

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

|                                    |                              |
|------------------------------------|------------------------------|
| In the Matter of the Petition of ) | DOCKET NO. A84-572           |
| FOSTER PETROLEUM CORPORATION )     |                              |
| To Amend the Agricultural Land )   | FOSTER PETROLEUM CORPORATION |
| Use District Boundary into the )   |                              |
| Urban Land Use District for )      |                              |
| Approximately 28 acres at )        |                              |
| Kilauea, Kauai, Tax Map Key )      |                              |
| 5-2-05: Portion of Parcel 23 )     |                              |
| and Portion of Parcel 24 )         |                              |
| _____ )                            |                              |

FINDINGS OF FACT,  
CONCLUSION OF LAW,  
AND DECISION AND ORDER

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

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| In the Matter of the Petition of )<br>FOSTER PETROLEUM CORPORATION )<br>To Amend the Agricultural Land )<br>Use District Boundary into the )<br>Urban Land Use District for )<br>Approximately 28 acres at )<br>Kilauea, Kauai, Tax Map Key )<br>5-2-05: Portion of Parcel 23 )<br>and Portion of Parcel 24 )<br>_____ ) | DOCKET NO. A84-572<br>FOSTER PETROLEUM<br>CORPORATION |
|--|---|

FINDINGS OF FACT, CONCLUSION OF LAW  
AND DECISION AND ORDER

Foster Petroleum Corporation (hereinafter "Petitioner"), a Delaware Corporation, filed this Petition on July 9, 1984, pursuant to Hawaii Revised Statutes Section 205-4, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundaries of approximately 28 acres of land, situate at Kilauea, Kauai, Hawaii, identified as Kauai Tax Map Key 5-2-05: portion of parcel 23 and portion of parcel 24, (hereinafter the "Property"), from the Agricultural District to the Urban District for a light industrial development and a buffer zone. The Land Use Commission (hereinafter the "Commission"), having heard and examined the testimony, evidence and argument of counsel presented during the hearings, and the proposed findings of fact and conclusion of law, hereby makes the following findings of fact and conclusion of law:

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. By action on December 18, 1984, the Commission consolidated for hearing this Petition, the Petition of George L. Sagen and Jane A. Sagen in docket no. A84-580 and the Petition of Beta Pacific, Inc. in docket no. A84-588. The Commission conducted the consolidated hearing on February 21, 1985, at Lihue, Kauai, pursuant to notice published in the Honolulu Advertiser and the Garden Island on January 18, 1985.

2. On February 21, 1985, the Commission accepted the request of Beta Pacific, Inc. to withdraw its petition in docket no. A84-588 and its request to intervene in this Petition. The Commission continued the consolidated hearing on April 16 and 17, 1985, pursuant to notice published in the Honolulu Advertiser and The Garden Island on March 15, 1985.

3. On February 21, 1985, the Commission admitted George L. Sagen and Jane A. Sagen and the Kilauea Neighborhood Association as Intervenors in this Docket.

4. No public witnesses appeared to testify before the Commission.

### DESCRIPTION OF PROPERTY

5. The Property consists of approximately 28 acres of land at Kilauea, Kauai, Hawaii, identified as Sites One and Two. Site One contains approximately 25 acres and is identified as Kauai Tax Map Key No. 5-2-05: portion of parcel 23. Site One abuts the makai side of Kuhio Highway and is

northwest of and separated from the Kilauea Urban District. Site Two contains approximately three acres and is identified as Kauai Tax Map Key No. 5-2-05: portion of parcel 24. Site Two also abuts the makai side of Kuhio Highway and is northwest of and adjoining Kilauea Town and Urban District.

6. Petitioner is the fee simple owner of the Property.

7. The U. S. Department of Agriculture Soil Conservation Service Soil Study, 1972, classifies most of the soils on the Property as Makapili silty clay (MeB), 0 to 8 percent slopes, Puhi silty clay loam (PnB), 3 to 8 percent slopes, and Hanalei silty clay (HnA), 0 to 2 percent slopes.

Makapili soils consist of well-drained soils on uplands of Kauai. Makapili silty clay (MeB) has a surface layer approximately 12 inches thick. This soil exhibits moderately rapid permeability, slow runoff and slight erosion hazard. Puhi soils consist of well-drained soils found on the uplands of Kauai. Puhi silty clay (PnB) has a surface layer approximately 12 inches thick. This soil exhibits slow runoff and slight erosion hazard. Hanalei soils consist of poorly drained soils found on bottom lands of Kauai. Hanalei silty clay (HnA) has a surface layer of approximately 10 inches. This soil exhibits moderate permeability, very slow runoff and slight erosion hazard.

The Land Study Bureau of the University of Hawaii has evaluated and rated all of the Property in its Detailed Land Classification as Overall (Master) Productivity Rating Class C.

9. The State Department of Agriculture's Agriculture Lands of Importance to the State of Hawaii (ALISH) classification system classifies approximately 8.3 acres of the Property as Prime Agriculture Land.

10. The Federal Insurance Administration's Flood Insurance Study for the island of Kauai designates the Property as "Zone C", an area of minimal flooding.

PROPOSAL FOR DEVELOPMENT

11. Petitioner proposes to subdivide Site One into approximately 30 lots, ranging in size from 10,000 to 30,000 square feet to be sold in fee to individual purchasers who would develop industrial lots for industrial uses.

12. Petitioner proposes to use Site Two as a landscape buffer, as well as a road access for the adjoining Kilauea Town lots. Petitioner proposes to offer adjoining lot owners the opportunity to purchase a portion of Site Two lands in order to enable each lot owner to increase his minimum lot size to 10,000 square feet. Petitioner's offer to sell lots would be dependent upon the Commission's approval of the reclassification and development of Site One.

13. Petitioner estimates that its development of the major infrastructure for the Property, including the necessary offsite improvements, can be completed within five years of receipt of all necessary governmental approvals.

14. Petitioner estimates that the total costs to develop the Property, including the necessary offsite improvements, will be approximately \$1,700,000.00.

STATE AND COUNTY PLANS AND PROGRAMS

15. The Property is situate within the State Land Use Agricultural District.

16. The County of Kauai classifies the Property as follows:

| <u>Kauai General<br/>Plan Update</u> | <u>North Shore<br/>Development<br/>Plan Update</u> | <u>Kauai<br/>Comprehensive<br/>Zoning Ordinance</u> |
|--------------------------------------|--|---|
| Agriculture                          | Agriculture  | Agriculture   |

Petitioner will need to obtain General Plan and Development Plan amendments and a change in zoning from Agriculture to Limited Industrial in order to commence development of the Property.

17. The Property is not situate within the County's Special Management Area.

PETITIONER'S FINANCIAL CAPABILITY TO  
UNDERTAKE THE PROPOSED PROJECT

18. Petitioner's balance sheet as of October 31, 1984, lists total assets of \$77,402,828.44 (including \$47,082,942.95 in securities investments) and net worth of \$75,943,261.56.

NEED FOR THE PROPOSED DEVELOPMENT

19. Petitioner's market consultant, A. Lono Lyman of A. Lono Lyman, Inc., projects a pent up demand for about 14 acres of industrial land and a potential demand for an additional 65 acres of light industrial land, a potential demand for an additional 126,000 square feet of retail space, and a potential demand for additional commercial space for the Hanalei District for 1985 to 1995.

Using the State Department of Planning and Economic Development's "Long-Range Population and Economic Simulations and Projections for the State of Hawaii," March 1, 1978, A. Lono Lyman predicted a potential increase of approximately 3,400 additional jobs in the primary industry, construction, and other industries by 1995. A. Lono Lyman divided the projected additional 3,400 jobs by 16 employees per industrial zone acre, added 20% of the land required to avoid excess competition and allocated 25% to 30% of this acreage total to the Hanalei and Kawaihau judicial districts.

Petitioner anticipates that two-thirds of the businesses will prefer to locate in the Hanalei District, which would result in a potential demand of 43 to 51 acres of industrial zoned land.

20. Cowell & Co., Inc., in a similar study prepared on April 17, 1985 for George L. Sagen and Jane A. Sagen, estimates a need for 18 to 37 acres of additional industrial land by the year 2000 for the Hanalei District, excluding an additional pent-up demand of 15 acres.

#### IMPACT UPON RESOURCES OF THE AREA

##### Agricultural Resources

21. The Property is not presently being used for agricultural purposes.

Frank S. Scott, Jr., an agricultural economist, analyzed the impact of removing 50 acres of marginal agricultural land for Petitioner's proposed light industrial

development and concluded that the removal of 50 acres will have no impact on agricultural development on Kauai.

Air Quality

22. Petitioner does not anticipate that the proposed development will produce significant adverse air pollutants except for some increase in air pollutants due to increased vehicular emissions.

Petitioner proposes to effect mitigative measures to reduce short-term fugitive dust problems due to construction activities.

Noise

23. Petitioner does not anticipate that the proposed development will produce significant adverse noise problems since the Property is located approximately 2,500 feet away from the residential areas. However, Petitioner expects increase in ambient noise levels due to increased vehicular traffic.

Historic Resources

24. No sites on the Property are listed in, nor are any sites been determined to be eligible for inclusion in the Hawaii Register or the National Register of Historic Places.

Flora and Fauna

25. Petitioner does not anticipate any rare or endangered species exist on the Property due to previous agricultural cultivation.

Water

26. Petitioner does not anticipate significant adverse



impacts on existing surface runoff, drainage systems, groundwater systems, stream flow, or water quality.

#### Scenic Resources

27. Petitioner proposes to construct a landscape buffer around Site One and along Site Two in order to mitigate any visual impacts of the proposed development from Kuhio Highway.

#### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

##### Electric and Telephone Utilities

28. Kauai Electric, a Division of Citizens Utilities Company, will provide electricity to the Property.

29. Hawaiian Telephone Company will provide telephone services to the Property.

##### Firefighting and Rescue Services

30. The Hanalei Fire Station, located adjacent to the Princeville Shopping Center, will provide fire protection and rescue services to the Property.

##### Police Services

31. The Hanalei Police Substation, located adjacent to the Princeville Shopping Center, will provide police protection to the Property.

##### Roadway Facilities and Traffic

32. Ingress and egress to the Property will be provided through the existing access off Kuhio Highway.

33. Petitioner will work with the County to mitigate any impacts of increased traffic generated by the development.

Petitioner may be required to provide deceleration-acceleration lanes, left turn storage lanes, and other highway improvements at the Kuhio Highway access.

Solid Waste

34. Petitioner proposes to have solid waste from the Property deposited at the County's Hanalei Landfill. Petitioner will not permit toxic wastes, generated from operations carried on at the Property, to be deposited at the County landfill.

Water

35. Petitioner proposes to install a 12-inch mainline extension along Kuhio Highway from Kilauea Town to the Property and a 16-inch mainline from the existing Kilauea water tank to Kilauea Town.

Petitioner will pay the \$340,000 to \$350,000 estimated costs for water system improvements.

Sewage

36. Petitioner proposes to dispose of sewage by using cesspools located on the Property and will coordinate development with appropriate State and County agencies to assure public health and safety, and environmental protection.

CONTIGUITY OF DEVELOPMENT

37. The Property is in close proximity to the Kilauea Urban District, a residential community with city-like concentrations of people, structures, streets, urban level of services and other related land uses.

PREFERENCES FOR DEVELOPMENT

38. Petitioner estimates the proposed development will provide approximately 400 permanent jobs at full buildout.

COMPLIANCE WITH STANDARDS FOR DETERMINING DISTRICTS BOUNDARIES

39. The Property conforms to the standards for reclassification into the Urban District in that:

- a. The Property is in the vicinity of the Kilauea Town, a community characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.
- b. Petitioner has substantiated the market demand for a portion of its proposed industrial development.
- c. Petitioner has the financial capacity to undertake and complete the proposed development.
- d. The Property is near basic services such as electric and phone utilities and police and fire protection.
- e. Petitioner will make sewage disposal and water systems available to the Property.
- f. The Property has satisfactory topography and drainage, and is reasonably free from the danger of floods, tsunami, unstable soil conditions, and other adverse environmental effects.

- g. Although County general plans do not indicate the Property for industrial development, the economic need for additional industrial lands outweigh existing planning considerations.
- h. The Property will not contribute towards scattered spot urban development and will not require an unreasonable investment in public supportive services.
- i. In order to minimize the impact of the proposed development on the aesthetic quality of the area, Petitioner proposes to construct a landscape buffer around Site One and along Site Two to mitigate adverse visual impacts of the development from Kuhio Highway.

40. Portions of Site Two of the Property does not conform to the County minimum lot standards unless consolidated with abutting residential lots in Kilauea Town.

INCREMENTAL DISTRICTING

41. Petitioner proposes to complete all on-site and off-site improvements within five years of receipt of all necessary governmental approvals.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or other parties to this proceeding not already

ruled upon by the Land Use Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

#### CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, the Commission finds upon a preponderance of the evidence that the reclassification of a portion of Site One of the Property, being approximately 15.0 acres located in Kilauea, Island and County of Kauai, State of Hawaii, Tax Map Key 5-2-05: portion of parcel 23, from the Agricultural District to the Urban District for light industrial use conforms to the standards established in the State Land Use District Regulations, is reasonable and non-violative of Section 205-2, Hawaii Revised Statutes, as amended, and is consistent with the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes, as amended.

The Commission also concludes that the reclassification of the remaining balance of 10 acres in Site One, and 3 acres in Site Two, has not been shown to be reasonably necessary at this time, does not conform to the State Land Use District Regulations, and is violative of Section 205-2, Hawaii Revised Statutes, as amended.

#### ORDER

IT IS HEREBY ORDERED that the mauka portion of the Site One of the Property, which is the subject of the Petition

Docket Number A84-572 by Foster Petroleum Corporation, consisting of approximately 15.0 acres situate at Kilauea, Kauai, Hawaii, identified as Kauai Tax Map Key 5-2-05: portion of parcel 23, and also identified on Exhibit A, attached hereto and incorporated herein, shall be and hereby is reclassified from the Agricultural District to the Urban District, and the Land Use District Boundaries are hereby amended accordingly.

IT IS ALSO ORDERED that the remaining balance of the Property, consisting of approximately 10 acres in Site One, and all of Site Two, situate at Kilauea, Kauai, Hawaii, identified as Kauai Tax Map Key 5-2-05: portion of parcels 23 and parcel 24, and also identified on Exhibit A, shall hereby remain in the Agricultural District.

DOCKET NO. A84-572 - FOSTER PETROLEUM CORPORATION

Done at Honolulu, Hawaii, this 2nd day of December  
1985, per motions on August 21, 1985 and September 24, 1985.

LAND USE COMMISSION  
STATE OF HAWAII

By J.P. Tacbian  
TEOFILO PHIL TACBIAN  
Chairman and Commissioner

By Frederick P. Whittemore  
FREDERICK P. WHITTEMORE  
Vice Chairman and Commissioner

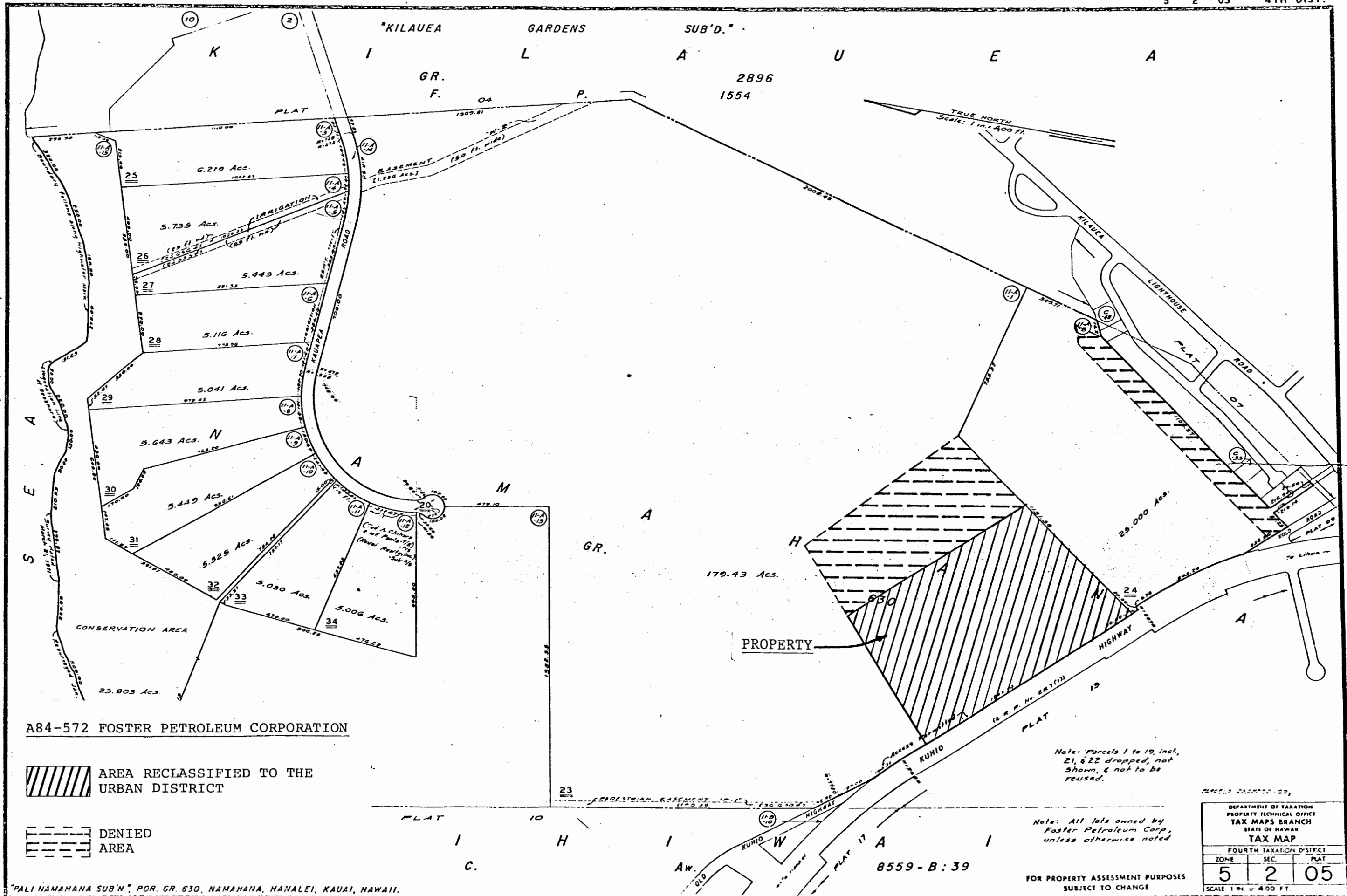
By Richard B. F. Choy  
RICHARD B. F. CHOY  
Commissioner

By William W. L. Yuen  
WILLIAM W. L. YUEN  
Commissioner

By Robert S. Tamaye  
ROBERT S. TAMAYE  
Commissioner


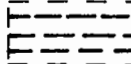
By Toru Suzuki  
TORU SUZUKI  
Commissioner

By Lawrence F. Chun  
LAWRENCE F. CHUN  
Commissioner



SOURCE: Reg. Map 10721 & 10722, 10723, 10724, 10725, 10726, 10727, 10728, 10729, 10730, 10731, 10732, 10733, 10734, 10735, 10736, 10737, 10738, 10739, 10740, 10741, 10742, 10743, 10744, 10745, 10746, 10747, 10748, 10749, 10750, 10751, 10752, 10753, 10754, 10755, 10756, 10757, 10758, 10759, 10760, 10761, 10762, 10763, 10764, 10765, 10766, 10767, 10768, 10769, 10770, 10771, 10772, 10773, 10774, 10775, 10776, 10777, 10778, 10779, 10780, 10781, 10782, 10783, 10784, 10785, 10786, 10787, 10788, 10789, 10790, 10791, 10792, 10793, 10794, 10795, 10796, 10797, 10798, 10799, 10800, 10801, 10802, 10803, 10804, 10805, 10806, 10807, 10808, 10809, 10810, 10811, 10812, 10813, 10814, 10815, 10816, 10817, 10818, 10819, 10820, 10821, 10822, 10823, 10824, 10825, 10826, 10827, 10828, 10829, 10830, 10831, 10832, 10833, 10834, 10835, 10836, 10837, 10838, 10839, 10840, 10841, 10842, 10843, 10844, 10845, 10846, 10847, 10848, 10849, 10850, 10851, 10852, 10853, 10854, 10855, 10856, 10857, 10858, 10859, 10860, 10861, 10862, 10863, 10864, 10865, 10866, 10867, 10868, 10869, 10870, 10871, 10872, 10873, 10874, 10875, 10876, 10877, 10878, 10879, 10880, 10881, 10882, 10883, 10884, 10885, 10886, 10887, 10888, 10889, 10890, 10891, 10892, 10893, 10894, 10895, 10896, 10897, 10898, 10899, 10900, 10901, 10902, 10903, 10904, 10905, 10906, 10907, 10908, 10909, 10910, 10911, 10912, 10913, 10914, 10915, 10916, 10917, 10918, 10919, 10920, 10921, 10922, 10923, 10924, 10925, 10926, 10927, 10928, 10929, 10930, 10931, 10932, 10933, 10934, 10935, 10936, 10937, 10938, 10939, 10940, 10941, 10942, 10943, 10944, 10945, 10946, 10947, 10948, 10949, 10950, 10951, 10952, 10953, 10954, 10955, 10956, 10957, 10958, 10959, 10960, 10961, 10962, 10963, 10964, 10965, 10966, 10967, 10968, 10969, 10970, 10971, 10972, 10973, 10974, 10975, 10976, 10977, 10978, 10979, 10980, 10981, 10982, 10983, 10984, 10985, 10986, 10987, 10988, 10989, 10990, 10991, 10992, 10993, 10994, 10995, 10996, 10997, 10998, 10999, 11000.

A84-572 FOSTER PETROLEUM CORPORATION

 AREA RECLASSIFIED TO THE URBAN DISTRICT  
 DENIED AREA

Note: Parcels 1 to 19, incl. 21, & 22 dropped, not shown, & not to be reused.

Note: All lots owned by Foster Petroleum Corp., unless otherwise noted

DEPARTMENT OF TAXATION  
PROPERTY TECHNICAL OFFICE  
TAX MAPS BRANCH  
STATE OF HAWAII  
TAX MAP

|                          |      |      |
|--------------------------|------|------|
| FOURTH TAXATION DISTRICT |      |      |
| ZONE                     | SEC. | PLAT |
| 5                        | 2    | 05   |

SCALE 1 IN = 400 FT.

FOR PROPERTY ASSESSMENT PURPOSES  
SUBJECT TO CHANGE

8559-B:39

"PALI NAMAHAHA SUB'N." POR. GR. 630, NAMAHAHA, HANAHEI, KAUAI, HAWAII.

**EXHIBIT A**



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

|  |                    |
|--|--------------------|
| In the Matter of the Petition of )     | DOCKET NO. A84-572 |
| )                                      |                    |
| FOSTER PETROLEUM CORPORATION )         | FOSTER PETROLEUM   |
| )                                      | CORPORATION        |
| To Amend the Agricultural Land Use )   |                    |
| District Boundary into the Urban )     |                    |
| Land Use District for approximately )  |                    |
| 28 acres at Kilauea, Hanalei, Kauai, ) |                    |
| Hawaii, Tax Map Key: 5-2-05: )         |                    |
| Portions of 23 and 24 )                |                    |
| )                                      |                    |

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission 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:

KENT M. KEITH, Director  
Department of Planning and Economic Development  
State of Hawaii  
250 South King Street  
Honolulu, Hawaii 96813

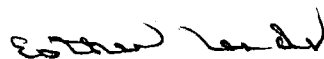
AVERY H. YOUNG, Planning Director  
Planning Department  
County of Kauai  
4280 Rice Street  
Lihue, Kauai, Hawaii 96766

CLINTON I. SHIRAIISHI, Attorney for Petitioner  
Shiraishi & Yamada  
P. O. Box 1246  
Lihue, Kauai, Hawaii 96766

ERIC T. MAEHARA, Attorney for Intervenors,  
George & Jane Sagen  
Foley, Maehara, Judge, Choi, Nip & Okamura  
737 Bishop Street, Suite 2700  
Honolulu, Hawaii 96813

JO ANN YOSHIMOTO, Intervenor,  
Kilauea Neighborhood Association  
P. O. Box 711  
Kilauea, Kauai, Hawaii 96754

DATED: Honolulu, Hawaii, this 2nd day of December 1985.



ESTHER UEDA  
Executive Officer

DOCKET NO. A84-575 - FOSTER PETROLEUM CORPORATION

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on December 2, 1985.

EVERETT KANESHIGE, Deputy Attorney General  
Department of the Attorney General  
State Capitol, 4th Floor  
Honolulu, Hawaii 96813

MAX GRAHAM, County Attorney  
Office of the County Attorney  
County of Kauai  
4396 Rice Street  
Lihue, Hawaii 96766