COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS

COMMONWEALTH REGISTER

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Jude U. Hofschneider
Lieutenant Governor

EXECUTIVE ORDER NO. 2013-05

SUBJECT: DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY

AUTHORITY: I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the community, environment, and critical infrastructure of the Commonwealth of the Northern Mariana Islands.

WHEREAS, CUC IS THE SOLE ELECTRICITY SUPPLIER to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI's businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

WHEREAS, WITHOUT CUC ELECTRICITY:

(1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;

(2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited oil supplies for emergency generation and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;

(3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup oil supplies for emergency generators were exhausted; and

(4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water.

WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

(1) CUC is owed approximately $14 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed over millions more by residential users;

(2) There is conflict and potential conflict between CUC and government agencies over money owed and other issues. Such conflict drains resources especially if it results in the parties going to court. Interagency cooperation and oversight is vital to ensure that government agencies can continue its operations without draining CUC's remaining resources. Further, regulatory oversight adds severe financial burdens to CUC.

(3) The people of the Commonwealth and its government are going through severe economically distressed times. This has put a severe strain on the government to meet its obligation.

(4) CUC often only has days' worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole, cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers;

(5) A unified government approach is necessary to reconcile and resolve the fiscal crises of the government with the fiscal crises of CUC. This can only be achieved through a declaration of significant emergency.

WHEREAS, THERE EXISTS A TECHNICAL WORKER CRISIS:

(1) CUC faces a manpower crisis. Skilled workers and a responsive support system are key to the success of the operation, particularly for preventative maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers;

(2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines and charges and, in the extreme, to a federal takeover of their finances;

(3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised;

(4) The legislature, through P.L. 17-1 (Mar. 22, 2010), has limited CUC's ability to hire technical staff, eliminating prior statutory permission to hire up to nineteen foreign workers and reinstituting a moratorium on the government's hiring of foreign nationals, even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act, as subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC § 8123(h);

(5) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidates;

(6) The impact of an inadequate workforce is substantial. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service. Second, the power plants would again degrade, producing more of these outages. Third, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team, with all expenses charged to CUC customers.

(7) CUC's renewal of contracts and hiring of foreign expert workers is necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth.

WHEREAS, A BOARD OF DIRECTORS DOES NOT EXIST:

(1) There is no Board of Directors. CUC has functioned without a Board because it has had to. While CUC's enabling act, reenacted as P.L. 16-17, as amended, authorizes a Board, there is no CUC Board yet because, while the staff of the Governor's Office have diligently tried to find Board volunteers who meet the complex statutory qualifications, they have been unable to do so. Nonetheless, CUC must continue to function.

(2) Without a Board in place, I still must provide for the continued operations of CUC. The Director needs to be able to negotiate with federal and other agencies.

WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY, I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and

2. Utilize all available resources of the Commonwealth government and its political subdivisions as reasonably necessary to respond to the emergency.

It is hereby **ORDERED** that:

This Declaration of a State of Significant Emergency shall take effect immediately and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30)-day period, terminate the declaration of a state of significant emergency. PL 18-4, § 104(g)

Under authority of this Declaration and with the goal of mitigating or ameliorating the above described crises, I immediately direct the following:

DIRECTIVE 1: All of the executive power of the CUC, which shall include any and all powers vested in the Board of Directors and the Executive Director, shall be exercised by my designated Executive Director.

DIRECTIVE 2: Section 4531 of Title 3 of the Commonwealth Code is hereby suspended as to CUC as follows:

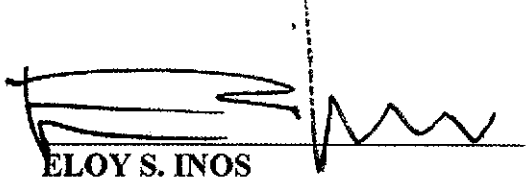
The following strike-out formatted language of the quoted provisions of the following statute regulating government employment is, as indicated, suspended immediately:

3 CMC §4531. Restrictions on Government Employment
~~Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.~~

As a result of my suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

The above described Directives are in no way meant as the limits of my actions or authority under this Declaration. Accordingly, I reserve the right under this Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 22 nd day of March 2013.



ELOY S. INOS
Governor
Commonwealth of the Northern Mariana Islands

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Jude U. Hofschneider
Lieutenant Governor

EXECUTIVE ORDER No. 2013-06

DECLARATION OF HEALTH EMERGENCY

WHEREAS, the Commonwealth Healthcare Corporation ("CHC") provides the bulk of necessary healthcare in the Commonwealth, as well as providing all emergency medical services; and

WHEREAS, the disruption of the provision of medical services by the CHC poses a direct threat to the health and safety of the people of the Northern Mariana Islands; and

WHEREAS, the CHC is currently in arrears to payments to vendors providing vital services and equipment and is in arrears in regards to salary payments to necessary employees; and

WHEREAS, CHC deteriorating financial condition affects its ability to maintain adequate infrastructure, equipment and personnel such that it is jeopardizing CHC's federal funding; and

WHEREAS, CHC, has been notified by federal authorities that, due to deficiencies in CHC operations and infrastructure, CHC will cease to be eligible for Medicare/Medicaid payments along with other penalties if the deficiencies are not promptly remediated.

WHEREAS, Article III §10 of the Constitution of the Commonwealth and PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013 provide that the Governor has the authority and duty to take necessary steps to respond to impending disasters;

NOW THEREFORE, I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and PL 18-4, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the disruption of critical medical services in the Commonwealth and the danger that such a condition poses to the public because of the great increase in otherwise preventable deaths that would result.

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200 /2300 Facsimile: (670) 664-2211/2311

WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY, I intend to enable CHC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of all CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands and CHC including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and

2. Utilize all available resources of the Commonwealth government and its political subdivisions as reasonably necessary to respond to the emergency.

To ensure that the suspension of regulatory provisions does not lead to financial abuse, this emergency declaration incorporates the March 19, 2012 Memorandum of Understanding (MOU) between CHC and the Department of Finance, Office Management and Budget, and Office of the Attorney General. In addition, any financial reports submitted by the CHC pursuant to the MOU must be submitted with a certification of the person submitting them stating that the reports are a full and accurate under penalty of perjury.

Done this 31st day of March, 2013

ELOY S. INOS
Governor

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Jude U. Hofschneider
Lieutenant Governor

EXECUTIVE ORDER NO. 2013-07

SUBJECT: DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY

AUTHORITY: I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the community, environment, and critical infrastructure of the Commonwealth of the Northern Mariana Islands.

WHEREAS, CUC IS THE SOLE ELECTRICITY SUPPLIER to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI's businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

WHEREAS, WITHOUT CUC ELECTRICITY:

(1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;

(2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited oil supplies for emergency generation and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;

(3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup oil supplies for emergency generators were exhausted; and

(4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water.

WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

(1) CUC is owed approximately $14 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed over millions more by residential users;

(2) There is conflict and potential conflict between CUC and government agencies over money owed and other issues. Such conflict drains resources especially if it results in the parties going to court. Interagency cooperation and oversight is vital to ensure that government agencies can continue its operations without draining CUC's remaining resources.

(3) The people of the Commonwealth and its government are going through severe economically distressed times. This has put a severe strain on the government to meet its obligation.

(4) CUC often only has days' worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole, cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers;

(5) A unified government approach is necessary to reconcile and resolve the fiscal crises of the government with the fiscal crises of CUC. This can only be achieved through a declaration of significant emergency.

WHEREAS, THERE EXISTS A TECHNICAL WORKER CRISIS:

(1) CUC faces a manpower crisis. Skilled workers and a responsive support system are key to the success of the operation, particularly for preventative maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers;

(2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines and charges and, in the extreme, to a federal takeover of their finances;

(3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised;

(4) The legislature, through P.L. 17-1 (Mar. 22, 2010), has limited CUC's ability to hire technical staff, eliminating prior statutory permission to hire up to nineteen foreign workers and reinstituting a moratorium on the government's hiring of foreign nationals, even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act, as subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC § 8123(h);

(5) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidates;

(6) The impact of an inadequate workforce is substantial. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service. Second, the power plants would again degrade, producing more of these outages. Third, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team, with all expenses charged to CUC customers.

(7) CUC's renewal of contracts and hiring of foreign expert workers is necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth.

WHEREAS, A BOARD OF DIRECTORS DOES NOT EXIST:

(1) There is no Board of Directors. CUC has functioned without a Board because it has had to. While CUC's enabling act, reenacted as P.L. 16-17, as amended, authorizes a Board, there is no CUC Board yet because, while the staff of the Governor's Office have diligently tried to find Board volunteers who meet the complex statutory qualifications, they have been unable to do so. Nonetheless, CUC must continue to function.

(2) Without a Board in place, I still must provide for the continued operations of CUC. The Director needs to be able to negotiate with federal and other agencies.

WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY, I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and

2. Utilize all available resources of the Commonwealth government and its political subdivisions as reasonably necessary to respond to the emergency.

It is hereby **ORDERED** that:

This Declaration of a State of Significant Emergency shall take effect immediately and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30)-day period, terminate the declaration of a state of significant emergency. PL 18-4, § 104(g)

Under authority of this Declaration and with the goal of mitigating or ameliorating the above described crises, I immediately direct the following:

DIRECTIVE 1: All of the executive power of the CUC, which shall include any and all powers vested in the Board of Directors and the Executive Director, shall be exercised by my designated Executive Director.

DIRECTIVE 2: Section 4531 of Title 3 of the Commonwealth Code is hereby suspended as to CUC as follows:

The following strike-out formatted language of the quoted provisions of the following statute regulating government employment is, as indicated, suspended immediately:

> **3 CMC §4531. Restrictions on Government Employment**
> ~~Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.~~

As a result of my suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

The above described Directives are in no way meant as the limits of my actions or authority under this Declaration. Accordingly, I reserve the right under this Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 25TH day of April 2013.

Eloy S. Inos
Governor,
Commonwealth of the Northern Mariana Islands

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Jude U. Hofschneider
Lieutenant Governor

DIRECTIVE

DATE: March 15, 2013
No. 3

TO: ALL DEPARTMENTS AND AGENCIES

FROM: **GOVERNOR**

SUBJ.: Partial lifting of hiring freeze

On February 22, 2013, Directive 1 was issued freezing all hiring. This Directive amends Directive 1 to allow for the following:

1) Extension of Provisional employment limited to one (1) extension for 90 days;
2) Renewals of qualified personnel;
3) Extension of limited term employment; and
4) Probationary employment.

The above approved actions must be in compliance with Public Law 17-80. A freeze remains for salary adjustments, reallocations, and reclassifications.

ELOY S. INOS

cc: Lt. Governor
Civil Service Commission

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200 /2300 Facsimile: (670) 664-2211/2311

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Jude U. Hofschneider
Lieutenant Governor

DIRECTIVE NO. : **4**

DATE : **March 4, 2013**

SUBJECT : **Qualified Allocation Plan**

WHEREAS, the Low-Income Housing Tax Credit (LIHTC) Program, created by the Tax Reform Act of 1986, is intended to encourage the construction or rehabilitation of low income rental units;

WHEREAS, Section 42, of the United States Tax Code (the "Code") provides for the issuance of low income housing tax credits to subsidize the private development of affordable housing;

WHEREAS, the Commonwealth of the Northern Mariana Islands receives a minimum allocation of such credits every year, which total $2,590,000.00 credits for 2013;

WHEREAS, heretofore the Commonwealth of the Northern Mariana Islands has not utilized its annual allocation of such tax credits;

WHEREAS, the Commonwealth of the Northern Mariana Islands has increasing demands for quality affordable housing for its citizens;

WHEREAS, pursuant to Federal Regulation Section 1.42-IT a "State housing credit agency" must be authorized by gubernatorial act to allocate Credits and administer the program;

WHEREAS, in accordance with the Omnibus Spending Bill of 2000, Omnibus Budget Reconciliation Act of 1989, and the Budget Reconciliation Bill of 1990, the Northern Marianas Housing Corporation developed a "Qualified Allocation Plan" (QAP) which sets forth (1) the criteria to evaluate and allocate tax credits to projects which best meet the housing needs of the State, and (2) the procedure to monitor for compliance with the provisions of the Low-Income Housing Tax Credit (LIHTC) Program;

WHEREAS, this office has determined that instituting the Commonwealth of the Northern Mariana Islands' first implementation of the Federal Low Income Housing Tax

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WHEREAS, this office has determined that instituting the Commonwealth of the Northern Mariana Islands' first implementation of the Federal Low Income Housing Tax Credit (LIHTC) Program will provide significant and lasting benefits to the people of the Commonwealth of the Northern Mariana Islands and promote the public welfare of the island by providing much needed affordable housing options at little or no cost to the taxpayers of the Commonwealth of the Northern Mariana Islands; and

WHEREAS, I appointed the Northern Marianas Housing Corporation (the "Agency") to administer, oversee, and serve the Commonwealth of the Northern Mariana Islands' official "State housing credit agency" for allocating and monitoring the Commonwealth of the Northern Mariana Islands' Low Income Housing Tax Credits pursuant to Section 42 of the Code.

NOW THEREFORE, I, Eloy S. Inos, Governor of the Commonwealth of the Northern Mariana Islands do hereby approve in its full and current form the Qualified Allocation Plan for the Commonwealth of the Northern Mariana Islands for 2013 and 2014 which was submitted for review from the Agency. This action will advance the interests of the island and benefit the people of the Commonwealth of the Northern Mariana Islands in many direct and indirect ways and provide meaningful housing opportunities for the less fortunate residents.

In witness whereof, I place my hands this 29 MAR 2013.

ELOY S. INOS
Governor
Commonwealth of the Northern Mariana Islands

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Commonwealth of the Northern Marianas Islands

Low-Income Housing Tax Credit Program
2013 and 2014 Qualified Allocation Plan

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Commonwealth of the Northern Marianas Islands

Low-Income Housing Tax Credit Program
2013 and 2014 Qualified Allocation Plan

I. INTRODUCTION

Created by the Tax Reform Act of 1986, The Low-Income Housing Tax Credit ("LIHTC") Program is intended to encourage the construction or rehabilitation of low-income rental units. Section 42 of the Internal Revenue Code ("Section 42 IRC") contains the regulations which govern the LIHTC Program which provides Federal tax credits to qualified project owners who agree to maintain all or a portion of a project's units for low-income individuals or families.

Under the Commonwealth of the Northern Mariana Islands ("CNMI"), the Northern Marianas Housing Corporation ("NMHC") has been designated as the agency responsible for the administration of the Federal Low-Income Housing Tax Credit Programs. In accordance with the Omnibus Spending Bill of 2000, Omnibus Budget Reconciliation Act of 1989 and the Budget Reconciliation Bill of 1990, NMHC developed this "Qualified Allocation Plan" ("QAP") which sets forth:

1. The criteria to evaluate and allocate tax credits to projects which best meet the housing needs of the State; and

2. The procedure to monitor for compliance with the provisions of the LIHTC Program.

This allocation plan shall be effective for reservations and awards of LIHTC for calendar year 2013 and 2014. The allocation plan is subject to amendment by the NMHC Board of Directors.

II. APPLICATION PROCESS

Applications for the Low-Income Housing Tax Credit are available at NMHC's office or by submitting a written request to NMHC at the address shown below.

Northern Marianas Housing Corporation
LIHTC Program, c/o Corporate Director
P.O. Box 500514
Saipan, MP 96950

Applications for tax credits should be submitted to NMHC by no later than the deadline specified in the application announcement. Upon receiving an application for tax credits, NMHC shall review the application to ensure that the application is complete and contains all required information. The Corporate Director shall have the right to defer the consideration of any application if, in his sole discretion, such deferral is deemed in the best interests of meeting housing needs.

The allocation plan will utilize a point system to rank projects based upon the evaluation criteria established. The ranking of projects, along with all other relevant data, will determine the priorities to be followed by NMHC in allocating tax credits to the projects under consideration. The scores derived from the point system will be a component of the overall evaluation, and not the sole determining factor for the awarding of tax credits. In addition to the scores derived, NMHC will review all relevant data required in the application. Projects selected under this allocation plan shall then be evaluated as to the minimum amount of tax credits required in order to make the project feasible.

Complete applications shall then be evaluated based upon the criteria established in accordance with the allocation plan to determine the project's rank in relation to other projects in the evaluation. The scores derived from the point system are not the sole determining factor for the awarding of LIHTCs, but are only a component of the overall evaluation. The ranking of projects, along with all other relevant data, will determine the priorities to be followed by

NMHC in allocating tax credits to the projects under consideration. Projects receiving the highest ranking shall then be evaluated to determine the minimum amount of tax credits required to make the project feasible. The amount of tax credits reserved or allocated to a particular project will be limited to the amount NMHC, in its sole discretion, deems necessary to make the project feasible.

III. SELECTION CRITERIA

1. ***Minimum Thresholds*** – In order to receive consideration for an allocation or award of Low Income Housing Tax Credits, applicants must meet the following Minimum Thresholds requirements:

   A. *Market Study*: A comprehensive Market Study of the housing needs of low-income individuals in the area to be served by the project by a disinterested party approved by the NMHC must be submitted as part of this application. The Market Study must be completed at the Owner's expense. Any application which fails to submit a Market Study or submits a Market Study dated over six (6) months from the time of application shall be returned to the applicant and will not receive further consideration. *Market Study requirements are specified in Appendix 1.*

   B. *Site Control*: To receive consideration for an award of LIHTC, the applicant must have control of the site in a form acceptable to the NMHC. Evidence of site control shall be submitted with the application for Low Income Tax Credits. Site control shall be substantiated by providing evidence in the form of an executed lease or sale option agreement, fee simple deed, or any other documentation acceptable to the NMHC. Evidence of site control must be provided for all proposed sites.

2. ***Selection Criteria Point System*** – Each application will be evaluated and awarded points in accordance with the following criteria. Unless otherwise indicated, all references to low-income unit(s) or low-income rental unit(s) shall mean low-income housing tax credit unit(s).

	CRITERIA	Points
1.	Project will provide low-income units for a longer period than is required under Section 42 IRC.	0 - 10
2.	Project will provide a greater percentage of low-income units than required under Section 42 IRC.	1 - 10
3.	Project has the appropriate zoning or the applicant has secured the necessary exemptions/variances to construct the project as proposed.	0 or 7
4.	The applicant demonstrates that all low-income units will be made available to people holding valid Section 8 vouchers.	0 or 6
5.	The project will serve tenant populations of individuals with children and will provide three (3) bedroom units or larger for at least 60% of all low-income units in the project.	0 or 10
6.	Project will give preference to special tenant populations.	0 or 3
7.	The project is participating with a local tax-exempt organization and is sponsored by a qualified non-profit, tax-exempt organization as defined in Section 42 IRC.	0 or 1
8.	The ratio of total tax credits requested as a percentage of total project cost.	0 - 5
9.	The project will be receiving project-based rental assistance subsidies which would result in eligible tenants paying approximately 30% of their gross monthly income towards rent.	0 - 4
10.	Local Government Support.	0 - 2
11.	Developer will commit to offer the units to sale or lease at the end of the fifteen-year compliance period or any extended use period first to existing tenants.	0 or 10
12.	Project is located in a qualified census tract, the development of which contributes to a concerted community revitalization plan as determined by NMHC.	0 or 2
13.	Project location and market demand.	0 - 15
14.	Developer experience.	-8 - 10
15.	Overall project feasibility.	0 - 10
16.	Energy Efficiency and Green Building.	0 - 5

- **Criteria 1 (0 – 10 Points):** Project will provide low-income units for a longer period than is required under Section 42 IRC. Applicants electing to commit to an additional use period beyond the 15-year LIHTC compliance period (collectively the Extended Use Period) will be awarded points based on the table below. By making this election, the applicant elects to waive its right to exercise a request for a qualified contract pursuant to Section 42(h)(6)(E)(i)(II). The elections will be recorded in the Restrictive Covenant Document. Points will be awarded based on the following:

No additional use period	*0 Points*
15 to 19 years	*4 Points*
20 to 24 years	*6 Points*
25 to 29 years	*8 Points*
30 years or more	*10 Points*

- **Criteria 2 (1 – 10 Points):** Project will provide a greater percentage of low-income units than required under Section 42 IRC. With respect to the set-aside affordability, if a project provides:

20% of the project to households earning less than 50% of AMGI, OR 40% of the project to households earning less than 60% of the AMGI	*1 Point*
40% of the project to households earning 50% or less of AMGI, OR 60% of the project to households earning 60% or less of AMGI	*2 Points*
60% of the project to households earning 50% or less of AMGI, OR 80% of the project to households earning 60% or less of AMGI	*3 Points*
100% of the project to households earning 60% or less of AMGI	*10 Points*

- **Criteria 3 (0 or 7 Points):** Project has the appropriate zoning or the applicant has secured the necessary exemptions/variances to construct the project as proposed. The applicant's readiness to proceed with the development of this project with respect to development approvals:

The applicant has obtained all necessary zoning and entitlements for the property, including subdivision approvals and upon receipt of credits, is ready to proceed with the development of the project without any additional development approvals other than customary land disturbance and building permits.	*7 Points*
Project is not appropriately zoned and/or does not conform to State Land Use regulations or requires 201 G, variances, subdivision approval or any other exemption from any local or state land use restrictions.	*0 Points*

- **Criteria 4 (0 or 6 Points):** The applicant demonstrates that all low-income units will be made available to people holding valid Section 8 vouchers.

If the answer to the question is "NO"	*0 Points*
If the answer to the question is "YES" and the applicant is able to demonstrate that all low-income units will be available to people holding valid Section 8 vouchers.	*6 Points*

- **Criteria 5 (0 or 10 Points):** The project will serve tenant populations of individuals with children and will provide three (3) bedroom units or larger for at least 60% of all low-income units in the project.

If the answer to the question is "NO"	*0 Points*
If the answer to the question is "YES"	*10 Points*

- **Criteria 6 (0 or 3 Points):** Project will commit to serve tenant populations with special housing needs (special needs groups are "persons for whom social problems, age, or physical or mental disabilities impair their ability to live independently and for whom such ability can be improved by more suitable housing conditions.") OR elder or elderly household tenant populations. *Applicants may receive points for electing to serve one of these tenant populations.*

Projects may receive 3 points for this criterion if it commits to the following:

*The project will set-aside at least 20% of all units for tenant populations with special housing needs**	*3 Points*
The project will set-aside all units for elder or elderly household tenant populations	*3 Points*

* To receive consideration for this criterion, a) the project must commit to provide case management or services specific to this population or special facilities to accommodate the physically disabled and b) the Market Study shall specifically address the housing needs for the special needs group.

- **Criteria 7 (0 or 1 Point)**: The project is participating with a local tax-exempt organization and is sponsored by a qualified non-profit, tax-exempt organization as defined in Section 42 IRC.

If the answer to the question is "NO"	*0 Points*
If the answer to the question is "YES"	*1 Point*

- **Criteria 8 (0 – 5 Points)**: The ratio of total tax credits requested as a percentage of total project cost. If total federal tax credit requested (gross) as a percentage of total project cost is:

Greater than 90% of total project cost	*0 Points*
81% through 90% of total project cost	*1 Point*
71% through 80% of total project cost	*2 Points*
51% through 60% of total project cost	*3 Points*
61% through 70% of total project cost	*4 Points*
50% or less of total project cost	*5 Points*

- **Criteria 9 (0 – 4 Points)**: The project will be receiving project-based rental assistance subsidies which would result in eligible tenants paying approximately 30% of their gross monthly income towards rent. Eligible programs shall include, but not be limited to, the Rural Development 515 Loan Program and HUD Section 8 project-based Rental Assistance Program.

If the answer to the question is "NO"	*0 Points*
If the answer to the question is "YES"	*1 – 4 Points**

* If the whole project has project based subsidies then 4 points is awarded, if only a portion of a project has project based subsidies, then the scoring will be adjusted based upon the percentage of units subsidized. The percentage is derived as "Number of Subsidized Units/Tax credit and non-tax credit subsidized units," provided they are developed simultaneously.

- **Criteria 10 (0 – 2 Points)**: Local government support – The project will receive a below market loan or grant from a State or local governmental agency other than NMHC, which in total amounts to ten percent (10%) or more of the total development cost.

The project has not applied for a below market loan or grant from a government agency, or if the total amount applied for is less than 10% of total development costs.	*0 Points*
The project has applied for a below market loan or grant from a government agency. (Documentation must be provided evidencing that an application for financing has been submitted.)	*1 Point*
The project has received a commitment from a government agency. (A copy of a commitment letter or contractual agreement must be included in the application.)	*2 Points*

- **Criteria 11 (0 or 10 Points)**: Developer will commit to offer the units to sale or lease at the end of the fifteen-year compliance period or any extended use period first to existing tenants who can qualify through currently available home ownership programs or other funding sources.

If the answer to the question is "NO"	*0 Points*
If the answer to the question is "YES"	*10 Points*

- **Criteria 12 (0 or 2 Points)**: Project is located in a qualified census tract, the development of which contributes to a concerted community revitalization plan as determined by NMHC (i.e. site is located in an Enterprise Community, Empowerment Zone, or part of a County redevelopment plan).

If the answer to the question is "NO"	*0 Points*
If the answer to the question is "YES"	*2 Points*

To receive consideration for this criterion, the applicant must provide an explanation on how this project is in compliance with such plan and its benefit to the overall community. The applicant must provide a letter of interest or a binding agreement with the government agency administering the community revitalization plan.

- **Criteria 13 (0 – 15 Points)**: Project location and market demand – Based on the strength of the comprehensive Market Study, points awarded will be based on NMHC's evaluation of the following factors:

Employment opportunities, schools, medical facilities located in the immediate vicinity of the project site	*5 Points*
Recreational facilities, shopping facilities, located in the immediate vicinity of the project site	*2 Points*
Documented/supported market demand	*2 Points*
Proposed rental rates are below market rents for the immediate surrounding area?	*2 Points*
Housing characteristics (e.g., design, density) appropriate for neighborhood	*2 Points*
Neighborhood conducive for senior or family use	*2 Points*

- **Criteria 14 (-8 – 10 Points)**: Developer experience – The points awarded will be based on NMHC's evaluation of the following factors:

Development Team has successfully met program objectives on past proposals which include LIHTC developments in other states or jurisdictions	*8 Points*
Development Team has failed to meet program objectives on past proposals, which include LIHTC developments in other states or jurisdictions, or any NMHC programs	*- 8 Points*
Development Team has successfully completed similar projects	*2 Points*

- **Criteria 15 (0 – 10 Points)**: Overall project feasibility – The points awarded will be based on NMHC's evaluation of the following factors that could impact the overall project feasibility:

Documentation of development costs	*2 Points*
Documentation of operating costs	*2 Points*
Debt Service Coverage Ratio of >1.15x	*2 Points*
Operating reserves equal to 3 months of monthly operating expenses	*2 Points*
Financial Commitments in place	*2 Points*

- **Criteria 16 (0 – 10 Points)**: Energy Efficiency and Green Building – Projects electing to incorporate energy efficient practices that promote resource conservation will be awarded points. Projects will be awarded points based on the following:

Project will not incorporate energy efficient practices.	*0 Points*
Project will elect to include one (1) General Energy Efficiency or Green Building Criteria and one (1) Energy Star Criteria from the list below.	*1 Point*
Project will elect to include two (2) General Energy Efficiency or Green Building Criteria and two (2) Energy Star Criteria from the list below.	*2 Points*
Project will elect to include three (3) General Energy Efficiency or Green Building Criteria	*3 Points*

and three (3) Energy Star Criteria from the list below.	
Project will elect to include four (4) General Energy Efficiency or Green Building Criteria and four (4) Energy Star Criteria from the list below.	*4 Points*
Project will elect to include five (5) or more General Energy Efficiency or Green Building Criteria and five (5) or more Energy Star Criteria from the list below.	*5 Points*

Energy Star Criteria:

- Installation of solar thermal, tankless, or tank type water heaters that meet ENERGY STAR standards;
- Installation of five or more ENERGY STAR qualified light fixtures, ceiling fans equipped with lighting fixtures, and/or ventilation fans in each unit;
- Installation of photosensors or timers on all outdoor lighting and ENERGY STAR or high efficiency commercial grade lighting fixtures (T8) in all common areas;
- Installation of ENERGY STAR appliances including refrigerators, dishwashers, and clothes washers (horizontal axis) in each unit;
- Reducing heat island effects by using ENERGY STAR low emissive roofing products for at least 50% of the roof area; or a combination of high-albedo and vegetated roof covering 75% of the roof area. Reduce asphalt surface areas and use low emissive pavement coatings and materials for at least 25% of paved surfaces;
- Installation of an ENERGY STAR qualified HVAC (Heating Ventilation Air Conditioning) System.

General Energy Efficiency and Green Building Criteria:

- Installation of water conserving plumbing fixtures: High Efficiency Toilets (less than 1.28 gallons per flush), showerheads with rated flow less than 1.75 gallons per minute (gpm), kitchen aerators with rated flow less than 1.5 gpm, and bathroom aerators with rated flow less than 1.0 gpm;
- Using flooring and exterior building materials that do not contain poly-vinyl chloride (PVC) such as brick or cement fiber siding over vinyl siding and concrete, bamboo, cork, or linoleum over vinyl flooring;
- Provide an easily accessible area dedicated to recycling (at a minimum) newspaper, corrugated cardboard, glass bottles and jars, aluminum cans, and plastic containers (#1 & #2);
- Utilizing low-VOC paints, primers, organic compound sealers, and adhesives, and composite or engineered wood specified to be free of added urea formaldehyde;
- All carpet must be Green Label or Green Label Plus certified carpet approved by the Carpet and Rug Institute;
- Implementing renewable energy technologies such as photovoltaics, geo-thermal heat pumps, wind turbines, etc. to provide at least 5% of the property's annual energy consumption;
- Use products manufactured, harvested, and assembled in the CNMI for 10% of the project based on cost to reduce transportation impact and improve local markets;
- Using at least 25% reclaimed or recycled content materials such as brick, framing lumber, recycled concrete and aggregates, recycled gypsum board, and fly ash concrete;
- Minimizing irrigation needs by selecting native trees and plants that are appropriate to the site's soils and microclimate. If irrigation is necessary, use an irrigation system that will deliver at least 50% non-potable water (recycled water, gray water, or collected rainwater);
- Locating projects within 1 mile of at least four community and/or retail facilities (grocery store, drug store, parks, schools, libraries, cultural centers, and other public facilities used by the residents). Include sidewalks or suitable pathways linking the development to public spaces.
- Apply for other green certification. Type of certification needs to be identified when the application is submitted.

- Installation of insulation that exceeds the CNMI Building Code in order to provide energy efficiency over the extended period of the projected life of the project.
- Develop and implement a construction waste management plan to reduce the amount of material sent to the landfill by at least 25%.
- Project plans and specifications call for labeling of all storm drains to clearly indicate where the drain leads.
- For properties built before 1978, use lead-safe work practices during renovation, remodeling, painting, and demolition.
- Install a ventilation system for the building providing adequate fresh air per ASHRAE (American Society of Heating, Refrigerating, and Air Conditioning Engineers) standards.

Upon completion of the project, a certification from a third party, architect, or engineer verifying the green building practices listed above have been used to construct or rehabilitate the building shall be submitted. Failure to provide the certification may result in forfeiture of the good faith deposit.

IV. RIGHTS OF NMHC

1. NMHC reserves the right to disapprove any application or project for any tax credit reservation or allocation, regardless of ranking under the criteria and point system as contained in section III of this QAP. The Corporate Director or his designated representative shall have the authority to defer consideration of any application if, in his sole discretion, such deferral is deemed in the best interest of meeting housing needs and NMHC's.

2. NMHC reserves the right, in its sole discretion, to:

   A. Hold back a portion of the annual state and federal housing credit ceiling for use during later reservation cycles;

   B. Carryover a portion of the current year's housing credit ceiling for allocation to a project which has not yet been placed in service; and

   C. Under certain conditions, issue a reservation for up to seventy-five (75%) percent of the next year's housing credit ceiling.

3. NMHC is required under the I.R.C. of 1986, as amended, to allocate the minimum amount of tax credits required to make a project feasible. The determination of the amount of tax credits to be reserved or allocated to a project shall be made solely at the discretion of NMHC. NMHC may, at the time of issuance of the IRS Form(s) 8609 for the project, decrease the amount of tax credits allocated to a project based on the actual cost and financing of the project.

4. NMHC may, at its sole discretion under certain circumstances, conduct a special round after the final scheduled round for a year for projects:

   A. Where the applicant's tax counsel has attested to an itemization of how the ten percent (10%) test prescribed by Code Section 42(h)(1)(E) will be met;

   B. Which have no deficient application items; and

   C. For which all exhibits have been submitted ("Year-End Round"). Year-End Round projects will receive a Carryover Allocation, not a reservation of LIHTCs, which may contain certain conditions and time periods for satisfying them. The circumstances for conducting a Year-End Round are:

      1. Availability of LIHTCs; and

      2. Potential loss of LIHTCs to the national pool.

When a Year-End Round is being conducted, applicants need to satisfy the above requirements in order to receive a Carryover Allocation; and LIHTCs will be processed on a first-come first-served basis and allocated to the extent available and to the extent applications can be processed.

5. NMHC in no way represents or warrants to any interested party which may include, but is not limited to, any developer, project owner, investor or lender that the project is, in fact, feasible or viable.

6. No member, officer, agent, attorney or employee shall be personally liable concerning any matters arising out of, or in relation to, the reservation or allocation of the Low-Income Housing Tax Credit.

V. COMPLIANCE MONITORING PLAN

1. ***Summary***: NMHC shall monitor compliance with all applicable Federal Program requirements for the period a project is committed to providing low-income rental units. NMHC will require:

   A. That all qualified tenants of a project be certified upon occupancy and be re-certified annually to ensure compliance.

   B. That all projects:

      1. Maintain copies of the income certification for each tenant on forms approved by NMHC;

      2. Maintain records regarding:

         a. Number of rental units (including number of bedrooms and size of square footage of each bedroom);

         b. Percentage of rental units that are low-income units;

         c. Rent charged on each rental unit including utility allowances;

         d. Number of occupants in each low-income unit for those buildings receiving tax credits prior to 1990;

         e. Documentation regarding vacancies in the building;

         f. Eligible and qualified basis of the building at the end of the first year of the credit period, and at the end of each year until required set-asides are met; and

         g. Character and use of the nonresidential portion of the building that is included in the building's eligible basis, all in accordance with the rules published by the Internal Revenue Service.

   NMHC may perform an audit annually but at a minimum, once every three years, and shall have access to all books and records upon notice to the project owner. Annually, owners of LIHTC projects will be required to certify to NMHC that for the previous year:

   - The minimum set-aside requirement was met;
   - There was no change in the applicable fraction, or an explanation if there was a change;
   - Appropriate income certifications and documentation have been received for each low-income tenant;

- Each low-income unit was rent-restricted in accordance with Section 42 IRC;
- All units were for use by the general public and used on a no transient basis (except for transitional housing for the homeless as provided for in Section 42 IRC);
- Each building was suitable for occupancy, taking into account local health, safety and building codes;
- There was no change in the eligible basis in the project, or an explanation if there was a change;
- All tenant facilities included in the eligible basis were provided on a comparable basis without charge;
- Rentals of vacancies were done in accordance with Section 42 IRC;
- Rentals of units were done in accordance with Section 42 IRC if any tenant's income increased above the limit allowed Section 42 IRC; and
- A Restrictive Covenant document was in effect for the project, for those buildings receiving credits after 1989, all in accordance with the rules published by the Internal Revenue Service.

In addition to the above criteria, NMHC reserves the right at any time to take any action it deems appropriate if it becomes aware of non-compliance and/or violations under the LIHTC Program. As evidence of such finding of non-compliance and/or violation, NMHC may:

- Conduct and rely upon its own investigations;
- Rely upon any order of a court with jurisdiction;
- Rely upon notice of such a finding from any federal or state agency with investigative or regulatory jurisdiction regarding the subject matter (i.e. IRS, DOJ, HUD, CNMI Office of the Attorney General); or
- Make a determination based upon the failure to report or affirmatively disclose information to NMHC.

If NMHC becomes aware of non-compliance, the Internal Revenue Service shall be notified in accordance with the rules published by the Internal Revenue Service. Please consult with your tax attorney and/or LIHTC consultant regarding Internal Revenue Code regulations. Owners are responsible for keeping abreast of current Program requirements. The guidelines outlined below pertain to projects allocated Federal and State Low Income-Housing Tax Credits in the CNMI.

2. *Compliance*

A. *Owner/Manager Training*: Owners, managing agents, and on-site managers should attend or document that they have recently attended training on management and compliance prior to leasing any units, but no later than receipt of IRS Form 8609, which certifies an allocation of tax credits. Training may be required following significant or repeated noncompliance events. At minimum, such training should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, next available unit procedures and unit vacancy rules, agency reporting requirements, record retention requirements, and site visits.

B. *Set-Aside*: The project must comply with the low-income set-aside requirements of Section 42 IRC as chosen by the owner at the time of receiving the credits. The minimum requirements are either:

1. Twenty percent (20%) or more of the units are occupied by tenants having a household income of fifty percent (50%)or less of the area median gross income (the "20-50 requirement"); or

2. Forty percent (40%) or more of the units in the project are occupied by tenants having a household income of sixty percent (60%) or less of the area median gross income (the "40-60 requirement").

Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937, as directed by the Internal Revenue Code. Area median incomes are determined annually by the U.S. Department of Housing & Urban Development (HUD), and are available from NMHC.

C. *Rent*: Units in the project must be rent-restricted to either thirty percent (30%) of the median income adjusted for family size for the area in which the project is located or rent-restricted to thirty percent (30%) of the imputed income limitations based on unit size. This rent restriction must be maintained throughout the Term of the Compliance and Extended-use period. *See "4. Rent Restrictions" in this section for further information.*

D. *Term of Compliance*: Projects must comply with the eligibility requirements for the initial fifteen (15) year period ("compliance period").

E. *Annual Certification and Record Retention*: These and other compliance requirements as listed in Section 1. Summary must be certified annually by the owner through the submission of the Annual Report. The Annual Report includes the Owner's Certificate of Continuing Program Compliance and shall be submitted by February 1 of each year throughout the compliance and extended-use period. The Annual Report and the supporting documentation verifying the information on the Annual Report must be kept for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year. However, the records for the first year of the credit period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building, in accordance with published IRS guidelines.

F. *IRS Form 8609*: The owner shall complete Part II of IRS Form 8609 and submit with subsequent Annual Report.

G. *Qualified Basis Tracking Sheet (QBTS)*: This form shall be submitted annually until the required set-asides are established. Documents will provide information on original tenants qualifying each building for tax credits minimum set-asides, and other set-asides.

H. *Status Reports*: This report is to be submitted annually by owners in such format as required by NMHC or its Authorized Delegate to document and track the continuous compliance of tax credit units. The documents report data that tenants are income eligible at move-in, that occupants of LIHTC units are re-certified at least on an annual basis and that the unit rents are restricted. Documentation will also indicate compliance with the vacant unit rule and 140% rule. The tracking of tax credit units substantiates the maintenance, increase or reduction of each BIN's qualified basis.

3. ***Qualifying Households***

A. *Qualifying Households*: Applicants for low-income units should be advised early in their initial visit to the project that there are maximum income limits, which apply for these units.

Management should explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification (TIC) prior to occupancy, and re-certified on an annual basis. Applicants should be informed of other Internal Revenue Services requirements such as the Student Rule and Recertification's.

B. *Unborn Children*: In accordance with the HUD Handbook 4350.3, the owner shall include unborn children in determining household size and applicable income limits. If permitted by state laws, the owner shall require documentation of pregnancy in such circumstances.

C. *Student Households*: In accordance with the Internal Revenue Code, a household comprised entirely of full-time students may not be counted as a qualified household, unless the household meets at least one exception. Refer to the Internal Revenue Code for additional guidelines on the exceptions. Owner shall utilize a lease provision requiring tenants to notify the managing agent of any change in student status.

D. *Calculating Anticipated Tenant Income*: The owner shall qualify tenants by calculating household income using the gross income the household anticipates it will receive in the 12-month period following the effective date of the income verification or Recertification. Anticipated income should be documented in the tenant file by third party verification whenever possible, or by an acceptable alternate method of verification with documentation as to why third party verification was not available. Owner shall use current circumstances to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. Owner shall refer to HUD Handbook 4350.3 for guidance on the proper calculation and verification of income and assets per IRC regulations.

E. *Certification*: Upon acceptance of an applicant to the project, a TIC must be completed for the applicant and certified to by the applicant and the owner. The form is a legal document which, when fully executed, qualifies the applicants to live in the set-aside units in the project. The TIC must be executed along with the lease prior to move-in. No one may live in a unit in the project unless he/she is certified and under lease.

The original copy of the executed TIC form is to be retained in the applicant's file. The TIC and the supporting documentation verifying the TIC must be kept for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building, in accordance with published IRS guidelines.

F. *Recertification*: For projects with less than 100% set-aside:

To ensure each unit is complying with the LIHTC income restrictions, NMHC requires:

a. The owner to annually recertify each tenant's income and household composition; and

b. Each tenant is to report certain changes in income and household composition which occur between regularly scheduled recertifications.

If the income of the tenants in a unit who have been previously verified increases above 140 percent of the applicable income limitation, the unit may continue to be counted as a low-income unit as long as the next available unit of comparable or smaller size is occupied by a qualified low-income tenant, and the rent continues to be restricted for the initial unit.

Each tenant's annual recertification is to be completed within one year of last recertification. The request for recertification shall be made between 60 and 90 days before the effective date, and it must clearly state that the tenant has ten (10) calendar days in which to contact the

owner to begin recertification processing. The notice must also state the days and hours available for the interview, the information the tenant should bring to the interview, and how and whom to contact to schedule the interview. Upon recertification of the tenant's income, the owner shall complete a new TIC, which shall be certified to by the owner or owner's designee.

G. *Past-Due Recertification*: A recertification is considered past due if the TIC for the tenant is not certified by tenant and owner within twelve months of the last recertification.

4. ***Rent Restrictions***: Projects receiving Low-Income Housing Tax Credits after January 1, 1990 must comply with the following procedures:

   A. Units in the project must be rent-restricted to thirty percent (30%) of the imputed income limitations for each unit, based upon HUD area median incomes and size of units. Rents are imputed by bedroom size in the following manner:

      1. A unit which does not have a separate bedroom – one (1) individual; and

      2. A unit with one (1) or more separate bedrooms – 1.5 individuals per bedroom.

   B. Gross rent does not include any payment for various rental assistance programs and supportive service assistance as outlined in Section 42 IRC. Gross rent must include any allowance for utilities.

   HUD publishes the area median incomes for each state annually. Updated income limits must be implemented pursuant to IRS Revenue Ruling 94-57, "Taxpayers may rely on a list of income limits released by HUD until 45 days after HUD releases a new list of income limits, or until HUD's effective date for the new list, whichever is later." Rents may be increased accordingly as the area median income increases. If the income of the tenants in a unit who have been previously verified increases above 140 percent of the applicable income limitation, the unit may continue to be counted as a low-income unit as long as the next unit of comparable or smaller size is occupied by a qualified low-income tenant, and the rent continues to be restricted for the initial unit.

5. ***Eviction of Tenant***: Once an eligible tenant has been certified and admitted to the project, the tenant may not be displaced solely due to an increase in the tenant's household income beyond the restricted limit.

6. ***Audits***: The project may be subject to a management audit by NMHC or its Authorized Delegate annually but, at a minimum, once every three years. Notification of an audit shall be given to the owner at least thirty (30) days prior to such audit. The results of the management audit and the recommendations for corrective action to protect and maintain the project shall be transmitted to the owner within thirty (30) days following the completion of the audit.

   The purpose of the audit will be to conduct a physical inspection of the building and/or project, and, for at least twenty percent (20%) of the project's low-income units, to inspect the units and review the low-income certifications, documentation supporting the certifications, and rent records for the tenants in those units. The audit may also consist of a review of first year tenant records, a review of the documentation supporting the Annual Report, and any other documentation necessary for NMHC to make a determination as to whether the project is not in compliance with Section 42 IRC.

   When conducting tenant file reviews, NMHC's and its Authorized Delegate's reviews shall include, but not be limited to:

   A. Completed rental application, including certification of assets and disposal of assets, if applicable;

B. Tenant income certification completed for move-in and current year, including all required signatures and dates;

C. Income verification(s) completed and documented;

D. Assets verified in accordance with IRC regulations;

E. Student eligibility documentation;

F. Lease and lease addendums completed at move-in;

G. Utility allowance on file;

H. Review of first year tenant records which qualified the project initially for tax credits.

The owner shall have a period of thirty (30) days in which to respond to the findings of the management audit. NMHC shall review the owner's response to determine the extent to which the issues raised in the management audit letter are addressed. Findings, whether corrected or not, will be reported to the IRS. *See the following Section 10 for information on notification to the IRS of any non-compliance found in the management audit.*

7. ***Rural Housing Service (RHS) and Tax-Exempt Bond Issue Projects***: In accordance with the published IRS guidelines on compliance monitoring, an exception may be granted to RHS projects under its section 515 program and buildings or projects of which fifty percent (50%) or more of the aggregate basis is financed with the proceeds of tax-exempt bonds.

   The IRC regulations allow for exception of a building from the inspection requirement if the building is financed by RHS under the section 515 program, the RHS inspects the building [under 7 CFR part 1930(C)], and the RHS and the allocating agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the allocating agency of the inspection results. Irrespective of the physical inspection standard selected by the allocating agency, a low-income housing project under Section 42 IRC must continue to satisfy local health, safety and building codes. A memorandum of understanding has not been executed between NMHC and RHS.

   Annual Reports, QBTS, Compliance Monitoring Status Reports and other reports are still required of RHS projects. Although NMHC has allowed the use of the RD 1944-8, the form does not determine eligibility for specific LIHTC requirements. Owners need to determine whether the TIC will be used or a worksheet will be attached to RD 1944-8 to determine eligibility under the IRC. Management audits will still be conducted as indicated herein.

   An owner who for some reason is not able to make any of the required certifications stated on the Annual Report or other requirements must inform the Agency immediately of such inability, as well as explain the reason for said inability.

8. ***Reporting Requirements***:

   A. The LIHTC Annual Report must be submitted annually by February 1 of each year throughout the compliance and extended-use period.

   B. Part II of the IRS Form 8609 must be completed by the owner and submitted with the initial Annual Report.

   C. Qualified Basis Tracking Sheets (QBTS) are submitted, at a minimum annually, with the LIHTC Annual Report until all set-asides are established.

D. Status Reports are submitted annually by the owners with the Annual Report to document and track the continuance compliance of tax credit units throughout the compliance and extended-use period.

E. These forms must be sent in to NMHC or its Authorized Delegate at the address shown in Section II. The Certification of Eligibility and LIHTC forms listed above are available from NMHC. Additionally, NMHC has data regarding HUD area median incomes, maximum rental rates, income verification information and third party verification forms.

9. *Fees*: NMHC reserves the right to adjust the fees annually due to changing circumstances. ***All fees are non-refundable*** and shall be paid via Cashier's Check and made payable to The Northern Marianas Housing Corporation. The following fees are associated with the LIHTC Program:

   A. *Application Fee* – An Application Fee of $1,000 per application shall be payable at the time of submission of the application. The fee shall be the same for all applicants.

   B. *Good Faith Deposit* – A good faith deposit of five percent (5%) of the first year's federal tax credited reserved shall be payable at the time the executed binding agreement is submitted to the NMHC. Upon allocation and issuance of the IRS Form 8609, 75 percent (75%) of the good faith deposit shall be retained by the NMHC as an administrative fee. The remainder of the good faith deposit shall be refunded to the applicant. Failure by the owner to meet any of the elections made in the scoring criteria at the time of application will result in the retention of the entire good faith deposit by the NMHC.

   C. *Compliance Monitoring Fee* – A compliance monitoring fee of up to $200 per unit for all units within each project shall be charged annually for administrative expenses. This fee shall be submitted with the LIHTC Annual Report for each year of the compliance/extended-use period. NMHC reserves the right to adjust fees due to changing circumstances annually each January 1. It will be the responsibility of NMHC to inform the owner of any changes in the annual compliance fee prior to the submission of fees. The compliance monitoring fee will be effective as of the Placed in Service date for the first building.

   D. *Qualified Contract Processing Fee* – A qualified contract fee of $150.00 per unit for all units.

10. ***Non-Compliance Penalties***: The penalty for non-compliance with these procedures is the potential recapture of the credits awarded and interest on the amount recaptured. The Internal Revenue Service shall determine penalties for non-compliance.

    Upon determination by NMHC of non-compliance with the LIHTC Program, the owner shall be notified and given thirty (30) days to correct any discovered violations. In accordance with the Internal Revenue Service's published guidelines on compliance monitoring, NMHC will be required to notify the IRS within forty-five (45) days after the end of the thirty-day correction period, whether or not the non-compliance is corrected. NMHC will be given the opportunity on the IRS form to indicate whether the owner has corrected the non-compliance. NMHC may extend the correction period, up to a total of six (6) months, if it is determined by NMHC that good cause exists for granting such an extension. In such case, the IRS will not be notified until the end of the extended correction period.

11. ***Additional Use Period***: NMHC is no longer required to report instances of non-compliance to the IRS after the initial 15 year compliance period of the Extended Use Period ("Additional Use Period"). The "AU Compliance Policy" during the Additional Use Period will concentrate on enforcing the requirements of the LIHTC program through the term of the Declaration of Restrictive Covenants for Low Income Housing Credit recorded on the property. The AU Compliance Policy is largely based on the procedures of the initial compliance period. Unless noted below, the policy and procedure for compliance during the initial compliance period shall continue to apply to the additional use period.

A. *Effective Date*: The AU Compliance Policy shall be effective on the first day after the expiration of the initial 15 year compliance period for the last building placed in service in the project. Generally, the additional use compliance period will begin on January 1 of the year after the expiration of the initial 15 year compliance period of the last building placed in service and be in effect until the end of the additional use period.

B. *Income and Rent Set Aside*: Owners are subject to the Section 42 occupancy and rent restrictions required in the Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits.

C. *Student Households*: The IRC student rule no longer applies during the additional use period. However, a modified student eligibility requirement will be enforced to ensure that properties in the additional use period are not used as dormitory housing. During the additional use period, a household comprised entirely of full time students will qualify as long as at least one member of the household is an independent student or is a student in grades Kindergarten through 12 (including home schooled minors studying course material within these grades). An independent student is defined as one who is not claimed as a dependent on his/her parent's tax return (proof required).

D. *Available Unit Rule / 140% Rule*: For projects which include market rate units, the Available Unit Rule and the 140% Rule do not apply during the additional use period. The percentage of tax credit units as specified in the Declaration of Restrictive Covenants for Low Income Housing Credits must be maintained throughout the additional use period.

E. *Certification and Recertification:* Certification of tenants at the time of move-in shall be required during the additional use period according to the same procedure as the compliance period. Recertification of tenants will be required during the additional use period. However, if any adults are added to the household, then the household must be re-certified.

F. *Unit Transfers*: During the additional use period, unit transfers are allowed without a new income qualification. Documentation of all unit transfers that occur shall be submitted as part of the Reporting Requirements.

G. *Reporting Requirements*:

1. The LIHTC Annual Report must be submitted annually by February 1 of each year throughout the additional-use period.

2. Status Reports are submitted annually by owners with the Annual Report to document and track the continuing compliance of tax credit units throughout the additional-use period.

H. *Site Audits*: Commencing within three years after the expiration of the Compliance Period, site audits for projects may be conducted at least once every five years. Projects that have substantial outstanding non-compliance beyond the correction period based on the findings of the most recent site audit may be subject to more frequent site audits.

I. *Owner Inspection*: Owners shall conduct an annual physical inspection of each unit and common areas in the project.

J. *Correction Period and Non-compliance Penalties*: Upon determination by NMHC of non-compliance with the LIHTC Program during the additional use period, the owner shall be notified and given thirty (30) days to correct any discovered violations. NMHC may extend the correction period on a case-by-case basis, up to a total of six (6) months, if it is determined by NMHC that good cause exists for granting such an extension. Owners may

request NMHC to review all outstanding non-compliance issues for a property once per calendar year after the initial correction period.

Any owner and constituent entities involved in management and ownership of a project with an unresolved finding of non-compliance beyond the initial correction period may be deemed to be *Not in Good Standing* by NMHC. Owners must clear all outstanding non-compliance issues to be deemed in *Good Standing* with NMHC.

VI. QUALIFIED CONTRACTS

The Omnibus Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credits after January 1, 1990 are subject to an additional use period that extended the minimum affordability period of credit properties from 15 to 30 years. The 1989 Act also provided an option for owners to present a Qualified Contract ("QC") for the acquisition of the property by a prospective buyer that agrees to purchase the property for the "qualified contract price". If the state agency is not able to find a buyer to purchase the building at the qualified contract price, the additional use period is terminated.

Owners that elected to waive their option to request a Qualified Contract are not eligible. After the last day of the fourteenth year of the compliance period of the last building placed in service or the last day of the last year of a multiple year allocation, an eligible owner of the project utilizing federal LIHTCs may request a QC.

1. ***Qualified Contract Request***: The legal owner must first submit a written request to the NMHC Corporate Director for consideration to present a Qualified Contract Request. The QC Request must also include a copy of the First year 8609s showing Part II completed for all buildings placed in service. After receiving the QC Request, NMHC shall conduct a review to determine the eligibility of an owner to submit an Inquiry, by confirming the following:

    A. The original owner did not waive its right to request a QC during the allocation of the tax credits;

    B. The tax credit property meets the basic physical compliance standards that are necessary to claim credits;

    C. The owner has secured waivers of any purchase option and right of first refusal connected to the property;

    D. The project and owners are in compliance and all programmatic requirements and are in good standing with NMHC.

    If NMHC, after the review of the QC Request, determines the Owner is not eligible to submit a Qualified Contract Request Application, the Owner will be notified in writing. The owner must correct any deficiencies noted in the recent compliance monitoring before submitting a QC Request.

2. ***Qualified Contract Request Application***: The Owner must file a complete Qualified Contract Request Application ("QC Application") with NMHC on such form(s) as the Corporate Director may require from time to time as prescribed. The QC Application includes any documents and any additional information as may be requested by NMHC in order to comply with the Internal Revenue Code §42(h)(6)(F).

    The QC Application shall include the Owner's proposed QC price. The QC Application shall include a report calculating the QC price prepared by an independent certified public accountant ("QC Report"). The QC Report will list all due diligence reviewed and provide a detailed calculation of the QC price. The QC Report will include an opinion and certification that the QC price was calculated in accordance with the Internal Revenue Code §42(h)(6)(F). The certified public accountant will provide a reliance letter with regard to the report and certification of QC price in the favor of NMHC.

A. The owner will submit the following documents as part of its Application:

1. QC Report;
2. QC processing fee of $150 per unit for all units;
3. Copies of all annual partnership tax returns;
4. Copies of annual audited project financial statement for all years;
5. Copies of loan documents for all secured debt during the compliance period;
6. Copies of partnership agreement (original, current, and all interim amendments);
7. Current title report (no more than 60 days from the date of QC Application);
8. A physical needs assessment for the entire project (no more than 60 days from the date of QC Application);
9. An appraisal prepared by a qualified third party appraiser for the entire project (no more than 60 days from the date of QC Application);
10. A Phase I environmental (no more than 60 days from the date of QC Application); and
11. Any other documents, certifications, application forms or agreements required by the NMHC.

B. The Owner must make the following documents available to interested buyers such that the buyers may conduct their due diligence:

1. Copies of annual audited project financial statement for all years;
2. Copies of loan documents for all secured debt during the compliance period;
3. Copies of partnership agreement (original, current, and all interim amendments);
4. Current title report (no more than 60 days old from the date of QC Application);
5. A physical needs assessment for the entire project (no more than 60 days from the date of QC Application);
6. An appraisal prepared by a qualified third party appraiser for the entire project (no more than 60 days from the QC Application);
7. A Phase I environmental report (no more than 60 days from the QC Application); and
8. Other relevant documents.

3. ***Other Terms***:

A. NMHC may procure a third party contractor to provide services related to the valuation, review, or inspection of the property. Owners are responsible for any costs associated with contacting and procuring the third party providers.

B. NMHC may reject a QC Application if the Owner does not provide the proper documentation, information on the required forms, or pay for the items listed below.

C. The 1 year period does not start until the Owner submits a complete QC Application with all required documents to the satisfaction of NMHC.

D. The Owner will agree to release the documents listed above to interested parties. Copies of such documents will be the responsibility of the owner.

E. The Owner also agrees to allow NMHC to advertise the property and the Qualified Contract price. Such advertising may include but is not limited to posting on the NMHC website, marketing through an agent, broker, or consultant and mailings to interested buyers.

F. NMHC will not bind the Owner to submit a request and will not start the one-year period defined in §42(h)(6)(I) until NMHC receives a complete QC Application.

G. Owners may choose to cancel the QC Application at anytime during this process. ***However the owner will only be able to request a QC once during the entire additional use period of the project. Withdrawing the application will count as the only time an owner can request a QC Application.***

H. Under IRC §42(h)(6)(E)(i)(II), NMHC's only obligation is to "present" to the Owner a bona fide contract signed by a prospective buyer to acquire the Owner's project for the QC price (the "Contract"). When NMHC presents the Contract to the Owner, regardless of when or if the Contract is fulfilled, the possibility of terminating the additional use period is removed and the project remains bound to the additional use restrictions, and shall not terminate, the additional use agreement.

I. The buyer shall submit a form of Qualified Contract to the Owner that clearly states the intent to purchase the property for the Qualified Contract price. A copy of the Qualified Contract shall be forwarded to NMHC by the buyer or the Owner. The Owner and the buyer are free to negotiate different transaction terms.

J. In keeping with the purpose of IRC §42, NMHC will resolve any case of doubt or interpretation in determining the QC price, both with regard to the overall process and particular projects, in favor of the lower QC price.

K. Please note that the IRS may clarify its regulations regarding the treatment of certain costs and valuations in calculating the QC price. The IRS regulations will be used upon publication of its rules with regard to the Qualified Contract.

Appendix 1 – Market Study

In accordance with Section 42 (m)(iii) of the Internal Revenue Code, NMHC requires a comprehensive Market Study to be submitted as part of the LIHTC application. The Market Study, which focuses on the housing needs of low-income individuals or families in the area to be served, shall be completed at the owner's expense and conducted by a disinterested party approved by NMHC. Any application which fails to submit a Market Study shall be returned to the applicant and will not receive further consideration.

The Market Study shall address the following information:

1. A statement of the competence of the market analyst.
2. Demographic analysis of the number of households in the market area which are income eligible and can afford to pay the rent. Estimate of capture rates for the market areas.
3. A description/identification of:
    A. The proposed site.
    B. Comparable developments in the market area.
    C. The project including location, unit counts, income levels, and target population. Market Study must be consistent with the proposed project.
4. An analysis of:
    A. Household sizes and types in the market.
    B. Practically available rents, vacancy rates, operating expenses and turnover rates of comparable properties in the market area.
    C. Practically available rents, vacancy rates and turnover rates of market rate properties in the market area. Projected operating funds and expenses, when available at the time of the study.
    D. Market demand for tenants with special housing needs, when applicable.
5. Identification of A description of:
    D. The proposed site.
    E. Comparable developments in the market area.
6. Geographic definition and analysis of the market area.
7. Expected market absorption of the proposed rental housing, including a description of the effect of the market area.
8. Identification and commentary of proposed projects in the market areas.

Projects that are requesting credits from eligible basis generated from a Community Service Facility as defined in Section 42 (d) (4) (C) (iii) must provide a market study that addresses the following:

1. A description of Services provided that improve the quality of life for community residents
2. The market area and demand for services provided.
3. The applicability of service provided to the community.
4. The affordability of the services provided households of 60% AMGI or less.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Jude U. Hofschneider
Lieutenant Governor

DIRECTIVE

DATE: April 8, 2013
No. 5

TO: ALL DEPARTMENTS AND AGENCIES

FROM: **GOVERNOR**

SUBJ.: Lifting of hiring freeze

On February 22, 2013, Directive 1 was issued freezing all hiring. Thereafter, on March 15, 2013, Directive 3 was issued partially lifting the hiring freeze. This Directive effectively lifts all the hiring freezes.

Although the hiring freeze is lifted, I expect all department heads and agencies to comply with applicable statutes and regulations in hiring the most qualified individuals through the proper procedures.

ELOY S. INOS

cc: Lt. Governor
Civil Service Commission

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200 /2300 Facsimile: (670) 664-2211/2311

Attorney General of the Northern Mariana Islands

JOEY P. SAN NICOLAS
Attorney General

VIOLA ALEPUYO
Deputy Attorney General

ATTORNEY GENERAL OPINION 2013-02

I. Question Presented

What are the Department of Public Lands ("DPL") financial obligations to the Marianas Public Lands Trust ("MPLT")?

II. Short Answer

The DPL owes MPLT all revenue generated from public lands that is not appropriated to it pursuant to its annual budget. DPL also owes MPLT an accounting to verify that the proper sums are transferred. DPL must transfer these excess funds on a yearly basis.

III. Analysis

The Northern Mariana Constitution, Article XI governs public lands and created the Marianas Public Lands Corporation ("MPLC").[1] MPLC was tasked with managing and disposing of public lands for the benefit of persons of Northern Marianas Descent ("NMD"). NMI Const., art XI, §§ 3, 4(a). Article XI, section 3 provides that "[t]he management and disposition of public lands except those provided for by section 2 shall be the responsibility of the Marianas Public Land Corporation."[2] Article XI, section 5 specifies the "Fundamental Policies" of MPLC. Section 5, subsection (g) states:

> The corporation shall receive all moneys from the public lands except those from lands in which freehold interest has been transferred to another agency of government pursuant to section 5(b), *and shall transfer these moneys after the end of the fiscal year to the Marianas Public Land Trust except that the corporation shall retain the amount necessary to meet reasonable expenses of administration and management, land surveying, homestead development, and*

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[1] The Corporation was dissolved after twelve years, and its functions were transferred to the Executive Branch. NMI Const. art. XI, § 4(f).

[2] Section 2 concerns submerged lands.

> *any other expenses reasonably necessary for the accomplishment of its functions*. The annual budget of the corporation shall be submitted to the legislature for information purposes only.

NMI Const. Art. XI, § 5(g) (emphasis added). Therefore, under the Constitution, DPL has an unequivocal constitutional duty to transfer all the money it receives from public lands to MPLT, less reasonable expenses of administration as annually approved of by the Legislature.

However, in *Department of Public Lands v. Commonwealth Northern Mariana Islands*, 2010 MP 14 ¶ 23, the Supreme Court held "that neither the text nor the legislative history of Article XI support the proposition that the fundamental policies contained in § 5 remain constitutionally operative." In other words, the above constitutional language, Article XI, section 5(g), is no longer an operative part of the Constitution. The case concerned whether the central government could pass legislation requiring that compensation for takings of real property be paid out of revenues generates from public lands. The matter came before the Court as a certified question between DPL and the CNMI, and the Court was asked to answer "[t]o what extent is Article XI of the NMI Constitution a restriction on Legislative action, and is Public Law 16-31 constitutional?" *Id.* ¶ 1.

In answering that question in the negative, the Court declared that section 5 was no longer operative because section 5 only applied to MPLC—not its successor entities such as DPL. *Id.* ¶ 23. The Court then had to examine what rights MPLT had to revenues generated from public lands in light of the fundamental polices no longer being constitutionally operative, *e.g.* the duty to transfer revenue generated. The Court held that MPLT "is a constitutionally created entity that lasts in perpetuity absent a constitutional amendment." *Id.* ¶ 30. The Court further recognized that:

> The drafters made clear that the functions of the Public Land Trust are to hold and invest the revenues generated from the management and disposition of public lands. (citation committed) The drafters likewise made clear that Public Land Trust will receive the funds generated from public lands even after the dissolution of the Public Land Corporation.

Id. Thus, the Court concluded its opinion by holding that "revenues generated from the management and disposition of public lands are trust funds that must go to the Public Land Trust to be held for the benefit of people who are of Northern Marianas descent."[3] *Id.* ¶ 34. These

[3] It is worth noting that Article XI, section 6, which is the only constitutional provision that discusses MPLT, does not create an affirmative right to receive revenue generated from public lands. This right is contained in the

funds must go to MPLT in perpetuity regardless of the executive branch entity that is tasked with the management and disposition of public lands.

Since section 5 is no longer constitutionally operative, the provision that "the corporation shall retain the amount necessary to meet reasonable expenses of administration and management, land surveying, homestead development, and any other expenses reasonably necessary for the accomplishment of its functions" is likewise no longer of any force or effect. CNMI Const. art. XI, § 5(g). The Court recognized this issue in a footnote and stated that DPL's current practice of withholding administrative expenses *may* no longer be constitutionally permissible. *Id.* ¶ 30 n.5. The Court, however, expressly refused to rule on this issue as the matter was not properly before it. *Id.* Since the practice of withholding administrative expenses is also allowed by DPL's enabling legislation, *see* 1 CMC § 2801 *et seq.*, and this law has not been declared unconstitutional, this practice must continue less the Executive Branch disregard a valid public law whose constitutionality has not yet been challenged.

Therefore, it is necessary to determine what constitutes "reasonable expenses of administration," since these must still be withheld from the revenues generated from public lands until 1 CMC § 2801 *et seq* is declared unconstitutional. Some of the early Commonwealth jurisprudence provides guidance on this question. In *Marianas Public Land Trust v. Marianas Public Land Corporation*, 1 CR 967, 969 (Comm. Tr. Ct. 1984), the Commonwealth Trial Court explicitly addressed the question of what constitutes necessary and reasonable expenses of administration. The court explained that:

> MPLC as a trustee has the duty to account to the beneficiaries as well as MPLT which is the depository for the trust funds. As a trustee MPLC has a strict duty to account and the burden of showing any deductions from the receipts is on MPLC. Thus, all the MPLT need do is demand all monies received by MPLC from the public lands and the burden is on MPLC to pay the money to MPLT less the expenses of administration which MPLC can prove.

Id. at 969-70. In defining administrative costs, the court determined that:

> Clear examples of management expenses of administration are: 1. collecting rents from public lands including collection procedures and attorney fees; 2. monitoring of leases of public lands including maintenance of a temporary nature; 3. Costs of

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now non-operative Article XI, section 5. Thus, while the Supreme Court declared that MPLT shall receive these funds in perpetuity, this declaration is based on an implicit finding of that right in section 6 because the explicit duty to transfer such funds under section 5 now no longer exists. This is a curious scenario and casts doubt on the validity of the court's holding that section 5 is unconstitutional—in other words—if the matter was revisited the Court may be persuaded to overturn this precedent.

negotiating leases and preparing leases of public lands; and 4. the accounting costs of receipts of lease money and the disbursal to MPLT.

However, management does not include capital expenditures or capital improvements as generally defined.

...

To administer the portion of public land set aside for the homestead program, the following are examples of reasonable expenses of administration:

> 1. Determining the location of public lands including the surveying and obtaining legal descriptions; 2. title searches and clerical work related thereto; 3. accepting applications and interviewing homestead applicants; 4. preparing homestead permits and deeds; 5. inspection of homesteads and the monitoring of compliance requirements; 6. travel, legal fees, and staff and board expenses related to the above.

Expenses of administration does not include capital expenditures or capital improvements such as constructing roads, water lines, sewers, etc., on public land designated within the homestead program.

Generally speaking, capital improvements or expenditures are those designed to enhance the value of property as contrasted with maintaining it. As a further example, should clearing of land be necessary to set survey markers to prepare a homestead permit for an applicant, the cost is a proper expense of administration. However, the cost of clearing an entire parcel for the purpose of developing a subdivision is not an expense of administration.

Expenses incurred in adopting a comprehensive land use plan of public lands are allowable. Examples would be: 1. planning and mapping costs; 2. any engineering design necessary to formulate the plan; 3. topographic work and any clearing necessary to formulate the plan; 4 necessary clerical, staff and board expenses related to the above.

Caution should be exercised however by MPLC to see that only those funds necessary and reasonable to adopt the land use plan are to be expended. The installation of infrastructure, general clearing, engineering and surveying of land not necessary to adopt the plan are not allowable.

Id. at 971-73.

In weighing the case's significance, it is important to recognize that it is a Commonwealth Trial Court decision, and thus, not binding. Nevertheless, the case lays out a thorough and complete analysis of what should and should not be considered administrative expenses. What the case lacks in precedential value, it makes up for in thoughtful reasoning.

Therefore, since no other case discusses what constitutes administrative expenses to such an extent, *MPLT v. MPLC*, should be followed.

Pursuant to the Constitution and Commonwealth jurisprudence DPL must deliver all revenue it generates from public lands to MPLT on a yearly basis less the amount that is contained in its yearly budget as approved of by the Legislature pursuant to 1 CMC § 2801 *et seq*. DPL may not retain funds for future projects unless such retention is approved of by the legislature, expend extra funds at the end of the fiscal year instead of transferring them to MPLT, or in any way use any revenue generated from public lands that has not been explicitly appropriated to it pursuant to its budget. All excess revenue must be transferred to MPLT without hesitation or delay on a yearly basis.

Furthermore, the Planning and Budgeting Act of 1983, 1 CMC § 7101, *et seq.*, also specifies how the entire government must prepare its budget and identify funds. DPL, as a department of the executive branch, is included within its provisions since the Governor's budget submission "shall set forth program priorities and budget justifications for all agencies of the government of the Commonwealth. The plan shall also include the budget programs of each government corporation in accordance with 1 CMC § 7206." 1 CMC § 7201(b). Thus, even if DPL were to argue that it was not included because the Constitution states that it submits its budget to the Legislature for informational purposes only, the requirement that government corporations also comply with the Planning and Budgeting Act, means that DPL's predecessor MPLC—a government corporation—also had a duty to comply. If DPL's predecessor entity, MPLC, had to comply with the Act then so too must DPL now that it enjoys even less autonomy as a line agency. Therefore, the Planning and Budgeting Act applies to DPL.

The Governor's proposed budget must include:

> (a) A detailed, current estimate of the total anticipated financial resources of the Commonwealth for the fiscal year which includes:
>
> > (1) All revenues and Covenant funds to be received pursuant to Covenant 702;
> > (2) Properly aged uncollected tax receipts and other resources carried over from previous years;
> > (3) Unobligated balances carried over from previous fiscal years and available for appropriation; and
> > (4) Grants, loans, or other monies due or received from the federal government and other private and public agencies.

> The estimate shall break down such resources by source, type, amount, and whether or not they are available to be appropriated. The estimate shall also include the Governors recommendations with respect to legislation on taxation and resource generation if such recommendations will balance the Governors budget submission.

1 CMC § 7202. While the excess revenue generated from public lands is not explicitly included therein, the requirements are sufficiently broad to include a need for DPL to identify its projected revenue in excess of its projected budget needs. While this money is not subject to legislative appropriation, it must be included in the budget for informational purposes. DPL's failure to include an accurate and complete accounting of *all* money it receives from public lands is a violation of the Planning and Budgeting Act. Therefore, in addition to DPL submitting its operating budget for informational purposes to the Legislature pursuant, DPL must also fully account to the Legislature for all the revenue it generates pursuant to 1 CMC § 7101, *et seq.* This duty exists in addition to its duty to account to MPLT pursuant to the Constitution and judicial precedent. Therefore, DPL's annual budget submission must include: (1) its administrative expenses necessary to operate; and (2) a total of all money generated from public lands.

IV. Conclusion

DPL owes MPLT an accounting of the revenue it generates from public lands. Second, it must transfer the balance of these funds, less DPL's budget, to MPLT on a yearly basis. Additionally, DPL must comply with the Budgeting and Planning Act and provide the Legislature with annual information regarding all revenue it generates from public lands. Therefore, DPL must establish procedures for accounting, identifying and transferring revenue generated from public lands to MPLT on a regular basis that are in excess of DPL's annual budget.

Joey P. San Nicolas
Attorney General

4/8/13
Date

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