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ORIGINAL

GUAM LAND USE COMMISSION REGULAR MEETING MINUTES



Department of Land Management Conference Room
ITC Building, Tamuning



Thursday, May 25, 2017
1:42 p.m. to 3:17 p.m.

GUAM LAND USE COMMISSION
Regular Meeting
Thursday, May 25, 2017
Department of Land Management Conference Room
3rd Floor ITC Building, Tamuning

MEMBERS PRESENT:

Mr. John Z. Arroyo, Chairman

Mr. Victor F. Cruz, Vice Chairman

Ms. Conchita D. Bathan, Commissioner

Mr. Tae S. Oh, Commissioner

Mr. Hardy T.I. Vy, Commissioner

Mr. Michael Borja, Executive Secretary

Mr. Nicolas Toft, Legal Counsel

PLANNING STAFF PRESENT:

Mr. Marvin Aguilar, Guam Chief Planner

Ms. Celine Cruz, Case Planner

Ms. Cristina Gutierrez, Recording Secretary

**GUAM LAND USE COMMISSION
GUAM SEASHORE PROTECTION COMMISSION
Attendance Sheet**

Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

Date of Meeting: Thursday, May 25, 2017

Time of Meeting: GLUC: 1:45pm GSPC:

<input checked="" type="checkbox"/>	GLUC
<input checked="" type="checkbox"/>	Regular
<input type="checkbox"/>	Special
<input checked="" type="checkbox"/>	Quorum
<input type="checkbox"/>	No-Quorum

	GSPC
	Regular
<input type="checkbox"/>	Special
<input type="checkbox"/>	Quorum
<input type="checkbox"/>	No-Quorum

COMMISSION MEMBERS

Chairman John Z. Arroyo

Vice Chairman Victor F. Cruz

Commissioner Conchita D. Bathan

Commissioner Tae S. Oh

Commissioner Hardy T.I. Vy

SIGNATURE

[Handwritten signatures in blue ink on lined paper]

STAFF

Michael J.B. Borja, Executive Secretary

Nicolas E. Toft, Legal Counsel (OAG)

Marvin Q. Aguilar, Chief Planner

Frank Taitano, Planner IV

Penmer Gulac, Planner IV

Celine Cruz, Planner IV

M. Cristina Gutierrez, WPS II

[Handwritten signatures in blue and red ink on lined paper]

ADJOURNMENT: GLUC: 3:17pm GSPC:



GUAM LAND USE COMMISSION

Chairman John Z. Arroyo
Vice Chairman Victor F. Cruz
Commissioner Conchita D. Bathan

Commissioner Tae S. Oh
Commissioner Hardy T.I. Vy

Michael J.B. Borja, Executive Secretary
Nicolas E. Toft, Legal Counsel (OAG)

AGENDA

Regular Meeting

Thursday, May 25, 2017 at 1:30 p.m.

Department of Land Management Conference Room
590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning
[As advertised in the Guam Daily Post on May 18, 2017 and May 23, 2017]

I. Notation of Attendance Quorum No Quorum

II. Approval of Minutes

- GLUC Regular Meeting of Thursday, May 11, 2017

III. Old or Unfinished Business [None]

IV. New Business

V. Administrative & Miscellaneous Matters

Status Report/Order to Show Cause

- A. Guam Wanfang Construction Ltd; six-month status report and continuation of an Order to Show Cause on the conditions of approval for a previously approved Height Variance for the proposed Pago Bay Marine Resort, in the Municipality of Yona, Application No. 2015-29B.

VI. Adjournment

GUAM LAND USE COMMISSION REGULAR MEETING MINUTES
Department of Land Management Conference Room, 3rd Floor ITC Bldg., Tamuning
Thursday, May 25, 2017 • 1:42 p.m. to 3:17 p.m.

I. Attendance

Chairman Arroyo called the regular meeting of the Guam Land Use Commission for Thursday, May 25, 2017 to order at 1:42 p.m., noting a quorum.

Present were: Chairman John Arroyo, Vice Chairman Victor Cruz, Commissioner Conchita Bathan, Commissioner Tae Oh, Commissioner Hardy Vy, Executive Secretary Michael Borja, Legal Counsel Nicolas Toft, Guam Chief Planner Marvin Aguilar, Planning Staff Celine Cruz and Recording Secretary Cristina Gutierrez.

II. Approval of Minutes

Chairman Arroyo first of order of business is the approval of the minutes of our May 11, 2017 meeting. You've all had an opportunity to review the minutes. Any comments or questions? If not, I will entertain a motion for approval.

Commissioner Bathan Mr. Chair, I would like to make a motion to approve the GLUC regular meeting Minutes of Thursday, May 11, 2017; subject to minor edits to be submitted to our Recording Secretary by close of business today.

Chairman Arroyo motion made by Commissioner Bathan, do I have a second?

Vice Chairman Cruz second.

Chairman Arroyo seconded by the Vice Chair; any discussion? No discussion; all in favor of the motion please say "aye" [Chairman Arroyo, Vice Chairman Cruz, Commissioner Bathan, Commissioner Oh, Commissioner Vy], all opposed please say "nay."

[Motion passed; 5 ayes, 0 nay]

Chairman Arroyo before we move one ---

Marvin Aguilar (Chief Planner) Mr. Chair, just a little housekeeping. We are still working on trying to secure a PA system for the conference room. So, I would like to ask the Commissioners, in discussion, if they could just raise their voice just a tad bit so that the audience can hear.

Chairman Arroyo thanks Marvin. And in that regard, if there is anybody in the audience who has some difficulty in hearing, please come forward. We can ask the reporters to give you their chair. We will try to speak up as loud as we can.

Moving on, we have no old or unfinished business.

III. **Old or Unfinished Business** [None]

IV. **New Business**

V. **Administrative & Miscellaneous Matters**

Status Report/Order to Show Cause

- A. Guam Wanfang Construction, Ltd; six-month status report and continuation of an Order to Show Cause on the conditions of approval for a previously approved Height Variance for the proposed Pago Bay Marine Resort, in the Municipality of Yona, under Application No. 2015-29B.

Chairman Arroyo we have received your Memorandum. Marvin, would you care to summarize—

Marvin Aguilar the report that you are referring to is my May 18, 2017 report and it is titled *Status Report Third Submittal*. It is basically my reflection of my review of the status report as submitted which was dated May 2nd, 2017; with attachments to include comments from Army Corps of Engineers; dispositions that have occurred prior and the Notice of Action that was issued dated May 3rd, 2016. **[Chief Planner reads Commission Brief. For full content/context, please refer to attachment.]**

[Attachment A – Commission Brief for Application 2015-29B dated May 18, 2017]

Chairman Arroyo any questions, comments?

Commissioner Bathan Mr. Chair, I have a comment on the commitment letter that was provided for the financial support of the project. The referenced project in the letter which was issued by China Chemical Guilin Engineering Co. Ltd., is for the Pago Bay Ocean Resort residential project. The name of the project is Pago Bay Marina Resort. I would like to point out that those are two different project names. It has to be consistent to reflect the actual name of the project that we approved.

Barbara Burkhardt may I speak?

Chairman Arroyo in just a second Barbara.

Barbara Burkhardt in our OTSC it says Ocean Resort.

Commissioner Oh they changed it because they have plans to remove the marina portion.

Chairman Arroyo any other questions?

Vice Chairman Cruz throughout the report, the developer had mentioned about the ongoing court litigation. My question that I would like to bring up in the open is, with the ongoing court litigation, and we don't know when it will happen. My question is, is it proper for us to go ahead and move forward with this application? The decision we have to make or should be hold it at abeyance?

Nick Toft (Legal Counsel) the current Court decision that is under consideration is Wanfang had a motion to dismiss for failure by Save Southern Guam to appeal the decision of the Board within the proper amount of time. Depending on how that decision goes there are two scenarios there; if the Judge decides to go with Wanfang's motion and dismisses the case, then it comes back to the Board to move forward. If it decides that Save Southern Guam complied with the timeline, then that case to reverse the Board's decision is still in front of the Judge, and is still ongoing. And you are looking at another at least four to twelve months of litigation on that issue as well. I would expect there to be additional motions filed in that case. And again, given the Court on expediting the cases each corner still has roughly 90-days to try and get an opinion out for the motions that are filed. So, you are looking at a fairly large timeline still unless the decision comes down to dismiss the case.

Vice Chairman Cruz I guess Commissioners what I am trying to say is that both parties have presented their issues before the Court. To me, I would rather say hold it in abeyance, give the benefit of the doubt to both parties to see who comes ahead out of it, and from then on whatever the decision the Court decides to pass on to us then I think that is when we should move forward on this.

Chairman Arroyo anyone else?

Commissioner Oh what can we do in the meantime though? Are we just going to put the project on hold? Or do we really need to make a decision today?

Chairman Arroyo I think there is a timeline issue here and I think we need to discuss that. I think if they failed to meet that timeline then everything else becomes moot correct? [Commissioners respond "yes."] So, if anything, I think we should discuss whether they met the timeline. And if we agree that they did meet the timeline, and if the rest of the Commission feels that we should hold this in abeyance until the case has been decided that is one course of action we can take. I think that it is important for us to decide today whether or not the NOA (Notice of Action) for this project has expired.

Does everyone agree? [Commissioners respond "yes."]

Commissioner Bathan based on the NOA, the one year expired on May 10 (2017).

Chairman Arroyo I think in your write up you referenced Executive Order 96-26, Section 5. I think the language there I think is pretty clear. It says they shall apply for and receive a clearing and grading permit for the approved project within one (1) year. Did that happen?

Marvin Aguilar no sir.

Chairman Arroyo they did not?

Marvin Aguilar they submitted a grading permit application on May 2nd (we can get a copy of that permit application), we signed off as the Department of Land Management on May 8th, and then the permit application went on to the other agencies to be approved. We have been in contact with the Department of Public Works' One Stop Permit office, and to date they were able to confirm that they were not issued a permit on May 10th.

Chairman Arroyo the question to you Nick then is, so they did not receive, was not granted a permit by the expiration date of May 10th. The Commission is empowered to grant extensions of time. They submitted their request on May 2nd, but it did not come before us until today. So, I guess what I am asking is, is the submission of their request for an extension does that allow for them to come before us today days after the expiration, and for us to hear their request for an extension.

Nick Toft the problem is that the Executive Order is silent as to how the extensions are being effectuated. We have a situation where the extension request is made just before the permit period expires; for that one year period expiration, prior to an extension being granted. And in addition, based on the timeline of submission for the May 2nd request, the first meeting that the Commission has had since then was May 11th. So, even the first possible meeting of the Land Use Commission was after the expiration date.

The situation that we are facing is that there are kind of two possible outcomes here. One, if the Commission decides that the period has expired and thus no extensions are possible, you are looking at a potential future litigation from Wanfang saying that they should have been given a chance to have the extension. If you say that, well let's look at it and grant them an extension then you have possible litigation from the usual parties on the other side saying that there is no permissive language in there, and that the statute does not allow for an extension to be granted afterwards. So, we are kind of in a damned if we do, damned if we don't situation. My reading of it is that the one year has expired, the extension has not been granted prior to that expiration. If I were the Judge ruling in that instance, I would say that that period has closed, and that the extension would not be possible at this time.

Chairman Arroyo one more question. They include in their request several reasons that prevented them from being issued a permit. If we allow them to discuss with us those reasons

and consider those reasons whether or not an extension should be granted would that be something you would advise us against doing?

Nick Toft I believe that we can listen to the grievance for the request and make the decision on whether or not to grant the extension because the statute is vague enough that there are two different interpretations of it. My position is just to advise the Board of my reading of it and the likely result of each, as far as legally, what potentially can happen.

Chairman Arroyo I am of the opinion that we should at least allow them the opportunity to explain to us why they could not meet the deadline. But, I also agree with Nick (Toft) that the language is pretty plain on the deadline. What are your feelings.

Vice Chairman Cruz I just want to interject something on deadlines and everything, it is the process on how you determine whether you meet it or not as you mentioned.

Nick Toft the language says *shall apply and receive*.

Vice Chairman Cruz one of the processing then in writing is that, the way I see it, one of the processes they start is they start their building permit process application and clearance and everything. And starting from Land Management they defer to DPW being the last and everything and even if it did get up to DPW before then there is no way DPW would have been able to just ... okay, here it is you're good. What I'm trying to say is when do you start the clock ticking.

Nick Toft on the ---

Vice Chairman Cruz do you consider them doing the process by coming to Land Management already or not?

Nick Toft I think that is where the language of the Executive Order is clear in that it says that the applicant shall apply for and receive the building or grading permit. So, the fact that they applied is not sufficient enough in my opinion.

Commissioner Oh the other discussion here is, did they ask for an extension; is their request for an extension actually valid based on the law. I understand that the building permit has not been issued; it hasn't been applied for and received by that one year deadline. Does it state anything on the actual request for extension?

Nick Toft and that is the problem in that the Executive Order is silent to that point. They did submit the request for the extension prior to the expiration; but, it is very unclear as to whether that will (inaudible) time for the Board to be able to grant an extension.

Commissioner Oh understand. I say let's listen to their presentation.

Chairman Arroyo okay. At this time, I would like to call Wanfang and its representative to come forward.

Barbara Burkhardt (representing Guam Wanfang Construction) I am going to be a Project Manager, and such, I am going to make some comments. It is unclear, I am not an attorney so I can't state it the way you did Nick. There's almost like a working session ... there are some items that I feel are unclear, and I am going to ask for your help on that clarity and suggest some remedies.

I had two meetings with the owner after our February 23rd; and I represent the owner today and really their input into how they are viewing our proceedings and our progress. I was very unhappy that they even found these four causes. In our first meeting, we were just talking whether we were going to go steel or precast and that was after February 23rd. I would have a bit of delay if we switched to precast, we could go ahead if we stayed with steel. They brought their construction manager, and when you are a construction manager you do a critical path. And I was kind of emotionally unhappy because on their critical path they were reading our progress and they basically said the cart is before the horse. I was riding the horse, but there were four (4) items, actually three (3) and then the labor situation became the fourth. And they said the cart is before the horse. It doesn't make sense for us to invest in the four months of this project if we are at risk never to start or to be delayed in our start.

AES is a design build construction company. So, when we start construction documents we are actually looking at material acquisition, purchase orders, labor. So, it isn't the standard where you go through your CDs, you bid, then you select your contractor and you start construction. With the beauty of a design build contract is that pretty much when you start CDs you start buying things, you start making commitments. And with labor, it is four to six months to get additional labor. We have our skilled labor to start piles and erecting steel, we don't have that additional labor that often some H-2 workers are used to keep the project moving once we drive our piles and erect our steel.

So, our construction manager presented to us in the first part of March after February 23rd that they thought it was the cart before the horse, and it was a risk for them to continue to move things forward given three scenarios plus the fourth on the labor.

They also said what's going on with the lawsuit, and we said ... everybody thought that we would have the first motion would progress after the January hearing and then we were rescheduled for an early April hearing. And they said let's convene again and see what the status is of our motion. We met after the April hearing, and the Judge said he would give a written ruling. I asked the judicial efficiency report almost day since right before May 2nd, and the last one that's on line is May 1st we were after April 1st. The May 1st efficiency report isn't up. The Judge has 90-days to reply so we are talking about July.

So, based on all of that we crafted the letter to you and decided we were two weeks away from May 2nd, we decided to submit it with a status update. And so, that is kind of the big picture on

how we got to here. I support the owner at this point and I totally understand where they are coming from.

Where we need help from you is on two items because if you read the Notice of Action there are two specific items, and there are fifty-four items. Two of them specifically say that before you can submit for permit these two items must be cleared. The first is the burial, and it says before you submit a permit this item must be cleared. We received a permit for the park on May 5th which is after May 2nd and we are currently under construction. We are very clear that we will be finished mid-July. But, it says very specifically you cannot get a permit unless you clear the park. The second thing is, if you look at item 8 which is a GLUC requirement it says specifically that you need have our agreement in place on the financial (Item 8 has A, B, C and D) and that needs to be in place before we get a permit. So, I seek your assistance in ... could have I gotten a permit by May 10th, no. If these items were near completion, you know, we hadn't gotten a response from you guys. Our construction manager pointed out that we had two items that would prevent us from getting a permit, any permit, if these two hadn't shown progress or were cleared. This is where I need your assistance.

We have a permit in progress. We anticipate an eight-week schedule on getting the grading permit, but we really need your assistance in getting the GLUC item cleared. We have a permit on the park, so hopefully that clears the burial of ancient remains. But, those two items according to the NOA need to be cleared in order for us to secure a grading permit.

I went over the litigation already, and I briefly touched on the H-2 worker problem. We were very optimistic that would be resolved. There is legislation before Congress in Washington, DC to increase the number of H-2 visas. There is litigation between Guam Contractors Association and CIS (Citizenship and Immigration Service) to lift the ... right now there are no permits, no additional H-2 visas have been given on Guam for almost a year. We used to be optimistic we are no longer optimistic on that item. Congress needs to act and we need receive our fair share of H-2 workers on continue on any projects on Guam.

That is my presentation.

Chairman Arroyo questions, comments? [None noted from the Commissioners] I think Barbara, the two items that you are waiting for; our response to the draft. I think had we known a month or two ago that was going to impede your ability to get a permit that would have been justification enough for us to grant an extension. Same with the difficulties you were having with the Department of Parks and Rec on the reburial. I think the problem that we are faced with is that you had submitted your request for an extension; the date that you did it did not give us enough time to hear and decide on that.

Barbara Burkhardt with all due respect, with all due respect. On the February 23rd meeting, it is in the meeting minutes; it's been a lot of time on the financial statement, and I made a request that we talk about Item 8. And it was brushed aside. I apologize Marvin ... I sent a memo to Marvin two weeks before May 2nd bringing to the attention and asking ... I actually asked that

we have your response at the next meeting. It may not have been enough time, but I feel we made some effort to bring it to your attention from our side.

Chairman Arroyo but did you read the Executive Order. I think it was pretty much clear on the NOA. I mean that pretty much takes everything out of our hands.

Barbara Burkhardt I am not an attorney, I don't read it that way. I read ... it seems ambiguous how it is written on the last page, on the signature page, it doesn't quite match up to the Executive Order in terms of verbiage. I am not an attorney, and we have not engaged an attorney on this. It seems to me that responding as a project manager anything could happen in a year; it could be a natural disaster to H-2 visas.

Chairman Arroyo considering the complexity and the dollar amount of this project, shouldn't somebody on your team review the Executive Order and had maybe put together a tickler or something that says, hey look we are two months out of the expiry date and it doesn't look like we are going to get a permit. Let's be proactive and let's ask for an extension and not wait till the last minute.

Barbara Burkhardt we were hopeful; it went from hope and commitment to It is dramatic to say devastated, but we wanted this to start. Our commitment includes we are doing the park and it didn't slow us down on breaking ground for the park. We haven't stopped our activities. We just are not going into purchase orders and commitments on materials and labor. That is basically where we are stopping until circumstances line up. I appreciate that you would have liked more notice. I agree, perhaps, we should have hired an attorney. It looked ambiguous to us. And I will tell you honestly, it looked like we could be due two, one-year extensions. That's the way it read to us. So.....

Chairman Arroyo anybody have any other comments?

Commissioner Oh when we had the six-month status report this was February 23rd; and one of the items, I believe that meeting was for an Order to Show Cause. If my memory serves me correct, there are certain strict requirements with the Notice of Action that we've been discussing from the beginning, from the get-go of this project. We've asked you guys for certain items, we've asked you guys for a financial statement. I think during that meeting we pretty much, kind of tried to state it as clear as possible, considering all the public outcry that is happening out there; we asked you guys to please abide by the NOA. And we emphasized it enough during that time. At this point, I think it would have been a lot more prudent if you guys would have been more proactive about these types of requirements. I just feel that at this point, and maybe I am the only one that feels this at this point (and I haven't really talked to you guys about it), but I feel that any of the conditions that were put on the project it seems like a lot of the important aspects of it are being ignored.

Barbara Burkhardt specifically ...

Commissioner Oh specifically, like the deadline on the NOA.

Barbara Burkhardt I appreciate your priority. As a resident of Guam, I think the most important thing that you carefully drafted on the NOA was the demolition bond for projects that do not complete. As a resident of Guam, and someone who suffers from incomplete projects; I thought that that was the most genius, brilliant, serving thing that you could insert in this NOA that other projects do not have. It's a milestone for future projects. If you want to go around the table and ask what the most important thing is, I think that's the most important thing. And it holds (and I am not speaking for the owner), it holds this owner to a very high standard of completion once we start this project. And one of the reasons I agreed to be a consultant on this project was because of that provision. You are talking about a deadline. I'm talking about something very important to the people of Guam that this project sets precedence on. And it's probably the most important thing to me. Everything else in the NOA, I don't mean to be glib, but everything else in the NOA an architect or an engineer can achieve and do creditably and work with good EPA, the good servants of Guam who oversee this stuff. To me, that is the most important part of the NOA.

Commissioner Oh I think you are mistaken. When you say the most important part of the NOA, I think it really depends on everyone's opinion. And for us, this is very important because you heard what our Legal Counsel said, and it puts us in a predicament right now. You guys have put us in a situation where pretty much if we do not move forward with this then there could be legal action. If we do move forward there could be another legal action. So, it is important.

Barbara Burkhardt well, there will be legal action on our part. We feel very strongly...that's not the way we respectfully request an extension on the project, and we would agree to have six-month reviews on that extension. We respectfully ask for the extension.

Chairman Arroyo any other comments or questions?

Vice Chairman Cruz I noticed that you've indicated a couple of items that kinda make a project, not a standstill, but to slow down. How much time would it take for you to complete, your so-called new design or whatever, to enable DPW ... for you to submit and enable DPW to issue you a building permit.

Barbara Burkhardt we have achieved one permit which is for the park, but it is outside of our property and it's contracted with Laguna. With the grading permit, and DLM, Marvin and Celine, the grading permit, we knock off about a third of the NOA items. And with this GLUC review of Item 8 and we currently have the permit and we are working with Parks and Rec on reinternment, I am going out in a limb and say that on our six month NOA we need to get all of these things finished. I am very confident we will have the grading permit in the next six months. I can't predict when it's going to be because there are some moving parts. I am pretty confident that we will have the two approvals; one from Parks and Rec and the Item 8 from GLUC, and then there's about a third of the NOA items that are covered in the grading permit. Many of them are EPA. There are a number of items that will be cleared with that grading permit. Sometime

between now and October 2nd, we will have the grading permit. Hopefully earlier, but we are pretty clear that is going to happen.

Commissioner Oh since our meeting in February, did you guys have plans to move forward with a building permit or a grading permit?

Barbara Burkhardt in order, and it is in our Order to Show Cause, and it's my list on permits; the first permit was the Parks and Rec for the remains and it took a lot longer than we thought. Then the grading permit; after the grading permit we have three permits, storm water permit with EPA, we have a highway permit for our highway improvements and we have the building permits.

Commissioner Oh I am just trying to get at the grading permit. What were the pre-requisites for the grading permit. That is what I am trying to get at.

Barbara Burkhardt the goal of the grading permit as shown on the drawings, is to establish the vegetative barriers. In other words, the kind of no build or cautious build zones, temporary ponding basin and for the construction site and rough grading to prepare for the piles. It does not include the pile driving.

Commissioner Oh so, there had to be some kind of design that had to be done in order for you guys to move forward with the grading permit. Correct?

Barbara Burkhardt correct, yeah.

Commissioner Oh so, the pre-requisite was the design on the grading permit itself.

Barbara Burkhardt oh, we needed a building footprint that you saw; it really hasn't changed from the previous plans. We needed that and the perimeter of the building and then It is a six-drawing set and it is submitted to ... it started.

Commissioner Oh it seems that the intention was to try to meet the conditions of the NOA when you guys did file for grading permit. There was effort made.

Barbara Burkhardt yes, there was effort made. I always try to be honest with you guys. We had these drawings permitted a couple of weeks before May 2nd, and there was a lot of discussion on what should we do, what should we do, and decided to go ahead and just submit May 2nd. Just submit, put it in.

[Gentleman in the audience commented "can you refer to paragraph 3 of the NOA please and read it out loud." Chairman Arroyo responded to the gentleman that the Commission is speaking with the consultant first.]

Barbara Burkhardt did I answer your question?

Commissioner Oh considering the situation, I would have thought that considering the amount of time needed to get a clearing or grading permit issued out before the deadline for a project of this size, I would have thought that there was some planning done ahead of time so that you guys could try to get a grading permit.

Barbara Burkhardt there was planning. If you look at the Department of Parks and Rec's section of the NOA, there are two items. The first item says the developer must hire a qualified archaeologist to prepare an Archaeological Monitoring, blah, blah plan. We have that for the grading permit.

Commissioner Oh that is what I was trying to refer to.

Barbara Burkhardt the second item and this is where I am getting to; prior to any approval, the developer must secure an agreement with DPR to address and resolve the reburial of human remains. We started in October; we received that approval April 26th. We were hoping every week since March that this would pop, that this would happen and it happened April 26th. Now, with all respect to Department of Parks and Rec, I don't blame them their counsel to me is the right thing must be done and we're not going to hurry the process. We got their signature April 24th and we submitted to DPW to final on April 26th and we received the permit on May 5th.

Commissioner Oh so, that was what I was referring to. Was there anything else holding up the process of acquiring or putting in an application for a grading permit, and you said basically it was designed, but now you said it was that condition. Understood. I can see why it was given. I'm trying to understand why it was given.

Barbara Burkhardt commented that she had sent a letter to Land Management a couple weeks prior inquiring about the GLUC, and had assumed that the GLUC item 8 comments that were given did not include the park because the park was on a separate parcel. These were two items that could slow things down from their opinion.

Chairman Arroyo any other questions or comments? (None noted from the Commissioners) Barbara, I still can't get past being proactive. I understand that it has taken some time to get some of the things done that were beyond your control. But, if this was something I was involved in I would be extra cautious, and if we were approaching a deadline and I knew that these were the scheduled time that the GLUC would be meeting I would have done something to make sure that I got an extension whether or not we needed it; we have to get an extension in for the next meeting or for a GLUC meeting held before the deadline, and that is your responsibility regardless of the issues that you were facing regarding the Government of Guam or even the response from the GLUC.

Also, you said you received the GLUC response when? Was it just yesterday or the day before?

Barbara Burkhardt today, in the meeting today.

Chairman Arroyo but you were saying that you could not have applied for a permit until you got the response, but you did apply for a permit on May 2nd.

Barbara Burkhardt you know

Chairman Arroyo if you could have applied for a permit on April 2nd using that same logic.

Barbara Burkhardt the way we forwarded Parks and Rec is we applied for a permit. So that worked somewhat for us for Parks and Rec. We had a series of scheduled meetings and reviews and things and we finally said this is going very slow let's just apply for a permit, let's try to advance it. I guess ... unfortunately ... I hear what you're saying John. We submitted for permit, it triggers things when you submit for permit and hasn't come towards a solution. It worked for us on Parks and Rec, and I hear you. I hear what you're saying.

Chairman Arroyo any other questions, comments? Thank you, Barbara. Nick, I just want to make sure that we've got all our bases covered. We've heard your counsel on this basically being expired, but there are still some grey areas as to, at what point in time can a request be submitted to the GLUC for an extension. I'd like to get a little bit more concrete direction on that before we decide on this. I want to make sure all of our bases are covered. Is it possible to get an opinion as to when a request for an extension needs to be submitted and needs to be heard? Is it the opinion that the request needs to be submitted in advance of a GLUC meeting and the formal extension needs to be made at that meeting prior to the expiry of the one year limit according to the Executive Order.

Nick Toft I am not sure if any additional research is going to turn up anything that will be of additional help. The difficulty we are dealing with is that the Executive Order's language is sort of bare-boned as to when the extension can be granted. The basic reading of it would seem that you have the language within one year the whole project shall expire if there has been no grading permit or building permit filed and received by our office. The question of the extension is just incredibly ambiguous. We have the facts; we have the fact that the request was submitted May 2nd that the expiration had happened May 10th, first meeting of Guam Land Use Commission subsequent to that application was May 11th, and it's just a question of what we do with that. I all I can tell you is that there is this ambiguity and that we have these likely outcomes from it.

Chairman Arroyo Barbara just mentioned that if we confirm that the NOA has expired and then there is going to be court action and that is going to be something that your office is going to have to address. Would you rather come up with an opinion now or wait until there is court action?

Nick Toft I don't think the opinion would have an effect on whether or not there would be court action.

Commissioner Oh I don't think there is no denying the fact that the NOA has expired. Because the expiration is dependent upon them submitting a building permit or grading permit before the one year deadline. There is no question about that. The question here, I think, really is about the extension. So, my question then would be, can we, do we even have the authority to vote on something that has already been expired.

Commissioner Bathan the request was submitted on May 2nd, and if the applicant would have thought that there was a meeting on May 11th which is the day after their NOA expired, then they would have submitted a request to extend prior to make in time for it be heard prior to May 10th.

Commissioner Oh I don't think anyone could deny the fact that the NOA has expired. But, the question is can we even take action on an NOA that has already been expired.

Vice Chairman Cruz it's almost the same as do we hold this until the Court is done. And like our Legal Counsel said, damn if you do and damn if you don't.

Chairman Arroyo does anybody disagree that the NOA has expired.

Commissioner Bathan it is expired.

Vice Chairman Cruz reading the way the NOA is presented it is expired. But, you and I reading it one way, our Legal Counsel reading one way to our favor and based on things. Leaving it to the developer ... I don't know. I do get Barbara's reason, we are submitting this let's move. But, sometime during the process the owner comes in and says I don't know about item 3; let's hold. To me, the question is what constitute what did they submit. Did they submit it on the day; it might be a day late before the meeting

Michael Borja (Executive Secretary) Commissioners if you recall, there was a project not long ago where there was a condominium development on side of Tumon hill and they had also expired their Notice of Action because they did not get their building or grading permit within one year. They came to the Commission asking to get an extension, but that was already beyond that and they were required to restart. It was nothing controversial, but that was what the action was.

Commissioner Bathan the point here is they did not plan ahead, and submit it before it expired.

Vice Chairman Cruz I understand that.

Chairman Arroyo you want to say something?

Barbara Burkhardt I am a project manager so, what was the meeting prior to May 10th?

Chairman Arroyo April 27th ---

Barbara Burkhardt so usually you have to submit two weeks prior so that would have meant we would have had to submit early April. We weren't ready; we were hoping that the Court would rule ---

Commissioner Bathan regardless, you should have submitted it because you are not too sure if the Court would decide or not.

Barbara Burkhardt I don't agree that there is a guideline in the NOA or in the Executive Order that gives us an indication on that, and we didn't hire an attorney to give us an opinion on when we should file either.

Chairman Arroyo let's take a ten-minute recess.

[Commission recessed at 2:45 p.m. and reconvened at 3:00 p.m.]

Chairman Arroyo okay, let's reconvene today's meeting. Any other comments or questions?

Commissioner Bathan Mr. Chair, I am not comfortable to move forward with the request for an extension since I am not clear if we are allowed to entertain a request for an NOA that has expired. So, if I may, I would like to ask Legal Counsel to issue a written opinion that we can base our action on.

Nick Toft well, I think we agree that the NOA is expired, but there is ambiguity. Courts generally grant Board's discretion as to their actions in these types of situations. It doesn't say when the extension has to be granted whether it's at the beginning or whether it's at the end. It doesn't say anything as to when the submission of the request for the extension has to be submitted. I believe the safest course of action at this point would be to take a vote on whether or not to extend the approval period, and then just move from there. Because I don't believe an opinion would resolve it in any other way different from what I just said.

Commissioner Oh my opinion is that I agree with Commissioner Bathan. I don't feel comfortable with moving forward with a vote currently. I would like to probably request two information; first being that, and I think I stated that earlier, because our Legal Counsel said it is a bit ambiguous, but if we could kind of take a step back and review the law and the Executive Order when it comes to actually voting and voting on an NOA that has already expired. If we even have the authority to do that. The other thing I'd like to probably ask the staff is if we could go back to cases in the past, go back to cases in the past to determine how we have responded these types of situations where the NOA have actually expired. Do we have some historical proof in the past that show that we have actually voted on an expired NOA. Whether or not we have actually given an extension to an expired NOA.

Vice Chairman Cruz I agree.

Chairman Arroyo Hardy, how do you feel?

Commissioner Vy all of us are not comfortable with a decision now. I think what we are actually looking for is some sort of statement from the AG's Office saying that, in black and white, that we can have that discretion to move on. Is that what you're saying?

Commissioner Oh yes, and to get some advice from our staff on similar cases.

[Chairman Arroyo asked the Commissioners if they were ready to vote; Vice Chairman Cruz, Commissioners Bathan, Oh and Vy all stated that they were not ready to vote today.]

Chairman Arroyo we need three (3) votes for an affirmative vote. If nobody is ready to vote, we cannot vote. So Commissioners, your request is to continue this hearing until we get some further feedback from the staff and maybe more guidance from the AG.

Commissioner Oh yes.

Chairman Arroyo alright; it is the order of the Commission that we continue this hearing until such time that we receive additional information from the Chief Planner and his staff, and hopefully some more guidance from the AG.

Alright, so that concludes this hearing. We let you know Barbara when to come back.

Chairman Arroyo any other items for discussion? [None noted] I will entertain a motion for adjournment.

VI. **Adjournment**

Commissioner Bathan I will make a motion to adjourn.

Commissioner Oh second.

Chairman Arroyo all in favor say "aye." [Chairman Arroyo, Vice Chair Cruz, Commissioners Bathan, Oh and Vy.]

Motion carries.

The regular hearing of the Guam Land Use Commission for Thursday, May 25, 2017 was adjourned at 3:17 p.m.

Approved by:

Transcribed by:



John Z. Arroyo, Chairman



M. Cristina Gutierrez, Recording Secretary

Date approved: 6/22/2017



ATTACHMENT A
DIPĀTTAMENTON MINANEHAN TĀNO'
(Department of Land Management)
GUBETNAMENTON GUĀHAN
(Government of Guam)



EDDIE BAZA CALVO
Governor

MICHAEL J.B. BORJA
Director

RAY TENORIO
Lieutenant Governor

DAVID V. CAMACHO
Deputy Director

May 18, 2017

Memorandum

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Commission Brief - Application No. 2015-29B

RE: Status report on conditions of approval
(3rd Submittal)

At its regular meeting of April 28, 2016, the Guam Land Use Commission (hereafter, Commission) approved a height variance with conditions to Guam Wanfang Construction, Ltd. (GWCL) to accommodate a two-tower, Multi-Family Dwelling development with building heights of 158 feet and 168 feet. As part of conditions of approval¹ GWCL is required to submit a written report to the Commission every six months for the purpose of providing a status on the state of progress of the development project².

The 3rd status report provides update of ongoing or closed items of condition as noted in the applicant's Notice of Action (NOA). The report also requests for relief from the one-year requirement of securing a grading or building permit pursuant to Executive Order 96-26, Section 5.

Closed Items of conditions: AES identifies closure of issues regarding:

Item	Action
Height Variance	Redesigned plans remain in accordance with height restriction imposed by the Commission
Redesign Plan	Redesign plans were submitted and approved with corrective action taken on the number of rooms and parking design.
Commercial operation of a Marina	AES attests on behalf of their client that the initial marina component of the project has been dissolved.
Public Beach Access	AES affirms public beach access corridor from Route 4 to beach resources remains as initially noted, pending further improvements for emergency vehicle access and turnaround.

¹ Ref: Notice of Action dated May 3, 2016 as recorded under DLM Document No. 892368.

² Condition No. 8c of the issued Notice of Action requires that "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'."

Street Address:
590 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

Website:
<http://land.guam.gov>

E-mail Address:
dmdir@land.guam.gov

Telephone:
671-649-LAND (5263)

Facsimile:
671-649-5383



Open Items of Conditions: The 3rd submittal focuses on two (2) NOA conditions as remaining open and perhaps in part serves to justify a request for relief by extension, that is:

Item	Action
The need to resolve Developer-GLUC agreement pursuant to Condition No. 8.	<p>A proposed agreement was received by the Department of Land Management on December 23, 2016. Recent preliminary assessment of the document has been completed by the Commission's legal counsel. Legal counsel is in agreement with the document's content and form, however provides two recommendations of change:</p> <ol style="list-style-type: none"> 1. Remove any reference to commencement or completion dates and instead reference start of any timeline certain days after actual commencement of work; and 2. Reduce written reporting times of construction/development from six (6) months to three (3) months.
Status of Reburial of ancient remains.	AES provides considerable work and coordination continues to meet a completion date of July 2017.

Assessment of this project thus far is two-fold. That is, to assess if the Order to Show Cause (OTSC) has been satisfactorily fulfilled and assess the extent of compliance to conditions as noted in the issued Notice of Action. The OTSC was issued by the Commission in response to the following issues addressed at its November 29, 2016 meeting, to include:

Item	Action
Failure to meet the required six (6) month deadline.	AES Construction Inc. (AES) accepted failure to respond in a timely manner. The 3 rd submittal was received prior to deadline of submittal.
The financial status of the project	AES provides a letter by China Chemical Guilin Engineering Co. Ltd. Adhering to the last requirement of the OTSC.
Density requirement appearing to have been exceeded.	AES provided corrective design changes to reflect permitted density requirements.
Not meeting the parking requirements.	AES provided corrective design changes to reflect permitted parking requirements.
Update and status on the interment of remains.	AES provides updates of the interment of remains with new design and agreement with DPR.
Written report from the Army Corps of Engineers on any possible impacts to the wetlands.	AES provides correspondence with the ACE regarding wetlands (see Attachment 1)

In this latest report by AES as the responding party, a remaining issue of the OTSC was a response on the financial status of the project. AES has since submitted a letter from China Chemical Guilin Engineering Co. Ltd. stating fact to the existence of a “finance + technical support for Pago Bay Ocean Resort residential project”. Based on this latest information we are of the opinion the applicant has to date provided satisfactory responses to each issue as noted in the OTSC. And at this time, we recommend the Commission relieve the applicant and its representative of the Order and resolve to release the Order to Show Cause.

As part of its report, AES requests for an extension of relief from the requirement of Executive Order 96-26, Section 5 where,

“The applicant shall apply for and receive a building or grading permit for the approved project within One (1) year of the date of recordation of the Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire; provided, however, that the Commission may grant Two (2) one-year extensions of the above approval period”.

AES noted the reason for this request was due to:

1. The extended review by DPR to obtain its first permit on the re-burial program, of which appears to have taken six (6) months to its current status;
2. Ongoing litigation of the project in court, to which ruling has yet to occur and causing a default on AES to hold design and engineering work at 50%; and
3. Reconsideration of construction methodology however, as a result of a workforce shortage on Guam the applicant felt it necessary from completing construction documents until the workforce issue has been resolved.

AES further states another open issue that needs updating and is interdependent if not critical to securing any permit. That is, the need to resolve Developer-GLUC agreement on bonding the project pursuant to Condition 8 of the NOA. To date, the Commission’s legal advisor provides certain minor changes to the draft agreement, as noted in this report and we expect a formal notification of such changes at the next hearing.

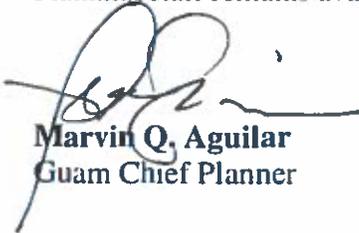
The applicant appears to have opted to refrain from expending further resources on a project that may either be overruled by the court or considered financially unviable due to economic impacts beyond the applicant’s control. AES states for these reasons the project remains at 50% design completion.

In our earlier report, Planning Division noted the six-month reporting schedules serve as the means to identify changes in the development scheme that in turn would articulate both adherence to conditions as noted in the issued NOA [as directed by the Commission]. We further emphasized such changes must reflect due diligence in an attempt to satisfy NOA conditions. We also noted the complexity of this project was enjoined by concerns generated by the Application Review Committee and the general public. As such, the Guam Land Use Commission found it only proper to exercise its authority and insist on some form of monitoring with particular focus on certain issues left remaining as a result of conditions

placed on the initial approval. The report was intended to provide straight forward responses to effect clear articulation of conditions as imposed, with the advancement in coordination with other agencies concerning infrastructure as the most critical component of assessment.

The intent of each reporting cycle is to provide straight forward responses to effect clear articulation of conditions as imposed. With this we anticipated discussion of what has transpired to date with agency coordination regarding infrastructure. If this cannot be accomplished due to force-error events such as ongoing legal litigation and/or a shortage in workforce in Guam, then perhaps the matter of cause and effect would be the order and form of future reports, or for such matters be points of consideration on the viability of this development project.

Planning staff remains available to provide further technical assistance in this matter.



Marvin Q. Aguilar
Guam Chief Planner

Case Planner: Celine Cruz

Attachments:

- 1) ACOE Letter
- 2) Agenda Disposition –January 12, 2017
- 3) Agenda Disposition – February 23, 2017
- 4) Original NOA (Document No. 892369)



DEPARTMENT OF THE ARMY
HONOLULU DISTRICT, U.S. ARMY CORPS OF ENGINEERS
FORT SHAFTER, HAWAII 96858-5440

December 1, 2016

SUBJECT: Permit Requirements for the Pago Bay Marina Resort; DA File No. POH-2007-00184

Pago Bay Resorts, LLC
Suite 201
Tun Jesus Crisostomo Street
Tamuning, Guam 96913

Pago Bay Resorts, LLC Representatives:

In response to my September 8, 2016 letter, I met with your project designers, Mr. John Sherman and Ms. Barbara Burkhardt of AES Designers, on October 20, 2016, to discuss the preliminary project design and Department of the Army (DA) permit requirements for the proposed Pago Bay Marina Resort to be located on Lot No. 164-4NEW-1 along Route 4 and adjacent to Pago Bay in Yona, Guam.

Based upon our discussions and review of the preliminary project plans, portions of the project may require a DA permit pursuant to Section 404 of the Clean Water Act (Section 404) and Section 10 of the Rivers and Harbors Act of 1899 (Section 10).

It was my understanding at the end of the meeting that the project plans were still in development, but AES Designers intended to keep the Corps engaged during the planning process and would apply for any necessary DA permits when it was appropriate to do so.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions, please contact me via telephone at (671) 339-2108 or via e-mail at Katy.R.Damico@usace.army.mil.

Sincerely,

Katy R. Damico
Project Manager
Guam Regulatory Field Office

cc:
Ms. Barbara Burkhardt, AES



GUAM LAND USE COMMISSION

Chairman John Z. Arroyo
Vice Chairman Victor F. Cruz
Commissioner Conchita D. Bathan

Commissioner Tae S. Oh
Commissioner Hardy Tan I. Vy

Michael J.B. Borja, Executive Secretary
Kristan Finney, Assistant Attorney General

AGENDA - DISPOSITION

Regular Meeting

Thursday, January 12, 2017 at 1:30 p.m.

Department of Land Management Conference Room

590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning

[As advertised in the Guam Daily Post on January 5th and January 10th, 2017]

- I. **Notation of Attendance** Quorum [1:39 p.m.] No Quorum
Present were: Acting Chairman Victor Cruz, Commissioner Conchita Bathan, Commissioner Tae Oh, Executive Secretary Michael Borja, Legal Counsel Kristan Finney, Guam Chief Planner Marvin Aguilar, Planning Staff - Celine Cruz, Penmer Gulac and Recording Secretary Cristina Gutierrez.

Executive Secretary Michael Borja commented on a new public law that has gone into effect recently that has direct effect on the GLUC. P.L. 33-219 relative to the number of members that make up the GLUC reducing the number of members from seven to five members; in addition, three (3) GLUC members make a quorum and 3 affirmative votes to approve an application. In addition, this also creates the empanelment of hybrid Commissioners which comprises 4 additional members designated from the Mayor's Council, and at that time there will be 7 members present and will require 4 to be a quorum. This hybrid Commission is empanelled only when a development cost of an application is at 3 million dollars or greater.

P.L. 33-209 instructs the process of handling of an application to the GLUC and basically what it does is it requires that the reports that an Application Review Committee provides to the GLUC must go to the Mayor's Municipal Planning Council or the respective Council where an application will have an effect.

- II. **Approval of Minutes**
- GLUC Regular Meeting of Tuesday, November 29, 2016 [Minutes approved; no changes noted]
- III. **Old or Unfinished Business [None]**
- IV. **New Business [None]**
- V. **Administrative and Miscellaneous Matters**

Horizontal Property Regime

- A. The Applicant, Allegro Properties Corporation represented by Atty. Melinda Swavely, Esq.; requests the issuance of a First Supplementary Final Public Report for the Avida Townhomes, on Lot No. 5360-R19NEW-4, in an "R2" (Multi Family Dwelling) zone, in the Municipality of Mangilao, HPR No. 168. Application No. 2014-07C.
Case Planner: Celine Cruz
Action - Motion to approve the applicant's request was approved unanimously; with an expiration date of February 12, 2018 [3 ayes, 0 nay].

Order to Show Cause

- B. Guam Wangfang Construction Ltd; Order to Show Cause as to the reason(s) for failure to comply with Conditions of Approval of the Zone Variance for Height for the proposed Pago Bay Marina Resort as noted on the Notice of Action dated May 10, 2016. Application No. 2015-29B.
Case Planner: Celine Cruz
Action – Vice Chairman Cruz noted for the record that the Commission has received the applicant's report dated December 21, 2016. Further discussion of the OTSC report is pending the return of Chairman John Arroyo and briefing of newly confirmed Commissioner Hardy Vy.

VI. Adjournment [Meeting was adjourned at 2:00 p.m.]



GUAM LAND USE COMMISSION

Chairman John Z. Arroyo
Vice Chairman Victor F. Cruz
Commissioner Conchita D. Bathan

Commissioner Tae S. Oh
Commissioner Hardy T.I. Vy

Michael J.B. Borja, Executive Secretary
Kristan Finney, Assistant Attorney General

AGENDA - DISPOSITION

Regular Meeting

Thursday, February 23, 2017 at 1:30 p.m.

Department of Land Management Conference Room
590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning
[As advertised in the Guam Daily Post on February 16, 2017 and February 21st, 2017]

- I. **Notation of Attendance** Quorum 1:40 p.m. No Quorum
Present: Chairman John Arroyo, Vice Chairman Cruz, Commissioner Conchita Bathan, Commissioner Tae Oh, Commissioner Hardy Vy, Executive Secretary Michael Borja, Legal Counsel Kristan Finney, Chief Planner Marvin Aguilar, Case Planner Celine Cruz and Recording Secretary Cristina Gutierrez.

Hybrid Commissioners: Mayor Jesse Blas (Yona), Mayor K.T. Susuico (Agat), Mayor Vicente Taitague (Talofofo) and Mayor Dale Alvarez (Santa Rita) [MCOGHC DLM2017-01-Wonderful Resorts LLC application]
- II. **Approval of Minutes**
 - GLUC Regular Meeting of Thursday, February 9, 2017
[Action – Motion to approve the minutes of February 9, 2017 was passed unanimously as submitted; 5 ayes, 0 nay]
- III. **Old or Unfinished Business**
 - A. Wonderful Resorts LLC (dba: Wonderful Windward Hills Resort); request for clarification and approval on multi-family use within a previously approved Planned Unit Development (PUD) for the proposed construction of townhomes, ~~Lot 154-2, 3, and 4,~~ Lot 154-2-4-REM-NEW-2-REM, in the Municipality of Yona. **[Continued from GLUC Hearing of 2/9/2017] [HYBRID COMMISSION] [MCOG DLM2017-01: Wonderful Resorts LLC]**
Case Planner: Marvin Aguilar
[Action – GLUC Commissioners accepts the applicant's (Wonderful Windward Hills Resort) Master Plan as submitted; 5 ayes (GLUC) and 4 ayes (Hybrid Commission), 0 nay.]
 - B. **Guam Wangfang Construction Ltd; Order to Show Cause on the conditions of approval for a previously approved Height Variance for the proposed Pago Bay Marine Resort, in the Municipality of Yona, Application No. 2015-29B. [Continuation-GLUC hearing of 1/12/2017]**
Case Planner: Celine Cruz
Action – GLUC Commissioners accepts applicant's six-month status report subject to the Applicant's submission of a confirmation letter on the status of the financial aspect for the project; document to be submitted with the next six month report due May 2, 2017.
- IV. **New Business [None]**
- V. **Administrative & Miscellaneous Matters [None]**
- VI. **Adjournment [There being no further business, meeting was adjourned at 4:17 p.m.]**

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

892368

File for Record is Instrument No. 892368

On the Year 14 Month 05 Day 10 Time 2:19

Recording Fee DE-OFFICIO Receipt No. _____

Deputy Recorder Jane 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 XX/ 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
Request for Variance - Height
GLUC Hearing Date: April 28, 2016
Date of Preparation of NOA: May 3, 2016
Page 2 of 8

ZONING

- / Zone Change***
- / Conditional Use
- / **Zone Variance**
- Height** Use
- Density Other (Specify)
- 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 ACTIONApplication No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance – Height

GLUC Hearing Date: April 28, 2016

Date of Preparation of NOA: May 3, 2016

Page 3 of 8

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.).

NOTICE OF ACTIONApplication No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance – Height

GLUC Hearing Date: April 28, 2016

Date of Preparation of NOA: May 3, 2016

Page 4 of 8

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.

NOTICE OF ACTIONApplication No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance – Height

GLUC Hearing Date: April 28, 2016

Date of Preparation of NOA: May 3, 2016

Page 5 of 8

- 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.

NOTICE OF ACTIONApplication No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance – Height

GLUC Hearing Date: April 28, 2016

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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.

NOTICE OF ACTIONApplication No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance – Height

GLUC Hearing Date: April 28, 2016

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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

NOTICE OF ACTION

Application No. 2015-29B

Wanfang Construction, Ltd.
Lot 164-4NEW-1- Municipality of Yona
Request for Variance - Height
GLUC Hearing Date: April 28, 2016
Date of Preparation of NOA: May 3, 2016
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=====

CERTIFICATION OF UNDERSTANDING

I/We _____ / Raymond Power for F&W
(Applicant [Please print name]) (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

[Signature] 5-10-16
Signature of Representative Date

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

Applicant Date Representative Date

Decision Granting Variance with Findings

Ref: Application No. 2015-29B

ACKNOWLEDGEMENT

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



MICHAEL J. 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.

Decision Granting Variance with Findings

Ref: Application No. 2015-29B

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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.

Decision Granting Variance with Findings
Ref: Application No. 2015-29B
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- 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 tsunami.

- 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

Decision Granting Variance with Findings

Ref: Application No. 2015-29B

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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.

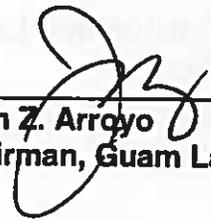
The vote of the members is as follows:

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

1
2 **GUAM LAND USE COMMISSION**
3
4

5
6 In the Matter of:)
7) APPLICATION No. 2015-29B
8 Guam Land Use Commission)
9) NOTICE & ORDER TO
10 vs.) SHOW CAUSE
11)
12 Guam Wanfang Construction Ltd.)
13
14

15
16 **THE GUAM LAND USE COMMISSION TO:**
17

18 Guam Wanfang Construction Ltd.
19 Unit 108 Sunny Plaza
20 125 Tun Jesus Crisostomo Street
21 Tamuning, Guam 96913
22
23

24 **YOU ARE ORDERED TO SHOW CAUSE** as to the reason (s) for
25 failure to comply with Conditions of Approval of the Zone Variance for
26 Height for the proposed Pago Bay Marina Resort as noted on Notice of
27 Action, dated May 10, 2016 and to present a complete and exact report to
28 address the following within two (2) weeks of receipt of this notice and
29 order:
30

- 31 a) Failure to meet the required six (6) month deadline;
32 b) The financial status of the project;
33

34 Further, at its meeting of November 29, 2016, the GLUC identified
35 the following additional items to be addressed:
36

- 37 c) Density requirement appearing to have been exceeded;
38 d) Not meeting the parking requirements;
39 e) Update and status on the internment of remains; and
40 f) Written report from the Army Corps of Engineers on any possible
41 impacts to the wetlands.

1
2 You should be prepared to provide evidence to the GLUC as to how
3 you complied or any work towards compliance with all of the conditions of
4 the Notice of Action. Failure to appear at the hearing may result in a
5 default judgment against you.
6

7 **YOU ARE ORDERED TO APPEAR** at the Guam Land Use
8 Commission ("GLUC") Meeting at the Guam International Trade Center
9 (GITC) Building, 590 S. Marine Corps Drive, Third Floor, Department of
10 Land Management (DLM) Conference Room, Tamuning, Guam on
11 January 12, 2017 at 1:30 p. m. to address your submitted report.
12

13 **IMPORTANT:** This hearing directly affects the continuation of
14 your project. You should seriously consider your actions relative to
15 this notice.
16
17

18 Dated this 7th day of December, 2016
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22
23 GUAM LAND USE COMMISSION

24
25 By: _____

26 *John Z. Arroyo*
27 Chairman
28
29
30
31

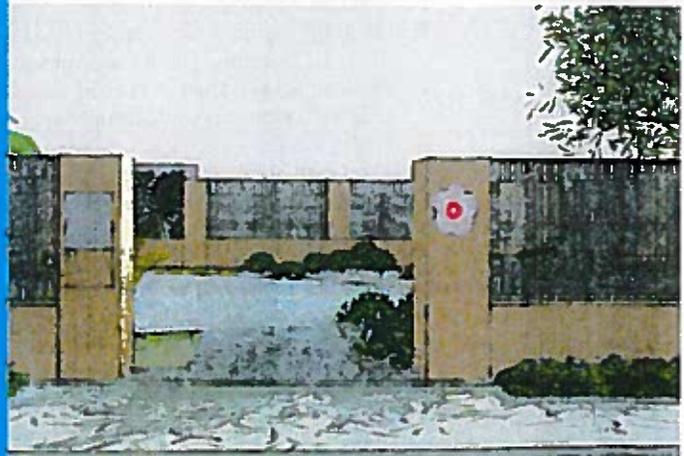
*Seaview Plaza
Unit 305*

*Received
12-7-2016 10:50 AM
John Steinhilber*

Pago Bay Ocean Resort

6 month Status Update
May 2, 2017

GLUC Application No. 2015-29
Yona, Guam





AES CONSTRUCTION INC.

1270 North Marine Corp Drive, Suite 101-236
Tamuning, Guam 96913

TEL: (671) 649-6321
FAX: (671) 649-6323

May 2, 2017

Director Michael Borja
Department of Land Management
Government of Guam

Re: Zone Variance Application No 2015-29B, Pago Bay Ocean Resort
GLUC 6 month Update- May 2, 2017
Extension of 1 Year Time Frame to May 2, 2018

Dear Mr. Borja

Two matters are at hand with this submission. Our 6 month Status Update and a formal request for extension in of time on the 1 year deadline specified in the GLUC NOA dated May 2, 2016.

Attached is our GLUC Status Update dated May 2, 2017, including the requested Financial Status letter for the project. This letter is provided by Guam Wanfang Construction Inc. This submission is in compliance of NOA Item 8 part c.

In addition to the Financial Statement, we request review and comment of our Item 8, part a, b & d, GLUC, OTSC Attachment 2 dated December 21, 2016. We submit these items as a proposal as directed in the NOA and look forward to your review and comment prior to the next GLUC Board Meeting.

The extension in time request to May 2, 2018 is driven by 3 factors.

1. Extended review by Guam Parks & Recreation to obtain our first Permit ARC Agency approvals. The Reburial Location. Approval was initiated in October of 2016 and is now completed as of April 19, 2017.
2. Ongoing litigation has not progressed beyond motions before Judge Barcinas. 3 hearings have been held in the last 11 months. There has been no ruling on the motions, and the initial 1 week indicated by the court has long passed. Guam Wanfang expected a ruling on the motions to occur early in 2017. As this has not occurred, we have placed design work and engineering on hold at 50% Design Development.
3. Guam Wanfang Construction has considered a steel or precast structural systems to expedite construction. Even with prefabricated structural systems, they have determined that the current H2 labor shortage will significantly impact the completion of construction within a normal timeframe. Guam Wanfang Construction does not feel it is prudent to finish Construction Documents nor start Construction until the skilled labor pool has improved on Guam.

Thank you for your time on these matters,

AES CONSTRUCTION, INC.

Barbara Burkhardt, RA
Authorized Representative for
Guam Wanfang Construction Inc

Zone Variance Application No. 2015-29B, Pago Bay Ocean Resort

Guam Wanfang Construction, Inc.

DRAFT

GLUC Status Update

Submitted: May 2, 2017

AES Construction, Inc. (Representing Wanfang Construction, Ltd.)

Unit 305 Sunny Plaza

125 Tun Jesus Crisostomo Street

Tamuning, Guam

Guam Land Use Commission

Department of Land Management

Government of Guam

P.O. Box 2950

Hagatna, Guam 96932

AES offers the following response to the GLUC actionable items listed in the NOA dated May 2, 2016.

Update - Open GLUC Items	AES Response
<p>1. Agreement between GLUC & the Developer - Item 8 NOA May 2, 2016.</p> <p>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;</p>	<p>We request that GLUC respond to our Draft agreement of December 21, 2016 as outlined in the procedures of Item 8, prior to the next GLUC Board Meeting to review the Status Update of Pago Bay Ocean Resort.</p>
<p>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;</p>	<p>Proposed agreement from the Owner to GLUC delivered December 21, 2016. Attachment 2.</p>

Zone Variance Application No. 2015-29B, Pago Bay Ocean Resort

Guam Wanfang Construction, Inc.

<p>b. The agreement shall contain and provide a timeline for projection completion;</p>	<p>We request an extension from May 2, 2017 to May 2, 2018. The 1 year deadline for permits on the Project. Revised Timeline Attachment 3.</p>
<p>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;</p>	<p>Letter from the Developer dated February 24, 2017 Attachment 1 6 month Updates submitted to date:</p> <ul style="list-style-type: none"> • November 14, 2016, approved February 23, 2017 • OTSC submitted December 22, 2016 approved February 23, 2017. • May 2, 2017 (contained herein)
<p>d. Elements of agreement may include, but not limited to:</p> <ol style="list-style-type: none"> 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. 	<p>Draft agreement delivered from the Owner to GLUC December 21, 2016.</p>
<p>2. Status of Reburial of ancient remains.</p>	<ul style="list-style-type: none"> ▪ Update, Reburial Grading Permit was submitted to DPW April 26, 2017, with appropriate approvals from the ARC

Zone Variance Application No. 2015-29B, Pago Bay Ocean Resort

Guam Wanfang Construction, Inc.

	<p>Agencies completed April 24, 2017. It was important to secure the approval of Guam Parks & Recreation for the Site Location and obtain Reburial procedures prior to initiating the Site Grading Permit process.</p> <ul style="list-style-type: none"> ▪ The Reburial Site Location is approved and construction is estimated to be completed on or about July 19, 2017. ▪ We cannot specify at this time when we will complete the reburial procedural outline received from Parks & Recreation April 19, 2017. ▪ AES has contracted Hurao Inc. President Anna Marie B. Arceo, to coordinate reburial of the remains. ▪ Memorial Park has been named Update: Naftan Aspunon Pago-Fanhafutan I Manaina-ta Guini Gi Pagu. ▪ Original Compliance requirement is under the Notice of Action dated March 13, 2008 for Application No. 2007-84. Further, this will be addressed and permitted separately from Pago Bay Ocean Resort, and is scheduled for completion in July 2017. ▪ The remains have been documented, wrapped and placed in appropriate burial boxes under a previous MARC contract in 2010. The remains are ready for burial. The Owner received a multi page burial procedural outline on April 19, 2017 from Guam Parks & Recreation. ▪ See Attachment 4 Fanhafutan I Manaina-ta Guini Gi Pagu Rendering.
Update - GLUC Items NOA May 2, 2017	AES Response
Item 1 Height Variance - Closed	<ul style="list-style-type: none"> ▪ No change in design height per the November 14, 2016 drawing submission, approved as submitted by GLUC February 23, 2017. Height is less than

Zone Variance Application No. 2015-29B, Pago Bay Ocean Resort

Guam Wanfang Construction, Inc.

	<p>approved by GLUC as noted in the NOA dated May 2, 2016.</p>
<p>Item 2 Conditions as listed by the Application Review Committee (ARC)</p>	<ul style="list-style-type: none">▪ Ongoing, Completion on hold, see Cover Letter for Extension of time on 1 Year request. Reburial Grading Permit and Site Grading Permit have been initiated as of March 2, 2017.▪ Update - on previous GLUC item requests.
<p>Item 3 Unresolved Agency infrastructure Items</p>	<ul style="list-style-type: none">▪ With the submission of engineering calculations and drawings attached to the Reburial Grading Permit, Site Grading Permit, Highway Permit & Building Permit, and Building Permit all unresolved items will be reviewed by ARC Agencies until their concerns have been satisfied. Update: See Schedule below ARC approvals are taking longer than anticipated.▪ Reburial Grading Permit was submitted March 2, 2016, ARC Agencies completed their review and approval April 24, 2017. Final Submission to DPW April 26, 2017, we anticipate a 2 weeks approval time frame.▪ Site Grading Permit has been submitted to DPW May 2, 2017. ARC Agency reviews include Department of Land Management, Guam EPA, Department of Agriculture, Guam Contractors Licensing and Guam Parks & Recreation, as well as DPW.
<p>Item 4 Redesign Plan - Closed</p>	<ul style="list-style-type: none">▪ Redesign Plans were resubmitted December 21, 2016 addressing all noted items in the NOA of May 2, 2016 and the OTSC dated December 21, 2016.▪ The Redesign Plans were reviewed and approved by GLUC February 23, 2017.

Zone Variance Application No. 2015-29B, Pago Bay Ocean Resort

Guam Wanfang Construction, Inc.

Item 5 Commercial Operations of a Marina - Closed	<ul style="list-style-type: none">▪ This item is no longer part of the Development.
Item 6 Beach Clean up - Closed	<p>The Developer has engaged University of Guam for Technical Expertise and Joint Continuing Participation on the Yearly International Coastal Cleanup. 3 areas under discussion. 1) Technical Assistance 2) Private Public Partnerships 3) Coordination with Sea Grant on the Annual International Coastal Cleanup.</p>
Item 7 Public Beach Access - Closed	<ul style="list-style-type: none">▪ Access as currently reserved for the Public by Pago Bay Resort will not be restricted or changed by the Developer of Pago Bay Ocean Resort.▪ Parks & Recreation previously approved the Beach Access in 2008. And inspection of the Beach Access Site was made April 20, 2017 by Parks & Recreation.▪ A Beach Access sign was posted by the Developer in March 2017. It was inspected by Parks & Recreation to be in compliance with sign regulations.▪ New improvements by the Developer will be included in the Building Permit, Additional improvements include Emergency Vehicle Access and Turnaround, Paved Parking and ADA Parking from Route 4.▪ Attachment 5.



China Chemical Guilin Engineering Co. Ltd.
International Business Department
77 Qixing Road, Guilin,
Guangxi P.R. China
Tel: 0773-5833 811
Email: kevin.wujianyu@qq.com

February 24, 2017

Guam Land Use Commission
590 South Marine Corps Drive
Tamuning Guam, 96913

Reference: **Commitment Letter**
Pago Bay Ocean Resort Residential Project

Dear Sirs,

We, China Chemical Guilin Engineering Co. Ltd. (CGEC), is an leading EPC contractor, mainly deals with in turn-key contracting, engineering design & engineering consultation on chemical, rubber, civil building, pharmacy, tobacco, urban utilities, municipal plan, electrical power, environmental protection and fire-fighting Industries. CGEC is wholly owned by China National Chemical Engineering Co. Ltd. which is listed in ShangHai in year 2010.

We CGEC are pleased to express our commitment by this letter to cooperate with Guam Wanfang Construction Ltd. for the oncoming **Finance+Technical Support for Pago Bay Ocean Resort Residential Project**. We have confidence and capability to finish the project to its best value and abide by Guam construction law.

CGEC will cooperate with Guam Wanfang Construction Ltd. and provide the project finance capability no less than US Dollar Ninety Six Million (US\$ 96,000,000.00).

We do hope through this submission and ensuing discussions we will instill a confidence that the CGEC will drive through all of its steps to a resounding success.

China Chemical Guilin Engineering Co. Ltd.,

Mr. Wu Jianyu
Assistant General Manager

DOOLEY ROBERTS FOWLER & VISOSKY LLP
ATTORNEYS AT LAW

DAVID W. DOOLEY
TIM ROBERTS
KEVIN J. FOWLER
JON A. VISOSKY
SETH FORMAN

865 SOUT MARINE CORPS DEIVE
SUITE 201
TAMUNING, GUAM 96913
TELEPHONE: (671) 646-1222
FACSIMILE: (671) 646-1223
www.GuamLawOffice.com

Of Counsel:
MELINDA C. SWAVELY

Writer's Direct Email:
Forman@GuamLawOffice.com

December 21, 2016

VIA HAND DELIVERY

John Z. Arroyo, Chairman
Guam Land Use Commission
ITC Building
590 South Marine Corps Drive
Tamuning, Guam 96913

VIA HAND DELIVERY

Marvin G. Aguilar, Guam Chief Planner
Department of Land Management
590 South Marine Corps Drive
Tamuning, Guam 96913

*P. Carlan 12/21/16
Land Plus DW*

**Re: Draft Agreement pursuant to section 8 of May 3, 2016 Notice of Action re:
Pago Bay Marina Resort**

Dear Chairman Arroyo and Chief Planner Aguilar:

Attorney Jon Visosky of our office is currently representing Wanfang Construction, Ltd. and Guam Wanfang Construction Ltd. with regards to matters pending before the Guam Land Use Commission concerning the Pago Bay Marina Resort project. Because Jon is currently off-island, I have been asked to prepare a document to be submitted to the Commission for review, that being a draft agreement between the Commission and Wanfang concerning a demolition bond to assure demolition of structures associated with the project in the event that Wanfang cannot complete the project due to lack of funding. Wanfang is required to submit this draft agreement by section 8 of the Notice of Action prepared on May 3, 2016 concerning Wanfang's request for a height variance. A draft agreement is enclosed for your review and comments. Because section 8 did not provide substantial detail concerning the agreement to be submitted for the Commission's review, I would like to call your attention to some of the proposed language that has been included to "fill in the blanks".

I would note that the draft agreement provides for a bond payable to the Guam Department of Public Works in the amount of 110% of the estimated cost of demolition of the



project, not 110% of the cost of the entire project. This is because the bond would be used only to demolish the incomplete project, rather than to complete, the project.

The draft agreement provides for reports from Wanfang to the Commission up until the time that construction commences. Wanfang understands that once construction has commenced, the Department of Public Works would be the agency with primary responsibility for oversight in accordance with Guam law.

The draft agreement also provides for demolition of any or all parts of the project that are incomplete and that violate any Guam law, are a hazard to the environment or public health, and/or are an eyesore. It is Wanfang's understanding and belief that even if the entire project is not completed on time, the bond would and should not be used to demolish buildings or facilities that are complete and functional.

With respect to review of an initial decision by the Commission to authorize use of the bond to commence demolition, the draft agreement provides that Wanfang would have a minimum (and at the Commission's discretion, that could also be a maximum) of 30 days to seek reconsideration of such a decision. The draft agreement provides that Wanfang could not seek judicial review of the decision without first seeking reconsideration from the Commission. The draft agreement further provides that if Wanfang then seeks judicial review, a decision by the Commission which is in accordance with the law and which is supported by substantial evidence shall be conclusive. This is the same deferential standard of review applied to other administrative agency decisions in 9 GCA §9239 in Guam's Administrative Adjudication Law.

Thank you for your attention to this matter. Representatives of Wanfang and either Jon or I would of course make ourselves available to meet with you and/or the Commission's attorney to discuss this Draft Agreement. Once the draft agreement has been reviewed and approved, we can arrange to have it finalized and recorded.

Sincerely,

DOOLEY ROBERTS FOWLER & VISOSKY LLP

Seth Forman

Seth Forman

Encl.

cc: James Fang, Vice President/General Manager
Guam Wanfang Construction Ltd.

John K. Sherman, PE, President
AES Construction

**DRAFT AGREEMENT BETWEEN GUAM LAND USE COMMISSION AND GUAM
WANFANG CONSTRUCTION LTD. CONCERNING DEMOLITION BOND**

THIS AGREEMENT is entered into this ____ day of December, 2016, by and between the Guam Land Use Commission, hereinafter called "the Commission", represented by the Chairman of the Commission, and Wanfang Construction Ltd., hereinafter called "Wanfang", represented by the General Manager of Guam Wanfang Construction Ltd..

WHEREAS, in Application No. 2015-29A, Wanfang applied to the Commission for a zone variance for height to construct the Pago Bay Marina Resort on Lot 164-4NEW-1, Municipality of Yona; and

WHEREAS, on May 3, 2016, the Commission approved the application for the zone variance for height with conditions; and

WHEREAS, the conditions for the approval included a requirement that there be an agreement between Wanfang and the Commission to assure the availability of funding for the demolition of structures associated with the project in the event the developer fails to realize project completion as a result of lack of funding;

NOW THEREFORE the Commission and Wanfang agree as follows:

1. Wanfang shall commence construction on the Pago Bay Marina Resort project by May 1, 2017, and shall complete the project by November 30, 2019.
2. From the date of recordation of approval for the project up until the date of commencement of construction, Wanfang shall submit a written report every six months to the

Commission on the status of the project with respect to the associated phases of development. The reports shall include the status of funding for the overall project. Prior to commencement of construction, Wanfang shall provide the Commission with documentation that it has the financial capability to complete the project.

3. Prior to securing permits for the project, Wanfang shall obtain an estimate of the cost of demolition of the structures associated with this project from a reputable demolition company. Wanfang shall provide a copy of the estimate to the Commission.

4. Wanfang shall obtain a bond payable to the Guam Department of Public Works in an amount equal to 110% of the estimated cost of demolition of the structures associated with this project.

5. If the project is not completed by May 31, 2020, or if the Commission determines through substantial evidence that the project has been abandoned without being completed prior to that date, and if the Commission determines through substantial evidence that any or all parts of the incomplete project that are in place at that time violate any Guam law, are a hazard to the environment or public health, or are an eyesore visible from adjoining property or public roads, then the Commission may issue a decision authorizing the Department of Public Works to use the funding from the bond to demolish such parts of the project.

6. Wanfang may seek reconsideration from the Commission of a decision issued pursuant to paragraph 5 of this agreement within such time period as the Commission finds to be reasonable, provided that such time period shall not be less than 30 days. When seeking such reconsideration, Wanfang must cite appropriate reasonable justification to rescind such order. No demolition shall take place and no funds from the bond shall be expended while a request for

reconsideration, or an appeal therefrom, is pending. The request for reconsideration is a requirement for Wanfang to exhaust its administrative remedies before Wanfang may appeal the decision as set forth in paragraph 7 below.

7. Wanfang's may appeal any decision made by the Commission pursuant to this Agreement to the Superior Court of Guam by filing a petition for judicial review in the Superior Court of Guam within 30 days after denial of a request for reconsideration. A decision of the Commission which is in accordance with the law and which is supported by substantial evidence shall be conclusive.

8. Wanfang may request the release of any bonding obtained pursuant to this Agreement when the project is complete and a final occupancy permit has been secured through the Guam Department of Public works.

GUAM LAND USE COMMISSION

Dated: _____

By: _____

John Z. Arroyo, Chairman

GUAM WANFANG CONSTRUCTION, LTD.

Dated: _____

By: _____

**James Fang, Vice President/General
Manager**

Zone Variance Application No. 2015-29B, Pago Bay Ocean Resort

Guam Wanfang Construction, Inc.

The following is the Revised Schedule for Pago Bay Ocean Resort.

Each phase requires the Owner/ Developer Approval before proceeding. Final Approval by the Authorities under DPW Permit is also an estimated duration. Delays in the Schedule are a Normal Shift in date during Design, Construction Documentation, Permitting, Construction, Occupancy Permit and Project Closeout.

SD - Schematic Design (Early Design Phase describing the Basic Components of the Project.) Completed December 2, 2016

Reburial Permit - Update Final Coordination with Parks & Recreation was completed April 19, 2017. DPW Permit Final Submission was on April 26, 2017. We await their comments and approval. Construction is scheduled to be complete on or about July 19, 2017. Reburial Ceremony has not been scheduled until Procedures for the handling of remains are completed under the overview of Guam Parks & Recreation.

DD - Update Design Development 50% Complete on Hold April 2017. Revision on Structural System pending approval from the Owner. 6 weeks remaining to complete Design Development.

Site Grading Permit- Update Submission to DPW & Army Corps of Engineers May 2, 2017. Grading for Temporary storm water ponding basin, Vegetative Barriers and Construction Sedimentation/ Silt Barriers will be described.

Permit for DPW/ Federal Highway Work- Submission to DPW & Department of Highways, on Hold.

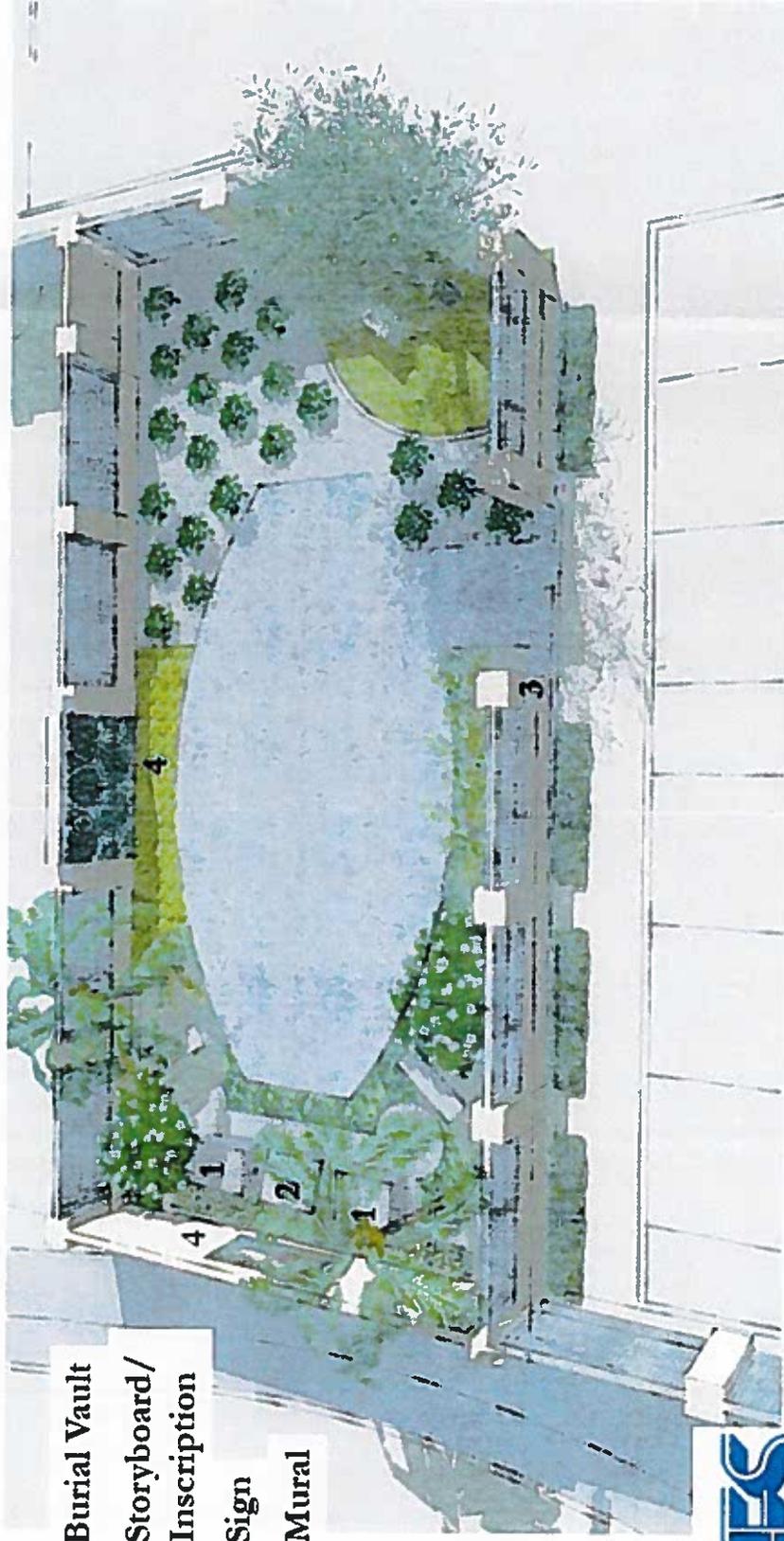
CD - Construction Documents (Final Architectural and Engineering Documentation, submitted for permitting) is on Hold. 12 weeks remaining after completion of Design Development.

Building Permit - on Hold. 12 weeks remaining after completion of CD's.

CA - Construction Administration, Upon receipt of Permit, 18 month duration.

Occupancy Permit and Contract Closeout - an additional 6 months.

Operations - Post-construction agreements on OSHA, EPA and Utility agreements and regulations, including those above and beyond items stated in the NOA by the ARC Agencies during post occupancy operations. i.e. Pool chemicals storage & disposal. Department of Agriculture regulations on Nypa Palms in the Wetlands.



1 Burial Vault

2 Storyboard/
Inscription

3 Sign

4 Mural



Fanhafutan I Manaina-ta Guini Gi Pāgu



ABS CONSTRUCTION
 1000 S. W. 10TH AVE. SUITE 100
 MIAMI, FLORIDA 33135
 TEL: 305-441-8888
 FAX: 305-441-8889

DATE: 02.22.2018
 TIME: 02.2018
 PROJECT: FULL SITE DEVELOPMENT PLAN

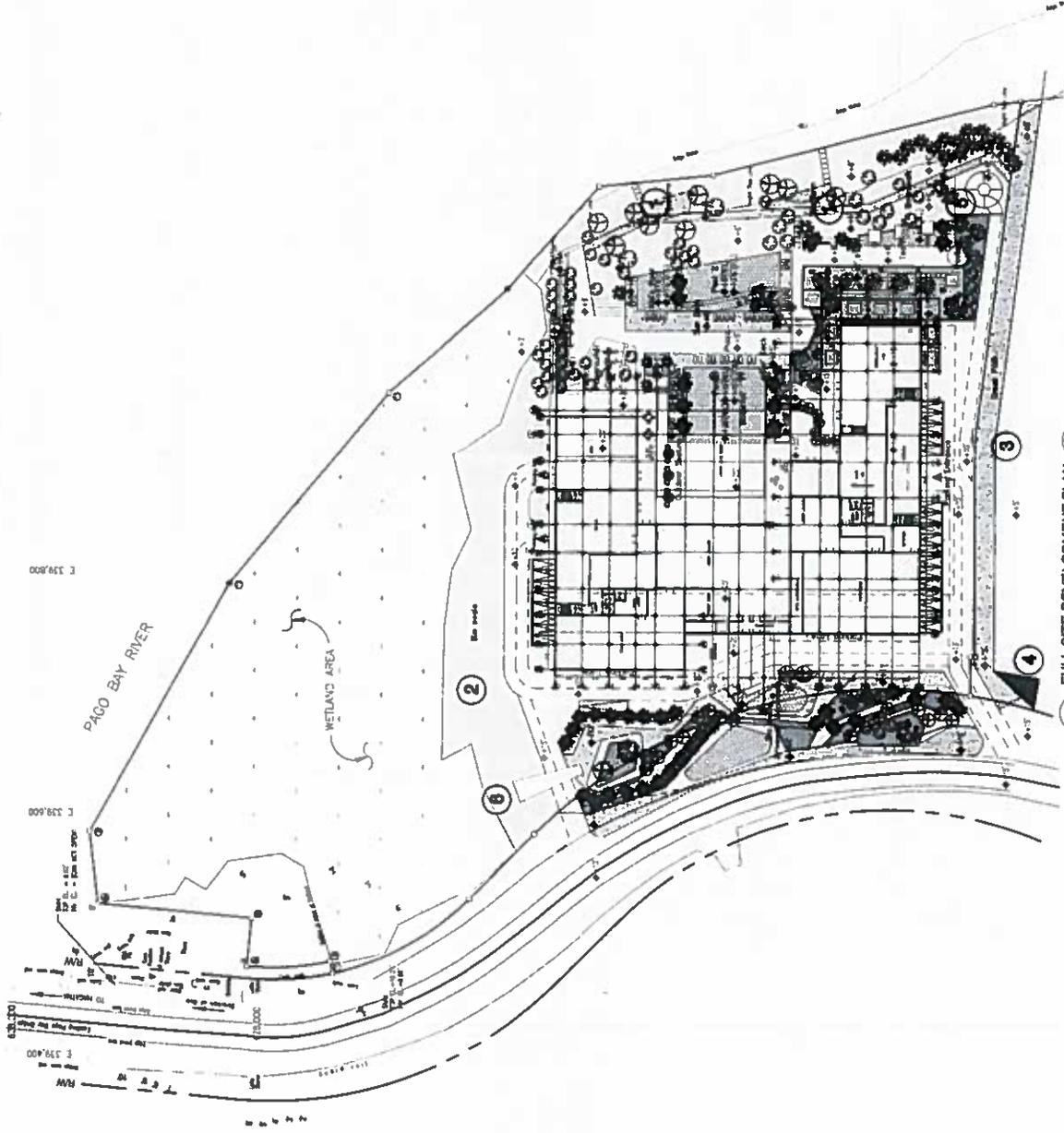
No.	Description/Remarks	Date	Author/Checked
01	CLIC Status Update	04.22.2018	
02	CLIC Status Update	04.02.2018	

GUAM WAWANG
 CONSTRUCTION
 1000 S. W. 10TH AVE. SUITE 100
 MIAMI, FLORIDA 33135
 TEL: 305-441-8888
 FAX: 305-441-8889

PAAGO BAY OCEAN RESORT
 YONGE
 GUAM
 1000 S. W. 10TH AVE. SUITE 100
 MIAMI, FLORIDA 33135
 TEL: 305-441-8888
 FAX: 305-441-8889

NOT FOR CONSTRUCTION
ATTACHMENT 5, ARMY CORPS

- KEY NOTES**
- SITE FEATURES**
- 1 BOARDWALK, VIEWING PLATFORMS ON 75 FT SETBACK, VEGETATIVE BARRIER AND SWALE DESIGN
 - 2 80" SWALE ON 24 FEET VEGETATIVE BARRIER
 - 3 BEACH ACCESS
 - 4 PUBLIC BEACH ACCESS PARKING
 - 5 PUBLIC EMERGENCY VEHICLE TURN AROUND
 - 6 DPW STORAGE WATER DISCHARGE



1 AS-100 FULL SITE DEVELOPMENT PLAN
 SCALE: 1"=50'