

Inspection of the  
Department of Public Lands  
Assessment and Collection of Fees for  
Lease No. L9104S





# Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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April 11, 2019

Marianne Concepcion-Teregeyo  
Secretary  
Department of Public Lands  
P.O. Box 500380  
Saipan, MP 96950

Honorable Edward Manibusan  
Attorney General  
Office of the Attorney General  
2<sup>nd</sup> Floor Juan Sablan Bldg.  
Capitol Hill Rd. Saipan, MP 96950

Dear Secretary Concepcion-Teregeyo and Attorney General Manibusan,

This report presents the results of our inspection on the Department of Public Lands (DPL) Assessment and Collection of Fees for Lease No. L9104S. The objective of this inspection is to examine DPL's revised billing as prepared on August 1, 2018 and determine if DPL properly assessed and collected the lease rental fees in accordance with the terms of the lease and its amendments. The Office of the Public Auditor (OPA) notes that the results of the inspection are not unique to this particular lease and are systemic within DPL's land leases; as evidenced in OPA report No. AR-18-01, published on July 17, 2018.

OPA has found that DPL (1) did not properly assess and collect the lease rental fees in accordance with the terms of the lease and its amendments by not enforcing the timely submission of required documents and (2) did not take into account the date the adjacent parcel was physically utilized or encroached upon by the Lessee prior to the Second Amendment to the lease agreement. Further, OPA cannot determine a conclusive methodology to calculate the amount owed by the Lessee.

This encroachment was known to DPL and its predecessors, the Marianas Public Land Corporation (MPLC) and the Department of Land and Natural Resources Division of Public Lands. However, previous management did not address the encroachment or pursue timely lease amendments, which complicates the accurate assessment of fees and inhibits DPL from achieving its mandate to collect all funds from public lands.

Very truly yours,

Michael Pai, CPA  
Public Auditor

## **BACKGROUND**

On July 10, 2018 the Office of the Attorney General (OAG) requested OPA to review and assess DPL's calculations of the rental fees associated with Lease No. L9104S. The OAG provided two different calculations performed by DPL at the direction of the OAG. These are discussed on the following page.

The documents provided by the OAG were incomplete to perform a review. OPA notified DPL and OAG on July 25 and 26, 2018 that an independent inspection on the matter would be pursued. Around the same time, OPA had issued its audit report on DPL's management of land leases and temporary permits (Report No. AR-18-01).

This inspection follows the standards adopted by the Council of Inspector Generals on Integrity and Efficiency. Please see Attachment 1 for Objective, Scope and Methodology.

### **Lease agreement and amendments**

On December 14, 1990, a lease agreement was executed for Lease No. L9104S granting the Lessee authorization to lease Lot No. 057 E 05 containing an area of approximately 2,813 square meters of public land.

On April 28, 1992, an amendment was executed amending Article 5 of the 1990 lease agreement reducing the rental fee based on 8% of the leasehold value.

On August 24, 1992, a memo from the management of the MPLC was addressed to the Board of Directors stating that the Lessee had requested to lease additional parcel of public land adjacent to the leased premises, known as Lot No. 057 E 15, containing an area of 1,718 square meters. The memo also stated that Lot No. 057 E 05 was resurveyed and renamed to Lot No. 057 E 18 containing a reduced estimated area of 2,783 square meters and proper amendment to the lease agreement will be prepared.

On December 3, 1992, the MPLC board addressed the Lessee's request and approved 2,000 additional square meters. However, MPLC did not amend the existing lease agreement or execute a separate lease agreement to reflect (1) the change in lot numbers and size and (2) the use of the adjacent parcels. DPL did not authorize the use of the adjacent parcels until the Second Amendment.

On October 31, 2014, with one year remaining on the 25-year lease agreement, a Second Amendment was executed amending Article 1 – Grant of Premises, Article 5 – Rental, and Article 7 – Annual Reports and Audit. This amendment reflected the change in lot number from Lot 057 E 05 to Lot 057 E 18 and its reduced estimated area of 2,783 square meters. The Second Amendment also included the adjacent parcels containing 2,000 square meters, that was approved 22 years prior by the MPLC Board in 1992, plus an additional 1,790 square meters (Lot No. 057 E 15 and Lot No. 057 E 29). As such, the total estimated area granted to the Lessee per the Second Amendment was 6,573 square meters.

## **Assistant Attorney General's memoranda**

On April 19, 2018, the Assistant Attorney General (AAG) issued a memorandum recommending that DPL charge the Lessee for the adjacent parcels of land retroactively to 1992. This was done following the provisions in the recitals of the Second Amendment which states that the Lessee submitted its written request to amend the Lease to take effect on November 30, 1992 as approved by the former MPLC. By doing so, the amount owed by the Lessee increased to approximately \$1 million, most of which attributed to interest compounded monthly.

On June 8, 2018, after receiving an affidavit from DPL's Director of the Compliance Division and a discussion with the Lessee, the AAG issued a revised memorandum suggesting DPL to adjust the charges for the adjacent parcels retroactively to November 1, 2014, the effective date of the Second Amendment. This decreased the amount owed by the Lessee to approximately \$185,000, most of which attributed to interest compounded monthly.

### **RESULTS OF INSPECTION**

We found that although DPL's revised billing, as prepared on August 1, 2018, was in compliance with the June 8, 2018 legal direction from the AAG, DPL did not properly assess and collect the lease rental fees in accordance with the terms of the lease and its amendments by not enforcing the timely submission of required documents. This includes, but is not limited to the lack of documentation that DPL received business gross revenue tax (BGRT) returns and assessed whether additional rent is due, and enforced the timely collection of appraisal reports. In addition, DPL did not take into account the date the adjacent parcel was physically utilized or encroached upon by the Lessee prior to the Second Amendment to the lease agreement.

#### **Lease rental fees were not properly assessed and collected due to the untimely submission of required documents**

Article 5(b) of the lease agreement states the Lessee shall pay to the Corporation any surplus resulting from subtracting the minimum annual rental from 3% of the gross receipts. This additional amount shall be paid quarterly within 45 days from the end of the quarter.

Documentation provided to OPA indicated that DPL assessed BGRT returns for years 2008 to 2018 to determine if additional rent was due. However, DPL did not provide documentation for the years prior to 2008. As a result, OPA is unable to determine if payments were required or made by the Lessee in accordance to Article 5(b) for the first 17 years of the lease agreement.

In addition, Article 6 of the lease agreement states that at the end of each 10-year period of the lease agreement or renewal or extension thereof, the guaranteed annual rental payable by the Lessee to the Corporation for the next two 5-year periods shall be based upon 8% of the appraised fair market value of the unimproved land or as provided for under Article 5(a), whichever is greater utilizing the land residual method of appraisal.

Based on the files provided for OPA’s review, appraisal reports were not submitted in a timely manner as required by the lease agreement. Table 1 below lists the appraisal reports submitted by the Lessee to DPL.

The appraisal report for the 10-year period of December 2000 to November 2010 was submitted on August 2014, 14 years after the due date. The appraisal report for the period of December 2010 to November 2015 was submitted on August 2013, three years after the due date.

Appraisal Report Due Date	Appraisal Report Date	Appraisal Effective Date	Submission Date	Appraised Lot No.	Appraised Fair Market Value	Rental Period
n/a	6/8/1990	6/8/1990	None	057 E 05	\$121,000	12/1990-11/2000
11/30/2000	8/29/2014	11/30/2000	8/29/2014	057 E 15 057 E 18	\$171,000	12/2000-11/2010
11/30/2010	8/11/2013*	11/30/2010	8/15/2013	057 E 15 057 E 18	\$108,000	12/2010-11/2015

Table 1: Appraisal report due dates and submission dates  
Source: Department of Public Lands

\* The appraisal report submitted in 2013 was used to determine the rental rate for Lot No. 057 E 29, as included in the Second Amendment to lease agreement.

The late submissions of these appraisal reports required DPL staff to retroactively adjust rental dues and the applicable interest fees for the affected rental periods for Lot No. 057 E 18 prior to the Second Amendment. Had the appraisal reports been submitted timely, DPL could have assessed and billed an estimated amount of \$42,000 in rental fees for the period of December 2000 to August 2013, in addition to the estimated rental fees of \$56,000 previously collected.

The files provided to OPA included the appraisal reports listed on Table 1. The appraisal report submitted on August 2013 is for Lots 057 E 15 and 057 E 18 and did not include Lot 057 E 29. Although Lot No. 057 E 29 is adjacent to Lot No. 057 E 15, Article 6 of the lease agreement clearly requires an appraisal report for all unimproved land. Documentation provided to OPA indicated that the former Secretary of DPL indirectly accepted the 2013 appraisal report to compute the rental rates for Lot No. 057 E 29.

The delinquent appraisals by Lessee delayed DPL’s ability to adjust the rental rates. This delay compromised DPL’s ability to collect timely payments from the Lessee, causing a large past due balance.

**Physical usage of adjacent parcels was not taken into account**

OPA finds that neither charging the Lessee retroactively as recommended by the AAG’s memorandum to 1992 nor 2014 takes into account the physical usage of the adjacent parcels. The effective date should be the date that the adjacent parcels were first utilized by the Lessee, and/or for which the Lessee received economic value.

OPA is not able to determine the exact date the adjacent parcels were initially utilized. However, various documents provided for OPA's review indicate that the adjacent parcels had been encroached upon by the Lessee as early as 1996. A field inspection report from January 1996 stated the Lessee was occupying excess public land without authorization. The documents provided also contained a surveyor's map prepared on October 2000 and filed at the Commonwealth Recorder's Office on March 16, 2005, indicating a chain link fence surrounding the leased lot and the adjacent lots: Lot No. 057 E 18, Lot No. 057 E 15, and Lot No. 057 E 29.

Further, a sublease agreement effective May 1, 2013 was submitted by the Lessee to DPL. The sublease agreement included the use of Lot No. 057 E 15, one of the two adjacent parcels contained in the Second Amendment, and took effect 18 months prior to the execution of the Second Amendment. Had DPL charged the Lessee accordingly for the duration of the 2013 sublease, DPL would have collected an estimated amount of \$31,000 for rental and interest fees.

Although various reports document the use of the adjacent parcels prior to the Second Amendment, OPA is unable to determine the exact date the Lessee should be retroactively charged.

### **OTHER RELATED MATTERS**

OPA notes other matters that indicate a lack of diligent enforcement by DPL.

- Article 12 of the lease agreement states that the Lessee shall not sublease, assign, or transfer without prior consent. Based on the list of subleases provided to OPA, OPA notes that of the nine subleases listed, only one sublease was approved by the Agency. In addition, of the nine subleases, only six of the nine sublease contracts existed in the Lessee's file.
- Article 7 of the lease agreement, as amended in the Second Amendment, states the Lessee shall, no later than forty-five (45) days after the end of each calendar year of the lease agreement, submit to DPL financial statements, audited by public accountants certified in the United States, which shall include a schedule of Gross Receipts indicating sources and deductions in support of the gross receipts rental requirement under Article 5(b). The files provided to OPA did not contain all the financial statements as required under Article 7 and did not appear to be certified.

### **CONCLUSION AND RECOMMENDATIONS**

Because of the many anomalies identified throughout the review of the files pertaining to Lease No. L9104S, OPA finds that DPL's predecessors and DPL failed to timely and accurately assess and collect rental fees and other related documents.

OPA recommends that DPL conduct a thorough review of the ledger and the Lessee's file to:

1. Properly determine the physical usage date of the adjacent parcel,
2. Reach concurrence with the OAG as to this date, and
3. Create a proper invoice for the Lessee to avoid loss of revenue.

In addition, OPA suggests that DPL review every long-term lease and evaluate its status and inform the lessees of the results.

## **AGENCY RESPONSES**

On March 12, 2019, OPA solicited comments from DPL and OAG and received their responses on March 22 and 26, 2019. See Attachments 2 and 3 for agency responses.

### **General Comments:**

OAG's response provided clarification that the legal opinion provided to DPL was not an official Attorney General Opinion. Instead, the documents provided to DPL were memoranda from the AAG. OPA has modified the report to address the OAG's response. The AG in his response concurred with OPA's recommendations and conclusion.

DPL provided two documents after the inspection work was performed which slightly modified two findings contained in this report. None of the responses received changed OPA's conclusion and recommendations.

### **DPL's Response to Recommendations:**

Regarding the date of physical usage of the adjacent parcel.

1. DPL submitted a copy of a letter from the Lessee summarizing a meeting held on November 20, 2014 between DPL and the Lessee wherein the Lessee was advised not to use the adjoining public lands until the lease is amended.

Regarding reaching concurrence with the OAG as to the date.

2. DPL feels that the affidavit of the Compliance Director and the memorandum from the AAG shows concurrence on a date.

Regarding creating a proper invoice for the client.

3. DPL stated that they are currently working on addressing the invoice matter by billing all DPL clients.

## **OPA's RESPONSE**

DPL's response to Recommendation #1 does not address the issue. Advising a Lessee not to use the property when the Lessee has already subleased the property, ignores the question of when was the property encroached upon. Regarding DPL's response for Recommendation #2, OPA was well aware that the AAG had reversed his opinion, however, DPL inspection reports and the 2013 sublease agreement suggests the fact that the Lessee encroached upon public land well before the signing of the Second Amendment. Regarding DPL's response for Recommendation

#3, DPL may have to revise their current billing to the Lessee depending on the date of concurrence with the OAG. Please see Attachment 4 for status of recommendations.

Attachments



## **OBJECTIVE, SCOPE AND METHODOLOGY**

### **OBJECTIVE**

The objective of this inspection is to examine DPL's revised billing as prepared on August 1, 2018 and determine if DPL properly assessed and collected the lease rental fees in accordance with the terms of the lease and its amendments.

### **SCOPE**

The scope of the inspection was focused on all documents pertaining to Lease No. L9104S from December 1990 to present.

### **METHODOLOGY**

To accomplish the inspection objectives, we:

- Obtained all original documents from DPL pertaining to Lease No. L9104S.
- Determined the terms of the lease agreement and its amendments and if required documents are submitted in accordance to the lease agreement.
- Tested the accuracy of the mathematical calculations against the lease agreement's terms and conditions and its amendments, physical use of the public land(s), and appraisal reports.
- Reconstructed the historical charges, payments and related balances to reflect proper application of related lease documents.
- Summarized inspection results.

We conducted our inspection in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our findings and conclusions.



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

March 26, 2019

AD19-0153

Mr. Michael Pai, CPA  
 Public Auditor  
 Office of the Public Auditor  
 P.O. Box 501399  
 Saipan, MP 96950

**RE: Draft Report on the Assessment and Collection of Fees for Lease No. L9104S**

Dear Mr. Pai:

Thank you for your letter dated March 12, 2019 addressed to the Department of Public Lands (DPL) with the attached draft report for Lease No. L9104S. DPL hereby submits our response to the attached report. I appreciate the fact that you have stated in a draft undated reply to the Attorney General Edward Manibusan (p2) that "...previous management did not address the encroachment or pursue timely lease amendments..." I also want to reference that DPL is preparing a second reply to OPA report No. AR-18-01 which was referenced in the draft letter.

Page 4 of the draft OPA report for L9104S stated that "On June 8, 2018, after receiving an affidavit from DPL's Director of Compliance Division and a discussion with the Lessee, the OAG issued a revised legal opinion suggesting DPL to adjust the charges for the adjacent parcels retroactively to November 1, 2014, the effective date of the Second Amendment. This decreased the amount owed by the Lessee to approximately \$185,000 most of which attributed to interest compounded monthly." I assert and maintain that the guidance for the calculation was from the Privileged Attorney-Client memo dated June 8, 2018 from DPL Legal Counsel, Assistant Attorney General Matt Pugh to DPL Secretary (myself) with cc copies to Evelyn Sablan, Director of Finance and Greg Deleon Guerrero, Director of Compliance.

**OPA Audit:** Page 4 of the draft report titled "Results of Inspection" indicated "We found that although DPL's revised billing, as prepared on August 1, 2018, was in compliance with the June 8, 2018 legal direction from OAG, DPL did not properly assess and collect the lease rental fees in accordance with the terms of the lease and its amendments by not enforcing the timely submission of required documents." "This includes but is not limited to the lack of documentation that DPL received business gross revenue tax (BGRT) returns and assessed whether additional rent is due, and enforced the timely collection of appraisal reports."

**DPL reply:** That is an incorrect statement, all BGRT forms have been submitted under this lease. See attachment of BGRT computation that no additional rental was due from the Lessee as the rental is greater than the three percent (3%) of BGR. Please see attached Schedule. (Attachment 1). Perhaps it is OPA's understanding that BRGT is charged automatically, however, the Lease reads " Lessee shall pay to Corporation in the manner prescribed herein

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**any surplus** resulting from subtracting 3% of the gross receipts and as further defined in article 35H. **Therefore, this should be removed as DPL did not fail to collect BGRT.**

**OPA Audit:** Lease rental fees were not properly assessed and collected due to the untimely submission of required documents. (page 4)

**DPL reply:** Lease rental fees are assessed, holdover fees are assessed, interest fees are assessed. All can be seen in the attached ledger, see attachment 2.

**OPA Audit:** The files provided for OPA's review did not include documentation that DPL received, reviewed, and assessed BGRT returns to determine if additional rent is due. As a result, OPA is unable to determine if payments were required or made by the Lessee in accordance to Article 5(b) (page 4) this is the same statement repeated throughout the draft.

**DPL reply:** The snapshot below is from Article 5B of the A&M lease. This means that the threshold for BGRT does not apply. Perhaps it is OPA's understanding that BRGT is charged automatically, however, it reads " Lessee shall pay to Corporation in the manner prescribed herein **any surplus** resulting from subtracting 3% of the gross receipts and as further defined in article 35H.

2 |                   B. Gross Receipt Rental. In addition to the guaranteed  
3 | minimum annual rental provided for above, the Lessee shall pay  
4 | to Corporation in the manner prescribed herein any surplus  
5 | resulting from subtracting the minimum annual rental from three  
6 | percentage (3%) of the gross receipts and as further defined in  
7 | Article 35 H hereof.  
8 |  
9 |                   This additional amount, if any, shall be paid quarterly,  
10 | within forty-five (45) days from the end of the quarter, with  
11 | adjustments, if any, to be made at the end of every calendar year  
12 | upon the submission of the annual certified financial statements  
13 | as provided in Article 8 hereof. A copy of the CNMI Business  
14 | Gross Revenue Tax Quarterly Return must be submitted quarterly  
15 | together with the computation of the quarterly gross receipts  
16 | rental to substantiate the additional payment or non-payment.

IANAS PUBLIC LAND CORPORATION  
P.O. Box 388  
San, Northern Mariana Islands 96950

Therefore, the assumption that DPL did not collect BGRT is wrong. Please see further explanation below:

Please refer to attachment 1. DPL maintains that by following the lease agreement, and that by calculating the BGR threshold, the Lessee is not required to make BGR payments. The auditor should have investigated this statement before finalizing in the draft final report to be presented to DPL and to the OAG. DPL has made all documents available to OPA. **Therefore, this should be removed as DPL did not fail to collect BGRT.**

**OPA Audit:** In addition, Article 6 of the lease agreement states that at the end of each 10-year period of the lease agreement or renewal or extension thereof, the guaranteed annual rental payable by the Lessee to the Corporation for the next two 5-year periods shall be based upon 8% of the appraised fair market value of the unimproved land or as provided for under Article 5(a) whichever is greater utilizing the land residual method of appraisal (page 4).

**DPL Reply:** This is a repeated statement throughout the report, and already replied to above.

**OPA Audit:** Based on the files provided for OPA's review, appraisal reports were not submitted in a timely manner as required by the lease agreement. Table 1 list the appraisal reports submitted by the Lessee to DPL (page 5).

The appraisal report for the 10-year period of December 2000 to November 2010 was submitted on August 2014, 14 years after the due date. The appraisal report for the period of December 2010 to November 2015 was submitted on August 2013, three years after the due date.

Appraisal Report Due Date	Appraisal Report Date	Appraisal Effective Date	Submission Date	Appraised Lot No.	Appraised Fair Market Value	Rental Period
n/a	6/8/1990	6/8/1990	None	057 E 05	\$121,000	12/1990-11/2000
11/30/2000	8/29/2014	11/30/2000	8/29/2014	057 E 15 057 E 18	\$171,000	12/2000-11/2010
11/30/2010	8/11/2013*	11/30/2010	8/15/2013	057 E 15 057 E 18	\$108,000	12/2010-11/2015

Table 1: Appraisal report due dates and submission dates  
 Source: Department of Public Lands

\* The appraisal report submitted in 2013 was used to determine the rental rate for Lot No. 057 E 29, as included in the Second Amendment to lease agreement.

**DPL Reply:** OPA's repeated issue throughout the draft report is based on the appraisal report. DPL continues to explain that the appraisal report is the responsibility of the Lessee. If the Lessee fails to submit the appraisal report on time, DPL charges interest rates for the appraisal

rates when the appraisal reports are submitted. Further, if the lease was signed in 1990, then the next appraisal is due on 2000 and 2010.

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6  
7 ARTICLE 6. APPRAISAL AND DETERMINATION OF RENTAL AFTER EACH  
TEN YEARS  
8 Notwithstanding the provision under Article 5A, at the end of  
9 each ten (10) year period of this Lease Agreement or renewal or  
10 extension thereof, the guaranteed annual rental payable by the  
11 Lessee to the Corporation for the next two five-year period shall  
12 be based upon eight (8%) percent of the appraised fair market  
13 value of the unimproved land or as provided for under Article 5A  
14 whichever is greater utilizing the land residual method of  
15 appraisal.

Further, the required appraisal report which was due on December, 2000 and submitted on August 2014 was a subsequent appraisal report. On February 28, 2005, Lessee submitted the first appraisal report prepared by MRT Corporation (Attachment 3) and the report was reviewed by DPL Internal Appraiser on August 28, 2006, with recommendation (Attachment 4) to return report to address the internal appraiser's concerns and recommendation. The appraisal company ceased operating business one year after opening and therefore could not revise their appraisal as they were out of business.

**OPA Audit:** No documents provided to OPA for review indicate whether DPL accepted the 2013 appraisal report to compute the rental rates for Lot No. 057 E 29 (page 5).

**DPL Reply:** DPL provided all documents of A&M for thorough review of OPA. Please refer to attachment 5a and attachment 5b which references the approval of the former DPL Secretary accepting the appraisal report.

**OPA Audit:** The delinquent appraisals by Lessee delayed DPL's ability to adjust the rental rates. This delay compromised DPL's ability to collect timely payments from the Lessee, causing large past due balance (page 5).

**DPL Reply:** DPL's response throughout this document remains the same. Lessee's that submit late appraisal reports are still charged interest rates, therefore DPL continues to collect. However, moving forward, in 2017, DPL has made some substantial changes to avoid repeating the same scenarios.

**DPL Plan of action:** DPL's amended regulations §145-70-110(d)(6) adopted on November 28, 2017, now allow DPL to use portions of the security deposit to commission an appraisal, if a Lessee is late. See excerpt:

§145-70-110(d)(6)

(6) All costs related to the lease including underwriting, appraisals, surveys, topographical surveys consolidations, excavation, studies, recordings, etc. shall be borne by applicant or lessee. In the event of lessee's failure to perform any obligation under a lease, DPL may (but shall not be obligated to) expend funds held in lessee's account (including security deposits) to satisfy such obligation to the extent feasible (e.g., to procure surveys, appraisals, or insurance).

Also, DPL has instituted several changes to ensure that appraisal reports are received on time. Currently, the in house appraiser works on the master listing of leases and ensures that reminder notices are issued by DPL to Lessee's whom appraisal will be due soon. DPL Compliance Division has also issued Notice of Violation letters to clients that have not submitted their appraisal reports.

**Recommendations**

OPA Recommends that DPL conduct a thorough review of the ledger and the Lessee's file to:

1. **Properly determine the physical usage date of the adjacent parcel**  
On November 24, 2014, Lessee submitted its letter recapping the November 20<sup>th</sup> meeting he had with DPL staff and noted that "Lessee was advised not to use the adjoining public land until such time the lease is amended to include additional properties." (Attachment 6).
2. **Reach concurrence with OAG as to this date.**  
DPL feels that the affidavit of Mr. Greg Deleon Guerrero date June 8, 2018 and that of the Memo from the Office of the Attorney General, Assistant Attorney General Matt Pugh that DPL has reached a date. These files have been available to OPA for review.
3. **Create a proper invoice for the Lessee to avoid loss of revenue.**  
DPL is working on addressing the invoice matter. Billings have been issued to all DPL clients.

In closing, current management team cannot do anything with past management failures. DPL is addressing internal controls and measures to tighten internal processes to ensure that DPL

Page 6

Reply to OPA L91045

protects our beneficiaries, people of Northern Marianas Descent. I have held employees accountable for their actions and or inactions, and always impress on Director's meetings, Directive 5 meetings, management meetings the importance of ensuring that DPL bills and collects for usage of public lands.

Also the regulation change now gives DPL the authority to enforce appraisals by commissioning an appraisal if the Lessee does not submit one, and using the Lessee's security deposit, which they remain required to replenish. Further, the adoption of the Standard Operating Procedures in December 2018 which allows for a standard measure applied to all clients, employees, for consistency and a better internal control.

Sincerely,



Marianne Concepcion-Teregeyo  
Acting Secretary, Dept. of Public Lands

/mt/gdlg/es

Attachments

cc: Compliance Division, DPL  
Finance and Accounting Division, DPL



Commonwealth of the Northern Mariana Islands  
**Office of the Attorney General**

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**EDWARD MANIBUSAN**  
Attorney General

**LILLIAN A. TENORIO**  
Deputy Attorney General

March 21, 2019



OAGOPA: 2019-93

David Blake  
Audit Manager  
Office of the Public Auditor  
Commonwealth of the Northern Mariana Islands  
1236 Yap Drive, Capitol Hill  
Saipan, MP 96950

**Re: *Draft Report re Inspection of the Department of Public Lands' Assessment and Collection of Fees for Lease No. L9104S***

Dear Mr. Blake:

Thank you for your draft report in connection with your inspection of DPL's assessment and collection of fees pursuant to my July 10, 2018 request and for the opportunity to comment before making it final.

On page 4 of your report you made reference to two "legal opinions" from my office. I want to note here that the memoranda prepared by the Assistant Attorney General was not an official opinion of the Office of Attorney General and should not be referred as Attorney General Opinions. I was unaware of the June, 2018 memo until after DPL revised its stance vis-à-vis the lessee's past due amounts.

I concur with your recommendations on page 6 of your report particularly that DPL and OAG should agree as to the earliest date the Lessee entered the adjacent parcels. From my recollection, DPL's compliance files include inspection reports from the early 1990's confirming the use of the property at least as of 1994. If that is the case, the Lessee should owe the amount based on the findings set forth in the April 2018 memorandum.

Thank you once again for giving me the opportunity to review your findings.

Sincerely,

  
**EDWARD MANIBUSAN**  
Attorney General

**Civil Division**  
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**Criminal Division**  
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**Victim Witness Advocacy Unit**  
Telephone: (670) 237-7602  
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**STATUS OF RECOMMENDATION**

<b>No.</b>	<b>Recommendation</b>	<b>Status</b>
1	Properly determine the physical usage date of the adjacent parcel.	Unresolved
2	Reach concurrence with the OAG as to this date.	Unresolved
3	Create a proper invoice for the Lessee to avoid loss of revenue.	Unresolved



Inspection of the Department of Public Lands  
Assessment and Collection of Fees for Lease No. L9104S  
OPA Report No. 19-02, April 2019

## 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](http://www.opacnmi.com)
- Contact the OPA Investigators at 322-3937/8/9
- OR visit our office on 1236 Yap Drive, Capitol Hill