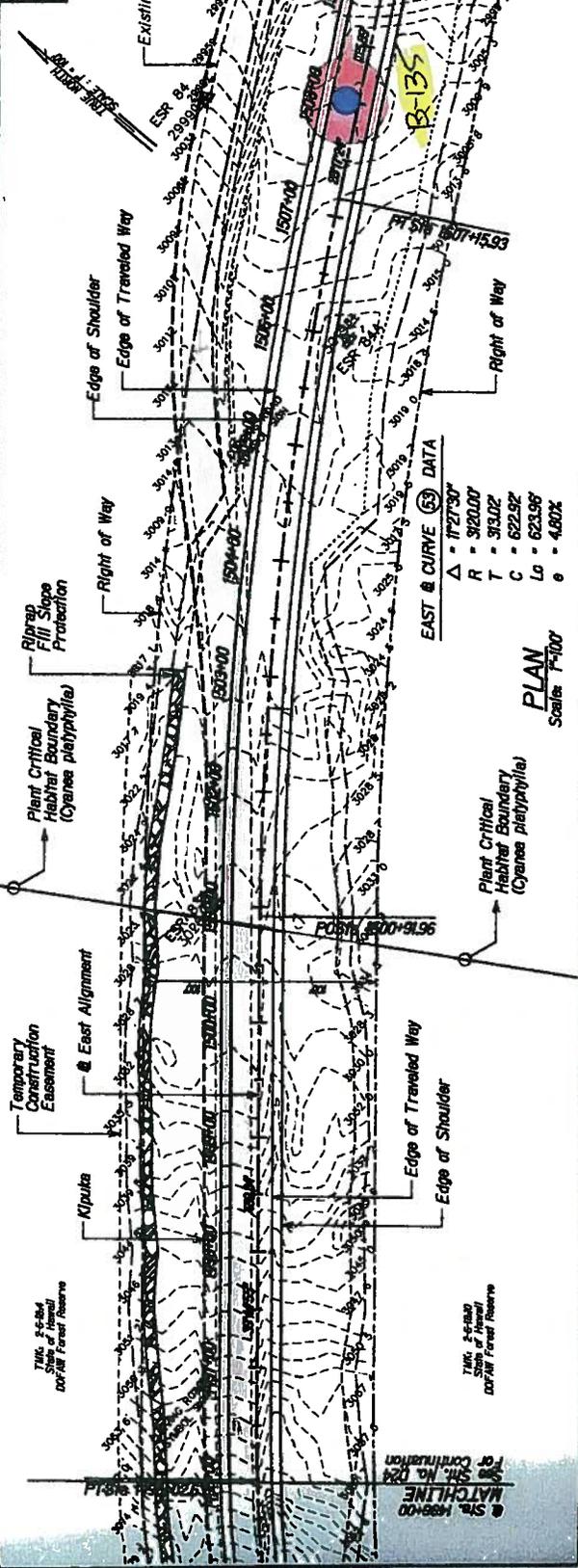
U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

ROADWAY PLAN & PROFILE
STA 1482+00 - 1496+00

Scale: As Indicated
 Date: September 25, 2003
 SHEET No. 24 OF 29

D24

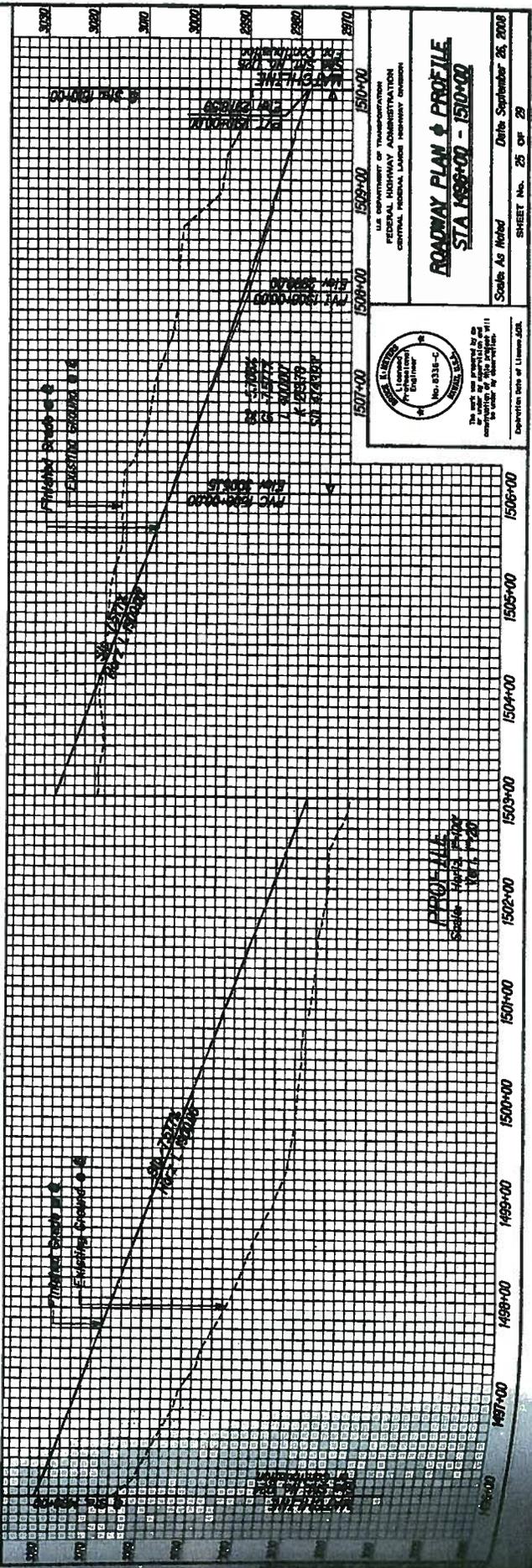
STATE	HI	HI SR 200(2)	025	029
PROJECT	SHAWNEE ROAD PROJECT			
SHEET NO.	TOTAL SHEETS			



EAST & CURVE DATA

$\Delta = 1121.50'$
 $R = 3120.00'$
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 $C = 622.92'$
 $Lc = 623.96'$
 $e = 4.80\%$

PLAN
Scale: 1"=100'



U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

ROADWAY PLAN & PROFILE
 STA 1498+00 - 1507+00

Scale: As Noted Date: September 25, 2002
 SHEET No. 25 OF 29

Division: State of Louisiana