

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
MILILANI GROUP, INC.)

DOCKET NO. SP91-378

MILILANI GROUP, INC.)

For a Special Permit to Continue)
and expand a Cemetery on)
Approximately 112 Acres of Land)
Situated Within the State Land)
Use Agricultural District at)
Mililani, Oahu, Tax Map Key)
Numbers: 9-4-06: por. 10; 9-4-33:)
1, 2, 3, 4)

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu Hawaii.

MAY 31 1991

Date

by

Executive Officer

MAY 31 1 27 PM '91
LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

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Mililani Group, Inc. (hereinafter "Petitioner") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and subchapter 12 of chapter 15, of the Hawaii Land Use Commission Rules. The Land Use Commission (hereinafter the "Commission"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

Procedural Matters

1. Petitioner filed the Special Permit application with the City and County of Honolulu Department of Land Utilization (hereinafter "DLU"), as the "processing agency" on July 30, 1990. The Permit was accepted for filing by DLU on October 19, 1990 as 90/SUP-2.

2. The City and County of Honolulu Planning Commission (hereinafter "Planning Commission") conducted a

public hearing on February 27, 1991, pursuant to a public hearing notice published on February 1, 1991, in the Honolulu Advertiser and Star Bulletin, newspapers of general circulation. Written public testimonies in support of the Permit were received from Neighborhood Boards 25 and 26, Mililani/Waipio/Melemanu and Wahiawa, respectively. Written testimony from the Director of the State Department of Health was submitted at the hearing.

3. On February 27, 1991, the Planning Commission recommended approval of the Permit, subject to 5 conditions.

4. On April 3, 1991, the Commission received a portion of the record of the proceedings before the Planning Commission.

5. On April 5, 1991, the Commission sent a letter to the City and County of Honolulu Department of General Planning requesting the complete record of the proceedings, including the application report and any maps used during the Planning Commission hearing.

6. On May 1, 1991, the Commission received the additional information from the City and County Department of Land Utilization.

Description of the Property

7. The subject property (hereinafter "Property") is located in Mililani, Oahu, approximately one half mile mauka of the new Waipio H-2 Interchange.

8. The Property consists of two contiguous parcels totalling approximately 112 acres, and is identified as Island of Oahu, Tax Map Key Nos.: 9-4-06: portion 10; 9-4-33: 1, 2, 3, and 4.

9. The first parcel is the 52 acre area which constitutes the existing Mililani Memorial Park (hereinafter "MMP"), while the second parcel is an approximately 60 acre area proposed for the cemetery's expansion (hereinafter "expansion parcel").

10. The expansion parcel is located directly east and mauka of the existing MMP.

11. The Property is owned in fee by Castle & Cooke, Inc.

12. The soils of the Property are rated A and B by the Land Study Bureau (LSB). The Property is classified as "Prime" and "Unique" Agricultural Lands under the Agricultural Land of Importance to the State of Hawaii (ALISH) classification system.

13. The existing MMP is accessible from Kamehameha Highway and the H-2 freeway, via the Waipio interchange.

14. The expansion parcel is slightly higher in elevation than the present MMP parcel and is characterized by relatively gentle rolling hills with an average slope of 9%.

15. The expansion parcel contains mature trees, shrubs, bushes and grasses that are commonly found throughout the upper Central Oahu plains and has been fallow since 1974.

16. Most of the proposed 60-acre expansion parcel was used for sugar production until early 1960, when the Property was taken out of production.

17. Any surface or subsurface historic or archaeological resources which might have been located on the Property would likely have been destroyed or irretrievably damaged or altered by periodic land cultivation activities. The Commission is unaware of the presence of any such resources within the proposed expansion parcel.

Permit Background

18. MMP Cemetery was initially developed prior to the State Land Use District boundaries enacted in 1964. MMP Cemetery was built by Oceanic Properties Investment, Inc., during 1960, via Resolution 666 adopted by the City Council on November 3, 1959.

19. Petitioner purchased Mililani Memorial Park & Mortuary, Inc., from Oceanic Properties Investment, Inc., in July 1974.

20. Petitioner is requesting the Permit to recognize the existing MMP and its proposed expansion on 60 acres of adjacent land.

21. MMP services the North Shore, Waianae Coast, Ewa, Central Oahu and the Aiea-Pearl City communities, although clientele frequently come from throughout Oahu.

22. MMP is the only cemetery operation that has been actively selling cemetery plots on the Leeward side of Oahu, with the only other companies actively selling cemetery plots being Valley of the Temple, Hawaiian Memorial Park and Greenhaven located in Windward Oahu.

23. Petitioner has also been requested by the County to obtain a change in the present zoning for the 60-acre expansion parcel from AG-1 Restricted Agricultural District to P-2 General Preservation District. Cemeteries are not allowed by the County under AG-1 zoning.

Summary of Proposed Uses

24. Petitioner proposes to use an approximately 60 acre portion of the Property to expand the existing MMP. This adjoining land is undeveloped, and is directly east and mauka of the existing cemetery.

25. Petitioner may include the construction of an additional chapel/administrative offices complex, with the customary ancillary uses consistent with cemetery operations on this expansion parcel. In addition, approximately 11,000 linear feet of new internal cemetery roadways are also proposed.

26. Petitioner anticipates a total of 72,000 cemetery plots to be needed over the 15-year MMP Development Plan (1,200 plots/acre at a 3'x8'plot).

27. Petitioner proposes that the expansion of the Property would occur in increments as follows:

<u>Year</u>	<u>Amount of Expansion Land Area to be Developed</u>
1992-1995	2 acres/year
1995-1998	4 acres/year
1998-2001	5 acres/year
2001-2005	6 acres/year

28. The proposed cemetery expansion will enable MMP to accommodate the increased demand for cemetery plots arising from Oahu's aging population base and substantial new residential developments on Oahu's Leeward side.

State and County Plans and Programs

29. The Property is designated within the State Land Use Agricultural District, as reflected on Land Use District Boundary Map O-9 (Waipahu).

30. The Property lies above the State Department of Health's (DOH) Underground Injection Control Line (UIC).

31. The Property is designated Public and Quasi-Public on the County Development Plan Map. The Expansion Parcel is zoned AG-1 Restricted Agricultural and the existing cemetery parcel is zoned P-2 General Preservation.

32. Neither parcel is within the Special Management Area (SMA) of the City and County of Honolulu.

Summary of Agency Comments

33. The City and County of Honolulu Department of Transportation Service, Public Works, and General Planning had no objections to the issuance of a State Special Use Permit for the proposed development.

34. The State Department of Agriculture made the following comments:

Agronomic Potential of the Property

According to our information, the subject property (Oahu Sugar Company Field 545-1) was irrigated with water pumped up from Waiahole Ditch which traverses the northern portion of the property. Field 545-1 once held the raw sugar production record of about 17 tons of sugar per acre (TSA). The average TSA of this field was better than the average for the Waiawa fields.

About one-half of the Property is classified "Prime" with the remainder classified as "Other Important". The Property has a Land Study Bureau Overall Productivity Ratings and Land Types of A121i and B122i. By this method of classification, the property has good to very good productivity potential for most agricultural uses. The Property has some of the major agronomic qualities needed for feasible agricultural use. However, it is unclear if an economically viable agricultural use can be maintained.

Water Supply

According to the application report, water for the Property will come from the existing Waiahole Ditch system. The application report assumes that Oahu Sugar Company (OSC) will phase out sugarcane production as the leases for these fields come to an end in 1995, thus providing for millions of gallons of water for domestic and industrial uses, including

MMP. This assumption would appear to establish a very harmful precedent, even though the requested re-allocation is incrementally small. As Oahu Sugar Company is forced to cut back production due to urbanization pressures, it will still require full use of its available ditch water to irrigate its remaining fields, as its groundwater resources are also being reallocated to urban uses.

35. The State Department of Health made the following comments:

"1. The subject project is located above the Underground Injection Control line and in a proposed critical wastewater disposal area as determined by the Oahu Wastewater Advisory Committee. No cesspools are allowed in the subject area.

"2. At this time, the details of wastewater treatment and disposal are incomplete. The continued use of the two existing on-site cesspool wastewater disposal systems will not be allowed. Domestic wastewater disposal by means of an on-site system is acceptable provided that the system meets all of the applicable requirements of Chapter 11-62.

"3. The Department of Health is concerned with non-domestic wastewater disposal. Section 11-62-06(d) states that non-domestic wastewater shall meet the specific requirements of Chapter 11-62 as determined to be applicable by the director. The director shall use the effluent requirements for non-domestic wastewater as set forth by the EPA.

Construction plans and engineering reports for proposed non-domestic wastewater systems shall be sufficient in scope and depth for determining the adequacy of compliance with the provisions of section 11-62-06. This information must be submitted such that the Department can continue its review."

Conformance With Special Permit Tests

36. In support of the request, the City and County of Honolulu Department of Land Utilization provided the following:

"a. Such use shall not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulation.

Chapter 205, HRS states in part that "In establishment of boundaries for agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation."

Although the site is rated as A and B lands according to the Land Study Bureau and classified as Prime and Unique Agricultural Land by ALISH (Agricultural Land of Importance to the State of Hawaii), there are considerations which resulted in the development of a portion of the site as the existing MMP Cemetery and most of the remainder (expansion area) lying fallow since 1974. The City Council's Resolution No. 666 allowed 52 acres of the site to be developed as a cemetery to meet the demand for burial plots. The subject 112-acre site is designated on the City's Development Plan Land Use Map as a Public and Quasi-Public use in recognition of the

existing MMP Cemetery and its future expansion. The City's long range plan for the site is continued cemetery use and future expansion of that use. Other considerations such as size, location and access have also deterred its owners from using the Property for agriculture.

Unlike most of the prime agricultural lands in Central Oahu and Ewa, the subject site and much of the lands along the upper Central Oahu plains do not have similar productive capacity, are not irrigated and are further away from mill production sites. As a result, most of the upper Central Oahu plains were deliberately taken out of sugar production years ago by Oahu Sugar Company because they could not be irrigated or cultivated economically and cost effectively and were not essential to their economic survival. In accordance with these constraints and based on a need for additional Urban Lands, Waiawa Ridge was granted a State Land Use District boundary amendment from Agricultural to Urban.

As sugar production techniques further improved in recent years thereby necessitating even less acreage to yield greater crop production at less cost, the need for lands within the upper Central Oahu plains, including the proposed MMP cemetery expansion site, for sugar production has waned even more. The Applicant submits that the subject MMP expansion site no longer has a "high capacity" for intensive cultivation.

Although many agricultural and related uses could be suggested for the use of the proposed MMP cemetery expansion site, there are no realistic diversified agricultural uses to which the site could be put, given its relatively small size and lack of on-site irrigation.

The growth of the non-irrigated pineapple industry in much of the Central Oahu area is limited. Market competition, weather conditions and non-irrigated fields have made it difficult to be productive and profitable for Castle & Cooke, which has phased out significant acreage in Central Oahu from pineapple production including Mililani Mauka. The proposed MMP expansion site was never put into pineapple production.

"b. That the desired use would not adversely affect surrounding property.

The proposed expanded cemetery area will not adversely impact any of the adjoining properties because lands surrounding the proposed expansion area except for the existing MMP cemetery are vacant and undeveloped. Since the abutting properties are planned and zoned for agricultural use. The cemetery should not adversely affect their future use.

Upon completion, the expanded MMP cemetery will provide a 100+ acre open area with a few structures and landscaped to be highly compatible with any new development which might eventually locate on lands adjoining the expanded facility.

"c. Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection.

The proposed expansion will have limited impact on public agencies since all improvements required to expand the cemetery will be funded by the Applicant; no publicly funded on or off-site improvements are required.

The Department of Public Works had no objections to the proposed MMP cemetery expansion because it involves no sewer facilities. The expanded cemetery will be served by an on-site, privately-owned and operated collection and disposal system.

The Board of Water Supply had no objections to the proposed expansion and recommended that the applicant obtain a water allocation permit from the State Water commission pursuant to the State Water Code in order to obtain additional water from the Waiahole Water System. Under Sec. 174C-49(a), Hawaii Revised Statutes, the applicant must show the following in order to obtain a water use permit for the expanded MMP cemetery:

Can be accommodated with the available water source;

Is a reasonable-beneficial use as defined in section 174C-3;

Will not interfere with any legal use of water;

Is consistent with the public interest;

Is consistent with State and County General plans and land use designations; and

Is consistent with county land use plans and policies.

According to the B.W.S., the proposed MMP cemetery expansion can be accommodated by water from the Waiahole Water System since expansion will occur in small-acreage increments over 15 years. The additional water needed from the Waiahole System to meet the cemetery needs after each expansion increment is completed will not be significant.

The expansion of the MMP as proposed by the applicant is needed to meet the demand for cemetery plots which generate from Leeward Oahu communities. MMP is the only cemetery facility which is actively selling cemetery plots to the public in Leeward Oahu. Its expansion meets the "reasonable-beneficial use" criterion of Sec. 174C-49(a), Hawaii Revised Statutes as well as its criterion that a proposed SUP be "consistent with the public interest".

The existing and proposed expansion site are designated for "Public and Quasi-Public Use" on the Central Oahu Development Plan Land Use Map. The proposal is in conformance with (once rezoning is granted for the 60 acres site) City planning policies for the area and would promote and implement that land use policy.

"d. Unusual conditions trends and needs have arisen since the district and regulation were established.

The subject site's lack of irrigation, scaling down of pineapple production by Castle and Cooke, fallowing of more distant and/or non-irrigated lands by the Oahu Sugar Company and relatively poor prospect for diversified agricultural use of the site due to lack of irrigation indicate that the importance of maintaining the Agricultural classification of the subject site from an economic perspective has waned considerably and probably lacks any significance today.

Since the Council of the City and County of Honolulu passed Resolution No. 666 on November 3, 1959 establishing the boundary and area for the Mililani Cemetery site, Castle and Cooke Land Company has always set aside said site for cemetery use. In July 1974, when the cemetery assets were sold to Mililani Group, Inc. (formerly known as Mililani Memorial Park and Mortuary, Inc.) as part of the sale, the Mililani Group, Inc. was given an option to purchase, and has purchased portions of said land for cemetery purposes. Furthermore, since 1974, a substantial portion of said land has not been used for agricultural purposes and mature vegetation and trees now covers that portion. The agricultural use of the balance of the site is temporary. The parcel's size, location and access makes continued pineapple cultivation difficult and would be abandoned as land is required for cemetery purposes.

"e. That the land upon which the proposed uses are sought is unsuited for the uses permitted within the district.

From an economic perspective, the subject site would not be suited for agricultural use due to its small size and the many reasons discussed earlier which makes sugar, pineapple and diversified agricultural use of the site unfeasible. Even though the site has physically productive soils for agricultural use, it is highly doubtful that it would be so used by its current owner for reasons which are set forth in preceding and following discussions.

According to the applicant, Castle and Cooke has examined the following agricultural products, pineapple, sugarcane, nursery, and ornamental and 9 other commercially produced fruits, all of which were determined to be unacceptable for this area. A shift in consumer interest in fresh pineapple versus canned products, low prices, marginal profitability and increased use of sugar beets as a sugar product; large acreage (1,000 acres) required to be profitable for nursery and ornamental crops as well as for vegetables and melons; and world-wide demand for only 700 acres for guava products (of the 9 commercial fruit grown in Hawaii only guava products were considered a viable crop) make these uses unacceptable to this area."

Planning Commission Recommendation

37. At its meeting of February 27, 1991, the City and County of Honolulu Planning Commission recommended approval of the Special Permit to the LUC subject to the following conditions:

- "1. The Applicant shall obtain a water allocation permit from the State Water Commission pursuant to the Hawaii State Water Code in order to obtain additional water from the Waiahole Ditch Water System.
- "2. Prior to the implementation of the project, the applicant must meet the requirements and obtain approval of all government agencies normally required for such projects, including a zone change approval from the City Council.
- "3. Should the request for a change in zoning be denied by the City Council, the Special Use Permit shall be deemed null and void.
- "4. Major modifications, such as expansion of the site shall be subject to review and approval by the Director of Land Utilization and the Planning Commission. Minor modifications shall be subject to review and approval by the Director of Land Utilization.
- "5. If any previously unidentified historic sites or archaeological remains are encountered during construction, the applicant shall stop work immediately and contact the State DLNR Historic Sites Office for instructions on how to proceed."

CONCLUSIONS OF LAW

The Special Permit request to allow the continued operation and expansion of an existing cemetery and related uses is an "unusual and reasonable" use as defined in Section 205-6, Hawaii Revised Statutes, and the proposed use, subject to conditions in the Order, is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect and encourage development of lands in the State of those uses to which they are best suited, in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that Special Permit Docket No. 91-378/Mililani Group, Inc. to allow the continued operation and expansion of an existing cemetery and related uses, on approximately 112, acres of land, designated within the State Land Use Agricultural District, Hawaii Tax Map Key Nos.: 9-4-06: portion of 10; 9-4-33: 1, 2, 3, 4, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby approved, subject to the following conditions:

1. The Applicant shall obtain a water allocation permit from the State Water Commission pursuant to the Hawaii State Water Code in order to obtain additional water from the Waiahole Ditch Water System.
2. Prior to the implementation of the project, the applicant must meet the requirements and obtain approval of all

government agencies normally required for such projects, including a zone change approval from the City Council.

3. Should the request for a change in zoning be denied by the City Council, the Special Use Permit shall be deemed null and void.

4. Major modifications, such as expansion of the site shall be subject to review and approval by the Director of Land Utilization and the Planning Commission. Minor modifications shall be subject to review and approval by the Director of Land Utilization.

5. If any previously unidentified historic sites or archaeological remains are encountered during construction, the applicant shall stop work immediately and contact the State DLNR Historic Sites Office for instructions on how to proceed.

6. Petitioner shall provide a metes and bounds survey map and description of the Special Permit area.

7. Petitioner shall establish the permitted use of the Special Permit Area within 2 years of this Order.

DOCKET NO. SP91-378 - MILILANI GROUP, INC.

Done at Honolulu, Hawaii, this 31st day of May 1991,
per motions on May 2, 1991 and May 30, 1991.

LAND USE COMMISSION
STATE OF HAWAII

By (absent)
RENTON L. K. NIP
Chairman and Commissioner

By Allen K. Hoe
ALLEN K. HOE
Vice Chairman and Commissioner

By Allen Y. Kajioka
ALLEN Y. KAJIOKA
Vice Chairman and Commissioner

By (abstain)
KAREN S. AHN
Commissioner

By Eusebio Lapenia, Jr.
EUSEBIO LAPENIA, JR.
Commissioner

By Joann N. Mattson
JOANN N. MATTSON
Commissioner

Filed and effective on
May 31, 1991

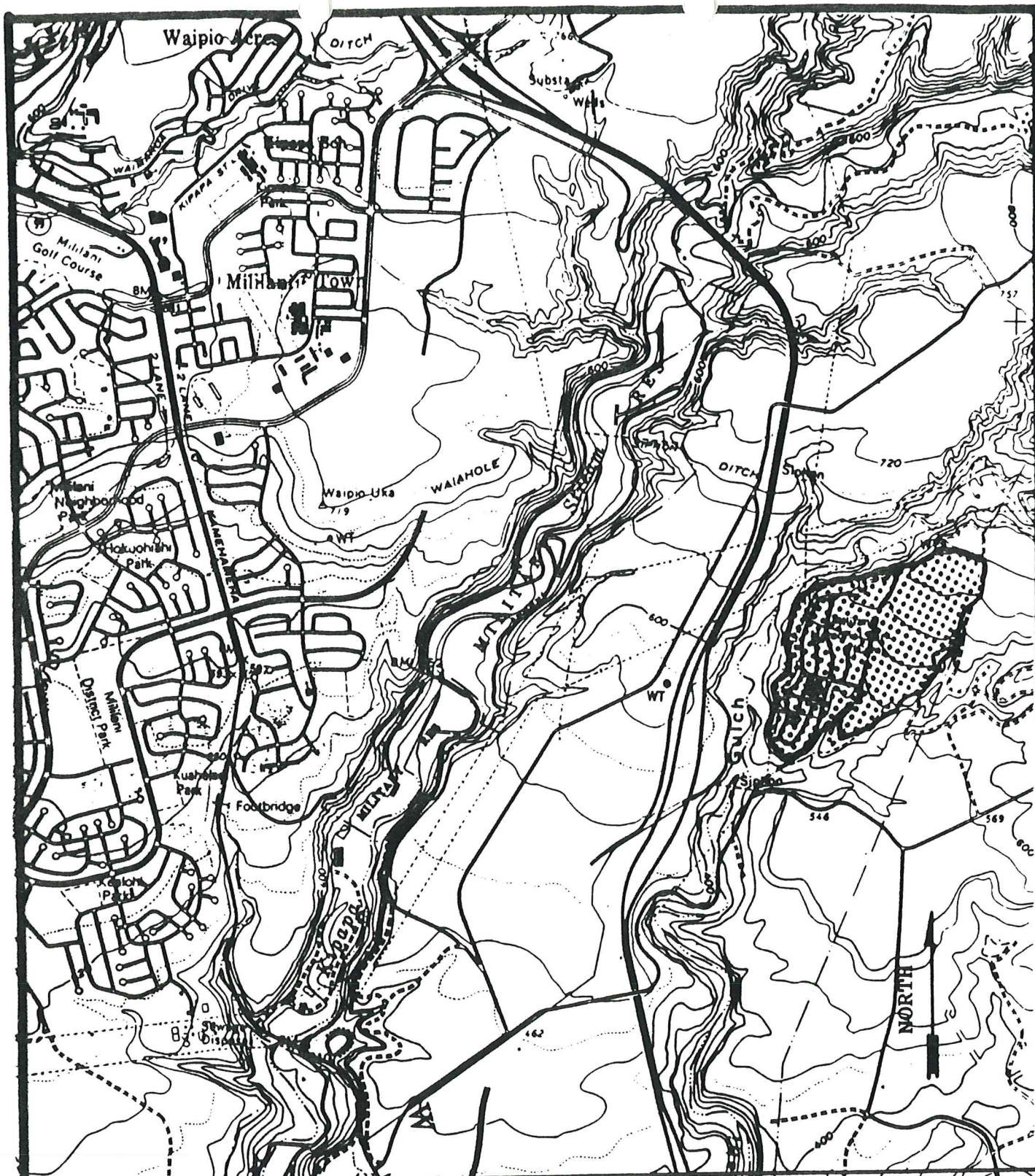
Certified by:

Robert L. ...
Executive Officer

By (absent)
JAMES M. SHINNO
Commissioner

By Elton Wada
ELTON WADA
Commissioner

By (absent)
DELMOND J. H. WON
Commissioner



DOCKET NO. : SP91-378 / MILILANI GROUP, INC.

LOCATION MAP

TAX MAP KEY: 9-4-06: por. 10; 9-4-33: 1, 2, 3, & 4
 WAIPIO, EWA, OAHU, HAWAII
 SCALE: 1" = 2,000 ft. (approx.)



APPROVED PERMIT AREA

EXHIBIT "A"