Chamorro Land Trust Commission

(Kumision Inangokkon Tano' Chamoru)

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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

Oscar A. Calvo
Commissioner

COMMISSION MEETING MINUTES
Guam Ancestral Lands Conference Room, Anigua
July 1, 2005; 4:05pm

I. CALL TO ORDER

Meeting was called to order at 4:05pm by Chairman Delfin Damian. Present were Commissioner David Matanane, Commissioner Annie Perez, Commissioner Oscar Calvo and Administrative Director Thomas Elliott.

II. APPROVAL OF MINUTES (June 1 and June 22, 2005)

Commissioner Matanane moved to approve the minutes of June 1 and June 22, 2005 subject to the following corrections on the June 1, 2005 minutes: The question was to Thomas Elliott on who funds the Special Account. What Mr. Matanane meant was who spends from the Special Fund Account. Commissioner Perez seconded the motion. There were no objections, MOTION PASSED, subject to corrections.

III. OLD BUSINESS

A. Ypao Point – Status Report

Chairman Damian commented that Felix Dungca would not be able to attend the meeting to present his status report on Ypao Point.

Chairman Damian informed the Commission that the resolution has been prepared for the Commissioners signature for the developers regarding the timeframe for the Ypao development.

Attorney Charles Troutman provided the Commission with a copy of a district court case that declares that the Chamorro Land Trust Commission is unconstitutional.

On page 15 of the court document it states that the Chamorro Land Trust Act is improper exercise of governmental power on behalf of a race base classification meaning Chamorros. Because of this the Chamorro Land Trust Act is not a legitimate exercise of a governmental purpose. The Court cannot elevate the Chamorro Land Trust Act over the private legislation in favor of the Moylans under the Public Trust Doctrine.

According to Attorney Troutman, one reason why the Attorney General is not taking part in this particular research is that he represented the plaintiffs in one of these cases.

The Court knows that if the Chamorro Land Trust Act were a proper legislative action the published Trust Doctrine would prevent the court from enforcing the land exchange in favor of the Moylans. Another case involving the homeland legislation in similar legal issue came before the Hawaii Supreme Court. The Hawaii Supreme Court confirmed that the land once in viewed with Hawaiian Trust status cannot be disposed of to non-Hawaiian Trust Act purposes. The Government of Guam argued aboriginal rights and as a result received a ruling which in effect stated that the CLTA was unconstitutional for two reasons. It is impermissible exertion of ethnic group rights by a government and the CLTC unconstitutionally favors one ethnic group over another. The Court cannot and chooses not to ignore or contravene that ruling. Accordingly, the decision is based on a large part of the ninth circuit's ruling on aboriginal rights, a ruling emanating from the same government's argument before the ninth circuit.

What this basically says is that the Chamorro Land Trust Act is unconstitutional. Under other cases the courts have said that in similar cases where they found the act unconstitutional, you couldn't issue contracts based on it. According to Attorney Troutman, this particular court didn't overturn stuff that was already done but doesn't think in light of these two cases, this one and the ninth circuit, that basically there is any chance of getting the ninth circuit to overturn itself, they don't routinely.

What Attorney Troutman told the Commission on Self Determination in the 1980s was that the reason we mentioned a Chamorro entity like the Chamorro Land Trust Act in the draft commonwealth bill is because we had our severe doubts as to whether it could stand under the existing organic act. A permanent solution lies with Congress, not any more court battles. In the meantime Attorney Troutman is working on potential solutions so that these projects don't head down the creek.

Attorney Charles Troutman inquired if anyone had done a background check on the developers.

Chairman Damian commented no and that is some of the things that we will be addressing.

Chairman Damian requested that Attorney Troutman continues to work on the Ypao development.

Commissioner Calvo inquired as to where does this actually leave the Commission on continuing with these projects.

Attorney Troutman commented that he is working on it because his current incarnation is to do what Governor Calvo did when he was Governor on a similar situation. What happened was that the court declared the Territorial Prosecutor unconstitutional for various reasons. So the Governor issued a temporary executive order where he put the powers of the prosecutor back with the AG's office until the matter was sorted out. Ultimately, it was sorted out in favor of getting rid of the Territorial Prosecutor so that became permanent. In this case it has already become permanent because we got this case and the ninth circuit telling us where to go. What Attorney Troutman is inclined to do is to recommend to the

Commission to work with the Governor and have him either reconstitute this Commission until the Legislature can get their act together to eliminate the problems that the court has said are illegitimate courses of Government.

Attorney Troutman inquired if the Commission has a copy of the original Oka Point deed.

Chairman Damian commented yes.

Commissioner Matanane commented that this bothers him because we are still moving ahead.

Attorney Troutman commented that he had suggested to the Commission's predecessors that they not do that. What worries him for Guam and the Commission is that no developer in his right mind is going to sign a contract that says now they invite ourselves to be sued.

Attorney Troutman commented that he will have his report on the matter for the next meeting.

The Administrative Director commented that the original Chamorro Land Trust Act defines a native Chamorro as one-fourth Chamorro blood. This definition has since changed and inquired if this makes any difference.

Attorney Troutman commented no.

Chairman Damian commented that we know the steps that need to be taken, we know that we need to have an audience with the Governor, we know that we will need to wait for legal counsel's review, we know we need to go to the legislature and ultimately we would need to send our request to Congress which will ultimately decide the fate of the continuation of the Land Trust.

B. Re-Affirmation of License Agreement – Song Retail

The Administrative Director informed the Commissioners that on November 2003 Mr. Yung Moo Song requested availability of Chamorro Land Trust property for a commercial license. Initially he wanted to operate a vegetable stand at the corner of Route 15 and Carnation Road. Over a short period of time his development plans incorporated a farmers retail outlet, a convenience store and a soup/coffee lounge. Mr. Song's request was approved in June 2004 and he was assigned Lot 34, Tract 14119 in the Adacao area of Mangilao, close to Latte Heights. Mr. Song was subsequently given authorization to have the sight surveyed and appraised. On March 21, 2005 a license agreement was executed between Chamorro Land Trust and Mr. Song. Around this time a portion of Lot 5402 adjoining the Latte Heights residential subdivision was identified as a proposed school site within the municipal lease program. Locating a convenience store on Lot 35 would create a blind spot for traffic and entice elementary school children to cross the street during peak traffic times. Some current Chamorro Land Trust lessees in the area expressed disappointment that a non-Chamorro was granted a commercial license. At this point we

have relocated Mr. Song from Lot 35 for reasons of safety and to maintain this area as an open park. Mr. Song's location remains on Carnation Road but closer to Route 15. We believe that this new location would be better for all concerned including the provision of convenience for resident CLTC clients.

The CLTC staff recommends re-affirmation of Mr. Song's license to operate the proposed facility and to mitigate any concern regarding the safety of school children from the proposed school site, mitigate any concerns regarding the flow of traffic and that non-Chamorros are allowed to hold commercial licenses on Chamorro Land Trust properties.

Commissioner Matanane inquired if there is an existing store on the property now.

Administrative Director commented no.

Commissioner Matanane inquired if Mr. Song is amendable to the relocation.

Administrative Director commented yes.

Commissioner Matanane commented that the Commission would have to remove the license on Lot 35 and then re-issue it to the new location.

The Administrative Director commented that no agreements or transaction have been executed at this point.

The Administrative Director commented that another concern here is that the fact that the gentleman in a non-Chamorro but was granted a license agreement.

Commissioner Annie Perez commented that the law does not exclude a non-Chamorro for a license only for residential.

Chairman Damian commented that the Commission can send out flyers in the area on what the statute is relative to the commercial licenses.

C. Request for Extension of Housing Development Agreement

The Administrative Director commented that this request came before him earlier this year and that it was also a prior request and a grant of agreement that occurred as far back as 2002.

Mike Torres (Vice-President of Marians Pro-Plan International) commented that Marianas Pro-Plan is a development group that started working with CLTC as far back as 1998 on a feasibility in market study. We brought out some financiers, some people from Nehemiah Corporation, Country Wide Mortgage, Lehigh Municipal leasing and finance and a variety of other financiers to take a look at Guam and the viability of developing Chamorro Land Trust properties specifically into affordable housing and looking at how to do it and putting together basically an entire package that encompasses everything from the development

infrastructure to the mortgage loan and the servicing of those as well. Subsequently, after a couple of years of very detailed studies and analysis it was determined that it was feasible to do. We started negotiations with CLTC and came up with a development agreement that was agreed to by the CLTC's attorney at the time. Unfortunately, we did not get much assistance from the Legislature as we had hoped for. There is a piece of legislation and it was felt by the CLTC's legal counsel that it needed to go through the Legislature as opposed to something that could have been done administratively by the Commission. This necessitated us to go to the Legislature in trying to get a bill written. They were slow to do that so finally we got an attorney in the states to put the bill together for us and we brought that forward. As you all know the last legislature was rather slow to get some things done. As a result our development agreement with CLTC has expired and we have been waiting to get in front of the Commission again to get it renewed. There had been some minor changes to the piece of property. Originally we were going to go into Lot 1022 and Lot 10125-R10 in the Astumbo area. There was approximately 450 acres that we were going to go in and develop. I understand from speaking to Mr. Elliott that some of that land had been committed to other uses and some leases are being let out at this point in time. Our stand on this is that we can work around that or we can work with a different piece of property. One of the things that I want to make sure everyone understands what exactly it is we are doing is that we are bringing in a complete development package and that means that we are going to build the infrastructure and set up the financing for that, build the homes, the mortgage loans and the servicing of these services. The homes we are going to build are going to be built to code, they are going to exceed the standards for Guam's construction to current time. It was felt that after Typhoons Pongsona and Paka that we needed to make sure that the homes were engineered to withstand sustained winds of 200mph or more. We can withstand sustained winds now of 239mph and the earthquake zone without any issues what so ever. These are pre-cast homes and this helps to increase the affordability. It will be fully insulated which will also reduce energy costs. The homes themselves are fully equipped. One of the things that we did in with working with HUD and FHA VA was to look at the reasons for rescission on loans. One of the biggest problem is that someone gets a home and start buying things for the house with credit cards. Rather than to put people in a position of paying 18% on things like a washer and dryer all these things will be incorporated in the home. Everybody knows that if you live in a concrete home you have to have air conditioner. It is much more economical to have that built into the loan than to have to go out and get it on your own. It is much more economical to have all the other necessities built into your home loan. The home prices that we are looking at would be coming in at around $85,000 at a starting point and that is for a 1250 to 1300 square foot home. It goes up from there all that way to 1600 to 1700 square foot range and that puts the home at $120,000. We are also looking and it was requested by some of the recipients of Chamorro Land Trust properties that we also offer multi-family dwellings or smaller homes for the manamko or people who are "empty nesters". These will go at an estimate of as low as $45,000 to $65,000. Basically what we are trying to do is trying to offer truly affordable options for homeownership. There has been a degree of resistance to this plan from some of the business community. In order to do this in an affordable way we have to short circuit those existing situations where profit margins for retailers are 200 and 300 percent. One example is, we are bringing in our own cement and portable cement plant. By doing it this way we are reducing our cement cost by 66%. It

goes right down the list just about any type of building materials. If you bring it in sufficient quantity you would achieve an economy of scale. By achieving that economy of scale we enable the Chamorro people to have homes. We all know that there is a wonderful new project coming up in Dededo but nobody on Chamorro Land Trust lots can ever afford one of those homes which is about $165,000. What we are trying to do is brining in the affordability into the marketplace. We realize for some in the business community that this might not be to their taste or something that they would enjoy but in reality it is time that we start looking at the needs of CLTC recipients. It is time that we start looking at the needs of the people who have not had an opportunity to own a home. The land is there and the sad thing is that it has been there for a very long time now. If you look at CLTC it was in 1974 when it first came into being. It wasn't until much later in 1992 that land was assigned to the Trust. Now it is 2005, 13 years later and CLTC has not been able to give sufficient homes to make a dent in the number of people who have requested homes. It is so bad that you have people who have not even bothered to get on the list because their attitude is what's the point, nothing is ever going to happen. We are offering a way where the CLTC can fulfill it's mission. We are offering a way to do it where it doesn't cost the CLTC or the Government of Guam a penny. We are covering all the cost including infrastructure. The issue that was before the Legislature and this is one of the sticking points was in order to fund the infrastructure development we are going to create special benefit districts. Guam does have a law that allows the creation of special benefit districts for the purpose of economic development or commercial development. What we are looking at doing is using the same methodology to create special benefit districts especially on the land we are developing. What this does is it takes the development cost and instead of it being added to the mortgage which raises the cost of the mortgage, raises the threshold for people to qualify, it goes on as a special benefit district tax. It remains with the land and it does not become a debt. It is an obligation of the land and it is paid with the mortgage. This is going to be low cost money at the 6% range. It is not going to be an over large burden on the borrowers. It is done in such a way that if the borrower decides to sell the property then that remains with the land and that tax continues to be paid for the term of the loan. By doing this it enables us to go in and develop proper infrastructure such as streets, curbs, sewers, electric, water and things of the sort. To do it in such a way where it doesn't have to be redone in 5 years. We believe we can get development done between 20 and 30 thousand dollars depending upon availability of existing infrastructure. The site that we were looking at going in to we were looking in the 24 to 26 thousand dollar range per lot. This is because all of the infrastructure is right there with the exception of the sewers. If we can find another site where there is similar availability then we should be able to maintain those costs. At this point in time what I need from the Commission is an extension on the development agreement with the stipulation that a new site may need to be found and provide that we can find a new site we can move forward with the project. I have been instructed by my Board that we must have action within the next 30 days or they will abandon this project. It has been a long time and there has been a lot of money and time invested in this. A lot of resources have been devoted to this and we have had no action, no forward movement for way too long. Their feeling is if Guam is not ready to move forward in this then they need to move on to other pastures.

Chairman Damian inquired on when did the licensing or lease expire.

Mike Torres commented that the original development agreement expired in 2003. The problem was it was stalled for a while and there was no board. I am hoping that we can get an additional 2 year extension. If we have the 2 year extension I think we can move forward fairly quickly. The other thing I need from the Commission is the support to either administratively accept the concept of creating special benefit districts which according to the charter that was read by our attorneys you do have the capability of doing if you do so choose. Or in assisting in getting a bill through the legislature to allow the creation of special benefit districts. The issue here is GovGuam doesn't have the money to develop. We don't want to load this on to the homeowner because what it does is it takes the number of potential homeowners who would be qualified and reduces it enormously.

Commissioner Calvo inquired on what is the timeframe if the Commission does grant the extension.

Mike Torres commented that the next step if done administratively would be to allow the creation of special benefit district and they can start moving and breaking ground within 6 months.

Commissioner Matanane inquired on what does CLTC merit from all of this.

Mike Torres commented that the Commission would be fulfilling its mission and that in the process of administering the special benefits district, CLTC will be collecting fees. They would also need to do short term commercial licensing as we do our development. We are going to need staging areas, storage areas, temporary plants and other things where we would work with the Commission in licensing some additional properties. In addition to the development there will also be commercial license fees that the Commission will make.

Commissioner Calvo inquired if the person who applies here would that only entice people who are on low income. Is this basically for low cost income individuals or anyone?

Mike Torres commented that every thing is done in accordance with CLTC regulations in regards to who is eligible to buy homes on CLTC properties. It was understood that there are people who have existing leases who have not been able to build a home because of infrastructure or because of financing and our understanding is that those people who have already been issued a lot and have not been able to build would be allowed to relinquish their existing lot and take over one of these lots and one of these homes. We are not talking about building 40 or 100 homes, we are talking about building thousands of homes. For the first site we were looking at building 1,200 homes.

Commissioner Calvo inquired if they would be shipping their materials from the mainland or would they be purchasing their materials locally.

Mike Torres commented that most of their materials would be coming from Asia. The only way for it to work in terms of building affordable homes is to buy the materials as

economically as possible. We are going to create initially about 120 jobs in the first 6 months and probably within the year close to 300 new jobs. What we want to do is to make every single one of our employees to be a homeowner. There is going to be a lot of spin off from this that we are not going to pick up ourselves. We hope to see this create a lot of economic development and opportunity for our people here. The suppliers here are not going to be making a lot of money.

Commissioner Perez inquired what happens if the person defaults on the loan.

Mike Torres commented that it goes right back to CLTC property and the next qualified Chamorro Land Trust recipient is the next person to take over the loan provided that they want it.

Chairman Damian informed Mr. Torres that a decision will be made once the Commission reviews the request along with Legal Counsel, hopefully on or before the 30 day deadline.

IV. NEW BUSINESS

None.

V. DIRECTOR'S REPORT

A. Compliance with Open Government Law

The Administrative Director commented that as a result of the compliance to open government law relative to Ypao Point the Attorney General's office had said that if some of the meetings that we have held in the past that did not meet the 5 day notice requirement we would have ratify those meetings if necessary.

A summary of all the meetings that could possibly need ratification was provided to the Commission. There is one executive session that we do have minutes on which did not meet the requirements of having a closed door meeting.

The Administrative Director commented that relative to the Executive Session minutes it has to be treated as invalid.

Commissioner Matanane made a motion to ratify the meeting minutes of September 1 & 15, 2004, November 18, 2004, December 1 & 29, 2004, March 9, 2005 and April 27, 2005. Commissioner Calvo seconded the motion. There were no objections, MOTION PASSED.

B. Revenues and Expenses for June 2005

The Commission was provided with a copy of the June 2005 revenue and expenses from the First Hawaiian Bank account.

Based on the Commission's decision at the last meeting the Administrative Director had executed the payment of $699,068.07 to Department of Administration as reimbursement of the special fund account.

Commissioner Matanane inquired on what is the balance of the two special accounts and if there was ever any money in the account to begin with.

The Administrative Director commented that Mr. Diaz, Acting ASO, had shown him a couple of statements showing approximately $19,000 and that these funds had since zeroed out.

Commissioner Matanane inquired if the Golf Course at any other time been depositing the rental payment to the Treasurer of Guam into the Commission's special account.

The Administrative Director commented that he believes that is what had happened.

Commissioner Matanane commented that the Commission does not have any accounting from DOA as the two special accounts whether or not there is a balance or have been receiving any money.

Chairman Damian requested the Administrative Director to obtain a complete accounting of the two special accounts from DOA for the next meeting.

Commissioner Matanane requested also for a breakdown if the Treasurer of Guam receives any money specifically for Chamorro Land Trust Commission and what account it goes in to.

C. BBMR Update – DOA invoice

The Administrative Director apologized to the Commission for not having a copy of the DOA invoice in the Commission's package.

Item not discussed.

D. Lease Activity Through June 2005

The Administrative Director informed the Commissioners that the Commission is working on 2nd day applicants (December 4, 1995).

Based on the leases that have been issued, Commissioner Matanane requested to have a breakdown of receivables also.

Commissioner Perez requested for a listing of how many land agents were involved in the issuance of leases so that the Commission can justify how many land agents are needed for future budget hearings.

The Administrative Director informed the Commissioners that there are two land agents for the residential division and two land agents for the agricultural division. It is getting more difficult to identify the agricultural areas and we are also running low on the residential inventory and part of the reason is that we are also having a difficult time getting our maps recorded at Dept. of Land Management. When we have surveyors survey Chamorro Land Trust properties they survey at least a half acre lot and they now have to depict the surrounding lots as per Department of Land Management's policy. This creates a lot of work for the surveyors and I have been getting some complaints from surveyors that they are seriously looking at not doing the work for us because it is not cost effective for them.

Commissioner Calvo commented that Dept. of Land Management is using us to update their status. We are only concerned with what we own and the outskirt of that is not our responsibility.

Chairman Damian informed the Administrative Director to compromise with the Director of Land Management.

The Administrative Director informed the Commission that he has a tentative meeting set up with Paul Santos the Acting Chief Surveyor and also with the Deputy Director of Dept. of Land Management.

E. 2005 Audit Status – OPA letter June 24, 2005

The Administrative Director informed the Commissioners that the audit as requested is in full swing by the Auditor. They are doing both a financial and management audit and they are using the 1999 audit as some what of a reference to determine how much of that particular audit has been implemented.

Items cited by the auditor are:
1. Lack of audited financial statements and annual finance and progress reports that should be submitted to the Legislature.
2. Lack of accounting system to properly record and account for all of the Commission's financial transactions.
3. Only one authorized signatory for all disbursement checks is presently required instead of two authorized signatories.

The Administrative Director commented that he often questions why is it that he is not only the signor of the checks he is also the certifying officer. The certifying officer should be the individual handling the account.

Chairman Damian commented that we can appoint any of the Commission members to be another signor on the checks although it is proper accounting procedure that the financial officer be one of the signors.

Commissioner Calvo commented that it is always the case of the financial officer to sign off also because that person would know if there is money in the account.

Chairman Damian commented that the Administrative Director would need to revisit this with James Diaz and if there is a problem because of his title and that is the reason why he is hesitant to do something like that then we would need to address that if his title and salary has to change.

The Administrative Director informed the Commissioners that James is a Program Coordinator III however, he is filling in as the Acting Administrative Services Officer but both position descriptions allow budget management.

4. Unauthorized pay increase of the Administrative Director since February 2000.

Pursuant to 21 GCA, Section 75118 the salary of the Administrative Director is specified at $55,000 per annum, however, there was a Civil Service Commission memorandum that adjusted the salary to $66,340 and the auditor is stating that it is not authorized by law.

Chairman Damian commented that he had already initiated the process to be able to address this issue and if it is by law to amend the amount then we will have support to make those changes. Our Administrative Director deserves what he is getting now and nothing less.

Commissioner Matanane commented that during one of our meetings it was stated by the Executive Director that the Board itself has the right to hire the Director and to propose the salary.

Commissioner Matanane commented that it bothers him because Civil Service Commission is making corrections on the salary of the Director when he is unclassified.

Chairman Damian commented that classified and unclassified makes no difference any more.

5. To compile a database identifying all leases and licenses to include lot numbers, names of lessees and licenses, monthly rental payments, commencement and termination dates of the agreement and when payments were made and also what payments are due on receivables.

Commissioner Matanane requested to include how far are they and if they are in arrears.

6. A tracking and monitoring system for all loan guaranties that the Commission has issued which is approximately 11 million dollars.

The auditor's recommendation is to offer and reassign to the next qualified applicant the opportunity to assume any loan before it goes into foreclosure or default.

The Administrative Director commented that there is still one loan default in the books which is being held for legal review and now that we have Mr. Troutman on Board we can forward this issue to him.

Commissioner Perez inquired if the property was reassigned to someone else.

The Administrative Director commented no and that the person is still on the property.

Commissioner Matanane inquired if they are willing to make any payments to the Commission and if not then they should be evicted.

The Administrative Director commented that we can find that out.

Chairman Damian commented that it is not the Chamorro Land Trust Commission's job to evict, the judicial side takes care of that, we simply start the process.

The Administrative Director commented that the public auditor wanted to give this agency the opportunity to be proactive regarding their findings rather than reactive.

IV. PUBLIC COMMENTS

Jose Torres commented that he is requesting for an easement coming from Marine Corp Drive to his property. Currently the easement is in the back of his area and is almost impossible to get through now. The previous Directors have said that the survey of the area was found to be illegal and that they can go ahead and give him an easement from the front of the property. Mr. Torres would like to know what has transpired relative to his past request for an easement. Mr. Torres is willing to get the equipment to clear the area and he just needs to know where.

The Administrative Director commented that there was a map that was drawn at one point that showed an easement going around the back of his property. The topographical feature of this property is fairly severe because if you are looking at the property from the street the property is higher than the road. We would have to cut in to create an access to Mr. Torres's property.

Jose Torres commented that there is another way to get in to his property which has already been cut in. There is an open area left by a construction company when they were working on the roads.

The Administrative Director informed Mr. Torres to come into to the office to meet with him to resolve the problem.

VII. NEXT MEETING DATE

None scheduled.

VIII. ADJOURNMENT

Meeting adjourned at 6:10pm.

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