

DRAFT  
8/15/13  
BILL 45 (2013)  
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

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AFTER RECORDATION, RETURN BY MAIL ( ) PICKUP ( ) TO:

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TITLE OF DOCUMENT: Unilateral Agreement and Declaration for  
Conditional Zoning

PARTY(IES) TO DOCUMENT: Kapa'a I, LLC

TAX MAP KEY NO. (1) 4-2-15: Portions of 6 and 12

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UNILATERAL AGREEMENT AND  
DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this \_\_\_\_\_ day of \_\_\_\_\_, 201\*, by Kapa'a I, LLC, a Hawaii limited liability

company, whose address is 905 Kalaniana'ole Hwy., Kailua, Hawaii 96734 (hereinafter referred to as the "Declarant"),

**WITNESSETH:**

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Kapa'a Valley, Kailua, Oahu, consisting of approximately 27 acres, described as Tax Map Key Nos. (1) 4-2-15: Portions of 6 and 12, and more particularly described in **Exhibit A** attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant plans to develop a light industrial park on the Land (the "Project"); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from the P-2 General Preservation District to the I-1 Limited Industrial District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 45 (2013), was held by the Council on xxxxx ; and

WHEREAS, the Council recommended by its Zoning and Planning Committee Report No. \_\_\_\_\_ that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. Transportation. The Declarant shall carry out the following requirements related to traffic and transportation improvements for the Project:

a. A time line establishing the anticipated commencement and completion dates of the major phasing components of this development shall be prepared by the Declarant in a format acceptable to the Department of Planning and Permitting (DPP). The time line should identify when the construction management plan (CMP), the traffic management plan (TMP), and updates to the initial TIAR, dated November 2012, will be submitted for review and approval.

b. The Declarant shall submit a CMP to the DPP for review and approval, as required, prior to the issuance of building permits for the purpose of developing the Land.

The CMP shall identify the type, frequency and routing of heavy trucks, and construction related vehicles. Every effort shall be made to minimize impacts from these vehicles and related construction activities. The CMP shall include provisions to limit vehicular activity to periods outside of the peak periods of traffic, utilize alternate routes for heavy trucks, utilize staging locations for construction workers and vehicles, and other mitigation measures related to traffic. The Declarant shall document the condition of roadways prior to the commencement of construction activities and provide remedial measures, as necessary, such as restriping, road resurfacing, and/or reconstruction if the condition of the roadways has deteriorated as a result of the construction activities.

c. A TMP shall include traffic demand management (TDM) strategies to minimize the amount of vehicular trips for daily activities and large events. TDM strategies could include carpooling and ride sharing programs, transit incentives, including provisions for a shuttle service from public transit stops at Mōkapu Boulevard and Kalaniana'ole Highway, and other similar TDM measures.

d. The Declarant shall prepare and submit an updated TIAR, covering the same area as the TIAR submitted with this zone change application, to the DPP for review and approval, as required, prior to initiation of Phase D of the project phasing plan attached hereto as Exhibit B and made a part hereof. The Declarant shall not begin construction of Phase D or the DPP-approved equivalent of remaining buildings until receiving the DPP approval of the completed TIAR since mitigation may be required to accommodate future development traffic. The DPP will

determine if recommendations from the TIAR are necessary for the Declarant to implement.

e. The Declarant shall enter into an agreement with the DPP and the Department of Transportation Services (DTS) prior to building permit approval for the development of the Land. The agreement shall be finalized by the DPP and subject to amendments, as approved by the DPP.

As part of the agreement, the Declarant shall fund, construct, or cause to be constructed all necessary street improvements along the Project's frontage of Kapa'a Quarry Road and Kapa'a Quarry Access Road, or at other locations along these roadways if determined necessary by the DPP and DTS for development purposes at the Project site. Every effort shall be made to construct the roadway improvements to incorporate "Complete Streets" criteria to the greatest extent practical. Discussions of Kapa'a Quarry Road improvements shall also be in consultation with the State Department of Transportation.

2. Buffer Zone. The approximately 29.9 acres of land abutting the zone change area and also within the parcels identified as Tax Map Keys: 4-2-15: 6 and 12 shall remain in the P-2 General Preservation District to serve the purpose of a buffer zone for industrial uses on the Land. The Declarant shall establish and maintain the buffer zone, as required by the DPP, to sufficiently mitigate noise and visual impacts through landscaping that includes earth berms and vegetation that includes tall trees and shrubs. Prior to the issuance of any development permit in the buffer area, the proposed project shall be submitted to the DPP for review and approval to ensure it meets the purpose of the buffer area. The portion of the buffer zone within the parcel identified as Tax Map Key: 4-2-15: 12 contains an existing detention basin which shall be allowed to serve the function of stormwater management for the adjacent zone change area.

3. Stormwater Facilities. The Land shall be subject to the following requirements related to stormwater facility improvements and maintenance, unless otherwise amended by the Director of the DPP:

a. The Declarant shall continue to accept all off-site stormwater drainage onto the Land from the culvert located under Kapa'a Quarry Access Road, which collects runoff from a drainage

ditch on the south side of the road, as highlighted in Exhibit C attached hereto and made a part hereof.

b. The Declarant shall be responsible for monitoring and maintaining all on-site infrastructure for stormwater management, including infrastructure related to item "a" above.

4. Compliance with Other Governmental Requirements. The Declarant acknowledges that approval of this zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.

5. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction and/or describing its progress toward complying with each condition of approval for this zone change. This status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied. Failure to do so may result in delays in processing of further permits.

6. Noncompliance or Failure to Fulfill Any Conditions. In the event of noncompliance or failure to fulfill any of the conditions set forth herein, the Director of the DPP shall inform the Council and may institute action to terminate or stop the project until applicable conditions are met. Noncompliance also may be grounds for revocation of the permits issued under this zone change. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change

in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

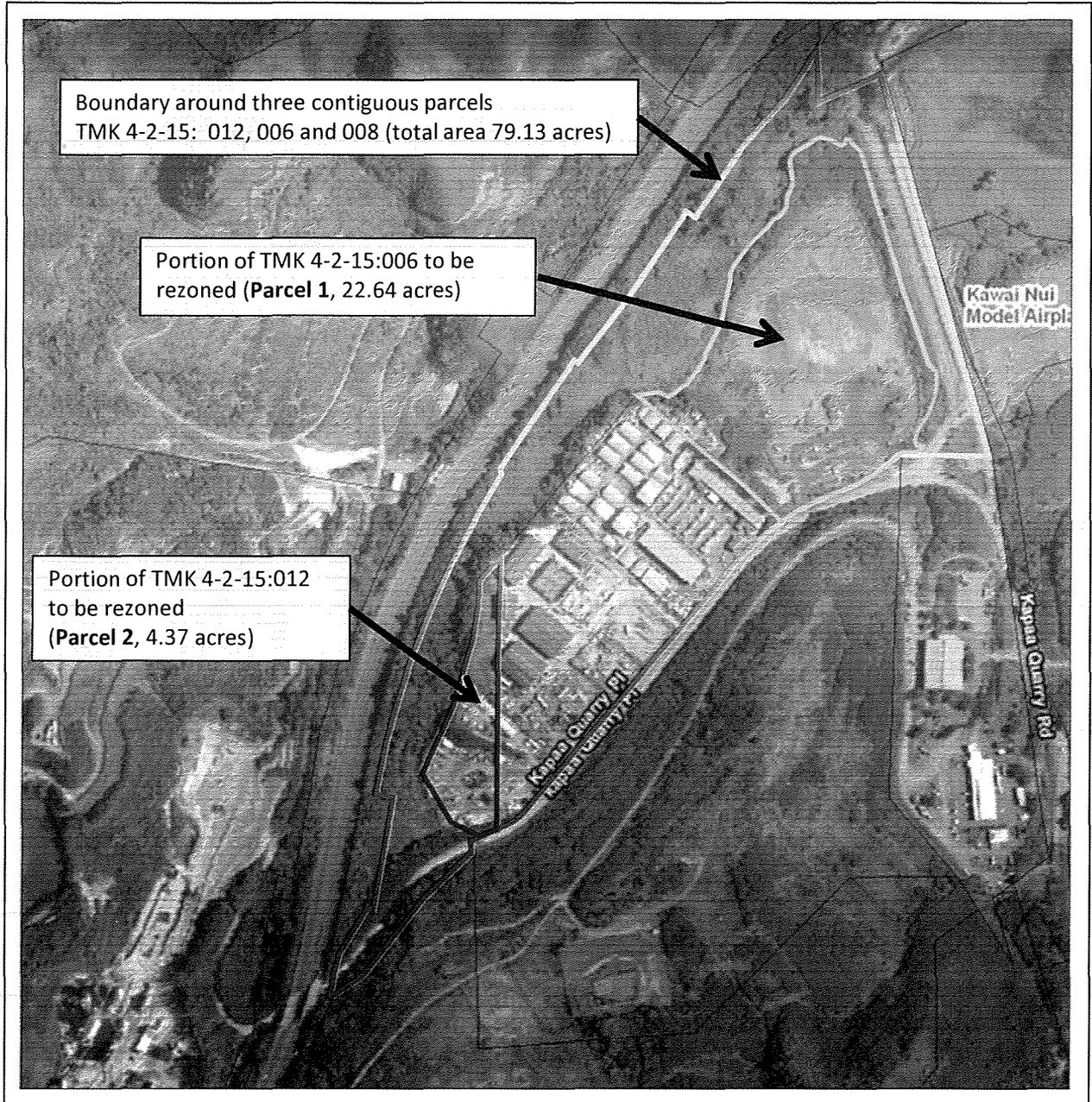
IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANT:

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# EXHIBIT A

## Overview of portion of property to be rezoned





- |    |          |  |
|----|----------|--|
| 3. | 291° 35' | 47.50 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286;  |
| 4. | 236° 23' | 22.88 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286;  |
| 5. | 229° 39' | 41.15 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286;  |
| 6. | 240° 20' | 18.00 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286;  |
| 7. | 216° 48' | 123.85 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 and along the remainder of Grant 1106, Ap. 1 to Kokahe;<br><br>Thence along the remainders of Grant 1106, Ap. 1 to Kokahe and R.P. 967, L.C. Aw. 6102, Ap. 1 to Mahi on a curve to the left with a radius of 500.00 feet, the chord azimuth and distance being |
| 8. | 201° 54' | 257.13 feet;<br><br>Thence along the remainders of R.P. 967, L.C. Aw. 6102, Ap. 1 to Mahi, R.P. 1373, L.C. Aw. 4472-B to Kaumu and Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 on a curve to the left with a radius of 500.00 feet, the chord azimuth and distance being  |
| 9. | 209° 30' | 382.68 feet;   |

Thence along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 on a curve to the left with a radius of 200.00 feet, the chord azimuth and distance being

10. 198° 30' 220.77 feet;

Thence along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 on a curve to the right with a radius of 60.00 feet, the chord azimuth and distance being

11. 212° 30' 88.47 feet;

Thence along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286, R.P. 1366, L.C. Aw. 3687-B, Aps. 1 and 2 to Mahi on a curve to the left with radius of 200.00 feet, the chord and azimuth and distance being

12. 257° 30' 174.48 feet;

13. 310° 00' 86.77 feet along the remainders of R.P. 1366, L.C. Aw. 3687-B, Ap. 2 to Mahi and Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286;

14. 342° 42' 588.43 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286;

15. 340° 10' 313.11 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286;

Thence along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 on a curve to the right with a radius of 700.00 feet, the chord azimuth and distance being

16. 342° 36' 59.03 feet;

Thence along the remainders of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 and R.P. 2447, L.C. Aw. 6968 to Kawahaohi 2 on a curve to the right with a radius of 200.00 feet, the chord azimuth and distance being

17. 16° 00' 206.02 feet;

18. 17° 04' 45.45 feet along the remainder of R.P. 2447, L.C. Aw. 6968 to Kawahaohi 2;

19. 340° 00' 19.07 feet along the remainder of R.P. 2447, L.C. Aw. 6968 to Kawahaohi 2;

20. 281° 02' 21.09 feet along the remainder of R.P. 2447, L.C. Aw. 6968 to Kawahaohi 2;

21. 328° 30' 39.79 feet along the remainder of R.P. 2447, L.C. Aw. 6968 to Kawahaohi 2;

22. 90° 43' 118.48 feet along the remainder of R.P. 2447, L.C. Aw. 6968 to Kawahaohi 2 and along Road and Utility Easement 1;

Thence along the remainders of L.P. 8264, Mahele Award 64, Ap. 3 to Kahoe (Certificate of Boundaries 115) and R.P. 6765, Mahele Award 53 to Kekuawahia and along Road and Utility Easement 1 on a curve to the right with a radius of 615 feet, the chord azimuth and distance being

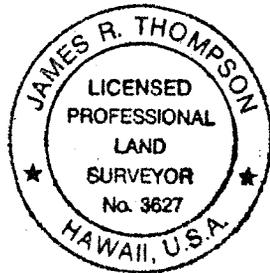
23. 57° 19' 47" 273.28 feet;

Thence along the remainder of R.P. 6765, Mahele Award 53 to Kekuawahia and along Road and Utility Easement 1 on a curve to the left with a radius of 1,013.94 feet, the chord azimuth and distance being

24. 62° 25' 10" 273.36 feet to the point of beginning and containing an area of 22.644 acres.

SUBJECT, HOWEVER, TO a portion of Road and Utility Easement "E-5" affecting Courses 20 and 21 of the above described parcel of land.

Honolulu, Hawaii  
August 24, 2012



WALTER P. THOMPSON, INC

By

*James R. Thompson*  
Licensed Professional  
Land Surveyor 3627  
Exp. 4/30/14

DESCRIPTION OF  
PARCEL 2  
REZONING FROM P-2 TO I-1

ALL that certain piece or parcel of land being portions of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286, Grant 11 07, Apana 1 to Kahunahana and Royal Patent 5642, Land Commission Award 7712, Apana 1 to Tute.

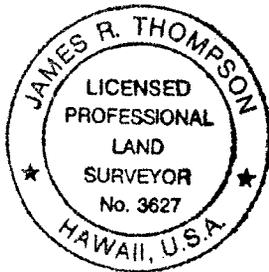
Situate at Oneawa, Kionaole, Kaohia and Kalaheo, Kailua, Koolaupoko, Oahu, Hawaii.

Beginning at the southeast corner of this parcel of land, the same being the south corner of Parcel C and on the northerly side of Road and Utility Easement 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA" being 3,997.98 feet North and 1,313.64 feet East and thence running by azimuths measured clockwise from true South:

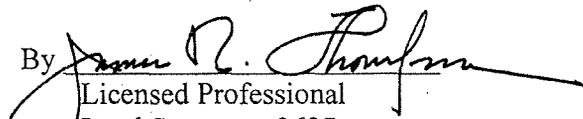
1. 65° 10' 81.04 feet along the remainder of Grant 1107, Ap. 1 to Kahunahana and along Road and Utility Easement 1;
2. 167° 02' 12.25 feet along the remainder of Grant 1107, Ap. 1 to Kahunahana and along Drainage Easement C-2;
3. 115° 53' 107.75 feet along the remainder of Grant 1107, Ap. 1 to Kahunahana and along Drainage Easement C-2;
4. 148° 20' 234.18 feet along the remainders of Grant 1107, Ap. 1 to Kahunahana and Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 and along Drainage Easement C-2;

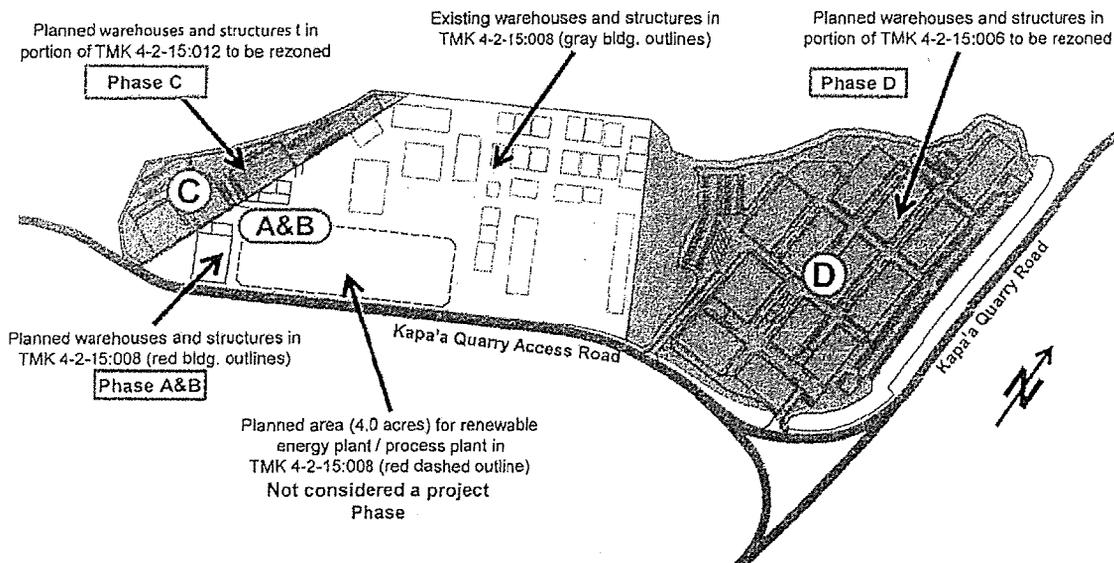
5. 238° 20' 5.00 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 and along Drainage Easement C-2;
6. 148° 20' 13.96 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 and along Drainage Easement C-2;
7. 204° 14' 286.31 feet along the remainder of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286;
8. 196° 30' 283.95 feet along the remainders of Deed: Minister of the Interior to C.C. Harris dated March 24, 1876, Liber 45, Page 286 and R.P. 5642, L.C. Aw. 7712, Ap. 1 to Tute;
9. 188° 20' 142.60 feet along the remainder of R.P. 5642, L.C. Aw. 7712, Ap. 1 to Tute;
10. 181° 33' 71.69 feet along the remainder of R.P. 5642, L.C. Aw. 7712, Ap. 1 to Tute;
11. 220° 10' 151.97 feet along the remainder of R.P. 5642, L.C. Aw. 7712, Ap. 1 to Tute;
12. 1° 01' 1,101.17 feet along Parcel C to the point of beginning and containing an area of 4.374 acres.

Honolulu, Hawaii  
August 24, 2012



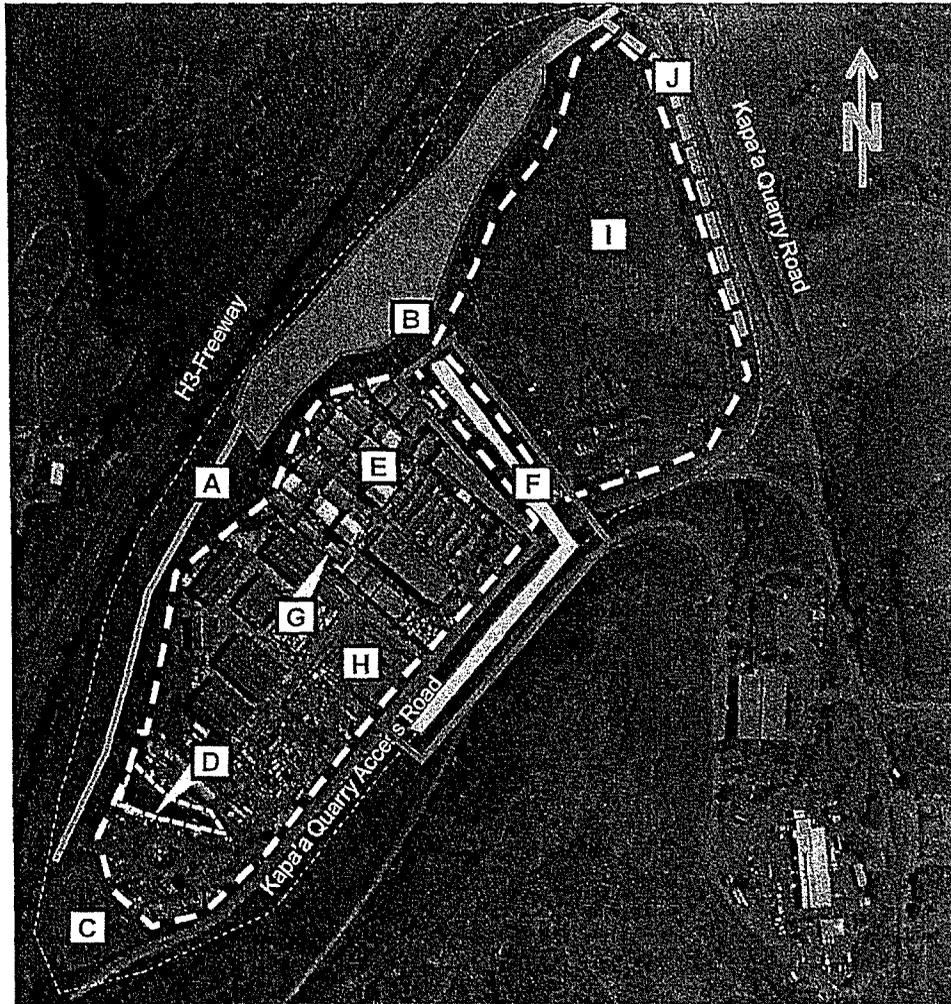
WALTER P. THOMPSON, INC.

By   
 Licensed Professional  
 Land Surveyor 3627  
 Exp. 4/30/14



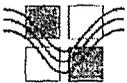
Project phasing plan

**EXHIBIT B**



Definition of water resource features of interest identified and examined in the investigation:

- A. Kapa'a Stream
- B. 13-acres wetland area in the lower reaches of the Kapa'a Stream corridor
- C. Drainage basin for runoff from the Kapa'a landfill.
- D. Vegetated wedge
- E. The water resources within existing industrial development in the upper portion of the project site.
- F. Drainage of runoff through culvert and to percolation field on project site
- G. Existing drainage swale in upper portion of project site
- H. Eight acres of permeable area within development footprint
- I. Lower portion of the site
- J. Drainage canals along western side of Kapa'a Quarry Road



Sustainable Design & Consulting LLC  
www.sustain-hi.com

Kapa'a Light Industrial Park  
Draft Environmental Impact Statement  
Water Resources Investigation of Project Site