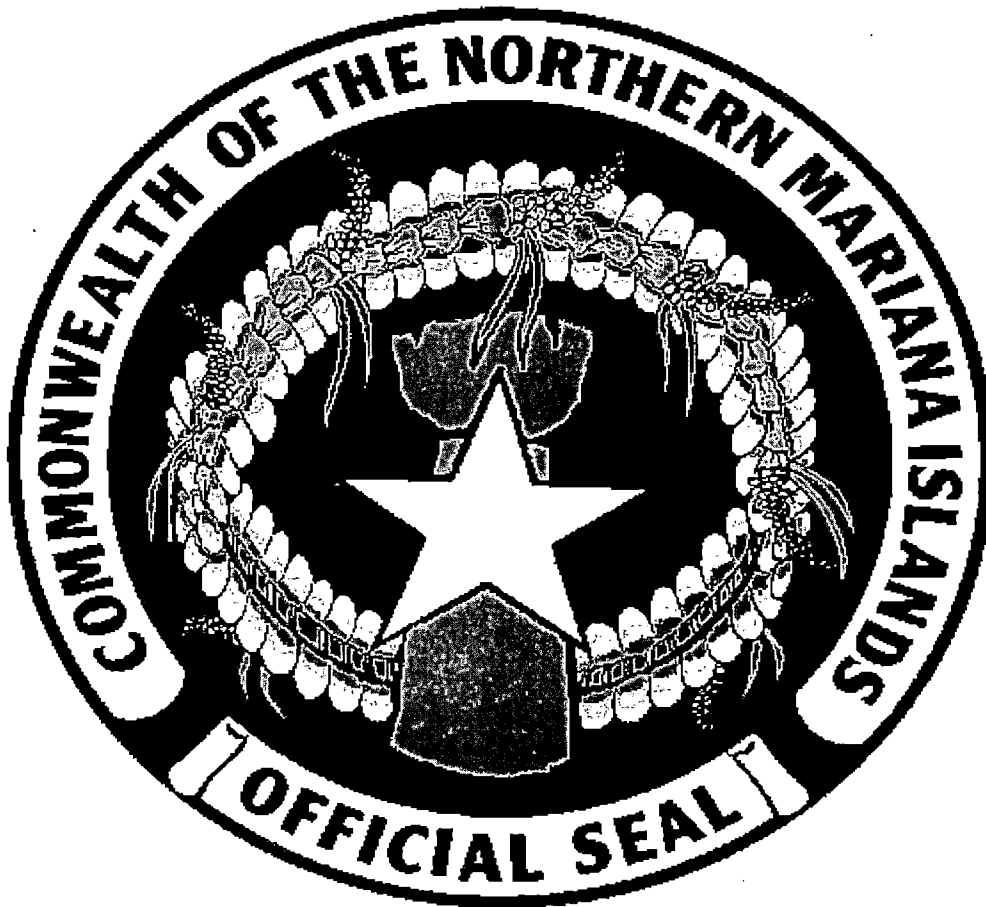


**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



COMMONWEALTH REGISTER

**VOLUME 41
NUMBER 12
DECEMBER 28, 2019**

COMMONWEALTH REGISTER

VOLUME 41
NUMBER 12
DECEMBER 28, 2019

TABLE OF CONTENTS

PROPOSED REGULATIONS

| | |
|---|---------------|
| Public Notice of Proposed Rules and Regulations of Conflict of Interest Chamorro/Carolinian Language Policy Commission | 042988 |
| Notice of Proposed Amendment of Regulations for the Department of Public Lands | 042997 |

ORDERS

| | |
|--|---------------|
| Labor Case No. 15-1207 Subject: Order Granting Complainant's Motion to Dismiss In the Matter of: Zaji O. Zajradhara v. Magisland, LLC Department of Labor | 043031 |
| Labor Case No. 16-009-09 Subject: Order Granting Complainant's Motion to Dismiss In the Matter of: Zaji O. Zajradhara v. ZY Corporation Department of Labor | 043035 |
| Labor Case No. 17-011 Subject: Order Granting Complainant's Motion to Dismiss In the Matter of: Zaji O. Zajradhara v. Pacific Health, Inc. Department of Labor | 043038 |
| Labor Case No. 17-045 Subject: Order Granting Complainant's Motion to Dismiss In the Matter of: Zaji O. Zajradhara v. RNR Holding Incorporated Department of Labor | 043041 |
| Labor Case No. 17-046 Subject: Order Granting Complainant's Motion to Dismiss In the Matter of: Zaji O. Zajradhara v. RNR Holding Incorporated Department of Labor | 043044 |
| Labor Case No. 19-025 Subject: Administrative Order In the Matter of: Zaji O. Zajradhara v. Nippon General Trading Corporation (SAIPAN) dba Country House Restaurant Department of Labor | 043047 |



Commonwealth of the Northern Mariana Islands
Chamorro/Carolinian Language Policy Commission

P.O. Box 503208 C.K. Saipan MP 96950
Tel: (670) 664-5321 Fax: (670) 664-5322



Ralph DLG. Torres
Governor

Arnold I. Palacios
Lt. Governor

PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS

The Chamorro-Carolinian Language Policy Commission (The Commission) intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedure of the Administrative Procedure Act, 1 CMC § 9104 (a). The regulations would become effective ten (10) days after adoption and publication in the Commonwealth Register. (1 CMC § 9105 (b)).

PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS

**ADOPTION OF CONFLICT OF INTEREST REGULATIONS FOR THE CHAMORRO-CAROLINIAN
POLICY COMMISSION**

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:

The Commonwealth of the Northern Mariana Islands, Department of Community of Cultural Affairs, Chamorro-Carolinian Language Policy Commission, intends to adopt as permanent regulations, pursuant to the requirements of the Administrative Procedure Act (1 CMC § 9104(a)). The regulations would become effective 10 days after adoption and publication in the Commonwealth Register (1 CMC § 9105(b)).

AUTHORITY: The DCCA Secretary and the Commission are authorized to promulgate these regulations pursuant to 1 CMC § 2354 & 3 CMC § 1203(d). The Commission Board adopted the said regulations on their regular board meeting on October 12, 2019.

THE TERMS AND SUBSTANCE:

§ 55-70-001 Purpose

The Chamorro-Carolinian Language Policy Commission (CCLPC) Board Members and staff of the Commission are subject to follow the Government Ethics Code Act of 1992.

§ 55-70-002 Responsibilities of Public Officers

Individuals appointed to or hired by the Commission are agents of the public and serve for the benefit of the public. They shall uphold and act in accordance with the applicable provisions of the Constitution of the United

§ 55-70-004 **Conflict of Interest**

There is a public trust to be protected from the danger of Conflicts of Interest.

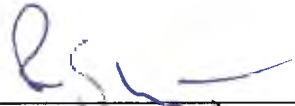
- a) A conflict of interest occurs when an official's responsibilities, duties, or activities conflict with the official's private interests, whether they are of a business, family, social, or other nature.
- b) A Board Member has an automatic conflict of interest in matters affecting a Board member's or Commission staff member's spouse, children, and siblings. A Board Member must automatically refrain from voting or engaging in any discussions relating to such matters.
- c) Board Members and Commission staff shall comply with the following conflict of interest restrictions:
 - 1. Shall not use their office/staff to seek employment or conduct business.
 - 2. Shall not use their position to obtain private gain or advantage for themselves, a relative, or an entity in which they have a present or potential financial interest.
 - 3. Shall not disclose or use confidential information that is not generally available to the public for his or her own or their spouse's, children's, or sibling's financial benefit.
 - 4. Shall not participate in transactions that they know their spouse, children, or sibling has a substantial financial interest.
 - 5. Shall not use public funds, time or equipment for their own private gain, unless authorized by law.
 - 6. Shall not participate in, vote on, influence or attempt to influence an official decision if they, or the business they are associated with, have a financial interest or potentially benefit, unless the interest or benefit is incidental to their position or would normally accrue to them in their profession, occupation or class.
 - 7. Shall not participate or engage in any conduct or activity that is prohibited by the Government Ethics Code Act of 1992.

THE SUBJECTS AND ISSUES INVOLVED: These proposed regulations establish Conflict of Interest Rules for Chamorro-Carolinian Language Policy Commission Board members and staff consistent with the Government Ethics Code Act of 1992.

DIRECTION 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 government offices in each senatorial district, in both English and in the principal vernacular. (1 CMC § 9104(a)(1)).

TO PROVIDE COMMENTS: Send or deliver your comments to the DCCA Secretary, at the above address, with the subject line "Chamorro-Carolinian Proposed Rules and Regulations – Conflict of Interest". Comments are due within 30 days from the date of publication of this notice. (1 CMC § 9104(a)(2)).

Submitted by:


ROBERT H. HUNTER
Secretary, DCCA


11-5-19
Date

Concurred by:


TITA HOCOG
Chairperson, CCLPC Board

11-07-19
Date

Attested by:


MELVIN L.O. FAISAO
Executive Director, CCLPC

11-05-2019
Date

Received by:


MATHILDA A. ROSARIO
Special Assistant for Administration

12/13/19
Date

Filed and
Recorded by:


ESTHER SN. NESBITT
Commonwealth Registrar

12-16-2019
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 the 16 day of Decembre, 2019.


EDWARD MANIBUSAN
Attorney General

1

1

1

1

1

1

1

1

1

1

1

1

1

1



Commonwealth of the Northern Mariana Islands Chamorro/Carolinian Language Policy Commission

P.O. Caller Box 10007 Saipan MP 96950
Tel: (670) 664-5321/6



Ralph DLG. Torres
Maga'låhi

Arnold I. Palacios
Segundu Maga'låhi

NUTISIAN PUBLIKU PUT I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA

Ufisinan Kumision Lingguåhin Chamorro yan Refaluwasch (I Kumision) ha intensiona para u adåpta kumu petmanienti i regulasion i mañechettun na Manmaproponi na Regulasion siha, sigun gi maneran i Åktun Administrative Procedure, 1 CMC § 9104 (a). I regulasion siempri mu ifektibu gi hålum dies (10) dihas dispues di adåptasion yan publikasion hålum i Rehistran Commonwealth. (1 CMC § 9105 (b)).

NUTISIAN PUBLIKU PUT I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA INADÅPTAN I KUMFLIKTA NA INTIRES I REGULASION PARA I KUMISION LINGGUÅHIN CHAMORRO-CAROLINIAN

I AKSION NI MA'INTENSIONA PARA U ADÅPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA:

I Commonwealth gi Sangkattan na Islas Mariånas, i Dipåttamentun Asuntun Kumunidåt yan Kuttura, i Kumision Lingguåhin Chamorro yan Carolinian, ha intensiona para u adåpta kumu petmanienti i regulasion, sigun gi dinimåndan i Åktun "Administrative Procedure," 1 CMC § 9104 (a). I regulasion siempri mu ifektibu gi hålum dies (10) dihas dispues di adåptasion yan publikasion hålum i Rehistran "Commonwealth." (1 CMC § 9105 (b)).

ÅTURIDÅT: I Sekretåriun i DCCA yan i Kumision manma'aturisa para u macho'gui esti na regulasion siha sigun para i 1 CMC § 2354 & 3 CMC § 1203(d). I Kuetpun Kumision ma'adåpta i sinangan na regulasion siha gi regulåt na huntan kuetpu-ñiha gi Oktubri 12, 2019.

I TEMA YAN SUSTÅNSIAN:

§ 55-70-001 I Puntu Palåbra

I Membrun Kuetpun i Kumision yan i impli'åo i Kumision Lingguåhin Chamorro-Carolinian (CCLPC) masuhetu para u matattiyi i Åktun "Government Ethics Code" i 1992.

§ 55-70-002 Responsibilidåt I Ufisiåt Publiku siha

I indibiduåt ni ma'apunta para pat ma'impleha ni i Kumision manehentin i publiku ya mansesietbi para i benifisiun i publiku. Debi na u mamantieni yan u makundukta gi minåulik na manera yan i aplikåpbli na "provisions" nu i "Constitution" i Istådu Unidus i Amerika, i "Constitution" nu i Sangkattan na Islas Mariånas, yan i aplikåpbli na lai yan regulasion i CNMI.

§ 55-70-003 Areklamentun Kumision

I Membrun Kuetpu yan i impli'ão i Kumision Lingguåhin Chamorro-Carolinian debi na u matattiya i areklamentu yan i manma'apueba na manera siha ginin i Kumision yan/pat i Eksakatibun Direktot para i Kumision.

§ 55-70-004 Petsonat Intires

Guaha hinenggin pupbliku para u maprutehi ginin i piniligrun i Petsonat Intires.

- a) I kumflikta masusesedi annai i responsibilidat, ubligasion, pat aktibidat kumumflikta yan i petsonat intires i ufisiat, achukka bisnis, familia, sosiât, pat otu siha.
- b) I Membrun Kuetpu gai insigidas petsonat intires gi hâlum i kasu ni inafekefeka i membrun Kuetpu pat impli'ão i Kumision asaguan-ñiha, famagu'un-ñiha, yan mañe'lun-ñiha siha. I Membrun Kuetpu debi insigidas na u suhâyi mambota pat manenggansa gi hâlum maseha hâfa na kumbetsasion ni mu asosiât yan i kaosa.
- c) I Membrun Kuetpu yan i impli'ão Kumision debi na u matattiya i mantinattiya na ristiksion petsonat intires siha:
 1. Ti debi na u ma'usa i ufisina/impli'ão ni para u mankundukta bisnis pat mamaisin chochu.
 2. Ti debi na u ma'usa i pusision-ñiha para u mahenta petsonat na ginanânsia pat para u mabentahan maisa siha yan i familian-ñiha, pat i kumpania ni mu asosiât pat para intires finansiat-ñiha.
 3. Ti debi na u famañangâni pat ma'usa kumfidensia na imfotmasion atyu i ti malalaknus gi pupbliku para benifisiun finansiat i asaguan-ñiha, famagu'un-ñiha, pat mañelun-ñiha.
 4. Ti debi na u fampattisipão gi transakzion ni matungu' na i asaguan-ñiha, famagu'un-ñiha, pat mañelun-ñiha manggai dinangkulu na intires finansiat.
 5. Ti debi na u ma'usa i fundun pupbliku, i ora pat ramienta para petsonat na ganânsian-ñiha, solu ma'aturisa ni lai.
 6. Ti debi na u fampattisipão hâlum, fambota, fansoyuk pat atempta para u fansoyuk disisasion ufisiat kumu yanggin, pat i bisnis ni manasosiât manggai intires finansiat pat sumiña mambenifisiu, solu i intires pat i benifisiu para i pusision-ñiha pat minamtan i prufessionat-ñiha, okupasion pat klas.
 7. Ti debi na u fampattisipão pat manenggansa gi hâlum maseha hâfa na kundukta pat aktibidat ni mapruhibi ni i Âktun "Government Ethics Code" i 1992.

SUHETU NI MASUMÂRIA YAN ASUNTU NI TINEKKA: Esti i manmaproponi siha na regulasion umestapblisi i Areklamentun i Kumflikta na Intires para i membrun i Kuetpu yan impli'ão i Kumision Lingguåhin Chamorro-Carolinian ni kumunsisti yan i Âktun "Government Ethics Code" i 1992.

DIREKSION PARA U MAPO'LU YAN PARA PUPBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi hâlum i Rehistran Commonwealth gi seksionan i manmaproponi yan nuebu na ma'adapta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi kumbinienti na lugat siha gi hâlum i civic center yan i ufisinan gubietnamentu siha gi kada distritun senadot, parehu Englis yan prinsipat na lingguåhin natibu. (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI UPIÑON SIHA: Na'hanão pat intrega hâlum i upiñon-mu guatu gi Sekretariun i DCCA, gi sanhilu' na address yan i suhetu na rãya "I Manmaproponi na Areklamentu yan Regulasion i Chamorro-Carolinian – Kumflikta na Intires". I upiñon siha debi na u manahâlum gi hâlum trenta (30) dihas ginin i fetchan i pupublikasion nu esti na nutisia. (1 CMC § 9104(a)(2)).

Nina' hálum as:

ROBERT H. HUNTER
Sekritáriu, DCCA

12-05-19
Fetcha

Kumunfotma as:

TITA HOCOG
Kabesiya, Kuetsun CCLPC

Fetcha

Tinestigu as:

MELVIN L.O. FAISAO
Eksakatibun Direktot, CCLPC

Fetcha

Rinisibi as:

MATHILDA A. ROSARIO
Ispisiát Na Ayudánte Para l Atministrasion

12/13/19
Fetcha

Pine'lu yan

Ninota as:

ESTHER SN. NESBITT
Remistran Commonwealth

12-16-2019
Fetcha

Sigun i 1 CMC § 2153(e) (Inaprueta i regulasion siha ni Abugádu Henerát ni para u macho'gui kumu fotma) yan 1 CMC § 9104(a)(3) (hentan inapruetan Abugádu Henerát) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueta kumu fotma yan sufisienti ligát ginin i CNMI Abugádu Henerát yan debi na u mapupblika, 1 CMC § 2153(f) (pupplikasion i areklamentu yan regulasion siha).

Mafetcha gi diha 16 gi December, 2019.

EDWARD MANIBUSAN
Abugádu Henerát

Fetcha

title

1-1-1940
1-1-1940
1-1-1940

1-1-1940

1-1-1940

1-1-1940

1-1-1940



Commonwealth of the Northern Mariana Islands Chamorro/Carolinian Language Policy Commission

P.O. Caller Box 10007 Saipan MP 96950
Tel: (670) 664-5321/6



Ralph DLG. Torres
Lappal Soulemelem

Arnold I. Palacios
Soumááng

ARONGORONGOL TOULAP REEL POMMWOL ALLÉGH ME MWÓGHUTUGHUTÚL
Bwulasiyol Ammwelil Alléghúl Kkapasal Chamorro me Refaluwasch (Commission we) igha re mánghemángil rebwe adóptááli Pommwol Mwóghutughut ikka e appasch bwe ebwe lléghló, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104 (a). Ebwe bwunguló mwóghutughut kkal llól seigh (10) ráál mwiril aal adóptááli me akkatééwowul me llól Commonwealth Register. (1 CMC § 9105(b)).

ARONGORONGOL TOULAP REEL POMMWOL ALLÉGH ME MWÓGHUTUGHUTÚL
ADÓPTAAL FITIGHOOGHO NGÁRE PETSONAT NGÁLI BWULASIYOL AMMWELIL ALLÉGHÚL
KKAPASAL CHAMORRO ME REFALUWASCH

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL ALLÉGH ME
MWÓGHUTUGHUT KKAAL: Commonwealth Téél Falúw kka Efáng llól Marianas, Bwulasiyol Ammwelil Sóobw me Kko, Bwulasiyol Ammwelil Alléghúl Kkapasal Chamorro me Refaluwasch, re mánghemángil rebwe adóptááli bwe ebwe lléghló mwóghutughut, sáangi milikka e ffil ngáli Administrative Procedure Act (1 CMC § 9104(a)). Ebwe bwunguló mwóghut kkal seigh ráál mwiril aar adóptáánil me akkatééwowul me llól Commonwealth Register (1 CMC 9105(b)).

BWÁNGIL: Eyoor bwángiir Sekkretóoriyol DCCA fengál me Commission reel rebwe arongawow mwóghutughut kkal sáangi 1 CMC § 2354 & 3 CMC § 1203(d). Board-il Commission ra adóptáánil mwóghutughut ikka e lo igha re yéélágh board wóól Sarobwél 12, 2019.

KKAPASAL ME AWEEWEL:

§ 55-70-001 BWULUL

Bwulasiyol Ammwelil Alléghúl Kkapasal Chamorro me Refaluwasch (CCLPC) Board Members me schóó kka re angaang me Commission rebwe attabweey ngáli Government Ethics Code-il 1992.

§ 55-70-002 LEMELEMIL SOU ANGAANG

Aramas ikka re áffiliir ngáre re umwuur rebwe angaang sáangi Commission igha iir schóór angaangil toulap me rebwe aliliis ngáli ghatchúl toulap. Rebwe aghatchú mwóghutughutúl me féfféér ikka e ffil ngáli paayúl Constitution-il United States States of America, Constitution-il Falúw Kka Efáng llól Marianas, me allégh ikka e ffil me mwóghutughutúl CNMI.

§ 55-70-003 Mwóghutughutúl Commission

Board Members me schóól angaangil Bwulasiyol Ammwelil Alléghúl Kkapasal Chamorro me Refaluwasch rebwe attabweey ngáli alléghúl me mwóghutughut ikka aa átirow sáangi Commission me/ngáre Executive Director-il Commission.

§ 55-70-004 Conflict of Interest

Eyoor apilúghúlúgh sáangi toulap iye re pileey sáangi nngawal Fitoghoogho ngáre Petsonat.


- a) Eyoor fitighoogho ngáre escháy souangaang ngáre official e conflict reel aal lemelem, angaang, ngáre mwóghutughut fengál me aar “private interests”, inamwo ngáre business, familiya, social, ngáre bwal cew masamas.
- b) Board Member iye e ffisch igha e conflict llól milikka e lifilifil reel aal Board Member ngáre schóól angaang reel schóólimweer, layúr, me bwiir. Board Member esóóbw tuutá ngáre toolong llól me apasa milikka e lo bwe e ffil.
- c) Board Members me schóól angaangil Commission rebwe attabweey ngáli abwungubwungúl afal fengál me pilil fitighoogho ngáre petsonat ikka e amwirimwiritiw:
 1. Ese mmwel rebwe yáali aar bwulasiyo/schóól angaang reel ebwe ghutt angaang ngáre eyoor business iye rebwe amwuri.
 2. Ese mmwel rebwe yáali aar position reel rebwe bweibwogh “private gain” ngáre “advantage” ngáliir, familiya, ngáre cew “entity” iye eyoor aar “potential financial interest”.
 3. Ese mmwel rebwe fang ngáre isiisiwow arongorong iye ese ffil ngáliir toulap ngáli aal ngáre schóólimweer, layúr, ngáre “financial benefit” ngáli bwiil.
 4. Esóóbw tuutá llól mwoghutughut ikka e ghuleey bwe eyoor fitighoogho iye elo petsonat ngáli schóólimweer, layúr, ngáre bwiir.
 5. Esóóbw yááyá aar selaapi toulap, oora ngáre peiráágh ngáli aar “private gain” solu eyoor bwángil sáangi allégh.
 6. Ese mmwel ubwe tuutá, bota, lemeli ngáre sótoli ghikkilil offisiat ngáre re, ngáre “business” imwu re iir fengál, eyoor “financial interest” ngáre “potentially benefit”, solu eyoor “interest” ngáre “benefit” iye elo bwe “incidental” ngáli aar angaang ngáre iye e lo bwe re bweibwogh llól yaar angaang, tarabwaagho ngáre “class”.
 7. Ese mmwel ebwe tuutá ngáre lo llól mwóghutughut ikka e stippa sáangi Government Ethics Code Act-il 1992.

KKAPASAL ME ÓUTOL: E itittiw sáangi pommwol mwóghutughut Alléghúl Conflict of Interest ngáli Board members me schóól angaangil Chamorro -Refaluwasch Lanugage Policy Commission iye e weewe fengál me Government Ethics Code Act-il 1992.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Pommwol Mwóghutughut kkal me llól Commonwealth Register llól táilil pommwol me ffél mwóghutughut ikka ra adóptáálil (1 CMC § 9102(a)(1)) me ebwe appaschetá llól civic center llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch. (1 CMC § 9104(a)(1)).


REEL ISIISILONGOL KKPAS: Afanga ngáre bwughiló yóómw ischil kkapas ngáli Sekkretóóriyol DCCA, reel félefél iye e lo weiláng, ebwe lo reel subject line “Chamorro-Carolinian Proposed Rules and Regulations – Conflicts of Interest”. Ebwe toolong kkapas llól eliigh ráál mwiril aal akkatééwow arongorong yeel. (1 CMC § 9104(a)(2)).

Isáliyalong:


ROBERT H. HUNTER
Sekketóóriyo, DCCA

12-05-19
Ráál

Átirowal:


TITA HOCOG
Chairperson, CCLPC Board



Ráál

Aalletal:


MELVIN L.O. PARDO
Executive Director, CCLPC



Ráál

Bwughiyal:


MATHILDA A. ROSARIO
Special Assistant ngáli Administration

12/13/19
Ráál


Ammwelil:


ESTHER S.N. NESBITT
Commonwealth Registrar

12-16-2019
Ráál

Sángi 1 CMC § 2153(e) (sángi átirowal AG reel mwóghutughut kkal bwe aa ffil reel fféerúl) me 1 CMC § 9104(a)(3) (mwiril aal átirowa sángi AG) reel pommwol mwóghutughut kka e appasch bwe ra takkal amwuri fischiiy me átirowal bwe aa ffil reel fféerúl me legal sufficiency sángi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (akkatééwowul allégh me mwóghutughut).

Aghikillátiw wóol 16 ráálil December, 2019.


EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

1871

1871

1871



Commonwealth of the Northern Mariana Islands
Office of the Governor
DEPARTMENT OF PUBLIC LANDS



**NOTICE OF PROPOSED AMENDMENT OF REGULATIONS FOR THE
DEPARTMENT OF PUBLIC LANDS**

INTENDED ACTION: TO AMEND REGULATIONS AFTER CONSIDERING PUBLIC COMMENT: The Commonwealth of the Northern Mariana Islands, Department of Public Lands ("the Department") intends to amend its regulations in accordance to the attached proposed amendments, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The amendments would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The Department has the inherent authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to Article XI of the Commonwealth Constitution and 1 CMC §2801 *et. seq.*

THE TERMS AND SUBSTANCE: The attached Regulation proposes to reduce the percentage of Fair Market Value calculations and are in conformity with the Department's obligation to objectively manage the use and disposition of public lands set forth at 1 CMC § 2801 *et. seq.* The amendment will affect Matured Leases, Leases that have fulfilled its 40-year term and exhausted its extension period.

THE SUBJECTS AND ISSUES INVOLVED: These amendments to §145-70-110 Lease Agreement Requirements include the following:

1. Define Matured Leases for the purpose of distinguishing between New Leases and Establish Leases that have reached its maximum term in accordance with DPL Policies and Regulations
2. Clarify difference between new leases, lease renewals and matured leases.
3. Reduce the fee from 5% of Fair Market Value to up to 3% of Fair Market Value as a basis for rent calculations for matured leases.


DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Amendments shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and this notice shall be 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 the Department of Public Lands Attn: Secretary, at the address below, fax or email address. Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).

OFFICE OF THE
ATTORNEY GENERAL
CIVIL DIVISION

mc

2019 DEC 16 PM 1:50

Submitted by: 
Marianne Concepcion-Teregeyo
Secretary, Department of Public Lands

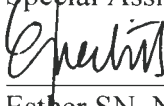
13 DEC 2019

Date

Received and Filed by: 
Mathilda A. Rosario
Special Assistant for Administration

12/16/19

Date


Received and Filed by: 
Esther SN. Nesbitt
Commonwealth Registrar

12.26.2019

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 the 26th day of December, 2019


Hon. Edward Manibusan
Attorney General



Commonwealth of Sankattan na Islas Mariānas
Ofisinan Mlaga'lāhi
DIPATTAMENTUN TANU' PUPBLIKU



**NUTISIA PUT I MANMAPROPONI NA AMENDA NU I REGULASION SIHA PARA I
DIPATTAMENTUN TANU' PUPBLIKU**

I AKSION NI MA'INTENTSIONA: PARA U AMENDA I REGULASION SIHA DISPUES DI KUNSIDERASION I UPIÑON I PUPBLIKU: I Commonwealth gi Sankattan Siha na Islas Mariānas, Dipattamentun I Tanu' Pupbliku ("I Dipattamentu") ha intensiona para u amenda iyon-ñiha Regulasion gi sigun mañechettun i mapropoñi na amenda siha, sigun para i maneran i Åkton Atministrasion Procedure, 1 CMC §9104(a). I amenda siha para u ifektibu gi hālum dies (10) dihas dispues di adaptasion yan publikasion gi hālum i Rehistran Commonwealth. (1 CMC § 9105(b))

ÅTURIDÅT: I Dipattamentu gai aturidåt para u adaptā i areklamentu yan regulasion siha ni para u makonsigi mo'na i obligasion yan responsabilidåt-ñiha siha sigun i Attikulu IX giya i Commonwealth Konstitusion yan 1 CMC §2801 et. Seq.

I TEMA YAN SUSTĀNSIAN I PALĀBRA SIHA: I chechettun na Regulasion mapropoñi para u ribāha i pusentun katkulasion i "Fair Market Value" ya mangu mfotmi yan i ubligasion i Dipattamentu para u maneha i usan yan dispusision nu tanu' pupbliku ni mapega mo'na gi 1 CMC § 2801 *et. seq.* I amenda siempri ha afekta i "Matured Leases," i Atkilu ni ha kumpli' kuarenta āñus na temān-ña ya ma'usa i tiempun ekstension-ña.

I SUHETU NI MASUMĀRIA YAN ASUNTU NI TINEKKA: Esti na amenda siha para i §145-70-110 Dimāndan i Kuntrātan Atkilu ingklusu i mantinattiyi:

1. Difina i "Matured Leases" para i rason nu difirensian i Nuebu na Atkilu yan i ma'istapblisa na Atkilu ni ha takka' i tiempun temān-ña ni sumigun yan i Regulasion yan "Policies" i DPL.
2. Na'klāru i difirensian i nuebu na Atkilu, rinuebun atkilu yan "matured leases."
3. Ribāha i fee ginin singku pusentun (5%) nu i "Fair Market Value" para tres pusentu (3%) nu "Fair Market Value" kumu fundasion para katkulasion atkila para i "matured leases."

DIREKSION PARA I PINE'LU YAN I PUPBLIKASION: Esti i Manmapropoñi na Amenda siha debi na u mapublika gi hālum i Rehistran Commonwealth gi hālum i seksiona ni manmapropoñi na regulasion (1 CMC § 9102(a)(1)), ya u mapega gi hālum kumbinienti na lugāt siha giya i civic center yan gi hālum ufisinan gubietnu gi kada distritun senatorial, parehu Inglis yan i dos na lingguāhin natibu, (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI UPIÑON SIHA: Na'hālum pat intrega i upiñon-mu siha para i Dipattamentun Tanu' Pupbliku Attn: Sekretāria, gi sanpapa' na address, fax pat email address. I upiñon siha debi na u fanhālum gi hālum trenta (30) dihas ginin esti na nutisian publikasion. Putfabot na'hālum iyo'-mu data, views pat atgumentu siha. (1 CMC § 9104(a)(2)).

I Dipattamentun Tanu' Pupbliku ha aprueba i mañechettun na regulasion siha gi fetcha ni malista gi sanpapa'.

Nina'hálum as:


MARIANNE CONCEPCION-TEREGEYO
Sekretária, Dipáttamentun Tanu' Pupbliku

13 DEC 2019
Fetcha

Rinisibi yan
pine'lu as:


MATHILDA A. ROSARIO
Ispisiát Na Ayudánti Para I Atministrasion

12/16/19
Fetcha


Pine'lu yan
Ninota as:


ESTHER SN. NESBITT
Rehistran Commonwealth

12.26.2019
Fetcha

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

Mafetcha gi diha 26th, gi December 2019.


Hon. EDWARD MANIBUSAN
Abugádu Henerát



Commonwealth Téel Falúw kka Efáng llól Marianas
Bwulasiyol Lappal Soulemelem
BWULASIYOL AMMWELIL FALUWEER TOULAP



ARONGORONG REEL POMMWOL LIIWEL NGÁLI
BWULASIYOL AMMWELIL FALUWEER TOULAP

MÁNGEMÁNGIL MWÓGHUT: REBWE LIIWELI MWÓGHUTUGHUT MWIRIL AAR AMWURI SÁNGI TOULAP: Commonwealth Téel Falúw kka Efáng llól Marianas, Bwulasiyol Ammwelil Faluweer Toulap (“Bwulasiyo we”) re mángemángil rebwe liiwelil mwoghutughut ikka e appasch bwe liiwel, sáangi mwóghutghutúl Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló liiwel kkal llól seigh ráál mwiril aal adóptááli me akkatééwowul me llól Commonwealth Register. (1 CMC § 9105(b)).

BWÁNGIL: Eyoor bwángil Bwulasiyo reel rebwe adóptááilil allégh me mwóghutughut llól igha ebwe tééló mmwal reel lemelemil me mwóghutughutúl sáangi Article XI reel Commonwealth Constitution me 1 CMC §2801 et. seq.

KKAPASAL ME AWEEWEL: Mwóghutughut ikka e appasch e lo bwe pommwol igha rebwe aghitighiitailó percentage reel calculation-il Fair Market Value me e weewe fengál me aar Bwulasiyo igha reel rebwe lemeli bwe ebwe ghatch mwóghutughutúl reel yááyál me “disposition” reel faluweer toulá iye ebwe tééló mmwal me 1 CMC § 2801 et.seq. Liiwel yeel ebwe siiweli “Matures Leases”, Atkkilóón ikka aa mwúтч reel aal fááigh ráál reel abwungubwungúl me takkeló reel aar “extended period”.

KKAPASAL ME ÓUTOL: Liiwel ngáli § 145-70-110 Abwungubwungúl Atkkilóón ikka e ffil ebwe schuulong milikka e amwirimwiritiw:

1. Ebwe lo aweewel Matured Leases ngáli bwulul ebwe ffat Ffél Atkkilóón me Atkkilóón ikka yoor Ghikkillil ikka aa toori “maximum term” llól abwungubwung fengal me Alléghúl me Mwóghutughutúl DPL.
2. Ebwe ffat meeta kka ese weewe reel ffél atkkilóón, atkkilóón ikka e lo bwe “renewals” me “matured leases”.
3. Ebwe ghitighiitiló fee reel 5% reel Fair Market Value mwet ngáli 3% reel Fair Market Value e lo bwe basis ngáli calculation-il atkkilóón ngáli “matured leases”.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Pommwol Liiwel kal me llól Commonwealth Register llól táilil pommwol me ffél mwóghutughut ikka e ra adóptááilil (1 CMC § 9102(a)(1) me ebwe appaschetá arongorong yeel me llól civic center me bwal llól bwulasiyol gobentameento llól senatorial district, fengál reel English me mwaliyaasch. (1 CMC § 9104(a)(1)).

REEL ISIISILONGOL KKPAS: Afanga ngáre bwughiló yóómw ischil kkapas ngáli Bwulasiyol Ammwelil Faluweer Toulap Attn: Secretary, reel féléfél iye e lo faal, fax ngáre email. Ebwe toolong kkapas llól eliigh ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views ngáre angiingi. (1 CMC § 9104(a)(2)).

Bwulasiyol Ammwelil Faluweer Toulap ra átirowa Mwoghutughut ikka e appasch wóól ráál iye elo faal.

Isáliyalong:



Marianne Concepcion- Teregeyo
Sekketóóriya, Bwulasiyol Ammwelil Faluweer Toulap

13 DEC 2019

Ráál

Bwughiyal:



Mathilda A. Rosario
Special Assistant ngáli Administration

12/16/19

Ráál

Ammwelil:



Esther SN. Nesbitt
Commonweatlh Registrar

12-26-2019

Ráál

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG reel mwóghutughut kkal bwe aa ffil reel fféerúl) me 1 CMC § 9104(a)(3) mwiril aal átirow sáangi AG) reel pommwol mwóghutughut kka e appasch bwe ra takkal amwuri fischiiy me átirowa bwe aa ffil reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (akkatééwowul allégh me mwóghutughut.)

Aghikkilátiw wóol

26th

ráálil



2019.

Part 001 - General Provisions

§ 145-70-001 Authority

The regulations in this chapter are promulgated by the Department of Public Lands pursuant to the authority set forth in Article XI of the Commonwealth Constitution and Public Law 15-2 (1 CMC § 2801 *et. seq.*)

§ 145-70-005 Purpose

These promulgated rules and regulations govern new leases, lease renewals, new temporary occupancy agreements, and temporary occupancy agreement renewals of public lands whether by permit, lease, or temporary authorization as in conformity with the obligation to objectively manage the use and disposition of public lands set forth at 1 CMC § 2801 *et. seq.* No commercial use of public lands is authorized or permitted without a valid lease, temporary occupancy agreement, permit, or concession agreement authorized by these regulations.

The Department of Public Lands (DPL) shall enforce these regulations to the extent allowed by law. DPL shall issue written notice of violation to any person or entity using or occupying public lands without authorization or in violation of these regulations for any activity or purpose.

§ 145-70-010 Definitions

- (a) “Applicant” means the person, persons, entity, or entities that have submitted a proposal to the DPL to lease or otherwise use public lands including respondents to requests for proposals issued by DPL for the leasing, development, or use of public lands, including without limitation persons or entities who have responded to one or more land use RFPs issued by the DPL.
- (b) “Commercial Use” means used for revenue generating activities. Active use means the actual physical operations or facilities generating revenue. Passive use means a supplementary use that augments the revenue generating operations or facility (e.g. parking lots). For purposes of these regulations, residential dwellings (e.g. condominiums, apartments or houses) are not recognized as Commercial Use.
- (c) “Department” means the Department of Public Lands (DPL).
- (d) “Government” means, for purposes of the regulations in this chapter, the departments and agencies of the CNMI Government other than the Department of Public Lands, unless otherwise specified in these regulations.
- (e) “Lessee” means the person, persons, entity, or entities holding leasehold interests in public lands.

(f) “Matured Leases” a property that has been leased for 40 consecutive years and has exhausted its extension period.

(f)(g) “Occupant” means the person or entity whose name appears on the temporary occupancy agreement.

(g)(h) “Owner” means the person, persons, entity, or entities holding fee simple title in lands that are not public lands.

(h)(i) “Permanent Structure” means a structure placed on or in the ground or attached to another structure or fixture in a fixed position and intended to remain in place for more than 6 months.

(i)(j) “Permittee” means a person or persons given a permit by DPL and whose name appears on the permit.

(j)(k) “Principal” means the Applicant personally or a person employed by the Applicant with the legal authority to negotiate, decide, and enter into agreements on behalf of the Applicant.

(k)(l) “Public Lands” means all those lands defined as public lands by N.M.I. Const. art. XI, § 1 including improvements thereon.

(l)(m) “Secretary” means the Secretary of the Department of Public Lands.

~~(m)~~(n) “Related Party” means the person, persons, entity, or entities who participate in the funding or operations of the Applicant or Lessee’s development or proposed development including without limitation parent companies in multinational company structures, as well as controlling or major shareholders. For the avoidance of doubt, Related Party shall include persons or entities that provide funding to an Applicant or Lessee. Transactions that, because of their nature, may be indicative of the existence of related parties include:

- (1) Borrowing or lending on an interest-free basis or at a rate of interest significantly above or below market rates prevailing at the time of the transaction.
- (2) Making loans with no scheduled terms for when or how the funds will be repaid.
- (3) Lack of sufficient working capital or credit to continue the business, or lack of complete business plan or financial projections.

(n)(o) “Request for Proposal” (RFP) means an open solicitation made through a bidding process by DPL to determine interest of potential lessees to lease and develop certain public lands at terms determined by or acceptable to DPL.

Part 100 – Lease Policies

§ 145-70-101 General Requirements and Restrictions

- (a) No right or interest in or to public lands shall be created orally. Any right to use, access, or enjoy public lands must be in writing signed by the Secretary in full compliance with these regulations or is void *ab initio*. Public lands shall be leased only for Commercial Use.

Consideration and preference must first be given to non-productive developed public land or underutilized public land before undeveloped land is considered for development. Consideration for entering into a lease shall be consistent with DPL's fiduciary duties to its beneficiaries. The Secretary of DPL shall have reasonable discretion regarding issues not anticipated by these regulations.

- (b) Every lease shall be properly documented via a written lease agreement and such other documents deemed necessary or appropriate by DPL to complete the transaction. All duly executed lease agreements shall be recorded at the Commonwealth Recorder's Office by the party receiving an interest in Public Land in accordance with 2 CMC §4913. The Department shall strictly enforce all terms of every lease requirement imposed as a condition of legislative approval of a lease or lease extensions, if any. Leases for mining shall require appropriate environmental impact study, damage mitigation plan, and restoration plan, an assessment on the value of minerals to be mined, and any other studies required by law or DPL as a condition precedent to possession. All costs including those for appraisals, surveys, topographical surveys, geotechnical reports, studies, etc. whether required by the DPL or the Government shall be borne by Applicant.
- (c) Eligibility.
 - All Applicants must be current and in good standing with the Department of Finance Division of Revenue and Taxation, all licensing and regulatory authorities, and with the DPL.
 - (1) Individuals - must be at least 18 years of age.
 - (2) Businesses - must be duly formed, in good standing and authorized to do business in their jurisdiction of origin AND in the CNMI and must provide all documentation required by the DPL to confirm such status.
 - (3) All Applicants must demonstrate credit worthiness, ability to pay rent, and ability to fund all proposed development, and to comply with all the conditions and covenants of the lease agreement to the satisfaction of the Secretary.
- (d) Restrictions.
 - (1) It is DPL's preference not to lease public lands where the proposed structures/facilities will overlap boundaries of adjacent private lands.
 - (i) If necessary and in the best interest of DPL's beneficiaries, the DPL may permit such development provided that all such proposed development and construction of facilities that will occupy both private and public lands shall be performed in a manner to facilitate and simplify segregation of improvements on the public lands from those on adjacent private lands upon expiration or termination of the lease. Alternatively a land trust consisting of the private lands and public lands may be formed with the DPL as trustee, or the fee simple title to the private lands may be assigned to DPL, at Lessee's expense. For the avoidance of doubt, such permitted improvements shall be designed and constructed to be free and independent from private land improvements so that upon expiration or termination of the Lease, when the DPL takes possession of the improvements, such improvements and DPL's (or its designee's) operation thereof shall not be dependent upon adjacent private lands. This restriction shall not apply if the fee simple interest in the private lands is assigned or transferred to the DPL as described herein.

- (ii) Before commencement of construction or development, Lessee shall be required to place on deposit with DPL the amounts necessary to perform such segregation at the expiration or termination of the lease, as estimated by an engineer selected by DPL and periodically deposit additional amounts to adjust upward for general inflation.
- (2) Notwithstanding the foregoing, for minor developments such as parking structures attached to adjacent improvements, if such improvements will be of little value to the DPL, the Secretary may waive the obligations set forth in subsection 1 above if the Applicant places on deposit concurrent with the execution of the lease the projected cost of demolition and removal of improvements, and restoration of leased premises.

§ 145-70-105 Procedures for Issuing Leases, Extensions, and Renewals

- (a) The DPL will deal only with the Principals of the Applicant.
- (b) DPL shall satisfy its fiduciary duties by taking the following steps towards entering into new leases, extensions, or renewals:
 - (1) Properties not under lease – DPL shall select proposals that provide DPL the greatest revenue over the course of the lease term. All leases must be aligned with DPL’s land use plan. In all instances, the DPL shall negotiate lease terms most favorable to its beneficiaries.
 - (i) Unsolicited Proposals – If the DPL receives a proposal or application to lease Public Land, it shall upon conclusion of negotiations (if any), publish a Notice of Proposed Lease of Public Land in accordance with Public Law 15-2 and these regulations, to determine if there are other interested parties, and consider public comments. If a second or other proposals are received during the notice period, the DPL may either select the most beneficial proposal or issue an RFP.
 - (ii) Solicited Proposals – If the DPL solicits proposals to lease specific parcels or tracts of Public Lands and two or more proposals are received by the DPL, DPL may select the most beneficial proposal. If only one proposal is received the DPL may award the sole Applicant, re-issue the Request for Proposal, or reserve the relevant parcels for future disposition.
 - (2) Properties under lease – if a current Lessee is interested in re-leasing, extending, or renewing its lease, DPL shall:
 - (i) Thoroughly review the performance of the lessee to determine if re-leasing or extending the lease is in the best interest of its beneficiaries.
 - (ii) Issue a Notice of Proposed Lease of Public Lands in accordance with 1 CMC § 2807 up to four years prior to expiration, but only if an extension or renewal of the existing lease is determined to be in the best interest of DPL and its beneficiaries, and no other firm has indicated an interest to lease affected parcel.
 - (iii) If additional proposals are received in response to such Notice, or if DPL has knowledge of one or more additional interested parties, DPL shall issue an open RFP at least two years prior to the expiration of the existing lease if in DPL’s judgment the second proposal is in the best interest of DPL and is significantly advantageous to the proposal of the existing lessee.
 - (iv) If a competing proposal does not materially enhance the existing lessee’s proposal, operations, or otherwise project to materially increase the revenue to DPL, and lessee has satisfied all the covenants and conditions of its existing lease, it is DPL’s preference to renew the lease with the current lessee with lease payments comparable to that proposed or implied

by the best competing proposal, but in no case shall DPL accept lease rent less than what was established in any preceding period.

- (v) If a current lessee does not intend on re-leasing, extending, or renewing, DPL shall issue an open RFP at least two years prior to the expiration of the existing lease.

§ 145-70-110 Lease Agreement Requirements

DPL shall include in lease agreements provisions typical of commercial practices. All public land leases are on a “triple net” basis “as is where is”. All leases shall conform to the following provisions:

- (a) Legal Description of the property (ies) subjected to the lease.
- (b) Purpose – a detailed description of the intended development and operations.
- (c) Term – the effective date and duration of the lease shall not exceed 25 years. Note: Upon expiration of the term, the property including all improvements shall revert to DPL for renewal, extension, or re-leasing to the highest best bidder as determined by these regulations in accordance with CNMI law.
- (d) Fees, Security Deposit, Costs.
 - (1) Prior to the preparation of any lease or supporting document, the Applicant shall deposit an administrative processing fee equal to the greater of \$5,000, or 0.50% of the estimated value of the subject property.
 - (2) Prior to any lease approval, lessee must deposit at least 5% of the total cost of the proposed project to which the lease pertains, whether the entire project or only a part of it will be situated on public lands. These funds will be held by the DPL to secure construction start up, and remediation costs.
 - (3) The security deposit requirement shall also apply to lease extensions or renewals where one or more key factors for approval is lessee’s proposal to further develop the property it currently occupies.
 - (4) Funds remaining on account with the DPL after the completion of the proposed development in excess of \$5,000 or 1% of the development cost (whichever is greater) shall be released to lessee upon completion of the project development. Remaining funds shall be retained as security, and Lessee shall be obligated to maintain a constant balance for the term of the lease.
 - (5) Funds shall forfeit to DPL should the project be cancelled or start date delayed more than one year from the execution of the lease. Mere ceremonious commencement (i.e. groundbreaking or ribbon cutting without materially beginning and continuing construction) will not avoid forfeiture.
 - (6) All costs related to the lease including underwriting, appraisals, surveys, topographical surveys consolidations, excavation, studies, recordings, etc shall be borne by Applicant or Lessee. In the event of Lessee’s failure to perform any obligation under a lease, DPL may (but shall not be obligated to) expend funds held in Lessee’s account (including security deposits) to satisfy such obligation to the extent feasible (e.g. To procure surveys, appraisals, or insurance).
- (e) Rental Rates.

Rent derived from public lands shall be based on the value of the property, and actually computed and collected on that basis; provided, that the DPL shall, within the limits set by fiduciary duty and the provisions of Public Law 15-2, have discretion in negotiating basic rents and additional rents upward taking into account changing economic conditions and other relevant trends and factors including other land transactions deemed substantially similar to the proposed lease. For the avoidance of doubt the Secretary of DPL may determine that a property's true value is greater (but not less than) an appraised value determined by independent appraisal.

- (1) New Leases – shall include new leases, and renewals.
- (2) Basic Rent shall be based on the value of the fee simple title to the property. It is the policy of DPL to collect at least 5% of a property's value each year for the term of the lease as base rent.
- (3) In no event shall the rent in subsequent years be less than the amounts in previous years of the lease.
- (4) Properties shall be re appraised and basic rent adjusted upward to market every five years based on an updated appraisal in its fee simple interest. For the purpose of determining Basic Rent, the value in subsequent periods shall include all improvements on the property less the value of improvements made by the Lessee during the term of the lease.
- (5) New Leases – shall be based on the value of the fee simple interest including improvements (if any).
- (6) Extensions - shall be based on the appraised value of the fee simple interest including improvements less the value of improvements made by the Lessee since the inception of the lease.
- (7) Renewals – shall be treated as new leases for purposes of determining rent.
- (8) Matured Leases – All matured leases entering a lease renewal shall be appraised on the value of the fee simple title to the property. It is the policy of DPL to collect up to 3% of Fair Market Value on the property for each year of the term of the matured lease as base rent with BGR.
- (8)(9) Additional Rent - Percentage of Business Gross Receipts – due to the scarcity of public lands and in accordance with its fiduciary duties owed to its beneficiaries, DPL shall charge additional rent that allows its beneficiaries to participate in the revenues generated as a result of the lease. This rent shall be charged as a percentage of Lessee's Business Gross Receipts (BGR) and shall also apply to the BGR of Lessee's subtenants, concessionaries and others permitted to engage in commercial activity upon the leased Premises. For the sake of clarity, BGR includes enterprise BGR, not just BGR derived from parts of the enterprise situated on public lands. The additional rent per year for every year of the lease term shall be as follows:

Business Gross Receipt Payment Schedule

| <u>Tier</u> | <u>Annual BGR Amounts</u> | | <u>% of BGR</u> | <u>Minimum Per Tier</u> |
|-------------|---------------------------|---------------|-----------------|-------------------------|
| | <u>From</u> | <u>To</u> | | |
| 1 | \$ - | \$ 50,000.49 | 3.00% | |
| 2 | \$ 50,000.50 | \$ 100,000.49 | 2.89% | \$ 1,500 |
| 3 | \$ 100,000.50 | \$ 200,000.49 | 2.78% | \$ 2,889 |
| 4 | \$ 200,000.50 | \$ 400,000.49 | 2.67% | \$ 5,556 |
| 5 | \$ 400,000.50 | \$ 800,000.49 | 2.56% | \$ 10,667 |



RENT ANALYSIS

Contents

| | |
|---|----|
| EXECUTIVE SUMMARY | 2 |
| SCOPE OF WORK..... | 2 |
| FORWARD..... | 3 |
| ARTICLE XI: PUBLIC LANDS | 3 |
| LEASES EXPIRING - ELIGIBLE UNDER PL 20-84 | 4 |
| PRIMARY SCOPE OF WORK..... | 5 |
| DPL REGULATION | 5 |
| RENT ASSESSMENT..... | 5 |
| ECONOMIC OVERVIEW:..... | 6 |
| ECONOMY | 6 |
| CASINO OPTIMISM | 7 |
| VISITOR ARRIVALS..... | 7 |
| HOTEL PERFORMANCE..... | 8 |
| PRICING POWER..... | 10 |
| HOTEL INVENTORY AND FUTURE DEVELOPMENT..... | 10 |
| REVENUE DATA..... | 11 |
| REGION DATA | 12 |
| LAND USE PLAN AND RECOMMENDATIONS | 13 |
| MARKET CONDITIONS INVESTORS AND FUTURE DEVELOPMENTS..... | 13 |
| ANALYSIS..... | 13 |
| APPENDICES: | 20 |
| APPENDIX 1 : Fiesta Appraisal | 20 |
| APPENDIX 2 : Fiesta Appraisal | 20 |
| APPENDIX 3 : PL 30-95 Chamorro Land Trust Commission Law to lease Gov't Lands | 20 |
| APPENDIX 4 : Real Estate Market Palau and Guam..... | 20 |
| APPENDIX 5 : Average Revenue Stream for Hotels under DPL Lease..... | 20 |
| APPENDIX 6 : Public Law 20-84..... | 20 |
| APPENDIX 7 : HANMI Letter to DPL..... | 20 |

EXECUTIVE SUMMARY

As group the Hotel Association of Northern Mariana Islands (HANMI) met with the Department of Public Lands (DPL) to discuss options of possibly reducing the lease rates. According to HANMI member hotels the existing rental rates in DPL's regulations are not feasible for any of the hotels that have reached maturity eligible under PL 20-84. They cited insufficient revenues to cover rents, lack of pricing power to increase revenues to levels necessary to support rents, and the general state of labor issues. The backdrop of this discussion is the possibility of HANMI member hotels obtaining new leases or lease extensions pursuant to PL20-84 as agreements with a number of the larger hotels situated on public lands are nearing expiration.

DPL is to conduct an internal feasibility study and market analysis to determine the sustainable lease rents DPL may charge clients leasing public lands in the Commonwealth of the Northern Mariana Islands (CNMI). The results of the study should show if DPL's current rates and the basis for determining rents provide the maximum benefits to its beneficiaries while being fair and sustainable to the hotel industry as a group. It will also be used to adjust existing policy (if necessary) towards this goal. The study will further assist the Secretary of Public Lands upholding its fiduciary duties to the People of Northern Mariana Descent.

SCOPE OF WORK

- Review DPL's current regulations on leases, particularly rents and the basis for determining rents
- Analyze the hotel group's historical financial statements. budget relative to the client requirements (5% of appraised fair market value for rent based on economic development and current status of tourist arrivals and price per room)
- Rent assessment practices in the region in general, Micronesia particularly.
- Pricing power for room rates of hotels in the CNMI Assesses hotel room supply needs of the CNMI to determine potential for additional hotels with new investors (established number of hotels and possibility of more developments and the likelihood of current developments to complete on time catering to and enticing a broader market).
- Assess operational and maintenance issues
- Address programming considerations
- What do market conditions imply for future development?
- What are the market conditions for each type of major real estate use?
- What type of development is recommended for priority?
- LUP what is the conclusion and recommendation for each type of real estate development.
- Analyze economic factors influencing real estate development
- Analyze local and regional economic and demographic conditions

FORWARD

The CNMI experienced its boom in tourism in the 1990s with arrivals during the peak years surpassing 700,000¹ (Tourism Masterplan ,2016), and hotel occupancies in the mid-'80s at a healthy average rate of nearly 140 USD. In the early 2000's the CNMI was impacted by the Asian Financial Crisis, and subsequently drastic reductions in air service, the market entered a difficult period thereafter. As a result of this, hotel performance was down, overall tourism revenue dropped significantly, and the overall economy, which had become highly reliant on tourism after the closure of the garment industry, entered a gloomy period.

The turning point in the CNMI economy came in 2014, with strong surges in demand from the Chinese and Korean markets in particular. Regular chartered flights in the Chinese tourist, the previously small market grew to over 200,000 arrivals in essentially less than five years accounting for 40 percent of the CNMI's overall arrivals by the of 2016² (Hawthorne HTL, 2015).

The rapid growth in the tourism industry is a key factor in maintaining hotels and golf resorts with its current operators, therefore prompting this study to assist the Secretary of DPL to negotiate new lease terms.

ARTICLE XI: PUBLIC LANDS

Section 4 of the Article XI of the CNMI Constitution created the Marianas Public Land Corporation who is then now the Department of Public Lands. Section 5: Fundamental Policies states "*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.*"

This section of the constitution initially only allowed MPLC to enter into lease agreements for a period 25-years as an initial term and 15-years for extensions. Our forefathers were steadfast in ensuring the best interest of Northern Mariana Descent was protected when it came to developments. The term of 40-years for commercial leases on Public land was made for one generational decision. This gave way for a new generation to make decisions and necessary changes to the lease agreement. This term also reverted all public lands back to MPLC to include all structures. However, after MPLC was abolished along with certain of its fundamental policies in accordance with the Constitution. PL15-02 was enacted establishing the Department of Public Lands and mirroring the fundamental policies of the constitution on the management of Public Lands.

Subsequently in December of 2018, PL 20-84 was enacted "*To amend 1 CMC §2806 (c) to increase the term of public land leases up to 40 years plus an extension up to 15 years for a total of 55 years; to authorize certain existing public land leases to be amended to extend the existing lease term up to 55 years;*

¹ Tourism Master Plan

https://www.doi.gov/sites/doi.gov/files/migrated/oia/reports/upload/CNMI_Tourism_Master_Plan-2012-to-2016.pdf

² Tourism Sustainability Feasibility Study- Hawthorne HTL for Marianas Visitors Authority, 2016

to amend 1 CMC § 2807 to authorize DPL to negotiate a new public land lease with certain existing public land leases under new terms and consideration without publishing an RFP; and for other purposes.”

As stated earlier, this law gives DPL the ability to enter into a new lease without an RFP for existing Hotels, Golf Resorts, and Schools reaching the end of their 40-year term

The first of Public Land leases to expire after its 40th year was Marianas Resort in Marpi which expired in April of 2018 but continued to operate till September of 2018 under the holdover status. Unfortunately, PL 20-84 was not signed until December of 2018 to allow DPL to negotiate a new lease with Marianas Resort. Instead the lot had to be put out to bid in accordance with PL15-02.

The CNMI is a unique position in comparison to the neighboring islands in the region. The constitution had a limit of 40 years for public land and 55 years for private lands. With PL 20-84, all leases in the CNMI can be made for up to 55 years. The Republic of Palau and Guam both have leases that have an initial term or 50 years with an extension of up to 49 years, this applies to Government and private land. The CNMI is the only one in the region where public land is collectively owned by people of Northern Marianas Descent. Unlike the ROP and Guam where “public lands” are properties owned by their governments.

LEASES EXPIRING - ELIGIBLE UNDER PL 20-84

Article XI of the CNMI constitution initially restricted the term of leases on public lands by limiting all land leases to 40 years, an initial 25-year term with an option of 15 years to extend after the initial term. However, after MPLC was abolished along with certain its fundamental policies the Constitution provided the CNMI Legislature with the authority to set lease terms. In 2006 lease terms were set by PL15-02 which basically mirrored those set by the Constitution. Subsequently in December 2018, PL20-84 was enacted. The purpose of PL20-84 is twofold:

- 1) To amend I CMC § 2806(c) to increase the term of public land leases up to 40 years plus an extension up to 15 years for a total 55 years; and
- 2) To authorize certain existing public land leases to be amended to extend the existing lease term up to 55 years.

For certain hotels, golf courses, and schools it allows DPL to negotiate a new lease for an initial 40-year term with an option of a 15-year extension. Specifically, it allows for the this to occur within five years prior to the expiration of their existing lease. However, PL20-84 also requires that for such lease’s rents shall be based on “at least two new appraisals”.

Marianas Resort was the first of Public Land Leases that completed its 40-year term which was the maximum allowed by the constitution. However, during the RFP process, Marianas Resort did not submit a proposal to continue doing business in the CNMI. The following are Land Leases nearing their 40-year term:

- Fiesta
- Hyatt Regency
- Pacific Island Club
- Coral Ocean Point
- Grace Christian Academy
- Kanoa Resort
- Saipan Palau Evangelical Church

The above developments have expressed their desire to continue to do business in the CNMI, however, the Public Law 20-84 and DPL Regulations state the New Leases Rental Payments shall be calculated on a Fee Simple Appraisal with improvements calculated at 5%.

PRIMARY SCOPE OF WORK

DPL REGULATION

DPL's regulation §145-70-110 (2) states that "*Basic Rent shall be based on the value of the fee simple title of the property. It is the policy of DPL to collect at least 5% of a property's value each year for the term of the lease as base rent.*"

Prior to the adoption of DPL's regulations, DPL reviewed its lease rates and found that they were anywhere from 2% to 8% of fair market value or a flat rate (Fiesta and Hyatt) for all commercial leases depending on the size of the development and term of the lease agreement. Private lands require prepayment on leases prior to commencement of the lease agreement. DPL finances its lease for the life of the term interest fee.

| Location | Percentage of FMV | Price Per Square Meter |
|----------|---------------------------|---------------------------|
| CNMI | 5% | Average \$34-\$806 PSM |
| GUAM | 10% for Government Land | Average \$24-\$480 PSM |
| Palau | 8% -9% of Government Land | Average \$150-\$450 PSM |
| Hawaii | Varies | Average \$1200-\$1450 PSM |

RENT ASSESSMENT

As shown in the table amount CNMI in comparison is by far the cheapest in fair market value percentage across the region. Currently, the CNMI charges at a maximum \$806 per square meter and \$5.50 per square foot for commercial spaces for lots in Saipan, the price varies in Rota and Tinian due to the lack of development in those islands. In recent months, real estate in Tinian has seen an increase in land transactions due the recent lease agreement between the Commonwealth Ports Authority and the Department of Defense.

Recent listings in Guam list properties with improvements starting at \$4.8 million for 13,000 square meters with 21,000 square feet of interior space, this property is listed as a hotel property containing 100 rooms³ (Today's Realty-Guam). However, this property is located in a central area of Guam and not within the tourist area. Raw land containing a little over 12,000 square meters is listed at \$5.9 million in the heart of

³ Today's Realty, <https://www.guamhome.com/eng/sales/detail/558-I-559-191742/plumeria-route-8-street-mongmong-gu-96910>

the Tamuning⁴ (Guam Home Finder, 2019), a major tourist area. Land ownership on Guam is based on fee simple and no Land Alienation limits land ownership.

The Republic of Palau (ROP) has listed Ngerbles Island containing 20.80 acres of pure privacy for lease enticing potential investors of the 99-year term. ROP similar to the CNMI has a provision in their constitution for Land Alienation and limits land ownership to citizens of Palau and are subject to a maximum lease term for Private and Government lands. Other commercial properties are listed between 8% - 9% of fair market value in a leasehold value.

ECONOMIC OVERVIEW:

For more than 30 years, tourism has been an essential economic support for the people of Saipan, Tinian, and Rota in the CNMI. In the late 1980s and first half of the 1990s, tourism experienced rapid growth as the islands welcomed direct foreign investment in resort hotels. In the CNMI government's fiscal year 1997, the industry peaked with approximately 727,000 visitors (MVA, Feasibility Study). These were primarily Japanese tourists, followed by Koreans and U.S. Citizens.

With little warning, a rapid decline in tourism began in 2006 following the cessation of service by the islands most significant air carrier. The long-term losses of tourists amid the rapidly rising cost of doing business have taken facilities and develop new products an essential element of remaining a competitive destination.

ECONOMY

The CNMI economy was based solely on tourism and garment manufacturing in the 1990s. The latter industry received national negative publicity in the past and was cited by industry opponents that prompted Federal Government takeover of local immigration and minimum wage standards. Unable to compete with China's cheap labor, CNMI garment factories began to shut down by 2000. By 2007, the apparel industry had lost more than 11,000 jobs. Total employment in the economy fell to 26,010, a 35.6 percent drop⁵ from its peak in 2004. Thus, in the short span of three years, the CNMI lost one-third of its economy, one that took more than twenty years to build (Micronesian Appraisal, 2019).

For the next few years, the region's Gross Domestic Product (GDP) suffered tremendously. Since bottom out in 2009 with a -17.5% decline in GDP growth, the CNMI economy has been steady growth culminating in its best year in the last decade with 28.2% growth in 2016, according to the Bureau of Economic Analysis. GDP adjusted to remove price changes increased 25.1% in 2017 after increasing 28.2% in 2016. For comparison purposes, real GDP for the United States excluding territories increases 2.2% in 2017 after increasing 1.6% in 2016⁶ (BEA, October 2018).

The driving forces behind the economic growth and accompanying optimism in the market are:

⁴ Guam Home Finder, <https://www.guamhome.com/eng/sales/detail/558-l-560-182855/lot-2127-1-new-r1-route-30-tamuning-gu-96913>

⁵ CNMI Comprehensive Development Strategy 2016-2021, <http://i2io42u7ucg3bwn5b3l0fquc.wpengine.netdna-cdn.com/wp-content/uploads/2017/12/CNMI-2016-2021-Comprehensive-Economic-Development-Strategy-Public-Comments.pdf>

⁶ <https://www.bea.gov/news/2018/cnmi-gdp-increases-2017>

- Substantial increases in private fixed investment, which increased by over 60% in 2015. This reflects investments in the gaming industry, including a temporary training facility and an integrated casino resort under construction in Garapan (Micronesian Appraisal, 2019).
- Increases in government spending, both at the local and federal levels. Combined spending by the CNMI and federal governments increased by 10% in 2015, a significant portion of the growth can be attributed to recovery operations and reconstruction following Typhoon Souledor. (Bureau of Economic Analysis, 2018)
- Continued steady growth in the tourism market, marked by a growth of 4.5% between 2015 and 2016, the fifth straight year increase in visitor arrivals. Data for FY 2016 shows a 14% growth in visitors from China and a 10% growth in visitors from Korea compared to 2015. Reversing a trend of decreasing Japanese visitor arrivals, 2016 saw an increase of 6% over 2015. Increases in visitor arrivals have resulted in healthy increases in hotel occupancy rates, average room rates, and employment in the hospitality industry over the last three years in particular. (Marians Business Journal, January 2019)

CASINO OPTIMISM

Saipan Casino investor, Imperial Pacific International (IPI), received a 40-year exclusive license agreement to operate a multi-phase integrated casino resort in Garapan expected to total more than 7 billion when finally completed. The phase 12 development project of Imperial Pacific International Holdings Limited is expected to be completed soon with a total surface area of 140,000 square meters, in order to expand the current entertainment and gaming facilities. Located in Garapan at the heart of Saipan, this world luxury holiday resort will be a rare combination of luxury integrated casinos, five-star luxury accommodation, and



a wide range of exclusive dining and entertainment facilities, including more than 200 gaming tables and over 350 slot machines. The 14-storey hotel building will offer more than 340 opulent

suites including 15 deluxe villas to exceed the satisfaction of all guests who pay attention to every detail⁷. (Imperial Pacific, 2019)

VISITOR ARRIVALS

FY 2018 marked the first downturn in tourism in the CNMI after several years of growth, sure evidence of a recovered tourism market. A total of 609,593 visitors came to Saipan, Tinian and Rota. A 7 percent decrease compared to FY 2017 ⁸(MVA Annual Report, 2018). However, it was still considered one the biggest tourist arrival, the largest being 1997 with a total arrival of 726,690. In an effort to continue the

⁷ <http://www.imperialpacific.com/en/ip-resort-hotel-saipan>

⁸ <https://drive.google.com/file/d/1Wf36t16rS6657P24n2lXSdD0-qGQE0LL/view>

push in all markets, MVA has undertaken innovative marketing strategies to suit individual market sources and target main stream media in Asia splashed across publications and social media launching “A paradise for everyone” and “Marianas Treasures.” All of this combined with the optimism of the Casino is sure to bring our visitors to greater peaks establishing a positive effect on our hotels.

| - FISCAL YEAR - | | YTD | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | TOTAL |
|-----------------------------|-------|---------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| 2018 | | 507,116 | 48,950 | 48,039 | 57,331 | 55,249 | 53,045 | 53,714 | 49,198 | 46,093 | 47,341 | 48,156 | 56,553 | 43,924 | 607,593 |
| 2019 | | 348,327 | 32,168 | 5,595 | 26,831 | 36,878 | 38,048 | 35,286 | 38,863 | 38,282 | 42,076 | 45,570 | | | 340,327 |
| % change | | -32.0% | -34.4% | -88.4% | -53.2% | 33.3% | -28.3% | -34.3% | -19.4% | -17.0% | 11.1% | 5.4% | | | |
| - CALENDAR YEAR - | | YTD | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | TOTAL |
| 2018 | | 352,796 | 55,249 | 53,045 | 53,714 | 49,198 | 46,093 | 47,341 | 48,156 | 56,553 | 43,924 | 32,108 | 5,595 | 26,831 | 517,807 |
| 2019 | | 275,783 | 36,878 | 38,048 | 35,286 | 38,863 | 38,282 | 42,076 | 45,570 | | | | | | 275,783 |
| % change | | -21.8% | -33.3% | -28.3% | -34.3% | -19.4% | -17.0% | -11.1% | -5.4% | | | | | | |
| - BY COUNTRY OF RESIDENCE - | | | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | |
| JAPAN | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 8.8% | 50,819 | 3,411 | 4,483 | 5,445 | 3,716 | 4,725 | 5,004 | 4,831 | 1,236 | 483 | 693 | 4,950 | 449 | 49,238 |
| FY 2019 | 2.7% | 9,287 | 334 | 138 | 943 | 831 | 983 | 2,871 | 2,313 | 671 | 617 | 889 | | | 9,287 |
| % change | | -72.0% | -90.2% | -87.2% | -82.1% | -83.0% | -78.2% | -58.6% | -50.1% | -45.8% | 7.0% | 0.9% | | | |
| KOREA | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 48.4% | 245,671 | 24,411 | 24,388 | 29,082 | 28,750 | 22,385 | 25,081 | 21,828 | 22,078 | 24,028 | 23,454 | 27,350 | 22,349 | 245,266 |
| FY 2019 | 43.8% | 146,388 | 18,882 | 831 | 7,138 | 14,881 | 18,387 | 13,378 | 17,182 | 17,788 | 21,379 | 23,848 | | | 146,268 |
| % change | | -40.4% | -36.1% | -91.8% | -75.5% | -48.4% | -31.8% | -46.7% | -21.8% | -19.8% | -11.5% | 0.8% | | | |
| CHINA | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 38.7% | 196,009 | 17,671 | 18,188 | 18,781 | 19,572 | 23,450 | 19,856 | 19,448 | 19,280 | 20,111 | 21,672 | 21,881 | 18,887 | 196,577 |
| FY 2019 | 46.9% | 156,156 | 13,708 | 2,400 | 16,827 | 18,880 | 19,567 | 18,568 | 16,973 | 16,728 | 17,159 | 18,356 | | | 156,188 |
| % change | | -20.3% | -22.4% | -85.2% | 15.7% | -1.5% | -18.6% | -16.6% | -12.7% | -13.2% | -14.7% | 15.3% | | | |
| HONG KONG | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 0.7% | 3,317 | 294 | 415 | 704 | 315 | 201 | 482 | 284 | 213 | 227 | 172 | 193 | 132 | 3,642 |
| FY 2019 | 8.7% | 2,483 | 148 | 88 | 373 | 267 | 188 | 182 | 488 | 287 | 283 | 240 | | | 2,483 |
| % change | | -25.0% | -49.3% | -78.6% | -47.2% | -15.2% | -20.9% | -61.0% | 64.1% | 20.7% | 15.9% | 39.5% | | | |
| TAIWAN | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 0.1% | 750 | 49 | 73 | 74 | 99 | 51 | 84 | 83 | 85 | 83 | 89 | 72 | 106 | 928 |
| FY 2019 | 8.2% | 768 | 51 | 8 | 81 | 124 | 81 | 78 | 89 | 183 | 87 | 188 | | | 768 |
| % change | | 2.4% | 4.1% | -87.7% | -17.8% | 25.2% | 19.6% | -8.5% | -27.7% | 21.2% | 6.7% | 75.3% | | | |
| PHILIPPINES | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 0.1% | 898 | 83 | 53 | 103 | 82 | 88 | 55 | 82 | 85 | 55 | 52 | 54 | 54 | 810 |
| FY 2019 | 8.2% | 834 | 88 | 42 | 84 | 81 | 47 | 82 | 96 | 82 | 81 | 41 | | | 834 |
| % change | | -8.2% | -28.9% | -20.8% | -37.8% | -1.8% | -30.9% | -6.5% | 15.9% | -3.5% | 65.9% | -21.2% | | | |
| GUAM | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 2.6% | 12,483 | 1,190 | 1,331 | 1,512 | 1,184 | 1,213 | 1,431 | 1,418 | 1,337 | 1,044 | 836 | 1,138 | 837 | 14,566 |
| FY 2019 | 3.8% | 11,818 | 1,488 | 1,179 | 1,288 | 1,674 | 1,888 | 1,113 | 1,218 | 1,347 | 1,311 | 1,281 | | | 11,818 |
| % change | | -5.4% | 23.7% | -12.1% | -16.0% | 41.7% | 56.8% | -22.2% | 7.7% | 9.7% | 25.8% | 43.8% | | | |
| UNITED STATES | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 1.8% | 8,479 | 1,346 | 857 | 821 | 1,048 | 881 | 1,019 | 881 | 1,158 | 755 | 808 | 897 | 848 | 10,318 |
| FY 2019 | 2.5% | 8,482 | 818 | 1,883 | 721 | 884 | 884 | 1,282 | 788 | 782 | 828 | 848 | | | 8,482 |
| % change | | 0.0% | -39.4% | 120.4% | -12.3% | -16.1% | 0.0% | 23.8% | -13.9% | -31.5% | 9.2% | 4.7% | | | |
| EUROPE | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 0.3% | 1,731 | 148 | 117 | 324 | 249 | 89 | 258 | 176 | 189 | 153 | 68 | 64 | 55 | 1,850 |
| FY 2019 | 0.3% | 1,831 | 88 | 8 | 148 | 137 | 78 | 187 | 128 | 122 | 128 | 38 | | | 1,831 |
| % change | | 6.0% | -40.4% | -93.2% | -55.6% | -45.0% | -13.0% | -27.5% | -28.4% | -27.8% | -16.3% | -42.6% | | | |
| OTHERS | | MS | YTD | | | | | | | | | | | | TOTAL |
| FY 2018 | 0.7% | 3,729 | 347 | 344 | 457 | 253 | 243 | 434 | 480 | 454 | 424 | 313 | 352 | 323 | 4,404 |
| FY 2019 | 1.0% | 3,432 | 217 | 188 | 384 | 318 | 381 | 414 | 643 | 419 | 442 | 344 | | | 3,432 |
| % change | | -8.0% | -37.5% | -45.3% | -16.2% | -20.1% | 57.6% | -4.8% | 33.7% | -9.7% | 4.2% | 9.9% | | | |

Figure 1-1: The above table was accessed from the Marianas Visitors Authority and breaks down tourist arrivals by region

HOTEL PERFORMANCE

Through the increase of visitor arrivals beginning in 2011, the Saipan hotel market recovered after a rather difficult decade. At the onset of the Asian Financial Crisis in 1997, Saipan's hotel performance peaked at RevPAR (Revenue Per Available room) of \$110.68⁹. The region-wide crisis had a major impact on the

⁹ Bureau of Economics, 2016 Report

hotel market. Although Saipan hotels enjoyed improving occupancy levels in the mid-2000s as the Japanese market recovered, another difficult period ensued from 2005 to 2009 where occupancy rates fell below 60%. Since then the market has recovered where the average RevPAR (Revenue Per Available Room) is over \$120 in the last three years.

Figure 1-2: Hotel Performance from January 1992 to September 2015 Source: HANMI Figure 1-3: Projections thru 2026 Source MVA

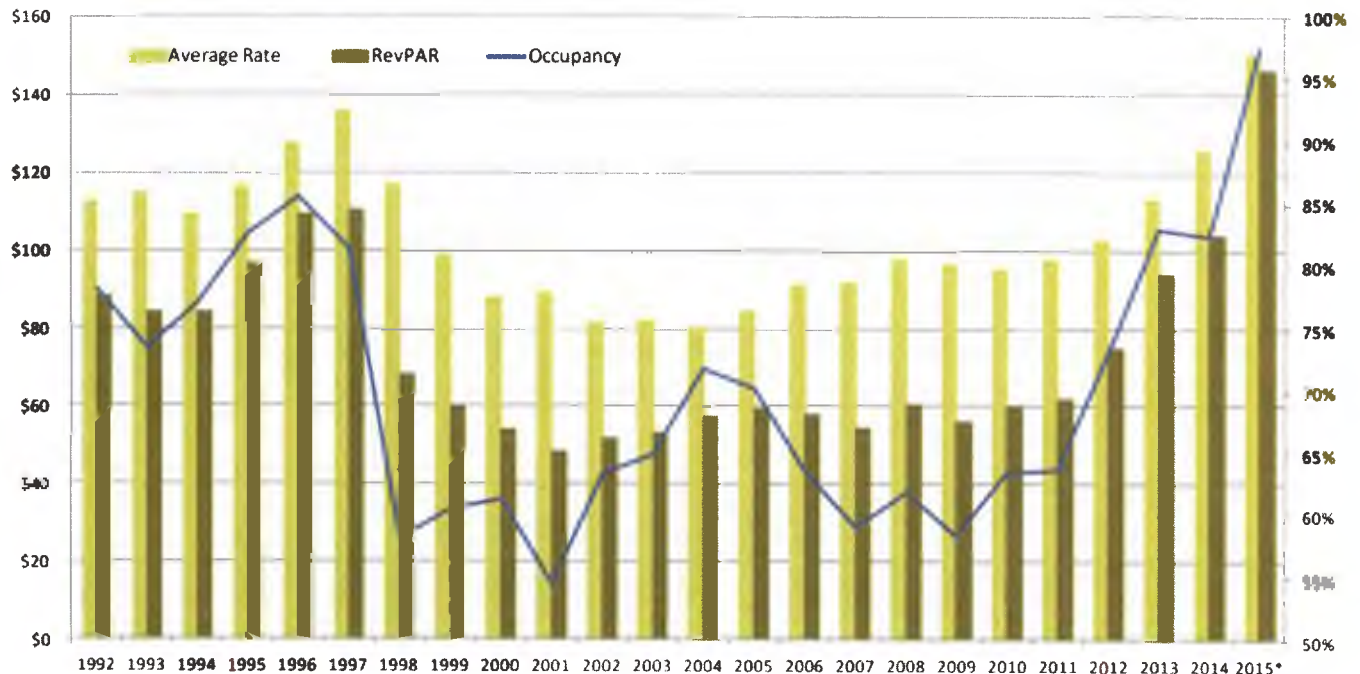


Figure 34: Estimates on Gross Receipts Tax and Room Occupancy Tax, by Calendar Year

| | Visitor Arrivals | RND | RNA | Occupancy | ADR | RevPAR | Rooms Revenue | Total Revenue | Gross Receipts Tax | Room Occupancy Tax |
|------------------|------------------|-----------|-----------|-----------|-------|--------|---------------|---------------|--------------------|--------------------|
| 2016 (Base Year) | 530,525 | 742,330 | 859,575 | 86% | \$140 | \$121 | \$103,926,200 | \$148,466,000 | \$7,423,300 | \$15,588,930 |
| 2017 | 587,917 | 823,084 | 1,042,075 | 79% | \$150 | \$118 | \$123,173,617 | \$175,962,310 | \$8,798,116 | \$18,476,043 |
| 2018 | 634,232 | 887,924 | 1,131,885 | 78% | \$157 | \$123 | \$139,704,932 | \$199,578,475 | \$9,978,924 | \$20,955,740 |
| 2019 | 667,584 | 934,618 | 1,184,425 | 79% | \$168 | \$133 | \$157,411,423 | \$224,873,461 | \$11,243,673 | \$23,611,713 |
| 2020 | 730,576 | 1,022,807 | 1,409,630 | 73% | \$178 | \$129 | \$182,402,062 | \$260,574,374 | \$13,028,719 | \$27,360,309 |
| 2021 | 766,527 | 1,073,138 | 1,409,630 | 76% | \$185 | \$141 | \$198,820,586 | \$284,029,409 | \$14,201,470 | \$29,823,088 |
| 2022 | 790,492 | 1,108,689 | 1,519,130 | 73% | \$190 | \$138 | \$210,162,457 | \$300,232,081 | \$15,011,604 | \$31,524,369 |
| 2023 | 826,152 | 1,156,612 | 1,519,130 | 76% | \$195 | \$148 | \$225,134,077 | \$321,620,110 | \$16,081,006 | \$33,770,112 |
| 2024 | 850,608 | 1,190,851 | 1,628,630 | 73% | \$200 | \$146 | \$237,593,559 | \$339,419,370 | \$16,970,968 | \$35,639,034 |
| 2025 | 882,020 | 1,234,828 | 1,628,630 | 76% | \$205 | \$155 | \$252,526,909 | \$360,752,727 | \$18,037,636 | \$37,879,036 |
| 2026 | 910,257 | 1,274,360 | 1,738,130 | 73% | \$210 | \$154 | \$267,126,685 | \$381,609,550 | \$19,080,477 | \$40,068,003 |

PRICING POWER

The national average for room occupancy is currently listed at 66%¹⁰ overall, the CNMI is averaging 88% of room occupancy. A statement like this is easy to see that the CNMI is doing well considering we are 22% above the national average, however, CNMI's room inventory is a big factor in determining that 88%. Due to Super Typhoon Yutu and the loss of Marianas Resort the CNMI lost over 250 rooms available for tourist arrivals. The loss of these rooms has pushed CNMI's hotel occupancy numbers above the national average.

Another contributing factor in room rate determination is the outdated facilities and accommodations at the major hotels on the island. A recent stay at the hotels showcased the beauty of the islands with breathtaking ocean views and amazing customer service however the facility itself was not up to par. The rooms were outdated and showed signs of age, the lobby at three of hotels showed signs of an 80's renovation. At reviews like this, it would prove rather difficult to charge higher rates for facilities that are not up to par with three-star accommodations.

A hotel on private property, Kensington Hotel owned and operated by E-land group reopened at the former Nikko Hotel in San Roque and went through a complete overhaul. The lobby boasts crystal chandeliers, luxury guest suites and an all-inclusive water park Kensington charges an average \$310 per night but reflect five-star accommodations. The two major developments on public lands have expressed its intent to renovate their facilities to similar standards once a new lease has been signed and approved, giving them the ability to charge higher rates.

Currently, hotels have agreements with online travel agencies such as expedia, booking.com and Agoda for cheaper room rates and travelers are more inclined to make their own travel arrangements these days. They also have arrangement with tour agencies in the Chinese and Korean market and charter flights/seats to fill these rooms.

The nature of tourism in Saipan is fast changing. Apartment-based vacation rentals which were not counted in MVA lodging inventors appears to be a significant factor. Some new projects under development are limited-service type "condo-tels" requiring less labor to operate which has hindered the current hotels overall numbers.¹¹ (John Knox, DPL Land use plan, 2018)

HOTEL INVENTORY AND FUTURE DEVELOPMENT

As stated in the 2016 Feasibility Study conducted by Hawthorne HTL for Marianas Visitors Authority, growth past the 750,000 mark could only be possible with considerable expansion the existing infrastructure by scales and timelines that correspond to arrival growth¹².

At the end of 2016, the CNMI currently had 3,248 rooms consisting of 11 hotel properties, of this number 2,355 rooms are part of the Hotel Association of the Northern Mariana Islands (HANMI). This is 75 percent of the total registered inventory on island. In early 2017, Kensington was added to the total number increasing the total number of rooms to 3,561.

¹⁰ Beverly Hotel Sustainability Report – Fine Point and Associates, 2018

¹¹ DPL Land use plan – Economic and Employment Projections

¹² Tourism Development in the US Commonwealth, MVA Report January 2017

Based on the information provided by MVA and reported on the feasibility study there are currently 5,212 rooms in future developments 1,600 of these rooms are Imperial Pacific's inventory, which leaves 3,612 rooms in other developments to include, Ocean Vista, Honest Profit, and Saipan Globe Hotel all currently in construction.

Due to the USCIS capping the amount of foreign workers in the CNMI at 13,999¹³, creating a bigger inventory would require at least 9,000 construction workers to fulfill such developments. This additional constraint would make the possibility of more rooms insurmountable.

REVENUE DATA

Figure 1-3: This data represents annual revenue over the past 16 years for hotels within the CNMI-Graph Courtesy of DPL

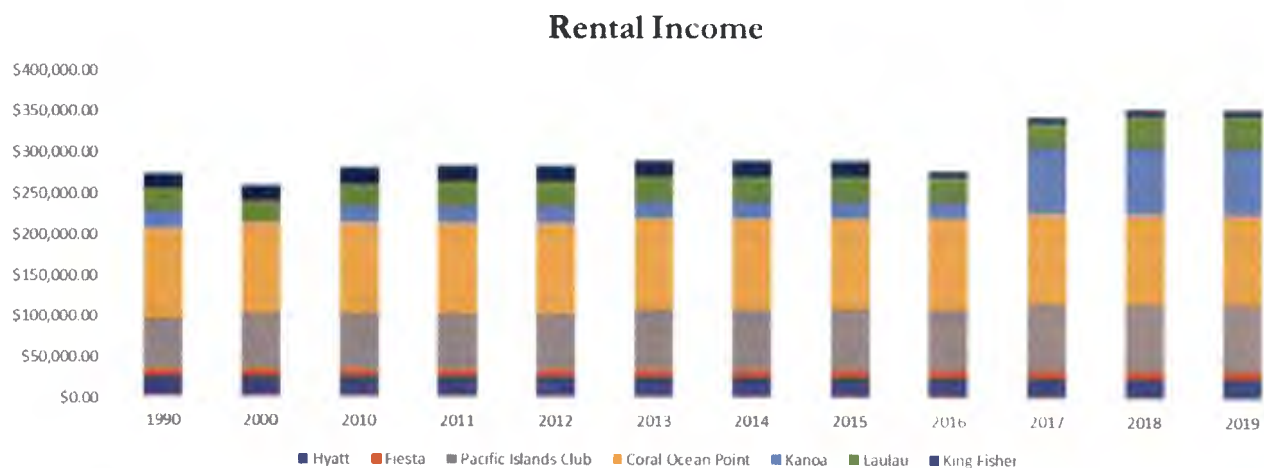
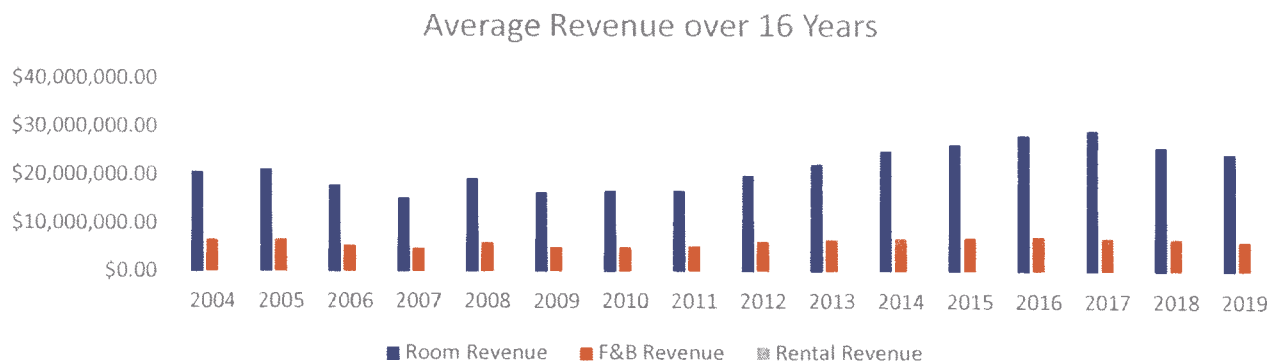
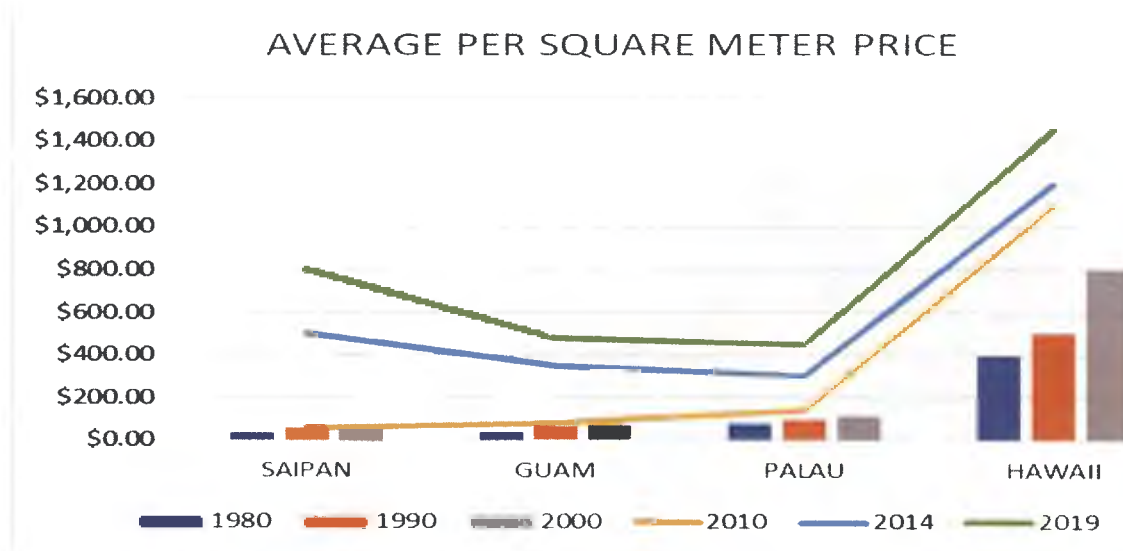


Figure 1-4: This data represents annual rental payments to DPL over a period of 29 -years. Graph Courtesy of DPL

¹³ USCIS report, March 2019

REGION DATA

Figure 1-5: The data represents the average price per square meter per decade; 2014 shows the drastic increase in price per square meter after the casino license was awarded to Imperial Pacific



The above table shows over the course of 30 years the price of land reflected the economic trend and tourist arrivals. For comparison purpose Hawaii, Guam and Palau's data were pulled as they are the closest in the region, however, the Republic of Palau land tenure is similar to that of the CNMI. According to the Republic of Palau's Constitution Article XIII, Section 8; "Only citizens of Palau and corporations wholly owned by citizens of Palau may acquire title to land or waters in Palau." In 2007 Palau President Tommy Remengesau Junior signed into law a bill that permits 99-year leases of government property including land, this law also allowed Private Citizens with 50-year leases to extend for another 49-years after the initial 50-year term.

The neighboring island of Guam has Government Lands that are managed by the Chamorro Land Trust Commission (CLTC) and was set up to give land to the landless similar to the CNMI's homestead programⁱⁱ. However, due to lack of infrastructure and lack of funds by the CLTC, the 33rd Guam Legislature introduced bill 33-95 and was signed into law in November of 2015 allowing the commercial lease of government lands to generate income to provide infrastructure on land available to be given to the landless. The law established that all Commercial Land Leases "Annual Rent shall be no less than ten percent (10%) of the current appraisal of the fair market value of the land that is to be leased. Rent shall escalate at a minimum of five (5) year intervals based at a minimum upon current appraisal of fair market value of the land being leased, but in no event shall rent be lower than the rent charged during the previous (5) year period. The rent to be charged on any request on the current appraisal of the fair market value of the land at the time the option to renew is exercised." The ten percent is on unimproved land and all cost to bring infrastructure to the lot is the burden of the developer.

The law, however, does allow for additional rental payments based on a percentage of BGRT, this rate is not set in stone and is subject to negotiations.

***Please see appendix 3 for Guam Public Law 33-95 and appendix 4 for a list of real estate listing in Guam, Hawaii and Palau.*

LAND USE PLAN AND RECOMMENDATIONS

According to DPL's land use which was updated in 2019, Public land inventory is determined by current use of public lands and the existence of vacant public land. Public lands that are surrounded by existing development shall be developed to complement the existing surrounding uses. Land in excess of 10% slope is generally not appropriate for development due to cost.

Saipan has approximately 2,819 hectares of available public lands, however due to topography and natural resources, Saipan has approximately 564 hectares of land with a slope less than 10% suitable for development such as public facilities, village homestead or commercial uses¹⁴.

The land use plan located several lots on the southern of Saipan for future land leases for private developers. To keep up with the CNMI's growing economy these lots should be considered for developments. The land use plan did not recommend any future developments at the completion and adoption of the land use plan.

MARKET CONDITIONS INVESTORS AND FUTURE DEVELOPMENTS

As stated in the above section, the Land Use plan did not recommend any future development. However, it did identify 564 hectares of public land that are available for commercial uses. Currently, the CNMI is in dire need of hotel/resort development to accommodate the anticipated number of visitors that both MVA sustainability report and Tourism Master plan pointed out. The current inventory is currently a little over 3,000 rooms bringing occupancy rates at 88% monthly. These numbers have put a strain in the facilities and is showing signs of strain on the infrastructures.

A quick survey has revealed the need for a shopping mall and amusement center is needed to attract more tourist and to give the locals more to do. There is a lack of meeting spaces for conventions, conference and expo facilities. Market conditions based on tourist arrivals and forecast proves that adding such developments and amenities will entice tourist to stay and prove a great influx of cash into the economy.

ANALYSIS

According to §145-70-110 (5) New Leases – shall be based on the appraised value of the fee simple interest including improvements (if any). §145-70-110 (2) Basic rent shall be based on the value of the fee simple title to the property. Currently rents are set at 5% of appraised value for 1) Basic Rents, plus 2) Additional Rents based on a certain percentage of BGR depending on the hotel's level of BGR.

DPL has reviewed financial statements of three of the major developments on the island and revealed that 5% of the fee appraisal with improvements is not feasible. To help achieve equilibrium for both the NMI Descents and HANMI while taking into consideration the analysis presented herein either of the following is proposed which we believe is sustainable. These recommendations are for matured leases.

¹⁴ DPL Land Use plan – Updated 2019

Recommendation # 1

DPL needs to realize the full value of the appraised value of the subject lot within the lease terms and properly assess the lot every five years in accordance with DPL's regulation. However, to achieve an attainable rate Business Gross Revenue (BGR) rents must be minimized or deleted from the calculation as an option. This will allow DPL to collect on the appraised value of the lot only and do away with BGR collections. To do this DPL can charge a flat rate of 2.5% of fair market value annually for rent, which is a 50% discount to current regulation rents. The chart below is a comparison of the current 5% as stated in DPL regulations and the proposed 2.5% rate without BGR Payments.

Current Payment to DPL average \$350,000.00 based on unimproved land and a percentage of BGR. As seen in Figure 1-1, the hotels average around 3.5 million annually before rental payments to DPL. An increase of 400% of existing rental payments is sustainable if percentage of BGR rent payments are deleted from the final equation.

Please See the Chart Below:

| HOTEL | CURRENT BASE RENT | AVERAGE BGR RENTS | TOTAL RENT AMOUNT |
|-------------------|-------------------|-------------------|-------------------|
| Hyatt | \$25,000.00 | \$276,402.00 | \$301,402.00 |
| Fiesta | \$10,000.00 | \$246,171.78 | \$256,171.78 |
| Kanoa | \$81,900.00 | \$309,520.78 | \$391,420.78 |
| World Resort | \$156,190.66 | \$189,480.00 | \$345,670.00 |
| Coral Ocean Point | \$109,992.00 | \$48,980.88 | \$268,964.88 |

The table above shows the current base rent and an average of BGR collection payments. Hyatt and Fiesta are old leases that have a set rate and rent are not based on the fair market value of the lot. In fact their rents have been far below market standards for decades now. The remaining three leases are subject to market value appraisal and pay a percentage of the appraised raw land. World Resort the highest of the above prepays rent three years in advance and BGR is paid quarterly in accordance with the lease agreement.

By eliminating BGR from the calculation as you can see in Figure 1-6, calculating a base rent without BGR will have rent payments made to DPL 100% more than what is currently being received. This will also allow DPL the opportunity to realize the full appraised value of the lot through-out the initial 40-year term.

By proceeding with the current regulation of 5% of fair market value with improvements, developers would not be able to continue to do business. As shown in appendix 5, the average net profit at its lowest will put them in the negative, at their highest they would not be making much profit which would push these developments out.

Figure 1-6: The table below shows the proposed 2.5% rental payment based on improved land as opposed to the 5% that is stated in DPL's current regulation.

| Current Rent | Appraisal Value with Improvement | Annual Rent | % of Appraisal | Current Rent | Appraisal Value with Improvement | Annual Rent | % of Appraisal |
|---------------|-------------------------------------|------------------|-------------------|---------------|-------------------------------------|-------------------|-------------------|
| 350,000.00 | \$ 70,000,000.00 | \$ 1,750,000.00 | 2.50% | 350,000.00 | \$ 70,000,000.00 | \$ 3,500,000.00 | 5.00% |
| 350,000.00 | | \$ 1,750,000.00 | 2.50% | 350,000.00 | | \$ 3,500,000.00 | 5.00% |
| 350,000.00 | | \$ 1,750,000.00 | 2.50% | 350,000.00 | | \$ 3,500,000.00 | 5.00% |
| 350,000.00 | | \$ 1,750,000.00 | 2.50% | 350,000.00 | | \$ 3,500,000.00 | 5.00% |
| 350,000.00 | | \$ 1,750,000.00 | 2.50% | 350,000.00 | | \$ 3,500,000.00 | 5.00% |
| 385,000.00 | \$ 73,500,000.00 | \$ 1,837,500.00 | 2.50% | 385,000.00 | \$ 73,500,000.00 | \$ 3,675,000.00 | 5.00% |
| 385,000.00 | | \$ 1,837,500.00 | 2.50% | 385,000.00 | | \$ 3,675,000.00 | 5.00% |
| 385,000.00 | | \$ 1,837,500.00 | 2.50% | 385,000.00 | | \$ 3,675,000.00 | 5.00% |
| 385,000.00 | | \$ 1,837,500.00 | 2.50% | 385,000.00 | | \$ 3,675,000.00 | 5.00% |
| 385,000.00 | | \$ 1,837,500.00 | 2.50% | 385,000.00 | | \$ 3,675,000.00 | 5.00% |
| 423,500.00 | \$ 77,175,000.00 | \$ 1,929,375.00 | 2.50% | 423,500.00 | \$ 77,175,000.00 | \$ 3,858,750.00 | 5.00% |
| 423,500.00 | | \$ 1,929,375.00 | 2.50% | 423,500.00 | | \$ 3,858,750.00 | 5.00% |
| 423,500.00 | | \$ 1,929,375.00 | 2.50% | 423,500.00 | | \$ 3,858,750.00 | 5.00% |
| 423,500.00 | | \$ 1,929,375.00 | 2.50% | 423,500.00 | | \$ 3,858,750.00 | 5.00% |
| 423,500.00 | | \$ 1,929,375.00 | 2.50% | 423,500.00 | | \$ 3,858,750.00 | 5.00% |
| 423,711.75 | \$ 73,500,000.00 | \$ 2,113,125.00 | 2.50% | 423,711.75 | \$ 73,500,000.00 | \$ 3,858,750.00 | 5.00% |
| 423,711.75 | | \$ 2,113,125.00 | 2.50% | 423,711.75 | | \$ 3,858,750.00 | 5.00% |
| 423,711.75 | | \$ 2,113,125.00 | 2.50% | 423,711.75 | | \$ 3,858,750.00 | 5.00% |
| 423,711.75 | | \$ 2,113,125.00 | 2.50% | 423,711.75 | | \$ 3,858,750.00 | 5.00% |
| 423,711.75 | | \$ 2,113,125.00 | 2.50% | 423,711.75 | | \$ 3,858,750.00 | 5.00% |
| 423,711.75 | \$ 84,525,000.00 | \$ 2,430,094.00 | 2.50% | 423,711.75 | \$ 84,525,000.00 | \$ 4,226,250.00 | 5.00% |
| 423,711.75 | | \$ 2,430,094.00 | 2.50% | 423,711.75 | | \$ 4,226,250.00 | 5.00% |
| 423,711.75 | | \$ 2,430,094.00 | 2.50% | 423,711.75 | | \$ 4,226,250.00 | 5.00% |
| 423,711.75 | | \$ 2,430,094.00 | 2.50% | 423,711.75 | | \$ 4,226,250.00 | 5.00% |
| 423,711.75 | | \$ 2,430,094.00 | 2.50% | 423,711.75 | | \$ 4,226,250.00 | 5.00% |
| 423,711.75 | | \$ 2,430,094.00 | 2.50% | 423,711.75 | | \$ 4,226,250.00 | 5.00% |
| 444,897.34 | \$ 97,203,750.00 | \$ 2,430,094.00 | 2.50% | 444,897.34 | \$ 71,573,250.00 | \$ 4,226,250.00 | 5.00% |
| 444,897.34 | | \$ 2,430,094.00 | 2.50% | 444,897.34 | | \$ 4,226,250.00 | 5.00% |
| 444,897.34 | | \$ 2,430,094.00 | 2.50% | 444,897.34 | | \$ 4,226,250.00 | 5.00% |
| 444,897.34 | | \$ 2,430,094.00 | 2.50% | 444,897.34 | | \$ 4,226,250.00 | 5.00% |
| 444,897.34 | | \$ 2,430,094.00 | 2.50% | 444,897.34 | | \$ 4,226,250.00 | 5.00% |
| 467,142.21 | \$ 88,367,045.00 | \$ 2,540,553.00 | 2.50% | 467,142.21 | \$ 88,367,045.00 | \$ 4,418,352.25 | 5.00% |
| 467,142.21 | | \$ 2,540,553.00 | 2.50% | 467,142.21 | | \$ 4,418,352.25 | 5.00% |
| 467,142.21 | | \$ 2,540,553.00 | 2.50% | 467,142.21 | | \$ 4,418,352.25 | 5.00% |
| 467,142.21 | | \$ 2,540,553.00 | 2.50% | 467,142.21 | | \$ 4,418,352.25 | 5.00% |
| 467,142.21 | | \$ 2,540,553.00 | 2.50% | 467,142.21 | | \$ 4,418,352.25 | 5.00% |
| 490,499.32 | \$ 101,622,102.00 | \$ 2,540,553.00 | 2.50% | 490,499.32 | \$ 101,622,102.00 | \$ 5,081,105.10 | 5.00% |
| 490,499.32 | | \$ 2,540,553.00 | 2.50% | 490,499.32 | | \$ 5,081,105.10 | 5.00% |
| 490,499.32 | | \$ 2,540,553.00 | 2.50% | 490,499.32 | | \$ 5,081,105.10 | 5.00% |
| 490,499.32 | | \$ 2,540,553.00 | 2.50% | 490,499.32 | | \$ 5,081,105.10 | 5.00% |
| 490,499.32 | | \$ 2,540,553.00 | 2.50% | 490,499.32 | | \$ 5,081,105.10 | 5.00% |
| 17,042,311.85 | | \$ 87,856,470.00 | | 17,042,311.85 | | \$ 164,222,286.75 | |

Figure 1-5: Shows what rent payments would be if the lease payments were based on raw land (no improvements) and according to the 5% of appraised value

| <u>Appraised Value</u> | <u>Year</u> | <u>Annual Rent</u> | <u>% of Appraisal</u> |
|------------------------|-------------|------------------------|-----------------------|
| \$6,500,000.00 | 1 | \$325,000.00 | 5% |
| | 2 | \$325,000.00 | 5% |
| | 3 | \$325,000.00 | 5% |
| | 4 | \$325,000.00 | 5% |
| | 5 | \$325,000.00 | 5% |
| \$7,475,000.00 | 6 | \$373,750.00 | 5% |
| | 7 | \$373,750.00 | 5% |
| | 8 | \$373,750.00 | 5% |
| | 9 | \$373,750.00 | 5% |
| | 10 | \$373,750.00 | 5% |
| \$8,596,250.00 | 11 | \$429,812.50 | 5% |
| | 12 | \$429,812.50 | 5% |
| | 13 | \$429,812.50 | 5% |
| | 14 | \$429,812.50 | 5% |
| | 15 | \$429,812.50 | 5% |
| \$9,885,687.50 | 16 | \$494,284.38 | 5% |
| | 17 | \$494,284.38 | 5% |
| | 18 | \$494,284.38 | 5% |
| | 19 | \$494,284.38 | 5% |
| | 20 | \$494,284.38 | 5% |
| \$8,897,118.75 | 21 | \$494,284.38 | 5% |
| | 22 | \$494,284.38 | 5% |
| | 23 | \$494,284.38 | 5% |
| | 24 | \$494,284.38 | 5% |
| | 25 | \$494,284.38 | 5% |
| \$10,676,542.50 | 26 | \$533,827.13 | 5% |
| | 27 | \$533,827.13 | 5% |
| | 28 | \$533,827.13 | 5% |
| | 29 | \$533,827.13 | 5% |
| | 30 | \$533,827.13 | 5% |
| \$9,608,888.25 | 31 | \$533,827.13 | 5% |
| | 32 | \$533,827.13 | 5% |
| | 33 | \$533,827.13 | 5% |
| | 34 | \$533,827.13 | 5% |
| | 35 | \$533,827.13 | 5% |
| \$10,569,777.08 | 36 | \$528,488.85 | 5% |
| | 37 | \$528,488.85 | 5% |
| | 38 | \$528,488.85 | 5% |
| | 39 | \$528,488.85 | 5% |
| | 40 | \$528,488.85 | 5% |
| | | \$18,566,371.84 | |

Note: Please see appendix 1 & 2 for Fiesta's Appraisal commissioned by Fiesta for the Purpose of Rent Calculation

Recommendation #2:

DPL has reviewed financial statements of three of the major developments on the island and revealed that 5% of the fair market value with improvements is not feasible. To help achieve equilibrium for both the NMI Descents and HANMI the following is proposed:

.5% of the appraised value and continue the 2% Business Gross Revenue Tax

This amount is 100% above what is currently being paid but based on the improvements and average revenue stream this amount would be feasible.

Current rent payments for 2 of the major developments are based on a flat rate and 1% of BGR. Consider the following:

Even at .5% of the appraised value on improved land DPL still stands to collect 100% more to these developments while allowing the investor to recuperate cost and make necessary renovations and improvements to the buildings and facilities that are in desperate need of repair.

Figure 1-7: Shows a straight line comparison for current rent, raw land, 5% of FMV, 2.5% of FMV and .5% of FMV

| Current Rent | Raw Land Appraised Value | Year | % of Appraisal | | Appraisal Value | | Appraisal Value | | Appraisal Value | | Annual Base | | COLLECTION | |
|---------------|--------------------------------|------|-----------------|----------------|------------------|------------------|------------------|------------------|------------------|------------------|-----------------|----------------|-----------------|-----------------|
| | | | Annual Rent | % of Appraisal | with Improvement | with Improvement | with Improvement | with Improvement | with Improvement | with Improvement | Base | % of Appraisal | 50% | 50% |
| 350,000.00 | 16,500,000.00 | 1 | \$1,750,000.00 | 2.50% | \$70,000,000.00 | \$70,000,000.00 | \$70,000,000.00 | \$70,000,000.00 | \$70,000,000.00 | \$70,000,000.00 | \$3,500,000.00 | 5.00% | \$350,000.00 | \$350,000.00 |
| 350,000.00 | | 2 | \$1,750,000.00 | 2.50% | | | | | | | \$3,500,000.00 | 5.00% | \$350,000.00 | \$350,000.00 |
| 350,000.00 | | 3 | \$1,750,000.00 | 2.50% | | | | | | | \$3,500,000.00 | 5.00% | \$350,000.00 | \$350,000.00 |
| 350,000.00 | | 4 | \$1,750,000.00 | 2.50% | | | | | | | \$3,500,000.00 | 5.00% | \$350,000.00 | \$350,000.00 |
| 350,000.00 | | 5 | \$1,750,000.00 | 2.50% | | | | | | | \$3,500,000.00 | 5.00% | \$350,000.00 | \$350,000.00 |
| 385,000.00 | 17,475,000.00 | 6 | \$1,873,750.00 | 2.50% | \$73,500,000.00 | \$73,500,000.00 | \$73,500,000.00 | \$73,500,000.00 | \$73,500,000.00 | \$73,500,000.00 | \$3,675,000.00 | 5.00% | \$367,500.00 | \$367,500.00 |
| 385,000.00 | | 7 | \$1,873,750.00 | 2.50% | | | | | | | \$3,675,000.00 | 5.00% | \$367,500.00 | \$367,500.00 |
| 385,000.00 | | 8 | \$1,873,750.00 | 2.50% | | | | | | | \$3,675,000.00 | 5.00% | \$367,500.00 | \$367,500.00 |
| 385,000.00 | | 9 | \$1,873,750.00 | 2.50% | | | | | | | \$3,675,000.00 | 5.00% | \$367,500.00 | \$367,500.00 |
| 385,000.00 | | 10 | \$1,873,750.00 | 2.50% | | | | | | | \$3,675,000.00 | 5.00% | \$367,500.00 | \$367,500.00 |
| 423,500.00 | 18,596,250.00 | 11 | \$2,119,375.00 | 2.50% | \$77,175,000.00 | \$77,175,000.00 | \$77,175,000.00 | \$77,175,000.00 | \$77,175,000.00 | \$77,175,000.00 | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,500.00 | | 12 | \$2,119,375.00 | 2.50% | | | | | | | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,500.00 | | 13 | \$2,119,375.00 | 2.50% | | | | | | | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,500.00 | | 14 | \$2,119,375.00 | 2.50% | | | | | | | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,500.00 | | 15 | \$2,119,375.00 | 2.50% | | | | | | | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,711.75 | 19,885,687.50 | 16 | \$2,494,284.38 | 2.50% | \$77,500,000.00 | \$77,500,000.00 | \$77,500,000.00 | \$77,500,000.00 | \$77,500,000.00 | \$77,500,000.00 | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,711.75 | | 17 | \$2,494,284.38 | 2.50% | | | | | | | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,711.75 | | 18 | \$2,494,284.38 | 2.50% | | | | | | | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,711.75 | | 19 | \$2,494,284.38 | 2.50% | | | | | | | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,711.75 | | 20 | \$2,494,284.38 | 2.50% | | | | | | | \$3,858,750.00 | 5.00% | \$385,875.00 | \$385,875.00 |
| 423,711.75 | 18,887,118.75 | 21 | \$2,494,284.38 | 2.50% | \$84,525,000.00 | \$84,525,000.00 | \$84,525,000.00 | \$84,525,000.00 | \$84,525,000.00 | \$84,525,000.00 | \$4,226,250.00 | 5.00% | \$422,625.00 | \$422,625.00 |
| 423,711.75 | | 22 | \$2,494,284.38 | 2.50% | | | | | | | \$4,226,250.00 | 5.00% | \$422,625.00 | \$422,625.00 |
| 423,711.75 | | 23 | \$2,494,284.38 | 2.50% | | | | | | | \$4,226,250.00 | 5.00% | \$422,625.00 | \$422,625.00 |
| 423,711.75 | | 24 | \$2,494,284.38 | 2.50% | | | | | | | \$4,226,250.00 | 5.00% | \$422,625.00 | \$422,625.00 |
| 423,711.75 | | 25 | \$2,494,284.38 | 2.50% | | | | | | | \$4,226,250.00 | 5.00% | \$422,625.00 | \$422,625.00 |
| 444,897.34 | 10,678,542.50 | 26 | \$533,827.13 | 2.50% | \$97,203,750.00 | \$97,203,750.00 | \$97,203,750.00 | \$97,203,750.00 | \$97,203,750.00 | \$97,203,750.00 | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 444,897.34 | | 27 | \$533,827.13 | 2.50% | | | | | | | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 444,897.34 | | 28 | \$533,827.13 | 2.50% | | | | | | | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 444,897.34 | | 29 | \$533,827.13 | 2.50% | | | | | | | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 444,897.34 | | 30 | \$533,827.13 | 2.50% | | | | | | | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 467,142.21 | 19,606,888.25 | 31 | \$553,827.13 | 2.50% | \$88,367,045.00 | \$88,367,045.00 | \$88,367,045.00 | \$88,367,045.00 | \$88,367,045.00 | \$88,367,045.00 | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 467,142.21 | | 32 | \$553,827.13 | 2.50% | | | | | | | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 467,142.21 | | 33 | \$553,827.13 | 2.50% | | | | | | | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 467,142.21 | | 34 | \$553,827.13 | 2.50% | | | | | | | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 467,142.21 | | 35 | \$553,827.13 | 2.50% | | | | | | | \$4,418,352.25 | 5.00% | \$441,835.23 | \$441,835.23 |
| 490,499.32 | 10,569,777.08 | 36 | \$528,488.85 | 2.50% | \$101,622,102.00 | \$101,622,102.00 | \$101,622,102.00 | \$101,622,102.00 | \$101,622,102.00 | \$101,622,102.00 | \$5,081,105.10 | 5.00% | \$508,110.51 | \$508,110.51 |
| 490,499.32 | | 37 | \$528,488.85 | 2.50% | | | | | | | \$5,081,105.10 | 5.00% | \$508,110.51 | \$508,110.51 |
| 490,499.32 | | 38 | \$528,488.85 | 2.50% | | | | | | | \$5,081,105.10 | 5.00% | \$508,110.51 | \$508,110.51 |
| 490,499.32 | | 39 | \$528,488.85 | 2.50% | | | | | | | \$5,081,105.10 | 5.00% | \$508,110.51 | \$508,110.51 |
| 490,499.32 | | 40 | \$528,488.85 | 2.50% | | | | | | | \$5,081,105.10 | 5.00% | \$508,110.51 | \$508,110.51 |
| 17,042,311.85 | | | \$18,566,371.84 | | \$87,856,470.00 | \$87,856,470.00 | \$87,856,470.00 | \$87,856,470.00 | \$87,856,470.00 | \$87,856,470.00 | \$16,222,286.75 | | \$25,441,047.71 | \$25,441,047.71 |
| | | | | | | | | | | | | | \$42,180,245.15 | |

Recommendation #3

Recommendation #3 is similar to recommendation #2 but higher percentages. The scenario below shows a 1% annual base rent and 6% of BGR collections. At this rate DPL stands to receive approximately \$84.5 million and is the closes DPL will get to the full market value of the lot with improvements.

This is amount is relatively close to what the developments would consider feasible.

| Current Rent | Raw Land | | | | | | | | | | | |
|---------------|-----------------|------|-----------------|----------------|----------------------------------|-------------------|----------------|----------------------------------|------------------|----------------|-------------------|--|
| | Appraised Value | Year | Annual Rent | % of Appraisal | Appraisal Value with Improvement | Annual Rent | % of Appraisal | Appraisal Value with Improvement | Annual BASE Rent | % of Appraisal | 6% BGR COLLECTION | |
| 350,000.00 | \$6,500,000.00 | 1 | \$325,000.00 | 5% | \$ 70,000,000.00 | \$ 3,500,000.00 | 5.00% | \$ 70,000,000.00 | \$ 700,000.00 | 1.00% | \$320,000.00 | |
| 350,000.00 | | 2 | \$325,000.00 | 5% | | \$ 3,500,000.00 | 5.00% | | \$ 700,000.00 | 1.00% | \$350,000.00 | |
| 350,000.00 | | 3 | \$325,000.00 | 5% | | \$ 3,500,000.00 | 5.00% | | \$ 700,000.00 | 1.00% | \$350,000.00 | |
| 350,000.00 | | 4 | \$325,000.00 | 5% | | \$ 3,500,000.00 | 5.00% | | \$ 700,000.00 | 1.00% | \$345,000.00 | |
| 350,000.00 | | 5 | \$325,000.00 | 5% | | \$ 3,500,000.00 | 5.00% | | \$ 700,000.00 | 1.00% | \$360,000.00 | |
| 385,000.00 | \$7,475,000.00 | 6 | \$373,750.00 | 5% | \$ 73,500,000.00 | \$ 3,675,000.00 | 5.00% | \$ 73,500,000.00 | \$ 735,000.00 | 1.00% | \$378,000.00 | |
| 385,000.00 | | 7 | \$373,750.00 | 5% | | \$ 3,675,000.00 | 5.00% | | \$ 735,000.00 | 1.00% | \$396,900.00 | |
| 385,000.00 | | 8 | \$373,750.00 | 5% | | \$ 3,675,000.00 | 5.00% | | \$ 735,000.00 | 1.00% | \$416,745.00 | |
| 385,000.00 | | 9 | \$373,750.00 | 5% | | \$ 3,675,000.00 | 5.00% | | \$ 735,000.00 | 1.00% | \$437,582.25 | |
| 385,000.00 | | 10 | \$373,750.00 | 5% | | \$ 3,675,000.00 | 5.00% | | \$ 735,000.00 | 1.00% | \$459,461.36 | |
| 423,500.00 | \$8,596,250.00 | 11 | \$429,812.50 | 5% | \$ 77,175,000.00 | \$ 3,858,750.00 | 5.00% | \$ 77,175,000.00 | \$ 771,750.00 | 1.00% | \$482,434.43 | |
| 423,500.00 | | 12 | \$429,812.50 | 5% | | \$ 3,858,750.00 | 5.00% | | \$ 771,750.00 | 1.00% | \$506,556.15 | |
| 423,500.00 | | 13 | \$429,812.50 | 5% | | \$ 3,858,750.00 | 5.00% | | \$ 771,750.00 | 1.00% | \$531,883.96 | |
| 423,500.00 | | 14 | \$429,812.50 | 5% | | \$ 3,858,750.00 | 5.00% | | \$ 771,750.00 | 1.00% | \$558,478.16 | |
| 423,500.00 | | 15 | \$429,812.50 | 5% | | \$ 3,858,750.00 | 5.00% | | \$ 771,750.00 | 1.00% | \$586,402.07 | |
| 423,711.75 | \$9,885,687.50 | 16 | \$494,284.38 | 5% | \$ 73,500,000.00 | \$ 3,858,750.00 | 5.00% | \$ 73,500,000.00 | \$ 771,750.00 | 1.00% | \$615,722.17 | |
| 423,711.75 | | 17 | \$494,284.38 | 5% | | \$ 3,858,750.00 | 5.00% | | \$ 771,750.00 | 1.00% | \$646,508.28 | |
| 423,711.75 | | 18 | \$494,284.38 | 5% | | \$ 3,858,750.00 | 5.00% | | \$ 771,750.00 | 1.00% | \$678,833.69 | |
| 423,711.75 | | 19 | \$494,284.38 | 5% | | \$ 3,858,750.00 | 5.00% | | \$ 771,750.00 | 1.00% | \$712,775.38 | |
| 423,711.75 | | 20 | \$494,284.38 | 5% | | \$ 3,858,750.00 | 5.00% | | \$ 771,750.00 | 1.00% | \$748,414.14 | |
| 423,711.75 | \$8,897,118.75 | 21 | \$494,284.38 | 5% | \$ 84,525,000.00 | \$ 4,226,250.00 | 5.00% | \$ 84,525,000.00 | \$ 845,250.00 | 1.00% | \$785,834.85 | |
| 423,711.75 | | 22 | \$494,284.38 | 5% | | \$ 4,226,250.00 | 5.00% | | \$ 845,250.00 | 1.00% | \$825,126.59 | |
| 423,711.75 | | 23 | \$494,284.38 | 5% | | \$ 4,226,250.00 | 5.00% | | \$ 845,250.00 | 1.00% | \$866,382.92 | |
| 423,711.75 | | 24 | \$494,284.38 | 5% | | \$ 4,226,250.00 | 5.00% | | \$ 845,250.00 | 1.00% | \$909,702.07 | |
| 423,711.75 | | 25 | \$494,284.38 | 5% | | \$ 4,226,250.00 | 5.00% | | \$ 845,250.00 | 1.00% | \$955,187.17 | |
| 444,897.34 | \$10,676,542.50 | 26 | \$533,827.13 | 5% | \$ 71,573,250.00 | \$ 4,226,250.00 | 5.00% | \$ 97,203,750.00 | \$ 972,037.50 | 1.00% | \$1,002,946.53 | |
| 444,897.34 | | 27 | \$533,827.13 | 5% | | \$ 4,226,250.00 | 5.00% | | \$ 972,037.50 | 1.00% | \$1,053,093.86 | |
| 444,897.34 | | 28 | \$533,827.13 | 5% | | \$ 4,226,250.00 | 5.00% | | \$ 972,037.50 | 1.00% | \$1,105,748.55 | |
| 444,897.34 | | 29 | \$533,827.13 | 5% | | \$ 4,226,250.00 | 5.00% | | \$ 972,037.50 | 1.00% | \$1,161,035.98 | |
| 444,897.34 | | 30 | \$533,827.13 | 5% | | \$ 4,226,250.00 | 5.00% | | \$ 972,037.50 | 1.00% | \$1,219,087.78 | |
| 467,142.21 | \$9,608,888.25 | 31 | \$533,827.13 | 5% | \$ 88,367,045.00 | \$ 4,418,352.25 | 5.00% | \$ 88,367,045.00 | \$ 883,670.45 | 1.00% | \$1,280,042.17 | |
| 467,142.21 | | 32 | \$533,827.13 | 5% | | \$ 4,418,352.25 | 5.00% | | \$ 883,670.45 | 1.00% | \$1,344,044.28 | |
| 467,142.21 | | 33 | \$533,827.13 | 5% | | \$ 4,418,352.25 | 5.00% | | \$ 883,670.45 | 1.00% | \$1,411,246.49 | |
| 467,142.21 | | 34 | \$533,827.13 | 5% | | \$ 4,418,352.25 | 5.00% | | \$ 883,670.45 | 1.00% | \$1,481,808.81 | |
| 467,142.21 | | 35 | \$533,827.13 | 5% | | \$ 4,418,352.25 | 5.00% | | \$ 883,670.45 | 1.00% | \$1,555,899.26 | |
| 490,499.32 | \$10,569,777.08 | 36 | \$528,488.85 | 5% | \$ 101,622,102.00 | \$ 5,081,105.10 | 5.00% | \$ 101,622,102.00 | \$ 1,016,221.02 | 1.00% | \$1,633,694.22 | |
| 490,499.32 | | 37 | \$528,488.85 | 5% | | \$ 5,081,105.10 | 5.00% | | \$ 1,016,221.02 | 1.00% | \$1,715,378.93 | |
| 490,499.32 | | 38 | \$528,488.85 | 5% | | \$ 5,081,105.10 | 5.00% | | \$ 1,016,221.02 | 1.00% | \$1,801,147.88 | |
| 490,499.32 | | 39 | \$528,488.85 | 5% | | \$ 5,081,105.10 | 5.00% | | \$ 1,016,221.02 | 1.00% | \$1,891,205.27 | |
| 490,499.32 | | 40 | \$528,488.85 | 5% | | \$ 5,081,105.10 | 5.00% | | \$ 1,016,221.02 | 1.00% | \$1,985,765.53 | |
| 17,042,311.85 | | | \$18,566,371.84 | | | \$ 164,222,286.75 | | | \$ 33,478,394.85 | 1.00% | \$35,866,076.18 | |

\$69,344,471.04

APPENDICES:

| | |
|--------------|--|
| APPENDIX 1 : | Fiesta Appraisal |
| APPENDIX 2 : | Fiesta Appraisal |
| APPENDIX 3 : | PL 30-95 Chamorro Land Trust Commission Law to lease Gov't Lands |
| APPENDIX 4 : | Real Estate Market Palau and Guam |
| APPENDIX 5 : | Average Revenue Stream for Hotels under DPL Lease |
| APPENDIX 6 : | Public Law 20-84 |
| APPENDIX 7 : | HANMI Letter to DPL |

BIBLIOGRAPHY

2010-2011 Survey of the U.S. State Tourism Office Budgets, U.S. Travel Association, Washington D.C. June 2011.

Citizen Job Availability Report, CNMI Department of Labor

Strategic Stand Alone State Workforce Investment Plan, Commonwealth of the Northern Mariana Islands, April 1, 2009.

Northern Mariana Islands - Saipan, Tinian, Rota - Strategic Initiatives for 2006-2010. Office of the Governor and Marianas Visitors Authority, May 2006.

Citizen Job Availability Section, Master Record (FNW Internal Database), CNMI Department of Labor, February 2011.

Consumer Price Index Commonwealth of the Northern Marianas, Department of Commerce, Commonwealth of the Northern Mariana Islands. August 2011.

CNMI Jobs Study Committee Recommendations, Office of the CNMI Public Auditor, May 20, 2007.

CNMI Qualifying Certificate Program Rules and Regulations, Investment Incentive Act of 2000 (4 CMC §3301, et seq.). Commonwealth Development Authority and the Division of Revenue and Taxation. March 2009.

Comprehensive Economic Development Strategic Plan, 2009-2014. Commonwealth of the Northern Mariana Islands Economic Development Strategic Planning Commission, Department of Commerce, March 2009.

Strategic Stand Alone State Workforce Investment Plan, CNMI Workforce Investment Agency, April 2009.

An Economic Evaluation of Public Investment in Tourism Marketing. Del Norte County. March 2006.

World Tourism Barometer, Volume 9, No.1. World Tourism Organization (UNWTO). February 2011.

Commonwealth of the Northern Mariana Islands, Status of Transition to Federal Immigration Law. United States Government Accountability Office. July 2011



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:

Zaji O. Zajradhara,

Complainant,

v.

Magisland, LLC,

Respondent.

Labor Case No. 15-1207

**ORDER GRANTING
COMPLAINANT'S MOTION
TO DISMISS**

I. INTRODUCTION

This matter came before the Administrative Hearing Office pursuant to Complainant's Laymans' Motion to Dismiss All Pending Cases ("Complainant's Motion to Dismiss").¹ The undersigned finds that the Motion may be decided on the applicable law and arguments, without an additional hearing. For the reasons stated below, Complainant's Motion to Dismiss is hereby **GRANTED**.

///

///

¹ The full caption or title of Complainant's Motion reads: "LAYMANS' [sic] MOTION TO DISMISS ALL PENDING CASES, DUE TO ECONOMIC HARDSHIP, POSSIBLE TERMINATION FROM PRESENT EMPLOYER AND OVERT DISCRIMINATION AND BIAS BY THE CNMI DEPT OF LABOR INVESTIGATION SECTION AND DIRECTLY FROM THE HEARING OFFICE JACQUELINE NICOLAS. THIS LAYMANS' [sic] MOTION SHALL COVER [CASES] MENTIONED ABOVE, AND OR ANY THAT I HAVE FORGOTTEN THAT ARE SCHEDULED TENTATIVELY OR OTHERWISE FOR THE YEAR 2019-2020."

II. DISCUSSION

Generally, motion filings under the Administrative Hearing Office are governed by NMIAC § 80-20.1-470(e).² While the regulations limit the permissible motions to be filed at the Administrative Hearing Office, a party may file a motion to dismiss on the following grounds: (1) lack of subject matter jurisdiction; (2) Lack of personal jurisdiction; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted. NMIAC § 80-20.2-130(c)(1). Further, cases may be dismissed when a Complainant wishes to withdraw or abandon the claims and allegations in a complaint. *See* NMIAC §80-20.1-485(b); *see also* *Zajradhara v. Black Construction*, LC-18-057 (Administrative Order Dismissing Case) (March 7, 2019 at 1).

On June 1, 2015, Complainant filed a complaint against Respondent alleging a violation of the CNMI employment preference statute, among other things.³ In July of 2015, Complainant requested to take the matter off calendar to pursue settlement. There was no

² Thereunder,

[a]n application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition of the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

NMIAC § 80-20.1-470 (e). Here, it is unclear whether Complainant served the Respondent with the present motion as no proof of service was provided by Complainant.

³ “A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job.” 3 CMC § 4528(a). A complainant has the burden to prove the elements of his or her claim. In order to prevail on a claim for damages under the employment preference statute, a complainant must prove all four elements of the statute: (1) that he/she was qualified for the job; (2) that his job application was rejected by the respondent/employer without just cause; (3) the respondent/employer then hired a foreign national worker for that positions and; (4) the respondent/employer failed to meet the 30% workforce objective requirement. *Zajradhara v. Woo Jung Corp.*, LC-18-059 (Administrative Order) (May 16, 2019 at ¶18).

follow-up in this matter since Complainant's request to take the matter of calendar.⁴ Subsequently, on October 28, 2019, Complainant filed the present motion to dismiss all his pending cases before the Administrative Hearing Office.⁵

While Complainant's Motion to Dismiss repeats the previously rejected arguments of bias and discrimination and continues to mischaracterize many of the proceedings and decisions of this Office,⁶ Complainant clearly demonstrates, among other things, that he no longer wishes to pursue any of his pending cases at the Administrative Hearing Office. Specifically, the caption states that Complainant wishes to dismiss "any and all" cases, Complainant's motion states he is pursuing federal claims against the various respondents, and Complainant submitted an affidavit from his employer to support the fact that Complainant wishes to prioritize his current job over litigating cases at the Administrative Hearing Office. For those reasons, as well as Complainant's failure to show to various scheduled hearings, the undersigned finds that Complainant no longer wishes to pursue his claims at the Administrative Hearing Office and dismissal is appropriate.

///

///

⁴ It appears this matter was filed during the former hearing officer's time and its processing was overseen in light of Super Typhoon Yutu, displacement of the Administrative Hearing Office due to typhoon damage, and the transition of the undersigned hearing officer in January of 2019.

⁵ It is unclear whether Complainant served his motion to Respondent as no proof of service was ever filed.

⁶ A litigant's allegations challenging the court's rulings as unfair or wrongly decided cannot form the basis of a proper motion to disqualify a judge for prejudice or bias. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 7. Further, the Commonwealth Supreme Court recognized that, "the mere exercise of [] authority, without more, does not in and of itself demonstrate bias. *Id.* at 9. Further, judicial decisions, alone, do not generally raise an appearance of bias or constitute a basis for recusal. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 36-39. Accordingly, as stated by the Commonwealth Supreme Court, the Complainant's allegations regarding prior rulings and decisions cannot form the proper basis for recusal. For the record, the undersigned maintains that Complainant's allegations of discrimination and bias are false mischaracterizations of this Office's proceedings and decisions. To be clear, said arguments do not form the basis to grant Complainant's present motion.

III. CONCLUSION

Accordingly, Complainant's Motion to Dismiss is hereby **GRANTED**.

So ordered this **4th** day of December, 2019.

/s/

Jacqueline A. Nicolas
Administrative Hearing Officer



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:

Zaji O. Zajradhara,

Complainant,

v.

ZY Corporation,

Respondent.

CAC No. 16-009-09

**ORDER GRANTING
COMPLAINANT'S MOTION
TO DISMISS**

I. INTRODUCTION

This matter came before the Administrative Hearing Office pursuant to Complainant's Laymans' Motion to Dismiss All Pending Cases ("Complainant's Motion to Dismiss").¹ The undersigned finds that the Motion may be decided on the applicable law and arguments, without an additional hearing. For the reasons stated below, Complainant's Motion to Dismiss is hereby **GRANTED**.

///

///

¹ The full caption or title of Complainant's Motion reads: "LAYMANS'[sic] MOTION TO DISMISS ALL PENDING CASES, DUE TO ECONOMIC HARDSHIP, POSSIBLE TERMINATION FROM PRESENT EMPLOYER AND OVERT DISCRIMINATION AND BIAS BY THE CNMI DEPT OF LABOR INVESTIGATION SECTION AND DIRECTLY FROM THE HEARING OFFICE JACQUELINE NICOLAS. THIS LAYMANS' [sic] MOTION SHALL COVER [CASES] MENTIONED ABOVE, AND OR ANY THAT I HAVE FORGOTTEN THAT ARE SCHEDULED TENTATIVELY OR OTHERWISE FOR THE YEAR 2019-2020."

ORIGINAL

II. DISCUSSION

Generally, motion filings under the Administrative Hearing Office are governed by NMIAC § 80-20.1-470(e).² While the regulations limit the permissible motions to be filed at the Administrative Hearing Office, a party may file a motion to dismiss on the following grounds: (1) lack of subject matter jurisdiction; (2) Lack of personal jurisdiction; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted. NMIAC § 80-20.2-130(c)(1). Further, cases may be dismissed when a Complainant wishes to withdraw or abandon the claims and allegations in a complaint. *See* NMIAC §80-20.1-485(b); *see also* *Zajradhara v. Black Construction*, LC-18-057 (Administrative Order Dismissing Case) (March 7, 2019 at 1).

On May 26, 2017, this matter was stayed until the parties' 18 U.S.C. § 1324(b) proceeding that was litigated before Administrative Law Judge James R. McHenry, III, at the Executive Office for Immigration Review, could be resolved. On November 18, 2019, the Department's Labor Enforcement Section gave notice of the resolution of the parties' 18 U.S.C. § 1324(b) proceeding by filing the Order Granting Voluntary Dismissal with Prejudice. Instead of proceeding with the stayed evidentiary hearing, Complainant filed the present motion to dismiss the case.

² Thereunder,

[a]n application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition of the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

NMIAC § 80-20.1-470 (e). Here, it is unclear whether Complainant served the Respondent with the present motion as no proof of service was provided by Complainant.

While Complainant's Motion to Dismiss repeats the previously rejected arguments of bias and discrimination and continues to mischaracterize many of the proceedings and decisions of this Office,³ Complainant clearly demonstrates, among other things, that he no longer wishes to pursue any of his pending cases at the Administrative Hearing Office. Specifically, the caption states that Complainant wishes to dismiss "any and all" cases, Complainant's motion states he is pursuing federal claims against the various respondents, and Complainant submitted an affidavit from his employer to support the fact that Complainant wishes to prioritize his current job over litigating cases at the Administrative Hearing Office. For those reasons, as well as Complainant's failure to show to various scheduled hearings, the undersigned finds that Complainant no longer wishes to pursue his claims at the Administrative Hearing Office and dismissal is appropriate.

III. CONCLUSION

Accordingly, Complainant's Motion to Dismiss is hereby **GRANTED**.

So ordered this **4th** day of December, 2019.

/s/

Jacqueline A. Nicolas
Administrative Hearing Officer

³ A litigant's allegations challenging the court's rulings as unfair or wrongly decided cannot form the basis of a proper motion to disqualify a judge for prejudice or bias. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 7. Further, the Commonwealth Supreme Court recognized that, "the mere exercise of [] authority, without more, does not in and of itself demonstrate bias. *Id.* at 9. Further, judicial decisions, alone, do not generally raise an appearance of bias or constitute a basis for recusal. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 36-39. Accordingly, as stated by the Commonwealth Supreme Court, the Complainant's allegations regarding prior rulings and decisions cannot form the proper basis for recusal. For the record, the undersigned maintains that Complainant's allegations of discrimination and bias are false mischaracterizations of this Office's proceedings and decisions. To be clear, said arguments do not form the basis to grant Complainant's present motion.

In the Matter of:

Zaji O. Zajradhara,

Complainant,

V.

Pacific Health, Inc.,

Respondent.

Labor Case No. 17-011

ORDER GRANTING COMPLAINANT'S MOTION TO DISMISS

This matter came before the Administrative Hearing Office pursuant to Complainant's Laymans' Motion to Dismiss All Pending Cases ("Complainant's Motion to Dismiss").¹ The undersigned finds that the Motion may be decided on the applicable law and arguments, without an additional hearing. For the reasons stated below, Complainant's Motion to Dismiss is hereby **GRANTED**.

///

///

1 The full caption or title of Complainant's Motion reads: "LAYMANS'[sic] MOTION TO DISMISS ALL PENDING
2 CASES, DUE TO ECONOMIC HARDSHIP, POSSIBLE TERMINATION FROM PRESENT EMPLOYER AND
3 OVERT DISCRIMINATION AND BIAS BY THE CNMI DEPT OF LABOR INVESTIGATION SECTION AND
4 DIRECTLY FROM THE HEARING OFFICE JACQUELINE NICOLAS. THIS LAYMANS' [sic] MOTION
5 SHALL COVER [CASES] MENTIONED ABOVE, AND OR ANY THAT I HAVE FORGOTTEN THAT ARE
6 SCHEDULED TENTATIVELY OR OTHERWISE FOR THE YEAR 2019-2020."

II. DISCUSSION

Generally, motion filings under the Administrative Hearing Office are governed by NMIAC § 80-20.1-470(e).² While the regulations limit the permissible motions to be filed at the Administrative Hearing Office, a party may file a motion to dismiss on the following grounds: (1) lack of subject matter jurisdiction; (2) Lack of personal jurisdiction; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted. NMIAC § 80-20.2-130(c)(1). Further, cases may be dismissed when a Complainant wishes to withdraw or abandon the claims and allegations in a complaint. See NMIAC §80-20.1-485(b); see also *Zajradhara v. Black Construction*, LC-18-057 (Administrative Order Dismissing Case) (March 7, 2019 at 1).

On June 2, 2017, Complainant filed a complaint against Respondent alleging a violation of the CNMI employment preference statute.³ On June 21, 2017, the matter was mediated before the former hearing officer. After mediation, Complainant filed a request to dismiss

² Thereunder,

[a]n application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition of the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

NMIAC § 80-20.1-470 (e). Here, it is unclear whether Complainant served the Respondent with the present motion as no proof of service was provided by Complainant.

³ “A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job.” 3 CMC § 4528(a). A complainant has the burden to prove the elements of his or her claim. In order to prevail on a claim for damages under the employment preference statute, a complainant must prove all four elements of the statute: (1) that he/she was qualified for the job; (2) that his job application was rejected by the respondent/employer without just cause; (3) the respondent/employer then hired a foreign national worker for that positions and; (4) the respondent/employer failed to meet the 30% workforce objective requirement. *Zajradhara v. Woo Jung Corp.*, LC-18-059 (Administrative Order) (May 16, 2019 at ¶18).

the case. An order dismissing the case was written and filed, but unsigned. Regretfully, no other action or follow-up was taken until the present motion to dismiss.

In consideration Complainant's multiple motions to dismiss the case, the undersigned finds dismissal appropriate.⁴ Complainant clearly demonstrates, among other things, that he no longer wishes to pursue any of his pending cases at the Administrative Hearing Office. Specifically, the caption states that Complainant wishes to dismiss "any and all" cases, Complainant's motion states he is pursuing federal claims against the various respondents, and Complainant submitted an affidavit from his employer to support the fact that Complainant wishes to prioritize his current job over litigating cases at the Administrative Hearing Office. For those reasons, as well as Complainant's failure to show to various scheduled hearings, the undersigned finds that Complainant no longer wishes to pursue his claims at the Administrative Hearing Office and dismissal is appropriate.

III. CONCLUSION

Accordingly, Complainant's Motion to Dismiss is hereby **GRANTED**.

So ordered this **3rd** day of December, 2019.

/s/

Jacqueline A. Nicolas
Administrative Hearing Officer

⁴ Notably, the undersigned rejects the arguments of bias and discrimination as the basis for Complainant's latter motion to dismiss. A litigant's allegations challenging the court's rulings as unfair or wrongly decided cannot form the basis of a proper motion to disqualify a judge for prejudice or bias. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 7. Further, the Commonwealth Supreme Court recognized that, "the mere exercise of [] authority, without more, does not in and of itself demonstrate bias. *Id.* at 9. Further, judicial decisions, alone, do not generally raise an appearance of bias or constitute a basis for recusal. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 36-39. Accordingly, as stated by the Commonwealth Supreme Court, the Complainant's allegations regarding prior rulings and decisions cannot form the proper basis for recusal.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:

Zaji O. Zajradhara,

Complainant,

v.

RNR Holdings Incorporated,

Respondent.

Labor Case No. 17-045

ORDER GRANTING
COMPLAINANT'S MOTION
TO DISMISS

I. INTRODUCTION

This matter came before the Administrative Hearing Office pursuant to Complainant's Laymans' Motion to Dismiss All Pending Cases ("Complainant's Motion to Dismiss").¹ The undersigned finds that the Motion may be decided on the applicable law and arguments, without an additional hearing. For the reasons stated below, Complainant's Motion to Dismiss is hereby **GRANTED**.

///

///

¹ The full caption or title of Complainant's Motion reads: "LAYMANS' [sic] MOTION TO DISMISS ALL PENDING CASES, DUE TO ECONOMIC HARDSHIP, POSSIBLE TERMINATION FROM PRESENT EMPLOYER AND OVERT DISCRIMINATION AND BIAS BY THE CNMI DEPT OF LABOR INVESTIGATION SECTION AND DIRECTLY FROM THE HEARING OFFICE JACQUELINE NICOLAS. THIS LAYMANS' [sic] MOTION SHALL COVER [CASES] MENTIONED ABOVE, AND OR ANY THAT I HAVE FORGOTTEN THAT ARE SCHEDULED TENTATIVELY OR OTHERWISE FOR THE YEAR 2019-2020."

II. DISCUSSION

Generally, motion filings under the Administrative Hearing Office are governed by NMIAC § 80-20.1-470(e).² While the regulations limit the permissible motions to be filed at the Administrative Hearing Office, a party may file a motion to dismiss on the following grounds: (1) lack of subject matter jurisdiction; (2) Lack of personal jurisdiction; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted. NMIAC § 80-20.2-130(c)(1). Further, cases may be dismissed when a Complainant wishes to withdraw or abandon the claims and allegations in a complaint. *See* NMIAC §80-20.1-485(b); *see also* *Zajradhara v. Black Construction*, LC-18-057 (Administrative Order Dismissing Case) (March 7, 2019 at 1).

On June 2, 2017, Complainant filed a complaint against Respondent alleging a violation of the CNMI employment preference statute.³ Regretfully, no other action or follow-up was taken on this matter since filing, until Complainant's Motion to Dismiss.⁴

² Thereunder,

[a]n application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition of the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

NMIAC § 80-20.1-470 (e). Here, it is unclear whether Complainant served the Respondent with the present motion as no proof of service was provided by Complainant.

³ "A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a). A complainant has the burden to prove the elements of his or her claim. In order to prevail on a claim for damages under the employment preference statute, a complainant must prove all four elements of the statute: (1) that he/she was qualified for the job; (2) that his job application was rejected by the respondent/employer without just cause; (3) the respondent/employer then hired a foreign national worker for that positions and; (4) the respondent/employer failed to meet the 30% workforce objective requirement. *Zajradhara v. Woo Jung Corp.*, LC-18-059 (Administrative Order) (May 16, 2019 at ¶18).

⁴ It appears this matter was filed during the former hearing officer's time and its processing was overseen in light of Super Typhoon Yutu, displacement of the Administrative Hearing Office due to typhoon damage, and the transition of the undersigned hearing officer in January of 2019.

While Complainant's Motion to Dismiss repeats the previously rejected arguments of bias and discrimination and continues to mischaracterize many of the proceedings and decisions of this Office,⁵ Complainant clearly demonstrates, among other things, that he no longer wishes to pursue any of his pending cases at the Administrative Hearing Office. Specifically, the caption states that Complainant wishes to dismiss "any and all" cases, Complainant's motion states he is pursuing federal claims against the various respondents, and Complainant submitted an affidavit from his employer to support the fact that Complainant wishes to prioritize his current job over litigating cases at the Administrative Hearing Office. For those reasons, as well as Complainant's failure to show to various scheduled hearings, the undersigned finds that Complainant no longer wishes to pursue his claims at the Administrative Hearing Office and dismissal is appropriate.

III. CONCLUSION

Accordingly, Complainant's Motion to Dismiss is hereby **GRANTED**.

So ordered this **3rd** day of December, 2019.

/s/

Jacqueline A. Nicolas
Administrative Hearing Officer

⁵ A litigant's allegations challenging the court's rulings as unfair or wrongly decided cannot form the basis of a proper motion to disqualify a judge for prejudice or bias. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 7. Further, the Commonwealth Supreme Court recognized that, "the mere exercise of [] authority, without more, does not in and of itself demonstrate bias. *Id.* at 9. Further, judicial decisions, alone, do not generally raise an appearance of bias or constitute a basis for recusal. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 36-39. Accordingly, as stated by the Commonwealth Supreme Court, the Complainant's allegations regarding prior rulings and decisions cannot form the proper basis for recusal. For the record, the undersigned maintains that Complainant's allegations of discrimination and bias are false mischaracterizations of this Office's proceedings and decisions. To be clear, said arguments do not form the basis to grant Complainant's present motion.



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:

Zaji O. Zajradhara,

Complainant,

v.

RNR Holdings Incorporated,

Respondent.

Labor Case No. 17-046

**ORDER GRANTING
COMPLAINANT'S MOTION
TO DISMISS**

I. INTRODUCTION

This matter came before the Administrative Hearing Office pursuant to Complainant's Laymans' Motion to Dismiss All Pending Cases ("Complainant's Motion to Dismiss").¹ The undersigned finds that the Motion may be decided on the applicable law and arguments, without an additional hearing. For the reasons stated below, Complainant's Motion to Dismiss is hereby **GRANTED**.

///

///

¹ The full caption or title of Complainant's Motion reads: "LAYMANS' [sic] MOTION TO DISMISS ALL PENDING CASES, DUE TO ECONOMIC HARDSHIP, POSSIBLE TERMINATION FROM PRESENT EMPLOYER AND OVERT DISCRIMINATION AND BIAS BY THE CNMI DEPT OF LABOR INVESTIGATION SECTION AND DIRECTLY FROM THE HEARING OFFICE JACQUELINE NICOLAS. THIS LAYMANS' [sic] MOTION SHALL COVER [CASES] MENTIONED ABOVE, AND OR ANY THAT I HAVE FORGOTTEN THAT ARE SCHEDULED TENTATIVELY OR OTHERWISE FOR THE YEAR 2019-2020."

II. DISCUSSION

Generally, motion filings under the Administrative Hearing Office are governed by NMIAC § 80-20.1-470(e).² While the regulations limit the permissible motions to be filed at the Administrative Hearing Office, a party may file a motion to dismiss on the following grounds: (1) lack of subject matter jurisdiction; (2) Lack of personal jurisdiction; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted. NMIAC § 80-20.2-130(c)(1). Further, cases may be dismissed when a Complainant wishes to withdraw or abandon the claims and allegations in a complaint. *See* NMIAC §80-20.1-485(b); *see also* *Zajradhara v. Black Construction*, LC-18-057 (Administrative Order Dismissing Case) (March 7, 2019 at 1).

On June 2, 2017, Complainant filed a complaint against Respondent alleging a violation of the CNMI employment preference statute.³ Regretfully, no other action or follow-up was taken on this matter since filing, until Complainant's Motion to Dismiss.⁴

² Thereunder,

[a]n application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition of the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

NMIAC § 80-20.1-470 (e). Here, it is unclear whether Complainant served the Respondent with the present motion as no proof of service was provided by Complainant.

³ "A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a). A complainant has the burden to prove the elements of his or her claim. In order to prevail on a claim for damages under the employment preference statute, a complainant must prove all four elements of the statute: (1) that he/she was qualified for the job; (2) that his job application was rejected by the respondent/employer without just cause; (3) the respondent/employer then hired a foreign national worker for that positions and; (4) the respondent/employer failed to meet the 30% workforce objective requirement. *Zajradhara v. Woo Jung Corp.*, LC-18-059 (Administrative Order) (May 16, 2019 at ¶18).

⁴ It appears this matter was filed during the former hearing officer's time and its processing was overseen in light of Super Typhoon Yutu, displacement of the Administrative Hearing Office due to typhoon damage, and the transition of the undersigned hearing officer in January of 2019.

While Complainant's Motion to Dismiss repeats the previously rejected arguments of bias and discrimination and continues to mischaracterize many of the proceedings and decisions of this Office,⁵ Complainant clearly demonstrates, among other things, that he no longer wishes to pursue any of his pending cases at the Administrative Hearing Office. Specifically, the caption states that Complainant wishes to dismiss "any and all" cases, Complainant's motion states he is pursuing federal claims against the various respondents, and Complainant submitted an affidavit from his employer to support the fact that Complainant wishes to prioritize his current job over litigating cases at the Administrative Hearing Office. For those reasons, as well as Complainant's failure to show to various scheduled hearings, the undersigned finds that Complainant no longer wishes to pursue his claims at the Administrative Hearing Office and dismissal is appropriate.

III. CONCLUSION

Accordingly, Complainant's Motion to Dismiss is hereby **GRANTED**.

So ordered this **3rd** day of December, 2019.

/s/

Jacqueline A. Nicolas
Administrative Hearing Officer

⁵ A litigant's allegations challenging the court's rulings as unfair or wrongly decided cannot form the basis of a proper motion to disqualify a judge for prejudice or bias. *Saipan Lau Lau Development, Inc. v. Superior Court (San Nicholas)*, 2000 MP 12 ¶ 7. Further, the Commonwealth Supreme Court recognized that, "the mere exercise of [] authority, without more, does not in and of itself demonstrate bias. *Id.* at 9. Further, judicial decisions, alone, do not generally raise an appearance of bias or constitute a basis for recusal. *Bank of Saipan v. Superior Court (Disqualification of Castro)*, 2002 MP 16 ¶ 36-39. Accordingly, as stated by the Commonwealth Supreme Court, the Complainant's allegations regarding prior rulings and decisions cannot form the proper basis for recusal. For the record, the undersigned maintains that Complainant's allegations of discrimination and bias are false mischaracterizations of this Office's proceedings and decisions. To be clear, said arguments do not form the basis to grant Complainant's present motion.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of:

Zaji O. Zajradhara,

Complainant,

v.

Nippon General Trading Corporation
(SAIPAN) dba Country House Restaurant,

Respondent.

Labor Case No. 19-025

ADMINISTRATIVE
ORDER

I. INTRODUCTION

On September 30, 2019, the undersigned granted Respondent's Motion for Sanctions and awarded Respondent with reasonable attorney's fees, in an amount to be determined.¹ As ordered, Respondent filed an itemized billing of the accrued fees, a memorandum to justify the accrued fees as reasonable, and an affidavit to attest to its veracity.² Based on the foregoing, the undersigned awards Respondent a total amount of \$4,860.00 in attorney's fees.

///

¹ See *Zajradhara v. Nippon General Trading Corporation* (Order Granting Motion for Sanctions) (Sept. 30, 2019); see also NMIAC § 80-20.1-485(c)(13); see also NMIAC § 80-20.2-140.

² Respondent also filed a proof of service which demonstrated that Complainant was served electronically served on November 12, 2019. Complainant failed to file any opposition and any such filing at this time would be considered untimely. See NMIAC 80-20.1-470(e). Considering Complainant's failure to file any opposition, the undersigned finds that oral arguments are not necessary and the issue can be decided on the merits of the brief.

II. DISCUSSION

The CNMI Supreme Court established a two-step process to determine an attorney's fees award. *In re Malite*, 2016 MP 20 ¶ 17 (citing *In re Malite* 2010 MP 20 ¶ 45).

First, the court must determine whether the requested fees are reasonable by considering similar fee agreements in the local legal community and relevant Model Rule of Professional Conduct ("MRPC") 1.5 factors. Second, the court must determine the appropriate fee award. If the requested fees are deemed reasonable, they may be awarded. If the requested fees are deemed unreasonable, the court must determine the appropriate remedy.

The MRPC factors for determining the reasonableness of fees include

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent.

... Depending on the circumstances in a given case, some factors may be weighed more heavily than others.

In re Malite, 2016 MP 20 ¶ 17.

With respect to the first factor, Respondent provides billing for 24.3 hours of work. The itemized billing and memorandum demonstrates that there are no "block billings," "inter-

office conferencing,” “vague entries,” “excessive research,” or other unjustifiable entries.³ The majority of the work relates to prepping, investigation, motion filing, attending a hearing, and reporting for investigation with the Department of Labor’s Enforcement, Compliance, and Monitoring Section (“Enforcement”). While Respondent concedes that the required work was not novel or difficult, Respondent professes that the preparations and briefings to defend against the multiple claims was necessarily time-consuming, though not excessive, to adequately defend against Complainant’s litigious nature. Further, Respondent claims the skill required to properly identify and articulate the applicable issues required a competent attorney. The undersigned agrees with Respondent’s arguments. The undersigned further notes the difficulty in defending a case against bare-bones complaint, unsupported allegations, and frivolous arguments. The undersigned finds that this factor heavily weighs in favor of Respondent.

With respect to the second factor, there is no showing that representation of Respondent precluded other employment. The undersigned finds that this factor should be treated neutrally.

With respect to the third factor, there is no showing of the fee customarily charged in the locality for similar legal services. However, the undersigned finds no inconsistency or excessiveness under the provided itemized billing for an attorney of similar skill, competency, and experience in this locale. The undersigned finds that this factor weighs in favor of Respondent.

With respect to the fourth factor, Complainant was seeking back pay, disciplinary action, and referral to US Department of Labor. Further, Respondent was able to defend against multiple claims. The undersigned finds that this factor weighs in favor of Respondent.

³ Notably, the itemized billing filed by Respondent shows an entry on 6/11/2019 by Rene Holmes. While Ms. Holmes did not file a notice of appearance in this case and her relationship to this matter is undefined, the undersigned notes that the work described resulted in a filing signed and submitted by the attorney of record, for this matter.

With respect to the fifth factor, there is no showing of time limitations imposed by the client or circumstances. However, the undersigned notes that cases pending before the Administrative Hearing Office, may result in the Department's denial of a certification of good standing. In the event a denial of a certification of good standing is affirmed, employers face various consequences. For instance, the employer would be unable to advertise job vacancy announcements on the Department's website—a necessary component in obtaining a temporary labor certification of foreign workers. Considering the circumstances on the local labor work force and certain federal timelines/processes, the undersigned finds this factor weighs in favor of Respondent.

With respect to the sixth factor, Respondent does not indicate the extent of the nature and length of the professional relationship between Respondent and its attorney. However, during the prehearing conference, the attorney orally stated that he had represented Respondent in various cases filed by Complainant. The cases were spread over a number of years, in various venues. Based on that representation, the undersigned can infer a positive professional relationship between Respondent and their attorney. The undersigned finds that this factor weighs in favor of Respondent.

With respect to the seventh factor, Respondent's attorney does not make any representations about his experience, reputation, and ability. However, with respect to experience, the undersigned notes that the attorney has been practicing in the CNMI for several years. With respect to reputation, the undersigned notes that the attorney has a reputable firm and, considering his previous positions in the CNMI Bar Association, likely respected among the legal community. Lastly, with the respect to ability, the undersigned notes that said ability was apparent based on the preparations, written filings, and presence at hearing. The undersigned finds that this factor weighs in favor of Respondent.

With respect to the eighth factors, Respondent does not identify whether the fee is fixed or contingent. However, based on the itemized billing provided, it appear that Respondent

was charged a set rate of \$200 for each hour of time worked by the attorney. The rate of \$200 per hour for an experienced attorney does not seem unreasonable. The undersigned finds that this factor weighs in favor of Respondent.

Based on the above factors and a review of Respondent's ordered filings, the undersigned finds the requested amount of \$4,860 in attorney's fee to be reasonable.

III. CONCLUSION

For the foregoing reasons, the undersigned hereby AWARDS Respondent \$4,860 in reasonable attorney's fees.⁴

So ordered this 25th day of November, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

⁴ "A person who has been awarded damages or other relief by an administrative order issued by a hearing office may bring a direct action in the Commonwealth Superior Court to enforce the administrative order and collect the award by filing a complaint seeking enforcement of that order." NMIAC § 80-20.1-485 (m).