



Chamorro Land Trust Commission

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COMMISSION MEETING MINUTES Dept. of Land Management Conference Room, Anigua February 16, 2005; 4pm

Felix P. Camacho
Governor of Guam

Kaleo S. Moylan
Lieutenant Governor of Guam

Thomas A. Elliott
Administrative Director

Commission Members

Delfin R. Damian, Jr.
Chairman

Annie R. Perez
Commissioner

David J. Matanane
Commissioner

I. CALL TO ORDER

Meeting was called to order at 4pm by Chairman Delfin Damian. Present were Commissioner Annie Perez, Commissioner David Matanane and Administrative Director Thomas Elliott.

II. APPROVAL OF MINUTES (December 29, 2004)

Commissioner Matanane moved to approve the minutes of December 29, 2004, subject to corrections. Commissioner Perez seconded the motion. There were no objections, MOTION PASSED.

III. UNFINISHED BUSINESS

1. Ypao Point status report

Felix Dungca informed the Commission that this project started about a year ago and we are now at the tail end of this process as we are guided by the RFDP. We are now in the negotiation stages as far as the compensations which will be discussed in Executive Session pursuant to the procurement laws. The draft documents have been preliminarily reviewed by the Attorney General's office and they find it pretty accurate with some minor changes. The Attorney General's office had responded back to the Commission that once these minor changes are corrected they will be prepared to recommend approval of the documents.

Mr. Dungca commented that for auditing purposes once this project is well on course that maybe a separate account can be established for accounting purposes.

According to Mr. Dungca there is still a lot of work remaining on this project for the remaining part of this calendar year. The conceptual master plan that was approved by the TaskForce as well as the Commission last year still has to be fine tuned. The final development master plan must be completed by the Developer and submitted to the Commission for final approval.

The master covenants, management and maintenance agreement are called for in the RFDP. Mr. Dungca is currently working with local representatives in drafting that up which should not be a problem because

we already have sample covenants from previous similar like projects on island that are recorded.

The critical thing in the RFDP is the management and administration of the cultural center, museum and the Chamorro Shrine (Naftan I Manainata). This is further down the road but it is never too early to start working on these documents. All these documents would have to be approved by this Commission before they take effect.

Mr. Dungca informed the Commission that once this project clears the Commission it would have to go to Phase II which is approval by the Land Use Commission. This is going to involve a lot of work on the part of the Developer as well as his design team. Under the RFDP we are required to assist the Developer in preparing an acceptable application to the Land Use Commission which would involve a design, preliminary engineering studies and coordination with permitting agencies. Once the application is completed it will be submitted to the Planning Division for review by the Application Review Commission which is composed of 13 individual agencies. There is a mandatory public hearing by law which will be held at the Tamuning Mayor's Office since the property in question is in Tamuning. The last step would be the GLUC hearing. These processes are embedded in executive order 96-26.

Mr. Dungca commented that once the project clears the Land Use Commission then the Developer or his design team will proceed to the permitting process. The process described is really a summation of a possible 2 to 3 year period once it clears the Commission.

A 2 page handout was provided to the Commission by Mr. Dungca which are excerpts from the RFDP entitled CLTC commitments and Master Developer responsibilities. The Chamorro Land Trust Commission has 4 commitments established in the RFDP and the Developer has 7 requirements. To this point all parties have been complying with the requirements.

Even though the Commission is not directly involved with the land use approval and the permitting process it is important that the Commission understands the Government approval process. There are basically 7 steps which are:

- Phase 1 – Chamorro Land Trust Commission
- Phase 2 – Guam Land Use Commission (land use approval)
- Phase 3 – A/E & Construction Drawings (design stages)
- Phase 4 – Government of Guam Permitting process
- Phase 5 – CM (the construction management)
- Phase 6 – Government Business Licenses
- Phase 7 – Other related functions (marketing plan)

Felix Dungca commented that the Developer has prepared a marketing plan last year and we continue to work with them to fine tune it.

Mr. Dungca informed the Commission of the 2 master objectives that are embedded in the RFDP which sets the perimeter by which the Commission uses to negotiate with the Developer on this important project.

Mr. Dungca informed the Commission that he had submitted a list of materials and supplies that he would need to function to continue with the project to the Administrative Director.

Chairman Damian inquired if Mr. Dungca has an office to work out of.

Mr. Dungca commented yes.

Chairman Damian commented that the Director would be looking into the availability of the items requested at the office and those that are unavailable then maybe the Commission can procure them.

The Administrative Director informed the Commission that most of these items are available in-house. The Commission also has 2 computer systems at Dept. of Land Management that belongs to the Commission and perhaps that could be provided to Mr. Dungca for his use.

Commissioner Matanane wanted to clarify that the Chamorro Land Trust Commission is here to lease out property and not to engage in partnership or any type of business activity.

IV. COMMUNICATIONS

1. From Perez Bros., Inc.

Re: Commercial license request

The Administrative Director commented that Perez Bros. is requesting some property adjoining Ancestral Lands southwest of the Guam Raceway Park. They are close to securing a lease agreement with Ancestral Lands Commission however, once they finish the grading program in that area they will come up to our portion which is right by the cliff line. According to the Administrative Director they may end up creating a 30 foot wall on that point. Perez Bros. would like to get the Commission's blessing to license the Commission's property for quarrying purposes. They believe that they would not be reaching our property for another 5 to 10 years. Upon the point that they do reach our property then they would pay the royalty from the grading in addition to the base rent.

The Administrative Director commented that a site inspection has not been scheduled yet and it is estimated that there are about 4 to 5 acres that they are requesting.

Chairman Damian requested the Administrative Director to report back to the Commission at the next Commission meeting after a site inspection is conducted.

2. From Ruel O. Valencia

Re: Request to lease or purchase CLTC property

The Administrative Director commented that Mr. Valencia is requesting to lease Lot 5002 and Lot 5001 in Dededo which is adjoining his private property at the Commission's fair rate.

Mr. Valencia had submitted a complete business package. He is currently operating both a fast food and check cashing business that he hopes to operate on the property requested.

The Administrative Director commented that Commission staff would have to conduct a field inspection of the area.

Commissioner Matanane inquired on the location of Mr. Valencia's business.

The Administrative Director commented that it is located in Dededo east of the old army reserve area and close to where the Harmon Loop cutoff is.

Chairman Damian requested the Administrative Director to obtain more information relative to the lots requested by Mr. Valencia.

3. From Ambros, Inc.

Re: Request to purchase or land exchange

Former Director Joseph Borja informed the Commission that the application by Ambros submitted by Mr. Frank and Tom Shimizu originally was a request to relocate or delete an easement between two lots. Both Mr. Borja and the Administrative Director had met with them and informed them that the Commission does not really sell land and that the has a licensing program. The Commission has a 21 year license program that they can apply for and then develop a long term lease when the leasing program becomes available and they are open to that.

The property is behind the 76 gas station in Anigua. Ambros owns two lots in the area and is looking at upgrading its facilities. In the back of the Ambros properties are two lots. One of the lots was condemned by the federal government and the other lot was bought by the federal government and provided an access to the beach. What Ambros had originally requested was to relocate the easement that runs in between their two lots to the side of their property. Land Management and engineering has a problem with that because of the width of the easement.

Former Director Joseph Borja commented that the lots in the back are of minimal size, there are no other surrounding land owners and the lot itself is un-developable as it stands. Ambros actually wants to purchase the lot but are willing to work with what programs the Chamorro Land Trust Commission has and in this case it is the licensing program.

Ambros would like to consolidate both of their lots because the law prevents them from construction of anything over two lots.

Because this request was previously submitted to the Commission and the Commission's instruction to then Director Borja was to come back at the next meeting with a recommendation. Staff recommendation is to approve the license request to Ambros Inc. They agree to undertake all cost concerning appraisal for determination of the rental rate and they've also agreed to undertake any cost of any mapping required to consolidate the lots.

Chairman Damian commented that Ambros would need to consolidate their lots in order to continue with their plans in expanding their facilities. With respect to the other two lots that were condemned by the federal government, the Chairman inquired from Mr. Borja if he knows if there are mechanisms right now with respect of acquiring or getting some kind of activity with the two small lots.

Former Director Joe Borja commented that the area where the two small lots are at is susceptible to flooding because it is close to the coast line. Joe Borja commented that he thinks Ambros's concern is really not on the two lots in the back but the access that cuts their two properties. The lots are really not of much value to any other than the Land Trust and Ambros.

Commissioner Matanane inquired if it would be feasible to put the easement in the corner.

Former Director Joe Borja commented that it is not feasible and the width of the easement is about 4 feet wide and DPW and Land Management had some concerns on that.

Chairman Damian informed Mr. Shimizu that the Commission will review the matter further to make sure that all procedures are followed and will respond back as soon as possible. The Chairman further stated that he doesn't see any other recourse and once it is reviewed the Commission may give Ambros an answer more than likely in their favor.

The Administrative Director commented that the Commission would get back to Mr. Shimizu in a week.

4. From Carmen Penaflor **Re: Request to transfer lease**

The Administrative Director informed the Commission that this type of request is repetitive amongst the lessees. Carmen Penaflor already has a lease on Chamorro Land Trust property, however, she has allowed her sister-in-law Teodora Penaflor to stay on the property and is requesting that she transfer her lease to her sister-in-law. Mrs. Carmen Penaflor was advised that there are rules in the Chamorro Land Trust Act that prevents a transfer of lease for a period of 7 years. In Carmen's case she won't be able to transfer her lease until August 2009.

The Administrative Director commented that the Commission may want to consider special consideration if necessary. It seems that Teodora Penaflores's circumstance is that she is living in a shipping container with her children and they are requesting special consideration on this case. The lessee has stated that she is willing to give up her lease to her sister-in-law.

Chairman Damian commented that the Commission would need to review the statutes and if it is within our authority then we can go ahead and change that but we will seek legal advice.

The Administrative Director commented that the Penaflores and also complaining about Land Trust staff giving conflicting directives in terms of how to resolve the situation. The Administrative Director commented that he provided them with a letter that authorizes the lessee to allow her sister-in-law to stay on the property so that way no one comes to try to remove her.

5. From Transworld Radio

Re: Boundary extension at the KTWR site in Merizo

The Administrative Director informed the Commission that KTWR radio is a shortwave radio station requesting to add an additional 1.2 acres to their existing acres leased. KTWR is currently leasing 17.4 acres on Lot 440 in Merizo for an antennae field which is not to exceed 20 acres as indicated on their lease. KTWR had submitted drawings and an executive summary that describes their business and capabilities.

Chairman inquired from representatives of KTWR on what part of the business is the expansion directed to.

Jere Johnson (KTWR) commented that they would like to expand their broadcast to reach Indonesia and others in Southeast Asia. They would need another antennae to cover these areas.

What KTWR are working for at this point is in obtaining a Memorandum of Understanding to conduct further research in order to get the exact acreage they need. They would need to conduct extensive review work first to see if it is a possibility before proceeding further with obtaining the other necessary permits. At this time they estimate that they would need an additional 1.2 acres as requested for another antennae.

Chairman inquired if there would not be any substantial changes to the topography with respect with the expansion.

James Parmerlee (KTWR) commented that there won't be any changes.

Chairman Damian informed KTWR that staff would have to conduct a field inspection of the area and will get back to them on the status.

V. UNFINISHED BUSINESS

Former Director Joseph Borja reported on 5 items that came before the Commission during his tenure.

1. **Thomas Manglona** – The Commission had exchanged Mr. Manglona's signed Chamorro Land Trust lot with an adequate Department of Land Management lot that has road frontage which is accessible to the Mass Transit vehicle to provide service for Mr. Manglona.
2. **Jose Santos Torres** – Access problem in Yigo, Director Elliott and Former Director Borja had conducted a site inspection of the area. The situation is much more complex than looking at the map although the lots seem to be right alongside Marine Drive. The topography of the property of the area prohibits direct access to Route 1 as well as a 50 foot military easement that runs alongside Route 1. These two situations would have to be resolved before you can actually provide direct access to Mr. Torres. The Administrative Director is looking at how to provide an adequate access easement to not only Mr. Torres but for all 8 lots within the area.
3. **Ramon Torres** – Complex issue, briefing memo not yet complete by Former Director Joe Borja.
4. **Arciga/Tenorio case** – Complex issue, briefing memo not yet complete by Former Director Joe Borja.
5. **Block 24, G. Ricardo Salas** – The field survey had been completed and the preliminary sketch had been completed that is now awaiting the approval by the Commission and Mr. Salas. The straight out exchange is 106 square meters and with adequate setback to the Lujan House there is still 85 square meters left over. If the Commission agrees 85 square meters would be sold to Mr. Salas.

Former Director Joe Borja informed the Commission that he will be briefing the Administrative Director on the overall status of Block 24. There are two other concerns in the area. Block 24 in Hagatna is prime government land which is vacant. GHURA is interested in building a building on the property, Dept. of Land Management along with Chamorro Land Trust Commission and Ancestral Lands Commission are also looking at the area as a potential site for a building. It is one of the rare lots in Hagatna that escapes the flood designation of being allowed to build on it. There are private properties within the framework of Block 24. One of the private lots is already being worked on which is with Mr. G. Ricardo Salas and the other involves a land exchange with the Cristobal family which is under a court order.

Chairman Damian requested the Administrative Director to provide some updates to Mr. Salas as he is eager to make some movement on the situation.

Commissioner Matanane commented that he would like to commend Mr. Borja following up on Mr. Salas's request.

V. STAFF REPORTS

1. Marcel Camacho – Commercial request

The Administrative Director informed the Commission that Mr. Camacho is requesting to license Lot 10125-R12 in Yigo and Lot 5402 in Mangilao. Mr. Camacho is hoping to get 2 acres each at fair market value.

Marcel Camacho commented that they have reached the point of selecting alternative lots that are suitable for development which is on Route 15 and Carnation Road in Mangilao with a minimum of 2 acres and across the Yigo Gymnasium. Mr. Camacho requested if the Commission can allow him to proceed with the license with the provision that when the commercial lease rules and regulations are adopted that the license can be converted.

The Administrative Director informed the Commission that through field inspections on the Route 15 and Carnation Drive intersection, they have stumbled across some problems in terms of conflicting boundaries and dumping of debris.

Chairman Damian commented that the Commission did give approval to Mr. Camacho and then there was an inventory problem.

The Administrative Director informed the Commission that there are no other impediments discovered at this point.

Marcel Camacho commented that he is aware that the process will take a little bit of time to draft a memorandum, survey the properties to identify 2 acres for both sites and to secure the adequate zoning and survey at his cost.

Commissioner Matanane made a motion to approve the substitution of the alternate parcels requested. Commissioner Perez seconded the motion. There were no objections, MOTION PASSED.

2. Hawaiian Rock – license request on Lot 5412, Mangilao

The Administrative Director informed the Commission that Hawaiian Rock is requesting to secure a license on Lot 5412 in Mangilao for quarrying purposes. The Commission had tried to clarify the area with respect to the International Shooting Center who also holds a license in the area. The International Shooting Center is in arrears and the Commission has been trying to negotiate with them to clear the matter. In speaking with Hawaiian Rock's representative, Mr. Dan Swavely, he indicated that if the Commission can get a reduction or perhaps some kind of response from the shooting range that they would be willing to go forward with the project. The field inspection revealed that it was a dumping

ground on the portion of where the shooting range is located at. Piles of engine parts were found on the property. There is an ongoing clean up being done by KoKu Enterprises in conjunction with the Mangilao Mayor's office. The Administrative Director commented that the shooting range probably has the best access to the area but he's sure that if the Commission gives Hawaiian Rock a license on the property they would be able to create another access if there is no other alternative access that would suit their needs.

Chairman Damian inquired if there has been communications with the International Shooting Center.

The Administrative Director commented that the Commission has and we are at the point of giving them ultimatums.

The Chairman commented that we are going to have to include this in the list of communications that we will be sending to the Attorney General's office for action.

The Chairman commented that if we give the land to Hawaiian Rock then perhaps we can work an agreement with them to be able to provide some service relative to cleaning up the debris.

The Administrative Director commented that Hawaiian Rock is requesting for a one year license to assess the property.

Commissioner Matanane inquired if Hawaiian Rock had gotten back the results of testing the ground.

The Administrative Director informed the Commission that Hawaiian Rock is requesting for the license before they start any testing of the area.

Chairman Damian commented that the Commission wanted to look at the monthly fee that Hawaiian Rock was proposing to pay the Commission to see if it is reasonable.

Chairman Damian also stated that Hawaiian Rock is requesting the shooting gallery parcel.

Chairman Damian informed the Administrative Director to continue communications with the shooting center and to send out notice to them via registered mail.

Dan Swavely (HRP) commented that with respect to the pre-qualifying activity before we start quarrying, it is suggested that it all be rolled into one license. The first 12 months would be to conduct exercises on the property with the Commission's approval. During this time they would pay all expenses associated with the pre-quarrying activities such as the environmental and archeological investigations to name some as well as paying the Commission a monthly fee of \$500 a month. After the results come back and if everything is all clear for quarry purposes then they will come back to the Commission to find out the

final land form the Commission would like and proceed with the negotiation of the remaining 20 year license.

Commissioner Matanane inquired on when does Hawaiian Rock expect to get the results of their studies.

Charles White (HRP) commented that realistically it would probably take a year because of the substantial studies needed to be conducted.

Commissioner Matanane recalls that the Commission did previously approve the one year study.

Dan Swavely (HRP) commented that with discussions with former Director Joe Borja and Administrative Director Thomas Elliot it was suggested that rather than making two licenses why not make one license with the provision of proceeding or not after the one year.

Commissioner Perez commented that with the one year request for testing purposes you would probably know in half of the year if it would be a feasible place so maybe we could start working on the license before the one year is up.

Dan Swavely (HRP) commented that we could make it with the provision of a maximum of one year and if is done sooner then we can proceed with the license.

Chairman Damian commented that we will entertain the license once Hawaiian Rock has received the results of their studies.

3. Loan Guaranty

The Administrative Director commented that the Commission had been giving out loan guaranties and right now we are at the 11 million mark as far as guarantying loans. The Administrative Director commented that he is concerned that should the Commission continue to guaranty loans that we have no funds to back them up. Out of the 113 applicants that we have provided loan guaranties to we only have 1 default.

Chairman Damian commented that this is part of the continued communications that we will continue to have with the Legislature. Part of the reason why there is a loan guaranty with an insufficient amount is that our loan makers whether past or present had appropriations done and they were just that, appropriations. We've been asked to be creative about how to fund it.

Chairman Damian commented that we are looking at hiring personnel specifically to handle the loan division of the Commission.

VI. NEW BUSINESS

1. Ceasar Bautista Batimana

The Administrative Director commented that with no representative present he would like to move on because some of the other issues that we have discussed previously today may also be applicable to this situation.

2. Jesse T. Flores

The Administrative Director commented that with no representative present he would like to move on.

Chairman Damian requested that communications be made with the two individuals before the next meeting so that they will be present.

3. Bill No. 50

The Administrative Director commented that Bill No. 50 is introduced by Senator Cruz, Senator Respicio and Senator Aguon. They are calling this the Chamorro Land ^{Ownership} ~~Ownership~~ Act of 2005 authorizing Chamorro Land Trust Commission residential lot recipients to own residential lots pursuant to a right of first refusal program, to allow cottage industry activities on residential leases by leaseholders and to remove the 21 year cap on licenses for churches, hospitals, public schools, private schools and post offices by amending Chapter 75.

Essentially one of the most disturbing parts of the bill is to allow Land Trust recipients to sell no more than 1,000 square meters of their property for \$5 per square meter. A Land Trust recipient holding a 1 acre lease is allowed to sell 1,000 square meters of that acre for \$5,000 but they would have to return the remaining portion to the Trust.

The Administrative Director commented that he had brought this up with the Governor and he feels that this is not a good idea however we should discuss it further.

Chairman Damian commented that we have had discussion on this with other Senators and there are some Senators who are adamant that this not go through.

Chairman Damian commented that the Commission would need to provide an official resolution to the Senators and Governor letting them know of our concerns to this.

Chairman Damian commented that he doesn't think any one of the Commission members are opposed to the ownership of the land but that there is a bit of work to be done in order for that particular aspect to flourish without any of the negative impact it is going to have.

The Administrative Director commented that he believes the intent is to generate some revenues to fund our programs. This could impact the market values particularly around areas where there could be a rush to sell Chamorro Land Trust properties. Once you evade the title to Chamorro Land Trust properties then essentially you are creating a situation where the Land Trust is no longer viable. The intent of the Land Trust is to hold the lands for native Chamorros for eternity.

Chairman Damian commented that our responsibility is to the Trust.

The Administrative Director commented that there may also be some certain amount of profiteering. If a person secures a piece of Trust land and then sells it for \$5 per square meter the person who buys it at that price could easily turn around and sell it for double the amount.

Commissioner Matanane commented that this is really defiant of the Chamorro Land Trust Commission.

4. Bill No. 29

The Administrative Director commented that he had submitted testimony on Bill No. 29 without the benefit of consultation from the Front Office. After speaking with the Governor about this he recommended that we contact his office to be sure that we are not in conflict with any other agency and that we do speak for the Administration.

Chairman Damian commented that every time we are up for a public hearing the first question that we are asked is if the testimony we are providing, testimony on behalf of you personally or your entity or is this something that is representative of the Executive branch.

The Administrative Director commented that Bill 29 proposes to transfer the old GMTA property to the Hagatna Mayor's Office. Department of Administration claims to be in possession of this property. According to the deed that was recorded, it specifically stated that upon conveyance or where GMTA does not need the property then it would automatically be returned to the Government. In this case we are the custodian of Government lands and should be reverted to the Commission. The Committee stated that since it went from DOA to GMTA to the Mayor's Office there was no transition and it was always within the Government and that was their contention. The other issue that the Administrative Director brought up was the back rent and offered a concession to let them off the hook with the rent, however, they thought that it was rather ludicrous that the Administrative Director would even suggest that they would owe back rent to the Land Trust.

Commissioner Matanane commented that this is why the Commission had been requesting for legal representation.

Chairman Damian commented that at this point a decision was made that the Government entities can hire legal counsel. The Commission does have the budget to hire legal counsel and the law states that we can.

Chairman Damian commented that it is the Commission's contention based on law that the property be returned to the Land Trust and the Legislature feels otherwise.

Chairman Damian commented that the Land Trust is not against the utilization of the property by the Mayor's office. We all can agree that it certainly is deserving of the Mayor and his plans are to provide more recreational activities.

5. Proposed lease terms for relocation of CLTC office

The Administrative Director commented that he had obtained a proposed lease terms from the Commission's existing landlord. The Administrative Director had previously inquired about the space at the west end of the building which is quite larger and would be suitable to the Commission as we begin to expand our staff. The space is ideal and approximately 2,400 square feet. This is approximately 700 to 800 square feet more than the Commission's current office space. The landlord proposes that the Commission pay \$1.59 per square foot and they would do all the interior build outs except for the drop ceiling in the common areas. The out of pocket expense for the Commission would be limited to whatever increase to the deposit that would be applicable based on the additional square footage and the transfer of phone lines and computer lines which is estimated to cost roughly around \$3,000.

Chairman Damian inquired if there would be an area for the Commission to hold its meetings.

The Administrative Director commented that it would include a conference room.

Chairman Damian commented that the Commission barely meets the fire code requirements at its present office.

Chairman Damian informed the Administrative Director that the Commission is in support of the move and to continue negotiations and to inform the Commission when he is going to be signing the lease.

Commissioner Matanane inquired if the air conditioning proposed would be adequate for the whole office.

The Administrative Director commented yes.

VII. PUBLIC COMMENTS

Joe Shimizu – Mr. Shimizu informed the Commission that relative to the Ambros request their preference really is to purchase the land. Ambros would like to purchase the lot out right and they would cover the cost of the surveying and appraisal requirements.

The Administrative Director commented that the discussion with the representatives was strictly based on the license of the property. At one point we did discuss a land exchange but it wasn't a viable option.

Chairman Damian informed Mr. Shimizu that the Commission will look into the matter further and that the Commission would also need to seek legal advice with respect to the sale of lands. Once the Commission get the findings based on provisions and the enabling act and if the sale is in order then the Commission would revisit the request.

Greg Perez – Resident of Tamuning representing his brother Frank Perez, would like to bring to the Commission's attention that the Perez family has a claim of interest on Ypao Point. The Perez's request at this time is to have an opportunity to meet with the Commission to review the claim of interest and perhaps work towards a resolution.

Chairman Damian informed Mr. Perez that the Commission will schedule a meeting to meet with the family within the next few days.

VIII. ADJOURNMENT

Meeting adjourned at 6:35pm.