

**exhibit 25**

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. DR96-19
	)	
HAROLD K.L. CASTLE FOUNDATION	)	DECLARATORY ORDER
	)	
For a Declaratory Order Clarifying	)	
and Correcting the Boundary	)	
Reclassification of the Land Use	)	
Commission Under Decision and Order	)	
Dated June 2, 1975, in Docket No.	)	
074-8 and Boundary Interpretation	)	
Dated September 15, 1992, in	)	
Boundary Interpretation No. 92-40	)	
_____	)	

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LAND USE COMMISSION  
STATE OF HAWAII

DECLARATORY ORDER

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of ) DOCKET NO. DR96-19  
HAROLD K.L. CASTLE FOUNDATION ) DECLARATORY ORDER  
For a Declaratory Order Clarifying )  
and Correcting the Boundary )  
Reclassification of the Land Use )  
Commission Under Decision and Order )  
Dated June 2, 1975, in Docket No. )  
074-8 and Boundary Interpretation )  
Dated September 15, 1992, in )  
Boundary Interpretation No. 92-40 )  
\_\_\_\_\_ )

DECLARATORY ORDER

PETITIONER'S INTEREST

Harold K.L. Castle Foundation ("Petitioner") filed a Petition for Declaratory Order, pursuant to sections 15-15-98 and 15-15-22(b)(6), Hawai'i Administrative Rules ("HAR"). Petitioner is the owner in fee simple of approximately 24.059 acres of land located at the northwest corner of Kalaniana'ole Highway and the Kapa'a Quarry Road in Kailua, island of O'ahu, State of Hawai'i, and identified as TMK 4-2-14: 4 ("Property").

Petitioner filed the instant Petition for Declaratory Order "for a declaratory order clarifying and correcting the boundary reclassification of the Land Use Commission under Decision and Order dated June 2, 1975 in Docket No. 074-8 and boundary interpretation dated September 15, 1992 in Boundary Interpretation No. 92-40."

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. On September 30, 1996, Petitioner filed its Petition for Declaratory Order, Joinder to Petition for Declaratory Order, and Petitioner's Memorandum in Support of Petition for Declaratory Order.

2. On October 28, 1996, the City and County of Honolulu Planning Department ("Planning Department") filed comments in response to the Petition for Declaratory Order. The Planning Department commented that it had no objections for a declaratory order to clarify that the Property is entirely within the Urban District.

3. On October 29, 1996, Petitioner filed an Amendment to Petition for Declaratory Order and Joinder to Petition for Declaratory Order. Petitioner also filed a Supplemental Memorandum in Support of Petition for Declaratory Order and an Affidavit of Chester Koga of R.M. Towill Corporation, a planning, engineering, and surveying firm.

4. On October 31, 1996, Petitioner filed a Second Supplemental Memorandum in Support of Petition for Declaratory Order and an Affidavit of James T. Funaki, Esq.

5. On November 1, 1996, at its meeting in Honolulu, Hawai'i, the Land Use Commission ("Commission") took action to consider the Petition for Declaratory Order.

### POSITION OF PETITIONER

6. Petitioner contends that the Commission should interpret the boundary between the Conservation District and the

Urban District in such a manner that the entire 24.059-acre Property would be located within the Urban District. Petitioner argues that this would be consistent with the overall purpose of Chapter 205 of the Hawai'i Revised Statutes, as amended ("HRS"), and more particularly consistent with the basis and intent of the Commission upon which the reclassification was determined in the 1975 Order.

#### DESCRIPTION AND BACKGROUND OF THE PROPERTY

7. The Property in question is currently identified as TMK 4-2-14: 4. The Property was originally a portion of a 343.996-acre tract of land, identified as TMK 4-2-14: 2.

8. The Property is located within the State Land Use Urban and Conservation Districts as represented in State Land Use District Boundaries Map O-14 (Mokapu).

9. The Property is located at the northwest corner of Kalaniana'ole Highway and the Kapa'a Quarry Road in Kailua, island of O'ahu, State of Hawai'i.

10. In 1963, the Property was leased by Kaneohe Ranch Company, Limited ("Kaneohe Ranch"), to Consolidated Amusement Company, Limited ("Consolidated"), which proposed to construct the Kailua Drive-In Theater on the Property. Harold K.L. Castle, then owner in fee of the Property, managed the Property and the tract of which it was a part through Kaneohe Ranch, of which he was the sole stockholder. He joined in the lease as lessor.

11. In 1963-1964, Consolidated constructed the Kailua Drive-In Theater, the roadway for egress from the theater, and the slope ramps to control drainage on the Property. The real

property tax assessor assigned the Property its current tax map key number, following the issuance of the lease to Consolidated and the construction of the theater.

12. On August 23, 1964, the Property was classified within the Urban District with the final adoption of the State land use district boundaries.

13. Upon the death of Harold K.L. Castle in 1967, the executors of the Harold Castle Estate dissolved Kaneohe Ranch. The Property was conveyed to Petitioner, which is the successor in interest of Kaneohe Ranch as lessor of the Property. Currently, the remaining 319.937-acre parcel is owned by the Teixeira Family Trust and Michael John Won Suk Shin and Dean Lawrence In Suk Shin, Joinders to the Petition for Declaratory Order herein.

14. In 1974, Commission Boundary Review Docket No. 074-8 proposed the reclassification of approximately 50 acres of land located at Kapa'a, island of O'ahu, from the Urban District to the Conservation District because (i) no urban development was evident on the 50 acres and (ii) portions of the area contained steep slopes which were not suitable for urban development. According to the 1974 Boundary Review Information Meeting and Public Hearing Maps for O'ahu, a portion of the Property was proposed for reclassification to the Conservation District under Docket No. 074-8.

15. By Decision and Order dated June 2, 1975, the Commission reclassified approximately 50 acres of land from the Urban District to the Conservation District in Docket No. 074-8.

The Decision and Order identified the affected lands as TMK 4-2-14: por. 2, which composed the tract of land of which the Property was originally a part and which was undeveloped and in its natural state. The Decision and Order did not include the Property, identified as TMK 4-2-14: 4, in the reclassification to the Conservation District. However, State Land Use District Boundaries Map O-14 (Mokapu), adopted by the Commission following the 1974 Boundary Review, and effective December 20, 1974, delineated the district boundary to include a portion of the Property containing the roadway for egress from the theater and the areas designedly graded for slope ramps within the Conservation District.

16. In 1991, Consolidated assigned its interest in the lease of the Property to Windward Park, Inc. ("Windward Park"), which had intended to develop a golf driving range on the Property. At the time Consolidated assigned its interest to Windward Park, Petitioner had agreed to sell its leased fee interest in the Property to Windward Park.

17. A title search of the Property for purposes of the conveyance was subsequently conducted. The title search revealed that the Property, first leased to Consolidated in 1963, was never legally subdivided out of the 343.996-acre tract of land. An application was subsequently filed with the City and County of Honolulu Department of Land Utilization ("DLU") to subdivide the 343.996-acre tract of land into two lots consisting of the 24.059-acre Property and the remaining 319.937-acre parcel.

18. In conjunction with the subdivision application, a boundary interpretation request for the 343.996-acre tract, including the Property, was submitted to the Commission.

Boundary Interpretation No. 92-40 dated September 15, 1992, was subsequently prepared which placed the drive-in theater parking lot, picture screen, service building, projection area, playground, and ticket box within the Urban District and placed the roadway for egress from the drive-in theater and the areas graded for slope ramps within the Conservation District.

19. Staff based the delineation of the district boundary on its review of Docket No. 074-8; the July 21, 1976, boundary interpretation; and specifically on the representation of the district boundaries on the Commission's State Land Use District Boundaries Map O-14 (Mokapu). A copy of Boundary Interpretation No. 92-40 was provided to the Department of Land and Natural Resources ("DLNR").

20. DLU was unable to process the subdivision application for the 343.996-acre tract of land upon information from DLNR that a portion of the Property was designated within the Conservation District, and that any subdivision of land in the Conservation District was not only subject to DLNR approval but also contrary to DLNR policy.

21. Petitioner determined that Boundary Interpretation No. 92-40 placed approximately 19.617 acres of the Property within the Urban District and approximately 4.442 acres of the Property within the Conservation District.

22. Windward Park subsequently abandoned its plans for a golf driving range on the Property, and in 1996, assigned its interest in the Consolidated lease to Le Jardin Academy, Inc. ("Le Jardin"). Le Jardin plans to relocate its existing K-8 school to the Property and to expand to include a high school.

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

#### CONCLUSIONS OF LAW

##### JURISDICTION

1. Jurisdiction of the Commission to consider the request of Petitioner is authorized under §§15-15-98 and 15-15-22(b)(6), HAR.

##### REMEDY

1. Petitioner is requesting the Commission to issue a declaratory order clarifying and correcting the boundary reclassification of the Land Use Commission under Decision and Order dated June 2, 1975, in Docket No. 074-8 and Boundary Interpretation No. 92-40 dated September 15, 1992.

##### APPLICABLE LEGAL AUTHORITIES

1. Section 205-2(1), HRS, provided the standards for determining the boundaries of the Urban District at the time of the reclassification by stating:

In the establishment of boundaries of urban districts those lands that are now in urban use and



a sufficient reserve area for foreseeable urban growth shall be included.

2. Part II of the State Land Use District Regulations, Sub-Part B. 2.7.(a), effective August 4, 1969, stated as follows:

"U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:

(a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

3. The roadway for egress from the drive-in theater and the slope ramps graded to control drainage affecting the drive-in theater were constructed during 1963-64 and constituted urban improvements that were in place on the subject 4.442-acre portion of the Property at the time of the June 2, 1975, issuance of the Decision and Order in Docket No. 074-8.

4. The June 2, 1975, Decision and Order issued in Docket No. 074-8 did not include the Property, identified as TMK 4-2-14: 4, in the reclassification to the Conservation District.

#### DECLARATORY ORDER

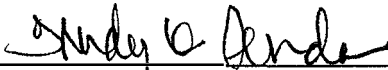
FOR GOOD CAUSE APPEARING, the Commission hereby rules that the boundary reclassification under Decision and Order issued on June 2, 1975, in Docket No. 074-8 and Boundary Interpretation No. 92-40 dated September 15, 1992, is clarified and corrected to reflect that the 24.059-acre Property, identified as TMK 4-2-14: 4, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is designated entirely within the State Land Use Urban District.


Accordingly, this Commission determines that State Land Use District Boundaries Map O-14 (Mokapu) be amended to reflect that the 24.059-acre Property is designated entirely within the State Land Use Urban District.

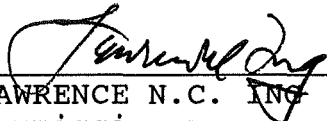
DOCKET NO. DR96-19 - HAROLD K.L. CASTLE FOUNDATION

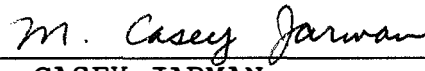
Done at Honolulu, Hawai'i, this 25th day of November 1996,  
per motion on November 1, 1996.

LAND USE COMMISSION  
STATE OF HAWAI'I


By   
TRUDY K. SENDA  
Chairperson and Commissioner

By   
RUPERT K. CHEN  
Vice Chairperson and Commissioner

By   
LAWRENCE N.C. KING  
Commissioner

By   
M. CASEY JARMAN  
Commissioner

By (absent)  
HERBERT S.K. KAOPUA, SR.  
Commissioner

By   
LLOYD F. KAWAKAMI  
Commissioner

By   
MERLE A. K. KELAI  
Commissioner

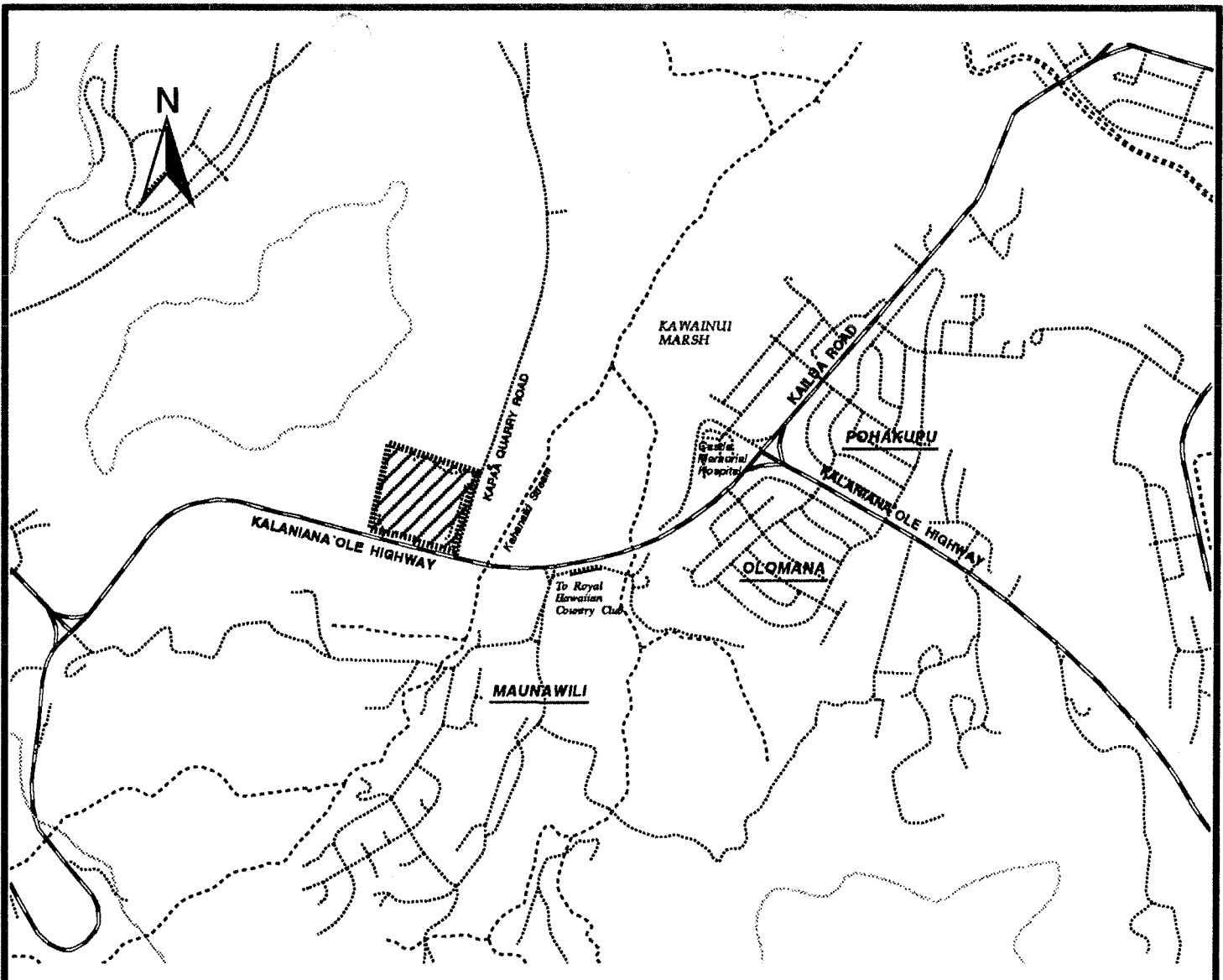
Filed and effective on  
November 25, 1996

Certified by:

  
Executive Officer

By (absent)  
EUSEBIO LAPENIA, JR.  
Commissioner

By   
JOANN N. MATTSO  
Commissioner



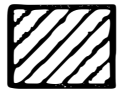
**DR96-19  
HAROLD K.L. CASTLE  
FOUNDATION**

**LOCATION MAP**

TAX MAP KEY: 4-2-14: 4

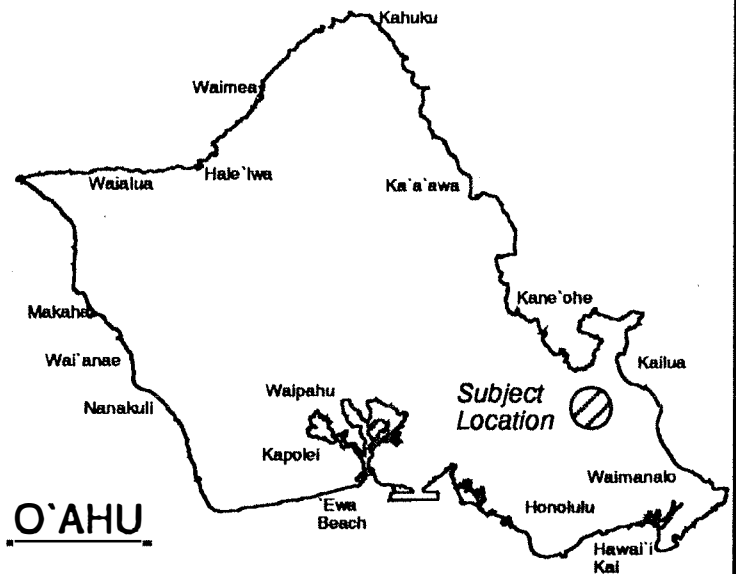
KAILUA, O'AHU, HAWAII

SCALE: 1" = 2,000 ft.



**SUBJECT PROPERTY**

**EXHIBIT "A"**



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of ) DOCKET NO. DR96-19  
HAROLD K.L. CASTLE FOUNDATION ) CERTIFICATE OF SERVICE  
For a Declaratory Order Clarifying )  
and Correcting the Boundary )  
Reclassification of the Land Use )  
Commission Under Decision and Order )  
Dated June 2, 1975, in Docket No. )  
O74-8 and Boundary Interpretation )  
Dated September 15, 1992, in )  
Boundary Interpretation No. 92-40 )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Declaratory Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL. RICK EGGED, Director  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

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

CERT. JAMES T. FUNAKI, ESQ.  
Takushi Funaki Wong & Stone  
Grosvenor Center, Suite 1400  
733 Bishop Street  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 25th day of November 1996.

  
ESTHER UEDA  
Executive Officer