

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A93-688
JOHN HUNT and DEBRA HUNT) JOHN HUNT and DEBRA HUNT
To Amend the Conservation Land Use)
District Boundary into the Urban)
Land Use District for Approximately)
15,592 Square Feet at Niu Valley,)
Honolulu, Oahu, City and County)
of Honolulu, Hawaii, Tax Map Key)
No.: 3-7-13: Por. 71)

HEARINGS OFFICER'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

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Hearings Officer

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JOHN HUNT and DEBRA HUNT (hereinafter "Petitioner") filed a Petition for District Boundary Amendment on January 7, 1993, and an Amendment to Petition for District Boundary Amendment on March 15, 1993, pursuant to Chapter 205, Hawaii Revised Statutes (hereinafter "HRS"), and Chapter 15-15, Hawaii Administrative Rules, (hereinafter "H.A.R."), to amend the State land use district boundary by reclassifying approximately 15,592 square feet of land situated at Niu Valley, Honolulu, Oahu, City and County of Honolulu, State of Hawaii, identified as Tax Map Key No.: 3-7-13: portion of 71 (hereinafter "Property"), from the Conservation Land Use District to the Urban Land Use District to conform with the current use of the Property for single-family residential purposes.

The Land Use Commission (hereinafter "Commission" or "LUC"), having heard and examined the testimony, evidence and argument of the parties presented during the hearing, and the

parties' proposed stipulated findings of fact, conclusions of law, and decision and order, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On November 6, 1992, Petitioner filed a Petition for Declaratory Order with the LUC under Docket No. DR92-16.

2. On December 3, 1992, Petitioner made an oral motion to withdraw its Petition for Declaratory Order. The LUC issued its Order Granting Motion to Withdraw Petition for Declaratory Order on December 15, 1992.

3. Petitioner filed a Petition for District Boundary Amendment on January 7, 1993, and an Amendment to Petition for District Boundary Amendment on March 15, 1993 (hereinafter collectively referred to as "Petition"). A draft Environmental Assessment (hereinafter "EA") was attached as Exhibit A to the Petition filed on January 7, 1993.

4. Petitioner is John Hunt and Debra Hunt, husband and wife, whose mailing and residence address is 343 Mamaki Street, Honolulu, Hawaii 96821.

5. On February 19, 1993, the LUC made a preliminary determination anticipating a negative declaration for Petitioner's draft EA.

6. On March 31, 1993, the LUC determined that the proposed action will not have a significant effect on the

environment and that an Environmental Impact Statement was not required of Petitioner.

7. On April 19, 1993, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order Determining a Negative Declaration for a State Land Use District Boundary Amendment.

8. On May 19, 1993, a prehearing conference was held in the conference room of the Old Federal Building, Room 238, 335 Merchant Street, Honolulu, Hawaii, which was attended by all parties.

9. The Office of the State Planning (hereinafter "OSP") recommended conditional approval of the Petition.

10. The Planning Department of the City and County of Honolulu (hereinafter "City") recommended approval of the Petition.

11. On June 3, 1993, Hearings Officer Benjamin M. Matsubara conducted a hearing on the Petition pursuant to a notice published on April 30, 1993, in the Honolulu Star-Bulletin.

12. There were no requests for intervention nor any public witnesses testifying on the Petition.

DESCRIPTION OF THE PROPERTY

13. The Property consists of 15,592 square feet of the 17,536 square foot lot located at 343 Mamaki Street, Niu Valley, Honolulu, Hawaii, and is identified by Tax Map Key No.:

3-7-13: portion of 71. The remaining 1,944 square feet of the lot not addressed by the Petition consist of lands already in the Urban District encompassing the 1,560 square foot driveway for the Property and an additional 384 square feet. These areas are zoned R-7.5 Residential by the City.

14. The 384 square foot section resulted from a consolidation and resubdivision involving TMK No.: 3-7-13:71 and the adjoining parcel designated as TMK No.: 3-7-11:24, to clarify the boundary between the two parcels. The 384 square feet added to TMK No.: 3-7-13:71 was originally part of TMK No.: 3-7-11:24, which was already in the Urban District and zoned R-7.5 Residential. Thus, the 384 square foot section has retained its Urban and Residential land use designations.

15. The Property adjoins six residential lots and Mamaki Street, a public residential street, on all sides except for the east side. Conservation District land adjoins the Property on the east.

16. Elevations for the Property range from approximately 45 feet above mean sea level (hereinafter "msl") at the top of the driveway to approximately 75 feet above msl at the rear of the Property. The topography in the vicinity of the single-family dwelling is relatively flat, averaging approximately 52 feet above msl.

17. Presently, one single-family dwelling which was built in 1965 is located on the Property.

18. The portion of the Property behind the existing residence and swimming pool slopes upward at approximately 20 percent. This area is landscaped and open. There are no structures in this area.

19. The United States Department of Agricultural Soil Conservation Service Soil Survey classifies the soils on the Property as Lualualei extremely stony clay (LPE). The soil condition is generally not suitable for agricultural use. There are no known adverse flood or drainage conditions.

20. The Property is connected to water, electric, sewer, and cable utilities. It is similar to the residential lots which adjoin it.

PROPOSAL FOR RECLASSIFICATION

21. Petitioner desires to have the State Land Use District Boundary amended to reflect the existing residential use of the Property. Petitioner intends to expand the existing single-family dwelling of 2,300 square feet an additional 280 square feet for a bedroom for Petitioner's child and an additional 180 square feet for an expanded kitchen. Renovations to repair the dwelling are also proposed.

22. The City will not issue a building permit for the expansion if the Property is in the Conservation District.

23. Petitioner does not propose any development of the Property other than additional improvements which would be allowed under R-7.5 Residential District zoning.

24. Petitioner does not intend to subdivide the Property and agrees to the imposition of a condition to prevent the subdivision of the Property.

25. Petitioner does not intend to have a bed and breakfast operation on the Property.

26. The proposed improvements to the Property will not involve any grading since that portion of the Property was previously graded when the lot was created.

PETITIONER'S FINANCIAL ABILITY
TO UNDERTAKE THE PROPOSED IMPROVEMENTS

27. Since Petitioner intends to only expand the existing dwelling an additional 480 square feet, the requirements of Section 15-15-50(c)(8), H.A.R. requiring the submittal of Petitioner's most recent financial statement, were waived without objection by the OSP or the City, pursuant to Section 15-15-34, H.A.R..

STATE AND COUNTY PLANS AND PROGRAMS

28. On December 7, 1951, portions of Niu Valley which included the Property was zoned by the City Planning Commission as A-1 Residential by Resolution No. 404, as part of a major rezoning of the Niu Valley area for residential use. Under Section 21-2.5 of the Revised Ordinances of Honolulu in effect at that time, an A-1 Residential District zoning designation required a minimum lot size of 7,500 square feet for each single-family dwelling.

29. With zoning in place, development in the Niu Valley area proceeded. As part of the overall development occurring in the Valley, on August 16, 1962, the Planning Department of the County approved the Niu Estates - Unit 2 subdivision, which created lots along Mamaki Street, among other lots.

30. On July 6, 1964, the Planning Department received an application to consolidate Lots 52 and 53 of the Niu Estates - Unit 2 subdivision with a portion of TMK No.: 3-7-04:1 and resubdivide these properties into three parcels, one of which consisted of the Property. On August 6, 1964, the Planning Director approved the subdivision map which created the Property. The agent for the then-owner of the Property received notice of the subdivision approval on August 19, 1964.

31. As the development of Niu Valley was occurring, the Hawaii State Legislature was in the process of enacting the State Land Use Law. On July 11, 1961, the Hawaii State Legislature adopted Act 187, SLH 1961, which created the Commission and the land use districts.

32. On April 21, 1962, the newly-created Commission adopted Temporary Land Use Commission District Boundaries. These were to serve as a guide for the Commission in creating the permanent district boundaries. The temporary designation for the Niu Valley area including the Property was Urban.

33. The Commission adopted the official land use boundaries on June 27, 1964, to take effect on August 23,

1964. The Commission designated the Property within the Conservation District.

34. On May 17, 1965, the City and County Building Department issued a building permit for a single-family residence on the Property. This was consistent with the zoning, which was still A-1 Residential. A single-family dwelling was built on the Property, and the Property was graded and landscaped, in 1965.

35. The zoning designation for the Property remained A-1 Residential until the adoption of the Comprehensive Zoning Code (hereinafter "CZC") by the County in January, 1969. The CZC provided that lands within the Conservation District would be zoned as P1-Preservation.

36. Despite the enactment of the CZC, the City continued to treat the Property as residentially-zoned property. A building permit issued by the City on May 7, 1969 indicated that the Property was zoned R-4 Residential, which was the equivalent of the present day R-7.5 Residential.

37. On July 27, 1982, pursuant to a request made by the previous owner of the Property, the Commission issued a boundary interpretation placing the Property within the Conservation District. The driveway portion of the Property was placed within the Urban District.

38. The Property has been continuously used as a single-family residence since 1965.

39. The Property is owned in fee simple by Petitioner. Petitioner signed an Agreement of Sale for the Property in 1984, and received a Warranty Deed for the Property in 1985. Since 1984, Petitioner has used the Property as a personal residence.

40. Petitioner John Hunt testified that at the time he bought the Property he was not advised that the Property was located within the Conservation District and zoned P1-Preservation. Petitioner testified that he was also not advised that the previous owner had received a Commission boundary interpretation confirming the location of the Property within the Conservation District. Petitioner indicated that he learned of these matters in 1990 when Petitioner attempted to get a building permit to make improvements to the Property.

41. The Development Plan (hereinafter "DP") Land Use Map for East Honolulu in which the Property is located, indicates that the Property is currently designated Preservation. However, pursuant to Section 24-1.2(i)(1) of the Revised Ordinances of Honolulu, as amended, a DP land use map amendment is not required for property to be rezoned if it is two acres or less. The Property abuts lands which are similarly designated and zoned, and the change does not involve major social, environmental, or policy impacts.

42. Petitioner has filed a zone change application with the City & County Department of Land Utilization

(hereinafter "DLU") to change the zoning from P1-Preservation to R-7.5 Residential. That application is now pending before the City Council.

43. By letter dated April 14, 1993 to the Chair of the Planning Commission, the Director of DLU recommended approval of the zone change request, subject to the conditions and filing of a Unilateral Agreement.

44. By letter dated May 12, 1993 to City Council Chair Gary Gill, the Chair of the Planning Commission recommended approval of the zone change request in accordance with the recommendations of the Director of DLU, and subject to reclassification of the Property by the LUC to the Urban District.

NEED FOR THE PROPOSED RECLASSIFICATION

45. Petitioner seeks the reclassification of the Property to correct a situation that has existed since 1965. The reclassification would conform the land use classification of the Property to its actual long-time use as a single-family residence and permit additions and repairs to the existing structure.

ENVIRONMENTAL IMPACTS

46. Since the Property has been in continuous use as a single-family residence since 1965, the proposed boundary amendment will have no effect on the existing environment and on environmental resources in and around the Property,

including agricultural, recreational, cultural and historic resources, and the flora and fauna of the Property.

ECONOMIC AND SOCIAL IMPACTS

47. Since the Property has been in continuous use as a single-family residence since 1965, the availability of schools, sewers, parks, water, sanitation, drainage, roads, and police and fire protection, and other services and facilities for the Property will not be additionally affected, nor shall the public agencies providing these services and facilities be additionally burdened, as a result of the proposed boundary amendment.

COMMITMENT OF STATE FUNDS AND RESOURCES

48. No commitment of State funds or resources will result from the proposed boundary amendment.

CONFORMANCE TO URBAN DISTRICT STANDARDS

49. The Property meets the standards applicable in establishing boundaries of the Urban District as set forth in Section 15-15-18, H.A.R. as follows:

a. The Property is located immediately adjacent to and is contiguous with lands which are located in the Urban District and which are zoned and used for urban uses.

b. The Property itself has been effectively in urban use since 1965, continues to be an appropriate and reasonable use of the Property, and is appropriately located for urban concentration.

c. Economic feasibility is not an issue with respect to the Property since, aside from customary residential improvements, Petitioner does not intend to develop the Property.

d. Basic services such as sewers, transportation systems, water, sanitation, schools, parks, and police and fire protection are already provided to the Property. No unreasonable investment in public infrastructure or support services will be necessary for the Property.

e. The Property includes lands with satisfactory topography and drainage conditions and is reasonably free from the danger of floods, tsunami, unstable soil conditions and other adverse environmental effects.

f. Although the Property is designated as Preservation under the City and County of Honolulu's DP Land Use Map, Petitioner has concurrently filed a Zone Change Application with the DLU, to change the zoning designation to Residential. If the Application is granted, the DP Land Use Map designation of the Property will automatically change to Residential.

g. Given the 15,592 square foot area of the Property, the Property represents a minor portion of the surrounding Urban District.

50. The Property does not currently meet the standards applicable to the Conservation District.

51. The Property is not necessary for watershed protection. It is not susceptible to floods or soil erosion. It is not undergoing major erosion damage and requires no corrective attention by government agencies.

52. The Property is not necessary for the protection of health and welfare of the public caused by flooding, tsunami, or volcanic activity. Rock falls have occurred but have not resulted in major damage or loss of life.

53. The Property has no unique physiographic or ecologic significance. Due to the existing development and landscaping of the Property, it has no significant conservation or preservation values or known archaeological sites. These lands are not necessary for the conservation of natural ecosystems.

54. The Property includes some lands with a slope in excess of 20 percent which has been landscaped. Due to the Property's location, configuration, and existing development, it does not have significant natural open space amenities or scenic values.

55. The Property has been suitably developed for residential use.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP TO APPLICABLE PRIORITY GUIDELINES OF THE HAWAII STATE PLAN AND FUNCTIONAL PLANS

56. The reclassification of the Property is in conformance with the Hawaii State Plan, priority guidelines and functional plan policies, including the following:

a. State Goals: All of the State goals set forth in Section 226-4, HRS.

b. State Objectives: The State objectives set forth in Sections 226-5, 226-13, and 226-19, HRS.

c. State Policies: The following State policies set forth in Chapter 226, HRS:

Section 226-5(b)(1): "Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county."

Section 226-5(b)(7): "Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area."

Section 226-13(b)(7): "Encourage urban development in close proximity to existing services and facilities."

Section 226-19(b)(1): "Effectively accommodate the housing needs of Hawaii's people."

Section 226-19(b)(3): "Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing."

Section 226-19(b)(4): "Promote appropriate improvement, rehabilitation, and maintenance of existing housing units and residential areas."

Section 226-19(b)(5): "Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas."

d. State Functional Plans: The proposed reclassification of the Property is in conformance with the following objective of the State Housing Functional Plan:

Objective D: "Preservation of existing public and private housing stock."

57. The proposed reclassification of the Property is in conformance with the following priority guideline contained in Section 226-104, HRS:

Section 226-104(b)(1): "Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles."

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

58. Although the Property is within the Coastal Zone Management area, it is not located within the Special Management Area; therefore, no Special Management area permit is required. The Petition is in general compliance with Chapter 205A, HRS.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner and the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a findings of fact should be deemed or construed as a conclusion of law, any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, HRS, and the Hawaii Land Use Commission Rules under Chapter 15-15, H.A.R., and upon consideration of the Land Use Commission decision-making criteria under Section 205-17, HRS, this Commission finds upon the clear preponderance of the evidence that the reclassification of the Property consisting of approximately 15,592 square feet of land situated at Niu Valley, Honolulu, Oahu, City and County of Honolulu, State of Hawaii and identified as Tax Map Key No.: 3-7-13: portion of 71, from the Conservation Land Use District to the Urban Land Use District subject to the conditions hereinafter stated in the Order, is reasonable, conforms to the standards for establishing the urban district boundaries, non-violative of Section 205-2, HRS, and is consistent with the Hawaii State Plan as set forth in Chapter 226, HRS.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, being the subject of Docket No. A93-688, filed by John Hunt and Debra Hunt, consisting of approximately 15,592 square feet of land situated at Niu Valley, Honolulu, Oahu, City and County of Honolulu, State of Hawaii, Tax Map Key No.: 3-7-13: portion of 71, and identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the Conservation Land Use District to the Urban Land Use

District and the State Land Use Boundaries are amended accordingly, subject to the following conditions:

1. Petitioner shall immediately stop work on the impacted area and contact the Department of Land and Natural Resources, Historic Preservation Division, should any significant archaeological resources such as artifacts, shell, bones or charcoal deposits, human burial, rock or coral alignments, pavings or walls of historic or prehistoric significance be encountered during the development of the Property.

2. Petitioner shall complete the proposed improvements upon the Property in substantial compliance with the representations made before the Commission in obtaining the reclassification.

3. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to the proposed improvements of the Property.

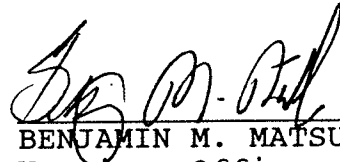
4. Petitioner shall provide notification to the Commission upon completion of Petitioner's planned improvements to the Property.

5. The Land Use Commission may fully or partially release these conditions as to all or any portions of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

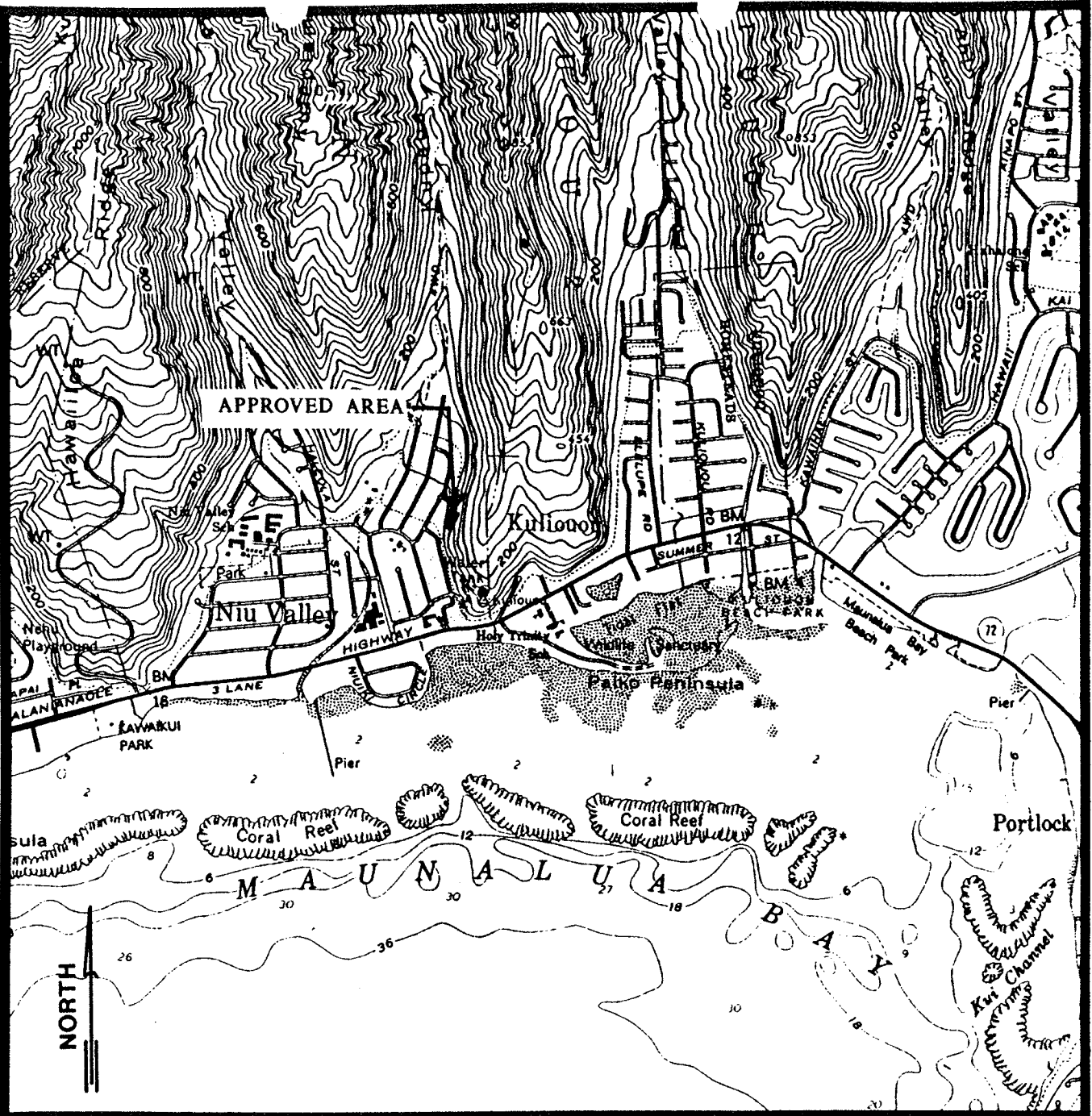
6. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a Statement to the effect that the Property is subject to conditions imposed by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

7. Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, H.A.R.

Dated: Honolulu, Hawaii this 19th day of July 1993.



BENJAMIN M. MATSUBARA
Hearings Officer



DOCKET No. A93 - 688 / JOHN HUNT AND
DEBRA HUNT

LOCATION MAP

TAX MAP KEY: 3-7-13: por. 71

NIUE ESTATES, NIUE VALLEY, HONOLULU, OAHU

SCALE: 1" = 2,000 ft. ±

