



CIVIL SERVICE COMMISSION
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GOVERNMENT OF GUAM

I Gobietnon Guahan

Bell Tower, Suite 201

710 West Marine Corps Drive

Hagatna, Guam 96910



LOURDES A. LEON GUERRERO
Governor

Tel: (671) 647-1855/1857 • Fax: (671) 647-1867

DANIEL D. LEON GUERRERO
Executive Director

JOSHUA F. TENORIO
Lieutenant Governor

Website: csc.guam.gov



Employee Address and Contact Information / Disclosure Form:

This form requests information that is relevant and necessary to reach a decision in your Appeal. The Civil Service Commission collects this information in order to process Appeals or Complaints under its statutory and regulatory authority. An Appeal or Complaint is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Civil Service Commission with all the information essential to reach a decision in your case could result in the rejection of your Appeal or Complaint.

Please be advised that your Appeal or Complaint is available to the public under the provisions of the Sunshine Reform Act of 1999. Information contained in your Appeal or Complaint file may be released as required by the Sunshine Reform Act of 1999. Additionally, information about your Appeal or Complaint will also be used in a depersonalized form in a database for program statistics.

Please print legibly below:

Employee Name:	LYNDA B. AGUON
Position Title:	Guam Historic Preservation Officer
Agency/Department:	GHRD Dept. of Parks and Recreation
Home Phone:	(671) 734-3311
Work Phone:	N/A
Cell Phone:	483-8552
Home Address:	
Mailing Address:	P.O. Box 5268
E-mail address:	Lynda.b.aguon@gmail.com

DISCLOSURE OF INFORMATION: Upon filing of any Appeal or Complaint, all documents submitted to the Civil Service Commission become public records/writing. The documents may be disclosed, inspected, or copied pursuant to the Sunshine Reform Act (5GCA, Chapter 10) or other applicable law(s). Personal information will not be made available to the public (i.e., SSN#, home address, etc.).

I hereby agree and acknowledge that upon any changes of the above information, I will notify the Commission. Non-notification may result in my case being dismissed. Furthermore, I have read and understand the Disclosure of Information Statement above.

6/20/19	Robert E. Koss 6/20/19
SIGNATURE & DATE OF EMPLOYEE	SIGNATURE & DATE OF REPRESENTATIVE

ORIGINAL



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DANIEL D. LEON GUERRERO
 Executive Director

DATE: 6/20/19

TO: Executive Director, Civil Service Commission

FROM: Lynda B. Aguon

SUBJECT: Letter of Appeal Letter of Complaint
 (Must check only one (1) item. For multiple Appeals or Complaints please fill out additional forms.)

APPEAL: (Please check only one (1) box)

- Adverse Action Grievance Equal Employment Opportunity
 Lay-Off "Bad Faith" Furlough "Bad Faith" Priority Placement "Bad Faith"

COMPLAINT: (Please check only one (1) box)

- Post Audit Notice of Personnel Action Lay-Off Furlough Priority Placement
 Public Protection Act, "AKA: Whistle Blower" Ethics in Procurement Political Activity, "AKA: Mini-Hatch"

I, Lynda B. Aguon
 (Print Full Name)

A Classified employee Unclassified Employee of Department of Parks & Rec. in the position
 (Agency of Department)

Historic Preservation Officer alleges that the action is inappropriate for the following reasons:
 (Your official job title)

Termination is based on retaliation, denial of due process, lacking just cause, no progressive discipline, action untimely & procedurally defective and for any other reason that is either known or becomes known without limitation.

D. J. [Signature] 6/20/19
 Signature & Date

**GOVERNMENT OF GUAM
DEPARTMENT OF PARKS AND RECREATION
NOTICE OF FINAL ADVERSE ACTION**

NAME OF EMPLOYEE (First, Middle, Last) LYNDA B. AGUON		RANK OR TITLE: GUAM HISTORIC PRESERVATION OFFICER	
BUREAU OR DIVISION: GUAM HISTORIC RESOURCES DIVISION, DEPARTMENT OF PARKS AND RECREATION		DATE OF THIS ACTION: JUNE 18, 2019	
LAST KNOWN ADDRESS: <p align="center">P.O. Box 5268 Hagatna, Guam 96932</p>			
TYPE OF ACTION <input checked="" type="checkbox"/> Final Notice of Adverse Action. <input type="checkbox"/> Notice of Proposed Adverse Action. <small>This is a Notice of Proposed Adverse Action which may result in any of the following: B, C, D.</small>			
A. DISMISSAL (Temporary Intermittent, Provisional, Seasonal or Part Time) Effective: _____ <small>There is no appeal from this action. Refer to Department of Administration.</small>		C. SUSPENSION for (***) working days Effective: _____ <small>You may appeal this action in accordance with the procedures outlined on Page 4.</small>	
B. DISMISSAL (From Permanent Appointment) Effective: June 18, 2019 (effective immediately upon service)		D. DEMOTION Effective: _____ <small>You may appeal this action in accordance with the procedures outlined on Page 4.</small>	
Appointing Authority <i>R. Ybanez</i> RICHARD YBANEZ, DIRECTOR, DPR	Date <i>6/18/19</i>	Time <i>10:15 a.m.</i>	
Employee's Signature <i>[Signature]</i>	Date <i>6/18/19</i>	Time <i>11:15 a.m.</i>	
I hereby certify that the original copy of this notice was served on the subject employee on this <u>18th</u> ^{July} day of June, 2019, at <u>11:15 a.m.</u> hours.			
<input checked="" type="checkbox"/> Served Personally	<input type="checkbox"/> Copy left at Last Known Address	<input type="checkbox"/> Served by Mail <input type="checkbox"/> Registered/Certified/RRR	
Printed Name of Person Serving Notice: <i>JC Mesa</i>		Signature of Person who Served this Notice: <i>[Signature]</i>	

EXECUTIVE ORDER 96-24, AUTHORIZED CAUSES FOR ADVERSE ACTION FROM SECTION 11.303 ARE LISTED BELOW. SELECT AND MARK APPROPRIATE BLOCK(S).

- A. Fraud in securing appointment.
- B. Refusal or failure to perform prescribed duties and responsibilities.
- C. Insubordination.
- D. Intoxication while on duty or the unauthorized possession, use or sale of alcohol on duty or while on government premises.
- E. Unlawful use, possession, or sale of illicit drugs.
- F. Unauthorized absences.
- G. Conviction for a crime.
- H. Discourteous treatment to the public or other employees.
- I. Political activity prohibited by law.
- J. Misuse or theft of government property.
- K. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment.
- L. Acts prohibited by Section 9102, 4GCA relating to strikes against the government.
- M. Acts prohibited discrimination to include sexual harassment.
- N. Failure to comply with the Drug-Free workplace program.
- O. Other misconduct not specifically listed (See herein and below; violation of Chapter 3 of DOA PR&R Code of Conduct, Chapter 11.402, notoriously disgraceful conduct adversely affecting the employer/employee relationship (on duty/off duty)).

EMPLOYEE'S RIGHTS

Chapter 11. 307, PR & R, Executive Order No. 96-24

11.306 Notice of Proposed Adverse Action

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all reasons, specifically and in detail, for the proposed action. The written notice must make it clear that it concerns only proposed action and not a matter already decided. A copy of such action shall be filed by the department/agency head with the Department of Administration and CSC.

11.307 Employee's Answer

An employee is entitled to seek reconsideration of the proposed adverse action by answering any charges within 10 calendar days after receipt of the notice; the answer may be made orally, in writing, or both. The department/agency head shall be available to meet with the employee at the designated date and time. The department/agency head may designate a committee to hear the employees answer. The employee may be represented by a person of his choice. The department/agency must consider the employees answers to the charges in the proposed adverse action notice. If the employee fails to answer during the notice period, the employee's inaction shall be construed as an answer, and the department/agency head may proceed with the adverse action upon expiration of the notice period.

- A. An employee against whom adverse action is proposed, must be retained in active duty status during the notice period; however, in an emergency situation, an employee may be immediately suspended during the notice period, under the following conditions:
1. The continued presence of the employee may interfere with the efficient operation of the department/agency, or the health or safety of the employee or others.
 2. Suspension is necessary to eliminate the possibility of deliberate damage to equipment, property or important documents.
 3. The employee's absence without authorized leave prevents the issuance of notice of proposed adverse action and the department/agency's attempt to contact the employee was unsuccessful.
- B. Suspension under this section is a separate adverse action and is appealable to the Commission within 20 days of the effective date of the immediate suspension. A copy of the notice of immediate suspension shall be filed with the Civil Service Commission no later than the next working day following the effective date of the suspension.
- C. If the Commission sustains the department's action in suspending the employee during the notice period, the number of days of suspension under this section shall be considered part of the final disciplinary penalty and in no case, shall the final days of suspension be more than 30 working days.

/ XX / Chapter 11.311, Final Notice of Adverse Action

- A. An employee is entitled to written notice of the department's decision within 10 days after receipt of the of the employee's answer to the charge(s). The decision shall be made by the department/agency head and shall be delivered to the employee at, or before the time the action will be made effective. The notice shall be in writing, be dated, state the specific facts found upon which such action is based; inform the employee of the time limit of 20 days within which an appeal may be submitted as provided in Personnel Rules and Regulations, Appendix A-CSC-100 (c) of the Civil Service Commission Hearing Procedures for Adverse Action Appeals.
- B. In the event the appointing authority cannot locate the employee, the Notice of Proposed Adverse Action and/or Notice of Final Adverse Action shall be sent, certified mail, to the employee's last known address.
- C. Copies of the final notice of adverse action shall be filed by the department with the Commission not later than the next work day following the effective date of the action. A copy of the final notice shall be filed with the Department of Administration.

/ XX / Chapter 11.313 Service of Proposed and Final Notice of Adverse Action

The Proposed and Final Notices of Adverse Action shall be personally served upon the employee. In the event the appointing authority cannot locate the employee, after reasonable efforts have been made to locate the employee, service of the Proposed or Final Notices may be made by leaving the Notice at the employee's dwelling or usual place of abode with some person of suitable age and discretion residing therein, or by mailing the Notice to the employee at the last known address. Service by mail is complete upon mailing.

[XX] CSC-100, Personnel Rules & Regulations, Appendix A, EO96-24

A. Right to Appeal

1. Any person in the classified service holding a permanent appointment and who is subject to an adverse action by management, except one who is exempted by law from the jurisdiction of the Civil Service Commission, is entitled to appeal an adverse action to the Civil Service Commission. A person who has been appointed to a permanent position and who has satisfactorily completed his probationary period holds a permanent appointment.
2. A contract employee occupying a permanent position in the classified service is entitled to appeal an adverse action to the Civil Service Commission during the term of his contract. Non-renewal of the contract by the government of Guam is not appealable.

B. Contents of Appeal

An appeal shall be in writing and shall set forth the answer to the charges and the grounds for appeal. An appeal may be amended within 15 days after filing. A person who is the subject of an adverse action and who files an appeal on his own behalf or through a representative is the appellant.

[XX] Time Limit for Filing Appeal

An appeal must be submitted within 20 calendar days from the effective date of the action.

[XX] Rights in Pursuit of Appeal

An appellant shall:

1. Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.
2. Have the right to be accompanied, represented and advised by a representative.
3. Be assured a reasonable amount of official time to prepare his case if he is on duty status.

[XX] Chapter 11.302d, PR & R, EO96-24 Definition of Day
Day means calendar day unless otherwise specified.

SYNOPSIS OF FACTUAL ALLEGATIONS:

You are being issued this final adverse action as a result of your unethical, criminal, dishonest, notoriously disgraceful, disrespectful, discourteous, unprofessional, unbecoming, unlawful, and insubordinate conduct and statements with your superiors, your subordinates and with the public between **March 21, 2019, and the present date** as set forth more fully herein.

Among the criminal charges against you are official misconduct (9 GCA 49.90(a)) for your misuse and abuse of your position and authority to order and instruct the unlawful and improper use of the official vehicle and improper use of your staff to use the 2018 Mitsubishi government vehicle for your personal purposes and pursuant to your instructions for your personal and private benefit and gain.

On March 21, 2019, you instructed the use of the vehicle by you and your administrative staff for your personal purposes (i.e. to go to lunch at Chamorro Village). You also instructed your staff to use this government vehicle during working hours to deliver your personal communications and grievances to the Director's office and to DOA on various dates in April and May 2019, for your personal benefit as set forth more fully below. You are also found to have violated 4 GCA 1103 regarding this improper use of the official vehicle as it was not used for official purposes at the times referenced in the Notice of Proposed Adverse Action and this Notice of Final Adverse Action ("NFAA") when it was used to provide you with a personal benefit or gain.

As the Guam Historic Preservation Officer and the State Historic Preservation Officer ("SHPO"), and a long-time employee of the Department of Parks and Recreation ("DPR") managing the Guam Historic Resources Division ("GHRD"), you are required at a minimum to have the ability to communicate effectively and to work effectively with the public and others, including employees within DPR and GHRD. This is a stated part of your job description attached to this NPAA.

You have been the supervisor of the GHRD Division on a continuous basis between 2000 and the present date. Between March 21, 2019, to the present date, you have had at least six (6) employees under your supervision at GHRD, including the State Archaeologist John Mark Joseph.

As part of your job duties, you are tasked with administering a comprehensive historical preservation program. You are also expected to be professional, respectful and courteous to your superiors, your subordinates and the public at all times, and held to a higher standard of conduct than non-supervisors.

GHRD's office has been located in Agana Heights for approximately 15 years or more. Approximately 3 years ago, the Director's office was moved from the Agana Heights office to its current location near Paseo stadium and Chamorro Village. You have not reported to anyone at the GHRD location for the past several years, as your supervisors, the Director and Deputy Director, have their respective offices at Paseo.

In your administrative interview on April 10, 2019, regarding the March 21, 2019, incident at Chamorro Village, you indicated it was required to log the destination and mileage of the 2018 Mitsubishi on March 21, 2019, and with any official vehicle used by GHRD, because the vehicles are purchased with federal funds.

Although you stated in your interview on April 10, 2019, that there was a log book for the 2018 Mitsubishi, when the Deputy Director requested to view the log book for this vehicle, he was told by GHRD staff that it did not exist. This statement was made in front of you by one of your employees.

Interviews with your staff confirm you were made aware that there was no log book for this vehicle before March 21, 2019. There has not been a log book for that vehicle until May 2019 according to your staff. The

official vehicles used by GHRD staff, other than the 2018 Mitsubishi SUV, and log books that were used by GHRD staff when the vehicle was used, between March 21, 2019, and the present date. The 2018 Mitsubishi was primarily used by you and your administrative staff. Other GHRD employees used the F-150 trucks.

You were untruthful and misleading in your interview regarding the existence or non-existence of a log book for this vehicle as of March 21, 2019. Unlike the 2018 Mitsubishi, the other official vehicles at GHRD have log books. Those log books were kept in a safe along with the keys to those vehicles.

As a supervisor and long-term government employee supervising employees who use official vehicles at GHRD, you are expected to be familiar with and comply with Guam law and policies regarding the use of an official vehicle only for official purposes. You are also responsible for ensuring compliance regarding use by your staff of a log book for each official vehicle used by GHRD staff.

Your staff indicated to Management after your April 10, 2019, interview that a log book had not existed for the 2018 Mitsubishi until late May 2019. You directed your administrative staff to deliver your personal grievances and letters to the Director's office and DOA with this vehicle as set forth more fully below. These personal activities were not recorded in a log book, and you were aware of this non-compliance between March 21, 2019, and late May 2019, when a log book was finally obtained for this vehicle.

When using an official vehicle, you and your staff are also expected to exercise a high degree of care and professionalism as you represent DPR when you are out in public.

Neither you nor your GHRD staff have been authorized by this office or Guam law to use the official vehicle for your personal purposes, such as a personal lunch or to deliver personal communications.

GHRD staff admitted in their respective interviews in May 2019, that official vehicles are not to be used for personal lunches, although you ordered the use of the 2018 Mitsubishi for your personal benefit and lunch on March 21, 2019, at Chamorro Village as set forth more fully herein.

Your staff, including Barbara Lujan and Michelle Yamasta, as well as other GHRD employees, admitted that using an official vehicle for a personal lunch and to deliver personal communications and grievances, is a misuse of the vehicle.

You directed the misuse of the official vehicle on March 21, 2019, by ordering your staff, Barbara Lujan, to enter a parking lot through the "exit" so you could park closer to the restaurant where you intended to eat lunch, namely, Chamorro Island BBQ. Ms. Lujan properly signaled to go into the entrance of the parking lot, when you directed her to pass that entrance and drive further ahead and enter through the exit of the parking lot. As a result of your direction and instructions as her superior, Ms. Lujan complied. Your instruction as to this improper use of the vehicle violated the written signs, safety regulations and further, endangered yourself, your staff, the vehicle, and the public. The parking lot was crowded at lunch that date, and cars were parked on the road just prior to the vehicle turning into the "exit." Mr. Colby's view would have been obstructed by the vehicles parked on the road and in the parking lot at the place where Ms. Lujan turned. Mr. Colby and members of the public would have properly expected a government vehicle to drive safely and turn into the "entrance" rather than an "exit."

At the time Ms. Lujan obeyed your instructions to turn into the "exit," Mr. Colby had properly entered the parking lot and was driving toward the disabled parking at the end of the parking lot near the exit. He was cut off by the vehicle entering through the "exit" in front of him. He had to wait for the official vehicle to park in front of him before he could enter his disabled parking space. He was very upset and complained that the DPR official vehicle came in the wrong way and cut him off on his way to the disabled parking.

Your written statements, and those of Barbara Lujan and Michelle Yamasta are attached to this NFAA as well as the statement from Mr. Colby and his Facebook post on March 21, 2019, that was posted on social media as a result of your improper use of the official vehicle on March 21, 2019. All attached exhibits were also previously attached to the NPAA personally served to you by park rangers at GHRD on June 4, 2019.

You stated in your May 14-15, 2019, interviews that you held a staff meeting between March 21, 2019 and your later interview on May 14, 2019, to discuss the proper use of official vehicles. Your employees indicated in their respective interviews in May 2019, that there was no such staff meeting held to discuss the use of an official vehicle, and that you do not hold regular staff meetings. You were also overheard by your staff mocking the use of the official vehicle after your initial interview on April 10, 2019, regarding the incident at Chamorro Village on March 21, 2019 involving the misuse of the government vehicle.

I find you have made untruthful, dishonest and misleading statements regarding the use of the official vehicle on March 21, 2019 (and in April and May 2019 for your personal purposes), the existence and recording in a log book for the 2018 Mitsubishi on March 21, 2019, and holding a staff meeting after March 21, 2019, to discuss the use of the official vehicles.

I also find that you have attempted to improperly influence the integrity of this investigation as set forth more fully herein, by speaking with employees about the substance of your investigation, including but not limited to, Michelle Yamasta and John Mark Joseph and also by referring to employees of GHRD as "squealing on you" and being "backstabbers."

As a long-time government employee and a supervisor of GRHD continuously since approximately 2000, you are expected to be familiar with and to fully comply with the Code of Conduct for government employees in Chapter 3 the DOA PR&R.

Public employment is a public trust, and you are expected to perform your job duties ethically, in compliance with laws, and to be courteous and professional to members of the public, your employees and your superiors. Such skills are needed for successful collaboration and to ensure productivity and efficiency.

As set forth more fully herein and below, myself and the Deputy Director received multiple complaints against you, orally and in writing, during the period March 21, 2019, through the present date.

Complaints about you were received from Marc Colby regarding an incident involving your misuse of an official vehicle on March 21, 2019, at Chamorro Village, as well as multiple complaints about your unprofessional, discourteous, disrespectful, unethical, and demeaning conduct and treatment toward GHRD employees **between March 21, 2019, and the present date.** These written complaints are attached to this NFAA and incorporated herein as if set forth in full. These complaints were previously attached to the NPAA served on you on June 4, 2019.

Additionally, in interviews GHRD employees under your supervision, Barbara Lujan, Alfred Masga, John Mark Joseph, Russell Kanai, Michelle Yamasta, and Jose Garrido, on various dates in May 2019, each of these employees admitted that the work environment under your management between March 21, 2019, through May 2019, has been stressful, hostile, unfriendly and/or unprofessional.

You have also been described in employee interviews in May 2019, as being moody, temperamental, argumentative, and hostile during the period March 21, 2019, through May 2019. Several GHRD employees have stated you are not qualified to be a supervisor, and that you are demeaning to your staff and very unprofessional as a supervisor.

During the period March 21, 2019, through the present date, employees under your supervision have stated they walk on eggshells, they are afraid of you, afraid of your temper and afraid of your retaliation for voicing their concerns in writing and even appearing to give statements in their interviews noticed in May 2019. As their supervisor, you were aware of their required interviews as they had to notify you in advance before such interviews.

GHRD employees have further voiced their concerns that during the period March 21, 2019, to present, you do not listen to your employees, you do not allow them to state their concerns, you interrupt your employees when they speak to you, and you provide confusing and conflicting instructions and policies.

At least one employee, John Mark Joseph, stated in his interview on May 28, 2019, that he records what goes on at the office as a result of his concerns and your conduct.

Your administrative staff, Michelle Yamasta, and Barbara Lujan, stated in their interviews on May 16-17, 2019, that you retaliated against them after your administrative interviews on May 14-15, 2019.

During your interviews, you were shown written complaints by Michelle Yamasta (dated March 21 and April 2019), Barbara Lujan (April 2019), Ian Catling (April 3, 2019), John Mark Joseph (May 1, 2019), and a Facebook post by Marc Colby on March 21, 2019. You subsequently subjected your GHRD employees to hostile actions, aggressive conduct on your part and name calling such as "backstabber."

GHRD employees heard you slamming doors in the office the week of May 13-17, 2019, and telling John Mark Joseph that Management wanted to terminate you and Mr. Joseph.

You were also overhead speaking with Mr. Joseph about dropping his complaints against you. GHRD staff, including Mr. Joseph, noticed a remarkable change in your attitude, such that it was friendly, toward John Mark Joseph between the date of your interviews on May 14-15, 2019, and prior to his scheduled interview on May 28, 2019.

You attempted to terminate Ian Catling's employment as stated more fully herein; however, regarding Mr. Joseph, instead of retaliating against him, you chose to be nice to him to improperly attempt him to drop his complaints against you as set forth more fully herein.

Your attitude and demeanor toward the female staff, however, was angry and hostile, and you stated to at least one male employee between May 14, 2019, and the present date, that the ladies were talking about you. There are only two females in your division; your administrative staff, Ms. Yamasta and Ms. Lujan.

Although Ian Catling was no longer under your supervision after April 8, 2019, you retaliated against him for his complaints by requesting to terminate his employment.

Barbara Lujan, your Administrative Aide, was hired at your request on February 18, 2019. She was interviewed on April 11, 2019, and then again on May 17, 2019, at the Director's office.

Ms. Lujan's complaint dated April 2, 2019, is attached to this NFAA. It was also attached to the NPAA served on you. Ms. Lujan has stated your untruthful comments in her complaint, as well as your confusing instructions. She has also indicated you have retaliated against her in May 2019, for her complaints. You did not speak with her in a friendly tone, did not address her, and instead gave her the silent hostile treatment after your interview and her interview.

At the bottom of Ms. Lujan's attached email complaint dated April 4, 2019, prior to her recent oral interview on May 17, 2019, she states the following:

“Depending on her moods when she reports to work in the morning, there is always something different that we will get scolded about and then she will schedule a meeting to address the issues because she is upset with us. She tends to be very demeaning when she talks to her staff and is very unprofessional as a supervisor. When one of her employees makes a mistake, the whole division will know. Never in my entire 42 years of Federal Civil Service did I encounter a supervisor with her attitude.”

Ms. Lujan has stated that she started looking for a job after her complaint on April 4, 2019, as a result of your unprofessional and demeaning conduct toward her and others in the workplace on and after March 21, 2019.

Fortunately, no employees have resigned between March 21, 2019, and the present date from GHRD division.

Ian Catling has not resigned and was removed from being under your supervision effective April 8, 2019.

As a result of the complaints made by the public and your subordinates and after knowledge and receipt of personal communications from you delivered personally to the Director's office by your administrative staff, the Director issued an order dated May 10, 2019, for you to appear for a mandatory interview on Tuesday, May 14, 2019.

You were at GHRD when this letter dated May 10, 2019, was the park ranger requested for you to acknowledge receipt of this communication from the Director's office. You refused to come to the front of the office to meet the park ranger. Instead of meeting with the ranger at the GHRD office on Friday, May 10, 2019, you instructed Michelle Yamasta to find out what was being delivered to you from the Director's office.

Per your instructions, Ms. Yamasta sent the officer away that date, because you refused to receive and sign the letter from your Director personally delivered by the DPR park ranger on May 10, 2019. After the ranger left, you then requested Ms. Yamasta to call on your behalf to have the park ranger re-deliver the letter for you to accept. You did not sign on the second page where indicated. Instead, you initialed the top of the page and stated, “Advised not to read.” This letter is attached to this NFAA. It was also attached to the NPAA previously served on you.

You appeared for your administrative interview on May 14, 2019, and May 15, 2019, at the Director's office. Present at your interviews was an Assistant Attorney General (“AAG”), myself, Deputy Director Victor Villagomez, and my Administrative Assistant Christine Olkerill. Throughout your interviews, you were given a comfortable chair, offered water, and given frequent breaks, including a lunch break over 2 hours on May 14, 2019. The interview took place in the Director's office, and you were even asked about the temperature of the room. The air conditioning was set at a good temperature to also ensure your comfort.

During your interview, you were shown email and written complaints against you from Ian Catling, Michelle Yamasta, Barbara Lujan, John Mark Joseph, and Marc Colby provided to the Director between March 21, 2019, and May 1, 2019.

You were also questioned about these complaints and incidents involving GHRD staff and the two incidents on March 21, 2019 (involving your argument with Michelle Yamasta in the morning and the incident at Chamorro village at lunch time).

During your interviews on these two dates, myself, the Deputy and Ms. Okerill observed you to be disrespectful, discourteous, demeaning, uncooperative, harassing, hostile, rude, and insubordinate. You spoke over the AAG and frequently interrupted the AAG. You were unprofessional to everyone present, including the AAG, by failing to answer her questions in a calm and professional manner.

You were asked repeatedly to allow the AAG to ask a full question before you attempted to answer it. You were asked in a respectful tone to please not interrupt or speak over each other, and you repeatedly failed to comply with this request. I observed your repeated non-compliance with this instruction.

I find that your tone of voice and conduct in these interviews was disrespectful, badgering, belittling, and you frequently attempted to control the pace and manner of the questioning by asking questions, answering before a question was fully asked allegedly in attempt to evade or dismiss the question, stating you had already answered the question when a question had not been fully asked before your answer, and stating on more than one occasion for the AAG to "move on." You asked several times if the AAG was trying to catch you in a lie. Breaks were also taken at times as a result of your failure to cooperate and to ensure you had ample breaks as well a lengthy lunch break (over 2 hours).

Your conduct in the interviews was unprofessional, argumentative, uncooperative, demeaning and disrespectful to myself and everyone present.

Management commenced the investigation to obtain the facts and circumstances regarding the multiple complaints made against you by your employees and a member of the public relating to your inappropriate words and conduct and your lack of professionalism. Your participation in these interviews as to the complaints against you was important.

You were given written notice on April 10, 2019, and on May 14, 2019, not to discuss the incident on March 21, 2019, or the substance of your interviews with employees or potential witnesses. You were also orally reminded of the Director's orders on April 10, 2019, and May 14, 2019, not to discuss the matter prior to the completion of the investigation. You failed to comply with these orders and instructions.

After your interview resumed on May 14, 2019, in the afternoon, while I was present, along with the Deputy Director and Christine Okerill, the AAG asked if you had spoken to any GHRD employees that day regarding the matters being investigated.

You admitted that you spoke with Michelle Yamasta over the telephone on one of your breaks. You also confirmed you spoke with Michelle Yamasta in person at GHRD during your two-hour break from your interview and discussed the argument with her on March 21, 2019, in the morning.

In your call with Michelle Yamasta, you informed Management in the interview that you called Michelle Yamasta to have the sign-out sheets delivered to the Director's office as requested. There was no need for you to do this as this had been directed to GHRD while you were being interviewed. You failed to produce the required sign-out sheets, so I had my office obtain those documents from GHRD while you were questioned.

The sign-out sheets indicate when Employees leave GHRD premises, and this was a policy you put in place as you admitted. You require your subordinates to do this so you can track their whereabouts and admit that you did not sign in and out of this log.

During your interview on May 14, 2019, when you were shown a copy of the sign-out sheet for March 21, 2019, which showed Michelle Yamasta signing out to go to Central files on the morning of March 21, 2019, you seemed surprised and wondered how the Director's office obtained this sign-out sheet. It was requested and obtained on April 10, 2019, after you, Michelle Yamasta and Barbara Lujan were interviewed regarding the March 21, 2019, incident.

I find that you have been untruthful, dishonest and misleading as to the substance of your call with Michelle Yamasta on one of your breaks in your interview.

Contrary to your version of the telephone call, Michelle Yamasta stated in her interview on May 16, 2019, that you called her and said someone was "squealing on you" and asked her if she was one of those persons. Ms. Yamasta confirmed that you approached her to discuss the argument with her on March 21, 2019, and attempted to discuss this matter with her. These conversations occurred with her on May 14, 2019, during breaks in your interview.

You returned from lunch on May 14, 2019, and indicated on the recording that you had a heated discussion with Michelle Yamasta on March 21, 2019, in the morning before going to Chamorro Village for lunch, after you had previously denied having any such argument or heated discussion on March 21, 2019, in your morning interview on May 14, 2019.

You violated the oral and written orders not to discuss the substance of your interview with any employee by speaking with Ms. Yamasta on May 14, 2019. You had just been questioned about your conduct toward Ms. Yamasta on the morning of March 21, 2019, when you thereafter communicated with her.

In your continued interview after lunch on May 14, 2019, you admitted that you knew you were not supposed to discuss the matter and that you would probably be asked about it in your continued interview, and yet you still discussed this matter with Michelle Yamasta. I was present in the interview when you admitted to violating my orders concerning not talking about matters covered by the investigation.

Despite being ordered not to discuss the incident on March 21, 2019, or any part of your interview with employees and potential witnesses, you disobeyed this order at least twice during two breaks in your interviews conducted on May 14-15, 2019. I was present in your interview when you admitted to this insubordinate conduct. I find your conduct disturbing, disrespectful and insubordinate.

I am also concerned about your attempts to violate the integrity of the investigation and to improperly influence and attempt to turn employees against each other to allegedly support your personal and malicious purposes. I am also concerned about employees who have expressed you have retaliated against them for expressing their complaints to my office between March 21, 2019, and the present date.

GHRD staff has also advised Management in the interviews in May 2019, that you have spoken about this matter to other persons between your interview on April 10, 2019, and May 2019, including Joe Quinata, a member of the Guam Historic Preservation Trust, at the GHRD office in late April or May 2019. You were overheard talking with Mr. Quinata at GHRD about the incident on March 21, 2019, and the incident involving Ian Catling.

A copy of the notices signed by you on April 10, 2019, and May 14, 2019, are attached to this NFAA, and were also attached to your NPAA.

Michelle Yamasta stated in her interview on May 16, 2019, that you called her during one of your breaks from your interview on May 14, 2019, and said someone was "squealing" on her, and asked if it was Michelle. Michelle Yamasta stated in her interview that she felt you retaliated against her for her complaints. She knew something was wrong on May 15, 2019, when you were slamming doors and used the word "backstabber" at GHRD when you were near her cubicle prior to your continued interview scheduled at 2 pm on May 15, 2019. At that point, Ms. Yamasta did not know that her complaints had been shown to you on May 14, 2019, the day before. She felt your conduct was threatening, aggressive, and hostile. Both she and Barbara Lujan heard you slamming doors in the office on or about May 15, 2019, after your administrative interview the day before.

Both Michelle Yamasta and Barbara Lujan stated in their May 2019 interviews that in the week after your administrative interviews on May 14-15, 2019, you came back to the office and told your subordinate, John Mark Joseph, that Management was trying to terminate your employment as well as his. No such comment was made by Management to you at any time in your interview or otherwise.

John Mark Joseph confirmed you made the above statement to him within two (2) weeks prior to his interview on May 28, 2019. He also confirmed that you asked to meet with him and in this meeting, you asked him to drop his complaint and grievance against you. He said you told him you would offer him anything if he would do that.

Mr. Joseph did not agree to your request, and it was unprofessional, unethical and insubordinate for you to have requested your subordinate to meet with you regarding his complaint against you relating to your prior unprofessional and discourteous conduct toward him.

Mr. Joseph said that over the past two (2) weeks, your conduct was markedly different toward him and you were actually friendly to him. It appears you attempted to use your influence as his supervisor and an alleged threat that Management was looking to terminate him and improperly asked him to drop his complaint and grievance. This conduct shows your lack of judgment and your violation of the personnel rules and regulations after an employee has made a complaint against you.

It was unethical and unprofessional for you as a supervisor to interfere with Mr. Joseph's complaints and/or grievance against you in May 2019. There is a process for his complaints and grievances. It was not your place to meet with him to discuss his complaints against you. Your conduct was self-serving, inappropriate and insubordinate, as you were aware of the orders not to discuss the substance of your interview (including Mr. Joseph's May 1, 2019, complaint), and you were aware he was to be interviewed on May 28, 2019.

You were advised as to all interview dates and times of your employees, because they had to advise you in advance of those interviews per your policy.

John Mark Joseph admitted in his interview on May 28, 2019, that you called him into a meeting, told him that Management was attempting to terminate you and him, and asked him to drop his complaint and grievance against you. You had just seen his complaint dated May 1, 2019, in your interviews on May 14-15, 2019. His May 1, 2019, complaint is attached to this NPAA.

In his email complaint to the Director dated May 1, 2019, Mr. Joseph states:

“Director, [a]fter returning from lunch today, Lynda started going off on comments I asked the staff to make on the change in the law to the National Register. She started yelling and belittling me again and when I approached her to ask her to repeat what she said, I thought she was going to strike me. Then she tried to say I was following her. I feel like I might need to make another complaint as I cannot work under this type of hostile environment. I feel like my blood pressure is going through the roof, this is beyond anything acceptable.”

In your interview on May 14-15, 2019, Management showed you only Mr. Joseph’s May 1, 2019 email attached to this NPAA. As referenced above, you thereafter told John Mark Joseph at GHRD and during working hours that you would do anything if he dropped his complaint and grievance. He did not agree with your request and indicated he felt uncomfortable that you sought to meet with him about a pending grievance about you without letting it go through the process and maintaining the status quo.

Both John Mark Joseph and employees of GHRD admitted in their interviews in May 2019, that they were present when you verbally attacked, raised your voice, yelled and confronted John Mark Joseph on May 1, 2019.

GHRD employees confirmed you insulted and disrespected Mr. Joseph on May 1, 2019, and stated he was nothing, among other disrespectful conduct and statements. You also said he had bad breath, and then falsely attempted to indicate he was following you.

You engaged him in a public confrontation after he came in from lunch and in front of your subordinates for allegedly asking his employees to comment on a proposed rule change for the National Parks Service. You indicated after the fact that you agreed with the proposed rule, but you failed to communicate that information with anyone, including John Mark Joseph. **The matter did not warrant your unprofessional demeanor, tone, insults, and conduct in front of your employees.**

Your employees have indicated when you engage in this conduct in front of them involving another employee, it makes them feel uncomfortable. They are there to work and should not be subjected to this type of hostile, unfriendly, and unprofessional behavior from their supervisor. It makes work life tense and stressful and keeps morale and productivity lower than it would be if the workplace was a happy or friendly environment.

After your interviews on May 14-15, 2019, you told one of your male subordinates that the ladies or women were making complaints against you.

Employee interviews in May 2019, further revealed that you have made sure to publicly state to your GHRD staff that you have filed grievances against the Director and Deputy Director, and indicate what step you were in the process between March 21, 2019, and the present date.

I find that you have misused and abused your position and authority to injure others, including your staff and Management, for your own self-serving, malicious and personal purposes.

Unlike you, interviews with employees in May 2019 revealed that John Mark Joseph did not discuss his complaint or grievance regarding you to other GHRD employees. Unlike you, he submitted personal leave to deliver his grievances instead of having others deliver them during working hours and using an official vehicle.

Your administrative staff, Michelle Yamasta and Barbara Lujan, admitted in their interviews in May 2019, that you instructed them to deliver your personal grievances to the Director's office and DOA between April and May 2019, during working hours and using the official vehicle.

You also had your administrative staff personally deliver your personal request to view your personnel file at DPR in May 2019 instead of emailing, faxing or delivering that request yourself during non-working hours.

You further advised them in advance what they were delivering (i.e. grievance or request to review your personnel file) and gave them specific instructions as to your personal grievances.

On another date in May 2019, which is set forth more fully below, you had your staff personally deliver a letter to the Director's office stating you would not respond to emails from the Director's Administrative Assistant Christine Olkerill.

This communication from you, which is attached to this NFAA, is yet another example of your insubordinate, disrespectful, discourteous, and unprofessional conduct which shows an inability to work well and communicate effectively with others. Your conduct appears to be divisive, hostile and unbecoming of a high-level supervisor of an important division charged with protecting our historic resources.

Between March 21, 2019, and the present date, you created and/or maintained an unfriendly, hostile and tense environment for your employees and to have publicly stated in a loud, unprofessional, aggressive and discourteous manner and tone matters that should have been handled privately and in a more professional manner, so as not to embarrass, belittle and humiliate your subordinates.

On or about April 3, 2019, you acted aggressively and unprofessionally toward GHRD employee Ian Catling in front of his peers and a customer at GRHD for allegedly making a mistake in signing a copy of a permit. He was encouraged to write the complaint by his co-workers. You treated him with disrespect in front of a customer and his peers and berated him for making a mistake. You refused to listen to him and then accused him of being argumentative. He filed a complaint against you at the suggestion of his co-workers. This complaint is attached to this NFAA and was also attached to the NPAA.

Although Mr. Catling was visibly upset at your lack of professionalism and your discourteous treatment of him in front of his peers and a customer, he did not argue with you, interrupt you, or treat you with any disrespect on that date in April 2019 or at any time. You refused to listen to him explain and admitted in your interview that you did not want to hear any attempt by him to justify his behavior.

Your GHRD staff admitted that it was you and not Ian that was unprofessional, belittling and demeaning toward Ian Catling on or about early April 2019, and that you refused to listen to him. Several of your staff admitted in their respective interviews in May 2019, that they were present for this argument and were uncomfortable for having to listen to you berate Ian repeatedly in a loud tone in front of a customer, for making a mistake.

After you berated him for making a mistake in front of a customer and his peers, and after he had gone back to his cubicle, you then followed him to his desk and continued to berate him about his mistake. You refused to listen to what he was trying to tell you at any time and instead, interrupted him. Your employees stated that when one person makes a mistake in that office between March 21, 2019, and the present date, you let everyone know about it repeatedly.

GHRD employees stated Ian is a hard worker, is very quiet and friendly. They indicated he was never disrespectful to you, and at no time ever interrupted you or raised his voice to you on this date or any other occasion. He was observed being upset as a result of your conduct, but he remained quiet and later left the premises to take a walk.

Mr. Catling's complaint dated April 3, 2019, is attached to this NFAA and incorporated herein as if set forth in full. Mr. Catling stated that if he needed to write another grievance as a result of your conduct, he would then turn in his resignation.

Mr. Catling was detailed to the Director's office in April 8, 2019, as a result of your unprofessional and discourteous treatment toward him the week of April 5, 2019. The personnel order is attached.

In her interview on May 16, 2019, Michelle Yamasta indicated that you attempted to have Ian Catling terminated after the incident in April 2019, after you became aware that he was detailed to the Director's office.

In your interview, you admitted you believed Ian had filed a complaint against you, because a personnel order issued on Friday, April 5, 2019, detailing Ian Catling to the Director's office shortly after your argument with Ian Catling at GHRD in April 2019. You admitted you even called the Deputy Director on Saturday, April 6, 2019, regarding the personnel order and asked if Ian Catling had filed a complaint against you.

Although you agreed in your interview that the Director and the Deputy Director have the right to detail employees and issue personnel orders, including the right to detail Ian Catling to the Director's office on April 5, 2019, you threatened to file a grievance and thereafter filed a grievance against the Deputy Director for detailing Ian Catling.

I find that you have used and abused the grievance process as an offensive tactic to defend against and attempt to cover up your unprofessional, discourteous, and aggressive conduct toward your subordinates and your superiors, including Ian Catling, the Director and the Deputy Director. This conduct demonstrates your inability to communicate and work well with others, including your superiors and your subordinates. Your subordinates have indicated you are unqualified to be a supervisor, and your unprofessional, unethical, disrespectful and discourteous conduct as stated herein, and as demonstrated by you to myself and the Deputy Director in your interviews, supports these allegations.

Between March 21, 2019, and the present date, you misused and abused your office, authority and position on multiple occasions, and misused and/or abused government resources, including the official vehicle on and after March 21, 2019, and improperly directed your administrative staff, including Barbara Lujan and Michelle Yamasta, to deliver your personal written communications and grievances to the Director's office and to DOA in the official vehicle during working hours in April and May 2019, for your own personal purposes and private benefit. These communications did not require the use of the official vehicle or your staff during working hours.

After your interviews on May 14-15, 2019, and as stated above, you were observed to give your administrative staff the quiet hostile treatment and were observed and heard slamming the doors to your office, the kitchen and the back exit. You were observed acting aggressively to your administrative staff and used the word "backstabber" directed to them the week your interviews were concluded. Ian Catling was no longer at GHRD under your supervision in May 2019.

During this time period, your subordinates referred to you as moody, argumentative, unprofessional, demeaning and belittling toward them in addition to making negative and disparaging comments about Christine Olkerill and refusing to read and answer her emails directly. You referred to the Director's Administrative Assistant Christine Okerill to your employees as the "commanding officer" according to interviews with your staff in May 2019.

Management commenced an investigation in May 2019, in addition to the one regarding the March 21, 2019, incident at Chamorro Village after learning of your discourteous and unprofessional treatment of GRHD employees under your supervision on March 21, 2019, and thereafter in April and May 2019, and after receiving written complaints from GHRD employees against you in March, April and May 2019.

On May 8, 2019, you directed your administrative staff to deliver your personal memo dated May 8, 2019, addressed to Christine Olkerill at the Director's office to view your personnel file at the DPR Director's office. This letter is attached to the NFAA, and was also attached to the NPAA. Christine Olkerill is the Director's Administrative Assistant. You directed your administrative staff to personally deliver this personal written communication from you to the Director's office and to DOA during working hours using the official vehicle according to your instructions.

In your interview on May 14-15, 2019, you admitted that your staff delivered this letter and other personal matters, including multiple grievances you filed, to the Director's office in April and May 2019. You even copied DOA and the Lt. Governor on some of these personal communications in May 2019, which you used your staff to deliver during working hours in the official vehicle.

You misused your power, authority and position between March 21, 2019, and the present date for all allegations stated herein. You misused and abused your position, power and authority by using the official vehicle for your personal purposes on and after March 21, 2019, through May 2019, on multiple occasions when you instructed your administrative staff to deliver your personal written communications to the DPR Director's office and to DOA during working hours and in the official vehicle.

Your GHRD administrative staff, Barbara Lujan and Michelle Yamasta, admitted to delivering multiple personal letters and grievances from you to the Director's office during working hours and using the official vehicle in April and May 2019, at your instruction.

You ordered your staff Barbara Lujan to deliver your personal request dated May 8, 2019, addressed to Christine Olkerill to view your personnel file to the DPR Director's office during working hours and in the official vehicle per your request. You should have used your own personal time and resources to communicate your personal requests and grievances to the Director's office and to DOA and not government staff and property.

I personally observed one occasion where one of your letters was delivered by your administrative staff in May 2019 using the official vehicle and was concerned about this misuse of the vehicle and your staff for your personal purposes. As the Director, I even confirmed in my letter to you dated May 9, 2019, that Barbara Lujan had delivered one of your personal letters. My letter is attached to this NFAA and was attached to the NPAA.

Barbara Lujan was interviewed on May 17, 2019, and admitted that she and Michelle Yamasta delivered your personal requests and grievances between April and May 2019, at your request during working hours and using the official vehicle. Your administrative staff, Michelle Yamasta and Barbara Lujan, both confirmed your orders to them and this delivery was a misuse of the official vehicle and staff resources by you for your personal purposes, benefit and gain, and that your conduct and instructions were unprofessional, unethical and violated the code of conduct in Article 3 of the DOA PR&R.

In my letter to you dated May 9, 2019, I ordered you to end your practice of being uncooperative and to view and address personally any generated documents from me, the Director, my Deputy Director and my Administrative Assistant Christine Olkerill. This letter is attached to this NFAA and was also attached to the NPAA.

Prior to submitting this letter, I was advised that you refused to read some of Christine's emails and instead had your staff open and read her emails to you. Michelle Yamasta confirmed in her interview on May 16, 2019, that she has opened and read emails from Christine Olkerill to you.

In my letter dated May 9, 2019, I stated that noncompliance with my order was grounds for disciplinary action.

You then directed your administrative staff to personally deliver your memorandum dated May 10, 2019, to me, Director Richard Ybanez, with the subject line as follows: Emails, orders, directives, etc., from Administrative Assistant Christine Olkerill. You copied Christine Olkerill, DOA, and the Lt. Governor Joshua Tenorio on your responsive letter. See attached letter which was delivered to the Director's office on May 10, 2019, at 11:41 a.m.

In your responsive letter dated May 10, 2019, you refer to my letter to you dated May 9, 2019, regarding your refusal to accept any and all documentation (emails, order, directive, etc.) addressed to you.

You state in the second paragraph of your letter "... and because of Ms. Olkerill's constant complaining, accusations and orders, I will not reply to her emails. You cannot force me to comply ... "

You then state in your letter for me to "please inform Ms. Olkerill to stop calling HP staff for the sole purpose of projecting her unfettered anger as she did Wednesday, May 8; attested by Mr. Kanai, and Ms. Yamasta."

Your responsive letter is another example of your insubordination and failure to treat your superiors and employees with courtesy and respect. It shows a lack of professionalism on your part and your inability to communicate effectively and to work well and collaborate with others, which is a minimum requirement of your position.

In the administrative interviews of GHRD staff in May 2019, your employees admitted that you refer to my administrative assistant, Christine Olkerill, only in a negative manner. They have heard you repeatedly refer to her as the "commanding officer" between March 21, 2019, and the present date. GHRD employees, however, stated they have not seen, overhead or observed any disrespectful or unprofessional conduct from Ms. Olkerill to you during this period.

Christine Olkerill has not worked at GHRD for at least 4 years. She has worked at the Director's office for several years as an Administrative Assistant at the Paseo location.

The communications from Ms. Olkerill to you via email between March 21, 2019, and this action, have been made on behalf of myself or the Deputy and have been professional and courteous. You have not provided any email, written or other proof of any communication from Ms. Olkerill supporting your negative comments about her in your letter to me.

On the other hand, your staff in their May 2019 interviews, do not agree with your assessment of Christine Olkerill. GHRD employees have confirmed you make negative comments about her. They have not heard anything positive about her from you between March 21, 2019, and the date of this action.

You have not treated Ms. Okerill with respect and courtesy as required by the ethical code of conduct and which should be paramount in your role as a Division manager. Instead, you have disrespected Ms. Okerill by publishing negative statements about her to GHRD employees.

You were ordered in the interview to provide me with all emails from Ms. Olkerill to you, and you only provided a few emails. None of the communications you provided to me in response to his order during your administrative interview show any complaints or accusations or orders made by Ms. Okerill. Her emails to you were professional and appropriate.

Your allegations and statements to me in your recent letter have not been supported by you with any evidence or statements from your personal knowledge. I find your statements about Ms. Okerill in your correspondence to me are not supported and are false, inaccurate, misleading and/or made for your personal and/or malicious purposes to malign her character and reputation with her peers, this office, and the community. You acknowledged in your interview that you had no personal knowledge to support the statements in your letter concerning Ms. Okerill's "constant complaints, accusations and orders" such that you informed me you would not reply to her emails.

Interviews with your GHRD staff in May 2019, confirm that you have disparaged and made negative comments about Christine Olkerill between March 21, 2019 and the present date. None of the interviews with your staff have revealed that Christine Okerill has engaged in any unprofessional or disrespectful conduct toward them or you to their knowledge, whether in person or in writing during the period March 21, 2019, through the present date. To date, you have failed to provide any evidence of Ms. Okerill's constant complaining, accusations and orders. I find your statements to be dishonest, inaccurate and misleading.

After your letter was delivered to the Director's office, and after you had been given the order by me as your Director to personally view and address communications from the Director, Deputy and Christine Olkerill, you initially refused to view or accept personal delivery of my letter dated May 10, 2019, delivered to GHRD during working hours while you were at GHRD as stated above. This letter was an order for you to attend a mandatory administrative interview at the Director's office on Tuesday, May 14, 2019, at 8:00 a.m.

During this period, March 21, 2019 to the present date, you have also repeatedly exposed the seven (7) employees under your supervisor at GHRD to your aggressive conduct, personal insults to staff, your loud, abusive and aggressive tone, demeanor and conduct on multiple occasions, and you have treated your employees in a disrespectful, discourteous, unfriendly and unprofessional manner on multiple occasions.

During this period of time, multiple written complaints were made to the Director's office regarding your conduct and lack of professionalism during the period March 21, 2019, including but not limited to, complaints from a member of the public, Marc Colby, a Facebook post made from him about you with your picture and that of the official vehicle on March 21, 2019, and written complaints from your employees, including but not limited to, Michelle Yamasta dated March 21, 2019, and April 16, 2019, Ian Catling dated April 3, 2019 (regarding an incident in April 2019), from Barbara Lujan dated April 4, 2019, and from the State Archaeologist John Mark Joseph, dated May 1, 2019. Mr. Joseph is also under your supervision at GHRD. As stated above, these complaints are attached to this NPAA.

During this period, March 21, 2019, through May 2019, you engaged in loud, disrespectful, discourteous, and unprofessional and aggressive confrontations with Michelle Yamasta, John Mark Joseph and Ian Catling at GHRD. As a result of your interactions with Ian Catling in April 2019, and his subsequent complaint against you, Ian Catling was transferred to the Director's office with a personnel order dated April 5, 2019, and effective Monday, April 8, 2019.

After being advised by Management over the weekend when you contacted them that Ian made a complaint against you, you then informed other people about Ian's complaint and told some of your subordinates that you were going to terminate his employment. You subsequently have attempted to terminate his employment in retaliation for his complaints about your conduct. He continues to work at the Director's office and is funded locally.

In his attached complaint, Ian indicates in your confrontation with him that you refused to hear what he was saying and accused him of implementing his own policies. Instead of listening to Ian Catling, you stopped him from speaking and asked him if he had a problem because he was being "argumentative."

His co-workers overhead you treat him with a lack of respect and professionalism and in front of a customer. Ian Catling was advised by his peers to file a complaint due to your lack of professionalism. As he indicated in his complaint, the only power he has is to just walk away and that if he had to write another grievance, it would be accompanied with a letter of resignation.

Although not used as a basis for this proposed adverse action, the Director's office is aware of at least two employees that were hired at your request in late 2018 that quit after just a few months under your supervision as a result of your unprofessional and discourteous conduct. The detail appointment of Ian Catling to the Director's office in April 2019, was to ensure his continued employment and to ensure you did not retaliate against him as a result of his complaints.

You were interviewed on April 10, 2019, regarding the incident at Chamorro Village on March 21, 2019, where you ordered the use of the official vehicle to attend a personal lunch. You informed your subordinates Michelle Yamasta and Barbara Lujan that you wanted to take them to lunch.

Earlier that date, you had engaged in an argument with your subordinate Michelle Yamasta, after which she left the office upset to deliver a contract to Central Files. When she left the office, you told your administrative assistant that you were going to charge Michelle Yamasta with abandonment of position.

Your administrative aide, Barbara Lujan, told you that she had reviewed the sign out log and that Ms. Yamasta had left the office to perform her work duties and had not abandoned her position. Ms. Lujan was subjected to the argument and your unprofessional and disrespectful words, conduct and tone that morning on March 21, 2019, toward Michelle Yamasta.

When Michelle Yamasta returned from delivering files, Ms. Lujan observed Ms. Yamasta to still be upset. They discussed what had happened before Ms. Yamasta left and your conduct and anger after Ms. Yamasta left GHRD which was experienced by Ms. Lujan. It was your idea to take them both out to lunch when Michelle returned. It is believed you did this to ensure your conduct was not reported to the Director's office.

Ms. Yamasta reported the argument you had with her on March 21, 2019, in the morning.

Michelle Yamasta went to lunch, because you requested it, and you are her supervisor. She has to work with you on a daily basis. She expressed concerns as did Barbara Lujan and others about your mood swings. Barbara Lujan also went to lunch, because you requested it, and she had just been on the job approximately one (1) month when she was subjected to your unprofessional conduct toward Michelle Yamasta on March 21, 2019. Ms. Lujan was concerned about using the official vehicle for a personal lunch, but you directed the use of the vehicle and that she drive the vehicle to lunch. She obeyed your requests and instructions as her supervisor.

Although you had a working vehicle and Michelle also had a personal vehicle, you instructed that Barbara Lujan drive the official vehicle, a 2018 Mitsubishi SUV, to Chamorro Village for this personal lunch at Chamorro Island BBQ. You and your staff admitted there was no business conducted by you or your employees at lunch, nor were any work papers brought to lunch. Additionally, you did not stop by the DPR Director's office across the street at any time before or after you left lunch at Chamorro Village. The vehicle did not make any stops between the GHRD office and your lunch destination at Chamorro Village according to interviews taken of you, Ms. Yamasta and Ms. Lujan regarding this incident. The three of you did not meet anyone for lunch or conduct any business. Only the three of you had lunch that date at Chamorro Village.

Interviews with your staff Michelle Yamasta and Barbara Lujan after the incident on March 21, 2019, confirmed the use of the official vehicle was for personal use, that you instructed that the official vehicle being used despite other vehicles being available for use to go to lunch, that it was a misuse and/or abuse of government official vehicle, your position and authority, and that the vehicle should not have been driven into the "exit" of the parking lot.

Ms. Lujan had just started her employment under you on or about February 18, 2019, and was only one (1) month into her probationary period. She drove the vehicle because you directed her to drive. GHRD employees, including Ms. Lujan and Ms. Yamasta, revealed that your instructions that Ms. Lujan not enter the entrance of the parking lot, and instead, enter the "exit", endangered the safety of the public, you, your staff, and the official vehicle. This was a misuse of the vehicle as stated herein and was not safe.

Your staff, including Ms. Yamasta and Ms. Lujan and other employees under your supervision who were not present on March 21, 2019, agreed in their interviews in May 2019, that it was improper to use the official vehicle for a personal lunch, that using an official vehicle requires a higher standard of care and professionalism, and that it was inappropriate and a misuse of the vehicle for you to instruct the driver to enter the "exit" of the parking lot. These orders and the misuse of this vehicle caused a member of the public to be upset and endangered the safety of the public, your staff, you, and the vehicle.

Your written statements made regarding this incident and those of Ms. Yamasta and Ms. Lujan are attached to this NFAA and were attached to the NPAA

You confirmed the use of the official vehicle on March 21, 2019, and that you directed the driver, Barbara Lujan, to drive the vehicle into the "exit" of the parking lot. She had turned her signal light on and attempted to enter the entrance of the parking lot, when you told her not to enter there but enter further ahead on the road so you could find parking closer to Chamorro Island BBQ.

Pictures of the parking lot that were taken and provided to employees during the interviews show that where you directed Ms. Lujan to drive the official vehicle there was an exit sign and a big arrow. The vehicle should not have been driven into this exit.

As a result of your instructions to enter the "exit" of the parking lot, a member of the public, Marc Colby felt he had been cut off and became angry. He took a picture of the official vehicle, you with your badge and subsequently posted about the incident on Facebook on March 21, 2019, and later filed a complaint with the DPR Director.

You became aware of the attached Facebook post on March 21, 2019, and you were shown this post during your interviews on May 14-15, 2019.

Your employee, Joe Garrido indicated in his interview, as did other GHRD employees, that you asked Mr. Garrido to respond to the Facebook post. Mr. Garrido did not respond as you had requested.

A copy of the Facebook post and your written statements are attached to this NFAA and were attached to the NPAA. The comments have been redacted from the Facebook post.

As stated above, when you were interviewed about this incident on April 10, 2019, you mentioned there was a log book for the vehicle and the use would have been written down in the log book. You later admitted when you were asked to find the log book that there was no log book for the vehicle. Michelle Yamasta and Barbara Lujan confirmed there was no log book for this vehicle.

The other official vehicles driven by GHRD employees all have log books which are in the safe with the keys to the vehicles when not in use.

You were aware that there was no log book for this vehicle and of the requirement that a log book must be used to record the mileage and destination for all use of the vehicle. Your failure to ensure a logbook in this vehicle and your misleading and false statements about the log book indicate your dishonest conduct.

You stated in your interviews in May 2019, that you had a staff meeting after March 21, 2019, to address use of the official vehicle. Interviews of your staff as of May 2019, confirmed that there was no such staff meeting called to discuss the use of the official vehicle or the log book at any time between March 21, 2019, and May 2019. Recently, however, you did acquire a log book for this vehicle that you indicated was purchased with federal funds.

You have embarrassed and disrespected GHRD staff, DPR, your Director, Deputy and the Government of Guam by your poor judgment, unprofessionalism, and you violated the ethical code of conduct (Chapter 3 of the DOA PR&R set forth below) and Guam laws, notably, 9 GCA § 49.90 (a) (official misconduct) and 4 GCA § 1103 as referenced in the charges below on and after March 21, 2019.

Your conduct was unbecoming, unsafe and disrespectful to the public as evidenced by the subsequent complaint made against you and the Facebook post of you and the official vehicle. Your conduct was notoriously graceful and has adversely affected the employer/employee relationship as a result of the multiple allegations against you in addition to this incident at Chamorro Village.

You have not been courteous and respectful to the public, your peers, your subordinates, or to you supervisors.

As stated above, you failed to acknowledge delivery of a letter from me requesting your administrative interview on May 14, 2019, after being ordered on May 9, 2019, to view and accept all such communications from me. You improperly involved and have attempted to triangulate and divide your office against other divisions including employees in my office.

I find that you advised your subordinates of grievances you filed against me, John Mark Joseph and the Deputy and the various step levels of those grievances. This misuse of your position and authority and revealing private and confidential information to your staff is malicious, improper and disrespects the right of privacy of your staff and this office regarding your personal grievances. Your staff have confirmed you have done this in their May 2019 interviews.

You have also attempted to malign the Director's administrative assistant, Christine Okerill, between March 21, 2019, and the present date, by calling her a "commanding officer," and refusing to open up or respond to her emails sent on behalf of the Director's office as stated above.

Based on the aforementioned, I find that you have violated all of the following:

Each of the above factual statements supports the charges below and are incorporated into each and every charge below as if set forth in full under each charge.

1) DOA Personnel Rules and Regulations, Chapter 11, Section 11.303 – "Authorized Causes for Adverse Action:"

A department/agency head may remove an employee for such misconduct, which affects the efficiency of the service. The authorized causes for adverse action include, but are not limited to the following:

- B. Refusal or failure to perform prescribed duties and responsibilities;**
- C. Insubordination;**
- H. Discourteous treatment to the public or other employees;**
- J. Misuse or theft or government property.**
- O. Other misconduct not specifically listed (See herein and below; violation of Chapter 3 of DOA PR&R Code of Conduct, Chapter 11.402 charges set forth herein, including but not limited to, safety and criminal conduct, notoriously disgraceful conduct adversely affecting the employer/employee relationship (on duty/off duty); official misconduct under 9 GCA 49.90 (a), violation of 4 GCA § 1103 re: use of government vehicle, and all charges herein, including B, C, H and J, above).**

I find you violated all of the charges herein and below based on the factual statements made herein and as attached to this NFAA. All exhibits attached were also provided to you with the NPAA.

For each and all of the charges, please refer to the factual statements above, below and as attached:

You failed to manage your employees and treat them with courtesy and respect. You failed to communicate effectively and work well with others as required by your job description.

Insubordination: Examples of your insubordinate conduct are stated above. These include your failure to comply with oral and written instructions in your May 14, 2019, and May 15, 2019, administrative interviews and the Director's letter and order dated May 9, 2019.

Discourteous and disrespectful treatment toward the public and misuse of government property: Your use of official vehicle for personal lunch and directing that the official vehicle turn in an exit-only road; a member of the public was angry and caused the Department to be placed in a bad reflection on social media with your picture and that of the official vehicle. You also misused government resources and the official vehicle for your personal and malicious purposes.

Disrespectful and discourteous treatment toward your subordinates in a hostile working environment, including your yelling, name-calling, triangulating, insulting and abusive language, and stating confidential information involving personnel in front of each other in loud tones to your staff. Your staff feel you have retaliated against them for their complaints and their participation in the investigation. You called my administrative assistant Christine Okerill a "commanding officer" and made false, inaccurate and misleading statements about her as stated more fully above. You advised me in writing you refused to reply to her emails.

Disrespectful to your superiors: You deliberately refused to acknowledge emails from the Director's Assistant, and disrespected orders given in interviews where myself and the Deputy Director was present. You were disrespectful with your tone of voice and demeanor in your interviews, your constant interrupting, and refusal to initially accept my order to you dated May 10, 2019, arranging your interview for May 14, 2019, among other allegations set forth above.

2) **11.402 (DOA PR&R) Alleged Violations**

CONDUCT

A. Criminal, dishonest, infamous or notoriously disgraceful conduct adversely affecting the employee/employer relationship (on duty or off duty)

Criminal conduct (official misconduct – 9 GCA § 49.90 (a)), dishonest conduct as set forth in her interviews and infamous and notoriously disgraceful conduct as to all allegations set forth herein, including the incident on March 21, 2019, at Chamorro Village with the improper direction, use and driving of the official vehicle pursuant to Lynda Aguon's orders and directives.

See all factual allegations above and herein to support each of the charges below, including your dishonest and untruthful statements in your letter about Christine Okerill and your untruthful statements made about the log book, staff meetings, and other statements made in your interviews, including failing to state that you called Michelle Yamasta during your interview on May 14, 2019, and stated that someone was "squealing" on you.

- B. **Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from any proper order from any supervisor having responsibility for the work of the employee: Insubordination.**

Despite being also orally instructed not to discuss the administrative investigation with employees or witnesses until the investigation had been completed, you admitted on May 14, 2019, to discussing this matter with Michelle Yamasta during your two (2) hours lunch break. You were aware at the time you asked her about an incident on March 21, 2019, that you were under orders from your Director orally and in writing not to discuss the matter, and refused to comply with that order. When you were asked in the interview (after your lunch break) if you discussed the matter with anyone, you admitted you had done so.

- C. **Disorderly Conduct: Fighting, Threatening or attempting to inflict bodily injury to another; engaging in dangerous horseplay or resisting competent authority.**
- D. **Disrespectful Conduct; Use of abusive or Obscene Language to or about other personnel.**

You were disrespectful as stated herein to the public, your subordinates, to me, to your Deputy Director, and to Christine Okerill. See all factual allegations above and herein.

- G. **Knowingly making false or malicious statements with the intent to harm or destroy the reputation of authority, or official standing of individuals or organizations.**

You made harmful and malicious statements about your subordinates in front of each other, including Ian Catlin, Michelle Yamasta, John Mark Joseph, and also made such false or malicious statements about my Administrative Assistant Christine Okerill.

Your conduct as set forth extensively above on multiple occasions during the period March 21, 2019, through the present date, is alleged to be unethical, criminal, notoriously disgraceful, disrespectful, unprofessional, hostile, disorderly, unbecoming, and insubordinate. Your conduct has affected the efficiency of the service, your staff, and the employer/employee relationship.

PERFORMANCE

- F. **Unauthorized use or possession of government property**

(Please see the detailed factual allegations regarding the incident on March 21, 2019, and your directing staff to deliver your personal communications and grievances in April and May 2019).

SAFETY

- A. **Failure to observe precautions for personal safety posted rules, signs, written or oral safety instructions**
- B. **Violation of safety regulations which endangers life or property.**
- C. **Endangering the safety of personnel through carelessness.**
- E. **Violating traffic regulations, reckless driving on government premises, or improper operation of government motor vehicles.**

For these charges, please refer to your directing the misuse of the government vehicle into the "exit" of a parking lot which endangered yourself, your staff and which caused a member of the public to be upset as he did not expect an official vehicle to cut him off on his way to the disabled parking.

You directed your staff to violate the rules of the road and posted instructions. This was an improper use of the official vehicle as previously stated. Your staff properly signaled and intended to enter the entrance when you ordered her to go further ahead and enter through the "exit."

3) **3.000 Ethical Conduct and Responsibilities of Government Employees (DOA PR&R)**

- A. Public service is a public trust. Employees are expected to be loyal to the U.S. Constitution, the Organic Act of Guam, and to perform their duties and responsibilities ethically and in accordance with laws.
- G. Employees shall not use public office for private gain.
- H. Employees shall protect and conserve public property and shall not use it for other than authorized activities.
- J. Employees shall, in good faith, disclose waste, abuse and corruption to appropriate authorities, and in doing so shall be protected from reprisal.
- K. Employees shall respect the rights and privacy of other employees and shall not use their position, authority, or other means to injure another person or employee for personal reasons or malicious purposes.
- M. Employees shall be courteous and helpful to clients and members of the public.
- N. Employees shall be courteous to other employees and respect supervisory authority.

You violated these sections of Chapter 3 of the DOA PR&R for the reasons set forth above and herein.

You acted unethically and violated the laws referenced herein, you used your public office and position for your personal and malicious purposes and to injure and harm others, you did not protect and conserve public property but instead, used your staff and directed them to use the official vehicle during working hours to deliver your personal communications and grievances.

You have not respected the rights and privacy of your employees and have used your position, authority and other means to injure your employees, other DPR employees and Management for your personal and malicious purposes. You have involved your employees in your personal grievances and issues with me, John Mark Joseph, Ian Catling, the Director, Deputy and your negative comments about Christine Okerill. Your staff has indicated you are unprofessional and not qualified to be a supervisor, as you triangulate your employees and involve them in your personal issues which do not involve them. You retaliated against your employees for complaining about your conduct, and appearing for interviews in this matter. You attempted to terminate Ian Catling's employment. You were not courteous to the public or to your supervisors or other employees during all times referenced herein.

4) **Official Misconduct; Defined & Punished - 9 GCA § 49.90**

“A public servant commits a misdemeanor if, with intent to benefit himself or another person or to harm another person or to deprive another person of a benefit; (a) he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized.”

9 GCA § 49.10 (a) defines “benefit” as any gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested other than the beneficiary’s lawful compensation.

9 GCA § 49.10 (b) “official function” means the decision, opinion, recommendation, vote or other exercise of discretion or performance of duty of a public servant in a lawful or unlawful manner.

9 GCA § 49.10 (d) “public servant” means any officer, member, or employee of the legislative, executive or judicial branches of the Territory or of any governmental instrumentality ...

5) **Violation 4 GCA § 1103 – Government Vehicles and use**

No government vehicle, whether government-owned, leased or rented shall be used for other than official purposes.

On March 21, 2019, as set forth more fully above and herein and in the attached exhibits, you insisted on using the official vehicle for a personal lunch with your two (2) subordinates at the Chamorro Village. In addition to using the official vehicle for a personal lunch, you instructed the driver of this vehicle, Barbara Lujan, to enter the parking lot through the exit, which was an unsafe and inappropriate instruction and use of the official vehicle. Such order and instruction caused a member of the public to feel he was cut off and may have endangered the safety of your employees, the vehicle and the public by such misuse and order you gave that date.

As a result of this incident, a member of the public, Marc Colby, was angry, and he posted a picture of you, with your badge, and a picture of the official vehicle, a 2018 Mitsubishi, on Facebook. This incident caused embarrassment to DPR as a result of your unprofessional conduct that date.

Witness statements were obtained from Barbara Lujan, Michelle Yamasta and YOU regarding the use of the official vehicle on March 21, 2019, to go to lunch at Chamorro Village. See attached statements that are incorporated herein by reference as if fully set forth herein.

A statement provided from Barbara Lujan which is attached states:

“On Thursday, March 21, 2019 approximately 11:35am., Ms. Lynda Aguon invited Michelle Yamasta and myself to lunch and suggested we go to Chamorro Island BBQ located at the Chamorro Village and said that we were going to use the government vehicle.”

“When I was getting my things, she said Bobbie you drive and I will show you where to go. So we got into the vehicle and headed down to Chamorro Village and when I was entering the vicinity in Agana, she said turn right towards Jamaican grill. I immediately turned on my right signal to proceed into the first entrance and as I was about to turn in, Ms. Aguon said “No, not here, go further up and I’ll tell you where to park which will be closer”, so I turned off my signal light and proceeded further up and Ms.

Aguon then pointed to the exit sign and said "turn in here", I turned and then she pointed to my left to show me the vacant parking spot.

As I was turning in to the parking spot, there was a car about 25 feet away from us and started to honk his horn, he did not have his signal on, so I figured he was probably honking at someone else. As we parked and got down the vehicle, the driver of the so-called vehicle that was honking exited his vehicle and stood by the sidewalk and started yelling at us saying "How dare you enter where there's an exit sign, you should be ashamed of yourselves, entering thru a one-way street and you just wanted to cut me off from my handicap parking."

The driver of the other vehicle's name is Mark Colby and posted the incident on Facebook with a picture of Lynda Aguon and the government vehicle.

Mr. Colby's Facebook post states:

"First she drove the wrong way on a one-way road then entered the exit! Cut off a car going to the disabled parking and argued with me about it! Note her badge, she is the director of Parks and recreation! Bonus it was all done a government official vehicle." Mr. Colby's Facebook post and his complaint dated March 21, 2019, are attached to the NPAA.

In his written complaint attached to this NPAA, Mr. Colby states:

"At about 1145 hours of Thursday 21 March 2019, I was driving into the Chamorro Village parking lot across from the entrance to Paseo Stadium with my mother to have lunch. I noticed an SUV driving in to the exit, said SUV then turned into a parking stall. I stopped to make sure we would not get hit as this SUV was driving in the wrong direction.

After I exited my car with my mother I approached the driver who was with two other ladies and informed her of her illegal actions of driving the wrong way on a one way road clearly marked with signs, as well as driving into an exit also clearly marked with a sign and for cutting off a car with disability plates. All she could say was "sorry." I also noticed that said SUV had Government of Guam plates and it was an official vehicle."

Service of the Notice of Proposed Adverse Action

You were personally served with the Notice of Proposed Adverse Action on June 4, 2019, by park rangers in your office at GHRD. You were orally advised when you were served that you had 10 calendar days to respond to the Notice of Proposed Adverse Action, or by June 14, 2019.

You were also advised in writing in the NPAA that you had ten (10) calendar days to respond orally, in writing, or both to the NPAA, and that your response was due no later than Friday, June 14, 2019. You were also advised that you could be represented in this meeting. The NPAA advised you that I had requested that a committee hear your oral response while I was off-island, and that Deputy Director Victor Villagomez was the Acting Director during the period of my off-island absence. You did not request to meet in person to answer your response.

I have reviewed the written response submitted by GFT on your behalf on Friday, June 14, 2019, before making my decision in this matter.

I have considered your written response as well as the complaints received, your written statement, the attached documents, and the information as stated herein.

I find that that oral and written complaints against you by your GHRD staff and Marc Colby for the period March 21, 2019, through May 31, 2019, are supported.

I further find that your conduct as stated herein during the period March 21, 2019, through May 2019, was criminal, unprofessional, unbecoming, dishonest, discourteous, disrespectful, unethical, and insubordinate.

Your conduct was notoriously disgraceful such that you have adversely affected the employer/employee relationship. Your conduct also affects the efficiency of the service and staff morale and efficiency.

I find that you violated all ethical codes of conduct referenced herein, and that you failed to perform your job duties and responsibilities ethically and in accordance with laws.

I further find your failed to obey orders I provided on all occasions referenced herein, and deliberately defied those orders. You disrespected me by failing to accept and receive my letter to you regarding the Administrative Interview, and you had your staff deliver a letter to me indicating you would not respond to the emails from my Administrative Assistant.

You further disobeyed orders not to talk about the investigation. Not only did you admit to this insubordinate conduct on May 14, 2019, but your violation of the orders not to discuss this matter with employees and witnesses was confirmed by GHRD staff, including Michelle Yamasta, Barbara Lujan and John Mark Joseph.

The facts also support the abuse and misuse of your position and the official vehicle for your personal purposes during this time period. You also endangered the safety of your staff, the public and government property on March 21, 2019.

I find you have committed official misconduct (9 GCA § 49.90) and violated the statute regarding use of a government official vehicle (4 GCA § 1103) as stated herein.

Additionally, you created and maintained an unprofessional and hostile working environment and failed to protect the rights and privacy of your subordinates and other employees. After you were shown employee statements and apprised of their complaints, I find that you then retaliated against them as alleged.

I find that you have falsely accused and maligned Christine Okerill for no legitimate purpose, and that you have abused government property and resources for your personal purposes, when such purposes were unauthorized. As a result of the foregoing, I find final adverse action taken against you as stated on page 1 is appropriate. The action is effective immediately upon service of this action upon you.

Appeal

You have twenty (20) calendar days from service of this final adverse action to file an appeal with the Civil Service Commission as set forth above.

cc: Department of Administration: Personnel Mgmt. Division

Attachments: As stated