

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 22, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 16OD-105

OAHU

Termination of Revocable Permit No. 5169 to Hazel Higgins; Issuance of Revocable Permit to Roland W. Higgins, Jr. and Daralynn S. Higgins for Residential Purposes, Kuliouou, Honolulu, Oahu, Tax Map Key: (1) 3-8-004:056.

APPLICANT:

Roland W. Higgins, Jr. and Daralynn S. Higgins, husband and wife, Tenant by the Entirety.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kuliouou, Honolulu, Oahu, identified by Tax Map Key: (1) 3-8-004:056 [Lot A], as shown on the map attached as **Exhibit A1** and aerial image attached as **Exhibit A2**.

AREA:

8,135 square feet, more or less.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: R-5

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Revocable Permit No. 5169, Hazel Higgins, Permittee, for residence purposes, at a monthly rental of \$332.74 effective from January 1, 2017.

CHARACTER OF USE:

Residence purposes.

COMMENCEMENT DATE:

July 1, 2018.

MONTHLY RENTAL:

\$760 per month from July 1, 2018 to September 30, 2018; and
\$1,520 per month from October 1, 2018 to December 31, 2018.

Land Division has procured independent appraisal services to assist in valuing the rent to charge for the use of State lands underlying revocable permits statewide, and ground rent discounts for tenancy and use restriction, if any.

Pursuant to the appraisal report, the appraiser uses 4% residential rate of return on the land value of \$456,000, which results in the annual rent of \$18,240 or \$1,520 per month.

Staff is aware of the significant increase from the current rent payable [\$332.74] to \$1,520, which is equivalent to 3.5 times. Therefore, staff recommends adopting 50% of the appraised rent [\$760] for the first three months of the new revocable permit, which will be followed by 100% of the appraised rent [\$1,560] for the subsequent period until the rent is determined again during the annual renewal process.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 47, that states "lease of State land involving negligible or no expansion or change of use beyond that previously existing." See **Exhibit B**.

DCCA VERIFICATION:

Individuals, not applicable

JUSTIFICATION FOR REVOCABLE PERMIT:

The requested tax map key, (1) 3-8-004:056 (Lot A) is a portion of a slope immediately behind private residences on Makaniolu Place in Kuliouou, Oahu.

Lots A to D inclusive were shown on a map dated September 22, 1942 and prepared by the Territory of Hawaii, Survey Department (**Exhibit C**). The map was prepared in response to requests from the neighboring owners for lease(s). Leases/revocable permits were issued and expired subsequently. Nevertheless, staff understands Lot A remains a portion of a 2.7-acre Quarry Reserve Lot¹, which has never undergone subdivision approval. The access for the entire Quarry Reserve Lot is located on Maunalua Avenue as shown on Exhibit C, which is a City road.

The restriction of ownership/tenancy of a residence lot/lease mentioned in §171-48(6), HRS² prohibits a lease be issued to any fee owner or tenant of residence lot. Notwithstanding the statutory restriction, Lot A, as currently configured, requires an access easement over the remainder of the Quarry Reserve Lot or the adjoining Lot 14 to connect to the public road, before a lease could be offered at auction. Either option would trigger lengthy planning³, negotiation, mapping, and documentation.

In view of the above, staff believes the issuance of a revocable permit (RP) is appropriate at this moment.

REMARKS:

Lot A was initially encumbered by General Lease No. 2968 issued to Ralph and Cynthia Geiser in 1943 for 21 years, and the lessees built a quonset hut on Lot A in 1948. The Geisers were the fee owners of the adjoining Lot 14. §171-48(6), HRS mentioned above was not enacted until 1962. Upon expiration of the lease, revocable permits ("RP") were issued over Lot A for residence purposes.

Around 1975, Mrs. Hazel Higgins requested the Board issue a RP to her for residence purposes. Her son, Mr. Roland Higgins, was in the process of purchasing Lot 14, which would provide access over Lot 14 to her. The Board authorized the issuance of RP 5169 to Mrs. Higgins. Staff notes that the applicants are the current owners of Lot 14 since they

¹ Quarry Reserve Lot only includes TMK (1) 3-8-004:011, 054, 055, and 056, not Lot D or TMK (1) 3-8-004:055.

² §171-48(6), HRS stipulates that "[n]o person shall be qualified to purchase or lease any lot who, or whose spouse, or both of them, owns or is a lessee, under a residential lease for a term exceeding twenty years (including any periods for which the lease may be extended or renewed at the option of the lessee), of any land situated within or without the State suitable for residential use."

³ If the Department were to conduct any long-term planning for the Quarry Reserve Lot, the study may re-visit the configuration of the individual lots to make them align with the lateral boundaries of the private properties.

bought it around 1978.

Mr. Higgins informed the Department that his mother passed away in 2013 and he requests the Board issue a RP to him and his wife over Lot A for residence purpose.

Two caves, known as Makani'olu Shelter and Kawekiu Shelter, are located in the vicinity, of which the Makani'olu Shelter has been placed on the Hawaii Register of Historic Places.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There is no noncompliance issue or pending litigation involving the existing RP. Staff visited the site recently.

The Department has not received any other applications for use of Lot A.

As mentioned above, the quonset hut currently on Lot A was built in 1948. Staff recommends conditions be inserted in the forthcoming RP document that the permittees accept the land and improvement thereon in "AS IS WHERE IS" condition with all faults and defects whether latent or patent, and release, indemnify, defend and hold the State harmless any liability arising from permittees' use of the premises.

Department of Facility Maintenance, Department of Parks and Recreation, State Historic Preservation Division, Board of Water Supply, and Division of Forestry and Wildlife have no objections/comments to the requested revocable permit and the proposed environmental assessment exemption.

Department of Planning and Permitting, Department of Health, Commission on Water Resource Management, and Office of Hawaiian Affairs have not responded to the solicitation for comment before the deadline.

RECOMMENDATION: That the Board:

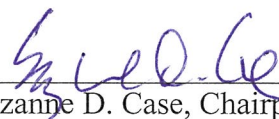
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to Roland W. Higgins Jr. and Daralynn S. Higgins covering the subject area for residence purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;


- B. The permittees shall accept the land and improvement thereon in "AS IS WHERE IS" condition with all faults and defects whether latent or patent, and release, indemnify, defend and hold the State harmless any liability arising from permittees' use of the premises;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Termination of Revocable Permit No. 5169 as of June 30, 2018.

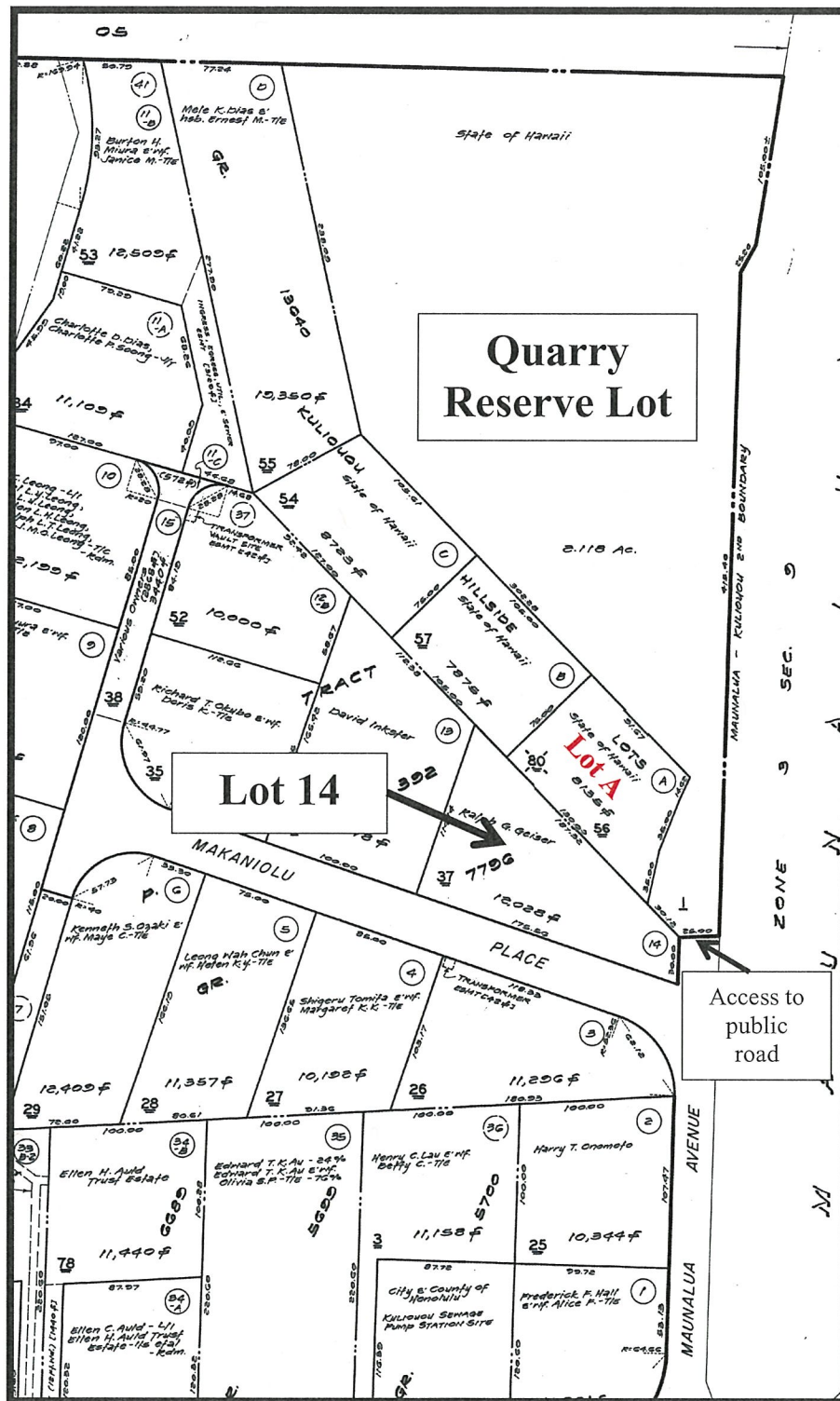
Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

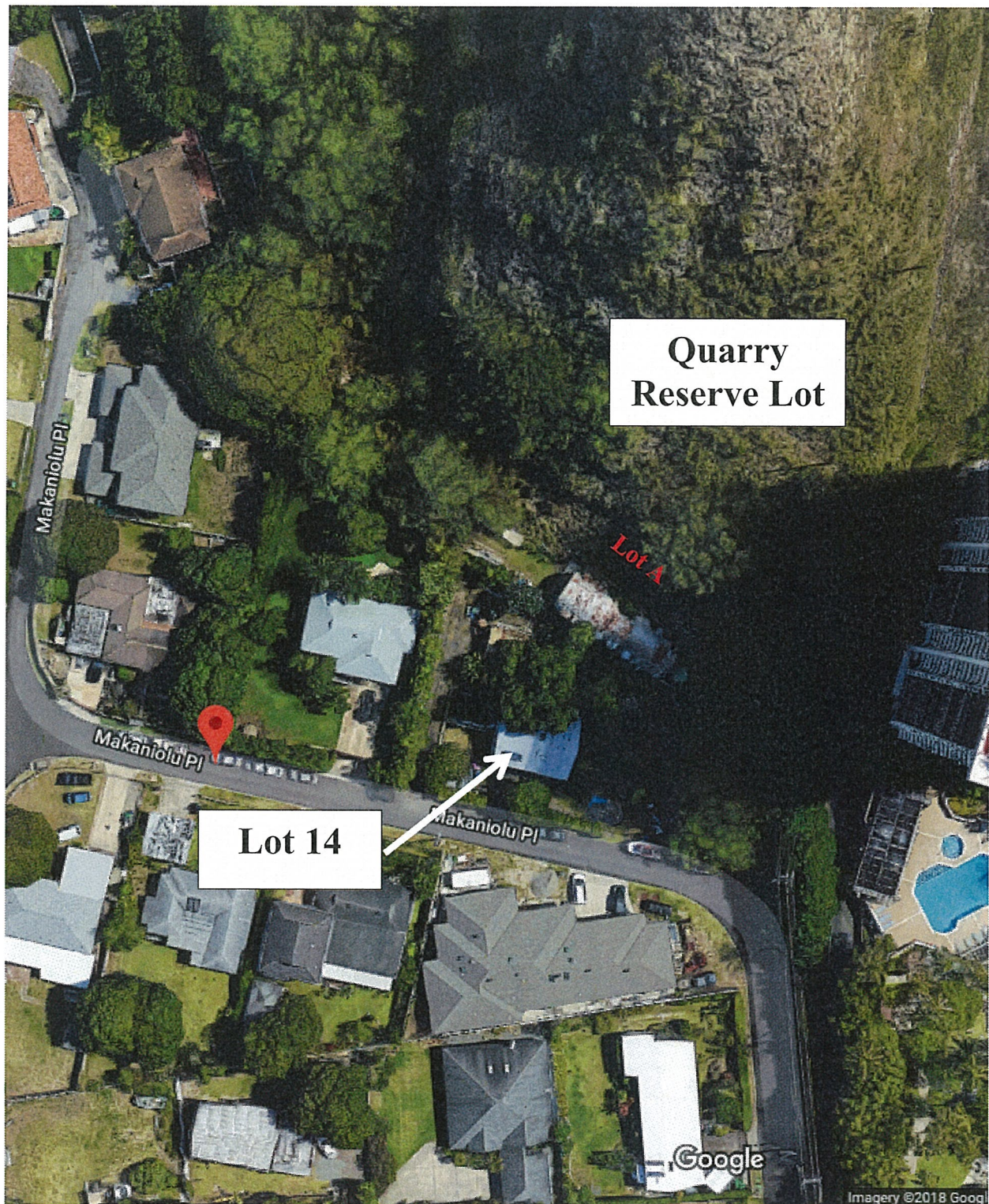

Suzanne D. Case, Chairperson





TMK (1) 3-8-004:056

EXHIBIT A1



TMK (1) 3-8-004:056

EXHIBIT A2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

Project Title:	Revocable Permit for Residence Purposes.
Project / Reference No.:	16OD-105
Project Location:	Kuliouou, Honolulu, Oahu, Tax Map Key: (1) 3-8-004:056.
Project Description:	For residential purposes due to the passing of the former permittee.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	In accordance with the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 47, that states "lease of State land involving negligible or no expansion or change of use beyond that previously existing."
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No, the requested location has been used for residential purposes since 1943 under lease or revocable permits. Therefore, staff believes the issuance of a new revocable permit has no significant effect on the environment.
Action May Have Significant Impact on Particularly Sensitive Environment?	No, the requested location does not affect the two caves in the vicinity, of which one of them is on the National Register. As such, staff believes there would be no significant impact to sensitive environmental or ecological receptors on State lands.
Analysis:	In the past, permits were periodically issued for conducting aerial fireworks display on the beach in this area, which have resulted in no known significant impacts to the natural and environmental resources in the area. As such staff believes that the proposed event would involve negligible or no expansion or change in use of the subject area beyond that previously existing.
Consulted Parties:	Agencies as noted in the submittal.
Recommendation:	That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT B

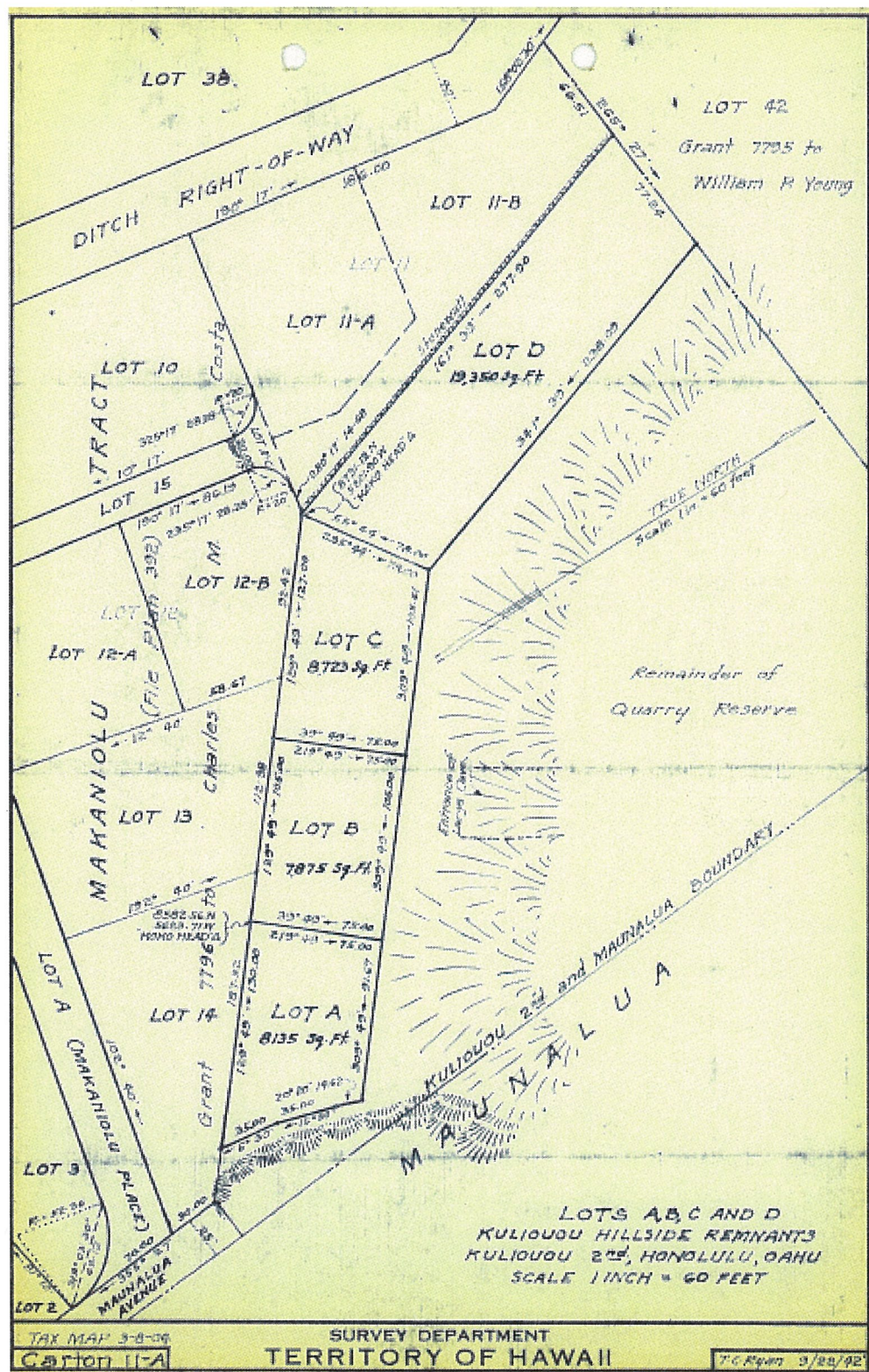


EXHIBIT C