



Office of the Public Auditor
Commonwealth of the Northern Mariana Islands

**Department of Lands and Natural Resources
Audit of Agreement with the
Marine Revitalization Corporation
for Operating the Outer Cove Marina
From May 1993 to October 1998**



Audit Report
AR-01-02



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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March 22, 2001

Dr. Joaquin A. Tenorio, Secretary
Department of Lands and Natural Resources
P.O. Box 10007
Saipan, MP 96950

Dear Dr. Tenorio:

Subject: Final Report on the Audit of the Department of Lands and Natural Resources' Agreement with the Marine Revitalization Corporation for Operating the Outer Cove Marina from May 1993 to October 1998 (Report No. AR-01-02)

The enclosed audit report presents the results of our audit of the lease agreement between the Department of Lands and Natural Resources (DLNR) and Marine Revitalization Corporation (MRC) for the operation of the Outer Cove Marina. This audit was requested by the former Speaker of the House of Representatives, Ninth CNMI Legislature. The objectives of the audit were to determine whether: (1) the reported project cost represents the actual construction cost of the Outer Cove Marina project, (2) DLNR and MRC fully complied with the terms and conditions of the lease agreement, (3) the fees charged to boat owners are reasonable and in accordance with the lease agreement, and (4) the CNMI will realize any rental revenues during the lease term. This audit also responded to the ten specific questions raised by the former Speaker.

Our audit showed that both the lessor and lessee, namely, DLNR and MRC failed to comply with the terms of their lease agreement. More specifically, DLNR failed to prevent commercial boats from being moored at the Smiling Cove Marina. Both parties failed to clarify terms of the lease agreement as it: (a) does not specify a basis the lessee can use to establish mooring fees, (b) contains no language that would ensure a minimum level of revenue from MRC, and (c) does not specify: (i) a fixed project cost ceiling, (ii) how project costs are to be allocated to facilities and infrastructure, or (iii) a limit on fees that MRC can collect. Further, of the 76 boat slips desired to be built at the Outer Cove Marina according to the lease agreement, MRC built only 45. Finally, while MRC records and documents show that the Marina had cost \$3,590,857 when completed in July 1998, we were unable to determine whether all costs were actually incurred in constructing the project.

The Office of the Public Auditor sees two alternative courses of action that MRC and DLNR may take in order to continue the operation of Outer Cove Marina. One is to substantially amend or to completely change the lease agreement, and the other is to have another entity take over the Outer Cove Marina operations. As such, we are offering two sets of recommendations.

As concerns the first alternative course of action which addresses amending or changing the lease agreement, we recommend that the Secretary of DLNR and MRC:

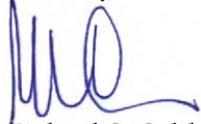
1. Amend or completely change the lease agreement so that there will be clearer understanding of each party's obligations and responsibilities, taking into account: (a) the components that will comprise the actual Outer Cove Marina project cost, (b) the allocation of Outer Cove Marina project cost between the area covered by the lease agreement and the area covered by the concession contract, and (c) the provisions in the lease agreement that may no longer be practical to implement, i.e., basing the computation of the CNMI's lease revenue on a percentage of MRC's net earnings.
2. Obtain an understanding about the fees to be collected from the boat owners. The parties to the agreement must agree: (a) on what will comprise the total cost that must be recovered from fees to be charged to the boat owners, (b) on the type and amount of fees MRC will be allowed to charge, (c) if the fees to be computed and the related revenue projections will yield a profit providing both yearly rental and a reserve for future development, (d) to have a periodic review conducted on MRC's financial operations, and on the amount of fees and type of revenues MRC will be allowed to collect, (e) to extend the lease period to allow MRC to collect lower fees and have a longer time to recover its investments, and (f) on any possible assistance from the government.
3. Dissolve other supplemental agreements. To avoid confusion, other agreements such as those for the breakwater and fender installation should either be dissolved or made part of a new or amended lease agreement.

As to the second alternative course of action of whether another entity should take over Outer Cove Marina operations, we make no specific recommendations. Instead, we only enumerate actions that the CNMI government and MRC may take. DLNR, as the government agent for the agreement, must spearhead the review of each alternative available for achieving a workable settlement. We believe that to be successful in resolving the current Outer Cove Marina problems, DLNR must have the cooperation and support of the Executive and the Legislative Branches. Most of the viable solutions, which may require delving into limited financial resources, go beyond the scope of authority of the DLNR Secretary.

The Secretary of DLNR concurred with OPA's recommendations: (1) to amend or substantially revise the lease agreement or, alternatively, (2) to have either the CNMI government or another entity take over operation of Outer Cove Marina, but stated it could not pursue either alternative until the Senate Oversight Committee had submitted its report and the current legislation (House

Bill 12-250) is enacted. We agree with DLNR that it cannot implement either alternative action until the Senate Oversight Committee submits its report and unless some form of legislation is enacted for the amendment of the agreement. MRC did not comment on OPA's recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MS', with a stylized flourish extending to the right.

Michael S. Sablan
Public Auditor

xc: Governor
Lt. Governor
Twelfth CNMI Legislature (27 copies)
Secretary of Finance
Attorney General
Special Assistant for Management and Budget
Press Secretary
Press
Anthony Pellegrino, President, Marine Revitalization Corporation

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EXECUTIVE SUMMARY

Our audit showed that both the lessor and lessee, namely, the Department of Lands and Natural Resources (DLNR, representing the CNMI) and the Marine Revitalization Corporation (MRC), failed to comply with the terms of their Submerged Lands Lease Agreement (lease agreement). More specifically, DLNR failed to prevent commercial boats from being moored at the Smiling Cove Marina. Both parties failed to clarify terms of the lease agreement as it: (a) does not specify a basis the lessee can use to establish mooring fees, (b) contains no language that would ensure a minimum level of revenue from MRC, and (c) does not specify: (i) a fixed project cost ceiling, (ii) how project costs are to be allocated to facilities and infrastructure, or (iii) a limit on fees that MRC can collect. Further, of the 76 boat slips desired to be built at the Outer Cove Marina according to the lease agreement, MRC built only 45. Finally, while MRC records and documents show that the Marina had cost \$3,590,857 when completed in July 1998, we were unable to determine whether all costs were actually incurred in constructing the project.

Background

MRC was chartered on May 25, 1993 as a non-profit organization to plan, build, and maintain a marina complex for public use. The Chairman of MRC's Board of Directors at the time reportedly submitted a written proposal on this project to the Legislature on September 16, 1993, and this was followed by an open letter to the public describing the project.

On August 21, 1995, DLNR entered into a lease agreement with MRC, a non-profit corporation, known as the "Lessee," to build and operate a boat marina and associated marine fueling station on 16,394 square meters of submerged land located in an area adjacent to American Memorial Park.

According to the original proposal, MRC planned to obtain a submerged lands lease from the CNMI Government so it could build a marina in an area known as the "Outer Cove," located adjacent to

American Memorial Park. The proposal specified that 44 boats could be docked at the Marina. However, it was subsequently amended to cover docking of 76 boats. The original proposal also stated that:

- the estimated cost of the Outer Cove Marina project was \$1.2 million;
- the construction cost was to be funded by donations from private citizens, and any shortfall would be funded by a bank loan;
- boat slips were to be available to the public for unstated amounts of rental fees;
- recreational facilities and park improvements were to be constructed on land adjacent to the Marina, and would be available to the public without charge.

Permit Issues

CRMO Permit

1. Permit Processing & Approval

The Coastal Resources Management Office (CRMO) is responsible for coordinating the issuance of coastal permits to anyone proposing to conduct activities which affect CNMI coastal resources. On September 14, 1993, MRC submitted an application to CRMO for a permit to improve the outer cove so that it could install 44 berthing slips. Almost one year later, on August 25, 1994, MRC requested that this permit application be modified to accommodate the construction of 76 boat slips. Descriptions in both the original and modified applications specified that boat slips or docks to be constructed would be the *floating type*. In November 1994, CRMO permit No. SMS-93-X-147 was issued to MRC to construct a 76 slip boat marina, which was to include a fueling dock, fuel storage facilities, restrooms, parking areas, landscaping, wastewater and other project infrastructure. Subsequently on November 18, 1994, MRC acknowledged all conditions imposed by the permit.

2. Safety & Financial Issues That Led to Amendment of the Permit and Reduction of Boat Slips

In 1998, boat owners raised certain safety issues. Consequently, on October 2, 1998, CRMO required MRC to submit an updated and corrected coastal engineering report and an amended permit application to address those safety issues. The permit identified three project categories: (1) work authorized by CRMO, (2) work CRMO had not

authorized, and (3) proposed new work. On June 25, 1999, MRC submitted the amended permit application to CRMO, and explained that the number of boat slips to be built would be reduced from 76 to 45. Subsequently on August 24, 1999, the CRMO Acting Director approved all the unauthorized work, project changes and proposed new work. He did not, however, address any safety issues.

Department of the Army Permit

On November 29, 1993, MRC applied to the U.S. Army Corps of Engineers, Guam Operations Office, for a permit to dredge 20,000 cubic yards of materials from the existing outer cove and construct floating docks for 76 boats. The permit (#PODCO GIN94-010) was granted on October 24, 1994.

When both the planned and completed work did not follow the original permit (#PODCO GIN94-010), MRC requested an amended permit for the project. On August 26, 1999 the U.S. Army Corps of Engineers issued a provisional permit to MRC *authorizing work that did not conform to work previously authorized by permit #PODCO GIN94-010*. The amended permit ratified one very significant item, namely, that the docks were now to be supported by piles rather than allowed to float as previously authorized.

Legislative Approval of the Submerged Lands Lease

According to the Submerged Lands Act, 2 CMC §1201 et. seq., the CNMI Legislature can grant development leases over submerged lands in the CNMI, and legislative approval is required for any such lease. This Act extended DLNR's

authority so that it covered all submerged lands in the CNMI and enabled it to grant leases for marina development.

MRC Submerged Lands Lease Act of 1995

On July 24, 1995, the Ninth Northern Marianas Commonwealth Legislature enacted the "Marine Revitalization Corporation Submerged Lands Lease Act of 1995" (Public Law 9-46) thereby authorizing the lease agreement between MRC and DLNR. The Act authorized DLNR to lease a submerged land area to MRC for 15 years beginning on October 24, 1995 with an option to renew.

Agreement and Contract Governing the Outer Cove Marina Project

MRC has two contracts for the Outer Cove Marina project. One is a submerged lands lease agreement with the CNMI Government represented by DLNR, which has jurisdiction over the submerged land area. The second is a concession contract with the U. S. Department of the Interior, represented by the National Park Service (NPS), for that portion of the land within the American Memorial Park.

Submerged Lands Lease Agreement

On August 21, 1995, after receiving legislative approval, DLNR and MRC signed the lease agreement governing the use of the submerged land adjacent to American Memorial Park. Under the agreement, DLNR agreed to lease a submerged land area to MRC for 15 years beginning on October 24, 1995.

The agreement expressed a desire that MRC lease 16,394 square meters of submerged land for construction, operation and maintenance of a 76 boat marina complex known as "Outer Cove Marina." The marina was to be used primarily by commercial vessels. Owners of other vessels could rent slips for private, personal, and non-commercial use, but only on a space-available basis. Slip rental fees were to be set by MRC with DLNR's approval. The lessee was to pay a rental amount of at least 75 percent of its annual net earnings, with the remaining 25 percent to be deposited in a trust fund. The amount deposited in the trust fund was to be used for: (a) extraordinary maintenance, (b) future development of Outer Cove Marina and its surrounding shoreline, and (c) enhancement and improvement of both American Memorial Park land (fastlands) and other facilities related to the marina. MRC could disburse the trust funds for such purposes only after it consulted with and obtained the approval of DLNR and the NPS. At the end of the lease term, MRC was to transfer title to all improvements on the leased property to DLNR.

Concession Contract with National Park Service

On January 29, 1997, the U.S. Department of the Interior entered into a 14 year concession contract with the NPS and MRC that enabled MRC to establish and operate a marina concession at American Memorial Park. Under the contract, the NPS was to provide an area of the Park to MRC, who would establish and operate a marina concession under the NPS's supervision and control.

While the concession agreement did not require MRC to make rental payments, it did require MRC to establish a capital improvement account, and deposit 10 percent of its gross receipts into such account. Deposited funds are not to become government funds, but are to be used to rehabilitate or construct facilities. Any interest earned is to be added to the fund. However, NPS subsequently agreed on September 3, 1998 to defer the 10 percent deposit until MRC had paid its project loans.

Outer Cove Marina Construction

Contrary to its plans and expectations, MRC has received no private donations or government financial assistance to help finance the Outer Cove Marina project. Instead to complete the project, MRC obtained a \$2 million loan from Bank of Hawaii, and \$1 million in loans from the MRC President and his companies. Also, in 1998, Mobil Oil Mariana Islands, Inc. advanced \$660,000 to help MRC build a gas station and mini-mart.

Construction was completed in 1998. Under the terms of the 15-year lease between MRC and DLNR, the marina becomes the CNMI's property in 2010.

Outer Cove Rules and Regulations

On November 14, 1995, CRMO approved, with special conditions, a coastal permit issued to MRC for construction of the Outer Cove Marina. This permit contains 32 conditions, one of which required that a management plan be prepared to address the Outer Cove Marina operations. MRC complied with this condition by submitting a management plan to CRMO, containing regulations for operating the marina. These

regulations were established pursuant to the lease agreement between DLNR and MRC.

These regulations address management and operation of the marina. More specifically, they are intended to govern the operation of vessels and activities of persons in the marina, its shores, shore waters, and fastlands surrounding the marina, so that the general public can enjoy safe, orderly, and convenient water recreation and other commercial activities. They are intended to agree and coordinate with MRC and applicable laws. These regulations provide that the 45 slip marina can accommodate vessels of up to 100 feet in length. They address issues such as the range of fees that MRC can charge its customers, the conduct of lessees and permit holders in the marina, and rules on permit issuance, the operation and mooring of vessels, fueling of boats, and assignment and transfer of boat slips and lease permits. These regulations are available at DLNR.

Issues Concerning the Outer Cove Marina

Boat owners stated that both safety and financial issues affect the continued viable operation of the Outer Cove Marina.

Safety Issues

Although the Outer Cove Marina was completed in July 1998, commercial boat owners then docking at the Smiling Cove Marina (SCM) refused to transfer to the Outer Cove Marina. The boat owners stated that the Outer Cove Marina was unsafe due to the absence of breakwaters or a seawall. They even quoted an official of the U.S. Coast

Guard, who according to them, said that without a breakwater, the boats in the Marina would be subject to severe damage from storm winds and swells coming from the west.

In September 1998, the boat owners filed a petition for an emergency summary suspension of the permit issued by CRMO, claiming that MRC had plagiarized engineering plans and violated the permit's specifications. The boat owners requested that MRC's permit to operate the Outer Cove Marina be canceled unless corrective measures were taken, claiming that MRC had willfully violated the permit specifications by building a substantially new project. CRMO, however, did not suspend the permit, but instead ordered MRC to submit a new coastal engineering report and an amended permit application.

Financial Issue

The boat owners also complained that the docking fees that MRC planned to collect would cost them (the boat owners) more than they were currently paying at SCM, and could cause them to go out of business.

MRC's Response to Boat Owners' Concerns

Prior to the development of the Outer Cove Marina, passenger boats, such as those owned by Pelley Enterprises (a company owned by the MRC President), were charged passenger fees of \$2.75 per passenger by the Commonwealth Ports Authority, while commercial boats docking at the SCM were not charged any passenger fees by DLNR. Consequently, commercial boat owners whose boats carried tourists and local residents to Managaha and other islands

preferred to dock at SCM.

SCM, which was built and improved with CNMI taxpayer money and Federal grant funds, was intended for the exclusive use of non-commercial pleasure boats. However, since no commercial marina existed at that time, the CNMI Government and the NPS allowed commercial boats to dock at SCM until a new marina was built. The Outer Cove Marina, therefore, was also built for the purpose of freeing dock spaces in SCM for private leisure boat owners, and MRC would not have built the Outer Cove Marina without assurances from DLNR that, upon completion, all commercial boats would be prohibited from docking at SCM.

In September 1998, MRC responded to the boat owners' petition, stating that the real motivation behind the safety concerns in the new marina was purely economics. The MRC President strongly believed that money and the passenger fees being charged by MRC was the cause of the controversy, and that commercial boats did not want to pay passenger fees. MRC stated that public hearings on the marina had been conducted before it was constructed, but no one registered any major criticism or complaint about the fees. MRC said that boat owners were using the issue of safety as an excuse, because they did not want to pay higher fees just to help MRC defray the construction cost.

More Recent Developments

On November 14, 1998, the CNMI Government entered into an agreement with four boat owners to build a breakwater for the safety of the Outer Cove Marina. Construction of the breakwater

has not commenced, and is awaiting appropriation by the Legislature. On the same date, MRC signed another agreement with the same boat owners to install “Marine Guard foam filled marine fenders” at the docks assigned to the four boat owners. The fenders were to function as cushions between the docks and boats, thereby providing added protection during poor weather. However, since the Outer Cove Marina was already on the verge of bankruptcy, a compromise was reached whereby the Government would purchase the fenders.

On April 1, 1999, MRC filed a Federal lawsuit (Civil Action No. 99-0021) against DLNR in an attempt to stop the commercial use of SCM. MRC asked the U.S. District Court to issue a permanent injunction to require that DLNR prevent the unauthorized commercial use of government-run Smiling Cove. The complaint stated that since the completion of the Outer Cove Marina in July 1998, DLNR and its counsel refused to act and enforce the Smiling Cove regulations. This refusal, according to MRC’s President, had caused MRC to be insolvent and on the verge of bankruptcy.

MRC has 9 years left on its 15-year land lease agreement with DLNR. Since the property will be turned over to the Government after the lease agreement ends, MRC’s President said it might be better if a government agency, such as the Commonwealth Ports Authority, take over the operation of the Outer Cove Marina and assume its liabilities.

Audit Requested by Former Speaker

In October 1998, the former House Speaker requested the Office of the Public Auditor to conduct an audit of the Outer Cove Marina project. He stated that: “My primary concern is that the marina was originally represented as containing 76 boat slips and costing \$1.2 million. The fees for berthing boats over the 15 year lease would have been sufficient to repay the construction costs, fund ongoing maintenance, and provide some rent to the treasury. I am told by MRC that the marina they have constructed has only 45 slips and the cost is \$ 3.5 million....”

The former Speaker provided us ten questions he wanted answered. Basically, he was concerned about the impact of the increased cost to the boat owners and the public.

Objectives and Scope

The objectives of the audit were to determine whether: (1) the reported project cost represents the actual construction cost of the Outer Cove Marina project, (2) DLNR and MRC fully complied with the terms and conditions of the lease agreement, (3) the fees charged to boat owners are reasonable and in accordance with the lease agreement, and (4) the CNMI will realize any rental revenues during the lease term. This audit also responded to the 10 specific questions raised by the former Speaker, who had earlier requested an audit of the Outer Cove Marina project.

To accomplish our objectives, we (1) examined MRC’s financial records to verify the mathematical accuracy of reported project cost, and traced cost

totals to the financial statements, (2) reviewed the lease agreement and concession contract with NPS to check MRC's compliance with their terms and conditions, (3) prepared an analysis comparing project cost with fees charged to boat owners, (4) test-checked monthly financial statements and records, and (5) prepared a projection of future MRC net earnings and corresponding rental fees over the remaining lease period.

Our audit focused on the review of disbursements reported by MRC for the project from the time the project was conceived in 1993, until October 1998 when the former Speaker requested that conduct the audit. We subsequently expanded our audit scope so we could review MRC's accounting system and test necessary transactions to obtain reasonable assurance that the lessee's revenues were completely recorded, and all expenses were legitimate and adequately supported. However, because of certain technical limitations, especially in the area of construction, we were prevented from making a full determination of whether the recorded project costs were actually and appropriately incurred in the construction of this project.

Inadequate Lease Agreement

Contracts should clearly provide the mutual agreements of the contracting parties. Our review revealed, however, that the provisions of the Lease agreement between MRC and the CNMI were inadequate to address the current financial concerns and disagreements between the MRC (lessee), the CNMI Government (lessor), and the affected boat owners because the contracting parties failed to incorporate important

provisions needed to govern the construction and operation of the project. As a result, neither MRC nor DLNR (the designated CNMI Government agency) is in a position to compel or otherwise convince CNMI boat owners to rent slips at the marina. Unless the operation of Outer Cove Marina is administered under an amended lease agreement, or under an alternative arrangement that the CNMI Government may implement, the OCM operation may not become a viable undertaking for the CNMI Government.

Noncompliance with Provisions of the Submerged Lands Lease Agreement

Parties to a contract must comply with contract provisions in order to satisfy their legal obligations. However, DLNR failed to comply with provisions of the Submerged Lands Lease Agreement as it failed to enforce the prohibition against commercial boats at SCM. On the other hand, MRC failed to construct the 76 boat slips originally desired. Consequently, the parties' inability to regularly inform the boating public and the Legislature about project changes resulted in interested parties blaming both DLNR and MRC for failing to make Outer Cove Marina a viable marina operation.

Final MRC and DLNR Settlement on Fees Needed

Projection of fees to be collected for using the marina could be made if the lease agreement provided the specific financial data or trends needed for the projection. The agreement, however, does not specify data or trends for use in establishing those fees. Instead, the agreement left decisions on the type and

amount of fees to be decided later by MRC and DLNR.

Prospective users of Outer Cove Marina expected that fees would be computed based on construction costs of between \$1 and \$1.2 million, the range of the Outer Cove Marina project cost MRC had stated in its proposal. MRC, however, expected to collect fees based on recovery of actual costs.

Recommendations

The Office of the Public Auditor sees two alternative courses of action that MRC and DLNR may take in order to continue the operation of Outer Cove Marina. One is to substantially amend or to completely change the lease agreement, and the other is to have another entity take over the Outer Cove Marina operations. As such, we are offering two sets of recommendations.

As concerns the first alternative course of action which addresses amending or changing the lease agreement, we recommend that the Secretary of DLNR and MRC:

1. Amend or completely change the lease agreement so that there will be clearer understanding of each party's obligations and responsibilities, taking into account: (a) the components that will comprise the actual Outer Cove Marina project cost, (b) the allocation of Outer Cove Marina project cost between the area covered by the lease agreement and the area covered by the concession contract, and (c) the provisions in the lease agreement that may no longer be practical to implement, i.e., basing the compu-

tation of the CNMI's lease revenue on a percentage of MRC's net earnings.

2. Obtain an understanding about the fees to be collected from the boat owners. The parties to the agreement must agree: (a) on what will comprise the total cost that must be recovered from fees to be charged to the boat owners, (b) on the type and amount of fees MRC will be allowed to charge, (c) if the fees to be computed and the related revenue projections will yield a profit providing both yearly rental and a reserve for future development, (d) to have a periodic review conducted on MRC's financial operations, and on the amount of fees and type of revenues MRC will be allowed to collect, (e) to extend the lease period to allow MRC to collect lower fees and have a longer time to recover its investments, and (f) on any possible assistance from the Government.
3. Dissolve other supplemental agreements. To avoid confusion, other agreements such as those for the breakwater and fender installation should either be dissolved or made part of a new or amended lease agreement.

As to the second alternative course of action of whether another entity should take over Outer Cove Marina operations, we make no specific recommendations. Instead, we only enumerate actions that the CNMI Government and MRC may take. DLNR, as the government agent for the agreement, must spearhead the review of each alternative available for achieving a

workable settlement. We believe that to be successful in resolving the current Outer Cove Marina problems, DLNR must have the cooperation and support of the Executive and the Legislative Branches. Most of the viable solutions, which may require delving into limited financial resources, go beyond the scope of authority of the DLNR Secretary. The alternative courses of action that DLNR and the CNMI Government can take are: (1) DLNR and the CNMI Government could pay MRC for the fair market value of the Outer Cove Marina project, with DLNR then taking over the marina operations; and (2) DLNR and MRC could turn to other private developers who might take over the marina operations and pay MRC for the project cost.

While DLNR and MRC did not respond to all of our recommendation, they did comment on our report findings.

DLNR's Comments

The Secretary concurred with OPA's recommendation (1) to amend or substantially revise the lease agreement or, alternatively, (2) to have either the CNMI Government or another entity take over operation of Outer Cove Marina, but stated it could not pursue either alternative until the Senate Oversight Committee had submitted its report and the current legislation (House Bill 12-250) is enacted.

The Secretary of DLNR did not agree with our finding that DLNR had failed to enforce the MRC submerged land lease prohibition against commercial vessel moorage in the Smiling Cove Marina. He said that operators of commercial vessels are legally allowed to

use Dock G at SMC under a "grandfathering" arrangement resulting from an oral agreement between the former Director of the Division of Fish and Wildlife and vessel operators. Further, it is gradually phasing out commercial vessels in the SCM and no longer issues commercial permits.

The Secretary said the emergency regulations are no longer in effect, and they cannot be made permanent because they have lapsed. While DLNR disagrees with OPA's opinion that the CNMI Administrative Procedures Act does not apply to MRC, DLNR believes MRC should comply with them.

OPA Comments to DLNR Response

We agree with DLNR that it cannot implement either alternative action until the Senate Oversight Committee submits its report and the current legislation (House Bill 12-250) is enacted.

DLNR is not in a position to criticize the language of the agreement and blame the Legislators for it because DLNR had, in fact, approved the agreement. DLNR should not have agreed with the restrictions in the agreement if they knew beforehand that Dock G can be made available for commercial vessels.

With regard to the applicability of the CNMI Administrative Procedures Act, we believe that any disagreement should be referred to the Attorney General's Office for legal opinion.

MRC Comments

According to MRC, Outer Cove Marina rules and regulations, rather than the lease agreement, were to govern marina operations. MRC said that the rules and regulations, which show the actual working arrangement between the parties, were to be used to regulate and coordinate activities at the Outer Cove Marina. Further, it stated that the lease agreement was only a policy statement and general agreement. OPA had, however, omitted any reference to these rules and regulations that the two parties to the lease agreement had agreed to.

MRC claims that the \$1.2M proposal was never intended to be a formal cost estimate for the Outer Cove Marina project. Rather it was provided for discussion purposes only, subject to change and used only to show the possible costs, as no formal cost estimate had been prepared.

MRC states that, at every design change, CRM, DEQ and U.S. Army Corp of Engineers were repeatedly appraised of the increasing costs of construction and design changes. It also claims that the issue of escalating costs had been conveyed to DLNR and NPS through its letter dated October 20, 1997 where MRC advised there was a need to increase departure fees from \$2.75 to \$4.00 because of increasing costs of construction.

MRC stated that it and the CNMI have a unique partnership on the Outer Cove Marina Project whereby, unlike other land leases, every act or decision had to be concurred in by DLNR and NPS. Consequently, MRC believes it has been betrayed by the Government who

should have instead supported it. Also, because of the Government's lack of cooperation, MRC has suffered financially as the project's developer and operator. It is therefore requesting that the Government assume its outstanding liabilities and reimburse it for expenditures and debt service incurred.

OPA Comments to MRC Response

OPA agrees that the Outer Cove Marina Rules and Regulations are relevant to the operation of the Outer Cove Marina, and we did in fact refer to it in **Appendix A** where we also show changes made at various times.

OPA believes that the controversies surrounding the operation of Outer Cove Marina, specifically as to fees to be charged, resulted from the lack of clarity in the lease agreement. Much of it could have been avoided had the Lease agreement clearly reflected the terms and conditions discussed in MRC's proposals and presentations to the public.

We agree that neither the project cost nor fees that OCM can collect were specifically stated in the agreement. However, the \$1.2 million was shown as the estimated cost in its Application for the Submerged Land Lease, and in CRM and United States Corp of Engineer's permits. It was also cited in MRC's open letters to the public and private sectors. The Legislature also believed that the marina had been originally represented as costing \$1.2 million as the former Speaker's letter to the former Governor dated March 17, 1999, stated that the "original cost for the OCM, which the Legislature approved, was \$1.2M. The Legislature based its decision on the original cost

amount when it agreed to force boat owners to move to the OCM.” MRC’s proposal, draft copies of the lease agreement, and other documents presented to the public and the Ninth Legislature prior to the approval and signing of the lease agreement correspondingly showed that marina and other improvements to be constructed was to range from \$1 to \$1.2 million.

The escalation of project cost was not an issue during the construction because the agreement did not specify a project cost. However, had MRC and DLNR agreed upon a formal project cost estimate during the proposal stage, such

estimate could have been included in the lease agreement and much of the controversy surrounding docking and departure fees could have been avoided.

OPA believes that the “type of private & public partnership” mentioned in the former Governor’s letter to MRC was merely an expression of MRC and the CNMI Government working together toward a common goal. Nothing in the law or the agreement states that there is a partnership. Consequently, we believe that the written provisions of the lease agreement rather than any such partnership governs.

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Introduction

Background

On August 21, 1995, the Department of Lands and Natural Resources (DLNR) entered into a lease agreement with Marine Revitalization Corporation (MRC), a non-profit corporation, known as the “Lessee,” to build and operate a boat marina and associated marine fueling station on 16,394 square meters of submerged land located in an area adjacent to American Memorial Park in Saipan.

The Outer Cove Marina

The Marine Revitalization Corporation (MRC) was chartered on May 25, 1993 as a non-profit organization to plan, build, and maintain a marina complex for public use. The Chairman of MRC’s board of directors at the time reportedly submitted a written proposal on this project to the Legislature on September 16, 1993, and this was followed by an open letter to the public describing the project.



The Outer Cover Marina and Public Park

According to the proposal, MRC planned to obtain a submerged lands lease from the CNMI Government so it could build a marina in an area known as the “Outer Cove,” located adjacent to American Memorial Park. The proposal specified that 44 boats could be docked at the Marina. However, it was subsequently amended to cover docking of 76 boats. The original proposal also stated that:

- the estimated cost of the Outer Cove Marina project was to be \$1.2 million,
- the construction cost was to be funded by donations from private citizens and any shortfall would be funded by a bank loan,
- boat slips were to be available to the public for unstated amounts of rental fees,
- recreational facilities and park improvements were to be constructed on land adjacent to the Marina and would be available to the public without charge.

Permit Issues

CRMO Permit

1. Permit Processing & Approval at CRMO

The Coastal Resources Management Office (CRMO) is responsible for coordinating the issuance of coastal permits by six government agencies¹ to anyone proposing to conduct activities which affect CNMI coastal resources. On September 14, 1993, MRC submitted an application to CRMO for a permit to improve the outer cove so that it could install 44 berthing slips. Almost one year later, on August 25, 1994, MRC requested that this permit application be modified to accommodate the construction of 76 boat slips. Descriptions in both the original and modified applications specified that boat slips or docks to be constructed would be the *floating type*. In November 1994, CRMO permit No. SMS-93-X-147 was issued to MRC to construct a 76 slip boat marina, which was to include a fueling dock, fuel storage facilities, restrooms, parking areas, landscaping, wastewater and other project infrastructure. Subsequently, on November 18, 1994, MRC acknowledged all conditions imposed by the permit.

2. Safety & Financial Issues That Led to Amendment of the Permit and Reduction of Boat Slips

In 1998, boat owners raised certain safety issues. Consequently, on October 2, 1998, CRMO required MRC to submit an updated and corrected coastal engineering report and an amended permit application to address those safety issues. The permit identified three project categories: (1) work authorized by CRMO, (2) work CRMO had not authorized, and (3) proposed new work. On June 25, 1999, MRC submitted the amended permit application to CRMO, and explained that the number of boat slips to be built would be reduced from 76 to 45². The exact statement in the amended permit application is as follows:

“During the permit review process, project plans were changed to increase the number of boat slips from 45³ slips to 76 slips. This change was reflected in the permit issued in 1994. The project plans were refined after the permit was issued. These changes were made during the engineering design phase which addressed numerous considerations, such as, site conditions, need to strengthen facilities against storm conditions, new information such as the apparent hardness of the substrate pertaining to dredging and foundation conditions relevant to piling installation, budget, and others. The considerations resulted in a final design which included rearrangement of the marina site plan, *reduction in size from 76 boats to 45 boats, and substitution of fixed-level prestressed concrete docking system for a floating dock system.*” (Emphasis added.)

¹ The six agencies are Dept. of Commerce, Dept. of Lands & Natural Resources, Dept. of Public Works, Div. of Environmental Quality, Historic Preservation Office and the Commonwealth Utilities Corporation.

² The original permit application addressed 44 boat slips and was later amended to cover 76 slips. This was subsequently amended again to 45 slips after completion of the project.

³ The first modification requested was actually from 44 (not 45) to 76 boat slips.

Subsequently, on August 24, 1999, CRMO Acting Director approved all the unauthorized work, project changes and proposed new work. While CRMO did not address any safety issues, it did add a statement that: (1) “*The Commonwealth Government, its Department or Agencies does not assume liability for damages to the permitted project as a result in design or construction deficiencies associated with the permitted or previously non-permitted work or damage to vessels or facilities from natural causes.*” and (2) “*CRMO assumes no liability, responsibility, makes claims (sic) or otherwise as to the safety of facility or the safety of the vessels berthed in the facility.*”

Department of the Army Permit

On November 29, 1993, MRC applied to the U.S. Army Corps of Engineers, Guam Operations Office, for a permit⁴ to dredge 20,000 cubic yards of materials from the existing outer cove and construct floating docks for 76 boats. The permit (#PODCO GIN94-010) was granted on October 24, 1994.

When both the work planned and completed work did not follow the original permit (#PODCO GIN94-010), MRC requested an amended permit for the project. On August 26, 1999 the U.S. Army Corps of Engineers issued a provisional permit⁵ to MRC *authorizing work that did not conform to work previously authorized by permit #PODCO GIN94-010*. The amended permit ratified one very significant item, namely, that the docks were now to be supported by piles rather than allowed to float as previously authorized.



Dock No. 1 (top), part of Dock No. 2 (middle), and Dock No. 3 (bottom) of the Outer Cove Marina.

⁴ The statutory authorities cited as establishing the need for this permit are *Section 10, River and Harbor Act of 1899 (33 U.S.C. 403)* and *Section 404 of the Clean Water Act (33 U.S.C. 1344)*.

⁵ A permit condition stated that the provisional Department of Army permit would become effective upon the date CRMO issued its permit. The CRMO amended permit was issued on August 24, 1999.

Legislative Approval of the Submerged Lands Lease

According to the Submerged Lands Act, 2 CMC §1201 et. seq., the CNMI Legislature can grant development leases over submerged lands in the CNMI; however, legislative approval is required for any such transaction. This Act extended DLNR's authority so that it covered all submerged lands in the CNMI and enabled it to grant leases for marina development.

MRC Submerged Lands Lease Act of 1995

On July 24, 1995, the Ninth Northern Marianas Commonwealth Legislature enacted the "Marine Revitalization Corporation Submerged Lands Lease Act of 1995" (Public Law 9-46) thereby authorizing the Submerged Lands Lease Agreement (lease agreement) between MRC and DLNR. The Act authorized DLNR to lease a submerged land area to MRC for 15 years through a lease beginning on October 24, 1995.

Agreement and Contract Governing the Outer Cove Marina Project

MRC has two contracts for the Outer Cove Marina project. One is the lease agreement with the CNMI Government represented by DLNR, which has jurisdiction over the submerged land area. The second is a concession contract with the U. S. Department of the Interior, represented by the National Park Service (NPS), for a portion of land within the American Memorial Park.

Submerged Lands Lease Agreement

On August 21, 1995 after receiving legislative approval, DLNR and MRC signed the lease agreement governing the use of the submerged land adjacent to the American Memorial Park. Under the agreement, DLNR agreed to lease a submerged land area to MRC for 15 years beginning on October 24, 1995.

The agreement expressed a desire that MRC lease 16,394 square meters of submerged land for construction, operation and maintenance of a 76 boat marina complex known as "Outer Cove Marina". The marina was to be used primarily by commercial vessels. Owners of other vessels could rent slips for private, personal, and non-commercial use, but only on a space-available basis. Slip rental fees were to be set by MRC with DLNR's approval. The lessee was to pay a rental amount of at least 75 percent of its annual net earnings, with the remaining 25 percent to be deposited in a trust fund. The amount deposited in the trust fund was to be used for: (a) extraordinary maintenance, (b) future development of Outer Cove Marina and its surrounding shoreline, and (c) enhancement and improvement of both the American Memorial Park land (fastlands)⁶ and other facilities related to the marina. MRC could disburse

⁶ According to the lease agreement, fastlands are improved lands controlled by the Federal Government.

the trust funds for such purposes only after it consulted with and obtained the approval of DLNR and the NPS. At the end of the lease term, MRC was to transfer title to all improvements on the leased property to DLNR.

Concession Contract with National Park Service

On January 29, 1997, the U.S. Department of the Interior entered into a 14-year concession contract with the NPS and MRC that enabled MRC to establish and operate a marina concession at the American Memorial Park. Under the contract, the NPS was to provide an area of the Park to MRC, who would establish and operate a marina concession under NPS's supervision and control. The Concessioner was to undertake an "Improvement Program" costing no less than \$1 million, and was to:

1. Construct a marina facility for the moorage of recreational and commercial water vessels.
2. Dredge the channel and basin of approximately 20,000 cubic yards, thereby deepening and widening it, with dredged material to be discharged at an approved inland location.
3. Remove existing wrecks, old pilings and other navigational hazards.
4. Construct the necessary land building as required and approved by the Superintendent, such as restrooms, fuel dock with an above ground storage tank, road, parking lot, picnic area, paths and trails, sewage pump-out facility, office, snack bar and/or store, landscaping, bilge pump connected to land based facility, and revetments.
5. Provide utilities, including telephone, underground electrical, water, and sewer.

The concessioner contract contained certain disclosure statements that may have a bearing on the contract:

"Whereas, as of the date of signing of this CONTRACT there exists a dispute between the Commonwealth and the United States concerning the ownership of the submerged lands that are to be included in this marina concession; and

Whereas, both the Commonwealth and the United States desire that this marina concession project go forward; and Whereas, by approving this marina project, neither the Commonwealth nor the United States waives or concedes any claim to ownership or control of the submerged lands, and this contract is not to be construed as prejudicial to the ownership claims of either the Commonwealth or the United States...."

While the issue of who has rightful ownership and control over the submerged land remained unresolved, the rental fees for boat slips were to be set as provided in Section 2(a) of the lease agreement. The concession contract specified that if it is determined that submerged lands are owned by the United States, the lease

agreement becomes null and void, and all MRC net earnings will accrue to the United States and be deposited in a capital improvement account. Further, it states that until the ownership dispute is resolved, the United States has a first lien on all MRC assets within the park except those owned by the Commonwealth under the lease agreement.

While the concession agreement did not require MRC to make any rental payment, it did require MRC to establish a capital improvement account, and deposit 10 percent of its gross receipts⁷ into such account. Deposited funds are not to become government funds, but are to be used to rehabilitate or construct facilities. Any interest earned is to be added to the fund. However, NPS subsequently agreed, on September 3, 1998, to defer the 10 percent deposit until MRC had paid its project loans.

Outer Cove Construction

Contrary to its plans and expectations, MRC has received no private donations or government financial assistance to help finance the Outer Cove Marina project. Instead to complete the project, MRC obtained a \$2 million loan from Bank of Hawaii and \$1 million in loans from the MRC President and his companies. Also, in 1998, Mobil Oil Mariana Islands, Inc. advanced \$660,000 to help MRC build a gas station and mini-mart.

Construction was completed in 1998. Under the terms of the 15-year lease between DLNR and MRC, the marina becomes the CNMI's property in 2010.

Outer Cove Rules and Regulations

On November 14, 1995, CRMO approved, with special conditions, a coastal permit issued to MRC for construction of the Outer Cove Marina. This permit contains 32 conditions, one of which required that a management plan be prepared to address the Outer Cove Marina operations. MRC complied with this condition by submitting a management plan to CRMO, containing regulations for operating the marina. These regulations were established pursuant to the lease agreement between DLNR and MRC.

These regulations address management and operation of the marina. More specifically, they are to govern the operation of vessels and activities of persons in the marina, its shores, shore waters, and fastlands surrounding the marina, so that the general public can enjoy safe, orderly, and convenient water recreation and other commercial activities. They are intended to agree and coordinate with MRC and

⁷ The concession agreement defines the term "Gross Receipts" to mean the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise, including gross receipts from sub-concessionaires and commissions earned on contracts or agreements with other persons or companies operating in the park. Also, all monies in coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts.

applicable laws. These regulations provide that the 45 slip marina can accommodate vessels of up to 100 feet in length. They address issues such as the range of fees that MRC can charge its customers, the conduct of lessees and permit holders in the marina, and rules on permit issuance, the operation and mooring of vessels, fueling of boats, and assignment and transfer of boat slips and lease permits. These regulations were too voluminous to attach to the report. A copy of these regulations can be obtained from DLNR.

Issues Concerning the Outer Cove Marina

Boat owners stated that both safety and financial issues affect the continued viable operation of the Outer Cove Marina.

Safety Issues

Although the Outer Cove Marina was completed in July 1998, commercial boat owners then docking at SCM refused to transfer to the Outer Cove Marina. The boat owners stated that the Outer Cove Marina was unsafe due to the absence of breakwaters or a seawall. They even quoted an official of the U.S. Coast Guard, who according to them, said that without a breakwater, the boats in the Marina would be subject to severe damage from storm winds and swells coming from the west.

In September 1998, the boat owners filed a petition for an emergency summary suspension of the permit issued by CRMO, claiming that MRC had plagiarized engineering plans and violated the permit's specifications. The boat owners requested that MRC's permit to operate the Outer Cove Marina be canceled unless corrective measures were taken, claiming that MRC had willfully violated the permit specifications by building a substantially new project. CRMO, however, did not suspend the permit, but instead ordered MRC to submit a new coastal engineering report and an amended permit application.

Financial Issue

The boat owners also complained that the docking fees that MRC planned to collect would cost them (the boat owners) more than they were currently paying at SCM, and could cause them to go out of business.

MRC's Response to Boat Owners' Concerns

The MRC President provided his view of the Outer Cove Marina Project as follows:

- Prior to the development of the Outer Cove Marina, passenger boats, like those owned by Pelley Enterprises (a company owned by the MRC President), were charged passenger fees of \$2.75⁸ per passenger by the Commonwealth Ports

⁸ The document dated April 1, 1999 (which was used as the basis for the MRC President's statement) provided a footnote that fees were \$4.50 per passenger.

Authority, while commercial boats docking at the SCM were not charged any passenger fees by DLNR. Consequently, commercial boat owners whose boats carried tourist and local residents to Managaha and other islands preferred to dock at SCM.

- SCM, which was built and improved with CNMI taxpayer money and Federal grant funds, was intended for the exclusive use of non-commercial pleasure boats. However, since no commercial marina existed at that time, the CNMI Government and the NPS allowed commercial boats to dock at SCM until a new marina was built. Outer Cove Marina, therefore, was also built for the purpose of freeing dock spaces in SCM for private leisure boat owners, and MRC would not have built the Outer Cove Marina without assurances from DLNR that, upon completion, all commercial boats would be prohibited from docking at SCM.⁹

In September 1998, MRC responded to the boat owners' petition, stating that the real motivation behind the safety concerns in the new marina was purely economics. The MRC President strongly believed that money and the passenger fees being charged by MRC was the cause of the controversy, and that commercial boats did not want to pay passenger fees. MRC stated that public hearings on the marina had been conducted before it was constructed, but no one registered any major criticism or complaint about the fees. MRC said that boat owners were using the issue of safety as an excuse because they did not want to pay higher fees to help MRC defray the construction cost.

More Recent Developments

On November 14, 1998, the CNMI Government entered into an agreement with four boat owners to build a breakwater for the safety of the Outer Cove Marina. Construction of the breakwater has not commenced, and is awaiting appropriation by the Legislature. On the same date, MRC signed another agreement with the same boat owners to install "Marine Guard foam filled marine fenders" at the docks assigned to the four boat owners. The fenders were to function as cushions between the docks and boats, thereby providing added protection during poor weather. However, since the Outer Cove Marina was already on the verge of bankruptcy, a compromise was reached whereby the Government would purchase the fenders.

On April 1, 1999, MRC filed a Federal lawsuit (Civil Action No. 99-0021) against DLNR in an attempt to stop the commercial use of SCM. MRC asked the U.S. District Court to issue a permanent injunction to require that DLNR prevent the unauthorized commercial use of government-run Smiling Cove. The complaint stated that since the completion of the Outer Cove Marina in July 1998, DLNR and its counsel refused to act and enforce the Smiling Cove regulations. This refusal,

⁹ Section 2.(c) of the lease agreement states that "The Secretary covenants to establish a policy for the existing Smiling Cove Marina barring owners of commercial fishing boats from renting slips in Smiling Cove Marina.

according to MRC's President, had caused MRC to be insolvent and on the verge of bankruptcy.

MRC has 9 years left on its 15-year land lease agreement with DLNR. Since the property will be turned over to the Government after the lease agreement ends, MRC President said it might be better if a government agency such as the Commonwealth Ports Authority take over the operation of the Outer Cove Marina and assume its liabilities.

Audit Requested by Former Speaker

In October 1998, the former House Speaker requested the Office of the Public Auditor to conduct an audit of the Outer Cove Marina project. He stated that: "My primary concern is that the marina was originally represented as containing 76 boat slips and costing \$1.2 million. The fees for berthing boats over the 15 year lease would have been sufficient to repay the construction costs, fund ongoing maintenance, and provide some rent to the treasury. I am told by MRC that the marina they have constructed has only 45 slips and the cost is \$ 3.5 million...."

The former Speaker provided us ten questions he wanted answered. Basically, he was concerned about the impact of the increased cost to the boat owners and the public.

Objectives, Scope, and Methodology

The objectives of the audit were to determine whether: (1) the reported project cost represents the actual construction cost of the Outer Cove Marina project, (2) DLNR and MRC fully complied with the terms and conditions of the lease agreement, (3) the fees charged to boat owners are reasonable and in accordance with the lease agreement, and (4) the CNMI will realize any rental revenues during the lease term. This audit also answered the 10 specific questions raised by the former Speaker.

To accomplish our objectives, we (1) examined MRC's financial records to verify the mathematical accuracy of reported project cost, and traced cost totals to the financial statements, (2) reviewed the lease agreement and concession contract with NPS to check MRC's compliance with their terms and conditions, (3) prepared an analysis comparing project cost with fees charged to boat owners, (4) test-checked monthly financial statements and records, and (5) prepared a projection of future MRC net earnings and corresponding rental fees over the remaining lease period.

Our audit focused on the review of disbursements reported by MRC for the project from the time the project was conceived in 1993 until October 1998 when we were requested to conduct the audit. We subsequently expanded our audit scope so we could review MRC's accounting system and test necessary transactions to obtain reasonable assurance that the lessee's revenues were completely recorded, and all expenses were legitimate and adequately supported. However, because of certain

technical limitations, especially in the area of construction, we were prevented from making a full determination of whether the recorded project costs were actually and appropriately incurred in the construction of this project.

We performed our audit field work at the MRC and DLNR offices on Saipan from November 1998 to May 1999. The audit was made, where applicable, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such test of records and other auditing procedures as were considered necessary under the circumstances.

As part of our audit, we evaluated MRC's internal controls over collection of boat slip rentals and other fees, and controls over disbursement for project and operation costs of the Outer Cove Marina. The weaknesses noted are considered insignificant, and are consequently not discussed in the Finding and Recommendations section of this report.

**Prior Audit
Coverage**

This is the first audit conducted addressing the lease of "submerged land" used for marina construction and operation. However, within the past 5 years, OPA has conducted two audits to determine compliance with lease agreement concerning the use of public lands. The CNMI Government allows private entities to lease public lands for quarry, non-quarry and hotel operations. We reported an underpayment of rentals to the Division of Public Land caused by its failure to adequately control collection of lease rental payments.

Findings and Recommendations

A. Agreement Governing the Outer Cove Marina's Construction, Operation, and Management was Inadequate

The provisions of the Submerged Lands Lease Agreement between MRC and the CNMI were inadequate to address the current financial concerns and disagreements between the Lessee, the Government, and the Boat Owners.

Contracts should clearly provide the mutual agreements of the contracting parties. Our review revealed, however, that the provisions of the lease agreement between MRC and the CNMI were inadequate to address the current financial concerns and disagreements between the MRC (lessee), the CNMI Government (lessor), and the affected boat owners because the contracting parties failed to incorporate important provisions needed to govern the construction and operation of the project. As a result, neither MRC nor DLNR (the designated CNMI government agency) is in a position to compel or otherwise convince CNMI boat owners to rent slips at the marina. Unless the operation of Outer Cove Marina is administered under an amended lease agreement, or under an alternative arrangement that the CNMI Government may implement, the OCM operation may not become a viable undertaking for the CNMI Government.

The Mutual Understanding Between Parties Must be Clearly Incorporated in a Written Contract or Agreement

A contract is an agreement between two or more parties which creates an obligation to do or not to do a particular thing. The key principle is the parties' mutual agreement concerning all aspects of the contract. There is no other way of ensuring that what was mutually agreed upon will be followed than by expressing all such matters as written provisions of the contract.

Deficiencies in the Lease Provisions

The audit showed that DLNR and MRC both failed to clarify terms of the lease agreement that was approved by P.L. 9-46 on July 24, 1995, and signed by the parties on August 21, 1995. The lease agreement does not specify: (1) a fixed OCM project cost ceiling, (2) how project costs are to be allocated to facilities and infrastructure, (3) a limit on boat slip rentals or other fees that MRC can collect, and (4) the benefits of the lease to the lessor and the lessee.

The following deficiencies in the lease provisions contributed significantly to the disagreements among the Lessee, the Government, and the boating community:

1. The Agreement Provides No Fixed Amount for OCM Project Cost

The lease agreement does not have a provision binding the Lessee to a fixed cost for the OCM project. We can only surmise that both DLNR and MRC assumed that it was not important to state a fixed project cost amount in the lease agreement because both parties simply accepted the statements in the project proposals that (1) the OCM project cost is \$1.2 million, (2) the project cost will be funded by donations from private citizens, and (3) any funding shortfall will be covered by a bank loan. However, needed donations never materialized, and the lessee (MRC) had to rely entirely on bank and private loans to complete the project.

Had donations of possibly \$1.5 million been collected, MRC would have needed to borrow only \$1 to \$2 million, an amount which could be recouped from OCM operating revenue—a scenario that would translate to lower rates for docking and departure fees. However, because MRC had to totally rely on about \$4 million in loans (principal plus accrued interest) to finance the OCM project, it needs to earn a larger amount of revenue over the term of the lease than was initially anticipated in order to pay off the loans and cover operating costs. MRC therefore has no choice but to impose higher docking and departure fees.

Although the proposed marina project was discussed in public hearings and legislative sessions, as well as in many meetings between MRC and concerned government officials, a final plan with a clear and definite scope was never made an integral part of the lease agreement. Even the development costs were omitted in the signed agreement. The omission of the final project plan and project costs becomes a critical issue now because MRC is seeking to calculate the fees (to be collected from boat owners) based on the total project cost so it can recover its investment.

We believe the problem of setting docking and departure fees could have been avoided, if during the proposal stage, MRC officials had disclosed how fees could escalate depending on the cost of the project. DLNR could then have included this information in the lease provisions. Nevertheless, the Government granted the lease to MRC without any restriction on project cost. Therefore, it would not be unreasonable for MRC to charge rates that would allow the recovery of its project and operating costs.

2. The Agreement Does Not Require that Costs be Properly Allocated to Facilities Comprising the OCM Project

The OCM project is governed by two contracts, MRC's lease agreement with the CNMI Government and its concession contract with the NPS. Consequently, disposition of project assets or facilities may differ when the contracts end (either by completion or early termination). All facilities covered by the submerged lands lease will be turned over to the CNMI Government, while facilities covered by the concession agreement will be disposed of under the terms of the NPS.

MRC did not, however, have separate lists of assets or facilities for each governing agreement/contract. It also did not prepare a cost allocation for common costs (e.g., permits, architectural and engineering studies, overhead) to be capitalized with the cost of completed facilities and improvements. The importance of costing each identifiable asset or facility could become readily apparent should the marina boat docking operation be segregated from the concession operation on the NPS property. Also, such costing is important in determining the proper docking and departure fees, and will help MRC to accurately record and determine the results of operations annually.

3. The Agreement Does Not Limit the Amount of Boat Slip Rentals or Other Fees that MRC Can Collect

Boat Slip Rentals

Section 2(a) of the lease agreement states:

“Slip rental fees in the Outer Cove Marina shall be set by the lessee with the approval of the Secretary.... Once set and approved, initial slip rental fees shall be published at least twice in the succeeding thirty (30) days in at least two Commonwealth newspapers and any subsequent changes shall also be published.”

Section 2(a) of the agreement is the only provision that directly states procedures for the setting of fees, and it only addresses “slip rental fees.” It does not address departure fees or the passenger fees that MRC wants to collect. According to the agreement, MRC and DLNR are responsible for determining and setting docking fees. Although fees are to be published in newspapers, the agreement provides no sanction if publication is not made. This provision also did not specify whether the fee amounts will be based on recovery of cost.

MRC can apparently collect additional fees

Section 1(d) of the lease agreement states:

“Net Earnings means any and all revenues collected from the boat slip rental fees, sales of fuel, business concessions, recreational facilities and *any and all revenues generated* from the operation of the Outer Cove Marina after deducting all ordinary operation and maintenance expenses including salaries, wages, utilities, loan payments, and cost of an environmental impact study ..., ordinary federally mandated concession fees ..., and all other ordinary expenditures pertaining to the operation and maintenance of Outer Cove Marina.” (Emphasis added.)

The definition of “net earnings” in Section 1(d) implies that there are other types of revenue that MRC can collect. It therefore appears that MRC is not restricted from collecting any type of fee from the OCM operation as long as the fee is reported in the net earnings computation.

Parties to a contract can only be restricted by law and contract provisions. On this project, MRC cannot otherwise be restricted from imposing fees that will allow cost

recovery because: (1) it is not a government regulated entity (such as a public utility company), and (2) the lease agreement contains no restrictive provision. Nevertheless, the requirement that the DLNR Secretary concur in the docking fees provided a means to protect the interest of commercial boat businesses, some of which are considered vital to tourism, a major industry in the CNMI.

Expectations and Disagreements on the Fees Imposed

OPA believes that unrealized expectations by both parties led to the problems in determining fees to be collected from boat owners. When MRC spearheaded the OCM project, it committed \$1 million to the project and expected financial support from Government agencies as well as the public. Unfortunately, no financial support materialized, and MRC was obliged to borrow additional funding. MRC's only realistic way to cover operating costs and debt service is to collect fees calculated on the basis of the project cost.

Boat owners and Government officials, on the other hand, expected lower fees because during the early discussions of the project proposal, the project cost was shown, through various documents, to be \$1.2M. The same group may also have assumed that the fees to be collected at the OCM would be similar to those collected for the use of SCM.

Type and Amount of Fees

Since the completion of the Outer Cove Marina, different types and amounts of fees have been established. For the reasons discussed above, questions were raised about these amounts and type of fees, and the procedure followed in adopting the fees. Apparently there are differences between the adoption procedures provided in the lease agreement and those provided by law under the Administrative Procedures Act. **Appendix A** provides commentaries on the various fees adopted for OCM.

4. The Agreement Does Not Ensure That Yearly Lease Revenue will Accrue to the CNMI Government

The lease agreement provides that: "Commencing on the first anniversary of the effective date of this lease, Lessee shall pay annually seventy-five percent (75%) of Lessee's Net Earnings in such year as rent under this lease." However, the description of net earnings in Section 1(d) of the lease, as previously quoted on page 12, will likely result in no net earnings. It appears that the parties who prepared the agreement failed to analyze the effect of allowing loan payments as a deduction in the computation of net earnings.

A lease agreement for property should result in an exchange of economic benefit between both lessor and lessee. However, the lease agreement with MRC may provide a direct economic benefit to the CNMI Government only when the CNMI takes over the marina facilities. That is because the agreement requires rental

payments only when MRC realizes net earnings from the OCM operations. Unlike other Government leases (such as those leasing public lands for hotels, golf courses, and quarry operations), the lease agreement provides no minimum annual rent.

The parties and oversight authorities to the lease agreement were responsible for not ensuring that the provisions clearly stated the intent of the parties. For example, two of the critical and related issues are the cost of the project and the amount of fees that MRC wants to collect. When MRC presented its original proposal, its officials said that they were committed to spending \$1 to \$1.2 million for the project, and that any excess cost would be obtained from government and private sector contributions. When the agreement was signed, there was nothing that clearly stated MRC and the CNMI Government's funding commitment. There were no provisions to cover contingencies such as the source of funding should the project cost exceed \$1.2 million and no government or private contribution was received. And when the situation did occur, MRC did not immediately request a modification of the agreement or halt the project until funding was secured. MRC instead relied on the premise that as the investor, it can recover its investment through the fees it will collect in the future. Unfortunately, the boat owners who are most affected are expecting fees that are comparable to those at SCM. Had MRC and DLNR provided the actual project cost, identified the specific source of funding, and stated the basis for computing the amount of fees, confusion could have been avoided.

B. Noncompliance with Provisions of the Submerged Lands Leased Agreement and its Intent

DLNR has failed to enforce the prohibition of commercial vessels from using SCM while MRC failed to construct 76 boat slips. Such failures have jointly caused MRC's continuing unprofitability and inability to generate more

Parties to a contract must comply with contract provisions in order to satisfy their legal obligations. However, DLNR failed to comply with provisions of the Submerged Lands Lease Agreement as it failed to enforce the prohibition against commercial boats at SCM. On the other hand, MRC failed to construct the 76 boat slips originally desired. Consequently, the parties' inability to regularly inform the boating public and the Legislature about project changes resulted in interested parties blaming both DLNR and MRC for failing to make Outer Cove Marina a viable marina operation.

DLNR Did Not Establish Policies Barring Commercial Use of SCM

Section 2 (c) of the lease agreement states that *"The Secretary covenants to establish a policy for the existing SCM barring owners of commercial passenger and commercial fishing boats from renting slips in Smiling Cove Marina"*. However, to date, DLNR has been unable to prevent commercial boats from using SCM. Commercial boat owners, however, insist they have no alternative to using SCM, as they consider OCM to be unsafe without a breakwater, and OCM fees to be unreasonably high.

On November 14, 1998, the Governor signed an agreement with four boat owners whereby the CNMI Government agreed to construct a breakwater for the safety of OCM. The agreement allowed the boat owners to temporarily dock their boats at SCM during periods of bad weather until such time as the breakwater was constructed. To date, the planned breakwater has not been constructed, pending appropriation by the Legislature.

Also on November 14, 1998, MRC signed a separate agreement with the same four boat owners whereby MRC agreed to install "Marine Guard foam filled marine fenders" at the four boat owners' assigned docks. This agreement contains several provisions for MRC berthing rates, namely:

- boaters may continue mooring at SCM, and pay a \$1.10 departure fee per paying tourist passenger departing from SCM until the fenders are installed,
- when the boats return to OCM (after the construction of the fenders), the departure fee shall be \$2.25 per passenger,
- MRC shall charge a mooring and passenger fee only to the extent necessary to pay its bank loans, maintenance cost, and reasonable overhead and administrative expenses.

Because the fenders were already installed, these new provisions may have only added to the confusion as to the type and amount of fees MRC may collect at OCM. No basis for computing fees was stated in the lease agreement. Yet, when MRC wanted to impose fees based on cost recovery, commercial boat owners opposed the rates because, according to most, they felt the unexpected increase in the OCM construction cost should not be passed on to them. OPA believes that the issue of the amount and type of fees MRC may collect cannot be decided on the basis of the agreements previously signed. Instead, the issue can only be settled through a new agreement between MRC and the CNMI Government.

MRC Did Not Construct 76 Boat Slips as Originally Desired

The lease agreement entered into by DLNR and MRC provides for the construction of a boat marina complex. Our audit showed that MRC constructed only 45 boat slips, or 31 less than originally desired. We believe this occurred because the structural project design for the 76 boat slips, which was submitted in 1994 to obtain the necessary permits, may not have been subjected to a reliable engineering study. Also, the reduced number of boat slips prevented the Government and boat owners from anticipating the high docking and departure fees that MRC needs in order to recover its actual project cost investment.

According to the lease agreement, MRC “wished”¹⁰ to lease the outer cove of Smiling Cove in order to construct a 76 boat marina complex. The “OCM Project” was conceptually planned in 1993. MRC’s President wrote an open-letter to the public and submitted a proposal to the legislature to construct a new marina that could accommodate 76 berthing slips which would be leased to the general boating public. In 1994, MRC was granted a permit by CRMO’s six-member board. MRC was also granted a permit by the U.S. Army Corps of Engineers based on its plans and an application showing floating docks with wood decking. The docks were to be installed and secured by concrete driven piles and concrete anchor buoys, and were to be able to accommodate 76 boats.

In its proposal to the Legislature, MRC estimated that \$1.2 million would be spent to construct a 76 boat slip marina complex. However, our review showed that MRC actually spent over \$3.6 million, or over \$2 million more than its proposal estimate, and constructed only 45 boat slips in the marina. It appears that MRC’s initial 1994 design for the project was not supported by a sufficiently reliable engineering study because MRC submitted an amended permit application in June 1999. The amended application was supported by a January 1997 concept study of the OCM dock configuration made by another consulting engineering firm, Winzler and Kelly.

The increase in the project cost (as discussed in other sections of this report) and the reduction in the number of boat slips can therefore be largely attributed to lack

¹⁰ The only reference to 76 boat slips is in the recitals to the Submerged Lands Leased Agreement. The terms and conditions makes no reference to it. The recital states “Lessee wishes to lease the premises (as defined herein) in order to construct a 76 boat marina complex.”

of good planning or absence of a reliable engineering study. MRC was unable to plan because it lacked outside financial support, and because of unanticipated structural changes that would affect future costs and revenue. In hindsight, the MRC President stated he wished he had retained technical expertise before proceeding with the project.

C. A Final Settlement is Needed Between MRC and DLNR for Setting Outer Cove Marina Fees

Proper fees to be charged at OCM cannot be determined until a final settlement between MRC and DLNR is negotiated.

Projection of fees to be collected for using the marina could be made if the lease agreement provided the specific financial data or trends needed for the projection. The agreement, however, does not specify data or trends for use in establishing those fees. Instead, the agreement left decisions on the type and amount of fees to be decided later by MRC and DLNR.

Prospective users of Outer Cove Marina expected that fees would be computed based on construction costs of between \$1 and \$1.2 million, the range of the Outer Cove Marina project cost MRC had stated in its proposal. MRC, however, expected to collect fees based on recovery of actual costs.

Basis for Fees Charged to the Public

The amount of fees for the use of public properties or for providing essential services must be established by statute, regulations, or by agreement between the Government and the contracted provider(s) of the service. For certain leases of public lands to be used by hotels, golf courses, quarries, etc., the lessees are not restricted from establishing their fees. In those cases, the Government usually specifies the amount of revenue it needs to collect from the lessees. For other agreements, such as the concession agreement for Managaha Island, a fixed \$5 landing fee is clearly stipulated. For utility services in the CNMI, a utility board established by law regulates the amount of rates to be billed to the public.

Submerged Lands Lease Agreement Provides No Basis or Specific Guidelines for Establishing Outer Cove Marina Fees

The lease agreement contains only one provision for setting Outer Cove Marina fees. Section 2(a) of the agreement states that “Slip rental fees ... shall be set by the lessee (MRC) with the approval of the Secretary (of DLNR).” Further, the agreement contains no data or trend information for use in projecting any amount or type of fees. In our opinion, DLNR was unable to take the proper course of action to settle the Outer Cove Marina controversies due to material deficiencies.

MRC and Prospective Users of Outer Cove Marina Differ on How User Fees Should be Established

MRC expects to establish types and amounts of fees based on cost recovery, as would most investors. Nevertheless, MRC may also be responsible for its own predicament because it did not immediately clarify the Government’s commitment or participation (in the marina venture) when it realized that the project cost would eventually exceed what was planned, and when no government or private contributions materialized.

Just as DLNR was negligent with reference to the agreement, MRC likewise failed to recognize all the missing elements in the agreement, as indicated on pages 11 through 15.

Prospective boat users, however, expected lower rates than were set by MRC. In their opinion, the rates should be based on MRC's project cost proposal of \$1 to \$1.2 million. Unfortunately, the signed lease agreement does not impose any limit on what MRC can collect, and it appears that the boat owners were not aware of that fact. Four boat owners even signed the November 14, 1998 agreement (for fender installation), which includes a provision that "MRC shall only charge that mooring and passenger fee it requires to pay its bank loans, maintenance costs, and reasonable overhead, and administrative expenses." As written, that provision reflects those four boat owner's recognition that MRC can recover all of its project cost through the fees it will collect.

No Level or Type of Fees can be Established without a New Agreement

Unfortunately, the agreement provides no procedure for setting fees. DLNR could have acted as an arbiter between MRC and the boat owners, as the lease agreement provides that any fee proposed by MRC must be approved by DLNR, which is responsible for managing public lands. DLNR, however, decided to wait for an audit report on the project, expecting that the report would recommend a level of fees. It appears that DLNR not only failed to immediately identify the agreement's flaws, but also did not seek an amendment to the lease, or attempt alternative settlement to address the future operation of the Outer Cove Marina. Nevertheless, based on all the circumstances, it now appears that the Outer Cove Marina can continue operations only if MRC and the Government agree on a new arrangement.

D. Response to Former Speaker's Inquiry

On October 1998, the former House Speaker requested that the Office of the Public Auditor conduct an audit of the Outer Cove Marina project. He stated that: “My primary concern is that the marina was originally represented as containing 76 boat slips and costing \$1.2 million. The fees for berthing boats over the 15 year lease would have been sufficient to repay the construction costs, fund ongoing maintenance, and provide some rent to the treasury. I am told by MRC that the marina they have constructed has only 45 slips and the cost is \$ 3.5 million....”

Issues surrounding the issuance of CRMO and Department of the Army permits are discussed on pages 1 to 3 of this report. We explained the reasons for changes that occurred in marina construction, the most significant of which were (1) the reduction of boat slips from 76 to 45, and (2) the construction of pile supported docks instead of floating docks. Our review of cost showed that the Outer Cove Marina project was constructed for over \$3.5 million, rather than the \$1.2 million stated in documents when MRC proposed the project.

OPA agrees with the former Speaker's concern that the increase in the project's construction cost and the reduction of the number of boat slips will most likely result in higher fees for the marina users. However, as discussed earlier in this report, the lease agreement does not actually provide a fixed amount for the Outer Cove Marina project, nor limit the amount and type of fees MRC can collect. The agreement also does not ensure lease revenue for the CNMI because any such lease revenue would need to be computed from MRC's net earnings. If the operation of the Outer Cove Marina results in no net earnings, then no lease rental is due.

Nevertheless, this audit still covered ten questions the former Speaker wanted answered:

Q. How much was expended by MRC in constructing the marina, and to whom?

Based on MRC accounting records and supporting documents, the capitalizable cost of the Outer Cove Marina, when completed in July 1998, was \$3,590,857 (see Table 1 on the next page). These records limited us to presenting the breakdown of costs only according to major classifications of services provided and vendors' names.

Description of Cost	Amount	Totals
Marina Construction		
Dock construction - Tano Group, Inc.	1,932,605	
Dredging Work		
McCart & Associates	65,000	
Tano Group, Inc.	35,042	
Coral Transplantation & Relocation		
Cheenis Pacific Company	20,000	
McCart & Associates	6,158	
Wreck Removal- McCart & Associates	70,500	2,129,305
Architectural, Engineering, Survey, & Permits		
Architectural Plans - Wilkinson White Architects	88,350	
Engineering		
Winzler & Kelly	91,716	
Northern Islands Company	27,420	
Clifford Consultants	22,117	
McCart & Associates	13,017	
Julianne T. Duwell	8,474	
Micronesia Environmental Services	4,451	
Surveying		
Meridian Land Surveying	22,000	
Ben Songsong	4,725	
Mariana Islands Marine School	2,355	
Unitek Environment Service	2,150	
Permit - CNMI Treasury	3,825	290,600
Landscaping & Road Paving		
Hawaiian Rock Products (c/o Mobil)	82,217	
Tropical Plaza Ltd.	2,200	84,417
Legal, Insurance, Interest & financing charges		
Legal - O'Connor, Berman, Dotts, & Baner	14,424	
Insurance & Appraisal		
Ocean Survey & Management Co.	1,649	
Micronesia Appraisal	1,800	
Interest/Financing Charges		
Bank of Hawaii	195,488	
Pacific Financial Corp.	4,535	
Pellegrino Group of Companies	79,210	297,106
Others		
Labor		
MRC employees	43,348	
Outside services	20,312	
Equipment rentals & related cost - various vendors	32,647	
Materials & supplies - various vendors	26,327	
Others - various vendors	5,483	128,117
Mobil Mart, Fueling Tank, Pump & Pipelines, Sewer & Water Pump House and Restrooms		661,312
TOTAL		3,590,857

Table 1 - Cost of the Outer Cove Marina Project

Note: A more detailed description of the above costs is shown in **Appendix B**.

Q. Which of these amounts should Mobil Oil be responsible for paying under its agreement with MRC and/or the National Park Service?

Of the total costs shown in Table 1, Mobil Oil Micronesia (Mobil) paid for \$743,529 (\$661,312 plus \$82,217), including: the Mobil mini-mart, fueling tank, pump & pipe lines, sewer & water pump house, and rest rooms, as well as the road paving cost (paid by Mobil to Hawaiian Rock Products). MRC recorded the \$743,529 as a loan from Mobil, payable in 11 years from February 1998 at 12 percent interest per annum.

Q. Does the water supply system service the marina boats or only the Mobil Mini-mart?

The water supply system, using CUC water and water bought from the Saipan Ice and Water Co., services the boats at the Marina, the Mobil mini-mart, and the public rest rooms.

Q. Which costs should be passed on to the public, and which costs are for commercial operations that MRC and/or Mobil Oil should absorb?

There are no provisions in the lease agreement, PL 9-46, or the concession agreement that can be used as a basis for answering this question. In our opinion, MRC is not prevented from establishing any type and rate of fees that would enable it to recover its investment, provided, however, that “Slip rental fees ... shall be set by the Lessee (MRC) with the approval of the Secretary (of DLNR).”¹¹ As concerns the cost of facilities paid by Mobil which MRC recorded as a loan payable, one way of paying off the loan from Mobil is to use the net earnings from the mini-mart and fuel sales. This suggestion can be readily implemented as the Mobil facilities can be easily identified, and the related financial operations easily recorded in separate accounting records. In our opinion, this suggestion is a practical way to ensure the loan is paid without an upward effect on any fees that MRC imposes on boat slip users. It will also allow bookkeeping flexibility should MRC eventually transfer the operation of the mini-mart and fuel station to a new operator.

Q. Were the architectural plans from Wilkinson White and the engineering plans from Winzler & Kelly unnecessarily duplicative?

The presence of both an architectural plan and an engineering plan is not necessarily an indication of duplication. An architectural plan may only pertain to a conceptual design of a structure without any professional assurance by the designer on its physical integrity. In most cases, if a plan comes only from an architect, the structural design has to be certified by an engineer before it can be used as the basis for construction. There are also cases when several engineering firms are hired because

¹¹ Submerged Lands Lease Agreement, Section 2. (a).

each has different fields of specialization, i.e., mechanical, structural, electrical, marine, etc. Therefore, having two plans does not necessarily indicate duplication.

Q. Were the costs expended for Mike McCart and Tano Corporation unnecessarily duplicative?

Based on the two companies' contract periods as well as descriptions of the work performed as stated in the periodic billings, it appears that there was no duplication of work.

McCart was contracted to dredge the marina site for an estimated at \$90,000, payable in five progress billings. MRC, however, only paid the first four progress billings on the contract, totaling \$65,000. McCart was asked to discontinue work around June 1997, and according to the MRC president, his work was not considered satisfactory. Tano, Inc. was then asked to continue the unfinished phase of the work. Tano billed MRC for work performed from about July to August 1997 at a cost of \$35,042. It appeared that dredging costs exceeded the \$90,000 contract by about \$10,000 because of the new contractor hired.

McCart was also hired to do wreck removal at a contract price of \$94,000, but he was only paid \$70,500, \$19,500 less than the original contract.

Based on payment documents examined, we found that MRC paid only for services the contractors had provided, and we have no basis for citing any duplicative work.

Q. How much did the change in design and the change in contractors at mid-project contribute to the cost overrun?

There can be no cost overrun in the absence of an established contract amount. Various documents including MRC's proposal, permit applications, draft copies of the lease agreement, and other documents presented to the public and the Legislature prior to the approval and signing of the lease agreement make reference to an estimated project cost ranging from \$1 to \$2 million. While the marina and other improvements to be constructed were estimated to cost from \$1 to \$1.2 million, neither the lease agreement nor its enabling legislation specified a project cost.

Q. Are there any other expenditures of funds which were inefficient or duplicative?

We are unable to answer this question because this is a commercial venture by the Lessee (MRC). The signed lease agreement, the concession contract, and the approving legislation allowed the Lessee to build the marina complex and any improvements on the leased properties, provided the lessee met the standards stipulated in the agreement/contract. However, the lease contained no restriction on the cost, size, or quality of the marina complex and improvements to be built.

Q. How much money did MRC borrow for construction costs?

Based on the promissory notes and other records provided to us, MRC borrowed about \$3.6 million (See **Appendix C**). According to the terms of the loans, MRC will incur an additional \$1.7 million in interest before the loans are fully paid. The interest will increase if installments are not paid on time or if the due dates are further deferred.

Q. What are the bank's loan repayment terms?

All loans are payable within five years, except the loan from Mobil, which is for eleven years. The interest rates on these loans range from 8.75 to 12.5 percent per annum. (See details for each loan in **Appendix C**)

Conclusion

It appears that project operations began and the project was completed in accordance with a lease agreement, whose provisions do not embody the intent of all the affected parties.

In its initial proposals, MRC, the Lessee, stated that the project was to cost \$1.2 million. Further, it stated that it expected to cover such cost through donations, with any shortfall being provided by a bank loan. Unfortunately, no donations materialized, and when the cost exceeded \$1.2 million, MRC proceeded with construction using additional borrowing. MRC also encountered problems which required changes in the marina construction. MRC, however, did not consult the Government, as the Lessor, on any possible negative effects such changes might have on project cost. Amendments to the lease agreement, enacted before MRC incurred additional costs and before it made design changes, might have alleviated future misunderstandings.

DLNR, the Lessor and representative of the CNMI Government, failed to introduce specific provisions in the agreement that would address how amounts and type of fees would be estimated and imposed. It is not clear whether the developer was to be allowed to impose rates and fees based on cost recovery or government subsidy. DLNR also did not ensure that any fixed lease revenue would accrue to the Government. Because lease revenue can be realized only if the Outer Cove Marina is operated at a profit, any operating loss will necessarily result in no lease revenue accruing to the Government.

While the question of safety was raised, the agreement names no specific party or agency as responsible for certifying the safety of the Outer Cove Marina project. Were MRC, DLNR, or the permit issuing agencies accordingly responsible for safety? Finally, the level of safety needed at the Outer Cove Marina should be clarified, as both the builder and the prospective users appear to differ on the level of safety needed.

Recommendations

The Office of the Public Auditor sees two alternative courses of action that MRC and DLNR may consider in order to continue the operation of the Outer Cove Marina. One is to substantially amend or to completely change the lease agreement, and the other is to have another entity take over Outer Cove Marina operations so that there will be a clearer understanding of each party's obligations and responsibilities. As such, we are offering two sets of recommendations.

As concerns the first alternative course of action which addresses amending or changing the lease agreement, we recommend that the Secretary of DLNR and MRC:

1. Amend or completely change the lease agreement so that there will be a clearer understanding of each party's obligations and responsibilities, taking into account:
 - a. The components that will comprise the actual Outer Cover Marina project cost.

The Outer Cove Marina properties/facilities will be turned over to DLNR and to NPS at the completion of the lease period. It is, therefore, necessary for MRC to provide a detailed cost breakdown of all the properties/facilities comprising the Outer Cove Marina project. The detailed cost breakdown of project cost will also be very useful in establishing the level of fees and making relevant decisions for the settlement of the Outer Cove Marina controversies.

In establishing the cost of each completed facility, MRC must also show the reasonable allocation of development costs (*e.g.* architectural and engineering costs, permits, interest and other costs during construction that can be capitalized in accordance with accounting principles and auditing standards, etc.).

- b. The allocation of the Outer Cove Marina project cost between the area covered by the lease agreement and the area covered by the concession contract.

How the Outer Cove Marina project properties/facilities will be disposed of depends upon when (1) the governing the lease agreement or the concession contract ends, or (2) the agreement or contract is terminated at an earlier period. It is, therefore, necessary that MRC also segregate the costs of the Outer Cove Marina project properties/facilities based on the governing agreement/contract.

- c. The provisions in the lease agreement that may no longer be practical to implement.

There are provisions in the lease agreement that may no longer be practical to implement. For example, the CNMI may never collect any yearly rental where it is to be computed as 75 percent of net earnings. The Outer Cove Marina may never make any profit at all because its construction cost was more than planned. DLNR should decide whether earning an annual rental is a priority, and if it is, then DLNR needs to introduce a new provision that will impose a guaranteed lease rental.

2. Obtain an understanding about the fees to be collected from the boat owners. The parties to the agreement must agree:

- a. On what will comprise the total cost that must be recovered from fees to be charged to the boat owners.

Having two contracts governing the Outer Cove Marina project complicates the process of deciding how cost and revenues will be allocated. OPA suggests that costs and revenues be segregated based on which agreement/contract governs. All cost allocated to the portion of the fast lands being managed by NPS can be recovered by concession and other revenues earned on NPS property. All cost allocated to the submerged land area can be recovered by revenues earned on the DLNR, i.e., Government property.

DLNR must also decide what portions of project cost and yearly operating cost will be allowed to be recovered from fees and revenues to be earned by MRC. For example, will interest on loans payable to the MRC President's group of companies be part of recoverable cost? Will there be a limit on salaries and management fees that MRC officials incur during the lease period?

- b. On the type and amount of fees MRC will be allowed to charge.

If all parties agree to the segregation of cost and revenue, then DLNR should be concerned only with cost and revenues attributable to the submerged land area. DLNR and MRC must then agree on how cost on the submerged land area can be recovered. For that process, MRC must describe the revenues (*e.g.* slip rental fees, departure fees, sale of fuel, etc.) it intends to collect. MRC must also provide a detailed projection of the yearly revenues and cost for the duration of the lease period.

- c. If the fees to be computed and the related revenue projections will yield a profit providing both yearly rental and a reserve for future development.

With MRC incurring about \$4 million (principal plus accrued interest) for the project, will the Government still expect to collect a yearly rental of 75 percent of net earnings as well as a deposit to a development trust fund

of 25 percent of net earnings? Perhaps the Government will waive the yearly rental and the deposit to avoid higher fees.

- d. To have a periodic review conducted on MRC's financial operations, and on the amount of fees and type of revenues MRC will be allowed to collect.

Economic conditions can change drastically over the life of a lease. An understanding should be reached to study and adjust the rates, possibly every two years, to cope with any economic change.

- e. To extend the lease period so as to allow MRC to collect lower fees and have a longer time to recover its investments.
- f. The Government may provide MRC with financial and other assistance that could possibly include: (1) the reduction or elimination of annual rent, (2) allowing MRC to defer tax payments until its loans are paid, (3) enforcing the provision in the lease agreement requiring the adoption of a regulation to ban the docking of commercial vessels in the Smiling Cove Marina, and (4) asking the other marina operators to establish uniform fees so that Outer Cove Marina rates can be competitive.

3. Dissolve other supplemental agreements. To avoid confusion, other agreements such as those for the breakwater and fender installation should either be dissolved or made part of a new or amended lease agreement.

As to the second alternative course of action of whether another entity should take over Outer Cove Marina operations, we make no specific recommendations. Instead, we only enumerate actions that the CNMI Government and MRC may take. DLNR, as the Government agent for the agreement, must spearhead the review of each alternative available for achieving a workable settlement. We believe that to be successful in resolving the current Outer Cove Marina problems, DLNR must have the cooperation and support of the Executive and the Legislative Branches. Most of the viable solutions, which may require delving into limited financial resources, go beyond the scope of authority of the DLNR Secretary. The alternative courses of action that DLNR and the CNMI Government can take are:

1. DLNR and the CNMI Government could pay MRC for the fair market value of the Outer Cove Marina project, with DLNR then taking over the marina operations.

This alternative will require the joint effort of the Executive Branch and the Legislature. Funds needed to pay MRC must be identified and appropriated. It will also require an analysis as to what part of the Outer Cove Marina project cost will be assumed by the Government. There are some parts of the Outer Cove Marina operations that could be retained by MRC or taken over by other concessionaires or contractors.

2. DLNR and MRC could turn to other private developers who might take over the marina operations and pay MRC for the project cost.

While DLNR and MRC did not respond to all of our recommendation, they did comment on our report findings.

DLNR's Comments

The Secretary concurred with OPA's recommendation (1) to amend or substantially revise the lease agreement or, alternatively, (2) to have either the CNMI Government or another entity take over operation of Outer Cove Marina, but stated it could not pursue either alternative until the Senate Oversight Committee had submitted its report and the current legislation (House Bill 12-250) is enacted.

The Secretary of DLNR did not agree with our finding that DLNR had failed to enforce the MRC submerged land lease prohibition against commercial vessel moorage in the Smiling Cove Marina. He said that operators of commercial vessels are legally allowed to use Dock G at SCM under a "grandfathering" arrangement resulting from an oral agreement between the former Director of the Division of Fish and Wildlife and vessel operators. Further, it is gradually phasing out commercial vessels in the SCM and no longer issues commercial permits.

The Secretary said the emergency regulations are no longer in effect, and they cannot be made permanent because they have lapsed. While DLNR disagrees with OPA's opinion that the CNMI Administrative Procedures Act does not apply to MRC, DLNR believes MRC should comply with them.

OPA Comments to DLNR Response

We agree with DLNR that it cannot implement either alternative action until the Senate Oversight Committee submits its report and the current legislation (House Bill 12-250) is enacted.

DLNR is not in a position to criticize the language of the agreement and blame the Legislators for it because DLNR had, in fact, approved the agreement. DLNR should not have agreed with the restrictions in the agreement if they knew beforehand that Dock G can be made available for commercial vessels.

With regard to the applicability of the CNMI Administrative Procedures Act, we believe that any disagreement should be referred to the Attorney General's Office for legal opinion.

MRC Comments

According to MRC, Outer Cove Marina rules and regulations,¹² rather than the lease agreement, were to govern marina operations. MRC said that the rules and regulations, which show the actual working arrangement between the parties, were to be used to regulate and coordinate activities at the Outer Cove Marina. Further, it stated that the lease agreement was only a policy statement and general agreement. OPA had, however, omitted any reference to these rules and regulations that the two parties to the lease agreement had agreed to.

MRC claims that the \$1.2M proposal was never intended to be a formal cost estimate for the Outer Cove Marina project. Rather it was provided for discussion purposes only, subject to change and used only to show the possible costs, as no formal cost estimate had been prepared.

MRC states that, at every design change, CRM, DEQ and U.S. Army Corp of Engineers were repeatedly appraised of the increasing costs of construction and design changes. It also claims that the issue of escalating costs had been conveyed to DLNR and NPS through its letter dated October 20, 1997 where MRC advised there was a need to increase departure fees from \$2.75 to \$4.00 because of increasing costs of construction.

MRC stated that it and the CNMI have a unique partnership on the Outer Cove Marina Project whereby, unlike other land leases, every act or decision had to be concurred in by DLNR and NPS. Consequently, MRC believes it has been betrayed by the Government who should have instead supported it. Also, because of the Government's lack of cooperation, MRC has suffered financially as the project's developer and operator. It is therefore requesting that the Government assume its outstanding liabilities and reimburse it for expenditures and debt service incurred.

OPA Comments to MRC Response

OPA agrees that the Outer Cove Marina Rules and Regulations are relevant to the operation of the Outer Cove Marina, and we did in fact refer to it in **Appendix A** where we also show changes made at various times.

OPA believes that the controversies surrounding the operation of Outer Cove Marina, specifically as to fees to be charged, resulted from the lack of clarity in the lease agreement. Much of it could have been avoided had the lease agreement clearly reflected the terms and conditions discussed in MRC's proposals and presentations to the public.

We agree that neither the project cost nor fees that OCM can collect were specifically stated in the agreement. However, the \$1.2 million was shown as the estimated cost

¹² We did not attach MRC's comments to this report as MRC's comments were only included by courtesy and not requested by OPA.

in its Application for the Submerged Land Lease, and in CRM and United States Corp of Engineer's permits. It was also cited in MRC's open letters to the public and private sectors. The Legislature also believed that the marina had been originally represented as costing \$1.2 million as the former Speaker's letter to the former Governor dated March 17, 1999, stated that the "original cost for the OCM, which the Legislature approved, was \$1.2M. The Legislature based its decision on the original cost amount when it agreed to force boat owners to move to the OCM." MRC's proposal, draft copies of the lease agreement, and other documents presented to the public and the Ninth Legislature prior to the approval and signing of the lease agreement correspondingly showed that marina and other improvements to be constructed was to range from \$1 to \$1.2 million.

The escalation of project cost was not an issue during the construction because the agreement did not specify a project cost. However, had MRC and DLNR agreed upon a formal project cost estimate during the proposal stage, such estimate could have been included in the lease agreement and much of the controversy surrounding docking and departure fees could have been avoided.

OPA believes that the "type of private & public partnership" mentioned in the former Governor's letter to MRC was merely an expression of MRC and the CNMI Government working together toward a common goal. Nothing in the law or the agreement states that there is a partnership. Consequently, we believe that the written provisions of the lease agreement rather than any such partnership governs.

**Types and Rates of Fees Established for OCM
(Listed based on Date of Adoption)**

1. January 22, 1997

The OCM Rules and Regulations prepared by MRC was approved by DLNR and NPS on January 22, 1997. Section XIV of the OCM Rules and Regulations provided these.

XIV FEES FOR BERTHING SLIPS

14.1 The following fees shall be assessed lessees assigned berths on a monthly basis.

- (a) Vessels 20.0 ft. to 29.0'.....\$ 5.00 per foot or less
- (b) Vessel 29.1 ft. to 42.0'.....\$ 7.00 per foot
- (c) Vessel 42.1 ft. to 52.0'.....\$10.00 per foot
- (d) Vessel 52.1 ft. to 65.0'.....\$15.00 per foot
- (e) Vessel 65.1 ft. to 100.0'..... ..\$20.00 per foot

14.2 The following fees shall be assessed permittees assigned mooring on a monthly basis.

- (a) Vessel 20.0 ft. to 29.0'.....\$ ½ the above rate
- (b) Vessel 20.1 ft. to 29.0'.....\$ ½ the above rate
- (c) Vessel 29.1 ft. to 42.0'.....\$ ½ the above rate
- (d) Vessel 42.1 ft. to 65.0'.....\$ ½ the above rate
- (e) Vessel 65.1 ft. to 100.0'.....\$ ½ the above rate

14.3 Passenger Departure Fees: per passenger-----\$ 2.75

Passenger Departure Fees will be charged to every passenger boarding on vessel carrying passengers for hire, regardless of water activity or destination. Boat owners will be billed each month and shall be paid within fifteen (15) days from the date of the billing.

OPA Comments

These rates were published twice in the Marianas Variety(6/15 & 19/98) and thrice in Saipan Tribune(6/19/98, 7/3/98 & 7/17/98). It appears that these rates are applicable until March 17, 1999 to all boaters except those four boat owners (who were parties to the November 14, 1998 agreements described in the following paragraph). The rates were not published in the Commonwealth Register.

2. November 14, 1998

On November 14, 1998, the CNMI Government entered into an agreement with four boat owners to build a breakwater for the safety of OCM. On the same date, MRC signed another agreement with the same boat owners to install "Marine Guard foam filled marine fenders"at the assigned docks to the four boat owners. With regards to the fees to be charged to the four boat owners, the pertinent provisions of these two agreements states that:

- (a) The boaters shall be allowed to continue mooring at the Smiling Cove Peninsula until fenders are installed.

**Types and Rates of Fees Established for OCM
(Listed based on Date of Adoption)**

(b) During that period that the boaters are allowed to moor at the Smiling Cove Peninsula, the boaters shall pay MRC a (departure) fee of \$1.10 per paying tourist passenger.

(c) At the time the boats move to OCM, the per passenger fee shall be \$2.25.

OPA Comments

The two rates for passenger departure fees mentioned here only applied to four boat owners, which according to MRC, ferries majority of the tourist going to Managaha Island.

The \$2.25 rate for passenger fee should have taken effect (within 24-hrs.) after the fender installation on July 16, 1999 as agreed by the boaters and MRC. However, the four boaters still did not want to pay the \$2.25 passenger fee and still insisted that OCM is unsafe without the breakwater. Two of them continued to pay the \$1.10 rate while the other two moved to Charlie Dock after the installation of the fenders.

3. March 18, 1999

This date's issue of the Commonwealth Register (Volume 21 No.3) had the publication of DLNR's Notice of Emergency and Adoption of the Proposed Regulations for OCM. Section XIV of these emergency regulation provides almost the same rates as those from the OCM Rules and Regulations approved on January 22, 1997 except that this emergency regulations provides a flat berthing fee of \$5.00 per lineal foot (irrespective of total boat length) for commercial boat owners, and the rate of the passenger departure fee was increased to \$4.00. Since this is an emergency adoption, the regulation is only valid for 120 days. The published rate are as follows:

XIV FEES FOR BERTHING SLIPS

14.1 The following fees shall be assessed lessees assigned berths on a monthly basis except for commercial passenger vessels who shall be assessed a flat fee of \$5.00 per lineal foot.

- (a) Vessels 20.0 ft. to 29.0'.....\$ 5.00 per foot or less
- (b) Vessel 29.1 ft. to 42.0'.....\$ 7.00 per foot
- (c) Vessel 42.1 ft. to 52.0'.....\$10.00 per foot
- (d) Vessel 52.1 ft. to 65.0'.....\$15.00 per foot
- (e) Vessel 65.1 ft. to 100.0'..... ..\$20.00 per foot

14.2 The following fees shall be assessed permittees assigned mooring on a monthly basis.

- (a) Vessel 20.0 ft. to 29.0'.....\$ ½ the above rate
- (b) Vessel 20.1 ft. to 29.0'.....\$ ½ the above rate
- (c) Vessel 29.1 ft. to 42.0'.....\$ ½ the above rate
- (d) Vessel 42.1 ft. to 65.0'.....\$ ½ the above rate
- (e) Vessel 65.1 ft. to 100.0'.....\$ ½ the above rate

14.3 Passenger Departure Fees: per passenger-----\$ 4.00

Passenger Departure Fees will be charged to every passenger boarding on vessel carrying passengers for hire, regardless of water activity or destination. Boat owners will be billed each month and shall be paid within fifteen (15) days from the date of the billing.

Types and Rates of Fees Established for OCM (Listed based on Date of Adoption)

OPA Comments

The cover letter for this March 18, 1999 publication of the Emergency Rules and Regulations was dated February 12, 1999. It was signed by DLNR officials (Acting DLNR Secretary and DFW Director) on February 13, by the Acting Attorney General on February 16, and by the Governor and the Registrar of Corporations on February 19.

The Emergency Regulations published on March 18, 1999, however, were exactly the same OCM Rules and Regulations published on January 22, 1997 except that the two pages (pages 9 and 10) showing section XIV were amended. The last pages of the January 22 published Rules and Regulations and the March 18 published Emergency Rules and Regulations showed that both were approved by exactly the same three officials on January 22, 1997. This, in our opinion is an example on the lack of effort on the part of DLNR officials to solve the OCM controversy. DLNR officials could not even have the March 18 published Emergency Rules and Regulations approved by the designated parties (Secretary of DLNR, authorized official of NPS, and President of MRC). What they did was probably reprinted the pages of the January 22, 1997 rules and regulations with minor changes like (1) adding the word "Revised" to the title on page 1 and (2) amending some lines on pages 9 and 10. Then, they just photocopied the signed last page.

4. April 19, 1999

This date's issue of the Commonwealth Register (Volume 21 No. 4) had the publication of DLNR's Notice of Emergency and Adoption of the Proposed Amendments to the Emergency Regulations for OCM. By this publication, DLNR again made an emergency adoption of the Emergency Rules and Regulations published on March 18, 1999 because some sections were again changed. The cover letter also stated the intention to permanently adopt the amended Emergency Rules and Regulations, thus in accordance with CNMI law, comments on the rules and regulations were sought from any interested party.

With the inclusion of the changes, affected sections of the Emergency Rules and Regulations are as follows:

XIV FEES FOR BERTHING SLIPS

14.1 The following fees shall be assessed lessees assigned berths on a monthly basis.

- (a) Vessels 20.0 ft. to 29.0'.....\$ 5.00 per foot or less
- (b) Vessel 29.1 ft. to 42.0'.....\$ 7.00 per foot
- (c) Vessel 42.1 ft. to 52.0'.....\$10.00 per foot
- (d) Vessel 52.1 ft. to 65.0'.....\$15.00 per foot
- (e) Vessel 65.1 ft. to 100.0'..... ..\$20.00 per foot

14.2 The following fees shall be assessed permittees assigned mooring on a monthly basis.

- (a) Vessel 20.0 ft. to 29.0'.....\$ ½ the above rate
- (b) Vessel 20.1 ft. to 29.0'.....\$ ½ the above rate
- (c) Vessel 29.1 ft. to 42.0'.....\$ ½ the above rate
- (d) Vessel 42.1 ft. to 65.0'.....\$ ½ the above rate
- (e) Vessel 65.1 ft. to 100.0'.....\$ ½ the above rate

Types and Rates of Fees Established for OCM (Listed based on Date of Adoption)

14.3 Passenger Departure Fees will be charged to each commercial boat owner for every paying tourist passenger that departs from the Outer Cove, regardless of water activity or destination. Boat owners will be billed each month and shall be paid within fifteen (15) days from the date of the billing. Passenger departure fees charged under this section shall be charged retroactively to February 19, 1999.

XXVII (sic) PREVIOUS AGREEMENTS

26.1 This Emergency Regulations are subject to the priority of the following previously existing agreements : (1) Agreement to build Breakwater in Outer Cove, and (2) Agreement among certain boat owners and the MRC, entered into on November 13, 1998. Each and every provision of these agreements remains in effect and neither is changed or superceded by these Emergency Regulations.

OPA Comments

The Amendment Section of the April 19 publication states that "Section 14.3, 'Passenger Departure Fee, set forth in the Emergency Regulations adopted February 19, 1999 is hereby deleted in its entirety and substituted therefore shall be the following.'" (Emphasis added) The substituted Section 14.3 is shown above and the section does not show any rate for passenger departure. It seems that there was an oversight by whoever drafted the amendments.

The Amendment Section also showed a mistake in the numbering of the section. "Previous Agreements" should have been referred as Section XXVI (26) not XXVII. The purpose and the meaning of Section XXVI are not very clear to us.

Since the April 19, 1999 publication was also an emergency adoption of the regulations, such emergency regulations was valid for only 120 days. We did not see any subsequent publication in the Commonwealth Register that the rules and regulations were permanently adopted pursuant to law.

OPA Conclusion on the Various Adoptions of OCM Fees

Based on what has been published, it is still unclear to the public as to what fees and rates are legally in effect for the use of the OCM. The April 19, 1999 publication in the Commonwealth Register was the last and was an emergency adoption of OCM Regulations, and although DLNR stated its intention to adopt those regulations permanently, more than a year has passed and still there is no formal adoption of any regulations. Nevertheless, it appears that adopting any type and rate of fees for OCM at this time is impractical. Whatever type and rate of fees that will ultimately be collected will most likely depend on the final settlement between the CNMI Government and MRC on how OCM will be operated in the future.

Detailed Breakdown of Construction Cost of the Outer Cove Marina Project As of October 31, 1998

Date	Document Examined	Amount	Description of Work Done
Marina Construction			
Construction of Dock and Fuel Pier Station			
Tano Group, Inc.			
07/07/97	Proposal dtd. 0707-97	110,000.00	Mobilization fee equivalent to 10% of \$1.1M (Proposed Contract Amount for supply, delivery and installation of double tee decking, prestressed concrete piles, pile caps, pile driving on and off shore, tugboat and barge off shore pile driving and supervision
07/31/98	Inv. No. 0731-98	519,217.00	Procurement and shipping of piles to project site
07/31/98	Inv. No. 0731-98	567,433.00	Cost of piles driven as of May 31, 1998
07/31/98	Inv. No. 0731-98	149,138.00	Piles caps, Forming and Setting
07/31/98	Inv. No. 0604-98	330,000.00	Procurement of "T" Decking
06/04/98	Inv. No. 0527-98	138,402.00	Additional 233 piles fender @ \$594 each.
05/27/98	Inv. No. 0527-98	69,018.00	Mooring cleats, Bumper, Fender System, Removal of 3,612 cy of materials, erosion control, hauling & landing of weights & pile driving.
08/17/98	Inv. No. 0817-98B	29,700.00	Supply & installation of additional 50 pcs. of fender piles @ \$594.00
07/30/98	Inv. No. 0730-98	3,830.00	Dumptruck rental used for MRC's soil and hauling of garbage
08/17/98	Inv. No. 0817-98A	4,320.00	Fabrication and installation of 27 pcs. Bollards @ \$160
08/17/98	Inv. No. 0817-98	8,547.00	Installation of 181 pcs. @ \$47.22 mooring cleats
10/16/98	MRC. Ck.No. 01044	3,000.00	Installation of water line close to the dock and power line for light poles
TOTAL		1,932,605.00	
Dredging Work			
McCart & Associates			
09/18/96	MRC 109	10,000.00	Dredging and Disposal of 12,000 CY spoils to the dumpsite - Mobilization due upon acceptance
10/10/96	MRC 119	15,000.00	Dredging and Disposal of the next 12,000 CY spoils to the dumpsite - Mobilization due upon Notice to Proceed
02/14/97	MRC 238	8,000.00	First 2,000 CY of materials dredged
03/08/97	MRC 266	16,000.00	Next 4,000 CY materials dredged
04/02/97	MRC 284	10,000.00	Next 4,000 CY materials dredged
04/11/97	MRC 292	6,000.00	Final 2,000 CY of materials dredged
		<u>65,000.00</u>	
Tano Group, Inc. (Continued the unfinished dredging works of McCart)			
09/05/97	MRC 432	7,479.00	Labor, equipment and materials for dredging 900 CY @ \$8.31 at Area 1 of the OCM (Invoice dated 8/9/97).
09/05/97	MRC 432	27,563.00	Labor, equipment and materials for dredging 3,000 CY @ \$9.18 at Area 3 of the OCM (Invoice dated 8/15/97).
		<u>35,042.00</u>	
TOTAL		100,042.00	
Coral Transplantation and Relocation			
Cheenis Pacific Company			
5/19-20, 1996	MRC Ck. Nos.004,007&022	20,000.00	Coral removal and transplantation to the new site
McCart & Associates			
06/14/96	MRC 026	6,158.33	Coral relocation services
TOTAL		26,158.33	
Wreck Removal			
McCart & Associates			
06/25/96	MRC 028	15,800.00	Mobilization upon agreement equivalent to 25% of the proposed amount (\$94,000) - First Payment
07/03/96	MRC 034	7,700.00	Mobilization upon agreement equivalent to 25% of the proposed amount (\$94,000) - Balance due on the first payment of 25%
07/17/96	MRC 052	9,400.00	10% of the Contract Price(CP) paid when the 1st wreck located in the furthest North was removed.

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**Detailed Breakdown of Construction Cost of the Outer Cove Marina Project
As of October 31, 1998**

Date	Document Examined	Amount	Description of Work Done
08/07/96	MRC 065	16,870.00	First pmt. of the 20% of CP paid when the wreck on the Southern corner was removed.
08/07/96	MRC 068	170.00	Second pmt. of the 20% of CP equivalent to the rental of tractor lowboy for 2 hrs. @ \$85.00 /hr.
08/07/96	MRC 067	1,760.00	Third pmt. of the 20% of CP equivalent to backhoe and excavator rental from July 10-16,1996.
10/10/96	MRC 119	18,800.00	20% of the CP paid after the last wreck on the Southern corner was removed.
TOTAL		70,500.00	
Architectural, Engineering, Survey and Permits			
Architectural Plans			
Wilkinson White Architects			
05/22/93	SSV 11823	1,000.00	Design the overall master plan of the proposed marina including the floating and
06/01/93	SSV 11847	1,000.00	fueling docks and above-ground fuel tanks, chandlery, picnic structures, restrooms
06/18/93	SSV 11981	18,000.00	drives, parking lots, walkways and signage. The location of the breakwater and dock
08/27/93	SSV 12349	5,000.00	pilings was shown and schematically designed. Landscaping areas was delineated.
09/15/93	SBI 4748	5,000.00	Construction drawing and specifications (20) sets was provided.
09/15/93	SSV 12515	5,000.00	The architect prepared and submitted the DPW Building permit and the DEQ Land
11/29/93	SSV 12871	1,000.00	Clearing/Erosion Control permit.
11/29/93	SBI 4951	2,000.00	
11/29/93	PBC 4073	2,000.00	
01/31/94	SBI 5167	5,000.00	
		45,000.00	
03/14/95	SSV 2510	5,000.00	Provided construction phase observation during the construction at least two (2) site
05/30/95	SSV 2907	10,000.00	visits per week to become generally aware of the progress and quality of work and to
11/27/95	PBC 6218	3,000.00	assist the contractor(s) and government agencies in clarification changes in the work.
12/22/95	MRC 95-12-04	3,000.00	Also, provided additional services based upon the requirements outlined in the CRM
01/11/96	MRC 96-01-09	3,000.00	Coastal Permit was performed within the ninety day period prior to construction. In
02/15/96	MRC 96-02-15	3,000.00	addition, Wilkinson White Architects was responsible for submission of all data
03/18/96	MRC 96-03-19	3,000.00	requirements to each of the government agencies.
		30,000.00	
06/06/96	MRC 015	2,437.50	Meetings with A.Pellegrino and coordination with other contractors about works to be done at OCM from 4/1/96 to 5/25/96.
08/07/96	MRC 071	1,800.00	Review, preparation and coordination of all the meetings with AP, Mobil, DPW, CRM and other contractors from 5/26/96 to 7/30/96
10/07/96	MRC 117	1,650.00	Review, redrawn & revised draft and concept about dock lay-out and Meet with other contractors from 7/31/96 to 9/27/96
12/05/96	MRC 179	2,362.50	Meetings and discussion with Tano, DEQ, USACOE, CRM about additional piles, dock lay-out & project updates from 9/28/96 to 11/19/96
02/14/97	MRC 242	1,000.00	Meetings and discussions with Micke McCart, CRM, Pellegrino, CRM . Review of other contractors' document from 11/20/96-2/6/97
03/11/97	MRC 271	1,212.50	Meetings and discussions with Micke McCart, CRM, Pellegrino, CRM . Review of other contractors' document from 11/20/96-2/6/97
04/30/97	MRC 317	2,325.00	Meetings, review, discussion with other contractors, CRM & Pellegrino from 2/7/97 - 4/4/97.
06/18/97	MRC 369	562.50	Review plastic piles, fender details, landscaping details and Complete application forms for erosion control & earthmoving permits.
		13,350.00	
	Sub-total	88,350.00	
Engineering			
Winzler & Kelly			

Detailed Breakdown of Construction Cost of the Outer Cove Marina Project As of October 31, 1998

Date	Document Examined	Amount	Description of Work Done
04/23/96	MRC 96-04-22	2,500.00	Manhours spent and expenses (Geotechnical subconsultant, reproduction,
05/31/96	MRC 96-05-31	1,500.00	photography, travel and per diem) incurred on design calculation, site plan, rip rap
06/10/96	MRC 016	6,000.00	Rap embankment section and details, dredging and dewatering plan, sedimentation
07/19/96	MRC 050	5,000.00	pond details, floating dock pile and gangplank details.
08/09/96	MRC 072	2,000.00	Installment payment for the above-stated scope of work.
09/24/96	MRC 108	2,000.00	Installment payment for the above-stated scope of work.
10/22/96	MRC 127	1,500.00	Installment payment for the above-stated scope of work.
10/29/96	MRC 141	1,629.00	Installment payment for the above-stated scope of work.
12/06/96	MRC 180	2,000.00	Provided engineering documentation and design criteria for the construction of the
01/09/97	MRC 212	4,000.00	OCM project as follows: (1)Phase 1 - Concept study (Evaluation of two fixed docks
02/21/97	MRC 243	7,000.00	and one floating dock configuration, quantities and estimates for each alternatives
03/12/97	MRC 265	10,000.00	and review of Coastal Engineering report by Clifford Consultants); and (2) Phase 2 -
05/21/97	MRC 339	12,785.00	Preparation of construction documents (plans and estimates for 100% submittal).
07/01/97	MRC 363	5,000.00	Installment payment for the above-stated scope of work.
08/26/97	MRC 423	2,000.00	Installment payment for the above-stated scope of work.
10/20/97	MRC 467	1,500.00	Installment payment for the above-stated scope of work.
02/10/98	MRC 522	1,000.00	Installment payment for the above-stated scope of work.
03/27/98	MRC 586	1,000.00	Installment payment for the above-stated scope of work.
04/24/98	MRC 3131060	10,000.00	Installment payment for the above-stated scope of work.
06/22/98	MRC 681	2,000.00	Installment payment for the above-stated scope of work.
07/07/98	MRC 749	2,000.00	Installment payment for the above-stated scope of work.
07/20/98	MRC 808	2,000.00	Installment payment for the above-stated scope of work.
08/18/98	MRC 886	1,000.00	Installment payment for the above-stated scope of work.
09/15/98	MRC 958	1,000.00	Installment payment for the above-stated scope of work.
10/13/98	MRC 1024	1,000.00	Installment payment for the above-stated scope of work.
11/04/98	MRC 1068	4,302.30	Installment payment for the above-stated scope of work.
	Sub-total	<u>91,716.30</u>	
Northern Islands Company			
06/18/93	MRC 11982	9,000.00	Proposal stated that this service will include the preparation of environmental-related
09/13/93	MRC 12404	3,000.00	documentation required for the submerged land lease and CRM permits, coordinate
12/20/93	MRC 12984	2,000.00	with involved Federal and CNMI Agencies and provide environmental related advice
02/02/94	SSV 121	3,000.00	relevant to project planning, design approval and construction.
02/21/94	SSV 253	1,000.00	Installment payment for the above-stated scope of work.
07/13/95	SSV 3136	5,000.00	Installment payment for the above-stated scope of work.
02/16/96	MRC 96-02-16	2,005.00	Installment payment for the above-stated scope of work.
03/14/96	MRC 96-02-17	2,005.00	Installment payment for the above-stated scope of work.
07/17/96	MRC 049	410.00	Installment payment for the above-stated scope of work.
	Sub-total	<u>27,420.00</u>	
Clifford Consultants			
09/01/93	SSV 12199	2,000.00	Prepare plans and specifications for on-site grading, dredging, geometrics for the
11/08/93	SSV 12738	3,000.00	marina complete enough for construction surveying, structural design of the docks
02/21/94	SSV 252	1,000.00	including the piers, finger piers and fuel docks, hydraulics for the marina, pile design
03/15/94	SSV 382	600.00	for the docks, plans for dewatering of the dredging spoils and any stabilization
04/22/94	SSV 669	650.00	required by Geotechnical Investigation.
06/05/95	SSV 2813	312.00	Prepared required reports for the dredging plan, dredging spoil and disposal plan
07/03/95	SSV 2909	3,978.00	erosion control permit.
			Structural engineer and design of the docks from March to September, 1995.

Appendix B

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Detailed Breakdown of Construction Cost of the Outer Cove Marina Project As of October 31, 1998

Date	Document Examined	Amount	Description of Work Done
07/03/95	SSV 2909	1,022.00	
07/24/95	SSV 2995	156.00	
09/30/95	SII 6727	2,503.60	
10/18/95	PBC 6100	2,500.00	
11/27/95	PBC 6216	2,710.40	
12/22/95	MRC 95-12-02	1,684.80	
	Sub-total	22,116.80	
McCart & Associates			
10/24/95	SII 6764	5,000.00	Construction management of the actual work to be performed for the entire project
11/03/95	SSV 3671	4,500.00	This includes technical support, project planning and value engineering, permit and
12/20/95	MRC 95-12-01	4,258.33	mitigation phases, choices of equipment and contractors, testing of equipments and
01/10/96	MRC 96-01-08	2,058.33	pre-mobilization items.
05/20/96	MRC 96-5-28	2,200.00	
	Sub-total	18,016.66	
Less 10/24/95	SII 6764	5,000.00	Adv. payment paid to McCart on 10/24/95 for Const. Mgt. but was taken back by
	Sub-total	13,016.66	MRC due to Mr. Pellegrino's dissatisfaction of the job done.
Julianne T. Duwell			
09/01/98	MRC 1030	8,474.48	Permitting and Design Services for breakwater at OCM
Micronesia Environmental Services			
12/27/96	MRC 207	268.22	Travel Expenses and Consulting fee of John Gourley in resolving impasse with
			USACOE
02/14/97	MRC 240	3,243.13	Consulting fee, photo devt., hammer & chisel, dive eqpt., xerox & binding of report
			which addressed the concerns of the USACOE
05/09/97	MRC 324	939.15	Consulting fee for study of OCM coral transplantation project as required by
			USACOE permit conditions
	Sub-total	4,450.50	
Surveying			
Meridian Land Surveying			
04/26/95	SSV 2756	5,000.00	Deposit made for topographic and hydrographic survey of OCM Project
05/30/95	SSV 2908	7,500.00	As built, topographic and hydrographic survey of OCM Improvement Project
07/07/95	SSV 3098	3,000.00	As built, topographic and hydrographic survey of OCM Improvement Project
08/17/95	SSV 3304	3,000.00	As built, topographic and hydrographic survey of OCM Improvement Project
09/26/95	SII 6728	2,000.00	As built, topographic and hydrographic survey of OCM Improvement Project
10/18/95	PBC 6102	1,500.00	Preparation of cadastral plat for OCM including approval and recording
	Sub-total	22,000.00	
Ben Songsong and Sons			
09/24/93	SSV 12492	900.00	Deposit made for topographic, hydrographic and as-built survey of OCM Project
11/02/93	SSV 12697	900.00	Topographic, hydrographic and as-built survey of OCM Project
11/13/98	1089	1,500.00	Performed hydrographic and topographic survey of the immediate vicinity of the OCM
11/27/98	1131	1,425.00	Performed hydrographic and topographic survey of the immediate vicinity of the OCM
	Sub-total	4,725.00	
Marianas Islands Marine School			
11/19/93	SSV 12864	2,355.00	Survey Work
Unitek Environment Services			
11/16/95	SII 7181	2,150.00	Sampling and analysis of bottom sediments at OCM
Permit			
CNMI Treasury			

Detailed Breakdown of Construction Cost of the Outer Cove Marina Project As of October 31, 1998

Date	Document Examined	Amount	Description of Work Done
11/29/93	SSV 12876	350.00	Permit Fee
09/15/93	MRC 3894	2,250.00	Application fee for CRM permit
11/30/95	PBC DM 95-11/31	375.00	Permit Extension
12/27/95	MRC 95-12-03	375.00	Permit Extension
01/18/96	MRC 96-12-10	375.00	Permit Extension
06/10/97	MRC 345	100.00	Building permit fee
	Sub-total	<u>3,825.00</u>	
TOTAL		<u>290,599.74</u>	
Landscaping and Road Paving			
Landscaping			
Tropical Plaza, Ltd.			
08/20/97	MRC 424	500.00	Landscape and architectural services
10/15/97	MRC 465	1,700.00	Landscape plantings around proposed store and mobile station
	Sub-total	<u>2,200.00</u>	
Road Paving			
Hawaiian Rock Products			
01/29/99	Inv. No. 09193	76,910.10	Grade and pavement with 2" thick asphaltic concrete in front of the store and piers
01/29/99	Inv. No. 09193	4,364.00	Concrete sidewalks at piers
01/29/99	Inv. No. 09193	943.20	8 pieces of 4ft. X 20ft. Speed Bumps
	Sub-total	<u>82,217.30</u>	
TOTAL		<u>84,417.30</u>	
Legal, Insurance, Interest & Financing Charges			
Legal			
O'Connor Berman Dolts & Banes			
	Installation Payment	1,555.10	Legal Services re: Lease Agreement with NPS
09/26/95	SII 6729	198.50	Review lease of Garapan Space
7/17& 9/26/95	SII 12115 & SII 6729	3,079.20	Legal Services re: Submerged Lands Lease Agreement
08/25/98	Inv. No. 16206	9,591.60	Legal Services re: Outer Cove Marina issues
	Sub-total	<u>14,424.40</u>	
Insurance & Appraisal			
Ocean Survey & Management Co.			
08/18/98	MRC 870	1,649.48	Inspection of the Marina for insurance coverage.
Micronesian Appraisal			
10/24/96	MRC 140	1,800.00	Appraisal report for A. Pellegrino's Tract 21899-8-R1 Sadog Tasi residence, which was used as collateral for the loan at Bank of Hawaii
Interest/Financing Charges			
Bank of Hawaii			
01/16/96	Billing Statements & MRC Payments	4,219.99	Total Interest Paid for Loan No. 5225438-9001 (\$50,000 Principal Amount) from 1/16/96 thru 3/31/97
06/07/96	Billing Statements & MRC Payments	2,393.60	Total Interest Paid for Loan No. 5225438-9002 (\$41,000 Principal Amount) from 6/07/96 thru 4/08/97
07/17/96	Billing Statements & MRC Payments	2,088.72	Total Interest Paid for Loan No. 5225438-9003 (\$40,000 Principal Amount) from 7/17/96 thru 4/16/97
07/24/96	Billing Statements & MRC Payments	2,335.51	Total Interest Paid for Loan No. 5225438-9004 (\$50,000 Principal Amount) from 7/24/96 thru 4/21/97
10/08/96	Billing Statements & MRC Payments	1,675.86	Total Interest Paid for Loan No. 5225438-9005 (\$50,000 Principal Amount) from 10/08/96 thru 4/01/97
12/06/96	Billing Statements & MRC Payments	456.11	Total Interest Paid for Loan No. 5225438-9006 (\$20,000 Principal Amount) from 12/06/96 thru 4/04/97

Appendix B

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Detailed Breakdown of Construction Cost of the Outer Cove Marina Project As of October 31, 1998

Date	Document Examined	Amount	Description of Work Done
02/14/97	Billing Statements & MRC Payments	460.07	Total Interest Paid for Loan No. 5225438-9007 (\$30,000 Principal Amount) from 2/14/97 thru 4/15/97
03/11/97	Billing Statements & MRC Payments	228.08	Total Interest Paid for Loan No. 5225438-9008 (\$30,000 Principal Amount) from 3/11/97 thru 4/10/97
03/11/97	Billing Statements & MRC Payments	0.00	No Interest was paid for Loan No. 5225438-9009 (\$25,000 Principal Amount)
04/25/97	Billings, Bank Memo, MRC Checks	141,005.35	Total Interest Paid for Re-structured or Refinanced Loan No. 5225438-9010 (\$1,476,887.03 Principal Amount) from 4/25/97 thru 10/31/98
05/01/98	Billings, Bank Memo, MRC Checks	13,957.26	Total Interest Paid for New Loan No. 5225438-9011 (\$500,000 Principal Amount) from 5/1/98 thru 10/31/98
10/27/97	Bank of Hawaii debit memo	8.00	Stop payment fee for missing MRC Ck. No. 456
04/23/97	Bank of Hawaii debit memo	54.00	Filing fee of Mortgage documents
04/25/97	Bank of Hawaii debit memo	26,305.00	Loan or Fasb Fees on the \$1.5M loan and title insurance
06/26/96	Bank of Hawaii debit memo	300.00	Title search fee for Mr. Pellegrino's Tract # 216895-8-14
	Sub-total	<u>195,487.55</u>	
Pacific Financial Corporation(PFC)			
09/30/98	MRC's General Ledger	1,464.58	This is a \$120K loan to PFC thru SIWC-Total Interest accrued from (\$41,520 1st drawdown) 6/19/98 thru 9/30/98.
09/30/98	MRC's General Ledger	1,601.93	This is a \$120K loan to PFC thru SIWC-Total Interest accrued from (\$64,967 2nd drawdown) 7/20/98 thru 9/30/98.
09/30/98	MRC's General Ledger	194.37	This is a \$120K loan to PFC thru SIWC-Total Interest accrued from (\$13,513 3rd drawdown) 8/19/98 thru 9/30/98.
10/31/98	MRC's General Ledger	440.79	Interest accrued on the \$41,520 loan from 10/1/98-10/31/98
10/31/98	MRC's General Ledger	689.72	Interest accrued on the \$64,967 loan from 10/1/98-10/31/98
10/31/98	MRC's General Ledger	143.46	Interest accrued on the \$13,513 loan from 10/1/98-10/31/98
	Sub-total	<u>4,534.85</u>	
Pellegrino Group of Companies			
08/28/98	MRC's General Ledger	552.73	Interest accrued from a loan directly obtained from Saipan Ice & Water Co.(\$53,280 Principal Amt.) from 8/28/98 thru 10/31/98
03/31/97	MRC's Debit Memo	3,341.38	Finance charge billed by Pelley Boat Charters, Inc.(PBC) from 4/30/96 thru 3/31/97
03/31/97	MRC's Debit Memo	50,561.13	Finance charge billed by Saipan Sea Ventures (SSV) from 4/30/96 thru 3/31/97
02/28/97	MRC's Debit Memo	24,718.10	Finance charge billed by Saipan Ice & Water Co. (SIWC) from 4/30/96 thru 3/31/97
09/30/96	MRC's Debit Memo	37.82	Finance charge billed by Showboat, Inc. (SBI) from 4/30/96 thru 9/30/96
	Sub-total	<u>79,211.16</u>	
TOTAL		<u>297,107.44</u>	
Others			
Labor			
OCM Staff			
07/18/98	MRC's Check Disbursements	<u>43,348.00</u>	Salaries of Outer Cove Marina's Staff from 6/9/96 thru 7/18/98
Outside Services			
6/14/96-9/2/98	MRC's Check Disbursements	<u>20,312.21</u>	Payment for various labor like fastland & topsoil clearing, landscaping, bollard installation, dock & roadside painting.
Equipment Rentals & Related Costs			
Kae Poong Corporation			
5/9/97-9/2/98	MRC's Check Payments & Invoices	574.00	Bulldozer, Crane and Boomtruck Rentals
East West Rental			
5/27/96 & 7/1/98	MRC Ck. Nos. 002 & 769	593.00	Generator (2800 Watts) and Pressure Washer (3000 PSI)
Shimizu Corporation			
9/19/97-9/23/97	MRC Ck. No. 484	980.00	Rental of Payloader and 10 tons Dumptruck
Saipan Sea Ventures			

Detailed Breakdown of Construction Cost of the Outer Cove Marina Project As of October 31, 1998

Date	Document Examined	Amount	Description of Work Done
5/11/96-7/31/96	MRC's Check Payments & Invoices	1,172.62	Gas for Shredder Machine and Gas and Marine Oil for boats used by the workers and supervisors in going around the OCM Project site.
Camacho Equipment			
7/21/98-8/11/98	MRC CK.Nos.811,828,830&854	2,097.50	Payments for Aggregates, Top Soil, Coral Filling Materials and Dumptruck Rental
Pelley Enterprises			
7/17/96-10/21/96	MRC Ck. Nos. 082, 123 & 165	2,215.00	rental of Backhoe, Excavator and Bulldozer
Cheenis Pacific Company			
3/8/97	MRC Ck. Nos. 119 & 291	3,000.00	Rental of Turbidimeter
Marianas Repairs Co. Inc.			
6/4/97-7/9/97	MRC Ck. Nos. 344,348,370,380 & 382	8,343.00	Rental of Dumptruck, Payloader and Backhoe
TM Corporation			
3/23/98-8/27/98	MRC's Check Payments & Invoices	13,672.00	Rental of Dumptruck, Payloader, Backhoe, Lowboy, Case Backhoe and Rockbreaker
		<u>32,647.12</u>	
Materials and Supplies			
5/10/96-10/31/98	MRC's Check Payments & Invoices	26,326.53	Various Hardware Materials and Excise Taxes on imported construction materials.
Other Expenses			
3/7/97-7/31/98	MRC's Check Payments & Invoices	5,482.79	Landscaping, Loan Documentation Fees, Ads, Gas/Oil for boats & Eqpts.,Ice & Drinking Water, Blueprinting & Security Services, Licensing Fees
TOTAL		<u>128,116.65</u>	
Mobil Mini Mart, Fueling Tank, Pump & Pipelines, Sewer & Water Pump House and Restrooms			
Tano Group, Inc.			
12/24/97-8/31/98	Progress Billings & Mobil Ck. Pmts.	578,091.48	Materials & Labor for Construction of the Mobil Mart, Fueling Tank, Pump & pipelines, sewer and water pump house and restrooms
Hawaiian Rock Products			
6/26/98	MOMAR Ck#11644/50	44,834.25	Provided labor, materials and equipment to excavate native soil, backfill, grade and compact and final coating of asphalt from main road to the mini mart building, ending around the parking area on the left & between mart & storage building.
Henry K. Pangilinan and Associates			
9/2/97-3/20/98	Mobil Ck.Nos.9467,10665,10897,11446	19,400.00	Design, Architectural & Engineering Plans for construction of sewer pumps, restrooms, fuel pier & water tank. Bldg. Permit Documents
Various Vendors			
9/2/97-7/6/98	Mobil Check Payments & Invoices	18,986.16	Upgrading of electrical services, Banners, Handling Charges,Bldg.Permmit Fees, Airfreight, Freezer, Panel Shutters, Displays & Aerial Photo of OCM.
TOTAL		<u>661,311.89</u>	
TOTAL CONSTRUCTION COST		<u>3,590,858.35</u>	

Appendix C

**Marine Revitalization Corporation - Outer Cove Marina Project
Summary of Loan Principal and Interest**

[Interest computed from the date of the loan to the end of the loan term (2004) or lease (2010)]

	Loan No.	Rate p.a.	Term	Principal	Accrued	Interest	Total Principal
					Interest	Payable	Plus Interest
					As of Oct., 1999	Nov. 99-2004	
Bank of Hawaii							
July, 1999(Date Refinanced)	BOH 1 of 2	8.75%	5 yrs.	556,107.00	15,893.51	116,590.09	688,590.60
July, 1999(Date Refinanced)	BOH 2 of 2	9.50%	5 yrs.	1,420,343.00	28,408.00	466,000.00	1,914,751.00
Sub-total				<u>1,976,450.00</u>	<u>44,301.51</u>	<u>582,590.09</u>	<u>2,603,341.60</u>
Anthony Pellegrino							
May, 1998	AP 1 of 7	12.00%	5 yrs.	20,000.00	3,511.62	4,591.42	28,103.04
May, 1998	AP 2 of 7	12.00%	5 yrs.	100,000.00	17,558.16	22,956.08	140,514.24
May, 1998	AP 3 of 7	12.00%	5 yrs.	100,000.00	17,558.16	22,956.08	140,514.24
June, 1998	AP 4 of 7	12.00%	5 yrs.	10,000.00	1,755.82	2,295.70	14,051.52
June, 1998	AP 5 of 7	12.00%	5 yrs.	50,000.00	8,269.56	11,987.56	70,257.12
June, 1998	AP 6 of 7	12.00%	5 yrs.	50,000.00	8,269.56	11,987.56	70,257.12
August, 1998	AP 7 of 7	12.00%	5 yrs.	40,000.00	5,777.84	10,427.76	56,205.60
Sub-total				<u>370,000.00</u>	<u>62,700.72</u>	<u>87,202.16</u>	<u>519,902.88</u>
Pelley Group of Companies							
Saipan Ice & Water Co.							
November, 1998	SIWC 1 of 4	12.50%	5 yrs.	13,640.00	1,587.69	4,200.30	19,427.99
December, 1998	SIWC 2 of 4	12.50%	5 yrs.	13,000.00	1,396.73	4,119.74	18,516.47
January, 1999	SIWC 3 of 4	12.50%	5 yrs.	13,000.00	1,278.46	3,269.74	17,548.20
March, 1998	SIWC 4 of 4	12.50%	5 yrs.	13,640.00	2,783.36	3,004.65	19,428.01
Showboat, Inc.							
March, 1998	SBI 1 of 1	12.50%	5 yrs.	65,000.00	13,263.78	14,318.62	92,582.40
Pelley Enterprises							
March, 1998	PEI 1 of 1	12.50%	5 yrs.	16,737.00	3,415.34	3,686.86	23,839.20
Pelley Boat Charters							
March, 1998	PBC 1 of 1	12.50%	5 yrs.	68,508.00	13,979.60	15,091.60	97,579.20
Saipan Sea Ventures							
March, 1998	SSV 1 of 1	12.50%	5 yrs.	185,638.00	37,880.92	40,893.87	264,412.79
Sub-total				<u>389,163.00</u>	<u>75,585.88</u>	<u>88,585.38</u>	<u>553,334.26</u>
Pacific Financial Corp. thru Saipan Ice & Water Co.							
September, 1998	PFC 1 of 3	12.50%	5 yrs.	41,520.00	5,790.75	11,828.13	59,138.88
October, 1998	PFC 2 of 3	12.50%	5 yrs.	64,967.00	8,317.60	19,250.76	92,535.36
November, 1998	PFC 3 of 3	12.50%	5 yrs.	13,513.00	1,572.91	4,161.13	19,247.04
Sub-total				<u>120,000.00</u>	<u>15,681.26</u>	<u>35,240.02</u>	<u>170,921.28</u>
Mobil Oil Marianas, Inc.							
February, 1998	MOMAR 1 of 1	12.00%	11 yrs.	743,529.19	160,805.79	526,161.02 *	1,430,496.00
Total				<u>3,599,142.19</u>	<u>359,075.16</u>	<u>1,319,778.67</u>	<u>5,277,996.02</u>

*Computation was based on end of Lease term (2010)

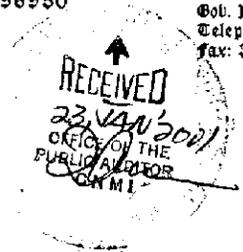


Commonwealth of the Northern Mariana Islands
Office of the Governor
Department of Lands and Natural Resources
Lower Base
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January 22, 2001

Mike Sablan, Public Auditor
Office of the Public Auditor
P.O. Box 501399
Saipan, MP. 96950



Subject: Outer Cove Marina OPA draft audit comments

Dear Mr. Sablan:

Thank you for allowing the Department of Lands and Natural Resources an additional week to respond to the above audit. We are glad that the draft audit has finally been completed and submitted to us for comments. Our response follows:

First, we disagree with the OPA finding that DLNR failed to enforce the MRC submerged land lease prohibition for Smiling Cove Marina commercial vessel moorage, for the following reasons:

1. At the time the legislature approved the submerged land lease, the legislators were aware, or should have been aware, that Dock G of the Smiling Cove Marina (SCM) facility was a commercial docking site under the then existing regulations. The Director, Division of Fish and Wildlife, who has responsibility for the SCM, had informed us that the docking of commercial vessels was grandfathered in at the SCM area due to a previous oral agreement with vessel owners, who had used the site for anchoring prior to the marina construction. Until the grandfather condition ends with the departure of the covered vessels, I was advised by counsel that I was legally bound to allow commercial use of the SCM at Dock G.
2. I was also advised by counsel that under the language of the MRC submerged land lease for establishing a policy prohibiting commercial vessels from mooring in the Smiling Cove Marina, it was evident that the legislature knew about the Dock G commercial use. With that knowledge, the Legislature provided some flexibility to the Secretary on how to carry out a policy by the lease language "prohibiting commercial vessels..." rather than using "prohibiting all commercial vessels...", which would have allowed no flexibility. The Secretary would have had to evict the Dock G commercial vessels resulting in litigation with the boat owners that were grandfathered in.
3. Because of the conflict caused by the breakwater and dock construction issues at Outer Cove Marina, we decided upon a policy of gradual phasing out of commercial vessels in Smiling Cove Marina. We felt this was a reasonable policy, considering all the problems at the time, including the lack of mooring space for commercial vessels in the CNMI. Since that time, there were no more commercial marina permits issued by the Department for Smiling Cove Marina.

Appendix D

Page 2 of 2

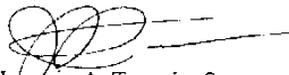
Perhaps the Department could be criticized for not being more vigorous in carrying out lease enforcement at Smiling Cove, but the allegation by the OPA and MRC of DLNR failing to comply at all with the lease provision is not justified. We request that this allegation be omitted from the final report.

Second, although we concur with the OPA's finding of two alternative actions to continue operation of Outer Cove Marina, DLNR cannot actively pursue either action until the Senate OCM Oversight Committee submits its report and current legislation for a government takeover of OCM run their course.

Third, we agree that the emergency regulations are no longer in effect and that the intention stated in the emergency regulation's public notice for making the regulations permanent cannot be achieved.*

We have no other comments to make on the audit. It is a comprehensive and complete analysis of the marina project and disputes. Since the preparation of the OPA audit, the public lands division of DLNR has been changed by the legislature to an autonomous government agency.

Sincerely,



Joaquin A. Tenorio, Secretary
Department of Lands and Natural Resources

xc: Director, DFW
File

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* Although not mentioned in the audit, at the Senate Outer Cove Marina oversight hearing, the Public Auditor documents indicated that the CNMI Administrative Procedures Act did not apply to MRC under the submerged land's lease Article 2(d), and so the CNMI emergency regulations promulgated above would not be applicable to MRC. DLNR, as advised by counsel, disagrees with OPA's position because of the article's provision "...and in accordance with applicable laws, rules, and regulations..." infers APA's compliance.

