

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

February 14, 2014

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

PSF No.:13OD-188

OAHU

Grant of Term, Non-Exclusive Easement to Thomas C. Young and Sandra G. Young for Concrete Pad, Ladder, Steps, and Rock Walls Purposes; Assess Administrative Cost of \$500 and Fine of \$500, Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:Seaward of 045

APPLICANT:

Thomas C. Young and Sandra G. Young as tenants in common

LEGAL REFERENCE:

Section 171-6, 13, and 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Niu, Honolulu, Oahu, identified by Tax Map Key: (1) 3-7-002:seaward of 045, as shown on the attached map labeled Exhibit A.

AREA:

430 square feet¹, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: R-10 [for the abutting private property]

¹ 430 square feet was provided by the applicants. At the time of writing this submittal, there is no map indicating the encroaching area.

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:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing concrete pad, ladder, steps, and rock walls over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See exemption declaration attached as **Exhibit B**.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS: Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at

- Applicant's own cost;
- 2) Pay for an appraisal to determine one-time payment; and
 - 3) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

Applicants, who are the owners of the abutting property identified as tax map key (1) 3-7-002:045 ("Parcel 45"), are planning to improve their property. In the due diligence period, the subject encroachments were noted on the survey map attached as **Exhibit C**.

The recorded seaward boundary of Parcel 45 was described as along "highwater mark at seashore" as shown in the deed for the property. The subject encroachments comprise portions of a loose rock seawall, CRM wall, concrete pad, steps and ladder. In the event the shoreline is determined to be different from the recorded boundary, the encroachment area may change correspondingly.

According to the material provide by the applicants and the research conducted by the Office of Conservation and Coastal Lands ("OCCL"), there is evidence indicating that the encroachments have been in existence since 1967 or earlier. In view of this situation, OCCL will not require an after-the-fact Conservation District Use Application to cure this matter, and supports a disposition to resolve the encroachments. A copy of OCCL's review on the encroachment is attached as **Exhibit D**.

Department of Health, Board of Water Supply, and Department of Facility Maintenance have no comments/objections to the request.

Division of Aquatic Resources, State Historic Preservation Division, Commission on Water Resource Management, and Office of Hawaiian Affairs have not responded to the solicitation for comment before the deadline.

Department of Planning and Permitting recommend designating the requested easement. In addition, it notes that a shoreline setback variance (No. 78/SV-13) was approved for a swimming pool on the property and the seawall is nonconforming. Staff believes the recordation of the easement at the Bureau of Conveyances will adequately provide public notice of such easement, notwithstanding the recommended approach of designating the easement.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Staff recommends the Board impose a fine of \$500 for the subject encroachments.

Upon approval of today's request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

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. Assess a fine of \$500 and a non-refundable administrative cost of \$500, under Section 171-6, HRS.
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-7-002:045, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Thomas C. Young and Sandra G. Young covering the subject area for concrete pad, steps, and rock seawall 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 term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 3-7-002:045, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - D. Review and approval by the Department of the Attorney General;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

- F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,

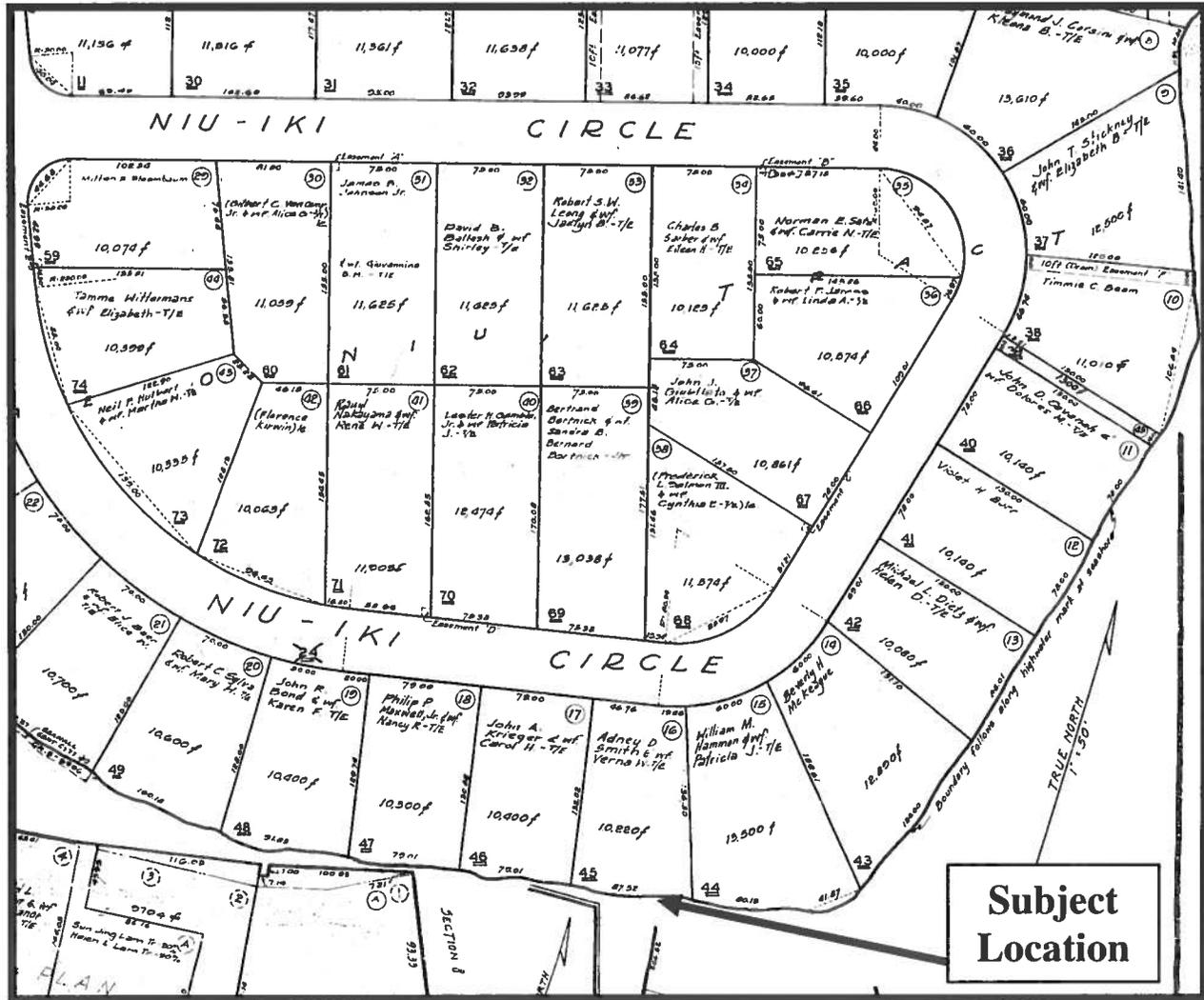


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TMK (1) 3-7-002:seaward of 045

EXHIBIT A

EXEMPTION NOTIFICATION

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

Project Title: Easement for Concrete Pads, ladder, Steps, and Rock Wall Purposes

Project / Reference No.: PSF 13OD-188

Project Location: Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:seaward of 045.

Project Description: Easement to legalize the encroachment on State lands.

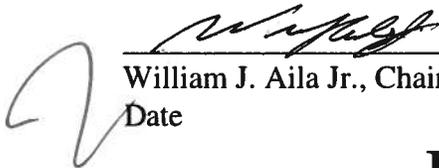
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

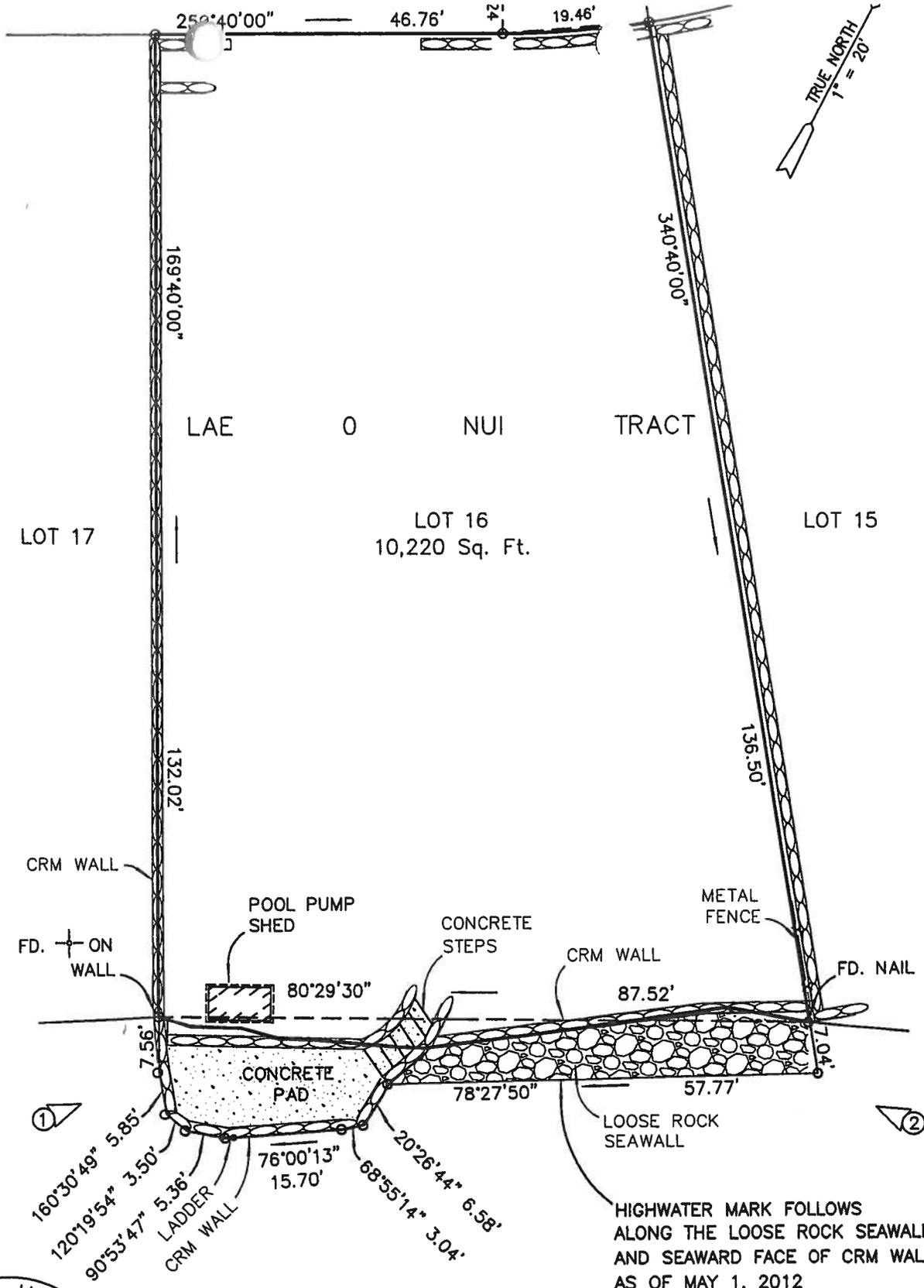
Consulted Parties Office of Conservation and Coastal Lands

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.



William J. Aila Jr., Chairperson
Date

EXHIBIT B



HIGHWATER MARK FOLLOWS
ALONG THE LOOSE ROCK SEAWALL
AND SEAWARD FACE OF CRM WALL
AS OF MAY 1, 2012



THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION.

O C E A N

EXHIBIT "C"
SHORELINE SURVEY
LOT 16
OF "LAE-O-NIU-TRACT"

At Niu, Waikiki, Oahu, Hawaii

Tax Map Key: 3-7-02:45

Date: July 15, 2013

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:DLNR:.BR

File Number Encroachment: OA-14-2

Thomas and Sandra Young

Vancouver, WA 98661

Dear Mr. and Mrs. Young,

SUBJECT: Request to Resolve State Land Encroachment at 94 Niu-Iki Circle, Honolulu, Oahu; Tax Map Key (1) 3-7-002:045; Owners: Thomas and Sandra Young

RECEIVED
LAND DIVISION
NOV 20 2013
NOV 20 AM 9:52
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

This is in response to your November 2013 request to resolve the shoreline encroachments at Tax Map Key (1) 3-7-002:045. According to information and maps contained with your request, you have identified approximately 413 square feet of encroachment (concrete pad and portion of CRM seawall) makai of the subject property onto State land.

An aerial photograph provided by the applicant from R.M. Towill Corporation from 1954 appears to show that a portion or all of the subject encroachment have been in existence since that time. An aerial photograph from the Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) database from April, 1967 clearly shows that the subject encroachment has been in existence since 1967 or earlier. As a consequence, the DLNR-OCCL will not be asking for an after-the-fact Conservation District Use Application to cure this matter. OCCL may reconsider this finding should we find that the subject encroachments were built without permits, within the Conservation District after 1964.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

EXHIBIT "D"

In addition, OCCL developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide OCCL's decisions on the disposition of shoreline encroachments.

Surrounding Land Uses:

The surrounding land uses on Niu Peninsula are residential. Adjacent properties have similar seawalls and encroaching structures. Niu-iki Circle runs along the mauka side of the property.

Beach Resources:

The coastline along the Niu Peninsula in the vicinity of the subject property is characterized by seawalls and other hardened structures with no beach resources.

Public Access:

There is no public access to this shoreline area.

Effect of Removing the Encroachment on:

Beach Resources: There are no beach resources on Niu Peninsula, so removal of the encroachment from the shoreline will provide no benefit to beach resources.

Public Access: OCCL staff has determined that no substantial improvement to public beach access would be gained by removing the subject encroachment because adjacent properties are fronted by similar seawalls and encroachments and there is no public shoreline access in the immediate area.

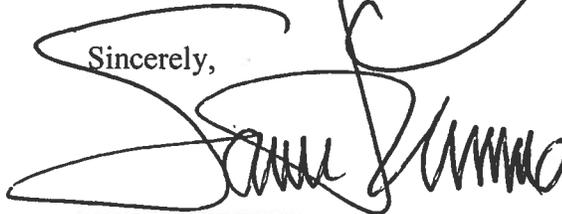
Affect on Adjacent Properties: Removal of the encroachment may destabilize seawalls and other structures on adjacent properties.

It has been a general policy and practice of OCCL to support disposition requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, OCCL has determined that the requirements stated in HRS § 205A, HRS § 183C, and in OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachment.

Please feel free to contact Sea Grant Extension Agent Brad Romine at OCCL at (808) 587-0049 or Bradley.M.Romine@hawaii.gov should you have any questions pertaining to this letter. Please contact DLNR Land Division at (808) 587-0433 should you wish to pursue an easement for the subject shoreline encroachment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', written over a horizontal line. The signature is stylized and somewhat cursive.

Samuel J. Lemmo, ADMINISTRATOR
Office of Conservation and Coastal Lands

cc: Land Division, Barry Cheung