

Island of Guam, Government of Guam
Department of Land Management Officer of the Recorder

File for Record is Instrument No. 892368

On the Year 14 Month 05 Day 10 Time 2:14

Recording Fee DE-OFFICIO Receipt No. _____

Deputy Recorder Jane Yamasaki
JANE T. YAMASAKI

(Space above for Recordation)

IMPORTANT NOTICE - READ CAREFULLY

“Pursuant to Section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLUC/GSPC project within one (1) year of the date of Recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire. This requirement shall not apply for application for Zone Change***.”

GUAM LAND USE COMMISSION ORIGINAL

Department of Land Management
Government of Guam
P.O. Box 2950
Hagåtña, Guam 96932

**AMENDED
NOTICE OF ACTION**

May 3, 2016

Date

To: Wanfang Construction Ltd.
c/o FC Benavente, Planners
127 Bejong Street, Barrigada, GU 96913

Application No. 2015-29B

The Guam Land Use Commission, at its meeting on April 28, 2016,

/ Approved / Disapproved / Approved with Conditions

/ Tabled

Your request on Lot 164-4NEW-1 in the municipality of Yona, for a zone variance for height to allow Commercial/common area height is not to exceed 58-foot mean sea level, Tower 1 not to exceed 168-foot mean sea level and Tower 2 not to exceed 158-foot mean sea level in an “R-2” (Multi-Family Residential) zone.

NOTICE OF ACTION
Wanfang Construction, Ltd.
Lot 164-4NEW-1- Municipality of Yona
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ZONING

/ Zone Change***

/ Conditional Use

/ **Zone Variance**

- | | |
|--|--|
| <input checked="" type="checkbox"/> Height | <input type="checkbox"/> Use |
| <input type="checkbox"/> Density | <input type="checkbox"/> Other (Specify) |
| <input type="checkbox"/> Side Yard | |

/ TENTATIVE DEVELOPMENT PLAN

SUBDIVISION

/ TENTATIVE

/ FINAL

/ EXTENSION OF TIME

/ PL 28-126, SECTION 1(A)

NOTE ON ZONE CHANGE

***Approval by the Guam Land Use Commission of a **ZONE CHANGE DOES NOT CONSTITUTE FINAL APPROVAL** but rather a recommendation to the Governor for his approval. Applicant shall be notified upon action taken by the Governor. [Reference 21 GCA (Real Property), Chapter 61(Zoning Law), Section 61634 (Decision by the Commission).]

SEASHORE

/ WETLAND PRMIT

/ SEASHORE CLEARANCE

HORIZONTAL PROPERTY REGIME

/ PRELIMINARY

/ FINAL

/ SUPPLEMENTARY (SPECIFY)

MISCELLANEOUS

/ DETERMINATION OF POLICY AND/OR DEFINITIONS

/ OTHER (SPECIFY)

NOTICE OF ACTION

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APPLICATION DESCRIPTION: The Applicant, Wanfang Construction, Ltd requested to exceed the allowable structural height limitation of thirty (30) feet to construct the Pago Bay Marina Resort, a proposed 14 story and 15 story multi-family structure in an “R-2” (Multi-Family Residential) zone on Lot 164-4NEW-1 Municipality of Yona.

COMMISSION DECISION: The Guam Land Use Commission **APPROVED WITH CONDITIONS** the request for zone variance for height. Conditions are as follows:

1. Commission approves the height variance which is lower than what the applicant requested with the following restrictions:
 - a. Commercial/common area height is not to exceed 58-feet mean sea level;
 - b. Tower 1 not to exceed 168-feet mean sea level ;and
 - c. Tower 2 not to exceed 158-feet mean sea level).
2. Applicant adheres to all conditions listed below and as provided by the Application Review Committee. Such recommendations shall serve as conditions of approval under Condition 2 as follows:

Conditions as recommended by the Guam Environmental Protection Agency:

- a. The applicant must conduct a comprehensive soil analysis to determine percolation rate, taking into consideration the water table, to be used as a basis of design for a storm water management plan;
- b. Comply with the requirements of the 2006 Guam CNMI and Guam Storm Water Management Manual or current storm-water management plan and associated pre-treatment program, as directed by GWA.
- c. The sewer discharge must be contained in a holding tank and a pump station with a capacity of 24 hours to allow schedule of pumping by GWA during non-peak hours, as directed by GWA.
- d. The proposed discharge points must bypass the Pago Double Shaft Sewer Pump Station, as directed by GWA.
- e. Cleaning and maintenance of any swimming pool must not be discharged to the sewer system. It must be pumped by a private company and discharged at an acceptable location, as directed by GWA.
- f. The wastewater pump station requires a certified operator to operate for compliance with the 10 GCA Chapter 52, the “Water and Wastewater Operator’s Mandatory Certification Act”, as directed by GWA.
- g. Pumping of sewage to GWA’s gravity main must be scheduled during non-peak hours.
- h. The applicant must construct a water storage tank with a minimum capacity of 24 domestic demands and the required fire flow, as directed by GWA.
- i. The water point of connection must be before the Pago Bay Booster station to conserve energy, as directed by GWA.
- j. Non-potable water for landscape and other non-domestic use must be explored by collecting rainwater.
- k. With respect to wetland protection, wetland areas must be protected and a buffer of 30 feet must be maintained.
- l. The project must comply with all the requirements of Guam EPA regulations to be incorporated during the issuance of building permit clearance (i.e. Solid Waste Management Plan, Boring and Dewatering Permit, Air Emission permit, etc.).

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Conditions of approval as recommended by the Guam WaterWorks Authority:

- a. **GWA recommends coordination with the GWA Engineering Department well in advance of the building permit application submittal. Discussions shall include the proposed project's impacts on existing water and sewer infrastructure and any required infrastructure improvements.**
- b. **Water service point of connection, connection details, water service line and meter size must be illustrated in the design drawings and approved by GWA.**
- c. **The water demand and sewer production calculations provided in the variance application do not specifically identify associated water uses, such as the pool and the water park. Utility calculations should identify all water demand activities and sewage sources, including restaurants and laundry facilities, if any.**
- d. **If water and sewer infrastructure are installed by the developer, they will require prior approval and shall be subject to inspection by GWA.**
- e. **The applicant shall install the water meters in the right of way or easement. If the developer will include a food preparation facility, then a grease trap shall be required. Backflow preventers are required for non-residential activities.**
- f. **New development is subject to water and/or sewer system development charges (SDC).**

Conditions of approval as recommended by the Guam Power Authority:

- a. **GPA has determined that significant infrastructure upgrades, that includes but is not limited to, switches, voltage regulators, load transfers and capacitor banks must be completed in order to support this project. GPA is also investigating the line extension of feeder P-211 to support the Pago Bay Marina Resort as a permanent solution. Consequently, the infrastructure upgrades, at a minimum of those referenced above, shall be completed prior to final service connection of Pago Bay Marina Resort.**
- b. **The applicant is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:**
 - i. **Coordinate overhead/underground power requirements with GPA Engineering for new structures;**
 - ii. **Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code;**
 - iii. **Maintain adequate clearance between any structures and electrical utility easements in accordance with NESC and GPA requirements.**
 - iv. **Developer/Owner shall provide necessary electrical utility easements to GPA prior to final connection.**
 - v. **Provide any revision to scheduling and magnitude of project power demand requirements for new loads.**
 - vi. **All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.**
 - vii. **Required system upgrades will be charged to the applicant. This includes relocation costs, new installation costs and all costs associated with modification of GPA facilities.**

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- c. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
- d. Further system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.

Conditions of approval as recommended by the Department of Parks & Recreation:

- a. The developer must hire a qualified archaeologist to prepare an Archaeological Monitoring, Discovery, and Data Recovery Plan in consultation with our office. We recommend that Mr. Sana and Mr. Sherman schedule a meeting soon, with the appropriate DPR staff to discuss the concerns raised.
- b. Prior to any approval by the GLUC, the developer must secure an agreement with DPR to address and resolve the reburial of human remains and the public beach access to the ocean shore.

Conditions of approval as recommended by the Department of Public Works:

- a. Incorporate eco-green and energy efficient as part of your design concept.
- b. Provide structural analysis for winds velocity that can withstand 170 mph;
- c. Outdoor amenities including landscaping must be design in detail and make use of its physical and biological resources which will make a great impact to the environment;
- d. Must provide a soil report and geology engineering report;
- e. Must provide a traffic impact analysis to be coordinated with DPW, Division of Highways (Traffic Control Section); to include,
 - i. A request the widening of Route 4; and
 - ii. Creation of a turning lane south-bound into Yona.
- f. Parking layout, parking stalls (compact standard and accessible stalls) must comply with the American Disability Act (ADA) requirements;
- g. Entrance/exit must be wide enough for public access;
- h. Must provide public access to the beach area; and
- i. Provide solid waste compositions.
- j. DPW recommends approval subject to comments review by the Application Review Committee (ARC) with conditions that the complete set of design drawings must meet all the requirements in conformance with the latest building code edition applicable to civil, structural, architectural, mechanical, electrical, plumbing including flood zone and ADA requirements.

Conditions of approval as recommended by the Bureau of Statistics & Plans:

- a. Provide an open vegetated buffer between the shoreline and buildings in accordance with Policy NS-9 of the NCGLUP.
- b. Employ erosion and sediment controls during construction of the 239-unit building to ensure that sedimentation is avoided and the debris are not allowed to fall and flow into the water.
- c. Coordinated with the Guam Environmental Protection Agency (GEPA) for effective implementation of erosion control methods.
- d. Guam Wanfang, Construction Ltd. is advised to avoid clearing, grading and construction over the wetlands located in Lot 164-4NEW-1.

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- e. Discharge of storm-water into the Pago River and Pago Bay should be avoided to the fullest extent practicable.
 - f. Submit a drainage plan showing methods or practices for managing storm-water on site implement best management practices on the property to control erosion and runoff during and after construction of the project in accordance with current storm-water management plan per DPW direction.
 - g. Consult with the Guam EPA for effective implementation of storm-water management practices.
 - h. The applicant is encouraged to implement Low-Impact Development (LID) practices such as permeable pavement for parking lots and walkways, grassed swales, island bio retention, and/or rain gardens into the landscaping design that will capture runoff from roofs, parking lots, or driveways, which filters pollutants before entering the water. An electronic file of the guidebook “Island Storm-water Practice Design Specifications” is available at the Bureau’s, Guam Coastal Management Program office.
 - i. The applicant is encouraged to implement LID practices such as permeable pavement for parking lots and walkways, grassed swales, island bio retention, and/or rain gardens into the landscaping design that will capture runoff from roofs, parking lots, or driveways, which filters pollutants before entering the water.
 - j. Avoid the use of invasive plants is encouraged. Although the project identifies tropical landscaping on the property, the applicant is encouraged to incorporate native plants as well. The applicant is advised to preserve native vegetation on the property.
 - k. The applicant is encouraged to consult with Department of Agriculture in using organic fertilizers or pesticides for landscaping purposes to avoid additional contaminants from entering the Pago River and Pago Bay. The applicant may also seek guidance from Guam EPA regarding their Pesticide Control Program.
3. In matters remaining unresolved by individual agencies particularly that of matters concerning infrastructure, the applicant shall be restricted from submitting and/or securing any permit requests to include, not limited to, building permits until such time such agency concerns have been satisfied;
 4. The applicant shall complete and implement a re-design plan. Such new design shall:
 - a. Be based on maximum footprint consideration(s) available by law (239 units);
 - b. Best blend into the natural beauty of Pago Bay;
 - c. In its current design, the applicant attempts to promote a level view corridor serving reason for “two tower” design. The applicant shall resume or retain this intent to provide, as best as possible, a design that will not interfere with view corridors;
 - d. **SUCH DESIGN SHALL SERVE AS THE BASIS FOR IDENTIFYING APPROPRIATE HEIGHT LIMITATIONS;** maximum height for the three structures – commercial building and common area the height is not to exceed 58-feet mean sea level, Tower 1 not to exceed 168-feet mean sea level and for Tower 2 not to exceed 158-feet mean sea level; and,
 - e. Within six (6) months of recordation of approval the applicant shall submit re-design plans with supporting information of such design to the Guam Chief Planner for assessment of compliance. After review, such information shall be forwarded to the Guam Land Use Commission for its consideration and approval at the next available regularly scheduled hearing.

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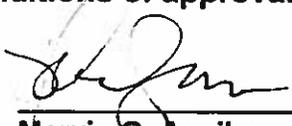
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5. All commercial operations associated with the Pago Bay marine Resort intended to occur within or in association with the Territorial Seashore Reserve shall require consent and approval by the Guam Seashore Protection Commission;
6. Owners/operators of the Pago Bay Marina Resort shall engage the technical assistance expertise of the University of Guam in implementing beach/bay cleanup program; and partnered marine science education program;
7. Owners/operators of the Pago Bay Marina shall provide public access to the beach area of the bay. Such access shall allow for egress/ingress of emergency vehicles and public use of the Territorial Seashore Reserve throughout the bay pursuant to the requirements of providing untrammled use of the beach and its natural beauty pursuant to Title 21GCA, Chapter 61, Section 61617(e);
8. That prior to securing any permits for the purpose of construction, the applicant shall engage in crafting and securing an agreement between the applicant/property owner and the GLUC, where:
 - a. The purpose of agreement shall serve solely to assure the availability of funding for demolition of structures associated with this project in the event the developer fails to realize the project completion as a result of lack of funding;
 - b. The agreement shall contain and provide a timeline for projection completion;
 - c. From the date of recordation of approval, the applicant shall submit a written report every six (6) months to the GLUC on the status of the project with respect to associated phases of development to include a status of funding for the overall project;
 - d. Elements of agreement may include, but not limited to:
 - i. Bonding at 110% of the cost of the project;
 - ii. In the event that the Commission determines through substantial evidence the need, order and execute its authority vested in the agreement, the applicant may within a time period found to be reasonable by the Commission, appeal its decision citing appropriate reasonable justification to rescind such order;
 - iii. The applicant may request release of bonding and/or instruments of binding agreement at the time of projection completion and final occupancy is secured through the Department of Public Works.
9. Conditions of approval shall be transferable to new owners, when applicable.



Marvin Q. Aguilar
Guam Chief Planner
Department of Land Management

5/4/2016
Date



John Z. Arroyo
Chairman
Guam Land Use Commission

5/4/2016
Date

Case Planner: Celine Cruz
Attachment(s): ARC Distribution List

Cc: **Building Permits Section, DPW (Attn: Mr. Joseph Guevara)**
Real Property Tax Division, Department of Revenue and Taxation

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CERTIFICATION OF UNDERSTANDING

I/We _____
(Applicant [Please print name])

/ Raymond Bonifacio FER
(Representative [Please print name])

Understand that pursuant to Section 5 of Executive Order 96-26, that a building or grading permit must be obtained for the approved GLUC/GSPC project within one (1) year of the date of recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire.

The Commission may grant two (2) one-year extensions of the above approval period at the time of initial approval.

This requirement shall not apply for application for a Zone Change***

I/We, further **AGREE** and **ACCEPT** the conditions above as a part of the Notice of Action and further **AGREE TO ANY AND ALL CONDITIONS** made a part of and attached to this Notice of Action as mandated by the approval from the Guam Land Use Commission or from the Guam Seashore Protection Commission.

Signature of Applicant Date

Raymond Bonifacio 5-10-16
Signature of Representative Date

ONE (1) COPY OF RECORDED NOTICE OF ACTION RECEIVED BY:

Applicant Date

Representative Date

ACKNOWLEDGEMENT

Filed with the Department of Land Management on 5th day of MAY, 2016 in accordance with 21 Guam Code Annotated Section 61620.



MICHAEL JB BORJA
Director of Land Management
or Designee

ACKNOWLEDGEMENT

Filed with the Department of Public Works on 9th day of May, 2016 in accordance with 21 Guam Code Annotated Section 61620.



GLENN LEON GUERRERO
DIRECTOR OF PUBLIC WORKS
or Designee

A DECISION OF THE GLUC GRANTING A VARIANCE IS NOT FINAL UNTIL 15 WORKING DAYS AFTER FILING OF THE DECISION WITH DPW AND DLM. PERMITS SHALL NOT BE ISSUED TO THE APPLICANT BEFORE IT BECOMES FINAL. (21 GCA §61621)

**DECISION GRANTING VARIANCE
WITH FINDINGS**

[Pursuant to Title 21 GCA §61616 (a) through (h), (j) and (k)]

Guam Land Use Commission

WHEREAS, the following decision of the Guam Land Use Commission is made in accordance with 21 GCA §61616, §61617, and §61620, now therefore;

BE IT RESOLVED, that on the 28th day of April 2016, a hearing of the Guam Land Use Commission (GLUC) was held in accordance with notices duly issued to consider the application of Wanfang Construction, Ltd. for a Zone Variance for (Setback/Height/Density/Sign/Parking) on Lot 164-4NEW-1 in the Municipality of Yona.

A quorum of the Commission was present. In attendance were:

1. Mr. John Z. Arroyo, Chairperson
2. Mr. Victor Cruz, Vice-Chairman
3. Mrs. Beatrice P. Lintiaco, Member
4. Mr. Tae Oh, Member

Appearing before the Commission representing the applicant were:

1. Mr. Richard Sana (Planning Consultant)
2. Mr. John Sherman (Architecture & Engineering Consultant)

Also appearing and testifying on the above project was/were:

See Attachment in favor / against
See Attachment in favor / against

After considering all statements and testimony presented by interested parties GLUC finds that the application, for **ZONE VARIANCE for Height is GRANTED** on the following grounds: (Note : All five (5) sections should be answered)

- a. **THAT THE STRICT APPLICATION OF THE PROVISIONS OF TITLE 21, GCA, CHAPTER 61, RESULTS IN PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS INCONSISTENT WITH THE GENERAL PURPOSE AND INTENT OF THE LAW. THE FOLLOWING FACTS SUPPORT SUCH A FINDING:**

The applicant provides that the variance requested is for an increase in height and density¹. The applicant notes that north and west areas of the properties have setbacks in excess of 100' and 120' respectively; and which contributes immensely to increasing the open spaces on the property. The significant amount of property in

¹ The original variance request was two-fold as the applicant requested for both height and density variance. At the hearing date of April 28, 2016 the GLUC unanimously disapproved the request for a density variance, citing the lack of justification for such a request. The GLUC proceeded to approve with conditions that which was requested for a height variance.

wetlands (32%); coupled with the significant amount of lineal footage land, located within riverside and ocean shore frontage, places unique development constrain requirements on full use of the property; thus qualifying for a request for greater density. Ownership has worked diligently to prepare a design that works very well with the unique qualities of the property, providing adequate spaces for light and air, and preventing undue concentration of population, and assuring the adequate utilities and amenities are provided to support the project. Disallowing the height variance will result in difficulty and unnecessary hardship inconsistent with the general purpose, spirit and intent of the zoning law, which is the protection and promotion of the public health, safety and general welfare of the people of Guam. The GLUC further found where any consideration to recommend an allowance to exceed the height limitation was warranted only as recourse to protect nearby natural resources and sensitive habitat through avoidance. The statute covering density² allows the subject property 239 units. The placement of these units cannot follow standard or typical displacement throughout available land space due to development constraints that are driven by habitat and natural resource protection, as provided under current law.

b. THAT THERE ARE EXCEPTIONAL CIRCUMSTANCES OR CONDITIONS APPLICABLE TO THE PROPERTY INVOLVED OR TO THE INTENDED USE THEREFORE THAT DOES NOT APPLY GENERALLY TO OTHER PROPERTY IN THE SAME ZONE. THE FOLLOWING FACTS SUPPORT SUCH A FINDING:

The applicant submits the property is located in an area that encourages multi-family activity as displayed by the "R-2" zoning designation. A reasonable transition from a vacant unmanaged lot, to the Pago Bay Marina Resort twin tower multifamily building, housing a managed community which places a premium on the property's unique origin and its sensitive land features; and is dedicated to their protection, is an appropriate use of this property. The height and density variance allows for reasonable use of the property while complying with the existing zoning requirements. These circumstances do not apply to other properties in the same area. Again, the GLUC further found where any consideration to recommend an allowance to exceed the height limitation was warranted only as recourse to protect nearby natural resources and sensitive habitat through avoidance. The statute covering density³ allows the subject property 239 units. The placement of these units cannot follow standard or typical displacement throughout available land space due to development constraints that are driven by habitat and natural resource protection, as provided under current law.

² See Title 21GCA, Chapter 61, Article 5, Sub-Article 5, Section 61502.

³ See Title 21GCA, Chapter 61, Article 5, Sub-Article 5, Section 61502.

- c. THAT THE GRANT OF VARIANCE WOULD NOT BE MATERIALLY DETRIMENTAL TO THE PUBLIC WELFARE, OR INJURIOUS TO THE PROPERTY OR IMPROVEMENTS IN THE ZONE OR NEIGHBORHOOD IN WHICH THE PROPERTY IS LOCATED. THE FOLLOWING FACTS SUPPORT SUCH A FINDING:**

The GLUC found that implementing a design that restricts lateral development to a more restricted footprint compliments the general objective of promoting public health, safety and welfare by allowing more open space to displace flooding due to the effects of storm surges and committing the first few stories to commercial and not residential-occupancy use. As the property exists at near sea level and in close proximity to submerged areas, the GCP was confident the applicant will be required to meet certain flood elevation standards.

In analyzing structural elevations, that the first 30 feet of the structure will incorporate non-residential occupancy such as a sub-ground parking garage program, open space parking and recreational space at the baseline level, and commercial space on the first two floors. This design appears logical and sensible as a means to ultimately protect human life from hazards of flooding, storms, and possible tsunamis.

- d. THAT THE GRANT OF SUCH VARIANCE WILL NOT BE CONTRARY TO THE OBJECTIVES OF ANY PART OF THE MASTER PLAN ADOPTED BY THE COMMISSION OR LEGISLATURE:**

The applicant submits that the "Guam Master Plan" as shown in the zoning map allows the location of multifamily uses in the "R-2" zone. This request is in reasonable accordance with and not contrary to the plan.

- e. THAT AS TO VARIANCES FROM THE RESTRICTIONS OF TITLE 21, GCA SECTION 61504, THE PROPOSED BUILDING WILL SUBSTANTIALLY ENHANCE THE RECREATIONAL, AESTHETIC, OR COMMERCIAL VALUE OF THE BEACH AREA UPON WHICH THE BUILDING IS TO BE CONSTRUCTED, AND THAT SUCH BUILDING WILL NOT INTERFERE WITH OR ADVERSELY AFFECT THE SURROUNDING PROPERTY OWNERS' OR THE PUBLIC'S RIGHT TO AN UNTRAMMELED USE OF THE BEACH AND ITS NATURAL BEAUTY. FACTS WHICH SUPPORT THIS CONCLUSION ARE AS FOLLOWS:**

The applicant submits that the proposed building will substantially enhance the recreational, aesthetic, and commercial value of the beach area. Subsequent development of the property may be anticipated. However, plans will not interfere with or adversely affect the surrounding property owner's or public's rights to untrammelled use of the beach and its natural beauty. Likewise, as part of the

conditions associated with the issued Notice of Action, the applicant is required to provide appropriate access for the public and emergency vehicles to beach area resources.

The members of the commission, after due consideration, voted to approve the request for a height variance by granting such request with conditions.

The vote of the members is as follows:

4 Ayes 0 Nays 0 Abstentions

This decision was adopted the 28th day of April, 2016 and shall be filed with the Department of Land Management and the Department of Public Works as mandated under Title 21, GCA, Section 61616 to 61617 and 61501.



John Z. Arroyo
Chairman, Guam Land Use Commission