

APPENDIX 10 re: Map h-65

During the Commission's Hearing for the Petition Commission Chair Scheuer questioned witness Kato. Commission Chair Scheuer appeared to try to establish that map H-65 was different than the other maps for the Hamakua Coast in that the district line on the other maps appeared to follow various map features but not the former railroad. Commission Chair Scheuer pressed Kato to agree that the district line on map H-65 appeared to follow the former railroad '**for all or nearly all of the map**' and in that way the **1969** Commission must have had '**some other reason**' for applying the district line to follow the former railroad on map H-65. Several areas of map H-65 are copied on subsequent pages in this Appendix.

This Appendix Evidences that Commissioner Scheuer was incorrect.

The relevant portions of the Hearing's transcript, Exhibit 5, are presented herein followed by copies of sections from the map.....

see following pages.....

21	MS. KATO: To be honest, this is a
22	question that I have tried to figure out, and -- but
23	for our purposes, we are considering this property
24	to lie along the Hamakua Coast.
25	But regardless of whether it does or not,

Source, Exhibit 5, Transcript page 94

Continued on next pages.....

1 if you push that aside, there are those four
2 conditions that I mentioned that are supposed to
3 guide where the boundary is supposed to be located.

4 And if you look just at that, then that
5 one says -- oh, I notice, I think, from Hilo to
6 another location in the general overall segments, it
7 mentions the 300 line, but in the considerations,
8 the 300 mark is only considered if there are no
9 other physical features that are applicable. But in
10 the case of this property, there's the pali and
11 there's the railway. **the railway is 430 ft. inland in one location**

12 COMMISSIONER SCHEUER: Okay.

13 MS. KATO: So I think those physical
14 features have to be considered first.

15 COMMISSIONER SCHEUER: But you're not
16 suggesting that in this case, there is -- or other
17 than the railway line, there is not a physical
18 feature that should be considered?

19 MS. KATO: No. **incorrect - there is a "ridge top and**
pali"

20 COMMISSIONER SCHEUER: Okay.

21 MS. KATO: Not that I'm aware of.

22 COMMISSIONER SCHEUER: Okay. You stated
23 earlier in response to a commissioner's question
24 that the maps are unclear. And I would suppose,
25 specifically, you mean Map H65 is unclear. In which
continued.....

1 way do you believe Map H65 is unclear?

2 Because it's posted to the LUC's website,
3 and I'm looking at it, and I realize that if you are
4 trying to perhaps determine the specific location of
5 the railway that, you know, you might want to drill
6 down to a location.

7 But the line on Map H65 does not,
8 generally speaking, stick to the clifftop, which you
9 can see by the contra lines, but rather as inland,
10 apparently running along the railway line for the
11 entirety, or nearly the entirety, of this map. So
12 I'm not sure in what degree or in what way you're
13 saying that H65 is an unclear map.

14 **MS. KATO:** I think it's a very small map,
15 so it's a little hard to tell exactly where that
16 line is drawn, but I also believe that if you
17 determine that it wasn't the intent to draw the
18 boundary there, then the map could be wrong.

19 And that has been found in other cases
20 where they've determined that the map was drawn
21 incorrectly in relation to the intent.

22 **COMMISSIONER SCHEUER:** But was that only
23 in relationship to the location of the pali rather
24 than the location of the interior road or railway
25 line?

Continued.....

1 **MS. KATO:** I believe they've reinterpreted
2 the map where they believe it to be incorrect.

3 **COMMISSIONER SCHEUER:** Okay. And in those
4 cases, was the location of the line in question on
5 those maps solely intended to locate the top of the
6 pali?

7 **MS. KATO:** You're asking if the line was
8 at the top of the pali.

9 **COMMISSIONER SCHEUER:** In the cases where
10 the LUC chose to essentially reread the map, in
11 those cases where the LUC was rereading, was the
12 line in question at the top of the pali, at the top
13 of the cliffs, rather than at, for instance, a
14 railway line?

15 **MS. KATO:** If the line was already there
16 before the -- or it was determined to be at the top
17 of the pali?

18 **COMMISSIONER SCHEUER:** I will go all day
19 to help you understand my question.

20 **MS. KATO:** I have not -- I'm sorry. Please
21 go ahead.

22 **COMMISSIONER SCHEUER:** You -- you were
23 citing to previous cases where the Land Use
24 Commission has said the boundary line was
25 incorrectly drawn on the map, and we are now -- we

Continued.....

1 are reinterpreting it based on a more detailed look
2 at topographical features. Is that correct?

3 **MS. KATO:** I think so.

4 **COMMISSIONER SCHEUER:** Yes or no would be
5 great.

6 **MS. KATO:** Yes.

7 **COMMISSIONER SCHEUER:** So in those cases
8 where the LUC has taken that action, was the line on
9 the map trying to indicate the location of the top
10 of the pali?

11 What I'm trying to get to, Ms. Kato, is
12 that in this case, it appears to me visually that
13 the line on the map clearly indicates over most of
14 this coastline a desire to place the boundary at the
15 railway line. So I can understand on a -- on a map
16 where things become close together --

17 Mr. Church, will you please mute yourself?
18 Where lines are close together that, like, oh, yeah,
19 I can understand on a map of this scale exactly
20 where the top of the cliff is is questionable. But
21 in this case, the line is well inland from the
22 cliff.

23 And I'm not sure that any of the cases
24 that you suggest are comparable are cases where the
25 line was well inland from the cliff.

continued.....

1 MS. KATO: Okay. Someone from -- Lorraine
2 from OPSD would like to respond.

3 COMMISSIONER SCHEUER: Yes. Can you turn
4 your camera, if possible, Ms. Maki? Hi. Aloha. Do
5 you swear or affirm the testimony you're about to
6 give is the truth?

7 MS. MAKI: I do. Okay. I don't know if I
8 have what you're looking for, but if you look on our
9 -- one of our exhibits -- I think it's OP Exhibit 4
10 -- that was a boundary interpretation, not a
11 reinterpretation, which is pretty similar to the
12 original '92 McCully interpretation. But it does
13 indicate that the top of the pali was used as the
14 boundary. Did you have anything else?

15 COMMISSIONER SCHEUER: So but my question
16 is here the question is not -- if I understood the
17 Office of Planning's argument correctly as
18 represented by your counsel, it was, hey, you've
19 done this before. And what I'm trying to say is I
20 think I see a difference. When we've done it before,
21 it's been about where the top of the pali is, not
22 where the railway line is. **Incorrect- the r.r. also crossed
Muragin's land, ref., Exhibit 37**

23 MS. MAKI: I disagree with that.

24 COMMISSIONER SCHEUER: Okay.

25 MS. MAKI: But we have cited those two

continued.....

1 cases, which are similar and -- but Stengel is --
2 okay. So Stengel was a boundary interpretation
3 first, and then they filed a DR.

4 **COMMISSIONER SCHEUER:** Yeah.

5 **MS. MAKI:** Okay? I don't think it was a
6 railroad right-of-way, but it was determined to be
7 inland of the top of the pali at first in a boundary
8 interpretation. And then during a DR petition, they
9 -- the Stengel one -- they indicated that there was
10 agriculture being done in that area, and so it was
11 reinterpreted to be the pali.

12 **COMMISSIONER SCHEUER:** I -- I understand
13 that.

14 **MS. MAKI:** Okay.

15 **COMMISSIONER SCHEUER:** But I agree with
16 you. In the Stengel case, there's no mention of a
17 railway line as being potentially the location of
18 the boundary.

19 **MS. MAKI:** Okay.

20 **COMMISSIONER SCHEUER:** Which is the point
21 I'm trying to get to.

22 **MS. KATO:** Are you asking if there's a
23 case that's exactly the same as this one?

24 **COMMISSIONER SCHEUER:** Yes. If you're
25 going to make the argument that the issue revolves

continued.....

1 around the map being drawn wrong.

2 **MS. KATO:** I don't believe there is a case
3 that is exactly like this one that we're aware of
4 that the LUC has determined where the -- where the
5 line was drawn inland and they decided to draw the
6 line -- that the line should have been drawn at the
7 top of the sea pali that has a railroad.

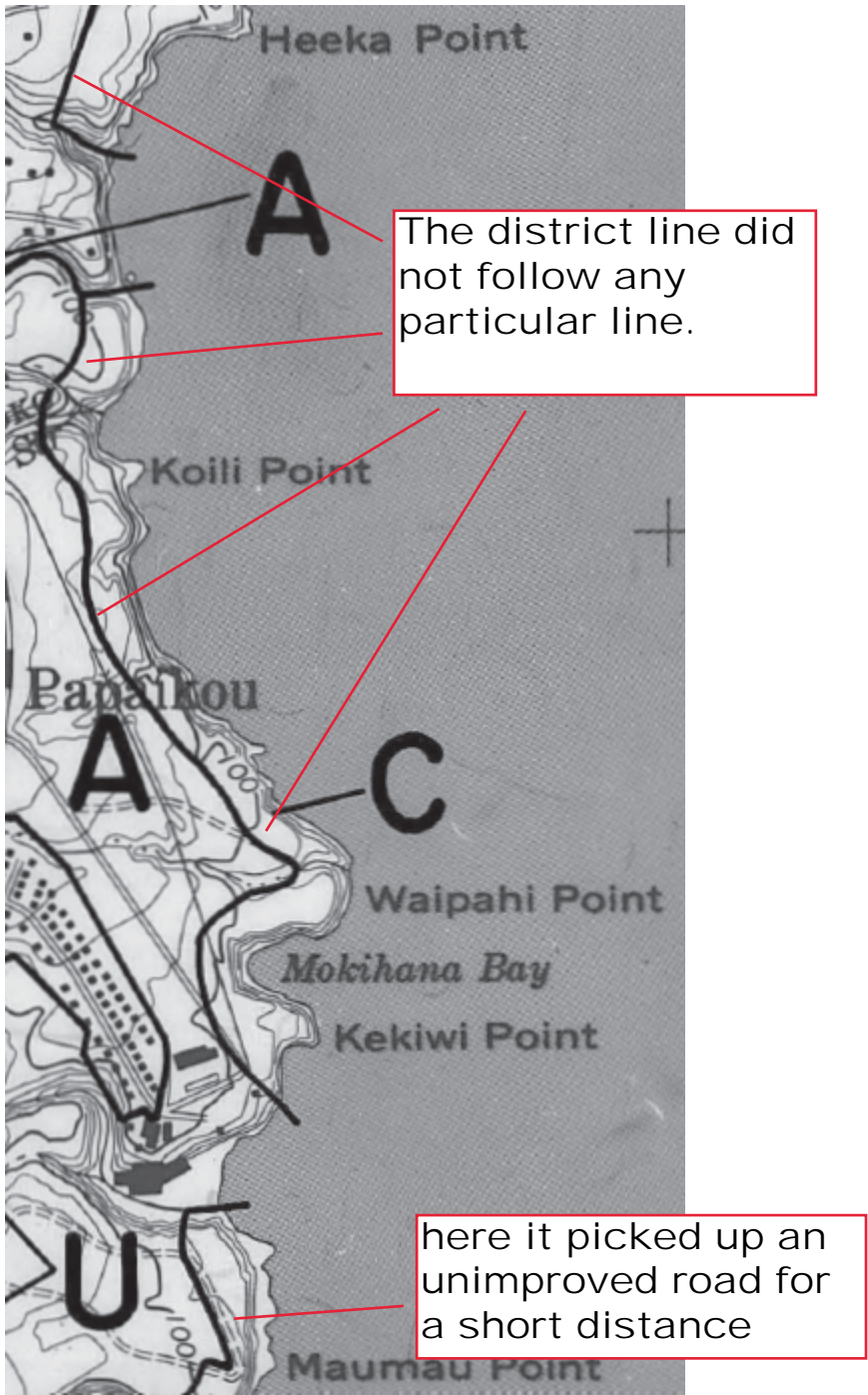
8 **COMMISSIONER SCHEUER:** Awesome. Thank you
9 so much. That's good clarification.

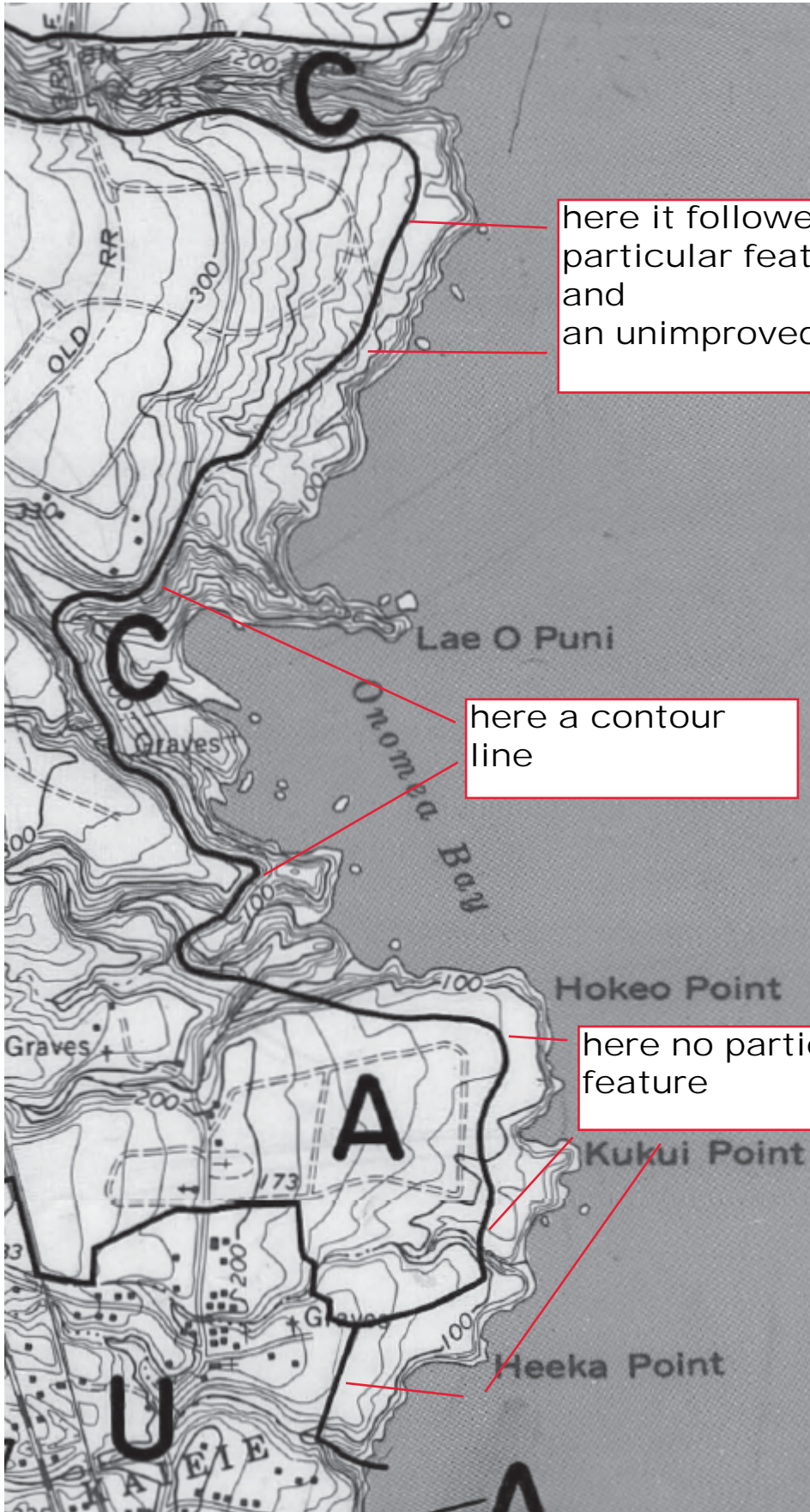
Source, Exhibit 5, Hearing transcript, pages 94-102
(emphasis and text box added)

Next we turn to sections of Map H59 and H65. Map H-59 shows the district line at the Muragin property to lie in an area which was occupied, in whole or in part, by the former railroad, also see the page copy of Muragin boundary interpretation map which shows the location of the railroad. Map H65 pictures show that the district line did not generally follow the former railroad for '**most or nearly all of the map**' as Commission Chair Scheuer asserted in the above copied pages of the Hearing transcript.....

Appendix 10

Source, SLUD Map H-65, the following snapshots show the coastal area leading from south to north.

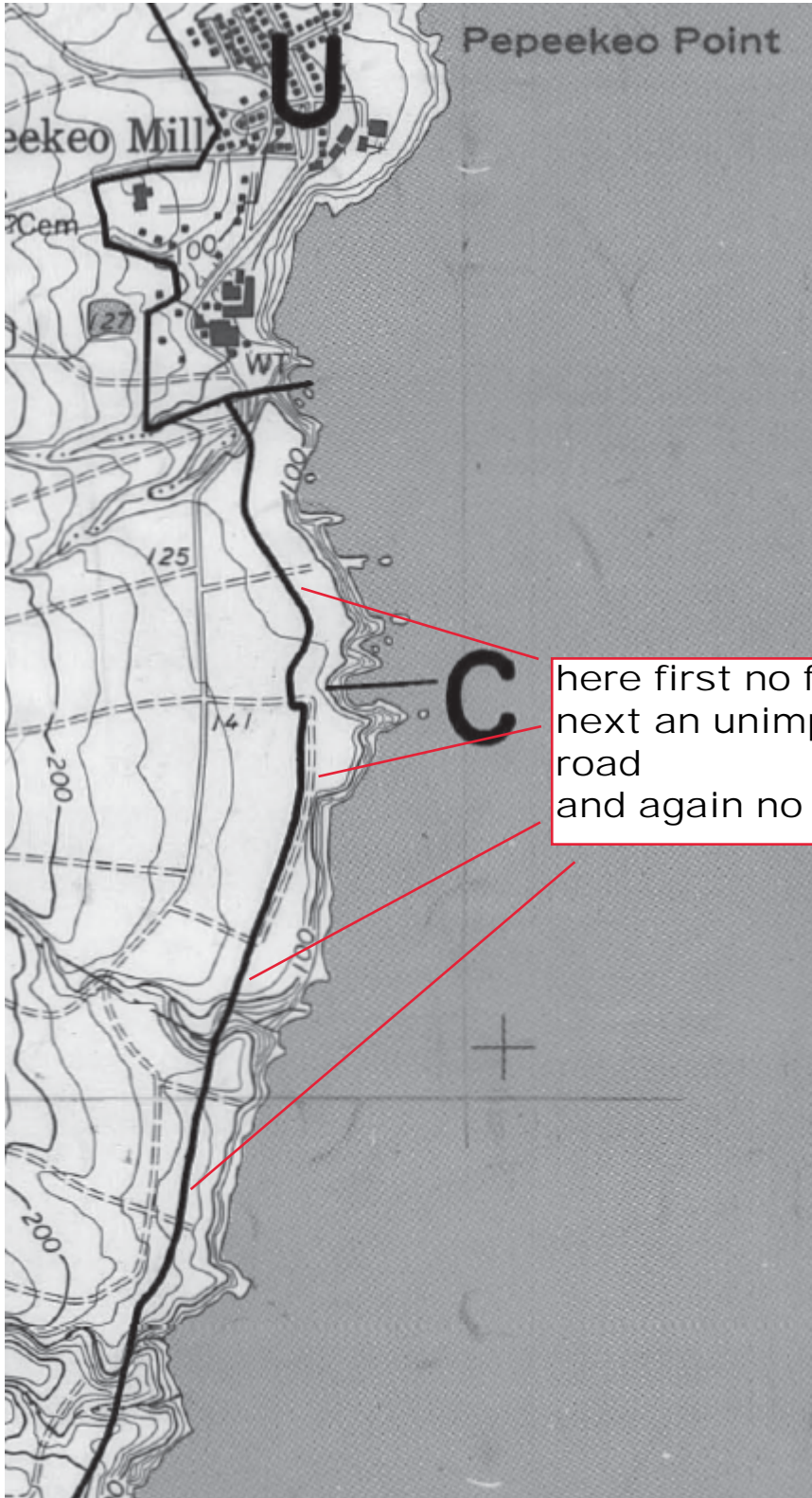




here it followed no particular feature and an unimproved road

here a contour line

here no particular feature



Pepeekeo Point

Pepeekeo Mill

Cem

WT

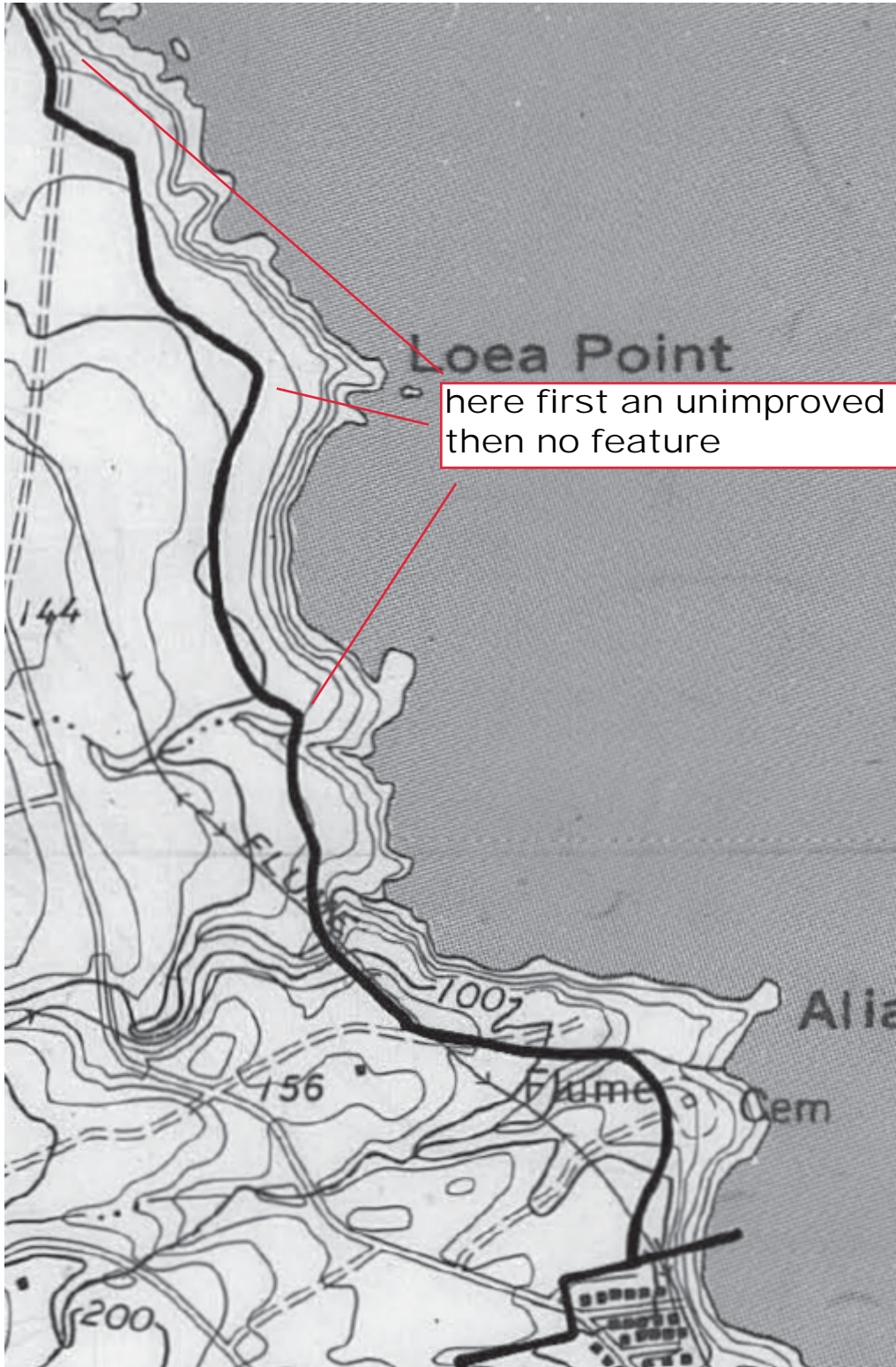
125

141

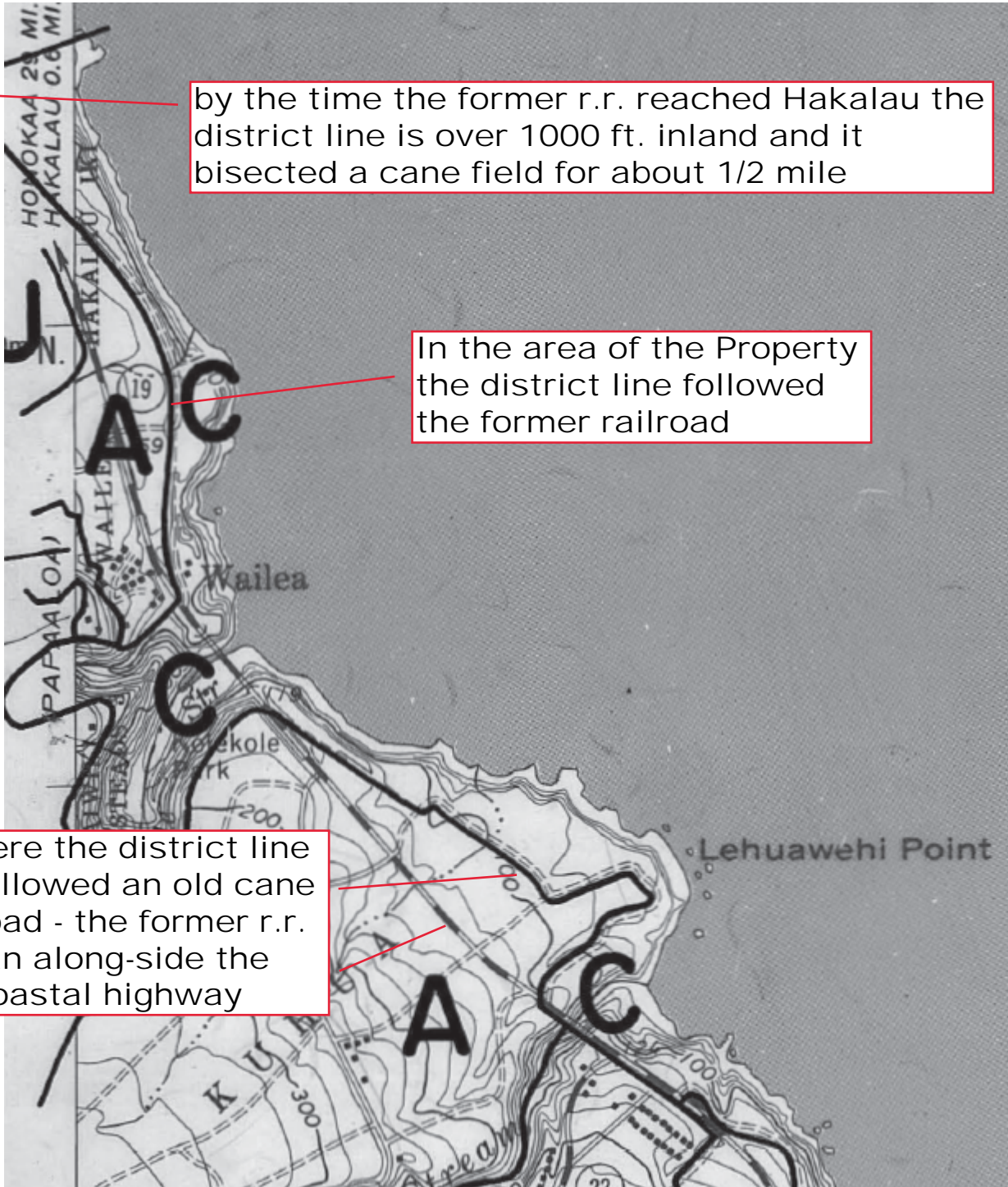
200

200

here first no feature
next an unimproved
road
and again no feature



here first an unimproved road
then no feature



by the time the former r.r. reached Hakalau the district line is over 1000 ft. inland and it bisected a cane field for about 1/2 mile

In the area of the Property the district line followed the former railroad

here the district line followed an old cane road - the former r.r. ran along-side the coastal highway