

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) Docket No. A93-698  
)  
CHARLES P. BOOTH, SANDRA E. BOOTH, ) HEARING OFFICER'S PROPOSED  
EDWARD D. BRUFFEY, and SHARON L. ) FINDINGS OF FACT,  
BRUFFEY ) CONCLUSIONS OF LAW, AND  
) DECISION AND ORDER  
To Amend the Conservation Land Use )  
District Boundary into the )  
Agricultural Land Use District for )  
Approximately 15,384.915 square )  
feet of land at Waimea, Waialua, )  
Oahu, Hawaii, TMK No.: 6-1-02: 2 )  
(por.) )  
\_\_\_\_\_)

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

BENJAMIN M. MATSUBARA  
Kendall Bldg., 8th Floor  
888 Mililani Street  
Honolulu, Hawaii 96813

Hearing Officer

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) Docket No. A93-698  
)  
CHARLES P. BOOTH, SANDRA E. BOOTH, ) HEARING OFFICER'S PROPOSED  
EDWARD D. BRUFFEY, and SHARON L. ) FINDINGS OF FACT,  
BRUFFEY ) CONCLUSIONS OF LAW, AND  
) DECISION AND ORDER  
To Amend the Conservation Land Use )  
District Boundary into the )  
Agricultural Land Use District for )  
Approximately 15,384.915 square )  
feet of land at Waimea, Waialua, )  
Oahu, Hawaii, TMK No.: 6-1-02: 2 )  
(por.) )  
\_\_\_\_\_)

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

CHARLES P. BOOTH, SANDRA E. BOOTH, EDWARD D. BRUFFEY,  
and SHARON L. BRUFFEY ("Petitioners") filed a Petition for Land  
Use Boundary Amendment on November 10, 1993, pursuant to section  
205-4, Hawaii Revised Statutes ("HRS"), and chapter 15-15, Hawaii  
Administrative Rules ("HAR"), to amend the land use district  
boundary by reclassifying approximately 15,384.915 square feet of  
land located at Waimea, Waialua, Oahu, Hawaii, identified as TMK  
No.: 6-1-02:2 (por.) ("Petition Area"), from the Conservation  
Land Use District to the Agricultural Land Use District.

The duly appointed Hearing Officer of the Land Use  
Commission (Commission"), having heard and examined the  
testimony, evidence, and argument of the parties presented during  
the hearing and the Stipulated Proposed Findings of Fact,  
Conclusions of Law, and Decision and Order among Petitioners, the

Office of State Planning ("OSP"), and the City and County of Honolulu Planning Department ("Planning Department"), hereby makes the following proposed findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioners filed a Petition for Land Use Boundary Amendment on November 10, 1993, and subsequent amendments thereto on November 29, 1993, June 9, 1994, and June 21, 1994 (collectively referred to herein as "Petition"). A draft Environmental Assessment ("EA") was attached as Exhibit 1 to the Petition filed on November 10, 1993 pursuant to section 343-5(a)(7), HRS.

2. Petitioners are Charles P. Booth and Sandra E. Booth, husband and wife, and Edward D. Bruffey and Sharon L. Bruffey, husband and wife. Sandra E. Booth and Sharon L. Bruffey are sisters. Petitioners' mailing and residence address is 59-814 Maulukua Road, Haleiwa, Hawaii 96712.

3. On December 2, 1993, and by a written order dated December 17, 1993, the Commission made a preliminary determination for a negative declaration regarding Petitioners' draft EA pursuant to section 343-5(c), HRS.

4. On March 23, 1994, and by a written order dated April 6, 1994, the Commission made a final determination for a negative declaration and determined that an Environmental Impact Statement was not required of Petitioners.

5. On June 13, 1994, a prehearing conference on the Petition was held in Honolulu, Hawaii, which was attended by all parties.

6. The OSP recommended conditional approval of the Petition.

7. The Planning Department recommended approval of the Petition.

8. The Commission's duly appointed hearing officer, Benjamin M. Matsubara, held a hearing on the Petition on June 24, 1994, pursuant to a public notice published on May 19, 1994 in the Honolulu Star-Bulletin.

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

10. At the hearing, Petitioners orally moved to waive the requirements for submittal of Petitioners' financial statement, as required by section 15-15-50(c)(8), HAR. Petitioners' request was granted by hearing officer, Benjamin M. Matsubara, and by a written order filed on July 11, 1994.

11. At the hearing, the hearing officer admitted into evidence, without objection, letters dated February 10, 1994 from Mr. Lunakanawai Hauanio and March 10, 1994 from Mr. Donald Clegg, Director of the Department of Land Utilization, City and County of Honolulu ("DLU").

DESCRIPTION OF THE PETITION AREA

12. The Petition Area consists of approximately 15,384.915 square feet, identified as TMK No.: 6-1-02: 2 (por.),

located at Waimea, District of Waialua, City and County of Honolulu, State of Hawaii. The Petition Area comprises a minute portion of the Waimea Falls Park.

13. The Petition Area is immediately adjacent to the southerly boundary of Petitioners' land, Lot 13 of the "NORTH SHORE HEIGHTS SUBDIVISION," as shown on File Plan Number 1049, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of approximately 1.647 acres, identified as TMK No.: 5-9-31:14 ("Petitioners' Lot").

14. The Petition Area is contiguous to the existing Conservation Land Use District on its south, west, and east sides. The remainder of the Petition Area is contiguous to the Agricultural Land Use District.

15. Generally, the Petition Area is severely sloped downward toward the Waimea Valley and away from Petitioners' Lot. The Petition Area is presently covered with eucalyptus and ironwood trees. The Petition Area lies idle and is not currently used.

16. The Petition Area is currently owned by Attractions Hawaii, a Hawaii partnership ("Attractions Hawaii"), which has expressed an intent to sell the subject property to the Petitioners.

17. The Petition Area contains a fence. No objections were expressed by the OSP with leaving that existing fence as it is.

18. The United States Department of Agriculture, Soil Conservation Service's Soil Survey of Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii, classifies the soils within the Petition Area as "HLMG," Helemano series silty clay, 30 to 90% slopes. This classification is for soil on the sides of V-shaped gulches. The surface layer is dark reddish-brown silty clay approximately 10 inches thick. The soil is used for pasture, woodland, and wildlife.

19. The University of Hawaii Land Study Bureau's Detailed Land Classification - Island of Oahu (1972) has given the Petition Area Land Classification Symbol "E107" (Master Productivity Rating "E," Land Type 107). Land type E107 consists of rough broken land, and is characterized by 36 to 80% slopes. This land type exists at elevations of 0 to 2000 feet in areas with annual rainfall of 35 to 60 inches. The overall classification uses of this land type include grazing and forest.

20. The State Agricultural Lands of Importance to the State of Hawaii ("ALISH") system groups agricultural land into three classes: Prime, Unique, and Other Agricultural Land. The Petition Area lies within the borders of the Conservation Land Use District, and is not subject to and has not been classified under the ALISH system.

#### PROPOSAL FOR RECLASSIFICATION

21. Petitioners desire to have the State Land Use District Boundary of the Petition Area amended from the Conservation Land Use District to the Agricultural Land Use

District for the purpose of increasing the adjacent Petitioners' Lot to the requisite size of 2.0 acres in order to permit two single-family dwelling units. Petitioners have represented that no new uses are proposed for the Petition Area. Petitioners also represented that no alteration or development of the Petition Area is proposed. Petitioners intend to seek a district boundary reclassification, a Development Plan Map amendment, and rezoning of the Petition Area to the same Agricultural Land Use District, Agricultural designation, and Country zoning classifications as Petitioners' Lot. Consolidation of the Petition Area with Petitioners' Lot will result in two acres that will then allow Petitioners to subdivide into two 1-acre lots, which is the minimum lot area for the Country District.

22. In 1985, Petitioners bought Petitioners' Lot. Approximately a year later, Petitioners Ed and Sharon Bruffey built a house on the Petition Area.

23. In 1987, or shortly thereafter, Petitioners obtained a building permit for an ancillary structure, with the intention of converting it into a second house on Petitioners' Lot ("Second House").

24. Petitioners added partition walls and two of the Petitioners, Charles and Sandra Booth, moved into the Second House at the beginning of 1992.

25. On March 24, 1992, the Building Department of the City and County of Honolulu ("Building Department") issued a Notice of Violation No. BV92-3-111, and on June 30, 1992, issued

a Notice of Order No. B092-6-84 to Petitioners for interior alterations to the ancillary structure ("Building Permit Violation").

26. On March 30, 1992, the Building Department issued a Notice of Violation, and on July 29, 1992, the DLU issued a Notice of Order to Petitioners for having two one-family detached dwellings located on Petitioners' Lot in a Country zoned district where only one detached dwelling is permitted ("Zoning Violation").

27. By letter dated May 19, 1994, the Building Department granted Petitioners' Ninth Request for Extension of Time to comply with the Building Permit Violation until November 12, 1994. Petitioners must submit progress updates to the Building Department every two months. The Building Department has granted an extension of time with respect to the Building Permit Violation since efforts to correct the violation, including the relief being sought through this Petition, are being pursued.

28. At the end of summer 1992, Petitioners Charles and Sandra Booth moved out of the Second House into the guest room of Petitioners Edward and Sharon Bruffey, where they currently reside. Petitioners Charles and Sandra Booth were living in the Second House for approximately six months.

29. By letter dated October 20, 1992, the Director of the DLU confirmed that the Zoning Violation was corrected on October 1, 1992.



#### STATE AND COUNTY PLANS AND PROGRAMS

30. The Petition Area is located within the State Land Use Conservation District, as reflected on the Commission's official map, O-3 (Waimea). The Petition Area is located within the General subzone of the Conservation District.

31. The Petition Area is designated "Parks and Recreation" on the City and County of Honolulu Development Plan Land Use Map for the North Shore. The Petition Area is zoned P-1 (Restricted Preservation District).

32. The Petition Area is within the Special Management Area ("SMA") of the City and County of Honolulu.

#### ENVIRONMENTAL IMPACTS

33. Since Petitioners do not intend to develop, construct on, or otherwise alter the Petition Area, there will be no significant impact on the environment and on the environmental resources in and around the Petition Area, including agricultural, recreational, cultural, scenic and historical resources, and the flora and fauna.

34. The State Department of Land and Natural Resources ("DLNR") recommends an archaeological survey of the Petition Area be undertaken to its satisfaction.

35. As long as the DLNR is satisfied with the results of the archaeological survey and mitigating measures have been done, the OSP would have no objections to normal agricultural activities on the Petition Area.

ECONOMIC AND SOCIAL IMPACTS

36. Since Petitioners do not intend to develop, construct on, or otherwise alter the Petition Area, the availability of schools, sewers, parks, water, sanitation, drainage, roads, police and fire protection, and other services and facilities for the Petition Area 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.

CONFORMANCE TO THE AGRICULTURAL DISTRICT STANDARDS

37. The Petition Area meets the standards applicable in establishing boundaries of the Agricultural District as set forth in section 15-15-19, HAR, as follows:

a. The Petition Area is located immediately adjacent to and is contiguous with Agricultural lands.

b. Petitioners maintain an avid interest in small-scale domestic home-gardening and the raising of lychee, oranges, white sapote, banana fruit trees, cinnamon and allspice trees, red ginger, heliconia, and plumeria, and vegetables, all of which are currently grown on Petitioners' Lot.

c. The agricultural uses on Petitioners' Lot will be enhanced by the reclassification of the Petition Area to the Agricultural District. The Petition Area can be used as a buffer agricultural strip to protect banana trees on Petitioners' Lot from high winds and to provide necessary shade. With a buffer agricultural strip, Petitioners can plant up to the border

of Petitioners' Lot without fear of encroachment of branches and roots into Conservation land.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN

38. The reclassification of the Petition Area is in conformance with the following goals, objectives, and policies of the Hawaii State Plan:

a. State Goals: The goals set forth in section 226-4(3) concerning the State's goals to achieve physical, social, and economic well-being for individuals and families in Hawaii.

b. State Objectives and Policies: The objectives and policies set forth in section 226-11(b)(4), HRS, concerning managing natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage; section 226-19(b)(1), HRS, concerning the accommodation of the housing needs of Hawaii's people; and section 226-19(b)(2), HRS, regarding the stimulation and promotion of feasible approaches that increase housing choices for moderate-income households.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

39. The Petition Area is within the Coastal Zone Management Area and is located within the SMA identified in section 205A-22, HRS; however, since no development of any type is being proposed, no SMA permit is required. The proposed reclassification of the Petition Area is in general compliance with chapter 205A, HRS.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any of the parties in this proceeding not adopted by this Commission herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law shall 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, HAR, and upon consideration of the Land Use Commission decision-making criteria under section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 15,384.915 square feet of land located at Waimea, Waialua, Oahu, Hawaii, identified as TMK No.: 6-1-02: 2 (por.), from the State Land Use Conservation District to the State Land Use Agricultural District, is reasonable, conforms to the standards for establishing the agricultural district boundaries, is non-violative of section 205-2, HRS, and is consistent with the Hawaii State Plan as set forth in chapter 226, HRS, and with the policies and criteria established pursuant to sections 205-17 and 205A-2, HRS.

PROPOSED ORDER

IT IS HEREBY ORDERED that the Petition Area, being the subject of this Docket No. A93-698 filed by Petitioners Charles P. Booth, Sandra E. Booth, Edward D. Bruffey, and Sharon L. Bruffey, consisting of approximately 15,384.915 square feet of land located at Waimea, Waialua, Oahu, Hawaii, identified as TMK No.: 6-1-02: 2 (por.), and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the State Land Use Conservation District to the State Land Use Agricultural District, and that the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. Petitioners shall acquire the Petition Area and obtain all zoning and subdivision approvals for the Petition Area from the City and County of Honolulu within one year of the date of the Decision and Order.

2. Upon satisfaction of condition 1, Petitioners shall provide written notification to the Commission of their acquisition of the Petition Area and receipt of all zoning and subdivision approvals for the Petition Area from the City and County of Honolulu.

3. Petitioners shall not construct buildings, walls, and fences, etc., or grade, grub, clear or alter the Petition Area, unless Petitioners have first conducted an archaeological survey of the Petition Area and instituted mitigating measures, as needed, to the prior express written satisfaction of the

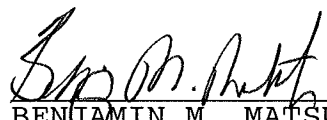
Department of Land and Natural Resources, Historic Sites Division, of the State of Hawaii. Petitioners shall provide written notification to the Commission of DLNR's approval.

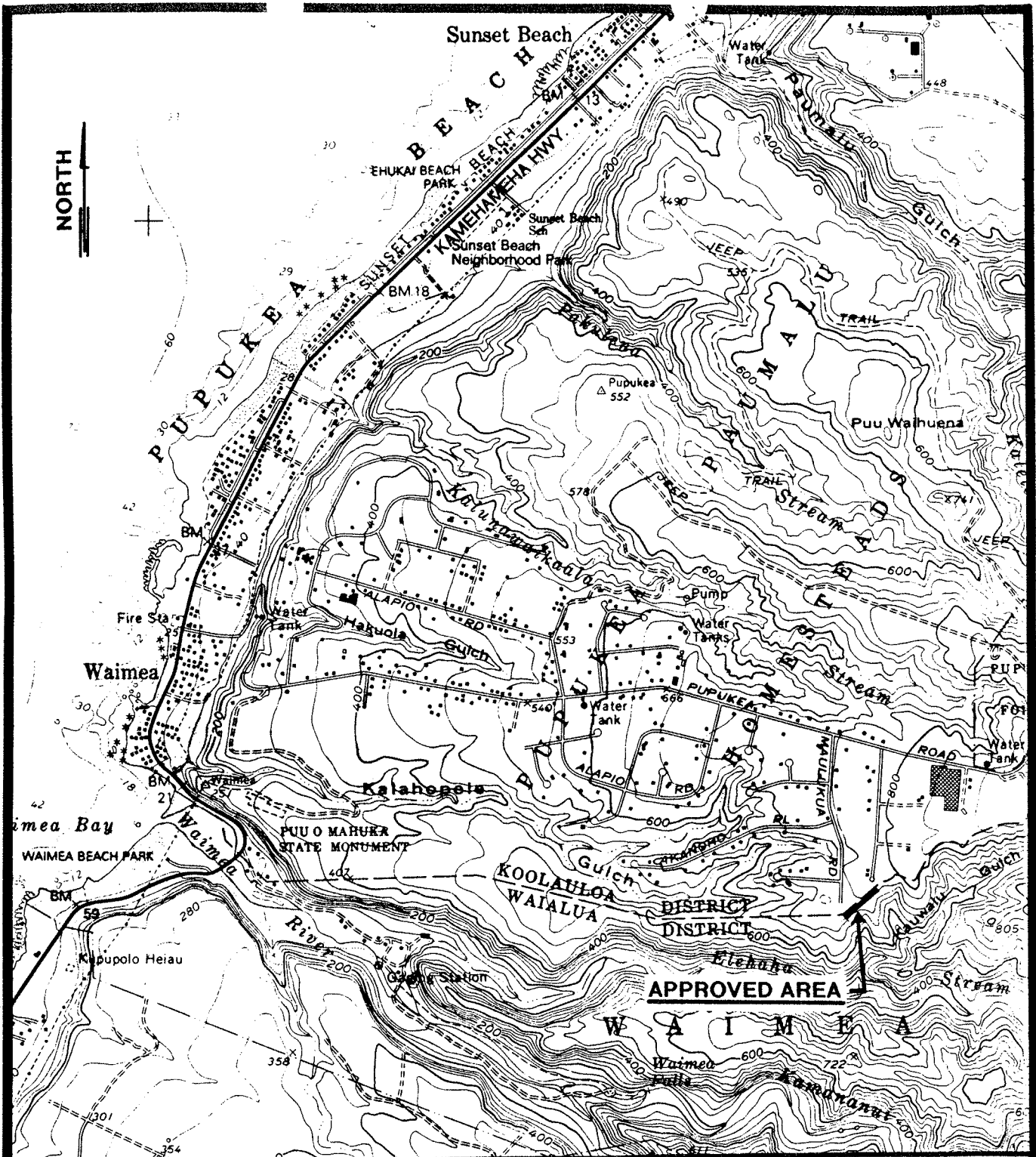
4. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioners.

5. Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioners shall (a) record with the Bureau of Conveyances a Statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area; and (b) shall file a copy of such recorded statement with the Commission.

6. Petitioners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.

Dated: Honolulu, Hawaii this 25th day of August 1994.

  
BENJAMIN M. MATSUBARA  
Hearing Officer



**LOCATION MAP**

DOCKET No. A93-698 / CHARLES P. BOOTH et al.

TAX MAP KEY: 6-1-02: por. 2

WAIMEA, WAILUA, OAHU

SCALE: 1" = 2,000 ft. ±

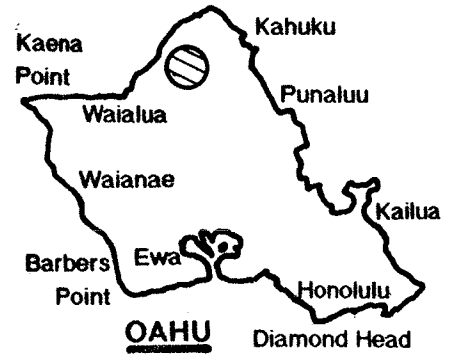


EXHIBIT "A"

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) Docket No. A93-698  
)  
CHARLES P. BOOTH, SANDRA E. BOOTH, ) CERTIFICATE OF SERVICE  
EDWARD D. BRUFFEY, and SHARON L. )  
BRUFFEY )  
)  
To Amend the Conservation Land Use )  
District Boundary into the )  
Agricultural Land Use District for )  
Approximately 15,384.915 square )  
feet of land at Waimea, Waialua, )  
Oahu, Hawaii, TMK No.: 6-1-02: 2 )  
(por.) )  
\_\_\_\_\_)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:


HAROLD S. MASUMOTO, Director  
Office of State Planning  
P. O. Box 3540  
Honolulu, Hawaii 96811-3540

CERT. ROBIN FOSTER, Chief Planning Officer  
Planning Department  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

CERT. DOUGLAS W. MACDOUGAL, ESQ.  
OWEN H. MATSUNAGA, ESQ.  
SHAH J. BENTO, ESQ., Attorneys for Petitioner  
Ashford & Wriston  
Alii Place, Suite 1400  
1099 Alakea Street  
Honolulu, Hawaii 96813

CERT. CHARLES P. BOOTH  
59-814 Maulukua Road  
Haleiwa, Hawaii 96712

DATED: Honolulu, Hawaii, this 25th day of August 1994.

  
\_\_\_\_\_  
BENJAMIN M. MATSUBARA  
Hearing Officer