



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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October 2, 2007

Honorable Ramon A. Tebuteb
House of Representatives
Fifteenth Northern Marianas Commonwealth Legislature
P.O. Box 500586
Saipan, MP 96950

Dear Representative Tebuteb:

Subject: Review of the Collection and Use of Managaha Landing and User Fees from September 1, 2004 through August 31, 2005

This report presents the results of the Office of the Public Auditor's (OPA) review of the controls over the collection of Managaha Island (Managaha) landing and user fees. The review also examined the use of such fees by Tasi Tours & Transportation, Incorporated (Tasi) from the Managaha Landing and User Fee Trust Account (Trust Account). The Trust Account was established under a concession agreement with the now Department of Public Lands (DPL) and its predecessors.¹ (OPA will refer to DPL and all of DPL's

¹ The Department of Public Lands is the agency currently responsible for management of the CNMI's public lands. It has had many predecessor agencies since the inception of the Commonwealth.

Article XI, Section 4 of the CNMI Constitution established the Marianas Public Land Corporation (MPLC), which managed the public lands of the CNMI until June 23, 1994, when it was dissolved.

Executive Order 94-3 transferred the functions of MPLC to the Division of Public Lands within the Department of Lands and Natural Resources (DLNR) on June 23, 1994. Public Law 10-57, effective April 18, 1997, created the Board of Public Lands (BPL) to supervise and manage the Division of Public Lands for the benefit of persons of Northern Marianas descent.

On December 5, 2000, Public Law 12-33 created a new Office of Public Lands (OPL) and removed it from the DLNR. OPL was an independent agency within the Executive Branch, headed by a Public Lands Administrator, and under the control of the BPL.

On November 13, 2001, PL 12-71 established the Marianas Public Land Authority (MPLA), a public

predecessors as DPL in most instances in order to minimize confusion). OPA's review covered September 1, 2004 through August 31, 2005 or the period covering the fourth year of the Second Managaha Concession Agreement (Second Agreement) between DPL and Tasi.

OPA found that there are controls in place and working adequately to ensure that fees collected from tourists visiting Managaha are accounted for and deposited in the Trust Account. Further, Tasi's disbursements from the Trust Account for the maintenance and improvement of facilities and landscaping on Managaha and for other services are allowable and in accordance with Section 9(D) of the Second Agreement.

BACKGROUND

In a letter dated November 18, 2005, you asked OPA to perform an audit to determine if there are proper procedures in place to collect and deposit the landing and user fees. Additionally, you asked OPA to audit how Tasi had "expended funds from the Managaha Island Landing and User Fee Trust Account to maintain, improve, and provide other services on Managaha Island subject to the provisions of Section D of the Agreement for Special Recreation Concession Managaha Island." *Emphasis omitted*

Managaha, located in the lagoon off Tanapag is considered one of the premier tourist spots on Saipan. Its pristine white beach, snorkeling and other marine activities, as well as other available recreation and concession facilities, attract tourists and locals alike. Since 1989, Tasi has been operating the recreational facilities on Managaha under a special recreational concession agreement with DPL.

The Second Agreement, which included the one year period OPA reviewed, was for a period of five years, from September 1, 2001 through August 31, 2006. Tasi and DPL last year completed negotiations and on October 4, 2006 signed a second amendment to the Second Agreement to extend the concession agreement for an additional ten years, which expires on August 31, 2016.

corporation headed by a Commissioner, who served at the pleasure of the Board of Directors.

Public Law 15-2 established the Department of Public Lands as an agency within the Executive Branch on February 22, 2006. The purpose of this Act was to transfer the responsibility for the CNMI's public lands to elected legislative and executive officials.

OPA will refer to DPL and all of DPL's predecessors as DPL in most instances in order to minimize confusion.

Since 1989, DPL has charged and collected a landing and user fee from all boat and tour operators who bring tourists to Managaha. The fee was set at \$5 per tourist.² All fees collected are to be deposited into a Trust Account by Tasi. The Trust Account is owned by DPL but managed by Tasi as provided by the Second Agreement. Section 9(D)(1) of the Second Agreement gave Tasi the authority to expend funds from the Trust Account to: construct, maintain, and repair public facilities, improvements, equipment and infrastructure on Managaha; to provide free public services, public safety, liability insurance, and insurance of public land improvements and equipment on Managaha; and to maintain the cleanliness and appearance of Managaha. Section 9(D)(2) of the Second Agreement, however, limited Tasi's authority to expend Trust Account funds by requiring Tasi to: obtain DPL's approval for expenditures greater than \$5,000; obtain three quotations, if available, for expenditures greater than \$5,000 and less than \$20,000 unless justified under emergency conditions; and to conduct a formal bid process for expenditures greater than \$20,000, unless specifically waived by DPL.

As provided in the Second Agreement, Tasi was required to submit to DPL a semiannual accounting of the use and status of the Trust Account funds (Semiannual Reports). The Semiannual Reports provide the beginning and ending balances of the Trust Account, cash and tour operator collections for each month during the period covered, adjustments pursuant to PL 11-64 and PL 13-16,³ interest earned, and detailed breakdowns of Tasi's

² DPL's Rules and Regulations, which included the \$5 landing and user fee, were formally adopted on September 10, 1993 and published in the Commonwealth Register on May 15, 1993.

³ The landing and user fee for non-resident passengers who disembark on Managaha on a commercial carrier was instituted pursuant to PL 11-64. (The law was signed by the then Governor on February 18, 1999, but its effective date was retroactive to September 26, 1998.) The commercial carriers were to record the number of tourist passengers daily. DPL (then the Division of Public Lands under the Department of Lands and Natural Resources) was to collect the fees from all commercial carriers and provide the Secretary of Finance with a monthly report. The Secretary of Finance was to create a special sub-account for the funds, and provide the Saipan and the Northern Islands Legislative Delegation an annual report thirty days after the close of each fiscal year. The funds were to be earmarked for appropriation by the Saipan and the Northern Islands Legislative Delegation for the Saipan Cultural and Performing Arts Center, Division of Public Lands, Commonwealth Museum, Saipan Youth Program, Indigenous Affairs Office and Carolinian Affairs Office.

PL 13-16 (signed by the then Acting Governor on July 3, 2002) appropriated \$2.6 million collected as revenue under PL 11-64 to the Marianas Visitors Authority (MVA) to fund the CNMI Strategic Tourism Plan and MVA's promotional campaigns for China and Korea. The Legislature found that a special sub-account called for in PL 11-64 had never been implemented.

Pursuant to the Second Agreement, the Managaha Island Landing and User Fee Trust Account was to be administered by Tasi for maintenance and repair of public facilities on Managaha. Because of the seeming conflict between the contract provision and PL 11-64, MPLA retained the funds. PL 13-16 reiterated the need for the special sub-account, with \$2.6 million going to MVA and the remainder to be spent in accordance with PL 11-64. In addition, PL 13-16 required the MPLA to

disbursements from the Trust Account by category of expense. OPA presents a summary schedule of landing and user fee collections and other deposits into the Trust Account and disbursements made by Tasi from the Trust Account as reported in Tasi's Semiannual Reports for the period September 1, 2001 through February 28, 2006 in **Appendix A**. Annually, the balance of the Trust Account is made available for appropriation by the Saipan and Northern Islands Legislative Delegation.

OBJECTIVES, SCOPE AND METHODOLOGY

The objectives of OPA's review were to (1) determine whether controls are in place and working to help ensure that collection of landing and user fees are properly accounted for and deposited into the Trust Account; and (2) determine whether Tasi's disbursements from the Trust Account are allowable and in accordance with the Second Agreement. To achieve the first review objective, OPA interviewed knowledgeable DPL and Tasi officials, physically observed the DPL Rangers' collection procedures at Managaha, reviewed Tasi's Semiannual Reports, and reviewed and tested Tasi's internal controls in accounting for collections and deposit of landing and user fees into the Trust Account. To achieve the second review objective, OPA reviewed supporting documentation for Tasi's disbursements included in its Semiannual Reports and tested for compliance with expenditure requirements and for allowability of such expenses to be charged against the Trust Account as outlined in Section 9(D) of the Second Agreement.

Although OPA was requested to conduct an audit on the collections and use of Trust Account funds, OPA determined that a limited review was sufficient to achieve the objectives of its review. Thus, OPA limited its review to the fourth year of the Second Agreement or the period covering September 1, 2004 through August 31, 2005. OPA's review does not constitute an audit as defined by generally accepted government auditing standards.

transfer \$650,704 (the sum collected by MPLA prior to the enactment of PL 11-64) into the Trust Account. Finally, PL 13-16 required all future landing and user fees to be deposited into the Trust Account for use in accordance with the terms of the Second Agreement. Thereafter, at the end of the fiscal years, the balance of the Trust Account would be available for appropriation by the Saipan and the Northern Islands Legislative Delegation in accordance with PL 11-64.

AG Legal Opinion, dated August 7, 2006, held that PL 11-64 and PL 13-16 were unconstitutional. OPA contacted AGO to discuss the ramifications of this opinion; OPA was told that this opinion was never published and is not considered to be a valid AG opinion. No court of competent jurisdiction has ruled on the constitutionality of the two public laws.

RESULTS OF REVIEW

OPA's review showed that:

- Adequate controls are in place and working to ensure that fees collected from tourists visiting Managaha are accounted for and deposited into the Trust Account; and
- Tasi's disbursements from the Trust Account for the maintenance and improvement of Managaha facilities and landscaping, as well as for other services, are allowable and in accordance with Section 9(D) of the Second Agreement.

Controls for Collection and Deposit of Fees in Place and Working

OPA's review showed that adequate controls are in place and working to help ensure the proper collection, safeguard, accountability, and deposit of landing and user fees into the Trust Account.

Managaha landing and user fees are collected in two ways: cash payment by tourists brought to Managaha by Tasi and monthly payments by other tour operators through an agreement with Tasi whereby those operators are billed monthly for the tourists they bring to Managaha. DPL assigns Rangers⁴ to Managaha to record the number of passengers landing on Managaha and collect the fees from tourists as provided by law, among other responsibilities. Tasi also assigns a Manager to Managaha to manage Tasi's concession operations and to verify and receive the cash collections and appropriate billing forms. OPA's physical observation of DPL's collection and verification procedures at the Managaha dock showed adequate controls in place and working to help ensure that all fees are properly collected and appropriately billed. Further, measures to safeguard daily cash collections are in place to prevent theft of cash as all cash are secured in a lockable cash box.

Cash Collection

The tourists brought to Managaha by Tasi pay the \$5 fee at the Managaha dock. Tasi boat operators or tour guides provide the DPL Rangers with a record of the number of passengers brought to Managaha that is verified by the DPL Rangers. The DPL Rangers issue sequentially numbered receipts for cash received from the tourists. At the end of each day, the Rangers prepare a cash collection report that is verified together with the Tasi Managaha Manager against the cash collections and cash receipts. All cash receipts are

⁴ The DPL Rangers' salaries and benefits are paid by DPL. Aside from collecting landing and user fees and recording the number of passengers landing on Managaha, they are also responsible for enforcing the rules and regulations regarding commercial use of Managaha, maintaining public safety and ensuring compliance with the terms of the concession agreement.

accounted to ensure completeness. Upon verification, the DPL Rangers and Tasi Managaha Manager sign the collection report signifying its accuracy. The collection report, supporting cash receipts and cash are then turned over to the Tasi Managaha Manager for submission to the Tasi Accounting office. Additional verification procedures are also conducted by the Tasi Accounting office to ensure accuracy of the cash collections. Tasi Accounting personnel deposits all cash collected into the Trust Account the following business day. OPA's physical observation of the collection and verification procedures discussed above and test of deposit transactions were found by OPA to be adequate to ensure the proper collection of all fees and subsequent deposit into the Trust Account.

Charge Accounts

Tasi, as the exclusive concessionaire at Managaha, has agreements with five tour operators whereby these tour operators are billed for total fees collectable based on the number of tourists they bring to Managaha. These tour operators are billed monthly by Tasi and payments by these tour operators are made the following month. At the Managaha dock, similar procedures are conducted by the DPL Rangers to verify the number of tourists brought to Managaha by these tour operators. To help ensure that these tour operators are appropriately billed, a billing request form is prepared for each of these tour operators by the DPL Rangers each day recording the number of tourists they brought to Managaha, which in turn is verified by each tour operator, and signed by the DPL Ranger and the tour operator signifying its accuracy. The tour operator and the Tasi-Managaha Manager are provided a copy of the forms for filing and billing purposes. OPA's physical observation of the verification procedures conducted by both the DPL Rangers and boat operators at the Managaha dock showed adequate controls in place to ensure that these tour operators are appropriately billed and that subsequent payments by the tour operators are deposited into the Trust Account.

Tasi's Disbursements are Allowable and in Compliance with the Second Agreement

OPA's second review objective was to determine whether Tasi's disbursements from the Trust Account were allowable and in accordance with the Second Agreement. During OPA's review of the Agreement, it became evident that two provisions, namely Section 7 and Section 9(D)(1), presented two seemingly contradictory provisions regarding the burden of paying for certain expenses.

Section 7 provided that Tasi be responsible, "at its own expense," to provide management and maintenance services at Managaha for the public's benefit. The services included security services, transporting residents to and from Managaha, daily cleanup, landscaping, maintenance and repair of facilities (toilet and shower facilities, pavilion, generators, reverse osmosis plant, sewage plant and other improvements and equipment within the Exclusive Concession Area as defined in **Appendix B**) and other improvements on the island. Section 9(D)(1) of the Second Agreement, however, provides that Tasi manage

and maintain the same services that are listed in Section 7, but may expend Trust Account funds to do so.

Tasi, through counsel, provided a historical explanation for the contradiction.⁵ Section 9(D)(1) of the Second Agreement governs expenditures from the Trust Account. The owner of the Trust Account was the Board of Public Lands; however, Tasi had the authority to expend funds for the purpose of managing and maintaining the island. Section 7 (Section 6 in the previous agreement) was not amended to reflect the addition of Section 9 so it still contained a provision providing that it was Tasi's responsibility to provide services "at its own expense." This resulted in the contradiction.⁶ The Commissioner of the MPLA at the time the Second Agreement was being negotiated concurs with the Tasi attorney's historical account of the existence of the two contract provisions. The Commissioner confirmed that it was MPLA's intent that the Trust Account funds be used for the management and maintenance of the island and acknowledged that Section 7 of the Agreement should have been deleted but was not.

As Section 9(D)(1) specifically authorizes use of the funds for the expenses detailed in Section 7 (i.e. those expenses related to management and maintenance services including security services, daily cleanup, landscaping etc.), and was added as a new provision in the Second Agreement, which reflects the intent of MPLA as confirmed by the Commis-

⁵ The initial agreement in 1989 envisioned a \$5 fee per passenger paid directly to Tasi to offset the high cost of the exclusive agreement. Tasi would have the duty to manage and maintain the island and the facilities and the cost of doing so would be borne by the collection of the \$5 passenger fees. In the early 1990's, several legislators had inquired about the exclusive nature of the relationship. To address these concerns, Tasi decided to establish the Trust Account to pay for the management and maintenance costs. Thus, what is now Section 9(D) of the Second Agreement was added.

⁶ Tasi's historical explanation further provided that when the then Board of Public Lands (BPL) conducted a new bidding process for the Second Agreement in 2001, BPL attempted to shift the responsibility and the cost of the management and maintenance of the island back to the concessionaire. BPL discovered, however, that none of the three potential bidders was willing to bid on the contract if it contained a provision that the concessionaire would have to pay for the management and maintenance itself. BPL then asked the three potential bidders to submit proposed concession agreements. When Tasi submitted its proposal, the contradictory language was brought forward (erroneously) into the proposed Second Agreement. The Second Agreement detailed the permissible use of the funds and also required Tasi to obtain three quotes for procurements of \$5,000 to \$20,000 and conduct a formal bid process for expenditures in excess of \$20,000, unless specifically waived by BPL.

sioner,⁷ OPA applied Section 9(D)(1) of the Second Agreement when determining whether Tasi's disbursements from the Trust Account were allowable.

In determining whether Tasi's disbursements were allowable and in compliance with the expenditure requirements outlined in Section 9(D) of the Second Agreement, OPA reviewed Tasi's itemized disbursements included in its Semiannual Reports covering the scope of review, reviewed related supporting documentation, tested compliance with expenditure requirements (*i.e.* DPL approval, three quotes requirement, and bidding process for over \$20,000), and compared the disbursements with the types of services permissible to be expended for from the Trust Account under Section 9(D)(1). OPA's review found no exceptions as all disbursements by Tasi were allowable and in compliance with Section 9(D) of the Second Agreement.

Thank you for the opportunity to provide information concerning the Managaha Landing and User Fee Trust Account. Please call should you have questions or require additional information.

Sincerely,



Michael S. Sablan, CPA
Public Auditor

cc: John S. Del Rosario, DPL Secretary
David L. Igitol, Tasi Tours Director/General Manager
Honorable Benigno R. Fitial, Governor
Honorable Timothy P. Villagomez, Lt. Governor
Matthew T. Gregory, Attorney General
Eloy S. Inos, DOF Secretary
Members of the Senate
Members of the House of Representatives

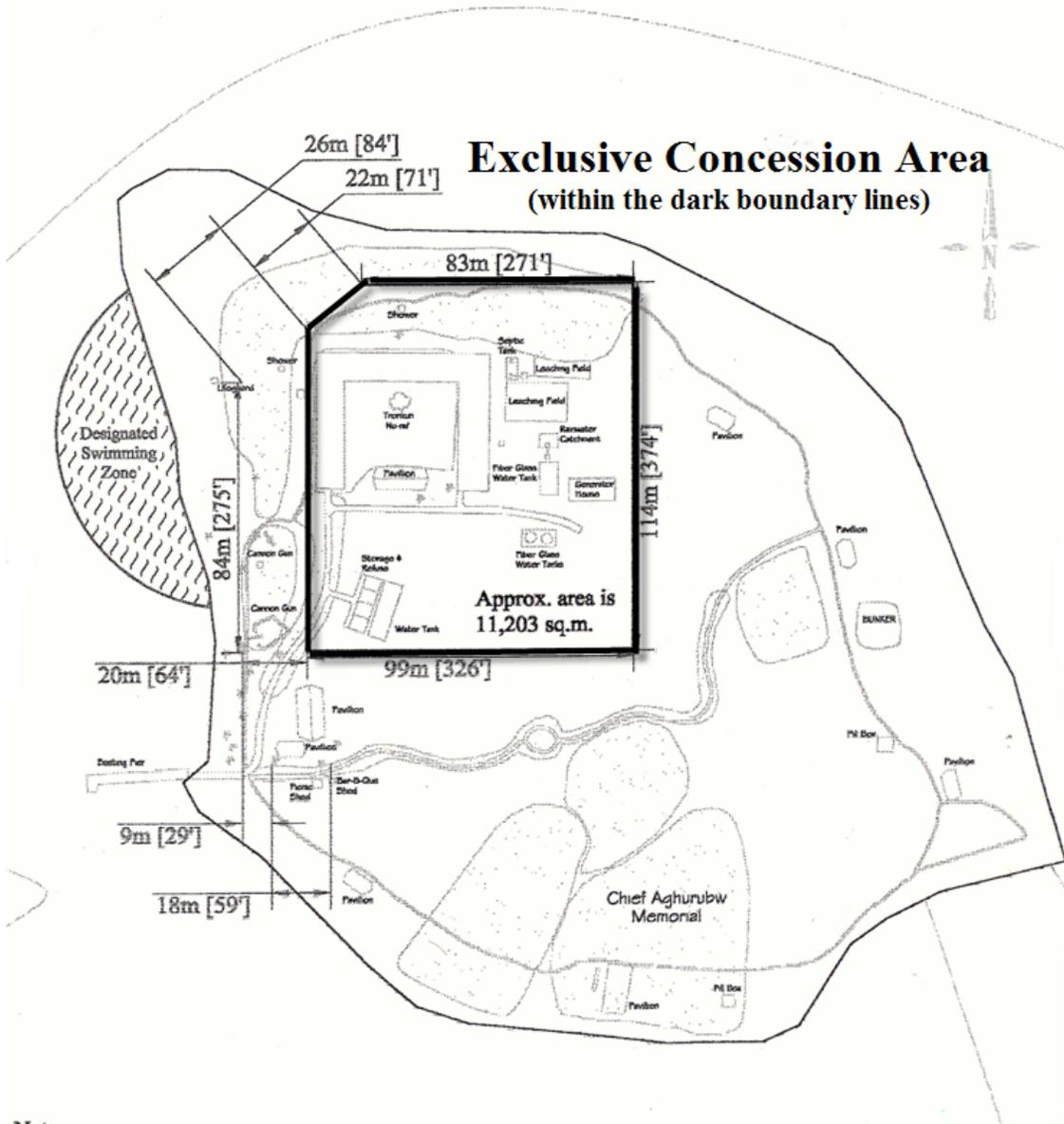
⁷ The intent of the then MPLA and Tasi regarding Section 9(D) can also be found in the First Amendment to the Second Agreement, made on September 27, 2002. In that document the parties address the impact of PL 13-16 and their understanding that the law does not amend Section 9(D)(1), which specifies when Tasi may use the fees. It appears then that MPLA and Tasi reasserted their understanding that Tasi may use the fees to pay for certain services and that such was part of the "material consideration provided by the Board" under the Agreement.

Appendix A

Managaha Landing and User Fee Trust Account Breakdown of Collections and Disbursements Per Semi-Annual Reports September 1, 2001 through February 28, 2006

	9/1/01 to 2/28/02	3/1/02 to 8/31/02	9/1/02 to 2/28/03	3/1/03 to 8/31/03	9/1/03 to 2/29/04	3/1/04 to 8/31/04	9/1/04 to 2/28/05	3/1/05 to 8/31/05	9/1/05 to 2/28/06	Totals
Beginning Balance	\$307,780	\$106,061	\$27,480	\$674,999	\$938,580	\$983,378	\$1,305,545	\$967,591	\$1,325,719	
Adjustment Per P.L. 13-16					(248,752)		(655,864)		(640,668)	(1,545,285)
Collections and Deposits										
1. Daily Cash Collections by MPLA Rangers			50,295	229,630	290,351	277,730	296,060	284,625	261,470	1,690,161
2. Charge Accounts Collections			142,128	186,111	246,676	225,880	251,610	261,750	240,470	1,554,626
3. Interest Earned on Savings Account	2,750	927	1,570	1,700	1,205	2,100	1,627	3,453	5,701	21,033
4. Cash Received from MPLA		154,386	650,704							805,090
5. Others				101	539	(439)		696		897
Total Collections and Deposits	2,750	155,313	844,697	417,543	538,771	505,270	549,297	550,524	507,641	1,002,760
Total Cash Available	310,530	261,374	872,178	1,092,541	1,228,599	1,488,648	1,198,977	1,518,116	1,192,691	
Disbursements										
Administrative Fee				600	600	600	600	600	600	3,600
Bank Charges					164				132	296
Operations and Maintenance Costs										
1. Building and Maintenance	104,118	123,698	73,932	57,319	109,055	86,843	77,135	100,432	147,674	880,204
2. Groundskeeping and Beautification	47,459	37,732	48,393	47,970	48,099	53,109	74,422	45,040	54,302	456,526
3. Insurance	19,423		25,780		25,780		25,780		25,780	122,543
4. Public Safety	33,208	72,416	48,784	48,073	61,445	42,406	53,167	46,189	42,751	448,440
5. Free Services - Public Transportation	260	48	290		78	146	282	136	214	1,453
Total Disbursements	204,469	233,894	197,179	153,962	245,221	183,103	231,386	192,397	271,452	1,913,062
Balance of Cash at End of Period	\$106,061	\$27,480	\$674,999	\$938,580	\$983,378	\$1,305,545	\$967,591	\$1,325,719	\$921,240	

Managaha Island



Note:
- CGM Produced on 02-08-2001