
Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

Audit of the Department of Lands
and Natural Resources
Outer Cove Marina Facility



OPA Report No.

21-04

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Results in Brief

The Department of Lands and Natural Resources (DLNR) is responsible for the enforcement, maintenance, and collection of payments pertaining to the Outer Cove Marina Facility (OCM). According to 2 CMC §§ 1201-31 (Submerged Lands Act), all submerged lands are under the jurisdiction of DLNR. In addition, the OCM regulations required that DLNR maintain the OCM in a “sanitary, sightly, and orderly condition and to preserve the public health, safety, peace, welfare, and convenience in the use thereof.”

Since the issuance of an audit report on the OCM in 2015 and semiannual follow ups on the recommendations regarding the revenue collection, unsafe structure and operation of the OCM, DLNR has made no major progress on restoring the OCM. Therefore, the Office of the Public Auditor (OPA) conducted another audit on DLNR to determine if the agency has an executable action plan to restore the OCM to safety standard condition and provide a functional marina. OPA found that DLNR (1) does not have an executable action plan and (2) has not identified nor preserved the safety of the OCM as required by regulation.

Introduction

Objective

The objective of the audit is to determine whether the Department of Lands and Natural Resources (DLNR) has an executable action plan to restore the Outer Cove Marina Facility (OCM) back to proper safety standard condition.

Please see *APPENDIX 1* for the scope and methodology of our audit.

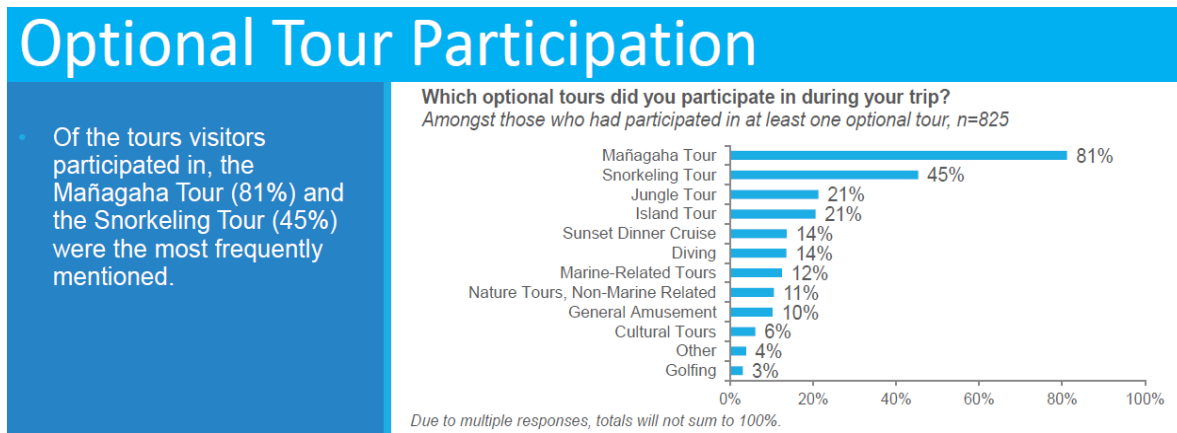
Background

The Department of Lands and Natural Resources (DLNR), established by 1 CMC § 2651, is responsible for the Outer Cove Marina Facility (OCM) as stated in the Submerged Lands Act. DLNR has the authority to promulgate rules and regulations per 1 CMC §§ 2653 and 2654. In the Northern Mariana Island Administrative Code (NMIAC) § 85-30.3-001 DLNR is entrusted to maintain the OCM “in a sanitary, sightly, and orderly condition and to preserve the public health, safety, peace, welfare, and convenience in the use thereof”.

On October 5, 2015, the Office of the Public Auditor (OPA) issued an audit report on the OCM. The audit reported findings and recommendations, specifically recommending that DLNR seek an engineering study to determine the needed repairs and the cost associated with repairing the facility. On September 25, 2019, the Department of Public Works advised DLNR to prohibit the use of certain areas of the OCM. During OPA’s follow up procedures in 2020, DLNR provided a quotation dated January 21, 2020 from an engineering firm that identified the repairs and estimated costs of restoring the OCM. To date, DLNR has not developed an official detailed action plan.

OCM is crucial to the survival of the CNMI’s tourist economy. In anticipation of tourism opening up, the Division of Coastal Resources Management has been actively approving applications for marine related activities that may require the utilization of the OCM. On July 1, 2021, the CNMI Governor signed a travel bubble agreement that allows South Korean citizens to travel to the CNMI for vacation. This agreement is the first step in jumpstarting the tourism industry in the CNMI in light of the COVID-19 pandemic. As reflected in Figure 1, the top tourist attractions are associated with marine activities that potentially require the use of the OCM. The introduction of the travel bubble by the CNMI projects an influx of tourists is likely to occur. The lack of an executable action plan for the restoration of the OCM may jeopardize the safety of the citizens and tourists participating in such marine activity.

Figure 1: Optional Tour Participation



Source: FY 2018 Marianas Visitors Authority Exit Survey

Findings

The audit found that the Department of Lands and Natural Resources (DLNR) does not have an executable action plan to restore the Outer Cove Marina Facility (OCM) to safety standard condition and has not established marina safety standards.

The following sections provide detailed discussion of these findings.

1. DLNR does not have an executable action plan.

The Department of Lands and Natural Resources (DLNR) has advised the Office of Public Auditor (OPA) that the department does not have an executable action plan to restore the Outer Cove Marina Facility (OCM) to safety standards because DLNR's main priority has been to secure funding.

DLNR provided OPA a document entitled "Proposed Concept for Future Development Projects for FY 2021-2022". The document includes a spending plan to restore the OCM indicating the cost for Architecture and Engineering (A&E) Design, and construction of a (1) floating dock, (2) revetment wall, and (3) break water system and is estimated to cost \$25 million as of April 2021. The concept, however, does not include details of the following:

- the objective of the project;
- compliance with applicable laws, regulations, and policies from multiple agencies at the federal and state level;
- the project risks and how the agency will address those risks;
- timeline, phases of the project, and the proposed completed date;
- gaining input from applicable stakeholders;
- plan of action to seek applicable resources to include financing.

Furthermore, DLNR is tasked with collecting berthing fees and OPA notes that the agency does not have a plan in place to utilize these collections for the restoration of the OCM. However, OPA commends DLNR's efforts in the collection of berthing fees as of August 09, 2021 and also commends them for taking steps to address the OCM safety issues and concerns.

Recommendation(s):

- Meet with applicable stakeholders to establish an executable action plan to restore the OCM.

2. DLNR has not established safety standards.

The United States National Park Services has an established checklist that contains safety measures to ensure that marinas under their jurisdictions are up to their standards. Currently, DLNR has not establish safety standards for the OCM. In 2019, the Department of Public Works recommended to prohibit the use of some portions of the marina as it is no longer safe to be used

by passengers and boat owners. Based on OPA’s observation and concurred by DLNR, the first levy (gangway) on the right, upon entering the OCM, has collapsed (See Exhibit A) and gangways within the facility are being held up by makeshift support (See Exhibit B). Furthermore, the OCM does not have operational toilet facilities (restrooms), electricity and water supply.



Exhibit A: Gangway upon entering OCM



Exhibit B: Makeshift support for gangway



Exhibit C: Gangway



Exhibit D: Exposed rebar on gangway

DLNR explained to OPA that boat operators, who choose to berth at the OCM, sign liability waivers. In addition, boat operators must load passengers at either the transient dock near the

Smiling Cove Marina or another dock on island. The agency is focusing their efforts on securing funding and additional resources to restore the OCM and claims it is the cause for not establishing marina safety standards.

Recommendation(s):

- Identify and establish applicable safety standards for the OCM.

Conclusion and Recommendations

The Department of Lands and Natural Resources (DLNR) is responsible for ensuring that the Outer Cove Mariana Facility (OCM) is maintained in a “sanitary, sightly, and orderly condition and to preserve the public health, safety, peace, welfare, and convenience in the use thereof”. However, the dilapidation and the lack of resources to maintain the OCM led to its unpleasant appearance, structural deterioration, and most especially, unsafe condition.

The CNMI is expected to resume its tourism industry; thus, the restoration and maintenance of the OCM is necessary. To date, DLNR does not have executable action plan to address the deteriorating condition and safety hazard of the OCM since OPA’s follow-up on June 23, 2021.

Recommendation Summary

We recommend that DLNR:

1. Meet with applicable stakeholders to establish an executable action plan to restore the OCM.
2. Identify and establish applicable safety standards for the OCM.

Summary of Responses

Please see *APPENDIX 3* for Department of Lands and Natural Resources detailed response and *APPENDIX 4* for OPA’s response.

Appendix 1. Scope and Methodology

The scope of our audit covered June 23, 2021 to present.

The Office of the Public Auditor (OPA) performed audit procedures to achieve the following:

1. Understand the audit subject.
 - a. Gain an understanding of the following:
 - i. Applicable laws and regulations relevant to the Department of Lands and Natural Resources (DLNR) and the Outer Cove Marina Facility (OCM);
 - ii. official communication between the Office of the Attorney General (OAG) and DLNR if needed;
 - iii. prior audit reports pertaining to DLNR and the OCM.
2. Inform the OAG about the audit, if needed.
 - a. Send an official letter informing the OAG of the new audit on the OCM.
3. Conduct a walkthrough observation of the OCM.
 - i. Take photos of the OCM;
 - ii. locate signs of no entry, if any;
 - iii. locate barricade blocking off the OCM, if any;
 - iv. observe instances of individuals getting on and off boats at the OCM;
 - v. observe if boats are parked at the OCM.
4. Determine DLNR's actions to restore the OCM to date.
 - a. Interview key staff who oversee and manage the OCM to determine the agency's actions to restore the OCM;
 - b. request for and obtain DLNR's action plan pertaining to the OCM, if any;
 - c. analyze action plan, if any;
 - i. determine if plan is executable.
5. Report writing.
 - a. Summarize all findings with recommendations and document them in the audit report;
 - b. issue draft report to the agency for review and comments;
 - i. publish final report.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix 2. Prior Audit Coverage



OPA has conducted an audit on the Department of Lands and Natural Resources, specifically the Outer Cove Mariana Facility in 2001 and 2015.

	Report Date & Number	Agency	Audit Title
1.	AR-01-02 (March 22, 2001)	DLNR	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.
2.	AR-15-03 (October 5, 2015)	DLNR	Audit of the Department of Lands and Natural Resources Outer Cove Marina.

Appendix 3. Agency Response

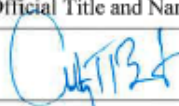
AGENCY RESPONSE TO THE AUDIT FINDINGS

Pursuant to 1 CMC § 7823, the Office of the Public Auditor (OPA) maintains an Audit Recommendation Tracking System to monitor the implementation and resolution of recommendations, and publishes a status report on a semi-annual basis. OPA will contact your agency to evaluate your compliance with the recommendations every June and December until all recommendations are resolved.

SECTION 1 – AUDIT GENERAL INFORMATION	
Agency Name:	Department of Lands and Natural Resources
Report No.:	
Report Title:	Audit of the Department of Lands and Natural Resources Outer Cove Marina Facility
Draft Report Issuance Date:	October 4, 2021
SECTION 2 – RECOMMENDATIONS AND CORRECTIVE ACTION	
Finding:	DLNR does not have an executable action plan.
Recommendation:	Meet with applicable stakeholders to establish an executable action plan to restore the OCM.
Does your agency agree with the finding? <i>(If you disagree, provide an explanation and supporting evidence.)</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Explanation: The Department does not have the funding resource to hire professional help to create any plan to mitigate and restore the facility.
Corrective Action: <i>(Provide detailed steps for implementing the recommendation and actions to preclude re-occurrence of the finding)</i>	 Await funding from the central government for the following plans to build, construct, and manage a new facility. This Department is seeking Funding assistance from the Governor's Infrastructure and Recovery Program (IRP) for the OCM Break Water Project. This will be the first initial proposed project plan to be contracted.
Proposed Completion Date: <i>Provide the date (mm/dd/yy) your agency expects to implement the recommendation(s).</i>	Unknown.
Point of Contact Name:	Anthony T. Benavente
Title:	Secretary of DLNR
Phone Number:	670.322.9830/34
Email:	tonytbenavente@gmail.com
SECTION 3 – ACCOUNTABLE OFFICIAL	
Accountable Official Title and Name:	Anthony T. Benavente, Secretary of DLNR
Signature:	
Date:	11/02/2021

AGENCY RESPONSE TO THE AUDIT FINDINGS

Pursuant to 1 CMC § 7823, the Office of the Public Auditor (OPA) maintains an Audit Recommendation Tracking System to monitor the implementation and resolution of recommendations, and publishes a status report on a semi-annual basis. OPA will contact your agency to evaluate your compliance with the recommendations every June and December until all recommendations are resolved.

SECTION 1 – AUDIT GENERAL INFORMATION	
Agency Name:	Department of Lands and Natural Resources
Report No.:	
Report Title:	Audit of the Department of Lands and Natural Resources Outer Cove Marina Facility
Draft Report Issuance Date:	October 4, 2021
SECTION 2 – RECOMMENDATIONS AND CORRECTIVE ACTION	
Finding:	DLNR has not established safety standards.
Recommendation:	Identify and establish applicable safety standards for the OCM.
Does your agency agree with the finding? <i>(If you disagree, provide an explanation and supporting evidence.)</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Explanation: Currently, the Department is not budgetted to operate a facility at this magnitude. Staffing is needed to enforce policies on a daily basis at the OCM.
Corrective Action: <i>(Provide detailed steps for implementing the recommendation and actions to preclude re-occurrence of the finding)</i>	Acquire funds needed to first inquire the design of the OCM facility from an Engineering Firm. Once done, more funding will need to be acquired to build/construct a new and safer facility. Finally, funding source is also be needed to provide staffing for maintenance or upkeeping of a docking facility on a yearly basis.
Proposed Completion Date: <i>Provide the date (mm/dd/yy) your agency expects to implement the recommendation(s).</i>	Unknown
Point of Contact Name:	Anthony T. Benavente
Title:	Secretary of DLNR
Phone Number:	670.322.9830/34
Email:	tonytbenavente@gmail.com
SECTION 3 – ACCOUNTABLE OFFICIAL	
Accountable Official Title and Name:	Anthony T. Benavente, Secretary of DLNR
Signature:	
Date:	11/02/2021

Appendix 4. OPA's Response to Agency

OPA acknowledges the Department of Lands and Natural Resources' (DLNR) response to the Draft Report. Due to the safety issues concerning the Outer Cove Marina Facility (OCM), OPA highly advises DLNR to take immediate action in obtaining funds or establishing an executable action plan to restore the OCM. OPA will be conducting semi-annual follow ups on the recommendations as stated in this report.

Appendix 5. Status of Recommendation

No.	Recommendation	Status
1.	Meet with applicable stakeholders to establish an executable action plan to restore the OCM.	Unresolved
2.	Identify and establish applicable safety standards for the OCM.	Unresolved



Department of Lands and Natural Resources
Audit of the Outer Cove Marina Facility
Report No. 21-04, November 9, 2021

CONSTITUTIONAL MANDATE

Article III, Section 12 of the CNMI Constitution and the Commonwealth Auditing Act (1 CMC, 2301, 7812 et. seq. of the Commonwealth Code) established the Office of the Public Auditor as an independent agency of the Commonwealth Government to audit the receipt, possession, and disbursement of public funds and to perform such other duties as required by law.

REPORTING FRAUD, WASTE, AND ABUSE

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- Visit our website and fill out our online form at www.opacnmi.com
- Contact the OPA Investigators at 322-3937/8/9
- OR visit our office on 1236 Yap Drive, Capitol Hill