

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



**COMMONWEALTH REGISTER
VOLUME 34
NUMBER 03
March 29, 2012**

COMMONWEALTH REGISTER

VOLUME 34
NUMBER 03

March 29, 2012

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COMMONWEALTH DEVELOPMENT AUTHORITY

P.O. BOX 502149, SAIPAN MP 96950
Tel.: (670) 234-6245/6293/7145/7146 • Fax (670) 235-7147
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PUBLIC NOTICE

OF PROPOSED AMENDMENTS TO THE DEVELOPMENT CORPORATION DIVISION (DCD) RULES AND REGULATIONS OF THE COMMONWEALTH DEVELOPMENT AUTHORITY (CDA)

INTENDED ACTION TO ADOPT THE PROPOSED AMENDMENTS TO THE DCD RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Development Corporation Division of the Commonwealth Development Authority intend to adopt the attached amendments to the DCD Rules and Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Amendments to the DCD Rules and Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b)).

AUTHORITY: The Board of Directors of the Development Corporation Division of the Commonwealth Development Authority thru its Chairwoman and the Board of Directors of the Commonwealth Development Authority thru its Chairman are authorized to promulgate the DCD Rules and Regulations pursuant to §6 of the CDA Act of 1985 (P.L. 4-49, as amended), 4 CMC §10203(a)(2) and (a)(30), and Section 1.4 of the DCD Rules and Regulations.

THE TERMS AND SUBSTANCE: The proposed amendments to the DCD Rules and Regulations were formulated to restate, enhance and clarify the existing regulations and are necessary to effectively carry out the intent of the Development Corporation Division of the Commonwealth Development Authority.

THE SUBJECTS AND ISSUES INVOLVED: The proposed amendments to the DCD Rules and Regulations are promulgated:

1. To amend Section 19.8 to confirm and clarify the intended scope and use of Deeds in Lieu of Foreclosure by borrowers and DCD when resolving defaulted loans.

CITATION OF RELATED AND/OR AFFECTED STATUTES, RULES AND REGULATIONS. These proposed amendments would affect other sections of the existing DCD Rules and Regulations.



DIRECTIONS FOR FILING AND PUBLICATION: The proposed amendments to the DCD Rules and Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1))

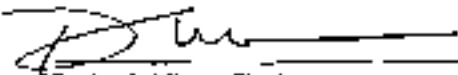
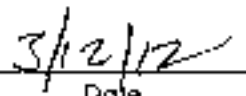
TO PROVIDE COMMENTS: Send or deliver your comments to Manuel A. Sablan, CDA Executive Director, to the following address, fax or email address, with the subject line "Proposed Amendments to DCD Rules & Regulations".

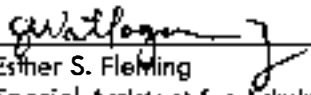
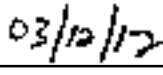
Commonwealth Development Authority
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Saipan, MP 96950
Tel. No.: 234-7145/7146/6293/6245 ext. 311 ▪ Fax No.: 235-7147
Email address: administration@cda.gov.mp

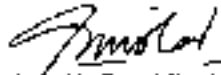
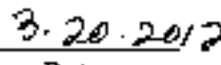
Comments are due within 30 days from the date of publication of this notice. Please submit your data, views and arguments. (1 CMC § 9104(a)(2))

These proposed amendments to DCD Rules and Regulations were approved by the DCD & CDA Board of Directors on February 24, 2012.

Submitted by:  _____ Date:  _____
Marcie M. Tomokane, Chairwoman
DCD Board of Directors

 _____ Date:  _____
Pedro I. Jifbus, Chairman
CDA Board of Directors

Received by:  _____ Date:  _____
Esther S. Fleming
Special Assistant for Administration

Filed and Recorded by:  _____ Date:  _____
Esther M. San Nicolas
Commonwealth Register

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed amendments to the QC Regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the _____ day of March 2012.

 _____ 3-20-12
EDWARD T. BUCKINGHAM
Attorney General

**Amendments to the Rules & Regulations
of the Development Corporation Division (DCD)
of the Commonwealth Development Authority (CDA)**

Section 19.8 Deed in Lieu of Foreclosure. In the event of default, the Loan Manager, together with the Executive Director, may propose a deed in lieu of foreclosure to the defaulted borrower. For purposes of these regulations, a deed in lieu of foreclosure shall be defined as when the defaulted borrower voluntarily agrees to exchange by way of a deed all of his or her mortgaged property for the elimination of all or a part of his or her debt.

Before any deed can be accepted, a clean Preliminary Title Report (PTR) and a current and approved appraisal must be obtained for the mortgaged property and the cost of such PTR and appraisal must be paid by the borrower. For purposes of this section, an appraisal shall be considered "current" if its "date of value" is within one (1) year of the date of the deed in lieu of foreclosure. The appraised value will be used for the value of the mortgaged property. In the event an appraisal value exceeds the outstanding balance of the defaulted loan, no credit or payment shall be made by CDA to the defaulted borrower for the difference. The value assigned the mortgaged property shall be the value of the loan only.

Unless some other justifiable resolution is approved by the Board of Directors, any debt that remains (anything above the appraised value of the mortgaged property) shall be reduced to a new note with new terms. If the defaulted borrower provides new and acceptable security for this new note, interest rates may be reduced; otherwise the interest rate on the new loan should remain the same as the rate for the old loan unless the Board of Directors otherwise approves

Only CDA mortgaged properties can be used for deeds in lieu of foreclosure. The Board of Directors may, however, upon recommendation of and justification by the Loan Manager and Executive Director approve deed(s) in lieu of foreclosure that convey the mortgaged properties plus or together with other un-mortgaged property. Before such additional property can be accepted, a clean PTR and current approved appraisal must also be obtained for such un-mortgaged property. Otherwise, no other, new or substitute property can qualify for a deed in lieu of foreclosure.



COMMONWEALTH DEVELOPMENT AUTHORITY

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NUTISIAN PUPBLIKU

GI MANMAPROPONI NA AMENDASION SIHA PARA I DIBISION KORPORASION DEVELOPMENT (DCD) NA AREKLAMENTU YAN REGULASION SIHA PARA I COMMONWEALTH DEVELOPMENT AUTHORITY (CDA)

I AKSION NI MA´INTENSIONA NA PARA U MA´ADAPTA I MANMAPROPONI NA AMENDASION SIHA PARA I DCD NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas Siha, Dibision Korporasion Development gi Commonwealth Development Authority ha intensiona para u adapta i mañechettun na amendasion siha gi Areklamentu yan Regulasion siha gi DCD, sigun gi manera gi Aktun i Administrative Procedure, 1 CMC § 9104(a). I Amendasion siha para i Areklamentu yan Regulasion gi DCD para u ifektibu gi halum i dies (10) dihas dispues di adaptasion yan i publikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b)).

ATURIDAT: I Kuetpun Direktot siha gi Dibision Korporasion Development gi Commonwealth Development Authority ni ginin i Kabiseyu (Chairwoman) yan i Kuetpun Direktot siha gi Commonwealth Development Authority ni ginin i Kabiseyu (Chairman) manma´aturisa para u macho´gui i Areklamentu yan Regulasion DCD sigun gi §6 gi Aktun CDA gi 1985 (P.L. 4-49, kumu ma´amenda), 4 CMC § 10203(a)(2) yan i (a) (30), yan i Seksiona 1.4 gi Areklamentu yan Regulasion i DCD siha.

I TEMA YAN SUSTANSIAN I PALABRA SIHA: I manmaproponi na amendasion siha para i Areklamentu yan Regulasion i DCD siha manma-formulated para u ma-restate, enhance yan u klarifika i presentu na regulasion siha yan mannisario para u ifektibu u carry out i itension gi Dibision Korporasion Development gi Commonwealth Development Authority.

I SUHETU NI MASUMARIA YAN ASUNTU NI TINEKKA: I manmaproponi na amendasion siha para i Areklamentu yan Regulasion i DCD siha na manmacho´gui:

1. Para ma´amenda I Seksiona 19.8 ni para u makonfotma yan mana´klaro i ma´intensiona na scope yan ma´usan i Deeds in Lieu of Foreclosure ni manmana´a´ayao yan i DCD yanggin i resolving defaulted loans.

SITASION NI MANA´ACHULI´ YAN/PAT INAFEKTA I ISTATUA, AREKLAMENTU YAN I REGULASION SIHA. Esti i manmaproponi na amendasion siha para u inafekta i pumalu seksiona siha gi presentu na Areklamentu yan Regulasion siha gi DCD.



DIREKSION NI PARA U MAPO´LU YAN U MAPUPBLIKA: I manmaproponi na amendasion siha para i Areklamentu yan Regulasion i DCD siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni maproponi yan nuebu na ma´adapta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi mangkumbiniente na lugat siha gi halum i civic center yan gi ufisinan gubietnamentu gi kada distritun senadot, parehu gi English yan gi lingguahin natibu. (1 CMC § 9104(a)(1)).

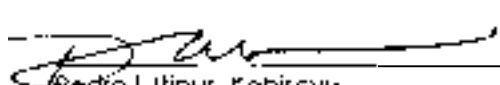
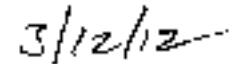
PARA U MAPRIBENIYI UPIÑON SIHA: Na'hånão pat intrega i upiñon-mu guatu gi as Manuel A. Sablan, CDA Direktot Eksakatibu, para i sigienti na address, fax pat email address, yan i råyan suhetu "Manmaproponi na Amendasion para i Areklamentu yan Regulasion siha gi DCD".

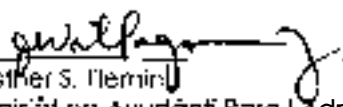
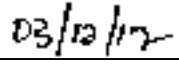
Commonwealth Development Authority
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E-mail address: actrr@cdawh.gov.mp


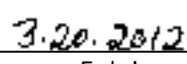
Todu tinigi' imfotmasion siha debi na u farihålum trenta (30) dihas ginin i fetchan publikasion esti na nutisia. Put fabot na'hålum i imfotmasion-mu, upiñon pat testamoñon kinentra siha. (1 CMC 9104(a)(2)).

Esti i manmaproponi na amendasion para i Areklamentu yan Regulasion siha gi DCD manma'apruueba ginin i DCD yan CDA kuetpun Direktot Siha gi Fibreru 24, 2012.

Nina'hålum as:  _____  _____
Marcie M. Tamaka, D. Kabiseyu
DCD Kuetpun Direktot Siha
Fetcha

 _____  _____
Pedro I. Ilirius, Kabiseyu
CDA Kuetpun Direktot Siha
Fetcha

Rinisibi as:  _____  _____
For: Esther S. Hernandez
Spisat na Ayudanti Para i Administrasion
Fetcha

Pine'lu yan
Ninota as:  _____  _____
Esther M. San Nicolas
Registran Commonwealth
Fetcha

Sigin i 1 CMC § 2153(e) (I Abugådu Heneråt ha aprueba i regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a)(3) (hentan inapruuban Abugådu Heneråt) manmaproponi na amendasion para i DCD na regulasion siha na mañechettun guini na manmaribisa yan manma'apruueba kumu fotma yan sufisienti ligåt ginen i CNMI Abugådu Heneråt yan debi na u mapublika 1 CMC § 2153(f) (publikasion areklamentu yan regulasion siha).

Mafecha gi _____ na ha'ani gi Måtsu 2012.

 _____  _____
EDWARD BUCKINGHAM
Abugådu Heneråt

Amendasion para i Areklamentu yan Regulasion siha
gi Development Corporation Division (DCD)
gi Commonwealth Development Authority (CDA)

I Seksiona 19.8 Deed in Lieu of Foreclosure. Yanggin siakâsu na ti makumpli i kuntrâta, i Manihântin Loan, siha yan i Direktot Eksakatibu, siña ha ofresi deed in lieu of foreclosure para i ti kumumpli na a'ayâo. Para i hinangai esti na regulasion siha, i deed in lieu of foreclosure debi na u madifina kumu yanggin i mana'ayâo ti buluntâriu ha kumpli i kuntrâta para u tulaika i maneran i deed todû iyon-ña pat i mortgage property para i mana'suhan todû pat pâtti gi dibi-ña.

Ântis di maseha hâfa na deed siña ma'aksepta, i gâsgas na Preliminary Title Report (PTR) yan i presentî yan i ma'aprueba na appraisal debi na u mahenta para i mortgage i propiedât yan i gâstu tât i PTR yan i appraisal debi na u ma'apâsi ni mana'ayâo. Para i hinangain esti na seksiona, i appraisal debi na u makunsidera i "presentî" yanggin i bâlin i fetchâ-ña" gi halum i un âñu (1) na fetchan sâkkan ni esti na deed in lieu of foreclosure. i appraised value siempri u ma'usa para i bâlin i mortgage i propiedât. Yanggin siakâsu na i appraisal value ha upus i outstanding balance gi defaulted loan, tâya' credit pat âpas siña mafa'tinas ni CDA guatu para i defaulted borrower ni para i difirensia.

Solu guaha ottru na justifiable resolution ma'aprueba ginin i Kuetpun Direktot siha, maseha hâfa na dibi ni tetehnan siha (maseha hâfa gi hilu' i appraised value gi ma-mortgage na propiedât) debi na u ribâha para i nuebu na nota, ni nuebu na tema siha. Yanggin i defaulted borrower ha pribeniya nuebu yan akseptâbu na sigirudât para esti i nuebu na nota, i apas intires siha siña ha' maribâha; lâo i apas intires gi nuebu na loan debi na u sâga ha' parehu kumu i apas i bihu na loan solu i Kuetpun Direktot siha suno sumiña ha aprueba.

I CDA ha' siña ma'usa i mortgaged propiedât siha para i deeds of lieu of foreclosure. I Kuetpun Direktot siha siña, lâo, sigun i rekomendasion i yan i justification ginin i Loan Manager yan i Direktot Eksakatibu ha aprueba i deed(s) in lieu of foreclosure ni ha convey i ma-mortgaged na propiedât siha plus pat dumanña' yan i ti ma-mortgaged na propiedât. Ântis kumu gumuaha mäs propiedât siña ma'aksepta, i clean PTR yan i presentî na ma'aprueba na appraisal debi na lokkui' siña ma'ahenta para i such unmortgaged na propiedât. Solu, tâya' ottru, nuebu pat substitute property siña kualifikâo para i deed in lieu of foreclosure.



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ARONGORONGOL TOULAP

POMWOL ALLÉGH ME ATIWLIGH KKA REBWE AMENDÁALI REL DEVELOPMENT CORPORATION DIVISION (DCD) ME COMMONWEALTH DEVELOPMENT AUTHORITY (CDA)

MÁNGEMÁNGIL MWÓGHUT YEEL BWE EBWE ADAPTÁALI POMWOL AMENDA KKA REL ALLÉGH ME ATIWLIGH KKA DCD: Commonwealth of the Northern Mariana Islands, Development Corporation Division of the Commonwealth Development Authority ebwe adaptáali amendments kka e appasch ngáli allégh me atiwilighil DCD, sáangi mwóghutughutul Administrative Procedure Act, 1 CMC § 9104(a). Amendments kka a ffér ngáli alléghul me atiwilighil DCD nge ebwe bwunguló 10 ráal mwiril igha re adaptáali me appaschlong lól Commonwealth Register. (1 CMC § 9105(b)).

BWÁNGIL: Board of Directors-il Development Corporation Division rel Commonwealth Development Authority sengi Chairwoman me Board of Directors-il Commonwealth Development Authority sengi yaar Chairman eyoor bwungúr bwe rebwe arongawow allégh me atiwiligh kka yaal DCD sáangi §6 rel CDA Act of 1985 (P.L. 4-49, as amended), 4 CMC § 10203(a)(2) me (a)(30) me Section 1.4 rel Alléghul me Atiwilighul DCD.

KKAPASAL ME AWEWEEL: Pomwol amenda kka ngáli alléghul me atiwilighul DCD e ffér bwe igha ebwe restate, amamawa, me aweweey atiwiligh kka efasil llo me igha e nesariyo bwe rebwe fféri meta mángemángil me muschelil Development Corporation Division of the Commonwealth Development Authority.

KKAPASAL ME ÓUTOL: Pomwol amenda kkal ngáli Allégh me Atiwiligh-il DCD ebwe.

1. Amenda li Section 19.8 ebwe ffat me aweweey yaayal Deeds rel foreclosure rel borrower me DCD igha rebwe resolve li defaulted loans.

CITATION KKA E TAFATAF NGELI, ME STATUES, ALLÉGH ME ATIWLIGH KKA EBWE AFFEKTALIL. Pomwol amenda kka ebwe affekktali akkaw sections kka e lo lól DCD Allégh me Atiwiligh.

AFALA REEL AMWELIL ME ARONGOWOWUL: Pomwol allégh me atiwiligh kkaal ebwe appasch llong lól Commonwealth Register llól section we e ira proposed me newly adopted regulations (1 CMC § 9102(a)(1) me ebwe bwal appasch fetal llól bwuley kka elo civic center me bwal llól bwulasyoo kka llól senatorial district rel kkasal English, Remeraalis me Refaluwasch. (1 CMC § 9104(a)(1)).

ATOTOOLONGOL MWALILI: Afanga ngáre bwughiló yóómw mángemáng reel Manuel A. Sablan, CDA Executive Director, ngáli address, fax me email reel subject line "Proposed Amendments to DCD Rules and Regulations".

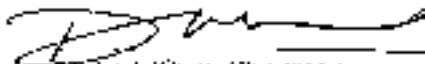
Commonwealth Development Authority
P.O. Box 502149 • Wakin's Building, Chalan Pale Arnold

Isiisilongol mángemáng nge ebwe llól 30 ráall sáangi all toowow arongorong yeel. Isáliilong yóómw data, views, ngáre angliingi. (1 CMC § 9104(a)(2)).

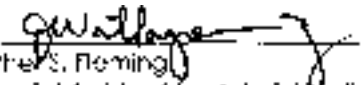
Pomwol allégh kkal nge a angaanga sáangi DCD & CDA Board of Directors wóoll Febreero 24, 2012.

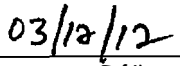
Isáliiya ong. 
Marcie M. Tomokanē, Chairwoman
DCD Board of Directors


Ráil

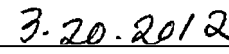

Pedro I. Ribus, Chairman
CDA Board of Directors


Ráil

Arámas ye
C b'wagh' 
Esther S. Fleming
Special Assistant for Administration

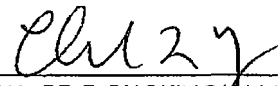

Ráil

File me
Rekoodliiyat: 
Esther M. San Nicolas
Commonwealth Register


Ráil

Sengi 1 CMC § 2153(e) Allégh kkaal lléghló sáangi AG bwe e fil reel fféeruúl me 1 CMC § 9104(a)(3) (mwiir sáangi AG) Pomwol amenda kkal ngáli atiwighil DCD a appaschlong a takkal amwuri fiischiy, me angúungú ló fféeruúl me legal sufficiency sáangi CNMI Attorney General me ebwele akkatewoow, 1 CMC § 2153(f) (Arongowowul allégh me atiwigh kkaal).

Rááil iye 20 Móozo 2012


EDWARD T. BUCKINGHAM
Attorney General

Amenda ngali Atiwligh me Alléghul
Developmental Corporation Division (DCD)
Commonwealth Development Authority (CDA)

Section 19.8 Yááyál Deed reel Foreclosure: Ngare e tutto bwe default, Loan Manager, me Executive Director emwal rebwe pomwoli yááyál deed reel foreclosure ngali aramas we e default. Reel bwulul allégh kkal, yááyál deed reel foreclosure nge faal nge defaulted borrower e volunteer me e angungúw bwe ebwe yoor liwel reel yááyál deed reel alongal yaal mortgaged property reel ebwe amwoy ló alongal ngare eghus dibil.

Mwaal rebwe bwughi deed, ebwe yoor , clean Preliminary Title Report (PTR) me appraisal iye e bwung me eghi current reel faluw yeel. méel PTR me appraisal nge schóól yááyá we ebwe abwóssúw. Bwulul section yeel, appraisal e current ngare yaal "date of value" nge lól egw(1) ragh reel rállil yááyál deed reel foreclosure. Appraised value il faluw nge rebwe yááyá ngali value-il faluw. Ngare appraisal value –il faluw e pár ló mwal balance-il defaulted loan we, esóór credit rebwe abwossu ngali schóól yááyá we reel CDA. Meta schagh lapal faluw we nge ebwe lapal loan we.

Ngare schagh bwe eyoor akkaw justifiable resolution iye re bwunguw ló mereel Board of Directors, alongal dibi kka e llof inamo meta iye e pár ló méel mwal mortgaged property we nge rebwe aghitighitativ reel new note me term. Ngare defaulted borrower we ayoor mil ffé me acceptable security reel note yeel, interest rates ebwe sósól tiw, interest rates wóól loan iye a ffé ebwe wewe schagh me interest rate il loan we e fasúl, ngare schagh bwe Board of Directors re bwunguw ló.

CDA mortgaged properties schagh mille emwal rebwe yááyá deed reel foreclosure. Board of Directors emwal mereel rekkomendation il Loan Manager me Executive Director rebwe bwunguw ló deed(s) reel ebwe yááyá reel foreclosure iye e ira mortgaged properties bwal akkaw unmortgaged property. Mwal ebwe yoor akkaw faluw ebwe appasch long nge rebwe accepta ill, clean PTR me current approved appraisal ebwe yoor reel unmortgaged property we. Esemwel mil ffé me ngare akkaw falúw emwel rebwe yááyá bwe deed in lieu of foreclosure.



COMMONWEALTH PORTS AUTHORITY

Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT

P.O. BOX 501055, SAIPAN, MP 96950-1055

Phone: (670) 237-6500/1 • Fax: (670) 234-5962

E-mail Address: cpa.admin@pticom.com

Website: www.cpa.gov.mp

PUBLIC NOTICE

Proposed Rules and Regulations of the Commonwealth Ports Authority Re: Incinerator and Triturator

The Executive Director of the Commonwealth Ports Authority hereby notifies the public that the Commonwealth Ports Authority intends to promulgate additions to its Airport Rules and Regulations.

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:

Notice is hereby given pursuant to 1 CMC § 9104(a) of the Administrative Procedure Act that the Commonwealth Ports Authority publishes the following amendments to add these fees and charges for its intended action to become the complete operative Airport Rules and Regulations for the agency.

AUTHORITY: The authority for the promulgation of regulations for the Commonwealth Ports Authority is set forth in 2 CMC § 2122(j) as an autonomous agency of the Commonwealth of the Northern Mariana Islands. 2 CMC § 2111(b)

The following proposed fees and charges were once published as emergency regulations in the Commonwealth Register on June 27, 2008 and previously approved by the CPA Board of Directors on November 30, 2006. The Board of Directors affirmed the regulations at the Regular Board Meeting held on February 9, 2012. The Board of Directors now hereby approves for the publication in the Commonwealth Register for Notice and Comment pursuant to the Administrative Procedure Act and as administered by the CNMI Law Revision Commission and for approval by the Attorney General pursuant to 1 CMC § 2153(e).

THE TERMS AND SUBSTANCE: These Rules and Regulations provide for the increase of fees that will allow CPA to recover its costs for incineration of contraband and prohibited goods including Foreign Vessel Waste at its Incineration and Triturator Treatment facilities at the Saipan International Airport subject to the terms and conditions of U.S. EPA RCRA Unilateral Administrative Order No. 7003-09-0001 and Order on Consent as well as applicable Federal and CNMI laws.

CPA is compelled by its Bond Indenture Agreement with the Bank of Guam for the 1998 Airport Revenue Bonds and Seaport Revenue Bonds pledging its revenue from its operations toward debt service.

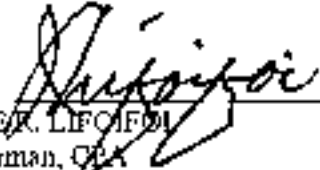
THE SUBJECTS AND ISSUES INVOLVED: Fees and charges by CPA: There are two CPA operations to which the charges below apply:

1. The Airport Incinerator Facility handling Foreign Vessel Waste from foreign vessels and airplanes under the existing EPA Administrative Order and any subsequently approved incineration operation by CPA; and
2. The Triturator Treatment Facility at the Saipan International Airport handling aircraft waste from all aircraft operations.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local governments in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1))

CPA shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them including all vessel agents; Port of Saipan vessels, tenants at the Port of Saipan; all Foreign Vessel operators seeking incineration services; all Signatory Airlines pursuant to the AUA of each carrier; and all law enforcement agencies including the Drug Enforcement Administration; Department of Public Safety; and the Division of Customs.

TO PROVIDE COMMENTS: Persons or entities wishing to submit comments may submit written comments to: Mr. Edward M. Deleon Guerrero, Executive Director, Commonwealth Ports Authority, P.O. Box 501055, Saipan, MP 96950; or via hand delivery to the Saipan International Airport Administration Office; or via facsimile at (670) 234-5962. **All written comments shall be submitted within 30 days after publication.**

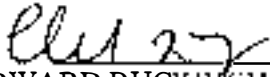
Submitted by:  03-14-12
JOSE R. LICOIFON
Chairman, CPA Date

Received by:  03/21/12
ESTHER S. FLEMING
Special Assistant for Administration Date

Filed and Recorded by:  03.20.2012
ESTHER M. SAN NICOLAS
Commonwealth Register Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC §9104 (a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153 (f) (publication of rules and regulations)).

Dated this 20 day of MARCH, 2012.



EDWARD BUCKINGHAM
Attorney General

COMMONWEALTH PORTS AUTHORITY

Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT
P.O. Box 501055, Saipan, M.P. 96950-1055
Tel: (670)237-6500/1 Fax: (670)234-5962
E-mail Address: cpa.admin@pticom.com
Website: www.cpa.gov.mp

NUTISIAN PUBLIKU

I Manmaproponi na Areklamentu yan Regulasion siha gi Commonwealth Ports Authority Re: Incinerator yan Triturator

I Direktot Eksakatibu gi Commonwealth Ports Authority guini ha nutisia i publiku na i Commonwealth Ports Authority ha intensiona para u cho'gui mäs para i Airport Areklamentu yan Regulasion siha.

I AKSION NI MA'INTENSIONA PARA U MA'ADÄPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I nutisia guini ha nä'i sigun gi 1 CMC § 9104(a) gi Äktun i Administrative Procedure na i Commonwealth Ports Authority ha publika i sigienti amendasion siha para u na'danña'i mäs esti äpas yan charges para i intension-ña na aksion ni para u mana'kumplidu i operative na Areklamentu yan Regulasion i Airport ni para i ahensia.

ÄTURIDÄT: I äturidät ni para u macho'gui i regulasion siha para i Commonwealth Port Authority mapega mo'na gi halum i 2 CMC § 2122(j) kumu guiya i ahensian autonomous gi Commonwealth gi Sangkattan na Islas Marianas siha. 2 CMC § 2111 (b).

I sigienti ni maproponi na äpas yan charges siha manmapublika un biähi kumu-emergency na regulasion siha gi halum i Rehistran Commonwealth gi Huñiu 27, 2008 yan i halatcha ha' na ma'aprueba ginin i CPA Kuetpun Direktot siha gi Nubembri 30, 2006. I Kuetpu Direktot siha mana'afitma na i regulasion siha gi Regulät na Kuetpun hunta ni masusedi gi Fibreru 9, 2012. I Kuetpun Direktot siha guini pä'gu ma'aprueba para i publikasion gi halum i Rehistran Commonwealth para i Nutisia yan Upiñon sigun gi para i Äktun Administrative Procedure yan kumu madirihi ginin i CNMI Revision Commission yan para inaprueba ginin i Abugädu Henerät sigun i 1 CMC § 2153(e).

I TEMA YAN SUSTÄNSIAN I PALÄBRA SIHA: Esti i Areklamentu yan Regulasion siha ha pribeniyi para i hinaksan i apas siha ni para u sedi i CPA para u recover i gasto-ña siha para i incineration i contraband yan i manmaprohibi na kosas siha säsåonão i Foreign Vessel Waste gi iyon-ña Incineration yan Triturator Treatment na fasilidät siha gi Saipan International Airport ni sinuhetu para i tema yan kundision siha gi U. S. EPA RCRA Unilateral Administrative Order No. 7003-09-0001 yan Order on Consent kumu guiya i aplikäpble gi Federät yan i lain CNMI siha.

I CPA ha compelled ginin i iyon-ña Bond Indenture Agreement yan i Bank of Guam para i 1998 i Airport Revenue Bonds yan Seaport Revenue Bonds ni ha pledging iyon-ña revenue ginin i operasion siha gi kontra i debt service.

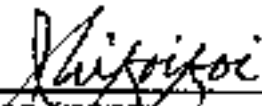
I SUHETU NI MASUMÄRIA YAN ASUNTU NI TINEKKA: I apas yan i charges siha ginin i CPA: Guaha dos na operasion CPA siha ni inaplika gi sampapa':

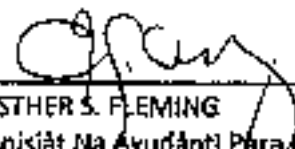
1. I Airport Incinerator Facility ha chocho'gui i Foreign Vessel Waste ginin i foreign vessels yan batkunairi siha gi papa' i existing EPA Administrative Order yan maseha hâfa tinattitiyi i inapruedan incineration operation ginin i CPA; yan
2. I Triturator Treatment Facility gi Saipan International Airport ha chocho'gui i aircrafts waste ginin todû operasion batkunairi siha.


DIREKSION PARA U MAPO'LU YAN PARA PUBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni Manmaproponi yan Nuebu na Ma'adâpta na Regulasion siha, (1 CMC § 9102(a)(1), yan u mapega gi kumbinienti na lugât siha gi halum i civic center yan i ufisinan gubietnamentu siha gi kada distritun senadot, parehu English yan prinsipât na lingguâhin natibu. (1 CMC § 9104(a)(1).

I CPA debi na u chuli' apropositu na measures ni u fa'tinas esti na Areklamentu yan Regulasion siha ni matungu' ni taotâo ni siña maninafekta ginin siha ni sâsâonâo gi todû vessel agents; Port of Saipan vessels, tenants gi Port of Saipan; todû Foreign Vessel operators ni manaliligâo sitbision incinerator siha; todû Signatory Airlines sigun gi AUA gi kada carrier; yan todû law enforcement agencies sânâonâo i Ufisinan Drug Enforcement Administration ; Dipattamentun Sinâfu' Publiku; yan i Divisions of Customs.

PARA U MAPRIBENIYI UPIÑON SIHA: Petsona siha pat entities ni ha diseseha para u na'hâlum upiñon siha siña ha na'hâlum tinigi' upiñon siha guatu gi as: Siñot Edward M. Deleon Guerrero, Direktot Eksakatibu, gi Commonwealth Ports Authority, P.O. Box 501055, Saipan, MP 96950; pat u machuli' guatu gi Saipan International Airport Ufisinan Atministrasion; pat via facsimile gi (670) 237-5962. **Todû tinigi' upiñon siha debi na u mana'hâlum trenta (30) dihas dispues di pupblikasion.**

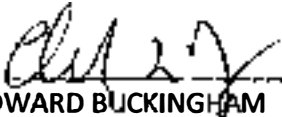
Nina'hâlum as: 
 JOSE R. LIFOIFON
 Kabesiyu, CPA 3-14-12
Fetcha

Rinisibi as: 
 ESTHER S. FLEMING
 Ispisiât Na Ayudanti Para Atministrasion 03/21/12
Fetcha

Pine'lu yan Ninota as: 
 ESTHER M. SAN NICOLAS
 Rehistran Commonwealth 03-20-2012
Fetcha

Sigun i 1 CMC § 2153(e) (I Abugâdu Henerât ha aprueba i regulasion siha na para u macho'gui kumu fotma) yan i 1 CMC § 9104(a)(3) (hentan inaprueban Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapupblika, 1 CMC § 2153(f) (publikasion areklamentu yan regulasion siha)).

Mafetcha guini gi diha _____, di _____, 2012


EDWARD BUCKINGHAM
Abugâdu Henerât

COMMONWEALTH PORTS AUTHORITY

Main Office: FRANCISCO C. ADA/SAIPAN INTERNATIONAL AIRPORT
P.O. BOX 501055, SAIPAN, MP 96950-1055
Phone: (670) 237-6500/1 *Fax: (670)234-5692
E-mail Address: cpa.admin@pticom.com
Website: www.cpa.gov.mp

ARONGORONGOL TOLAP

Pomwol Atiwligh me Alléghul Commonwealth Ports Authority Reel: Incinerator bwal Triturator

Executive Director-il Commonwealth Ports Authority e akkatowow arongorong reel toulap bwe Commonwealth Ports Authority emuschel ebwe arongawow akkaw appasch ngáli Atiwligh me Alléghúl Airport.

MÁNGEMÁNGIL MWÓGHUT YEEL BWE EBWE ADAPTÁÁLI POMMWOL ALLÉGH ME ATIWLIGH: Sangi 1 CMC § 9104(a) reel Administrative Procedure Act, Commonwealth Ports Authority e akkatowow amendá kkal bwe ebwe appascha reel fees bwal méél igha ebwe ffs bwe iyel yaar complete operative Rules me Regulations il agency.

BWÁNGIL: Bwángil akkatewowul alléghul Commonwealth Ports Authority nge e lo llól 2CMC § 2122 (j) igha e autonomous agency me llól Commonwealth of the Northern Mariana Islands. 2 CMC § 2111(b).

Pomwol fees me charges kkal nge efasúl appasch bwe emergency regulations lól Commonwealth Register wóól Unnyo 27, 2008 nge rebwal bwungúw ló reel CPA Board of Directors wóól Nobembre 30, 2006. Board of Directors rebwal alleghú ló allégh kkal reel yaar Regular Board Meeting wóól Febrero 9, 2012. Board of Directors a bwungúw ló bwe ebwe appasch lól Commonwealth Register reel arongorong me mángemang sáangi Administrative Procedure Act me lemelemil CNMI Law Revision Commission bwal angungul mereel Attorney General sáangi 1 CMC § 2153(e).

KKAPASAL ME AWEWEEL: Atiwligh me Allégh kkal ebwe atomoghata abwóss reel ebwe mwel bwe CPA ebwe bwughi sefali méél góstol reel incineration reel contraband me prohibited goods e tolong Foreign Vessel Waste me reel Incineration me Triturator Treatment facility me Saipan International Airport subject ngali terms me conditions il U.S. EPA RCRA Unilateral Administrative Order No 7003-09-0001 me Order on Consent me meta kka e ffil ngali Alléghul Federóód me CNMI.

CPA reel yaal Bond Indenture Agreement me Bank of Guam reel 1998 Airport Revenue Bonds me Seaport Revenue Bond e akkapal bwe salapi e tolong mereel operations nge ebwe mwet ngali abwóssul dibi.

KKAPASAL ME ÓUTOL: Fees me charges reel CPA: I kkal ruwoow CPA operations kka charges kka e ffil ngali.

1. Airport Incinerator Facility iye e bwughi Foreign Vessel Waste mereel foreign vessels bwal plane kka e lo faal EPA Administrative Order iye e eyoor me bwal alongal incineration operation iye re bwunguw ló mereel CPA; bwal

2. Triturator Treatment Facility me Saipan International Airport igha e bwughi aircraft waste mereel alongal aircraft operations.

AFALA REEL AMWELIL ME ARONGOWOWUL: Pomwol Allégh kkal ebwe appasch long lól Commonwealth Register lól section wóól Proposed and Newly Adopted Regulations (1 CMC § 9102(a)(1)) me appasch fetal lól bwuley kka e lo civic center me bwal llól bwulasiyoo kka llól senatorial district rel kkasal English, Remeraalis me Refaluwasch. (1 CMC § 9104(a)(1))

CPA ebwe aronga atiwiligh me allegh kkal ngaliir aramas kka ebwe affecta liir e toolong alongal vessel agents; Port of Saipan vessels, tenants me Port of Saipan, Alongal Foreign Vessel operators kka re kke ghut incineration services; alongal Signatory Airlines sangi AUA reel eew carrier, me bwal alongér law enforcement agencies e toolong Drug Enforcement Administration; Depótamental Public Safety; me Division of Customes.

ATOTOOLONGOL MWALILI : Aramas me ngare entities kka remuschel rebwe isisilong mángemángir rebwe ngaley : Mr. Edward M. Deleon Guerrero, Executive Director Commonwealth Ports Authority, P.O. Box 501055, Saipan, MP 96950: me bwughi ló reel Saipan International Airport Administration Office; facsimile reel (670) 234-5962. Alongal ischil mángemang nge ebwe tolong lól 30 ráll mwiril yaal akkatowow arongorong yeel.


Isáliyallong:


JOSE R. LIFFIEOI

3-14-12
Ráll

Aramas ye:

E bwughi



ESTHER S. FLEMING

Special Assistant for Administration

3/21/12
Ráll

File me

Rekoodliiyal:

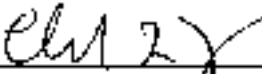

ESTHER M. SAN NICOLAS
Commonwealth Register

03-20-2012
Ráll

Sengi 1 CMC § 2153(e) Allégh kkaal lléghló sángi AG bwe e fil reel fféeruúl me 1 CMC§ 9104(a)(3) (mwiiir sángi AG) Pomwol atiwiligh kkal a appaschlong a takkal amwuri fiischiy, me

Sengi 1 CMC § 2153(e) Allégh kkaal lléghló sáangi AG bwe e fil reel fféeruúl me 1 CMC§
9104(a)(3) (mwiir sáangi AG)Pomwol atiwligh kkal a appaschlong a takkal amwuri fiischiy, me
angúungú ló fféerúl me legal sufficiency sáangi CNMI Attomey General me ebwele akkatewoow,
1 CMC § 2153(f)(Arongowowul allégh me atiwligh kkaal

Rááilil iye _____ ráil lól _____, 2012



EDWARD T. BUCKINGHAM
Attorney General

**PART 12 OF THE CPA AIRPORT RULES AND REGULATIONS
ARE HEREBY AMENDED TO ADD THE FOLLOWING FEES AND
CHARGES:**

SIGNATORY AIRLINES/VESSELS (ENTERING PORT OF SAIPAN):

1. AIRPORT INCINERATOR FACILITY CHARGES:

For every request for incineration of permissible Foreign Vessel Waste or Contraband Prohibited Goods (controlled substances or seized contraband) as permitted by the Division of Environmental Quality and/or the U.S. Environmental Protection Agency at CPA's Incinerator Facility the following charges shall apply:

- A. Incinerator Base Fee: \$0.41 per pound
- B. Incinerator Fuel Rate: \$0.54 per pound
- C. Incinerator Surcharge Rate: \$0.20 per pound

Total Initial Operating Incineration Charge: \$1.15 per pound

The Incinerator Fuel and Surcharge Rates shall be fluctuating rates to be established at the tenth of each month by the Commonwealth Ports Authority Comptroller and published to all signatory airlines and port operators as well as to the general public. The Fuel and Surcharge Rates shall take into consideration the following criteria:

- I. Actual monthly charges for fuel costs;
- II. Actual manpower services/labor hours of operations;
- III. Utility charges for incineration operation;
- IV. Actual monthly weight of airlines and non-airline incinerated waste;
- V. Actual costs for environmental compliance with U.S. EPA Administrative Order and any compliance requirements by the CNMI Division of Environmental Quality.

NON-SIGNATORY AIRLINES

Pursuant to Section 12 Part 12 of the Authority's Rules & Regulations, for non-signatory airlines, the above Incinerator rates as it applies to non-signatory airlines shall be multiplied by a factor of 1.5.

2. AIRPORT TRITURATOR WASTE HANDLING SERVICES:

TRITURATOR HANDLING/PROCESSING FEES:

For every aircraft waste handling service provided by CPA to every signatory airline for the CPA Triturator for foreign vessel waste, the following charges shall apply:

- A. Waste Disposal Fee: \$0.05 per gallon
- B. Water Usage Fee: \$0.05 per gallon

NON-SIGNATORY AIRLINES:

Pursuant to Part 12 Section 12, the above Triturator rates as it applies to non-signatory airlines shall be multiplied by a factor of 1.5.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

EXECUTIVE ORDER NO. 2012-02

DECLARATION OF STATE OF EMERGENCY

WHEREAS, the Commonwealth Healthcare Corporation (“CHC”) provides the bulk of necessary and critical 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, welfare 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 to salary payments to vital and necessary employees; and

WHEREAS, the CHC requires an infusion of funds to continue to provide medical services necessary for health, welfare and safety of the people of the Northern Mariana Islands; and

WHEREAS, the Marianas Public Land Trust (“MPLT”) and the CHC have agreed to a loan agreement to provide needed funds to the CHC so it may continue its service critical to the people of the CNMI; and

WHEREAS, for the above loan to be enacted the Commonwealth government must give its agreement to the terms of the loan; and

WHEREAS, Article III §10 of the Constitution of the Commonwealth and section 5101 et seq. of Title Three of the Commonwealth Code provides that the Governor has the authority and duty to take the necessary steps to respond impending disasters;

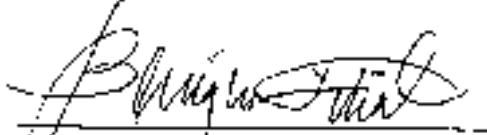
NOW THEREFORE, a State of Emergency for the Commonwealth of the Northern Mariana Islands is declared due to the imminent threat of the disruption of critical medical services in the Commonwealth and the danger that such a condition poses to the public because of the great increase in otherwise preventable deaths that would result.

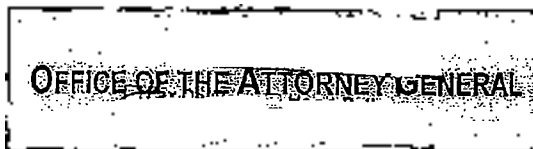
In order to meet this imminent threat, the Constitutional authority provided under Article III §10 is invoked, including, but not limited to, the authority to:

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

1. Enter into a loan agreement among the Commonwealth, CHC and MPLT; and
2. Suspend all statutory or regulatory provisions as required; and
3. The reprogramming of funds necessary to meet this emergency.

Done this 6th day of March, 2012


Benigno R. Fitial
GOVERNOR



ATTORNEY GENERAL OPINION NO. 06-10

DATE: 07/28/06

TO : Secretary of Public Lands
FROM : Attorney General
SUBJECT : Constitutionality of Certain Parts of Public Law 15-2

At the request of the Secretary of the Department of Public Lands (DPL), the Office of the Attorney General has analyzed parts of PL 15-2 against Article XI of the Commonwealth Constitution to determine if any conflicts of law exist.

Various questions of constitutional law are raised. PL 15-2, Section 3 repeals and re-enacts PL 10-57, PL 12-33 and PL 12-71 as a new Article 3 under Title 1, Chapter 13 of the Commonwealth Code. The provisions of PL 15-2 applicable to this Opinion are:

- 1) The DPL's authority over the administration, use, leasing, development and disposition of public lands does not extend to the issuance of land use permits and licenses, except as specifically provided for in PL 15-2.
- 2) The DPL shall submit each year a proposed annual budget for the next fiscal year in accord with the budgeting and planning procedures applicable to all departments of the Executive Branch. Within its proposed budget, the DPL shall itemize all personnel, travel, and other expenses for the fiscal year in question; the sums required to be expended during the year with respect to its leasing responsibilities and the homestead program; sums required to be held in reserve for approved homesteads or other DPL programs in the next two fiscal years; a detailed statement of all other DPL assets, liabilities, revenues and expenditures; and the estimated sum to be transferred at the end of the fiscal year to the Marianas Public Land Trust (MPLT).
- 3) A fund to be known as the "DPL Operations Fund" shall be maintained by the Department of Finance separate and apart from the General Fund Bank Account(s) and other funds of the Commonwealth Government.
- 4) The DPL shall, within 120 days after the effective date of PL 15-2, in consultation with the Office of Personnel Management, take appropriate actions to ensure that all DPL employees are subject to the provisions of PL 7-31.

I. LEGAL ISSUES

The questions posed implicate four legal issues:

1. Notwithstanding the authority granted under Article XI, Sections 3 and 5 g) of the Commonwealth Constitution, can the Legislature restrict or deny DPL from issuing permits and licenses for the commercial use of public lands?
2. Notwithstanding Article XI, Section 5 g) of the Commonwealth Constitution that provides that the DPL, successor to the Marianas Public Land Corporation (MPLC), shall submit its budget to the Legislature for information purposes only, can the Legislature require the DPL to submit an annual budget requiring approval and appropriation in accord with budgeting and planning procedures applicable to all departments of the Executive Branch?
3. Notwithstanding Article XI, Sections 3 and 5 g) of the Commonwealth Constitution, can the Legislature require the DPL to deposit its Northern Marianas Descent funds in an account under the maintenance of the Secretary of Finance?
4. Notwithstanding Article XI, Sections 3 and 5 g) of the Commonwealth Constitution, can the Legislature require DPL employees to be subject to PL 7-31, and to be administered by the Office of Personnel Management?

II. SHORT ANSWERS

1. No. Article XI, Sections 3 and 5 g) gives the DPL, as successor to the Marianas Public Land Corporation, the exclusive authority to manage and dispose of public lands in the Commonwealth.
2. No. Article XI, Section 5 g) provides that the DPL, as successor to the Marianas Public Land Corporation, shall submit its budget to the Legislature for information purposes only.
3. No. Article X of the Commonwealth Constitution gives the Secretary of Finance the responsibility only over public funds (taxpayer funds), not Northern Marianas Descent funds. Article XI, Section 3 gives the DPL, as successor to the Marianas Public Land Corporation, exclusive authority to manage and dispose of public lands in the Commonwealth, which necessarily includes receiving, managing and expending the revenues from the commercial use of public lands in accordance with Article XI, Section 5 g).
4. No. Article XI, Sections 3 and 5 g) provide that the DPL, as successor to the Marianas Public Land Corporation, has exclusive authority to manage and dispose of public lands in the Commonwealth and, further, that it shall retain funds received

from the commercial use of public lands for reasonable expenses of administration and management, land surveying, homestead development, and any other expenses reasonably necessary for the accomplishment of its functions, which necessarily includes personnel costs and other related costs of its operations.

III. ANALYSIS

Article XI, Section 1 of the Commonwealth Constitution provides:

“Section 1: Public Lands. The lands to which right, title or interest have been or hereafter are transferred from the Trust Territory of the Pacific Islands to any legal entity in the Commonwealth under Secretarial Order 2969 promulgated by the United States Secretary of the Interior on December 26, 1974, the lands as to which right, title or interest have been vested in the Resident Commissioner under Secretarial Order 2989 promulgated by the United States Secretary of the Interior on March 24, 1976, the lands as to which right title or interest have been or hereafter are transferred to or by the government of the Northern Mariana Islands under Covenant Article VIII, and the submerged lands off the coast of the Commonwealth to which the Commonwealth now or hereafter may have a claim of ownership *are public lands belonging collectively to the people of the Commonwealth who are of Northern Marianas descent.*”

N.M.I. Const. art. XI, § 1 (emphasis added).

Article XI, Section 3 of the Commonwealth Constitution provides:

“Section 3: Surface Lands. The management and disposition of public lands except those provided for by section 2 shall be the responsibility of the Marianas Public Land Corporation.”

N.M.I. Const. art. XI, § 3.

Article XI, Section 4 f) of the Commonwealth Constitution provides:

“f) After this Constitution has been in effect for at least twelve years, the Corporation shall be dissolved and *its functions* shall be transferred to the executive branch of government.”

N.M.I. Const. art. XI, § 4 f) (emphasis added).

Public Law 15-2, Section 3, provides in part:

“Section 101. The Department of Public Lands. The Department of Public Lands is hereby established within the Executive Branch *to manage and administer the Commonwealth’s public lands under the provisions of Article XI of the Constitution.*”

PL 15-2, Section 3 (in part, emphasis added).

The CNMI Constitution, Article XI, Section 4 creates and dissolves the former Marianas Public Land Corporation (MPLC). Upon dissolution of MPLC, "... its functions shall be transferred to the executive branch of government." N.M.I. Const. art. XI, § 4 f).

Dissolving MPLC did not dissolve any of the responsibilities under Article XI except those relating to the structure of the public corporation. A public corporation such as MPLC is simply a legal entity that has certain enumerated responsibilities. In the case of MPLC, the responsibilities were the Fundamental Policies. A corporation (MPLC) is like a container. The Fundamental Policies are like the contents. When MPLC was dissolved, all that happened was the "shell," or the "container," was eliminated and the "contents," or "guts of the corporation" were relocated to the Executive Branch. Notwithstanding the relocation or transfer to the Executive Branch, the Fundamental Policies (functions) remained intact.

Article XI, Section 5 lists the Fundamental Policies that govern how public lands in the Commonwealth are to be managed and disposed of. These same Fundamental Policies survived the dissolution of MPLC to this day, since they are the "functions" that were transferred to the Executive Branch of government upon the dissolution of MPLC. To conclude otherwise would leave no "functions" to be transferred. Therefore, all Fundamental Policies listed under Article XI, Section 5 are the same Constitutional functions that the DPL operates under today. Below are the Fundamental Policies listed in Section 5:

"Section 5: Fundamental Policies. The Marianas Public Land Corporation shall follow certain fundamental policies in the performance of its responsibilities.

a) The corporation shall make available some portion of the public lands for a homestead program. A person is not eligible for more than one agricultural and one village homestead. A person may not receive a freehold interest in a homestead for three years after the grant of a homestead and may not transfer a freehold interest in a homestead for ten years after receipt except that these requirements are waived for persons who have established a continuous use of public lands for at least fifteen years as of the effective date of this Constitution. At any time after receiving the freehold interest, the grantee may mortgage the land provided that all funds received from the mortgagee be devoted to the improvement of the land. Other requirements relating to the homestead program shall be provided by law.

b) The corporation may not transfer a freehold interest in public lands for twenty years after the effective date of this Constitution, except for homesteads as provided under section 5(a), or for use for a public purpose by another agency of government, or for land exchanges to accomplish a public purpose as authorized by law.

c) The corporation may not transfer a leasehold interest in public lands that exceeds twenty-five years including renewal rights. An extension of not more than fifteen years may be given upon approval by three-fourths of the members of the legislature.

d) The corporation may not transfer an interest in more than five hectares of public land for use for commercial purposes without the approval of the legislature in a joint session.

e) The corporation may not transfer an interest, and may prohibit the erection of any permanent structure, in public lands located within one hundred fifty feet of the high water mark of a sandy beach, except that the corporation may authorize construction of facilities for public purposes.

f) The corporation shall adopt a comprehensive land use plan with respect to public lands including priority of uses and may amend the plan as appropriate.

g) 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 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.”

N.M.I. Const. art. XI, § 5.

Although not legally necessary, Public Law 15-2 reconfirms that the functions previously performed by the MPLC shall be transferred to the executive branch of government after its dissolution. PL 15-2, § 2(a). The Act further reinforces Article XI provisions by stating, “[t]he Department of Public Lands is hereby established within the Executive Branch to manage and administer the Commonwealth’s public lands *under the provisions of Article XI of the Constitution.*”

PL 15-2, § 3 (emphasis added).

The broad authority granted by Article XI is further explained in the Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (hereinafter the “Analysis”). According to the Analysis:

“The term disposition means sale, lease, and granting easements or other interests in the public lands. Under the power granted by this section [Article XI, Section 3], the corporation [MPLC, and necessarily its successors that are mandated to fulfill the functions of MPLC] may select, employ, promote and terminate employees, employ contractors and consultants, employ legal counsel, sue and be sued in its own name, provide liability insurance as it considers necessary, make contracts, borrow money within the limitations contained in article X, and take any other action necessary for the management or disposition of public lands.”

Analysis at 146.

The Analysis at the bottom of page 145 and top of page 146 defines the term “management” of public lands as including the preservation, improvement and use of the public lands.

A. Commercial Land Use Permits and Licenses

Some provisions in PL 15-2 conflict with Article XI, § 5 of the Commonwealth Constitution. For example, PL 15-2, § 3 states, “[t]he Department’s authority does not extend to the issuance of land use permits and licenses, except as specifically provided for in this Act, and does not limit in any respect the authority of other Commonwealth agencies to issue permits and licenses pursuant to their respective enabling legislation.” Of course other Commonwealth agencies are free to issue permits and licenses to carry out their mandates, however, DPL still has the ultimate responsibility to manage all public lands in the Commonwealth, including collection of revenues for the commercial use of the public lands, regardless of whether the management is accomplished by lease, permit, license or any other form of management agreement. It is not always practical or prudent to issue interests in land for all commercial purposes. For example, the use of public lands for commercial filming; roadside vendor businesses; temporary advertising by signs or banners; mining; or any other short term or temporary use. Permits and licenses are the sensible methods of regulating the commercial use of public lands. Not only do these methods eliminate the necessity of transferring an interest in the land, they allow for easy termination if the permit or license requirements are not complied with.

As stated earlier, the Analysis at page 146 gives MPLC (and its successors) broad powers to take whatever action is necessary for the management and disposition of public lands. The Analysis further restricts the Legislature from enacting limitations on the powers to manage and dispose of public lands. See Analysis at 151.

B. DPL Annual Budget

Although PL 15-2, § 3 mandates that DPL submit a proposed annual budget each year in accord with the budgeting and planning procedures applicable to all departments of the Executive Branch, this legislative mandate is directly in conflict with the “information purposes only” provision under Article XI, § 5 g) of the Commonwealth Constitution as mentioned above. The last sentence of Article XI, § 5 g) (above) confirms that the annual budget is to be submitted to the Legislature for information purposes only. There is no approval by the Legislature, nor is there a requirement for an appropriation. Article XI defines specifically how revenues derived from public lands are to be spent, and where the excess goes (MPLT). Since public land revenues are to be kept separate and apart from public (taxpayer) funds, appropriation is not necessary. Since submittal of the budget for information purposes only is part of the Fundamental Policies, or “functions”, the Legislature cannot change this mandate by legislation any more than it can change any other “function” under § 5.

The foregoing under Article XI, § 5 g) is enforced by the Analysis at page 159:

“It is intended that the Marianas Public Land Corporation (and necessarily its successors) be financially independent of the legislature and that it meet its expenses with the retained funds. There is no limitation on the percentage of the total revenues

received that the corporation may retain except the limitation of reasonableness and necessity set out in the last clause. The corporation also has the power to borrow to meet expenses.”

Analysis at 159.

C. Responsibility Over NMI Descent Funds and Procurement

PL 15-2, Section 3 requires that all debts, liabilities, obligations and operational expenses of the DPL shall be paid from the DPL Operations Fund bank account(s). The DPL Secretary is the expenditure authority over the Operations Fund bank account(s). Strictly applying these requirements suggests that DPL should maintain its own finance division, personnel division, procurement and travel division, etc., so that the operational expenses of administering these functions are paid out of DPL funds and not Executive Branch general funds.

Article X: Taxation and Public Finance defines how “taxpayer” and other public funds are to be managed and controlled. The language under Article X, Section I clearly speaks of “taxes,” “public funds,” and appropriation by the Legislature of “public money” for “public purposes.” Each and every Section under Article X talks about public funds, public debt, taxes, and appropriations of public funds. Section 8 gives the Department of Finance the responsibility to control and regulate the expenditure of public funds, and Section 9 allows a taxpayer to bring an action for breach of fiduciary duty by persons charged with the control of public funds. Clearly, Article X only involves management and control of funds in the Commonwealth general fund, and does not and cannot extend to any control over funds being held for the benefit of persons of NMI Descent. Those funds are to be managed and controlled under the strict fiduciary of DPL, pursuant to Article XI.

The Analysis starting at page 152 discusses the Fundamental Policies (Functions) under Article XI, Section 5. Important to the discussion of how control over NMI Descent Funds is limited, the Analysis states, in part:

“All matters not specifically mandated by the Constitution or delegated to the legislature are left to the discretion of the corporation. The corporation is not subject to any of the limitations imposed by article X.”

Analysis at 152.

As cited above in the Analysis at 146 under the definition of the term “disposition,” MPLC (and necessarily its successors) have the power to enter into contracts in its own name. Because DPL retains funds for its administration and other responsibilities, procurement of goods and services that are paid from retained funds must be under the authority and control of DPL.

D. DPL Personnel

PL 15-2, Section 5 requires that

“Within 120 days after the Effective Date of this Act, the Secretary of the Department, *in consultation with* the Office of Personnel Management, shall take appropriate actions to ensure that all Department employees are subject to the provisions of PL 7-31.”

PL 15-2, § 5 (emphasis added).

A plain common sense reading of this language suggests that DPL is only required to “consult” with OPM in ensuring that PL 7-31 is implemented. There is no requirement, nor can it be presumed, that the intent of this provision is for DPL to be administered by OPM. The contrary is true. As stated above, DPL operational expenses are to be paid out of DPL funds, not the Commonwealth general fund which funds OPM. DPL has already commenced its consultation with OPM pursuant to the Act and well within the 120-day requirement.

As stated earlier, the Analysis at page 146 empowers MPLC (and necessarily its successors) with the authority to select, employ, promote and terminate employees, employ contractors and consultants, employ legal counsel, and sue and be sued in its own name. Such authority makes perfect sense to avoid conflicts of competing interests over NMI Descent funds with Commonwealth general funds. NMI Descent funds should pay for all administrative expenses of the operations of DPL, and taxpayer funds should not be involved. By using OPM personnel to administer and regulate DPL’s personnel causes the Commonwealth “taxpayer” to unnecessarily pay part of DPL’s administrative expenses that revenues derived from public lands should pay.

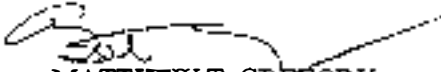
IV. CONCLUSION

Because of DPL’s unique responsibilities of managing the use and disposition of public lands in the Commonwealth for the collective benefit of persons of Northern Marianas Descent, it should be categorized as a semi-autonomous agency within the Executive Branch. As such, DPL must be free of the influences of public issues and the political needs of the Commonwealth in general. This necessarily requires total separation of its revenues from Commonwealth general funds in particular and the Department of Finance in general. The DPL, to avoid competing interests within the Executive Branch, should operate under its own umbrella of independence, bound by the standard of strict fiduciary care imposed by Article XI of the Commonwealth Constitution.

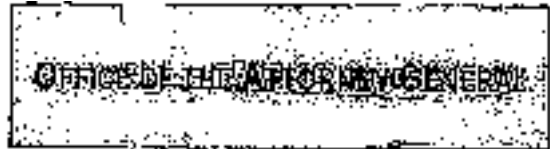
For the foregoing reasons, it is my opinion that:

1. The provision under PL 15-2, Section 103 a) that restricts DPL from issuing land use permits and licenses is in direct conflict with Article XI, Section 3 of the Commonwealth Constitution, and is therefore unconstitutional.

2. The provision under PL 15-2, Section 103 b) that requires DPL to submit a proposed annual budget for the next fiscal year in accord with the budgeting and planning procedures applicable to all departments of the Executive Branch is in direct conflict with Article XI, Section 5 g), and is therefore unconstitutional.
3. The provision under PL 15-2, Section 103 c) that establishes the “DPL Operations Fund” which shall be maintained by the Department of Finance, along with all related provisions under Section 103 c) are in direct conflict with Article XI, Sections 3 and 5 g), and are therefore unconstitutional. Accordingly procurement of goods and services shall remain with the DPL, and is not to be through the Department of Finance Procurement and Supply.
4. The provision under PL 15-2, Section 5. Transition, that requires DPL to consult with the Office of Personnel Management and to take appropriate actions to ensure that all DPL employees are subject to the provisions of PL 7-31 is in direct conflict with Article XI, Sections 3 and 5 g), and is therefore unconstitutional.



MATTHEW T. GREGORY
Attorney General



ATTORNEY GENERAL OPINION NO. 06-11

DATE: 08/07/06

TO : Secretary of Public Lands
FROM : Attorney General
SUBJECT : Mañagaha Island Landing and User Fees; Management of Mañagaha Island

At the request of the Secretary of the Department of Public Lands (DPL), the Office of the Attorney General has analyzed PL 11-64, PL 13-16 and PL 12-12 against Article XI of the Commonwealth Constitution to determine if any conflicts of law exist. Various questions of constitutional law are raised.

PL 11-64 was enacted on February 18, 1999, for the purpose of imposing a \$5.00 landing fee to be paid by non-resident passengers that disembark on Mañagaha Island. The public law obligated the Division of Public Lands, predecessor to the DPL, to collect the landing fees from all commercial carriers, and to submit a report of the collections at the end of each month to the Secretary of Finance. The revenues collected were to be placed in a special account and expended exclusively on certain Commonwealth projects.

PL 13-16 was enacted on July 3, 2002. The public law partially amended PL 11-64. The primary purpose of PL 13-16 was to appropriate \$2.6 million from Mañagaha Island landing fees collected under PL 11-64 to the Marianas Visitors Authority (MVA). The public law also required the Marianas Public Lands Authority (MPLA), another predecessor to the DPL, to immediately transfer \$650,704.00 into a Mañagaha Island Landing and User Fee Trust Account, which represented user fee collections by MPLA prior to the enactment of PL 11-64. Further, the law required future collections of the fees to be deposited in the Mañagaha Island Landing and User Fee Trust Account. The funds in the account are to be used for the maintenance and repair of public facilities on Mañagaha Island in accordance with the terms of the Agreement for Special Recreational Concession, Mañagaha Island, between the MPLA and Tasi Tours Transportation, Inc. Any remaining funds in the account at the end of each fiscal year were subject to appropriation by the Saipan and Northern Islands Legislative Delegation, as set forth in PL 11-64.

PL 12-12 was enacted on August 8, 2000. The primary purpose was to designate Mañagaha Island and its surrounding waters as a Marine Conservation Area, and to provide for management policies, administration and enforcement of marine conservation areas, and for other purposes. The public law used Article XIV, Section 1 of the Commonwealth Constitution as the authority for mandating that "the marine resources shall be managed, controlled, protected and preserved by the Legislature for the benefit of the people." PL 12-12, Section 4 provides in part:

Section 4. ~~Mañagaha Marine Conservation Area Established: Purpose.~~

(a) There is hereby established a marine conservation area called the “Mañagaha Marine Conservation Area,” consisting of the Isle of Mañagaha and its surrounding waters ...”

PL 12-12, Section 4 (in part).

The public law gives the Department of Lands and Natural Resources (DLNR) the exclusive authority to manage marine conservation areas. PL 12-12, Section 6. As shown under Section 4 above, the Isle of Mañagaha is included in the marine conservation area.

I. LEGAL ISSUES

Two legal issues are posed:

1. Notwithstanding the authority granted to the DPL under Article XI, Sections 3 and 5 g) of the Commonwealth Constitution, can the Legislature regulate the use of public lands in general, and Mañagaha Island in particular, by imposing a landing and user fee to be collected from nonresident visitors to Mañagaha Island?
2. Notwithstanding the authority granted to the DPL under Article XI, Sections 3 and 5 g) of the Commonwealth Constitution, can the Legislature regulate the use of public lands in general, and Mañagaha Island in particular, by declaring Mañagaha Island and its surrounding waters part of a marine conservation area to be managed exclusively by the DLNR?

II. SHORT ANSWERS

1. No. Article XI, Sections 3 and 5 g) gives the DPL, as successor to the Marianas Public Land Corporation, the authority to manage and dispose of public lands in the Commonwealth, which necessarily includes Mañagaha Island, and the exclusive authority to receive all moneys generated from the use of public lands.
2. No. Article XI, Section 3 gives the DPL, as a successor to the Marianas Public Land Corporation, the exclusive authority to manage and dispose of public lands in the Commonwealth, which necessarily includes Mañagaha Island.

III. ANALYSIS

Article XI, Section 3 of the Commonwealth Constitution provides:

“**Section 3: Surface Lands.** The management and disposition of public lands except those provided for by section 2 shall be the responsibility of the Marianas Public Land Corporation.”

N.M.I. Const. art. XI, § 3.

Article XI, Section 2 deals with submerged lands.

Article XI, Section 5 g) of the Commonwealth Constitution provides:

“**g)** 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 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.”

N.M.I. Const. art. XI, § 5 g) (emphasis added).

Public Law 15-2, Section 3, provides in part:

“**Section 101. The Department of Public Lands.** The Department of Public Lands is hereby established within the Executive Branch *to manage and administer the Commonwealth’s public lands under the provisions of Article XI of the Constitution.*”

PL 15-2, Section 3 (in part, emphasis added).

A. Mañagaha Island Landing and User Fees

On September 15, 1993, the Marianas Public Land Corporation, a predecessor to the DPL, promulgated rules and regulations governing the commercial use of Mañagaha Island. Citing Article XI of the Constitution that gives the MPLC the exclusive authority over management of public lands in the Commonwealth, the rules and regulations described the use of and placed restrictions on the commercial use of the Island in accordance with Articles XI and XIV. The rules and regulations further provided for the maintenance, security and other necessary issues relevant to the preservation of the Island for the purposes intended under Article XIV. To generate funds to carry out the maintenance, security and preservation of the Island, the rules and regulations created a landing and

user fee of \$5.00 to be assessed to every “tourist” that arrives on Mañagaha Island. Tourist was defined as a person who is not a resident of the CNMI. The fees collected are restricted and must be used only for the “... construction, maintenance, repair and/or upkeep of the improvements, infrastructure, appearance, safety and cleanliness of Mañagaha Island.” Rules and Regulations Regarding the Commercial Use of Mañagaha Island, Commonwealth Register, Volume 15, Number 09, September 15, 1993, Pages 1076, *et seq.*

PL 11-64 and PL 13-16 purporting to impose a landing and user fee on nonresidents disembarking on Mañagaha Island usurped the authority and took away from DPL and its predecessors the responsibility of managing and maintaining Mañagaha Island in accordance with Articles XI and XIV. DPL, and only DPL, has the Constitutional entitlement to collect revenues generated from the use of public lands in the Commonwealth. Any funds so collected must be preserved and used only to sustain DPL’s functions, and any funds not retained by DPL for such purposes shall be transferred to the Marianas Public Land Trust after the end of each fiscal year. See N.M.I. Const. art. XI, § 5 g). As stated above, all landing and user fees collected at Mañagaha Island have been restricted and are to be used only for the “... construction, maintenance, repair and/or upkeep of the improvements, infrastructure, appearance, safety and cleanliness of Mañagaha Island.”

On August 31, 2001, the Board of Public Lands, another predecessor to the DPL, entered into an Agreement for Special Recreational Concession, Mañagaha Island (Agreement), with Tasi Tours & Transportation, Inc., (Tasi) which granted to Tasi a license to use the Exclusive Concession Area on Mañagaha Island to operate commercial concessions. Under the Agreement, Tasi was required to establish the Mañagaha Island Landing and User Fee Trust Account for the deposit of landing and user fees collected from nonresident visitors to the Island. Tasi was authorized to expend the funds to construct, maintain, upkeep and repair public facilities, improvements, equipment and infrastructure on Mañagaha Island, to provide free public services on Mañagaha Island, to provide for public safety on Mañagaha Island, to provide for insurance of Public Lands improvements and equipment and liability insurance, and to maintain the cleanliness and appearance of Mañagaha Island.

Although PL 13-16 recognized the existence of the Agreement between the MPLA and Tasi Tours Transportation, Inc., which reserved landing and user fees for construction, maintenance, repair and/or upkeep of the improvements, infrastructure, appearance, safety and cleanliness of Mañagaha Island, the Legislature nonetheless continues to appropriate funds from the Mañagaha Island Landing and User Fee Trust Account – funds that have not even been collected yet. By doing so the Legislature ignores its own recognition of the existing Agreement in PL 13-16, along with the intended purposes of the landing and user fees set forth in the Agreement.

For example, on August 30, 2005, the Legislature, through PL 14-86, appropriated \$1,300,000 to MVA, and for other public purposes, “from the fees generated pursuant to Public Law 11-64.” Again, on December 9, 2005, through PL 14-99, the Legislature appropriated \$650,000 to construct official grandstands at the Francisco Palacios Baseball Stadium and Miguel B. Pangelinan Softball Field, the pathway projects for the Dandan Elementary School and Kagman Elementary School, and for the Marianas High School’s building J termite renovation. Then again, on July 5, 2006, the

Saipan and Northern Islands Legislative Delegation, through SLL 15-5, appropriated another \$650,000 from the landing Fees for the MVA, for construction of canoe houses, for the Saipan Mayor's office, for the Northern Islands Mayor's office, for PSS Headstart, for the CARLA project, for the independent programs at the Joeten-Kiyu Public Library. These appropriations totaling \$2,600,000 were appropriated in direct conflict with PL 13-16, which only allowed appropriation of landing fee revenues after a surplus was declared *after the end of each fiscal year*, and then only by the Saipan and Northern Islands Legislative Delegation. In less than one year the Legislature and the Saipan and Northern Islands Legislative Delegation have improperly appropriated more than twice what is normally collected from all nonresident visitors to Mañagaha Island in one year, and without regard for the intended purpose of the landing fees for "construction, maintenance, repair and/or upkeep of the improvements, infrastructure, appearance, safety and cleanliness of Mañagaha Island."

B. Management of Mañagaha Island

Article XIV of the CNMI Constitution has two sections. Section 1, provides:

"Section 1: Marine Resources. The marine resources *in waters off the coast* of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction under United States law shall be managed, controlled, protected and preserved by the legislature for the benefit of the people."

N.M.I. Const. art. XIV, § 1 (emphasis added).

It is clear from a plain reading of the language in Section 1 that the marine resources sought to be protected lies in the waters off the coast. Common sense tells us that marine resources would only involve the waters, not the land. Otherwise landmasses would also be mentioned. All landmasses in the Commonwealth are islands, so why would Mañagaha Island be singled out in this instance? As seen in Article XIV, Section 2 below, certain islands are restricted for purposes *other than marine resources*.

Article XIV, Section 2, provides:

"Section 2: Uninhabited Islands. The island of Mañagaha shall be maintained as an uninhabited place and used only for cultural and recreational purposes. The islands of Maug, Uracas, Asuncion, Guguan and other islands specified by law shall be maintained as uninhabited places and used only for the preservation and protection of natural resources, including but not limited to bird, wildlife and plant species."

N.M.I. Const. art. XIV, § 2.

PL 12-12 attempts to use the language in Section 1 to somehow include Mañagaha Island into the conservation area. Sections 1 and 2 are separate and distinct from one another, and there is no hint

of overlap between the two. Section 1 affects marine resources in coastal waters, and Section 2, as it affects Mañagaha Island, restricts the use of the Island to cultural and recreational purposes.

PL 12-12, Section 6 lists the marine conservation activities protected – all of which involve waterways and not surface lands:

- “(a) No harvesting or catching of fish or other marine life or natural resources within the designated boundaries of the conservation area shall be permitted, except as approved by regulation for scientific research, cultural and traditional practices, or educational studies.
- (b) No motorized or non-motorized watercraft, floating or submersible, or other means of aquatic transport shall be permitted within the conservation area, except as allowed by regulation for enforcement, scientific, recreational and educational purposes, or the transport of persons to and from the isle of Mañagaha, and for any other purpose deemed necessary by the Division to advance the policies set forth by this act and regulations.
- (c) No swimming, diving, snorkeling or other human activity shall be permitted within the conservation area, except as provided by regulation.
- (d) No person may engage in any exempt activity in subsections (a) or (b) of this section, unless a permit has been issued by the Division for such purpose pursuant to regulations.
- (e) The Division may further prohibit by citation, order, rule or regulation any activity which in any way would make a significantly negative or long-lasting impact on the conservation area.”

PL 12-12, Section 6 (a) through (e).

All of the activities listed above are water-related activities. It is impossible for the Island itself to be included in any of the protected activities. Since Mañagaha Island is within the so called “Mañagaha Marine Conservation Area” under PL 12-12, no person would be allowed on the Island unless the Division of Fish and Wildlife first issues a permit to that person. Further, no person would be allowed to swim in the waters around the Island unless the Division of Fish and Wildlife allows the activity by regulation. Clearly, the Legislature has shifted the management of Mañagaha Island from DPL to the DLNR and its division, the Division of Fish and Wildlife – a violation of Article XI, Section 3 of the Constitution.

PL 12-12 incorrectly uses the marine resources provisions of Article XIV, Section 1 to justify shifting the jurisdiction over Mañagaha Island to the DLNR and its Division of Fish and Wildlife, in direct violation of the management and disposition of all public land responsibilities of the DPL and its predecessors. PL 12-12 stretches beyond reason the area of marine resources to include Mañagaha Island itself. In this instance the Legislature improperly delegated authority to regulate public lands in the Commonwealth – a Constitutional function given to the DPL.

The DLNR is correctly charged with the responsibility of protecting the marine resources of the Commonwealth, which includes the waters surrounding Mañagaha Island. Notwithstanding this responsibility, any such authority for marine resource preservation must allow for the free flow of

tourists and Commonwealth residents to enjoy the cultural and recreational interests located on and around Mañagaha Island. Any restriction that affects the Constitutional privilege of using Mañagaha Island and its surrounding waters must also include DPL's responsibility to ensure that the cultural and recreational advantages of Mañagaha Island are maximized.

The Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (hereinafter the "Analysis") describes marine resources as those resources found in the waters off the coast of the Commonwealth over which the Commonwealth has jurisdiction. Marine resources are those resources found in the water such as fish, dissolved minerals, plant life suspended in water and other resources. Marine resources do not include resources found on or under the submerged lands. Those resources are public lands and are provided for by Article XI, Section 2. Analysis at page 181. It stands to reason, therefore, that marine resources also cannot include non-submerged lands, or surface lands.

Mañagaha Island, being a surface public land, is clearly within the jurisdiction of DPL, a predecessor of MPLC, and currently responsible for implementing the functions of Article XI.

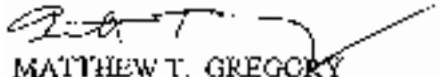
Mañagaha Island is being preserved for cultural and recreational purposes by the DPL. Commonwealth residents have the free use of the Island for cultural and recreational enjoyment, while the Island remains an important element of our tourism industry.

IV. CONCLUSION

For the foregoing reasons, it is my opinion that:

1. The DPL is responsible for the management and disposition of public lands in the Commonwealth under Article XI, Section 3 of the Commonwealth Constitution. As such, the DPL is charged with the responsibility of collecting all revenues from public lands for the purposes set forth under Article XI, Section 5 g). PL 11-64 and PL 13-16 that impose a \$5.00 landing and user fee to be paid by nonresident passengers who disembark on Mañagaha Island directly conflict with the Article XI responsibilities of DPL, and both public laws are, therefore, unconstitutional.
2. Because of the unconstitutionality of PL 11-64 and PL 13-16, PL 14-86, PL 14-99, and SLL 15-5 are invalid and also unconstitutional.
3. Mañagaha Island is not and cannot be included within the marine resources jurisdiction of DLNR, or its Division of Fish and Wildlife, as stated in PL 12-12. The responsibilities under Article XIV, Section 2, which include Mañagaha Island, do not merge into and become a part of Section 1, which defines marine resources. Since the DPL is the custodian of public lands in the Commonwealth and charged with the responsibilities of management and disposition, the DLNR and its Division of Fish and Wildlife do not have exclusive jurisdiction over Mañagaha Island. To the extent that

provisions of PL 12-12 give to the DLNR and its Division of Fish and Wildlife jurisdiction over Mañagaha Island to the exclusion of the DPL, or if they in any way interfere with the DPL's responsibility to maintain Mañagaha Island as an uninhabited place to be used only for cultural and recreational purposes, then such provisions are unconstitutional and, therefore, unenforceable.



MATTHEW T. GREGORY
Attorney General