

APPENDIX-5 Relevant Documents on Land Acquisition

Appendix-5 Relevant Documents on Land Acquisition

Acquired Documents related to Master Ground Lease Agreement

No.	Requested Document	Reference (MD No.)	Received Document/Information	Result of Document Acquisition
1	Office of the President : Document related to transfer of lease right over land issue(from MCIA to MJIL)	No. 1), b) of MD	No. 1 "Document 4.9.1, Office of the President, Transfer of Land Lease Right" (Attached document attached of Draft Final Report)	The lessee of the original land lease agreement was the Ministry of Culture and Internal Affairs (MCIA), but according to the cabinet ordinance, the present rightful lessee is the Ministry of Justice, Immigration and Labor (MJIL). During the present survey, a copy of the cabinet ordinance was obtained as legal evidence.
2	MJIL : Document showing legal validity of lease agreement renewal	No. 1), a) of MD	No. 2.1 "Document 4.9.2, MJIL, Legal Validity of Lease Agreement Renewal" (Attached document attached of Draft Final Report)	In response to the President's order, MJIL sent a notification on February 21, 2019 to the landowners on the option to renew in accordance with the land lease agreement. This was reported to the Embassy of Japan in the Marshall Islands on May 22, during the survey. However, since the notice can be read that the issue will continue to be negotiated, MJIL has attached a letter indicating that agreement renewal has become legal.
		No. 1), a) of MD	No. 2.2 "MJIL, Background"	On August 8, 2019, MJIL issued a document on the background of the meeting with the land owners.
			No. 2.3 "Minutes of Meeting with Land Owners"	The minutes dated on February 29 of the 4th meeting held on February 26, 2019, with the land owners was obtained. The minutes mainly explains the opinions of the land owners and concludes with the Minister of MJIL agreeing to discuss the landowners' opinions on increase of lease rate at the next Cabinet meeting.
3	Cabinet Office : Letter of approval for exclusive right to construction of the reservoir	No. 2) of MD	No. 2.4 "List of Participants of Meeting with Land Owners"	On October 1, a list of participants of the 4th meeting was obtained. Four out of five landowners of the proposed site are listed as participants.
4	Drawings showing the land boundaries of the land owner	No. 3) of MD	No. 3 "Document 4.9.3, Office of the President, Exclusive Rights" (Attached document attached of Draft Final Report)	RMIPA commented that the airport runway is planned to be extended in the future, and a part of the land proposed for construction of the reservoir by JICA will become a buffer zone, and therefore, it will be unusable (or will be demolished in the future even if it is constructed now). Therefore, a letter of approval on the use of this land from the Cabinet was obtained.
			Land plots having influence on the proposed land are the following.	Since the land boundaries of map owned by MWIU do not correspond with the coordinates of the topographic map prepared in this survey, comparison was not possible.
			- Nakan Weto - Katoji Weto	- The land owners were confirmed from one of the landowners (Hackney Takju) who participated in the above mentioned 4th meeting. The land owners of each Weto are as follows. - Nakan Weto : Kelai Nemna, Jitenboro Konou, Item Andrike - Katoji Weto : Kelai Nemna, Rosalie DeBrum, Bedrik Filimoni

No.	Requested Document	Reference (MD No.)	Received Document/Information	Result of Document Acquisition
5	Attorney General : Document clarifying the ownership of the landfilled plot	No. 4) of MD	No. 4.1 "Document 4.9.4, AG, Landfilled Plot Ownership Clarification" (Attached document attached of Draft Final Report)	The document listed to the left was obtained, but it was not specifically related to the proposed site.
			No. 4.2 "Document to Clarify Ownership of Landfilled Plot"	According to the document obtained from the AG on August 8th and addressed to JICA office representative (refer to the left document), the AG indicated that the landfilled site is owned by the owners of the land side plot.
			No. 4.3 "Supplement Document to Clarify Ownership of Landfilled Plot"	Furthermore, according to an email sent from the AG dated September 4th to the JICA office representative (refer to the left document), the view of the AG is that the government and the land owners will hold a meeting to determine the amount to be paid and the agreement will be concluded.
			No. 4.4 "Minutes of the Internal Meeting between MWSC and AG"	AG confirmed that USD 4,000/ac/year is governmental rate of lands with MWSC and the Ministry of Foreign Affairs.
			No. 4.5 "The Official Letter on Progress of the Land Lease Negotiation from AG to JICA"	- AG expressed RMI government's opinion to JICA that USD 4,000/ac/year is governmental rate of lands. - AG insisted that lease rate is not set compulsorily by the land registration authority. At the same time, commercial rates are confidential between the parties. In general, commercial rate is higher than governmental one because the commercial rate includes that of assets like buildings, AG indicated. - AG expressed that RMI Government can negotiate with the landowners of Nakan Weto and Katoji Weto as an addendum to the master ground lease agreement between Majuro International Airport and rainwater reservoir system adjacent landfill area for the Project.
			No. 4.6 "The Official Letter with Master Ground Lease Agreement and the Minutes of the Meeting between RMI Government and Landowners to JICA"	On May 22, 2020, MWSC finally submitted the minutes of the meeting dated on May 11, 2020 and the addendum to the master ground lease agreement between Majuro International Airport and rainwater reservoir system adjacent landfill area for the Project dated on May 20, 2020 to JICA.



REPUBLIC OF THE MARSHALL ISLANDS

CONFIDENTIAL

C.M. 248 (2018)

FOR ACTION

Minister of Culture and Internal Affairs
Minister of Works, Infrastructure and Utilities
Minister of Justice, Immigration and Labor

FOR INFORMATION

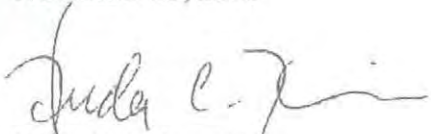
All Ministers

SUBJECT: Transfer of Responsibility of Government Leases and Division of Land and Survey.

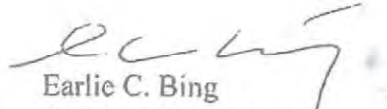
At its meeting on November 23, 2018, the Cabinet:

- 1) **approved** the transfer of the responsibility of all Government leases from the Ministry of Culture and Internal Affairs to the Ministry of Justice, Immigration and Labor; and
- 2) **approved** the transfer of the Land and Survey Division from the Ministry of Culture and Internal Affairs to the Ministry of Works, Infrastructure and Utilities, including personnel, salary and wages for personnel, budget, and equipment; and
- 3) **directed** the Attorney-General to draft the relevant legislation, other legal instruments, or amendments thereto, if required, to give effect to these transfers;
- 4) **directed** the Secretary of Finance, in consultation with the Office of the Attorney-General, Ministry of Culture and Internal Affairs, Ministry of Justice, Immigration and Labor and the Ministry of Works, Infrastructure and Utilities to transfer the relevant budgets to give effect to these transfers and not to exceed the 10 percent reprogramming requirement;
- 5) **appointed** the following as members of the Negotiating Team responsible for obtaining new leases or renewals for the Government: responsible Minister, Attorney-General and the Secretary of Finance.

Page 2 of 2
C.M. 248 (2018)
November 23, 2018



Hilda C. Heine, Ed. D
President



Earlie C. Bing
Clerk of the Cabinet

[Reference – C.P. 8031 (2018)]
Signed by the President on November 23, 2018.

No.2-1 MJIL, Legal Validity of Lease Agreement Renewal



REPUBLIC OF THE MARSHALL ISLANDS
MINISTRY OF JUSTICE, IMMIGRATION & LABOR
OFFICE OF THE MINISTER

PO Box 1712 ~ Majuro, Marshall Islands 96960
Tel: (692) 625-7232 ~ Email: adingj@gmail.com
Office: RMI Sea Patrol, Delap Village, Majuro Atoll

June 7, 2019

Nobuaki MATSUI

JICA Marshall Islands Office

Matsui.Nobuaki@jica.go.jp

TEL (692) 625 5437/5438

Re: Legal Position on Lease Agreement.

Dear Mr. Matsui,

During the meeting with JICA and the Consultants on the Project for the Improvement of Water Reservoir, JICA requested the Ministry of Justice, Immigration and Labor to provide clarification on the Ministry's position on the current Master Ground Lease Agreement (Majuro International Airport and Water Distribution System). Please note, that the Ministry of Justice, Immigration and Labor, although is now the custodian of all Government Leases, the terms and conditions for any lease is still subject to the control and approval of the Government of the RMI, namely, the Cabinet. Therefore, the Ministry will execute any terms and conditions of any lease in accordance with the approval of the Cabinet.

As you are aware, the Ministry of Foreign Affairs and Trade sent a letter to the Embassy of Japan in regards to the current Lease Agreement. That letter is a copy of what the RMI Government sent to the various landowners of both the Airport and Water Reservoir areas. The letter was sent to notify the landowners of Section 23 of the Lease Agreement. In other words, the Government notified the landowners of their intent to invoke the Option to Renew clause stipulated under the Lease Agreement. It is stated in the letter that the Government will renew the Lease for an additional 25 years (Section 23 Option to Renew) and that the terms and conditions of the current leases remain the same, except the annual rent which is to be agreed to by the Parties (The Government and the landowners).

Therefore, this letter is submitted to reiterate that the RMI Government is invoking Section 23 of the Lease Agreement and extending the Lease for an additional 25 years upon the expiration of the initial term of the Lease.



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I would like to take this opportunity to thank JICA and the Japan Government for their continued support and assistance to the Republic of the Marshall Islands.

Respectfully,

A handwritten signature in black ink, appearing to read "Jack J. Ading", is written over the printed name.

Jack J. Ading

Minister of Justice, Immigration and Labor.

Republic of the Marshall Islands.

No.2-2 MJIL, Background



REPUBLIC OF THE MARSHALL ISLANDS
MINISTRY OF JUSTICE, IMMIGRATION & LABOR
OFFICE OF THE MINISTER

PO Box 1712 ~ Majuro, Marshall Islands 96960
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Office: RMI Sea Patrol, Delap Village, Majuro Atoll

August 20, 2019

Mr. Nobuaki Matsui
Resident Representative
Japan International Cooperation Agency (JICA)
JICA Marshall Islands Office

Subject: Notification – Improvement of Water Reservoir Project

Dear Mr. Matsui-san,

This is to officially notify your office of the following items highlighted for the Ministry of Justice, Immigration & Labor ("MoJIL") to confirm under paragraph 9-1 of the *Minutes of Discussions on the Preparatory Survey of the Project for Improvement of the Water Reservoir at Majuro Atoll* ("MOD"), signed May 29, 2019 for the above project.

The Ministry is pleased to confirm that:

- a. the clarification provided in the document dated May 22, 2019 is appropriate with respect to MoJIL's position regarding the terms of the land lease agreement No. MI-92-0032 signed February 19, 1992; and
- b. MoJIL is the rightful lessee, representing the Government of the Republic of the Marshall Islands, on all lease agreements, and in particular, the lease agreement for the land used for the airport and water reservoirs. Please find attached herewith, a copy of the Cabinet Minute confirming transfer of the custodian of government leases from the Ministry of Culture and Internal Affairs to the Ministry of Justice, Immigration and Labor; and
- c. Section 23 of the lease agreement contract No. MI-92-0032 grants the lessee the right to invoke the *Option to Renew* clause by sending a written notification to the landowners expressing such desire to renew the lease for an additional twenty-five (25) years under the same terms, with the exception of the rental rate and a new renewal clause. It is explicitly provided that the rental rate may be renegotiated for a higher rate that shall



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not exceed the current Government rental rate for private land. Additionally, notification letters expressing a desire to renew the lease agreement have been delivered to landowners along with a draft lease agreement; and

- d. MoJIL confirms that while all the respective land parcels were properly represented and afforded time and opportunity to discuss the rental rates during the four (4) meetings, the Government remained committed to renewing the lease at the rate stipulated in the lease agreement contract. MoJIL is pleased to provide the attached Meeting Minutes between the Landowners and the Government on February 26, 2019 for reference. The Landowners also met with Her Excellency, Madame President and a few Cabinet Ministers whereby the Landowners reiterated their desire to have the rental rate increased from the current Government rate, however the response was to remain within the limit. As such, MoJIL believes the Landowners have been afforded sufficient notice and therefore have been duly notified of the Government's intention to renew the lease agreement at an amount not exceeding the current Government rate of \$4,000 per acre per year.

We hope the information contained herein is sufficient as per the MOD, but if you have any questions, please do not hesitate to contact our Office for any clarifications.

Sincerely,

Hon. Jack Ading
Minister of Justice, Immigration & Labor

No.2-3 Minutes of Meeting with Land Owners

Meeting Minutes

Meeting between Airport (AKIA) Landowners and the RMI Government

Date: February 26, 2019

Time: 2pm

Venue: Women's Training Center (PSS)

Present: Airport Landowners (*refer to sign in sheet – MOCIA*)

Hon. Jack J. Ading, Minister of Justice, Immigration and Labor

Attorney General's Office – AG Filimon Manoni, DAG Johnathen Kawakami, AAGs F. Tafaaki and E. Iban, Elma Ned

Ports Authority – James Bing and Anram Chichi Kemem

Chief Secretary's Office – Kino Kabua

Ministry of Culture and Internal Affairs – Assistant Secretary Wallace Peter

Opening Remarks – Hon. Jack J. Ading

Minister Ading opened the meeting and welcomed the landowners and thanked them for being able to make it to the meeting. Minister Ading made note of the ongoing dialogue between the landowners and the government in previous meetings and thanked them for their cooperation and constructive discussions. Minister then introduced the members present on the government's side. Minister Ading then briefly touched on some of the pending issues from previous meetings and noted that they would be addressed accordingly by the relevant representatives on the government side. Lastly, Minister opened the floor to the landowners for brief remarks.

Remarks on behalf of landowners – Mr. Phillip Muller

Mr. Muller acknowledged and thanked the government for their efforts in meeting with the landowners and discussing various issues raised. Mr. Muller was hopeful that the government would be agreeable to the landowner's request for an increase of lease payments from \$4,000 per acre/per year to an amount no less than \$7,000 per acre/per year or a higher amount once a survey or appraisal has been carried out on the airport. Mr. Muller further stated that the landowners are aware of the revenue generated from the airport lands and were hopeful that the government would find ways to come up with the funding to cover the requested increase.

Remarks from the Office of the Attorney General

AG Manoni acknowledged Minister Ading and the government representatives, as well as the landowners and their appointed Chairman Mr. Muller. AG Manoni then turned it over to AAGs Tafaaki and Iban to further explain to the landowner's the government's intention to renew the lease pursuant to Section 23 of the existing Ground Lease Agreement between the Government and Landowners. Section 23 allows for the government, upon written notice to the landowners, the option to renew the lease for an additional 25 years at the current government lease rate. The current government lease rate is \$4,000 per acre/ per year. This issue proved to be the heart of the discussions. The landowners assumed that we were re-negotiating the lease rate, however, the government was merely invoking its right to renewal. From a legal standpoint, the AGs office did explain to the landowners that any changes to the lease rate would require Cabinet approval.

Remarks from Ports Authority – James Bing

Minister Ading then gave the floor to Mr. Bing to share a few words. Mr. Bing bluntly stated that the Airport does not generate any income, rather it is only able to stay afloat via collections for its operations. Mr. Bing wanted to make this notion clear to the landowners in case they were led to believe otherwise. Mr. Bing then distributed copies of Revenue/Expenditures for the Ports Authority (see attachment 1). Mr. Bing then addressed another issue brought up by landowners regarding their right to first refusal on any equipment or supplies. Mr. Bing reiterated that this is still being done and just recently, a number of landowners were able to pick up chairs that were recently replaced in the terminals.

Hackney Takju

Alap Takju acknowledged all those present for the meeting and thanked the government side for their time. Alap Takju just wanted to make note of the fact that several airlines are now landing in the RMI and several businesses (local and foreign) use the airport lands for various reasons. Alap Takju just wanted to highlight these things to the government that if any way those revenues generated from those businesses could be used to increase the lease payments.

Nidel Lorak

Alap Lorak acknowledged all those present and thanked the government side for clarifying their position and notifying the landowners of their intent to renew the lease. Further, he noted that he is still holding out hope that the landowners will be compensated justly. Alap Lorak also noted the reclaimed lands and asked when the landowners can expect a survey/appraisal of the leased lands. Alap Lorak then added that he is hopeful that the government would further consider the landowners request for an increase of the lease payments in the near future.

Phillip Muller

Mr. Muller again thanked the government for the fruitful discussions and also requested that the government consider at some point down the road, an increase in lease payments.

Minister Jack J. Ading

Minister Ading once again thanked everyone for their contributions to the discussion and noted that he would bring up the points discussed in the meeting with the Cabinet. Further Minister Ading noted that he would keep the landowners apprised of any new developments and would be in touch should the need for another meeting arise.

meeting adjourned

No.2-4 List of Participants of Meeting with Land Owners

Meeting with Landowners of the New Water Catchment Project site

Date: February 26, 2019 @ 2pm

	Name	Title	Weto
1	Neilom Zedkeia	Daughter of Iroijlablab	Lots M1, M2, N, O*
2	Kelai Nemna	Iroij	Lots A, B, C, D, E, P, Q*
3	Rosalie deBrum	Alap	Katoj, Neioabwe
4	Marie L. Maddison	Senior Rijerbal	Neioabwe
5	Anke Laelang		
6	Rosemond Lijokon Jetnil		
7	Kendy Ten	Alap	Nuwe
8	Bedrik Bland**	Senior Rijerbal	Katoj
9	Lourine B. Komta		Katoj
10	Jitenboro Konou	Alap, Senior Rijerbal	Kiniloke
11	Biolynn Langrine	Senior Rijerbal	Ejean
12	Maston Edwards	Alap	
13	Emlin M. Joran (for Hilda Samuel)	Alap	Mar
14	KC deBrum	Future Alap	
15	Peterson Bland		
16	Rosebina Edmond	Senior Rijerbal	Katoj
17	Bedrik Filimoni	Senior Rijerbal	Katoj
18	Nidel Lorak	Alap, Senior Rijerbal	Jabonbar, Komlal
19	Vincent Muller		
20	Walter Laelang	Iroij	
21	Jitenburo Konou	Alap	Nakan
22	Badina Bland		
23	Irene Tarkij	Senior Rijerbal	Mar
24	Hackney Takju	Senior Rijerbal	Lot P, Q*

* See airport site survey pdf to see names of Lots

** Same person as Bedrik Filimoni



REPUBLIC OF THE MARSHALL ISLANDS

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C.M. 125 (2019)

FOR ACTION

Minister of Works, Infrastructure and Utilities

FOR INFORMATION

All Ministers

SUBJECT: Construct an additional rainwater reservoir.

At its meeting on May 29, 2019, the Cabinet:

1. **approved** Majuro Water and Sewer Company's exclusive right to construct an additional rainwater reservoir at the currently under-water area of approximately 2.3ha between the eastern perimeter fence of Amata Kabua airport and the existing rainwater reservoir No.6 as shown in the attached Annex.

Handwritten signature of Hilda C. Heine in black ink.

Hilda C. Heine, Ed. D
President

Handwritten signature of Earlie Carter Bing in black ink.

Earlie Carter Bing
Clerk of the Cabinet

[Reference – NO C.P. (2019)]

Signed by the President on May 29, 2019.



REPUBLIC OF THE MARSHALL ISLANDS
OFFICE OF THE ATTORNEY GENERAL

Po Box 890
Majuro, Marshall Islands MH 96960

June 11, 2019

Abacca Maddison
Acting Chief Secretary
Office of the Chief Secretary
Republic of the Marshall Islands.

Re: Legal Opinion on Aggregate Ownership in the RMI.

Dear Acting Chief Secretary,

This Memo responds to the questions posed in your Office's Memo dated January 31, 2018. There are a number of legislation highlighted here as well as regulations. The Office has also made references to specific case laws to help clarify some of the questions here.

The Office has attached to this relevant pieces of legislation, case law and the Regulations mentioned here for further review and clarity if any.

Please do not hesitate to contact the Office should you have any further questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'Johnathan Kawakami', written over the typed name and title.

Johnathan Kawakami
Acting Attorney General.

Cc:
Kino Kabua –Deputy Chief Secretary
Maybelline Bing – Secretary of Finance

1. Which entity, public or private can claim legitimate ownership over the intertidal zone (and all resources therein) on both the lagoon and ocean sides of Majuro atoll?

Pursuant to Section 103 of the Public Lands and Resources Act ("Act"), *"That portion of the law established during the Japanese administration of the area which is now the Republic, that all marine areas below the ordinary high watermark belong to the government, is hereby confirmed as part of the law of the Republic..."*

There are however a number of exceptions to this provision. These are:

- (a) *Such rights in fish weirs or traps (including both types erected in shallow water and those sunk in deep water) and such rights to erect, maintain and control the use of these weirs or traps as were recognized by local customary law at the time the Japanese administration abolished them, are hereby reestablished; provided, that no weirs or traps or other obstruction shall be erected in such locations as to interfere with established routes of water travel or those routes which may hereafter be established.*
- (b) *The right of the owner of abutting land to claim ownership of all materials, coconuts, or other small objects deposited on the shore or beach by action of the water or falling from trees located on the abutting land, and such fishing rights on, and in waters over reefs where the general depth of water does not exceed four feet at mean low water as were recognized by local customary law at the time the Japanese administration abolished them, are hereby reestablished where such rights are not in conflict with the inherent rights of the government as the owner of all marine areas below the ordinary high watermark; provided however, that this Section shall not be construed to apply to any vessel wrecked or stranded on any part of the reefs or shores of the Republic.*
- (c) *The owner of land abutting the ocean or lagoon shall have the right to fill in, erect, construct and maintain piers, buildings, or other construction on or over the water or reef abutting his land and shall have the ownership and control of such construction; provided, that said owner first obtains written permission of the Chief Secretary before beginning such construction.*
- (d) *Each of the rights described in Paragraphs (a), (b) and (c) of this Subsection (1) are hereby granted to the person or group of persons who held the right at the time it was abolished by the Japanese administration, or to his or their successor or successors in interest. The extent of each right shall be governed by the local customary law in effect at the time it was abolished.*
- (e) *Nothing in the foregoing Paragraphs of this Subsection (1) shall withdraw or disturb the traditional and customary right of the individual land owner, clan, family or municipality to control the use of, or material in, marine areas below the ordinary high watermark, subject only to, and limited by, the inherent rights of the Government of the Marshall Islands as the owner of such marine areas. The foregoing Paragraphs of this Subsection (1) shall create no right in the general public to misuse, abuse, destroy or carry away*

mangrove trees or the land abutting the ocean or lagoon, or to commit any act causing damage to such mangrove trees or abutting land.

(f) Any legal interest or title in marine areas below the ordinary high watermark specifically granted to an individual or group of individuals by the Republic or any previous administering authority, or recognized as a legal right or rights, shall not be affected by this Section.

(1) Written notice of any legal interest or title must be filed with the land office within two (2) years from January 8, 1958. The validity of the claimed legal interest or title shall be determined by the land officer after notice to the person making the claim or any other known parties in interest, and an opportunity for hearing, in the same manner and with the same rights of appeal as in the case of claims to land which the government had possession of under claim of ownership. [TTC 1966, §32; 67 TTC 1970, §2; 67 TTC 1980, §2, modified.]

This position is also confirmed by the Supreme Court of the Marshall Islands (the highest Court of the Republic) in the case of *Zedkaia and Toring v Marshalls Energy Company Inc., et al* SCT Civil 12-01 (11/18/15). The Supreme Court stated in pages 4 and 5 of their Opinion, that "

At the heart of this case is the ownership of the disputed land. If Plaintiffs own the land, we must decide whether Defendants are liable for unlawful taking and trespass. If, on the other hand, the Government owns the disputed land, then Plaintiffs' claims for unlawful taking and trespass fail. The parties rely on various statutes in arguing that they each own the disputed land.... It is undisputed that the land at issue was submerged below the ordinary high water mark before the Government filled it. As a "marine area below the ordinary high watermark," section 103(1) indicates that the submerged land belonged to the Government. "

It should also be noted that in regards to Majuro's lagoon, Article IX Section 1(1), (2) and (3) of the RMI Constitution states,

"(1) The people of every populated atoll or island that is not part of an atoll shall have the right to a system of local government which shall operate in accordance with any applicable law."

"(2) The system of local government shall in each case extend to the sea and the seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll or island is measured."

"(3) The whole of the land and sea areas to which any system of local government extends shall lie within the jurisdiction of a local government; and, where there is more than one local government, the land and sea boundaries of their respective jurisdictions shall be as defined by law."

Therefore, Majuro Atoll Local Government (MALGOV) has jurisdiction over the land and sea areas of the lagoon (internal waters) and a distance of 5 miles from the baselines from the territorial sea of Majuro. So even if MALGOV may have jurisdiction to pass ordinances in regards to Majuro's internal waters, that authority does not grant MALGOV the exclusive right to claim ownership. This was made clear in the case of *Majuro Atoll Local Government v Marshall Islands Marine Resources Authority CA 15-25 (11/23/15)* where the High Court stated,

"Thus the constitution deal with both elements of the jurisdiction of local governments. It establishes the territorial jurisdiction of a local government in Article IX Section 1(3) and the limits of its political authority in Article IX, Section 2(1). While local governments have broad powers within their geographic areas, they are subject to the authority of the national government, including the authority to grant exclusive authority to MIMRA for the management of the nation's fishery waters, including Majuro lagoon."

This case confirms that the marine areas below the ordinary high watermark belong to the Government. The specific public entity that is authorized by law to regulate the marine areas including its resources is the Marshall Islands Marine Resources Authority. However, the owners of the abutting land have specific rights as explained in sub paragraphs (a) through (f) above.

2. Does this interpretation extend to all other atolls and islands in the Marshall Islands, and if not, how does it differ?

Yes.

3. Which entity, public or private, can claim legitimate ownership over the marine zone beyond the intertidal zone and within Majuro lagoon?

Pursuant to Section 107 of 33 MIRC Ch. 1 (Republic of the Marshall Islands Maritime Zones Declaration Act 2016), the marine zone beyond the intertidal zone is provided as follows:

(1) Subject to subsection (2) below, the baseline from which the breadth of the territorial sea is measured shall be:

(a) where a reef is present

(i) the low-water line of the seaward side of the reef fringing the coast of any part of the Republic or bounding any lagoon adjacent to any part of that coast; and

(ii) where there are breaks in reefs or entrances to lagoons, any closing lines drawn between the natural entrance points at low water or between the geographic coordinates of points declared by order of the Minister; or

(b) where a reef is not present, the low-water line of the coast itself and outermost permanent harbour works.

(2) Where there is an archipelago, the Minister may, by order, declare, in accordance with international law, the geographic coordinates of points between which archipelagic baselines are to be drawn.

(3) Archipelagic baselines drawn pursuant to subsection (2) above shall not affect the baselines referred to in Article IX, subsection 1(2) of the Constitution of the Republic of the Marshall Islands.

Pursuant to Section 119 of the Marshall Islands Marine Resources Authority (MIMRA):

(1) Unless otherwise provided in this Title, the Authority shall have the exclusive powers and functions to:

(a) conserve, manage and sustainably develop all resources in the Fishery Waters and seabed and subsoil thereunder, in accordance with the principles and provisions in this Title and in sub-regional, regional and international instruments to which the Republic of the Marshall Islands is party;

(b) establish management plans and programs to manage the resources in the Fishery Waters;

(c) issue licenses in accordance with this Title;

(d) issue licenses for the exploration and exploitation of the seabed and subsoil of the Fishery Waters; (e) negotiate and conclude access agreements and fisheries management agreements on behalf of the Government in accordance with Article V, Section 1(d) of the Constitution and Part I of Chapter 4 of this Title;

(f) implement by regulation or otherwise as appropriate access agreements or fisheries management agreements to which the Republic of the Marshall Islands is party;

(g) act as the Competent Authority for the purpose of implementing the international fisheries and related obligations of the Marshall Islands;

(h) coordinate and manage fisheries monitoring, control and surveillance and, in consultation with the Attorney-General, enforcement of this Title;

(i) appoint authorized officers and observers in accordance with this Title;

(j) cooperate in the conservation and management of highly migratory fish stocks as appropriate with other coastal States in the region and States fishing in the region and high seas area and participate in appropriate sub-regional, regional and international organizations or arrangements relating to fisheries;

(k) participate in the planning and execution of projects, programs or other activities related to fisheries or fishing, or the exploration or exploitation of the nonliving resources of the Fishery Waters, seabed or subsoil thereunder, in which the Government or any agency or instrumentality that has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise;

(l) regulate the processing, marketing and export of fish and fish products;

(m) seek technical assistance for the determination of the Fishery Waters zones and boundaries;

(n) submit the budget and a report regarding the expenditure of its funds to the Nitijela on an annual basis,

(o) perform such other duties and functions as may be necessary to carry out the purposes and provisions of this Title.

(2) The Authority shall, in exercising its powers and functions, cooperate with other agencies of the Government with competence, given under authority of law, in any related area. [P.L. 1997-60, §11.][amended by P.L.2011-63]

In regards to the ownership of the Majuro lagoon waters, Article IX, Section 1(2) of the RMI Constitution states, *"The system of local government shall in each case extend to the sea and the seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll or island is measured."*

Fishery Waters is defined as, *"means the exclusive economic zone, the territorial sea and internal waters, including lagoons, as described in the Marine Zones (Declaration) Act, 1984, and any other waters within the jurisdiction of the Republic of the Marshall Islands;"*

Furthermore, Section 114 of the Act also stipulates *"The sovereignty of the Republic of the Marshall Islands extends to its land areas, internal waters, local government waters, territorial sea and archipelagic waters, and to the airspace over them and the seabed and subsoil under them, and the resources contained in them."*

Therefore, the various zones explained here fall under the Government of the Marshall Islands jurisdiction and regulation pursuant to the Republic of the Marshall Islands Maritime Zones Declaration Act 2016. Local governments (MALGOV) also have jurisdiction, but as the Constitution states, their jurisdiction is subject to the laws of the National Government. The public entity that is authorized by law to regulate the marine waters and the fishery waters is the Marshall Islands Marine Resources Authority pursuant to the Marshall Islands Marine Resources Act 1993.

4. Does this interpretation extend to all other atolls and islands in the Marshall Islands, and if not, how does it differ?

Yes.

5. Are there limitations to the regulations, fees and charges that the Government of the Marshall Islands may impose upon the exploitation of resources within either the intertidal or marine zones of the Majuro lagoon?

Generally limitations to the exploitation of resources would relate to acquiring licenses and the payment of fees from the designated Authority. Any limitations imposed on the exploitation of resources within either the intertidal or marine zones of Majuro lagoon is regulated by the following:

- a. Marshall Islands Marine Resources Act Regulations 1998
- b. Fishing License (Third Implementation Agreement) Regulation 2009
- c. Sea cucumber Regulations 2012
- d. Aquarium Fisheries Regulations 2015

The Office has provided copies of these Regulations along with this Memo. You can also search for these regulations on the RMI Court Website here: www.rmicourts.org search under *Constitution, Code, Regulations and Treaties* link.

6. Does this interpretation extend to all other atolls and islands in the Marshall Islands, and if not, how does it differ?

Yes.

7. **If it is deemed appropriate to extend regulations, fees or charges upon the exploitation of aggregate resources in the Majuro lagoon (or other lagoons within RMI), which Government entity should take prime carriage for the determination and implementation of such regulation, fees and charges?**

Marshall Islands Marine Resources Authority pursuant to the MIMRA Act. Section 120 of that Act grants MIMRA the authority to promulgate regulations in regards to various areas as explained below. MIMRA will be required to submit its proposed regulations to the Cabinet for endorsement and approval in accordance with the Administrative Procedures Act 1994.

(1) Subject to the provisions of this Title, the Authority may make regulations and standards to carry out the purposes and provisions of this Title, and in particular but without restricting the generality of the foregoing, may adopt regulations in relation to:

- (a) the conservation, management and sustainable development of fish in the Fishery Waters, including but without restricting the generality of the foregoing the catching, loading, landing, handling, transporting, possession, inspection, disposal and export of fish;*
- (b) related activities in the Fishery Waters;*
- (c) the operation of fishing vessels or any other vessel which may enter the Fishery Waters for any purpose which falls within this Title;*
- (d) the use and protection of fishing gear and equipment, including fish aggregating devices and artificial reefs;*
- (e) licensing for fishing, fish processing establishments and other activities falling within this Title;*
- (f) pollution or the environmental quality of the Fishery Waters;*
- (g) fisheries monitoring, control and surveillance;*
- (h) prescribing the powers and duties of persons engaged in the administration or enforcement of this Title and providing for the carrying out of those powers and duties;*

(i) compliance by citizens and fishing vessels of the Republic of the Marshall Islands which engage in fishing outside the Fishery Waters with applicable laws of other States or regional fisheries management organizations or arrangements, and applicable access agreements or fisheries management agreements; (j) the processing of fish and fish products;

(k) the export of fish and fish products; and

(l) prescribing any other matter to carry out the purposes and provisions of this Title.

(2) In promulgating regulations, the Authority shall comply, mutatis mutandis, with the procedures the Cabinet is required to take in promulgating regulations under the Administrative Procedures Act, 1994. (3) Any regulation promulgated by the Authority in accordance with this Title shall have the full force and effect of law and shall form an integral part of this Title. [P.L. 1997-60, §12.][amended by P.L.2011-63]

No.4-2 Document to Clarify Ownership of Landfilled Plot



REPUBLIC OF THE MARSHALL ISLANDS
OFFICE OF THE ATTORNEY GENERAL
P.O.BOX 890
MAJURO, MARSHALL ISLANDS 96960

August 8, 2019

Mr. Nobuaki Matsui
Resident Representative
Japan International Cooperation Agency (JICA)
Majuro, Republic of the Marshall Islands

Dear Mr. Matsui-san,

As per your request, the Office of the Attorney-General has analyzed the questioned posed by your good Office in relation to ownership of reclaimed land to construct a water reservoir.

The relevant law is the *Public Lands and Resources Act* (9 MIRC Ch. 1). In Section 103(1), it provides "...that all marine areas below the ordinary high watermarks belong(s) to the government..." with the exceptions outlined in paragraphs (a) to (f) of that provision. However, the Act further provides in Section 105 that "...title to new land created through 'land-fill' or other land reclamation processes from marine areas below the ordinary high water mark..." whether by the Government or any other person, including corporations, and for whatever purposes, belong to the owners of the adjoining land(s).

Insofar as the areas of any local governments are concerned, this is stated in Article IX, Section 1(2) and (3) although the latter is clarified in the *Local Government Act 1980* (4 MIRC Ch. 1) as required therein. Section 107(3) provides for the principles as follows:

- 1) For land boundaries—
 - a) "as far as practical, follow natural features;
 - b) not unduly cut across the boundaries of land holdings; and
 - c) not unduly fragment social groups..."
- 2) For seabed boundaries—simply that "...they should comply with the median line principle except to the extent that this would involve cutting across the boundaries of rights in the seabed in which case those boundaries should, if practical, be followed".

When compared to provisions provided above under the *Public Lands and Resources Act*, the areas of any local governments as stated in the Constitution should not have any bearings on the issue at hand.

Please do not hesitate to contact this Office should the need arise. Komol tata.

Regards,


Bernard J. Adiniwin
Acting Attorney-General

No.4-3 Supplement Document to Clarify Ownership of Landfilled Plot

差出人: "Bernard Adiniwin" <bernardadiniwin@gmail.com>
日時: 2019年9月4日 9:22
宛先: <Matsui.Nobuaki@jica.go.jp>
CC: <Zebedee-Jessica@jica.go.jp>; "cassailisjarom" <cassailisjarom@gmail.com>;
<KilmaCaslyina.MH@jica.go.jp>
件名: [External email]Re: [External email]Re: [External email]Re: Reclaim Land

[This mail was sent from an EXTERNAL sender.]

Matsui-san, again, apologies for the late reply. I'm trying my best not to make this a habit.

For both your questions, that'll be up to the Parties involved, i.e. Government and landowners, as it'll be reflected in the lease/renewal lease. Once direction is given to this Office from the Cabinet, then that's when we'll be involved.

Hope that helps. Komol tata.

On Thu, Aug 29, 2019 at 10:54 AM Matsui.Nobuaki@jica.go.jp <Matsui.Nobuaki@jica.go.jp> wrote:

Bernard-san,

Thank you very much for the letter.

We received yesterday and reported to JICA HQ.

I am afraid but the officer in charge asked the following questions.

Will you help me clarifying the matters?

1. If reclaimed land belongs to the land owners of adjoining land, should GRMI pay rent during the extended contract term to the land owner? In other words, when GRMI supposed to start payment of the rent, just after the completion of reclamation or in the new contract after another renewal 25 years later?
2. Should the GRMI make another contract for the reclaimed land or the reclaimed land under this JICA improvement water reservoir project will be considered as a part of the renewed contract by invoking the option of renewal?

I understand that GRMI should start payment after the completion of reclamation and the reclamation implemented within the contract will not require any new contract but an automatic amendment of land area size which will reflect the total amount of land lease.

You must be very busy but I hope you could clarify my questions.

Your kind cooperation will be appreciated very much.

Best regards,

Nobuaki Matsui,

JICA Marshall Islands Office

No.4-4 Minutes of the Internal Meeting between MWSC and AG

MAJURO RAINWATER CATCHMENT DEVELOPMENT

Meeting Minutes

Office of the Attorney General

April 2nd , 2020

Attendees: Richard Hickson Attorney General, Joseph Batol General Manager, Melvin Dacillo PMU, Wani De Brum MWSC Cassalis Joram Foreign Affairs

Minutes

Introduction and Welcoming

Attorney General opened the meeting to discuss progress with the Rainwater catchment project with MWSC, Foreign Affairs observed.

- Joseph Batol advised that JICA were supporting the project but needed to advise Japans Parliament.
- They needed legal advise on the land situation
- Attorney General advised that due to staff changes and a change of Government, the lease was only just ready to negotiate
- An addendum to the land lease was prepared and a meeting with the 5 land owners needed to be arranged.
- The plan is to add the area of the project, once reclamation had finished to the existing land lease as an addendum.
- Attorney General advised \$4000 per ace per year was the standard Government rate.
- Attorney General advised there was no compulsory recording of private land leases.
- Attorney General would prepare advise for GM to give JICA and minutes

Closing

Meeting adjourned at 11:00PM

No.4-5 The Official Letter on Progress of the Land Lease Negotiation from AG to JICA



OFFICE OF THE ATTORNEY GENERAL

P.O BOX 890, Majuro MH96960;
REPUBLIC OF THE MARSHALL ISLANDS

April 2, 2020

Mr Yoshiki Omura
Leader of JICA Preparatory Survey
JICA
Tokyo Japan

Dear Sir,

MAJURO WATER CATCHMENT PROJECT

Thank you for your queries regarding the Majuro Water Catchment, kindly proposed to be funded by the Japanese Government.

The lease amount that is currently paid by Government is \$4000 per acre/per year.

There is no compulsory filing of leases at the land Registration Authority, so all commercial leases are kept as commercial and in confidence between the parties. They may be a higher rate because they are usually very small parcel and may include improvements like buildings.

We are currently negotiating with the land owners for the entire land lease and the intention is to include the rental for the increase in the size in Nakan and Katwoj Wetos in the overall airport lease negotiation.

If it is more convenient for the project a separate lease addendum but parallel lease can be negotiated and created.

Yours faithfully,

A handwritten signature in black ink, appearing to be "Richard Hickson", with a long horizontal line extending to the right.

Richard Hickson

cc Joseph Batol MWSC, Wani deBrum MWSC

Cassalis Joram MOFAT



Majuro Water and Sewer Company

P.O. Box 1751 Majuro, Marshall Islands 96960

Phone: (692) 625-8838/8934/5695 Fax: (692) 625-3837

email: jibatol@gmail.com

May 22nd 2020

JICA Preparatory Survey Team

Ms. Akiko FUJITA

RE: THE PROJECT FOR NEW WATER RESERVOIR AT MAJURO ATOLL

I would like to send the copy of the document which was made as the agreement between the two Wetoos land owners at the project site and the Government of RMI.

In addition, I would like to indicate some process that were made to reach the agreement as following.

Lease rate is not set compulsorily by the land registration authority. In addition, commercial rates are confidential between the parties. However, commercial land rate may be higher than government one in general, because the rate includes that of assets like buildings.

With regard to this lease rate of the land, in the meeting on May 11, 2020 between the landowners of the two Wetoos (Nakan and Katoji) and the relevant governmental organizations such as AG, MWIU, RMIEPA and MWSC, AG explained the current status on lease rates of land. Conclusively the landowners of the two Wetoos agreed to the current condition on lease rate of lands which was stated from AG.

Yours faithfully,

Joseph Batol

General Manager, MWSC

Attached:

- 1 Addendum to the Master ground lease agreement
- 2 Minutes of meeting between Government & Landowners

**ADDENDUM TO THE MASTER GROUND LEASE AGREEMENT
MAJURO INTERNATIONAL AIRPORT AND
WATER DISTRIBUTION SYSTEM
ADJACENT LANDFILL AREA**

This lease **ADDENDUM** (hereinafter “addendum”) is made and entered into this _____, day of May, 2020, by and between the Landowners who, under Customary Law & Traditional Practice of the Republic of the Marshall Islands hold the rights, interests and titles on **Nakan Weto** and **Katoj Weto**, a portion of the area described in the land survey marked as Exhibit “A” of the Master Ground Lease (Contract No. MI-92-0032), located in Rairok, Majuro Atoll, (hereinafter referred to collectively as “Lessors”), and the Government of the Republic of the Marshall Islands, Majuro Atoll, MH 96960, acting through the Ministry of Justice, Immigration & Labor (“Tenant”).

IN CONSIDERATION of the covenants and mutual agreements contained in this ADDENDUM, and in addition to and notwithstanding any expressed term or conditions set forth in the MASTER GROUND LEASE, the parties agree as follows:

- 1. Adjacent Land.** The area and portion of Nakan Weto and Katoj Weto, as described in Exhibit “A” of the Master Lease (Contract No. MI-92-0032), located in Rairok, Majuro Atoll, shall be the subject of this lease addendum between the Lessors and the Tenant.
- 2. Land-fill Area.** The proposed area and site for the Water Reservoir Improvement Project (“Project”) is properly depicted and described in the attached survey map marked as Annex 1 to this agreement. The portion of Nakan Weto, **0.1606 acre**, and Katoj Weto, **4.4047 acre**, shall be deemed, the “land-fill area”, and consequently, upon completion of the Project, shall form part of the total acreage for the adjacent land described in this lease addendum.
- 3. Rental Adjustment.** Tenant shall, upon completion of the Project to landfill a portion of the area adjacent to the land described in Exhibit “A” of the Master Ground Lease, and thereby expanding the total leased area specifically on **Nako Weto** and **Katoj Weto**, and upon completion and publication of a revised land survey depicting and describing the total land area that is the subject of the Master Ground Lease for the Airport and Water Reservoir, inclusive of the landfilled area, adjust the rental payment in accordance with the current Government rate to accommodate the portion expanded under this current lease addendum and compensate the Lessors accordingly.
- 4. Applicability.** The provisions of the Master Ground Lease shall apply generally except as expressed in the sections above with respect to the adjacent land and land-fill areas properly described in Exhibit “A” of the Master Ground Lease and Annex 1 to this addendum.

5. Execution of Addendum. Execution of this addendum by Lessors constitutes acceptance by them of the terms and conditions of the Master Ground Lease, subject to the terms and conditions of this addendum.

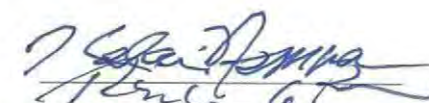
6. Rental Payment. The Lessor agrees that land rental payment will be \$4000.00 per acre per year, starting from completions of the project and survey of the additional land fill area, unless the master land lease is altered, whereby the Lessor shall pay the agreed rate of the Master Ground Lease.

IN WITNESS WHEREOF, the parties have made this addendum effective at Majuro Atoll, Republic of the Marshall Islands on the day and year first written above.

Lessors - Land Parcels as described in Annex 1

Katoj Weto

Iroij - Kelai Nemna
Alab - Rosalie deBrum
Ri-jerbal - Bedrik Filimoni


Katoj Weto
Ri-jerbal - Bedrik Filimoni

Nakan Weto

Iroij - Kelai Nemna
Alab - Jitenburo Konou
Ri-jerbal - Item Andrike

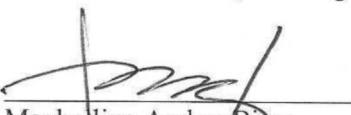

Nakan Weto
Ri-jerbal - Item Andrike

For Tenant:


Hon. Jemi Nashion
Minister of Justice, Immigration & Labor
Culture & Internal Affairs


Hon. Alfred Alfred, Jr.
Minister of Finance, Banking & Postal Svc.

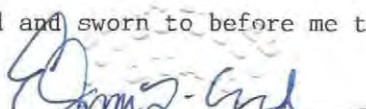
Certification of Funds


Maybeline Andon-Bing
Secretary of Finance

Approve as to Legal Form:


Richard Hickson
RMI Attorney General

Subscribed and sworn to before me this 20th day, 2020.


Elma L. Ned
NOTARY PUBLIC
Republic of the Marshall Islands
My commissions expires on the
14th day of Jan. 2021



REPUBLIC OF THE MARSHALL ISLANDS
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 890
MAJURO, MARSHALL ISLANDS 96960

Meeting Between Government & Landowners
Re Water Reservoir Improvement Project

Meeting Minutes

May 11, 2020 at 12:00 noon

Present: List of attendees – See attached sign in sheet.
Katoj Weto Landowners
Nakan Weto Landowners
Director of RMI Ports Authority ("RMIPA")
Operation Manager of MWSC ("MWSC")
Manager of Project Management Unit – Ministry of WIU ("PMU")
Office of the Attorney General ("AG")

Next meeting: Meeting between JICA/Japan & relevant Government agencies May 15, 2020.
Meeting with Landowners to be determined at a later time.

1. Opening

Attorney General Richard Hickson opened the meeting by introducing the Government representatives from the different agencies:

- Director of Ports Authority, Mr. James Bing
- Operation Manager for MWSC, Mr. Halston Wani deBrum
- Manager of PMU, Mr. Melvin Dacillo
- Assistant Attorney General Claire Loeak
- Attorney General Richard Hickson

2. Discussion

AG Hickson started the discussion by explaining the intention of the Government to seek the landowners' permission to expand an area currently under the Master Ground lease for the Airport & Water Reservoir for the purpose of undertaking a project to improve the water

reservoir. The proposed area is on two wetos, Nakan and Katoj, and the project would be undertaken by JICA. As the proponent of the Water Reservoir Improvement Project ("Project"), JICA requires the assurance that landowners have been consulted and given approval for the use of the land and to land fill the area.

AG Hickson explained that the Project is intended to improve the Water Reservoir system which would require land-filling the area, an area that is not part of the land but sits on the coastal reef, currently adjacent to Nakan and Katoj wetos.

The floor was given to MWSC to explain details of the project to the landowners. MWSC explained to landowners the extent of the improvement and the benefit the island would gain as a result. MWSC further compared the current capacity of the water reservoir against the increased capacity once the project is completed and how the island will benefit in relation to the ongoing and more frequent dry spells the Marshall Islands has been experiencing and will likely continue to experience in the future. MWSC then handed to landowners a picture of the area in its completed state.

3. Roundtable

Landowner Marie Maddison asked confirmation of the purpose of the meeting: whether it was to seek approval to land fill the area and to agree to the expansion. AG Hickson confirmed. Landowners asked if there was a timeline. MWSC responded by stating the project would likely take 22 months from the date construction begins.

Landowner Marie Maddison started discussing concession leases at the airport for other wetos unrelated to the addendum. At this time, the Iroij, Kelai Nemna stated "emman." It was agreed that our office would take the addendum back to our office to increase the font size and deliver back to the Iroij for his signature the following day.

Landowners Marie Maddison and Josepha Maddison agreed to take the addendum for their eldest sister, Alab Rosalie deBrum, to review and will contact our office later on.

A power of attorney by Dri-Jerbal Bedrik Filimoni, assigning her daughter, Rosebina Edmond, to act in her stead, was made a part of the supporting documents for the addendum. It was agreed the addendum would be delivered for the daughter's signature after obtaining the Iroij Kelai's signature the following day, May 12, 2020.

4. Conclusion

The meeting concluded on a good note and parties will touch base once all signatures have been obtained.



AAG Loeak – Minute taker



AG Hickson - True & Correct Record

DATE

5/11/2020

Landfill Addendum Mtg.

Name of Attendees

Iroij Ketai Nemna

Lisa Carlton (Iroij's daughter)

Marvyn Maddison

Josephina Maddison

Rosebina Edmund

Walston deBru

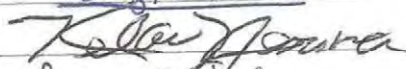
JAMES P. C. BING II

MELVIN V. DA CILLO

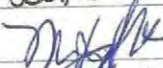
AG Hickson

AAG Weak

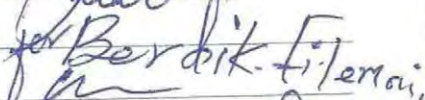
Signature



Lisa Carlton





 Rosebina Edmund

