

DOCKET NO. DR21-73
HONOIPU HIDEAWAY, LLC.
TMK Nos. (3) 5-6-001-074, Kapaa-Upolu, North Kohala,
County of Hawai`i, State of Hawai`i

**PETITION FOR DECLARATORY ORDER
FOR BOUNDARY INTERPRETATION
ON REMAND**

STAFF REPORT

ACTION MEETING
June 24, 2026



Daniel E. Orodener
Executive Officer

Submitted: June 18, 2026

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1. EXPLANATION OF THE PROCEEDING BEFORE THE LAND USE COMMISSION

This proceeding before the Land Use Commission (“Commission”) is to reconsider the Honoipu Hideaway, LLC’s (“Petitioner”) Petition for Declaratory Order to determine the location of the State Land Use district boundary line pursuant to its authority under the Hawai`i Administrative Rules (“HAR”) §15-15-22. This reconsideration hearing is based on a remand order by the State Supreme Court on this matter.¹

Specifically, Petitioner seeks an interpretation of the land use district boundary lines on certain lands consisting of approximately 17.5470 acres of Tax Map Key No. (3) 5-6-001-074, situated at Kapaa-Upolu, North Kohala, Island and County of Hawai`i. (“Petitioner Area”) in the State Land Use Agricultural and Conservation District pursuant to HAR §15-15-22(f). **The proceedings are not a hearing to consider the reclassification of the Petition Area.**

The Petition Area is a shoreline parcel with a road running through the property along the coastline. To the north, the road is identified as Upolu Point Road and the road name changes to Old Coast Guard road shortly before it crosses through the Petition Area.

According to an official boundary interpretation² done at the request of and based on a metes and bounds survey provided by the Petitioner, the current Conservation district boundary line bisects the Petition Area and places approximately 5.319 acres in the Conservation district. The remainder area comprising 12.228 acres is in the Agricultural district.

The Petitioner argues that the Conservation district has not been placed in the correct location due to a mapping error on the State Land Use District Boundaries Map H-3, dated December 20, 1974 (“1974 LUC map”)³, and the boundary interpretation that Commission staff provided to Petitioner on October 19, 2020 was also incorrect. Petitioner contends that due to the mapping error, the usual application of HAR §§15-15-22(a) to (e) is ineffective to determine the location of the Conservation district boundary line, and that uncertainty regarding the correct location of the Conservation boundary line remains.

For this reason, Petitioner is seeking that the Commission determine the location of the Conservation district line and that the district line be set along the *mauka* edge of the currently existing road.

Petitioner has filed the Petition for Declaratory Order pursuant to HAR§ 15-15-22 Interpretation of district boundaries.

HAR§ 15-15-22 Subsection

(a) Except as otherwise provided in this chapter:

(1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines;

¹ Honoipu Hideaway, LLC v. Land Use Commission, 156 Hawai`i 367 (2025)

² Boundary Interpretation No. 01-20 dated October 26, 2020

³ The State Land Use District Boundaries Map H-3 dated December 20, 1974 is the official, legal representation of district boundaries for that area

- (2) Land having an elevation below the shoreline as stated by section 205-1, HRS, marine waters, fishponds, and tidepools of the State, and accreted portions of lands pursuant to sections 501-33 and 669-1, HRS, unless otherwise designated on the land use district maps, shall be included in the conservation district;
 - (3) All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps; and
 - (4) All water areas within the State are considered to be within a district and controlled by the applicable district rules.
- (b) All requests for boundary interpretations shall be in writing and include the tax map key identification of the property and a print of a map of the property. All requests for boundary interpretations involving shoreline properties shall be accompanied by a survey map showing the locations of the shoreline as provided for in section 205A-42, HRS. Any erosion or accretion through natural processes shall be reflected on the map. Further, any shoreline structure, piers, and areas of man-made fill which were constructed or completed since the date of adoption of the state land use district boundaries existing as of the date of the request for interpretation shall be verified on the map.
- (c) The executive officer may request the following information:
- (1) Additional copies of the print, including a reproducible master map of the print or an electronic copy in a recognized format of the executive officer's designation; and
 - (2) Additional information such as, but not limited to, tax map key maps, topographic maps, aerial photographs, certified shoreline surveys, and subdivision maps relating to the boundary interpretation.
- (d) The executive officer may use all applicable commission records in determining district boundaries.
- (e) The following shall apply whenever uncertainty exists with respect to the boundaries of the various districts:
- (1) Whenever a district line falls within or abuts a street, alley, canal, navigable or non-navigable stream or river, it may be deemed to be in the midpoint of the foregoing. If the actual location of the street, alley, canal, navigable or non-navigable stream or river varies slightly from the location as shown on the district map, then the actual location shall be controlling; and
 - (2) Whenever a district line is shown as being located within a specific distance from a street line or other fixed physical feature, or from an ownership line, this distance shall be controlling; and
 - (3) Unless otherwise indicated, the district lines shall be determined by the used of the scale contained on the map.
- (f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an uncertainty concerning the location of any district line, the commission, upon written application or upon its own motion, shall determine the location of those district lines. [emphasis added]

Petitioner argues that subsections (a) to (e) do not resolve the uncertainty surrounding the conservation district boundary and is seeking for the Commission to determine the location of the district lines based on HAR§15-15-22(f).

2. SUPREME COURT RULING

The State Supreme Court filed its decision on August 28, 2025, vacating the LUC’s Decision and Order Denying Petition for Declaratory Order regarding boundary mapping and remanded the case back to the Commission. This means the Commission, upon request of the Petitioner, must rehear the Petition for Declaratory Order and make new findings of fact and conclusions of law, in a decision and order.

Petitioner requested a remand hearing and has filed documents in support of its case.

The court determined that the Commission applied the wrong standard for burden of proof in its decision. The court held that the proper burden of proof for a LUC boundary interpretation is the “preponderance of the evidence.” [emphasis added]

The court further determined that, “In the absence of findings applying the appropriate burden of proof, we decline to weigh in on the merits of Honoipu’s petition; instead, in keeping with our precedent, ‘we defer to those agencies with the na`auao (knowledge/wisdom) on particular subject matters to get complex issues right.’” [emphasis added]

Standard of Proof ⁴

The level of certainty and the degree of evidence that a party must meet to prevail in a legal proceeding. Different types of cases require different standards. The main standards of proof are “proof beyond a reasonable doubt” (in criminal cases only), “proof by clear and convincing evidence,” and “proof by a preponderance of evidence.”

Burden of Proof ⁵

A party’s obligation to prove its claims or defenses. It has two parts:

- the duty to produce evidence, and
- the duty to persuade the judge or jury that the evidence meets the required standard of proof.

Preponderance of Evidence ⁶

The word “preponderance” means something more than weight of evidence; it denotes superiority of weight, or outweighing. That which best accords with reason and probability.

The standard of proof in most civil cases. It means the fact at issue is more likely true than not true—essentially, that the evidence weighs slightly in favor of one side.

⁴ Black’s Law Dictionary (abridged 4th Edition 1984 and 12th Edition, 2024)

⁵ *Id.*

⁶ Black’s Law Dictionary (abridged 4th Edition 1984 and 12th Edition, 2024)

3. Procedural Timeline

On January 03, 2020, Petitioner submitted, by email, a survey map of the subject parcel dated June 08, 2020, and requested a boundary interpretation for the subject parcel to determine the location of the State Land Use Agricultural District and State Conservation District. The request was at that point identified as Boundary Interpretation No. 01-20.

On October 27, 2020, the LUC executive officer transmitted to Petitioner a letter providing background on the boundary interpretation and included a signed copy of the survey map showing the metes and bounds description of the demarcation between the State Agricultural District and State Conservation District, including the acreage for each within the subject parcel. [LUC Land Use District Boundary Interpretation No. 01-20](#) and [Survey Map \(10/26/2020\)](#)

On March 4, 2021, Petitioner requested the LUC to reconsider its boundary interpretation and provided a lengthy explanation for its reasoning. [Petitioner Response Letter re: Boundary Interpretation](#)

On June 25, 2021, Petitioner filed its Petition for Declaratory Order for Boundary Interpretation, Verification of Petition, Petitioner's Exhibits 1-26 and COS. [Petition for Declaratory Order for Boundary Interpretation, Verification of Petition, Exhibits 1-26, COS](#)

On September 8, 2021, the Petitioner provided property survey showing the Agricultural/Conservation district boundaries as identified in Boundary Interpretation No. 01-20 and Petitioner's preferred boundary location along the edge of an existing road. [Petitioner's survey of the subject property reflecting the location of the Conservation District Boundary Line along the edge of the road](#)

On September 14, 2021 County of Hawai'i Planning Department ("County") filed a Statement of No Position and Notice of Non-Appearance. [COH Statement of No Position and Notice of Non-Appearance](#)

On September 15, 2021, the Commission mailed an errata notice to Petitioner to confirm that the area in question was in the State Land Use ("SLU") Agricultural District based on the original 1964 District Boundary Map H-3, Mahukona Quadrangle effective dated August 23, 1964. The current and correct SLU Agricultural/Conservation Districts were amended during the 1969 Boundary Review when the Commission proposed and approved the 300-foot setback from the "line of wave action" or shoreline for the subject parcel and the surrounding area. [LUC Errata Letter dated September 15, 2021](#)

On October 11, 2021, Petitioner responded to LUC's Errata Notice and requested a meeting to clarify the issues that the LUC had raised. [Petitioner Response Letter to LUC Errata Letter](#)

On December 6, 2021, Petitioner filed a Supplemental Memorandum and Exhibits. [Supplemental Memorandum in Support of Petition for Declaratory Order for Boundary Interpretation; Declaration of Nathan Eggen; Declaration of Miles S. Horie; Exhibits 1-32; Certificate of Service](#)

On December 13, 2021, State Office of Planning [and Sustainable Development]⁷ (“OPSD”) filed its comments and recommendation on the Petition for Declaratory Order. [OPSD Position on Petition for Declaratory Order, Exhibits 1-4 and COS](#)

On December 13, 2021, the Commission mailed out the December 22-23, 2021 meeting agenda to the Parties, and the Statewide, and Hawai`i mailing/emailing lists.

On December 16, 2021, Petitioner filed a Supplemental Exhibit List and additional exhibits. [Petitioner’s Supplemental Exhibit List; Exhibits 33-34, COS](#)

On December 20, 2021, the Commission received public comments from: [Kriseda & Stephen Smith](#), [Linda & Marty Halbritter](#), and [Marcelle Loren](#)

On December 22, 2021, Petitioner filed a Second Supplemental Exhibit List and exhibits. [Petitioner’s Second Supplemental Exhibit List; Exhibits 35-38, COS](#)

On December 22, 2021, Petitioner filed a Third Supplemental Exhibit List and exhibits. [Petitioner’s Third Supplemental Exhibit List; Exhibit 39; COS](#) (12/22/2021)

On December 22, 2021, the Commission held a hearing on this matter.

On February 28, 2022, the Commission filed an Order Denying Petition for Declaratory Order.

Remand Proceedings (2026)

On September 9, 2025, pursuant to the [State of Hawai`i Supreme Court Public Opinion](#): “We vacate the LUC’s Order Denying Petition for Declaratory Order, filed February 28, 2022, denying Hono`ipu’s Petition for Declaratory Order for Boundary Interpretation, filed June 25, 2021, and remand to the LUC for further proceedings consistent with this opinion.”

On February 12, 2026, the LUC Executive Officer and staff held a pre-hearing conference with Petitioner, OPSD, and County to set dates for filings for the remand hearing. This was followed up with a letter on this date to Petitioner, OPSD, and County with filing dates. [LUC and Parties Agreed Upon Filing Dates](#)

On February 27, 2026, the County filed position statement and notice of non-appearance. [COH Transmittal Letter, COH Statement of No Position and Notice of Non-Appearance](#)

On March 10, 2026, Petitioner filed a Memorandum on Remand and Fourth Supplemental Exhibit List and exhibits. [Petitioner’s Memorandum on Remand; Fourth Supplemental; Exhibit List; Exhibit 40-52; Certificate of Service](#)

On March 19, 2026, Petitioner filed a Witness List. [Petitioner’s Witness List and Certificate of Service](#)

⁷ The State Office of Planning had a statutory name change in 2023 to Office of Planning and Sustainable Development

Filings After the Agreed Upon Filing Deadline

On March 27, 2026, Petitioner filed an Errata to Petitioner's Memorandum on Remand. [Petitioner's Errata to Petitioner's Memorandum on Remand](#)

On April 13, 2026, Petitioner filed a Fourth Supplemental Exhibit List and exhibits. [Petitioner's Fourth Supplemental; Exhibit List; Exhibits 5A, 8A, 11A, 13A1; COS](#)

On April 13, 2026, Petitioner filed an Amended Witness List. [Petitioner's Amended Witness List; COS](#)

On April 13, 2026, the Commission mailed out the December April 22, 2026, meeting agenda to the Parties, and the Statewide, and Hawai'i mailing/emailing lists.

On April 21, 2026, public testimony from [Dwight J. Vicente](#) was received.

On May 29, 2026, Petitioner filed a [Fifth Supplemental Exhibit List](#).

4. HISTORICAL MATTERS

On January 3, 2020, Petitioner submitted its initial Boundary Interpretation request to the Commission to determine the Conservation district to Agricultural district boundary on parcel 3-5-6-001-074-0000.

According to the Petition, historically, prior to 1961, there was a dirt road in the vicinity that did not hug the coastline or run through the Petition Area (see USGS aerial photo dated April 24, 1951). In the map, the dirt road rounded out toward the shoreline and turned in a southeastward direction, at approximately a ninety-degree angle shortly before the current boundary of the Petition Area.

Petitioner agrees that the location and curvature of the road as it existed prior to 1961 was correctly depicted on the 1957 USGS Map for Mahukona (Petitioner's Exhibit 12) but claims that due to road reconstruction and paving work done in 1961 to service the newly built Loran Coast Guard Station, the change in direction and curvature of the road as of 1961 are reflected on an USGS aerial photo dated January 18, 1965 (Petitioner's Exhibit 15). Petitioner asserts that the 1965 aerial shows the reconstructed road hugging the shoreline and cutting through the Petition Area., but this location of the road was not reflected on the LUC map dated August 23, 1964 (or in any of the maps, except the 1982 USGS map which has not been used as an official base map for LUC boundaries).

Petitioner claims that the 1964 LUC map followed the 1957 USGS map and showed where the dirt road was mapped on the 1957 USGS Map for Mahukona and failed to correctly depict the road as it existed at the time the map was drawn. (The claim is that an accurate rendering would

have reflected the road running along the coastline as depicted in Exhibit 17 (1982 USGS Map of Mahukona).⁸

LUC staff would like to note that the 1964 LUC map did not illustrate the Conservation district boundary. The Conservation district boundary line first appears on the LUC map dated 1969. (The 1969 LUC map used the 1964 LUC map as the base).

Petitioner then alleges that subsequently, the alleged error on the 1964 LUC map was carried forward to the 1969 and 1974 maps, with all three LUC maps depicting the dirt road as it existed prior to 1961.

Petitioner contends that the alleged error on the 1964 LUC map is significant because it impacts the location of the Conservation district boundary line on the 1969 LUC map, which in turn impacts the location of the Conservation district boundary on the 1974 LUC map. The 1974 LUC map, as amended is the official map.⁹

Petitioner's 2020 interpretation request (Petitioner's Exhibit 8) supposes that the 1969 and 1974 LUC maps appear to show the conservation boundary of this parcel as following along the roadway depicted in the maps for both decades, and that in reviewing the conservation boundaries of other nearby parcels to the north beyond the coast guard base such as TMKs 3-5-5-001-074, 3-5-5-0-05-009, and 3-5-5006-004, the conservation boundary also appear to follow the same shoreline roadway.

The Petitioner further states that in reviewing the LUC maps, the USGS maps, and historical aerial photographs, it appears that there are a number of discrepancies between the original August 23, 1964 LUC boundary map and its road aligned conservation boundary and the actual road alignment that was present in 1964 and that the 1974 LUC map did not appear to update/resolve that discrepancy. (The 1982 USGS map which the Petitioner relies on in its argument would not have been available for another 8 years for LUC staff to use as a reference)

The Petitioner submitted 8 attachments to support the Boundary Interpretation application.

1. 2019 certified shoreline survey and site survey map from Engineers Surveyors Hawaii, Inc. depicting the entire TMK.
2. USGS Aerial photo dated January 18, 1965, showing the current USCG station buildings and current roadway alignment in front of those buildings that are still visible in the 2019 shoreline survey.

⁸ The State Land Use Law was enacted in 1961. Since 1964, the Board of Land and Natural Resources has adopted and administered land use regulations for the Conservation District pursuant to the State Land Use Law.

⁹ See HAR§15-15-17(b) (The boundaries of land use districts are shown on the maps entitled "Land Use District Boundaries, dated December 20, 1974, as amended, maintained and under the custody of the commission") and HRS §205-3 ("Land use district boundaries existing as of June 2, 1975, shall continue in full force and effect subject to amendment as provided in this chapter or order of a court of competent jurisdiction based upon any litigation filed prior to July 1, 1975, or filed within thirty days after service of a certified copy of any final decision and order made as part of the commission's 1974 periodic boundary review, whichever occurs later.")

3. USGS Aerial photo date April 21, 1954 showing the previous/original USCG base that was 20 acres and matches the location and road-based conservation zone boundaries depicted on the 1964 LUC boundary map.
4. Excerpt of LUC map for H3-Mahukona from December 20, 1974.
5. 1957 USGS quad for Mahukona
6. 1982 USGS quad for Mahukona
7. USCG Upolu Point Station Information NARA documentation
8. GIS image of conservation boundaries along shoreline road

The Petitioner concludes the boundary interpretation request by stating that he was requesting the boundary interpretation to clarify that the existing boundary was along the actual roadway that existed since 1961 and was as depicted in his shoreline survey. Petitioner contends that it was likely that the person performing the LUC mapping at that time did not visit and perform a site survey of the remote location due to military secrecy restrictions in force at that time to identify that the USGS 1957 base map was inaccurate in December 1964.

5. LUC Historical Background on United States Coast Guard (“USCG”) LORAN system

LUC staff researched the U.S. Coast Guard station’s history and background and arrived at a more plausible explanation of why the 1957 map depicted the area as it did and how the conservation boundary lines were accurately overlaid upon them in 1969 and carried over to maps representing the area in later years.

It is helpful to understand what the purpose of a long-range navigation (“LORAN”) system was during the 1940’s era to envision why the LORAN station facilities were located and built in remote areas and how they functioned. See the **Addendum** for the article taken from the United States Coast Guard- Aviation History book.

The LORAN-A “Top Secret” project included the Upolu Point station near the Petition Area and restricted access to the region. Historical records indicate that the site survey was performed in December, 1943 and the construction period lasted from June to July 1944.

The LORAN-C system site was surveyed in October-November 1959, with early construction done from August 1960 to June 1961.

The operational lifespan of the Upolu LORAN systems was from 1944 till 1993.

6. STAFF COMMENTS AND ANALYSIS

In preparation for the 2021 LUC meeting on this Petition, it was discovered that the 2020 LUC boundary interpretation had erred and cited the wrong base reference map date, incorrectly referring to a map drawn on August 23, 1964. The correct reference should have been to a map approved on August 4, 1969, when a mauka setback inland from the shoreline was applied to existing boundaries in certain areas that followed from recommendations made in the 1969

Boundary Review report¹⁰. The 1969 Report provides the following recommendations for the general area which includes the Petition Area.

“The shoreline from Kawaihae around North Point to Pololu Valley is marked by numerous historic artifacts such as King Kamehameha I’s birthplace, and a variety of different conditions such as rocks, steep pali and occasional beaches. The lands should be recognized by inclusion in the Conservation District.”¹¹

In addition, the 1969 Report provided the following discussion and recommendations to be used in making the new Conservation District boundaries.

“Recognition that the shoreline is a zone rather than a line has been the basis for recommending that the designation of the Conservation District be inland from the “line of wave action” at varying distances relating to topography, and other use factors. A number of criteria have been developed as the result of a search for physical boundaries that more easily and better designate shoreline conditions from adjacent agricultural uses and districts.”

Four major conditions have been recognized and recommendations based upon these conditions have been made for the new Conservation District boundaries.

- 1. Where a plantation road, farm road, access way or public road exists at the edge of agricultural use within reasonable proximity to the shoreline, it was used as the boundary between the Agriculture and Conservation Districts.*
- 2. Where a vegetation line such as a windbreak or row of trees more clearly marks the edge of the agricultural practice, this was used.*
- 3. In cases where the shoreline is bounded by steep cliffs or a pali, the top of ridge was used.*
- 4. Where no readily identifiable physical boundary such as any of the above could be determined, a line 300 feet inland of the line of wave action was used.”¹²*

The area was designated as agricultural in 1964 until the Conservation and Agricultural boundary lines were amended in 1969 to allow for an approximate 300’ setback from the coastline in certain areas.

Figure 1, USGS map H-3 Mahukona is the official 1974 State of Hawai‘i State Land Use District Boundaries map that was based on a USGS base map drawn in 1957. The Agricultural Designation area (“A”) is color coded green and the Conservation Designation area (“C”) is color coded blue.

Figure 2 is a USGS topographic quadrangle map drawn in 1982. This map should not be confused or accepted as the official State of Hawai‘i State Land Use District Boundary map- they

¹⁰ State of Hawai‘i Land Use Districts and Regulations Review: Prepared for the State of Hawai‘i Land Use Commission by Eckbo, Dean, Austin and Williams; August 15, 1969.

¹¹ Ibid. pg. 36

¹² Ibid. pg. 86

are not interchangeable. The LUC used Fig. 1 as the official map to make its boundary interpretation, as required by HRS §205-3 and HAR §15-15-17(b)¹³, and the original official map did not include all the features displayed in the 1982 USGS map. Any changes to the official map must be approved by the LUC.

Figure 3 is the LUC H-3 Mahukona map which illustrates the amendments made in August 1974 to the Conservation boundary to accommodate the cultural resources of the heiau and King Kamehameha's birthplace which are located in the coastline area to the North of the subject parcel.

The Petitioner's argument revolves around the Petition Area (identified with bold lines in Fig. 1) and how unimproved/improved roadways (depicted as double-dashes (====) for unimproved roadways and solid lines (-----) for improved roadways) could be used as "landmarks" for survey boundaries. Close examination of Fig. 1 will reveal that there is an unimproved roadway that approaches the Petition Area from the North but veers to the East just after entering the North perimeter on the Petition Area and continues East away from the shoreline, never crossing the Petition Area and paralleling the shoreline.

Fig. 2 also displays a red triangular area that Petitioner contends should have been included in the Agricultural designation zone. This uses the 1982 USGS map as its base rather than the official LUC 1974 SLU map.

There is no direct evidence in the record to support the conclusion that the Commission and its staff intended to use the roadway as a landmark in setting the district boundary across Petitioner's property in 1969. Also, there is no direct written evidence in the record that specifically describes the Commission and its staff using a 300-foot setback at the location of the Petitioner's property. However, there is direct evidence in the record to support that the Commission did officially adopt the district boundaries containing the Petitioner's property in 1969 (see Figure 1) and again in 1974 (see Figure 3) that clearly show the Conservation district boundary following the mauka edge of the roadway, as depicted on the USGS base maps, to the North of the subject property and then following a parallel course with the shoreline from the subject property towards the South.

Petitioner focuses his argument on the road being used as a landmark, but the consistency of the 300-foot setback and its history of use detract from that hypothesis¹⁴. The Coast Guard and local County authorities had no prior issues with the Conservation boundary in the area when it was established in 1969, nor were there any objections to the boundaries before 1969 or after.

¹³ See HAR§15-15-17(b) (The boundaries of land use districts are shown on the maps entitled "Land Use District Boundaries, dated December 20, 1974, as amended, maintained and under the custody of the commission") and HRS §205-3 ("Land use district boundaries existing as of June 2, 1975, shall continue in full force and effect subject to amendment as provided in this chapter or order of a court of competent jurisdiction based upon any litigation filed prior to July 1, 1975, or filed within thirty days after service of a certified copy of any final decision and order made as part of the commission's 1974 periodic boundary review, whichever occurs later.")

¹⁴ State of Hawai'i Land Use Districts and Regulations Review: Prepared for the State of Hawai'i Land Use Commission by Eckbo, Dean, Austin and Williams; August 15, 1969 (pg. 86)

There is no record of the 1974 LUC map being altered to deviate from the approximate 300-foot setback line in the proximity to the Petition Area to accommodate any changes (except as depicted in Fig. 3, 1974 map), and the historical map information provided in the staff report support that the 300-foot setback served as the accepted boundary standard for the Petition Area and the area running to the South without being contested, by a landowner, County or State agency, from 1969 until this case¹⁵.

Official USCG photos of the facility dated from 1954-1973 show images of a remote set of one-story structures designed to support the maintenance and operation of the base whose staff consisted of a commanding officer and a detachment of approximately 12-14 technicians.

The 1954 images show a trail-like roadway to the buildings and a desolate landscape. This is important to note since the criteria applied to determining the Conservation boundary lines in 1969 relied on distinct landmarks. According to Chapter 9 of the State of Hawaii Land Use Districts and Regulations Review, Chapter 9- Section V “if no landmark could be established....a line of 300 feet inland of the line of wave action was used”.

Examination of Fig. 1 reveals, the unimproved roadway veered away from the coastline making it unlikely that it could have served as a landmark and justify an irregular seaward adjustment to the 300-foot setback line that would support Petitioner’s claim.

It is also more likely that the Commission had to rely on the coastline due to the restricted access to the Coast Guard station area which would have prevented establishing other distinct landmarks and the trail-like roadways were too insufficient to rely on at the time the 1957 USGS foundational map was drawn.

Petitioner’s Exhibit 13 describes the desolate landscape that existed as the station developed after being originally built in June 1944 and becoming operational in January 1945. The temporary Naval Quonset huts were replaced by permanent buildings (which began construction in August 1949 and were completed by March 1951).

A water purification system and storage tanks, drainage ditches, paved roadways between buildings, new antenna ground system and a new water distribution system were completed in the fall of 1951. More equipment was installed and the station would become operational in the Central Pacific in mid-1962.

In August of 1960, construction began on a totally new station and all the older existing buildings were removed. By 1961, the new construction was complete, and now, very permanent distinct landmarks existed and could have served as identifiable points of reference for more detailed mapping - but no map changes were requested from or made by the USGS to the 1957 base map.

These new buildings were built of concrete with prestressed concrete beams and ceilings with concrete slab floors designed to be typhoon and earthquake proof. The newly installed road

¹⁵ State of Hawai`i Land Use Districts and Regulations Review: Prepared for the State of Hawai`i Land Use Commission by Eckbo, Dean, Austin and Williams; August 15, 1969 (pg. 86)

might have been adopted as one of these mapping references, but there is no evidence on the record that the Commission knew about the new road and instead relied on the 1957 foundational map to draw and approve the 1964, 1969, and 1974 LUC maps covering this area. The official 1964 LUC map for this area did not get altered until the Conservation and Agricultural areas were amended in 1969 using an approximate 300-foot setback from the coastline. Later maps would maintain where the Conservation boundaries were drawn. The LUC maps in 1969 and 1974 did not depict the road as it existed at those times.

There were additional opportunities to amend the Conservation boundary when the boundary reviews of 1969, 1974 and 1992 occurred, but no issues arose with respect to the subject parcel. No challenges to the mapping methodology and results, that had been in place for over 50 years, had been raised until the current Petitioner took possession of the property.

Petitioner makes an assumption that “in accordance with the intent of the drafters of the 1969 LUC map and principles to guide the demarcation of Conservation district boundaries, the Conservation district boundary within the Petition Area should be located along the *mauka* edge of the Road [Petition, Section E, pg. 15]. The location of the road, assumed intent of the drafters, historical uses in the area, and compliance with the intent of the Conservation district led to this conclusion.

The Petitioner can’t assert to know or assume what the intent of the Commission drafters of the 1969 map was. There is no evidence identifying what the 1969 map drafters’ intent was, or any speculation on why they did not act on adjusting any boundaries to take into account the newly constructed concrete facilities available to use as landmarks.

It is more likely that the Coast Guard’s priority in 1969 and 1974 was to concentrate on its primary operational mission and not on aligning or observing new boundaries for State maps. The Coast Guard didn’t raise any issues or concerns in 1969 when the Commission established boundary lines consistent with the 300-foot setback from the shoreline and there was no compelling reason to make alterations to existing maps. Similarly, the Coast Guard didn’t raise any objections or requests for amendments to the boundary lines in 1974 or 1990 when the Commission conducted reviews and made changes to the State Land Use District Boundaries.

When the Commission staff initially conducted its review on October 19, 2020, staff concluded that all 5.319 acres of the Petition Area were within the Conservation District. The staff relied on a copy of the Petitioner’s Shoreline Survey, a metes and bounds survey of the Petition area, and the 1974 official LUC map to make its determination. (See attached Fig. 1).

Subsequently, the Commission discovered an error in the dates and map references used in the October 19, 2020, boundary interpretation and mailed an errata notice to Petitioner on September 15, 2021 to confirm that the area in question was in the SLU Agricultural District based on the original 1964 District Boundary Map H-3, Mahukona Quadrangle effective dated August 23, 1964.¹⁶

¹⁶ LAND USE DISTRICTS for the State of Hawaii- Recommendations for implementation of the State Land Use Law Act 187 SLH 1961” by Harland Bartholomew & Associates, dated January 11, 1963

The boundary errata noted that the SLU Agricultural/Conservation District designation for the subject parcel was as depicted on the SLUC 1969 District Boundaries Map H-3, Mahukona Quadrangle, effective dated August 4, 1969, and is unchanged for the current SLU District Boundaries Map H-3, Mahukona Quadrangle, effective dated December 20, 1974. The Petitioner was also provided with a copy of the metes and bounds survey map entitled “Shoreline Survey Map of Lot 19-A as Shown on Map 34 of Land Court Application 1120”, with the certification of the SLU District Boundaries for reference.

In the initial DR Petition filed with the LUC, the Petitioner stated that the Shoreline Survey and the survey of the Petition Area based the location of the Conservation district line on the 1974 LUC map, and that the 1974 map, provided the sole information for the determination.

Petitioner then concluded that:

- 1) Since the road existed in its current location before the Conservation district was created in 1964 and first amended in 1969, that the road was an existing physical boundary;
- 2) the Conservation district boundary depicted on the 1969 and 1974 LUC maps follow the *mauka* edge of the depicted roadway, and Petitioner deduces that the map drafters intended to follow the existing physical boundary (or that the road constituted the boundary line separating the Agricultural and Conservation districts)
- 3) locating the Conservation district boundary along the *mauka* edge of the Road is consistent with State of Hawai‘i Land Use districts and Regulations Review prepared by consultants for the Commission in 1969.

The crux of Petitioner’s argument is stated “There is no doubt that if the Road had been properly mapped at the time the district boundary was drawn in 1964 or reviewed in 1969, the Conservation district boundary would have followed the *mauka* edge of the Road”. [DR Petition, pg. 17]

After receiving the errata correspondence, in a letter dated October 11, 2021, Petitioner requested a meeting to discuss issues raised by the Errata.

LUC Staff has the following comments to Petitioner’s response to the Errata noting that:

- Petitioner identifies the four major conditions used as general standards when the Conservation District Boundaries were established [Petitioner Response to Errata, page 5]:
 1. Where a plantation road, farm road, access way or public road exists at the edge of the agricultural use within reasonable proximity to the shoreline, it was used as the boundary between the Agriculture and Conservation Districts.
 2. Where a vegetation line such as a windbreak or row of trees more clearly marks the edge of the agricultural practice, this was used.

3. In cases where the shoreline is bounded by steep cliffs or a pali, the top of the ridge was used.
 4. Where no readily identifiable physical boundary such as any of the above could be determined, a line 300 feet inland of the line of wave action was used.
- “Line of Wave Action” - Petitioner claims LUC maps do not support a 300-foot setback.
 - LUC staff agrees that the Conservation line first appears on the LUC map dated 1969. However, Petitioner’s claims that the action taken in the 1969 map for the boundary to follow along the road near the shoreline where a road exists within a reasonable proximity to the shoreline are only partially correct. The map does follow the road except in areas of historical or cultural significance as supported by the 1964 Map, and then in certain areas a 300-foot setback is used in the 1969 Map, and 1974 Map.
 - Petitioner assumes that the use of the road as a boundary continues south down the coast. This is incorrect- though roads are clearly visible, the road veers to the east just north of the Petition Area. The official maps used by the LUC in 1969 continue the Conservation boundary southward observing the 300’ setback, reflecting a combination of boundary observation techniques being used. Where the road could be used for mapping, they were. Where the roads ended and no readily identifiable physical boundary such as any of the 3 other major conditions that were recognized when setting the Conservation District boundaries, a line 300 feet inland of the line of wave action was used.
 - Petitioner argues that “The specific description of the action taken during the 1969 Review for the area where the property is located does not support a 300 [oo]t setback from the ‘line of the wave action’ or shoreline for the subject parcel and the surrounding area”
 - Petitioner points to the general description in the 1969 Report of a large geographic area from Kawaihae around North Point to Pololo Valley that is not specific to the Petition Area. In this general area, LUC staff found that the 4 major conditions used as general standards for the Conservation District boundaries were consistently followed as evidenced by Figure 3.
 - Where a physical boundary existed (standard 1), the boundary overlays the physical boundary. There are also boundary accommodations to observe significant cultural features such as Kamehameha’s birthplace and the Mookini Heiau.
 - Where a shoreline was bounded by steep cliff or a pali, a top of the ridge was used (standard 3).
 - Despite Petitioner’s assertion that text supports what the map shows, the argument is selectively referencing details which bolster its position rather than describing how the boundary general standards were applied to achieve a level of consistency.
 - Petitioner further states that the “1969 Review does not state that a 300-foot setback was used for the area from “Kawaihae around North Point to Pololo Valley.” This statement is taken out of context. LUC staff caution that the recommendations in the 1969 Report were not the rule or standard applied. As evidenced by how the LUC applied the four major conditions used as general standards in determining the boundary lines, there is

consistent application of the Conservation District lines and the HAR §15-15-22 guidelines.

- Petitioner consistently relies on the 1982 USGS reference map to argue the location of the road as the boundary. However, the 1982 USGS map is not the official LUC map.
- Petitioner alleges that the current boundary interpretation does not support a 300-foot setback. [DR Petition, pg. 8] LUC staff used the Petitioner’s own certified shoreline certification map, Petitioner’s metes and bounds property survey, and an overlay of the LUC’s official 1974 map to support its interpretation.

The LUC staff conclude that the Commission never intended to use the roadway as the demarcation line at the specific location of the subject property and that the 1969 Map was drawn properly and accurately.

The portrayal of the road being used as a mapping landmark is a convenient assumption to include land where it was not originally intended to be. Prior to this request there are no records of the Coast Guard or any other party disputing the Conservation boundary line. The 300-foot setback from the shoreline consistently and neatly portrays the boundary for a remote section of coastline that would have been difficult and costly to re-map otherwise.

7. AGENCY COMMENTS ON THE PETITION

On September 14, 2021, County of Hawai`i Planning Department (“County”) filed a Statement of No Position and Notice of Non-Appearance. [COH Statement of No Position and Notice of Non-Appearance](#)

On December 13, 2021, State Office of Planning [and Sustainable Development]¹⁷ (“OPSD”) filed its comments and recommendation on the Petition for Declaratory Order. [OPSD Position on Petition for Declaratory Order, Exhibits 1-4 and COS](#)

OPSD provided a detailed analysis of Petitioner’s arguments against the LUC’s location of the district boundary in Boundary Interpretation No. 01-20 and LUC staff’s boundary determination.

Based on the LUC’s Boundary Interpretation No. 01-20 Errata letter dated September 15, 2021 regarding the establishment of the State Land Use Boundary line and the lack of support to determine a different boundary location, OPSD sees no reason to deviate from the boundary identified in the LUC’s Boundary Interpretation No. 01-20. Accordingly, OPSD does not support the Petitioner’s Petition for Declaratory Order for Boundary Interpretation.

On February 27, 2026, the County of Hawai`i filed an updated [statement of no position and notice of non-appearance at the scheduled hearing](#).

As of April 15, 2026, OPSD has not submitted any further comments or position statement.

¹⁷ The State Office of Planning had a statutory name change in 2023 to Office of Planning and Sustainable Development

8. STAFF RECOMMENDATION

In spite of the voluminous filings by Petitioner, LUC staff contends that the boundary review in 1969, which established the current official boundaries, was accurately done using maps that were properly drawn and that the Petitioner's portrayal that the road should be used as a mapping landmark is an assumption for the convenience of the Petitioner¹⁸ and in order to include land where it was not originally intended to be.

Staff has provided maps which illustrate how awkward the boundary adjustment would have been to accommodate Petitioner's argument instead of simply retaining the existing Conservation boundary line and how the 5.319 acres appear to be "inserted" to fit into the Agricultural designation when the "road as a landmark" rationale is used. Without the benefit of the 1982 USGS map, the existing map references prior to 1982 were based on a well-defined 300' setback which excluded this odd piece.

If the Commission is inclined to **agree** with the LUC staff's boundary interpretation¹⁹, it should deny Petitioner's request for Declaratory Order on Remand. If Petitioner would like to include the 5.319 acres into the Agricultural district, LUC staff recommends the Commission urge that a District Boundary Amendment ("DBA") be pursued to accomplish that as provided for in HRS §§205-3.1(a) and 205-4²⁰.

If the Commission *disagrees* with LUC staff's boundary interpretation, it can grant the Petitioner's request for Declaratory Order by providing specific reasons why the existing official map H-3 Mahukona, and Boundary Interpretation No. 01-20 done using it, was incorrect; and, provide a factual basis for identifying where the location of the official boundary should be for this property. In addition, if the Commission determines that the portion of the land which includes the structures being used for residential housing are within the State Agricultural District; then they also should address the potential non-conforming use status of the structures pursuant to HRS §205-8 Nonconforming uses.²¹

9. ADDENDUM

¹⁸ Petitioner, Nathan Eggens, in testimony at LUC hearing (12/22/2021; Transcript pgs. 82-83; and, Supreme Court Decision pgs. 4-5, and footnote 4) [LUC-Transcripts-12-22-2021.pdf](#)

¹⁹ Boundary Interpretation No. 01-20

²⁰ HRS §205-3.1(a) "District boundary amendments involving lands in the conservation district...shall be processed by the land use commission pursuant to section 205-4."

²¹ "The lawful use of land or buildings existing on the date of establishment of any interim agricultural and rural district in final form may be continued although the use, including lot size, does not conform to this chapter; provided that no nonconforming building shall be replaced, reconstructed, or enlarged or changed to another nonconforming use and no nonconforming use of land shall be expanded or changed to another nonconforming use. In addition, if any nonconforming use of land or building is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited."

1946 – Pacific LORAN and Post War Aviation Support; CG Air Detachments Sangley Point and Guam Established

LORAN (**LO**ng **RA**nge **N**avigation) is a terrestrial navigation system using ground-based transmitters. Hyperbolic LORAN lines of position (LOP) are formed by measuring the difference in reception times of synchronized signals. A LORAN net, or chain, requires a master station, initiating the pulse, and a series of slave stations. In very simplified terms, the master transmits and the slave responds. Charted values of this time delay measurement were placed upon a navigational chart. The measurement observed placed one somewhere along a LOP. That information is of little value without a LOP from a second pair. The point of intersection of the two LOPs is the location of the ship or aircraft receiving the signals. The station configurations thus must provide a geometry that allows such intersection.

This initial LORAN system is known as LORAN A. This ‘Top Secret’ project was developed during World War II in response to the need of military ships and aircraft for a precise navigational system. Scientists at the Massachusetts Institute of Technology and the Bell Laboratories, with the support of the War and Navy Departments made theory a reliable reality. The Coast Guard’s involvement began in 1942 when Vice Admiral Waesche, Commandant of the Coast Guard, was asked to recommend an officer to direct the program. Lieutenant Commander Lawrence M. Harding was given the task and brought rapid progress to the project. In mid-1943 the North Atlantic chain became operational. The success in the North Atlantic led to rapid expansion elsewhere.



LORSTA Ulithi Atoll

Construction and operation of the North Atlantic chain was a joint endeavor. The site selection, construction, and operation of the LORAN system in the Pacific was an all Coast Guard undertaking. The first group of stations constructed was the Bering Sea chain. Site surveys and calibration support was provided by a Coast Guard PB4Y-2 number V-189. This aircraft made 96 flights resulting in 354 hours of flying, most of which were conducted under adverse weather conditions. As there were no handling facilities at the three destinations it was necessary to anchor the plane in the open. V-189 continued to provide this type of support throughout the construction of the Pacific chains. When the command unit moved to Guam an additional PB4Y-2A was obtained as was a PB4Y-2. Construction of the Western Aleutian and Hawaii chains were next. From that point on the other five chains came into

being. The Pacific military campaign was the determining factor and construction overlapped. Three construction detachments were utilized.

The importance of LORAN to the war effort cannot be overstated. The extent of problems overcome in establishing the individual stations was exceeded only by the magnitude of the task in general. The stations which were erected provided LORAN service for practically the entire Pacific area in which combat operations were performed.

In the post war period LORAN became the primary electronic navigation system for both ships and aircraft. The Coast Guard was given the responsibility of maintaining and operating the vast majority of all LORAN stations. The LORAN chains in the Pacific were realigned and modified to support post war military and commercial requirements. Whenever and wherever support could be obtained from local sources and/or other military installations it was utilized. A number of the stations, however, were constructed on isolated islands or other remote locations.

A large vessel to supply equipment and personnel was needed for construction and logistical support of the Pacific LORAN chain. The *USS Colquitt*



Coast Guard Cutter Kukui

(AK-174) was obtained and converted to Coast Guard requirements. The name was changed to *USCGC Kukui* (WAK-186). The *Kukui* carried two LCMs on her decks to ferry men and equipment to shore and also had three bulldozers, several trucks and a few jeeps stashed in her holds. Seven months a year she was underway providing necessary logistic support to members of the Coast Guard LORAN chain throughout the western Pacific. During this time, she delivered “everything from toothpicks to antenna poles; from a can of pepper to a “Quonset Hut.” She also carried the complex electronic equipment necessary to set up the LORAN system. The Officers and men not only sailed the ship but they operated bulldozers, landing craft, trucks and jeeps.”

The *USCGC Nettle* (WAK-169), a former Army FS, was also obtained for LORAN support. She spent the first six years at Kwajalein atoll followed by a year at Guam and then was based out of Sangley Point to support the Philippines Section. At intervals during the years a 180 foot buoy tender was stationed at Guam. At other times, support for the Pacific island stations was provided quarterly by 180 foot buoy tenders based at Hawaii.

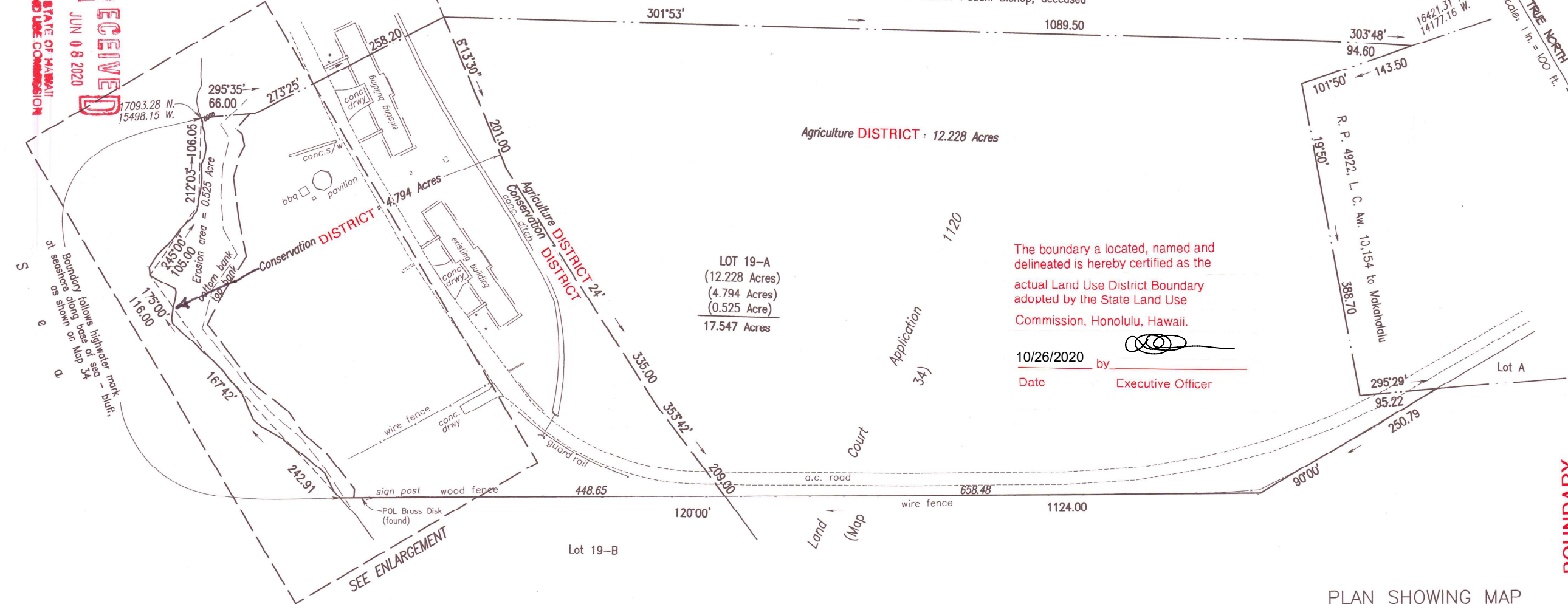
Completing the picture was regular aviation support. The isolated stations in Alaska were serviced out of Air Station Kodiak and French Frigate Shoals was supplied initially by the Air Detachment at

Kaneohe, Hawaii and continued when the air detachment moved to Barbers Point. In addition to French Frigate shoals the detachment flew an extended logistic flight throughout the Pacific, The logistic flights were WESTPACs and those that flew these flights referred to themselves as “Cosmic Overseas Airways.” In addition, there were air detachments established at Sangley Point in the Philippines and at Guam to provide logistic support to isolated LORAN stations.

STATE OF HAWAII
LAND USE COMMISSION
RECEIVED
JUN 08 2020

Grant 5089 to Trustees under the will and of the Estate of Bernice Pauahi Bishop, deceased

TRUE NORTH
Scale: 1 in. = 100 ft.



The boundary a located, named and delineated is hereby certified as the actual Land Use District Boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

10/26/2020 by Executive Officer

BOUNDARY INTERPRETATION NO. 01-20

PLAN SHOWING MAP OF LOT 19-A, AS SHOWN ON MAP 34, OF LAND COURT APPLICATION 1120 Situated at Honoipu, North Kohala, Island of Hawaii, Hawaii T.M.K. : (3) 5-6-01: 074

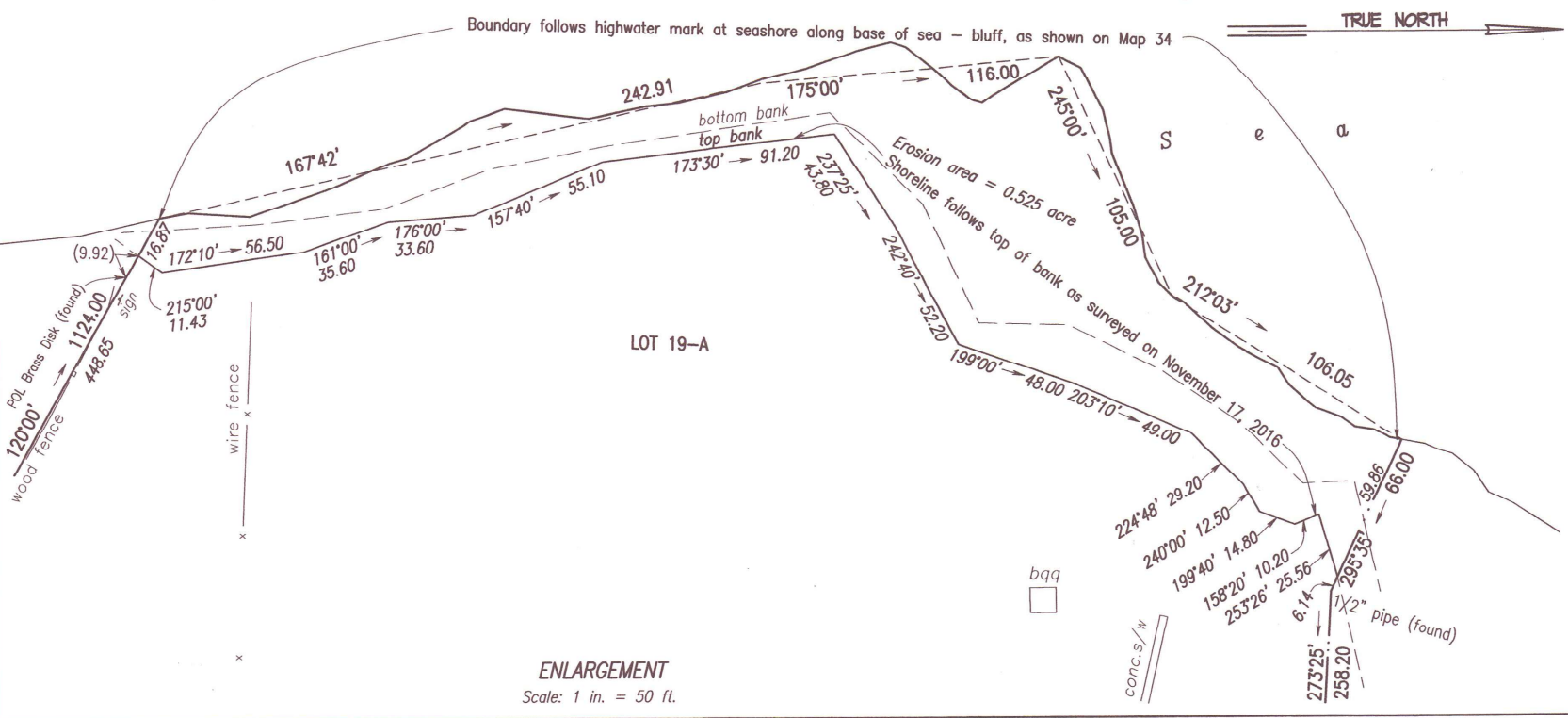
Owner: Honoipu Hideaway LLC
Address: 1001 S. Bishop Street, Suite 2685A
Honolulu, Hawaii 96813



- NOTES:
1. Azimuths and coordinates referred to Government Survey Triangulation Station "PUU O NALE"
 2. Shoreline survey is for setback purposes

This work was prepared by me or under my direct supervision.

Miles S. Horie Ekipre 4/30/22
Licensed Professional Land Surveyor
Certificate Number 10007



ENLARGEMENT
Scale: 1 in. = 50 ft.

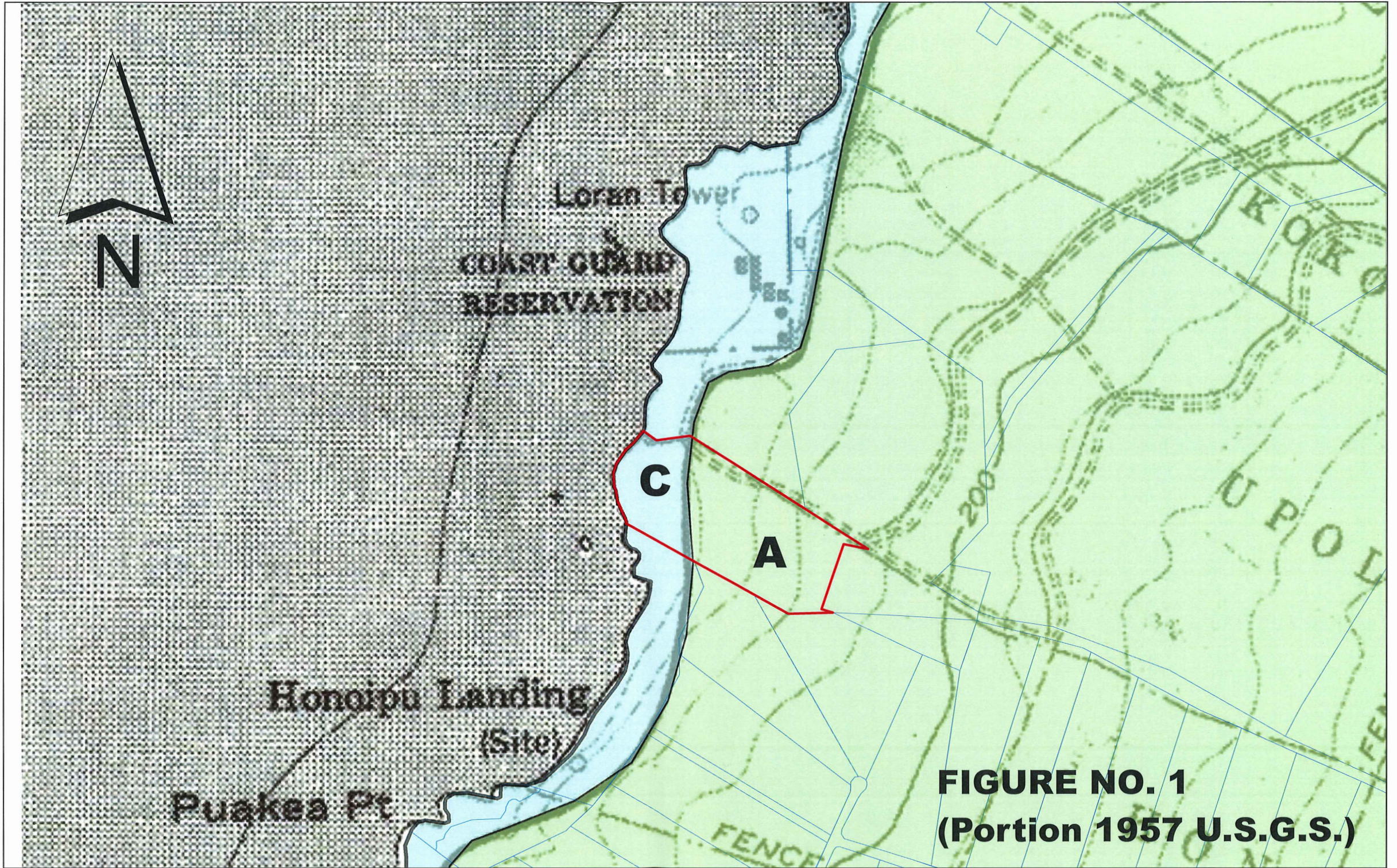
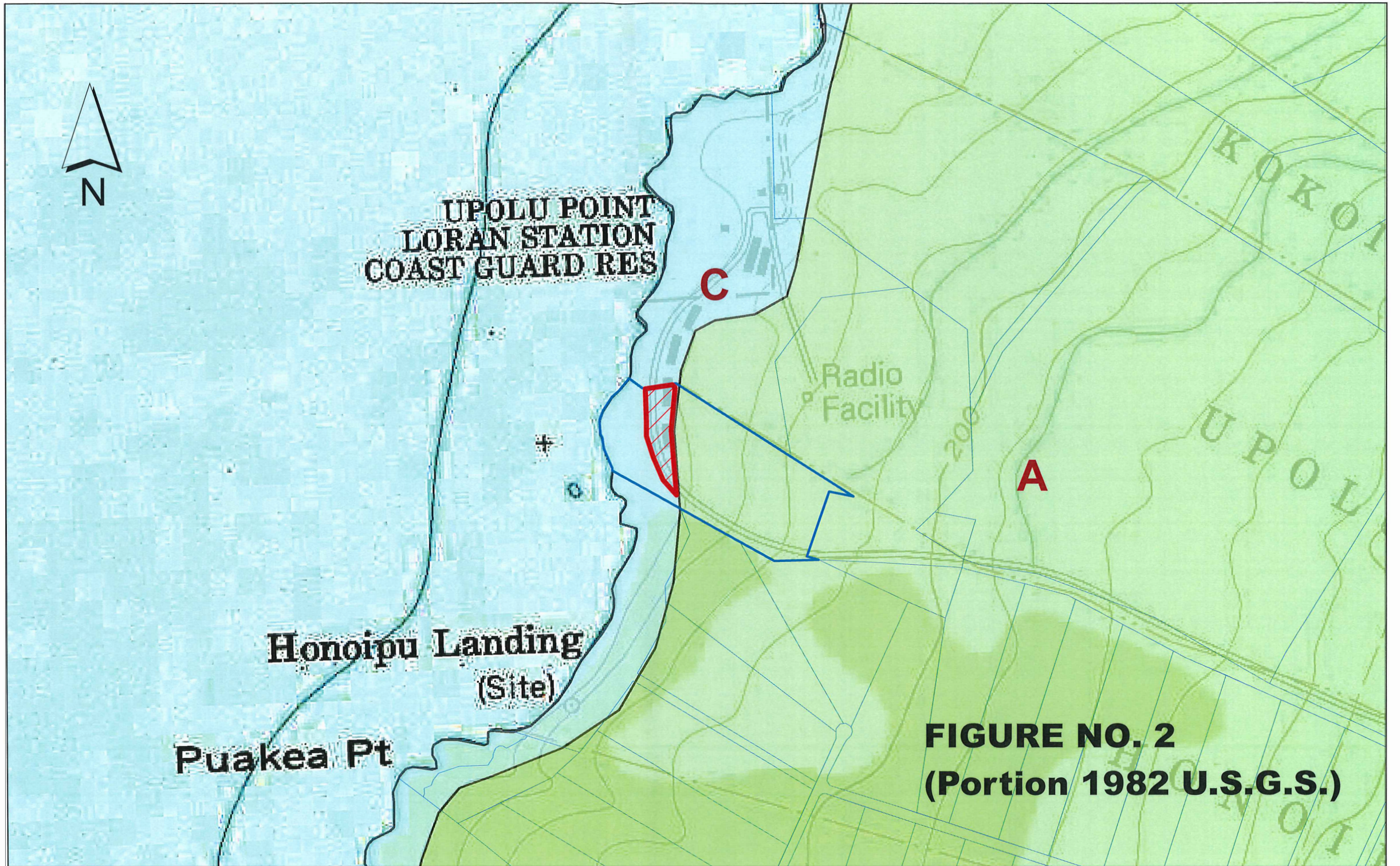


FIGURE NO. 1
(Portion 1957 U.S.G.S.)



**FIGURE NO. 2
(Portion 1982 U.S.G.S.)**

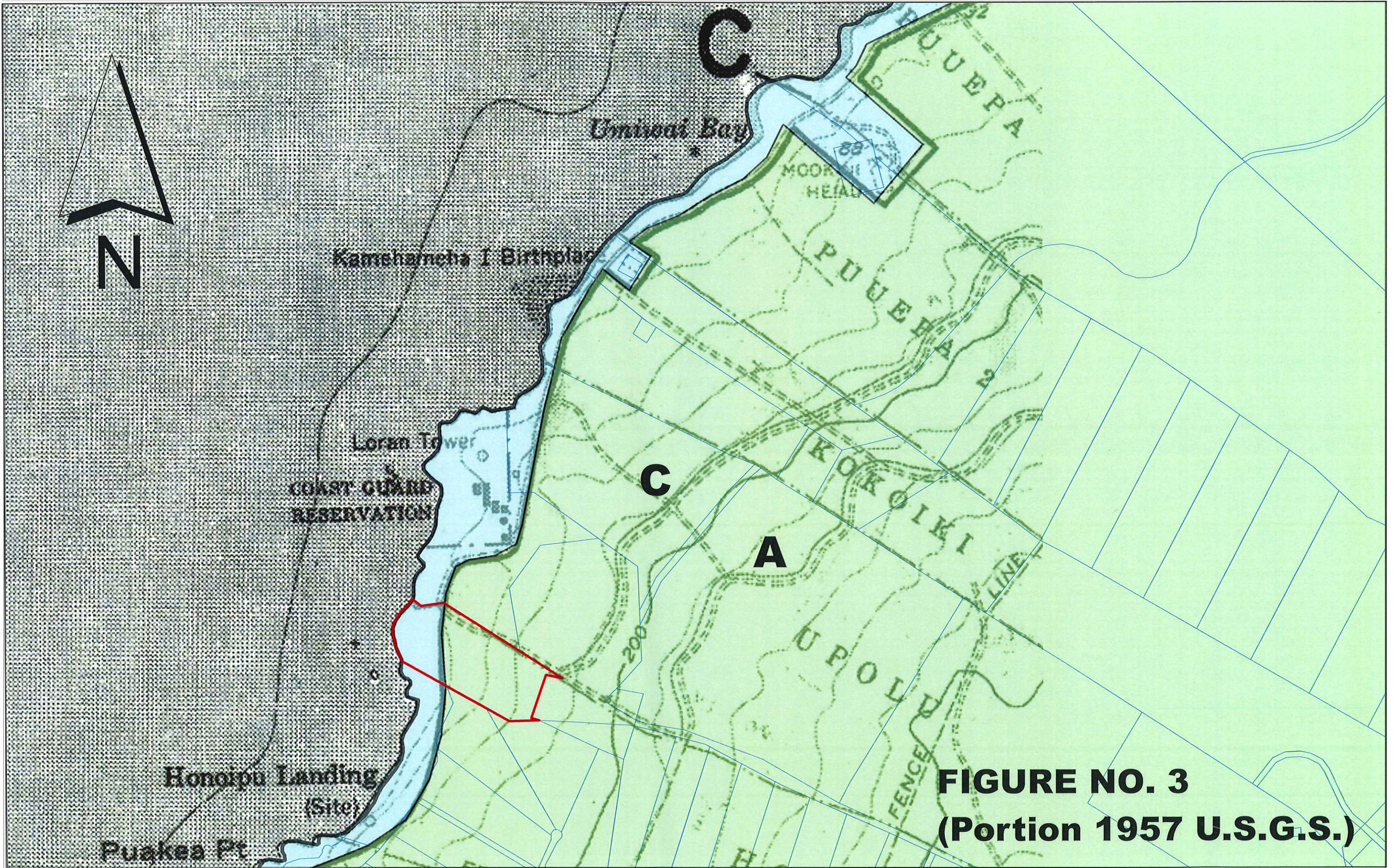


FIGURE NO. 3
(Portion 1957 U.S.G.S.)