

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i
December 9, 2011

**BOARD OF LAND AND
NATURAL RESOURCES
STATE OF HAWAII
HONOLULU, HAWAII**

REGARDING: Conservation District Use Application (CDUA) HA-3601

APPLICANT: Muhammad Yunis, Yunis Family Trust

AGENT: Ron Terry, Geometrician Associates

LOCATION: Pepe'ekeo, South Hilo, County of Hawai'i

TMK: (3) 2-8-008:100 (por.)

AREA OF PARCEL: 38.25 acres

AREA OF USE: 4.25 acres

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE:

The project site is located in Pepe'ekeo within the *ahupua'a* of Makaanahaloa, district of South Hilo, Island of Hawai'i (**exhibit A**) in which the majority of existing land use is agricultural practices including cattle grazing and farming. The project site is located in the South Pepe'ekeo Point Subdivision and consists of a 38.25 acre parcel (parcel 100) owned by Continental Pacific, LLC which lies within the Conservation and Agricultural Districts. Continental Pacific, LLC provided authorization (licensing) to the Yunis Family Trust to create pasture lands on a portion of parcel 100. The Yunis Family Trust also has an interest in adjacent parcels that lie in the agricultural district as they currently maintain agricultural uses and a residence.

Parcel 100 is bounded by the shoreline cliffs on the (*makai*) eastern side, private property on the south (Hilo) side and the applicants lots on the western (*mauka*) side (**exhibit B**). The majority of the surrounding parcels are vacant land which consists of flat, pasture-type geomorphology.

Resource and Environment

The vegetation at the project site has been severely impacted or heavily degraded by traditional farming, sugar cane plantation practices and grazing of livestock. Reconnaissance of the site revealed there were no trace of indigenous or native vegetation at the project site which consists

of pasture grasses and shrubs. Dominant grasses include Hilo grass (*Paspalum conjugatum*) Guinea grass (*Panicum maximum*) and goosegrass (*Eleusine indica*). Trees located near the project site include only the non-native ironwood (*Casuarina equisetifolia*), coconut and banyan. No plants listed as threatened or endangered were observed at the project site.

There were no native fauna observed at the project site, only the common Myna (*Acridotherus tristis*) and the Northern Cardinal (*Cardinalis cardinalis*) were reported. No woody vegetation tall enough to support native species, such as the Hawaiian Hoary Bat, was found on site. A survey of the avifaunal and feral mammal species concluded that none are listed on the federal or State of Hawai'i endangered species list; similarly no water birds were detected or seen in the project area.

Culture, Architecture and Archeology

Cultivation of sugar has completely decimated any evidence of historical land uses at the project site although some remnants of an old flume are still visible in the excavated terrain. An archeological assessment previously conducted for a subdivision of lots, that included parcel 100, concluded that over a century of sugar cane cultivation and recent grubbing and grazing practices have removed any traces of historical or archeological sites. The closest historical sites are Chinese and Japanese cemeteries located approximately 1-mile northwest of the project site.

Research into current land use in the vicinity of the project site reveals that the coastal gathering of *opihi* and sea urchins, along with net and shoreline fishing, still occurs. An existing 10-foot wide public pedestrian access *makai* of the project site is currently in use to provide public access to the top of the sea cliffs. Various rope ladders and steps currently provide public access down to the rocky shoreline from the 10-foot wide easement.

PROPOSED USE:

The applicant is proposing to fence in a 4.25 acre portion of parcel 100 (**exhibit B**) to increase the existing grazing area currently maintained by the Yunis Family Trust, to minimize the amount of imported hay and grasses necessary to sustain horses at this site. The proposed activity will also support the applicant's ability to keep the animals "at home" rather than at a costly off-site boarding facility. Animals will not be bred for commercial use and the proposed improvements will not be used for commercial activities. No more than (3) three horse will be kept on the 4.25 acres project site.

The applicant proposes to construct a 5-foot high, hog wire or chain-link fence approximately 1400-feet in length (**exhibit C**). The fencing is being emplaced to prevent trespassing on the subject property and for the safety of the animals. The fencing will be placed 10-feet *mauka* of the *mauka* edge of the 10-foot shoreline access easement. The fence will delineate two (2) separate "paddocks" within the project site. Each "paddock" will be a grazing area for the animals and will contain grasses appropriate for grazing purposes. The grazing pasture will be carefully fenced with minimal disturbance to the land. Forage seed may be planted periodically to support grazing practices which will reduce the need for imported hay and grass for feeding.

Management Plan

Manure from pasture areas and soiled bedding from the stalls will be collected bi-weekly and immediately transported by wheelbarrow to the applicant's agricultural area. The manure will be evenly spread around the trees and planters for fertilization purposes; all collected manure will be utilized for agricultural purposes and additional fertilizer will be purchased to fulfill the applicant's needs. The non-commercial garden area will contain orchard trees and vegetables and will be located on the applicant's adjacent agricultural property. Currently there are no manure removal protocols for the existing grazing cattle on site; the proposed use will greatly reduce the amount of manure that remains undisturbed at the project site.

The horses will be housed in a stable located off of the subject parcel in the Agricultural District lands currently owned by the Yunis Family Trust. The animals will be attended to twice-daily and will be cleaned, and watered before grazing in the new 'paddocks'. Grazing practices will alternate between 'paddocks' so that the land is not heavily damaged and will have sufficient time to re-grow using planted and re-seeded vegetation and grasses. Erosion will be minimized by alternating grazing between paddocks, and exposed areas will be immediately seeded. Water for the horses will be retained from an existing county water supply. Dr. Yunis is a veterinarian and will be on-hand for any concerns associated with the animals.

Reporting schedule:

The applicant shall be required to contact the Office of Conservation and Coastal Lands if, at any time, the shoreline access easement area becomes impassible due to shoreline erosion.

SUMMARY OF COMMENTS:

The Office of Conservation and Coastal Lands (OCCL) referred the application to the following state agencies for review and comment: DLNR - Engineering Division, Historic Preservation Division (SHPD), Land Division, Division of Forestry and Wildlife (DOFAW), The Hawaii Department of Health, the Office of Hawaiian Affairs; similarly the application was referred to the following county agencies: County of Hawaii Department of Water Supply and the County of Hawaii Planning Department and to the following community organizations: Island Transitions, LLC and the Pepe'ekeo Community Association.

Comments received from the following agencies have been summarized by staff as follows:

Office of Hawaiian Affairs (OHA)

OHA has no objections to the finding of no significant impact (FONSI). They advocate for the Best Management Practices that are discussed in the Environmental Assessment.

DLNR – Engineering Division

The project site is located in an area of Minimal Tsunami Inundation based on the Flood Insurance Rate Map (FIRM) classification system, which has no special regulations for development.

Applicant response: We acknowledge that the project is located in an area of Minimal Tsunami Inundation based on the FIRM classification system. We concur that this zone does not have special regulations for development.

DLNR - State Historic Preservation Division (SHPD)

No comments.

DLNR - Division of Forestry and Wildlife (DOFAW)

No comments.

DLNR - Hawai'i District Land Office (HDLO)

No comments.

County of Hawai'i - Planning Department

The office issued an amended Special Management Area (SMA) Use Permit (SMM-11-000173) to the applicant for the 4.25 acre portion of the subject parcel 100. Conditions of the amended SMA permit include:

- A. At no time shall the landowner or applicant restrict or impede access to the ten foot wide pedestrian access easement located on parcel 129 or the ten foot wide lateral public pedestrian shoreline access easement located on the subject property (parcel 100).*
- B. No land alteration, grubbing, landscaping, or construction activities, including but not limited to, the stockpiling of debris, construction materials or equipment, shall occur within the (40) forty foot shoreline setback area.*

Applicant response: We will comply with the conditions listed in the SMA permit (SMM-11-000173)

County of Hawai'i - Department of Water Supply

The subject parcel is currently allocated one (1) unit of water through an existing master water meter that service several lots in the area. The one (1) unit of water assigned to the parcel is limited to an average daily use age of 400 gallons and is suitable for only one single-family dwelling. The current water availability conditions in this area, which are subject to change without notice, may only allow (1) unit of water per pre-existing lot of record.

Applicant response: Please note that the applicant will not be requesting to install a water meter for the 4.25 acre license portion of the subject parcel. The applicant will be utilizing catchment for watering purposes.

Island Transitions, LLC

The presence of the 10-foot wide public access easement has been acknowledged by this group. They ask that a condition be placed into the authorization for moving the location of the fence *mauka* of the current location should coastal erosion effect the condition of the shoreline access area. This will ensure that the public access easement can also be moved *mauka* should the condition of the cliff deteriorate.

Applicant response: The applicant is agreeable to the condition listed above and it is included as part of the license agreement to utilize the property. The applicant requests that the Department of Land and Natural Resources (DLNR) or the County of Hawai'i – Planning Department (or another appropriate regulatory agency) advise the applicant that coastal erosion requires moving the public access to within the fenced area.

ANALYSIS:

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated *August 8, 2011* that:

1. The proposed use is an identified land use in the Conservation District Limited Subzone, pursuant to Hawaii Administrative Rules (HAR), §13-5-23, L-1, **AGRICULTURE (D-1)**, *Agriculture within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticulture crops, floriculture crops, or forest products, or animal husbandry. A management plan is also required; please be advised, however, that this finding does not constitute approval of the proposal;*
2. Pursuant to §13-5-40(a), HAR, *a public hearing will not be required; and*
3. In conformance with Chapter 343, Hawaii Revised Statutes, as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) is anticipated for the proposed project.

Notice of this CDUA and draft Environmental Assessment (EA) was published in the *September 8, 2011* issue of Environmental Notice. A Finding of No Significant Impact (FONSI) was published in the *November 8, 2011* Environmental Notice.

§13-5-30 CRITERIA:

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

- 1) *The proposed 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.

Staff is of the opinion that the proposed action will not negatively impact the natural resources of the area. The applicant found no historic and cultural resources, significant flora or faunal habitat and water resources on the subject parcel. The proposed fence will be constructed using minimal land modification in order to preserve the existing physical and environmental aspects of the subject area.

- 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 Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. Agriculture (with a management plan) is an identified land use within the Resource Subzone. The land on the subject parcel has historically been used for agriculture and the applicant has a management plan to insure sustained use of the land.

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

The County of Hawaii has granted a SMA minor permit (SMM #11-000173) for the specified land use. Staff believes that the use is consistent with the provisions and guidelines contained in HRS §205A.

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

Construction of the pasture fence will be confined to the area, licensed to the applicant, which is already in use as a grazing pasture and has been heavily altered. Therefore the proposed use will not adversely affect natural resources within the surrounding area, community or region.

The proposed use involves continued grazing practices in an area (including the subject parcel and surrounding parcels) that is not highly sensitive, in that it contains no native vegetation, streams or other water bodies, historic properties or resources important for gathering or other cultural purposes. Public shoreline access and lateral shoreline access will be maintained.

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

The proposed cattle fencing will be similar to fencing found on the subject and surrounding parcels which provide existing grazing areas. The applicants are planning to build a farm dwelling and barn on the adjacent agricultural parcels and the fencing will be compatible with, and supportive of, this use. As previously stated the adjacent public shoreline access and lateral access will not be impeded upon.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Although the pasture fence will be visible, it appears to be compatible with existing fencing on the subject parcel and surrounding properties. The use of existing pasture in the Conservation District will not be changed or disturbed.

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

The proposed project does not involve subdivision of Conservation District land.

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

Staff believes that the proposed project will not be detrimental to the public health, safety and welfare.

DISCUSSION:

The Yunis Family Trust is proposing to enclose 4.25 acres of pasture lands through a license with the property owners Continental Pacific, LLC who authorized the Yunis Family Trust to apply for the necessary permits to install fencing for livestock. The larger Parcel 100 is currently grazed by cattle and the Yunis Family Trust is also purchasing 8.9 acres of adjacent lands to build a single family residence, raise livestock and plant fruit and vegetables for personal use.

As the project is located adjacent to a 10-foot wide pedestrian access easement provided to the public to access the shoreline, a condition to move the fence, if major coastal erosion impacts the easement, is being recommended.

Construction activities would comply with applicable federal, State and County regulations and standards, and employ best management practices to minimize construction related impacts. Noise and air quality potential impacts will be mitigated through compliance with the Department of Health regulations.

In the unlikely event subsurface prehistoric deposits or human burials are inadvertently discovered during construction or land uses activities, such activities would be immediately suspended in the vicinity of the discovery and SHPD would be notified.

Since the project site is within an area where intense cultivation has altered the land and the current land use is grazing and agriculture staff believes that the no historic, archeological or natural resources will be affected by this proposal.

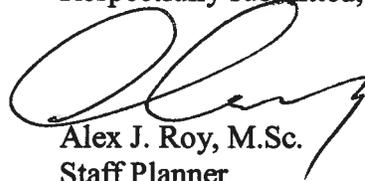
RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application for agricultural use consisting of the fencing of a 4.25 acre pasture for grazing purposes located in Pepe'ekeo, South Hilo, County of Hawai'i, portion of TMK: (3) 2-8-008:100, subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of HAR §13-5-42;
2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawai'i 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 permittee, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The permittee shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to HAR §11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 "National Pollutant Discharge Elimination System";
4. The permittee shall notify the Department and submit a proposal to move the fence mauka should coastal erosion threaten to impact the 10-foot wide shoreline access easement;
5. Before proceeding with any work authorized by the Department of the board, the permittee shall submit three copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Two of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
6. Unless otherwise authorized, 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; further, all work and construction of the infrastructure must be completed within three years of the approval. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
8. Best Management Practices (BMP) shall be used for the proposed project;
9. The permittee understands and agrees that this permit does not convey any vested rights or exclusive privilege;

10. In issuing this permit, the Department and Board have relied on the information and data that the permittee 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;
11. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided and minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral shoreline access, or pathways acceptable to the department;
12. Animal husbandry activities shall be limited to sustainable levels in accordance with good soil conservation and vegetation management practices;
13. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
14. 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 permittee shall immediately contact the State Historic Preservation Division;
15. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
16. Other terms and conditions as prescribed by the chairperson; and
17. Failure to comply with any of these conditions may render this Conservation District Use Permit (CDUP) null and void.

Respectfully submitted,



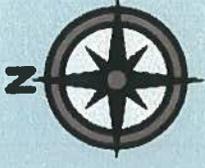
Alex J. Roy, M.Sc.
Staff Planner

Office of Conservation and Coastal Lands

Approved for submittal:

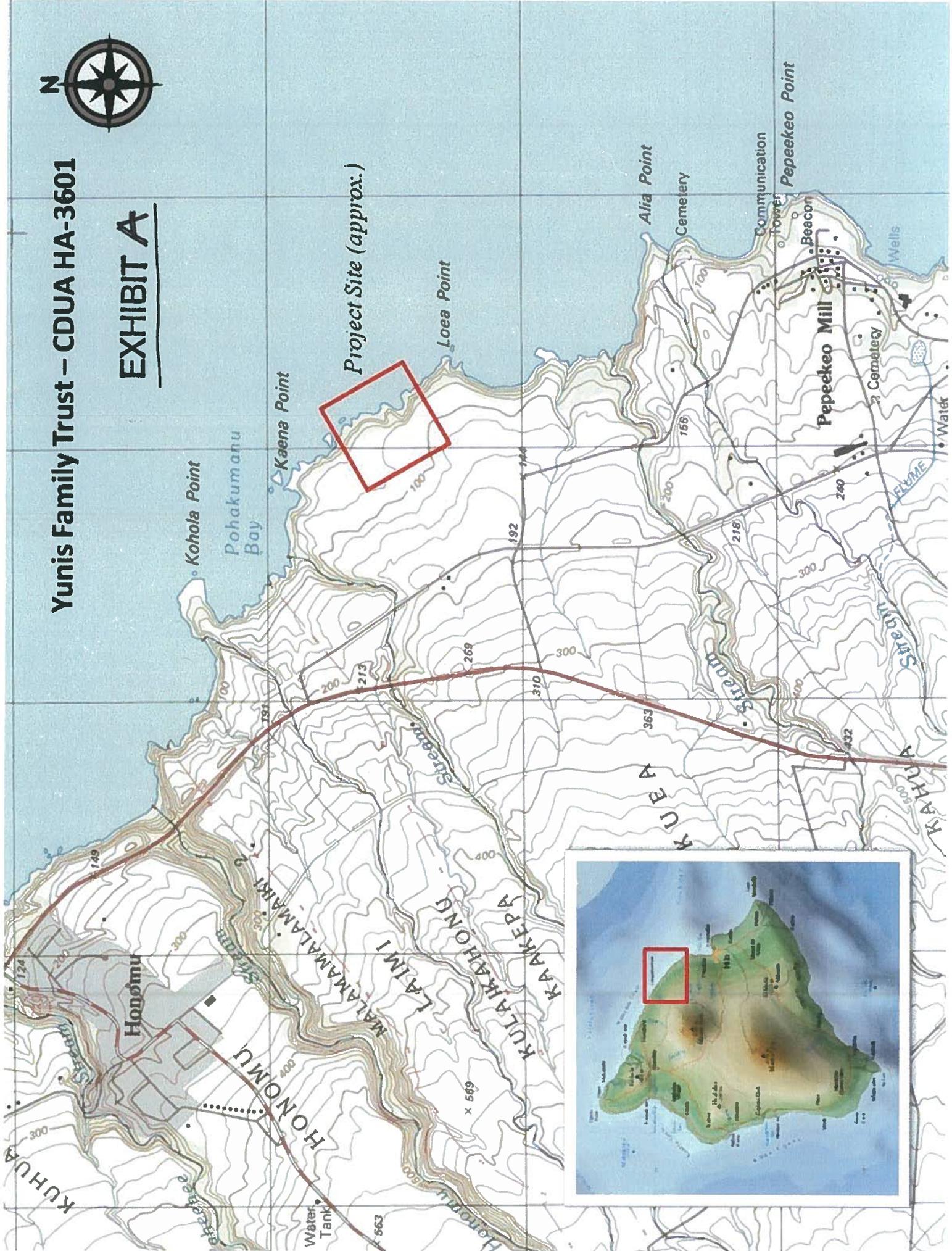


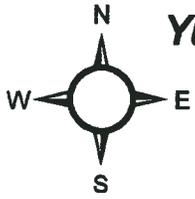
William J. Aila, Jr., Chairperson
Board of Land and Natural Resources



Yunis Family Trust – CDUA HA-3601

EXHIBIT A





Yunis Family Trust

This map is intended as a visual representation of Conservation District subzone designations; this map shall not be used for boundary interpretations or any other use beyond a visual reference.

Conservation District Resource Subzone

328008100
P. 100

Pedestrian Access Easement

Conservation District Resource Subzone

328008127
P. 127

Proposed Cattle Fencing

4.25 Acre Pasture

328008777

328008128
P. 128

EXHIBIT B

328008129

100

328008100
P. 100

328008110

328008130

Conservation District Resource Subzone

