



E-FILED  
CNMI SUPERIOR COURT  
E-filed: Oct 27 2023 04:05PM  
Clerk Review: Oct 27 2023 04:05PM  
Filing ID: 71209580  
Case Number: 23-0146-CV  
N/A

**By Order of the Court, Judge WESLEY M. BOGDAN**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**ALEXANDRIA DAVIS STEELEY,** )  
  
Petitioner, )  
  
vs. )  
  
**CNMI DEPARTMENT OF LANDS AND )  
NATURAL RESOURCES (DLNR); CNMI )  
DIVISION OF FISH & WILDLIFE (DFW); )  
SYLVAN IGISOMAR, Secretary, DLNR; and )  
MANNY PANGELINAN, Director, DFW,** )  
  
Respondents. )

**CIVIL CASE NO. 23-0146**

**ORDER GRANTING  
COMMONWEALTH’S  
MOTION TO DISMISS**

**I. INTRODUCTION**

**THIS MATTER** came before the Court on September 19, 2023 at 10:00 a.m. in Courtroom 223A, CNMI Superior Court, Guma’ Hustisia for oral argument on the Commonwealth of the Northern Mariana Islands’ (the “Commonwealth”) Motion to Dismiss Petitioner Alexandria Davis Steeley’s (“Petitioner”) Complaint for Review of Agency Action, for Declaratory Judgment, Injunctive Relief, and Damages (the “Petition”). The Court also heard oral argument on the two government officials’ – Respondent Sylvan Igisomar and Respondent Manny Pangelinan, in their personal capacities – Motions to Dismiss Petitioner’s Second Cause of Action Based on Qualified Immunity.

Petitioner was represented by her attorney, Jeanne H. Rayphand. The Commonwealth, by and through Respondent CNMI Department of Lands and Natural Resources (“DLNR”), was represented by Assistant Attorney General Hunter Hunt. Respondent Sylvan Igisomar (“Igisomar”), Secretary of DLNR, was represented by Assistant Attorney General Gregory Cenac. Respondent Manny Pangelinan (“Pangelinan”), Director of the Department of Fish and Wildlife (“DFW”), was represented by Assistant Attorney General Joshua Willis.

1 Based upon a review of the arguments, filings, and relevant law, and for the reasons stated  
2 herein, the Court **GRANTS** the Commonwealth’s Motion to Dismiss the Petition.

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

- 4 1. The underlying controversy centers on Petitioner’s applications, filed **February 10, 2023**, for  
5 permits and clearance from the CNMI Division of Environmental Quality (“DEQ”) and the  
6 Division of Fish and Wildlife (“DFW”).
- 7 2. Petitioner is legally required to obtain both the DEQ permit and DFW authorization before she  
8 may lawfully clear vegetation and rebuild a home situated on property located in Kagman,  
9 Saipan.
- 10 3. During its review of Petitioner’s application, DFW detected a Nightingale Reed-warbler within  
11 the buffer zone area around Petitioner’s property and gave notice to Petitioner, on or about  
12 **March 31, 2023**, that the permit process had been halted for further investigation and/or  
13 resolution.
- 14 4. On **May 15, 2023**, DFW assessed the amount for a partial credit of money to be paid by  
15 Petitioner to the Saipan Upland Mitigation Bank (“SUMB”) to mitigate damage to the  
16 Nightingale Reed-warbler’s habitat.
- 17 5. On **July 27, 2023**, Petitioner filed her Complaint for Review of Agency Action, for Declaratory  
18 Judgment, Injunctive Relief, and Damages against DLNR, DFW, Respondent Igisomar (in both  
19 his official capacity as Secretary of DLNR and in his personal capacity), and Respondent  
20 Pangelinan (in both his official capacity as Director of DFW and in his personal capacity).
- 21 6. On or about **August 9, 2023**, DLNR transmitted notice of an Authorization for SUMB Credit  
22 Sale to Petitioner.
- 23 7. Petitioner has not paid, and apparently – as argued in Court – does not want (or intend) to pay  
24 the SUMB mitigation fee to receive the necessary permits that would allow her to clear her  
25 property in Kagman and rebuild a home on it.

1 8. On **August 22, 2023**, the Commonwealth filed its Motion to Correct Misjoinder and Motion  
2 to Dismiss for Lack of Jurisdiction and Failure to State a Claim on Which Relief Can Be  
3 Granted.

4 9. Respondent Igisomar and Respondent Pangelinan thereafter joined the Commonwealth's  
5 Motion to Dismiss and also filed separate Motions to Dismiss the claims against them in their  
6 individual capacities.

7 10. On **October 2, 2023**, this Court granted Respondent Igisomar's and Respondent Pangelinan's  
8 Motions to Dismiss the claims filed against them in their individual capacities by separate  
9 Order of the Court.

10 11. The Court now issues its ruling on the Commonwealth's Motion to Dismiss the Petition.

### 11 **III. LEGAL STANDARD**

12 The Commonwealth Rules of Procedure for Administrative Appeals, in conjunction with the  
13 Commonwealth Rules of Civil Procedure, govern the specific procedures and processes to be used in  
14 the Superior Court for judicial review of CNMI agency decisions that were made under the  
15 Administrative Procedures Act. *See generally* NMI R. P. Admin. App. *and specifically* NMI R. P.  
16 Admin. App. 2(g) ("All motions are governed by the Commonwealth Rules of Civil Procedure except  
17 where the rules contained herein conflict or state otherwise, in which case these rules govern.").

18 The Commonwealth's Administrative Procedure Act allows for judicial review of "final  
19 agency action[s]." 1 CMC § 9112(d); *see also* NMI R. P. Admin. App. 1(a) (providing that the rules  
20 are meant to govern procedures for judicial review of "**final** orders or decisions from an agency")  
21 (emphasis added). Final agency action is therefore a jurisdictional prerequisite to judicial review.  
22 *Cody v. N. Mar. I. Ret. Fund*, 2011 MP 16 ¶ 10; *see also ANAKS Ocean View Hill Homeowners Ass'n*  
23 *v. Inos*, 2023 MP 1 ¶ 20 ("Finality is a jurisdictional requirement for any appeal of an agency action." ).  
24 An aggrieved party must seek judicial review within thirty days of a final agency action. *Cody*, 2011  
25 MP 16 ¶ 18 (citing 1 CMC § 9112(a)-(b)).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

#### IV. DISCUSSION

Petitioner seeks judicial review of agency action she claims was too slow and asks the Court to declare that Respondents “unlawfully withheld and unreasonably delayed” a final agency decision on her application for certain land clearing permits. To remedy this delay, Petitioner asks that the Court order DFW to issue her the necessary permit to clear her house lot and rebuild a house thereon.

In the alternative, Petitioner asks this Court to declare that all Kagman homestead property owners are exempt from the Commonwealth’s regulatory scheme with respect to land usage *and* the environmental regulations designed to protect endangered species in the CNMI, so that ultimately she may clear vegetation and rebuild a home on her homestead property in Kagman without obtaining any permits.

Upon full review of the record, the moving papers, and counsel’s arguments, the Court finds that: (i) the underlying appeal is not one of final agency action (and the delays complained of are not unreasonable under the circumstances); and (ii) the alternative declaratory relief requested by Petitioner is somewhat extreme and, if granted, would constitute a violation of the separation of powers doctrine.

**A. The Court Lacks Jurisdiction Because There Is No “Final Agency Action” to Review (and the Delays Complained of Are Not Unreasonable Under the Circumstances).**

Final agency action is a jurisdictional prerequisite to judicial review. *Cody*, 2011 MP 16 ¶ 10; *see also ANAKS*, 2023 MP 1 ¶ 20 (“Finality is a jurisdictional requirement for any appeal of an agency action.”). “[A]n aggrieved party must seek judicial review within thirty days of a *final agency action*.” *Cody*, 2011 MP 16 ¶ 18 (citing 1 CMC § 9112(a)-(b)) (emphasis added).

Petitioner concedes in her Petition that there has been no final agency action taken on her permit application. *See* Petition at 7. She asserts that this is because Respondents have “unlawfully withheld and unreasonably delayed” taking action on her application and that she is therefore entitled to injunctive relief ordering DFW to promptly issue her the necessary permits.

1 The Court agrees that there is no final agency action for this Court to review, but disagrees  
2 with Petitioner’s claims that the agency actions in this case were unreasonable (or, that the delay  
3 entitles Petitioner to the injunctive relief requested). As noted in the facts above, Petitioner received  
4 the notice of DFW’s Authorization for SUMB Credit Sale on August 9, 2023 and has since failed (or  
5 outright refused) to act on it. The application has basically sat in limbo ever since, as DFW cannot  
6 grant Petitioner’s permit application until Petitioner accepts the fee for the SUMBA credits. Put  
7 another way, the ball has been in Petitioner’s court for months.

8 Moreover, because Petitioner has not yet complied with the lawful process used in the CNMI  
9 to permit the clearing of property which may adversely affect threatened or endangered species,  
10 Respondents have been unable to issue a final decision on Petitioner’s permit application. And without  
11 final agency action, this Court is deprived of jurisdiction over Petitioner’s APA claim. Under these  
12 facts, the Court finds it appropriate to grant the Commonwealth’s Motion to Dismiss Petitioner’s first  
13 cause of action.

14 In addition, Petitioner’s second cause of action, which is premised on the same alleged  
15 wrongdoing as her APA claim – *i.e.*, Respondents’ alleged failure to act on her permit application –  
16 must be dismissed as well. As stated above, there is no unlawful withholding of agency action – and  
17 certainly none rising to the level of a constitutional violation – where DLNR has fulfilled its duty to  
18 notify Petitioner to pay the SUMB mitigation fee, and the decision now rests with Petitioner as to  
19 whether or not to accept the fee.

20 **B. Petitioner’s Alternative Request for Relief, if Granted, Would Violate the Separation  
21 of Powers Doctrine.**

22 As an alternative to Petitioner’s request that this Court instruct DFW to give her the permit  
23 she wants, Petitioner asks the Court to declare that all Kagman homestead property owners are exempt  
24 from the environmental regulations promulgated by the CNMI government to protect critical habitats  
25 for endangered species. The Court simply does not have the power to do this.

“The Commonwealth Constitution provides for a tripartite system of government,” which  
“gives rise to the separation of powers doctrine.” *Commonwealth v. Lot No. 218-5 R/W*, 9 N. Mar. I.

1 533, 535 (2016). “The separation of powers operates in a broad manner to confine legislative powers  
2 to the legislature, executive powers to the executive, and those powers that are judicial in character to  
3 the judiciary.” *Id.* In other words, its purpose is “to safeguard the independence of each branch of the  
4 government and protect it from domination and interference by the others.” *Sablan v. Tenorio*, 4 N.  
5 Mar. I. 351, 363.

6 Here, the CNMI government has unequivocally declared an interest in protecting endangered  
7 species and their special habitats. To achieve this important goal, our government promulgated certain  
8 regulations that all property owners must comply with if they wish to clear or build on land in the  
9 CNMI. What Petitioner asks for – *i.e.*, a declaration that all Kagman homestead property owners are  
10 exempt from these environmental regulations – would require this Court to violate the separation of  
11 powers doctrine and interfere with the decision-making of a co-equal branch of government. The  
12 Court declines to do so. This Court’s obligation is to *interpret* the law when faced with a case or  
13 controversy, not to change it.

14 For these reasons, the Court lacks subject matter jurisdiction over Petitioner’s claims.  
15 Accordingly, the Petition is dismissed.

16 **V. CONCLUSION**

17 **THEREFORE**, for the reasons stated above, the Court **GRANTS** the Commonwealth’s  
18 Motion to Dismiss the Petition.

19 **SO ORDERED** this 27th day of October 2023.

20  
21 /s/  
22 **WESLEY M. BOGDAN**, Associate Judge