Chamorro Land Trust Commission

P.O. Box 2950 Hagåtña, Guam 96932 *Phone: 475-4251 Fax: 477-8082*

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

Oscar A. Calvo
Commissioner

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

I. CALL TO ORDER

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

Chairman commented that Item C on Director's Report will be deleted from this meeting's agenda until the next meeting.

II. APPROVAL OF MINUTES (April 27, 2005 & May 13, 2005)

Commissioner Matanane moved to approve the minutes of April 27, 2005 and May 13, 2005 subject to corrections. Commissioner Calvo seconded the motion. There were no objections, MOTION PASSED.

III. OLD BUSINESS

A. Ypao Point Status Report

A memo was presented to the Commission by Jerry Tang (Legal Counsel for the Developer) relative to issues brought up at the May 13, 2005 meeting.

Chairman Damian commented that we are laying the ground rules for the actual negotiations of the ground lease and development agreement for Ypao Point. On the last meeting one of the issues that was raised was the resolution that the Commission's Legal Counsel will be putting together regarding the $50,000 deposit and to set up the account for the first year's lease. Another area of concern brought up by the Developer was the pending lawsuit by Thomas Sheldon and Arnold Davis who have expressed their thoughts on the development agreement and could very well file suit against the Land Trust.

Harry Chang (Representative for Himalaya Holding Group) is here to negotiate the ground rules before we enter the actual negotiations and some of the issues we have concerns on.

Jerry Tang (Legal Counsel for Himalaya Holding Group) prepared a letter regarding the issues that was raised at the May 13, 2005 meeting.

Chairman recessed the meeting so that Board members could read over the letter provided.

Issues that Mr. Tang would like the Attorney General to address are:

1. Relative to the Claim of Interest by Frank Perez which indicated that when he deeded the property to the Government of Guam it was intended to be used for a hospital facility.

a. Whether the Claim of Interest affects the Land Trust ability to lease the property to the Developer for purposes other than a hospital facility?
b. Whether the Claim of Interest can be used by Third parties to challenge the proposed lease and who would have standing to use the Claim of Interest?
c. What are the Land Trust's legal defenses to that type of a challenge?

2. The threatened law suit by Thomas Sheldon and Arnold Davis.

a. Their claim that the Land Trust is an organization that benefits a distinct racial/ethnic group that violates the constitution. Why does the Land Trust feel that it is not unconstitutional and how does it not use racial and ethnic classifications in its operation?
b. What are the Land Trust's legal defenses?
c. What is the Land Trust's estimate as to how long that type of lawsuit would take to be resolved and during that period of time what is the likelihood of the plaintiffs being able to get an injunction against the Developer from proceeding?

Harry Chang commented that they don't think that the lawsuit is inevitable and they also don't think it would stop the development. What they want to know is what are the procedures should they sue? Before they put the half a million dollars into deposit he cannot answer the Taiwan officials that they will deal with it when they get sued.

Harry Chang questions on what would happen to the money? Would it get stuck in an account for 6 months? They need to look at the logistics and how it is going to tie in with the lawsuit.

Harry Chang commented that he wants to answer Taiwan that they are suing the Land Trust and not the developer and wants to assure them that this shouldn't stop the development process. The developers need clarification that if the Commission gets sued, how are they as the developer going to be affected. Are they we going to loose money?

Harry Chang commented that they are very confident that the Land Trust will prevail in this lawsuit against these two individuals.

3. $50,000 performance Bond, the RFDP requires a performance bond but doesn't define the purpose of the bond or any further details. It doesn't provide sufficient

details for an insurance company to issue a bond. The Developers are asking that they just pay $50,000 dollars in lieu of the performance bond but would need the Attorney General to draft up language regarding its purpose and the conditions of the deposits so that they know what it is for and what would constitute an event where they would forfeit the money.

Chairman Damian commented that with respect to the $50,000 performance bond a resolution has been requested for the Attorney General to put together the language as a cash deposit. The Commission will contact the Attorney General's office on the status of the resolution.

Harry Chang commented that the $50,000 cash deposit would be available. They assumed that the Attorney General would be present at today's meeting to give them the conditions. The concern is that the $50,000 is good faith money, they negotiate and go forward with this money. The Developers need to know that with Gods blessing they strike a deal with the Land Trust does this $50,000 go towards the first year? This language needs to be addressed in the Attorney General's statement.

Chairman commented that the specific language with regards to how the money is to be acted on will be on the resolution.

Administrative Director reminded both Harry Chang and Jerry Tang subject to the Resolution, that the $50,000 should have been made available or should have been tendered to the Commission at the point that they were selected to be the developer.

Jerry Tang commented that they have checked the correspondences and the issue was raised since last year indicating that they have been trying to deal with the inability to get an insurance company to provide the bond.

Commissioner Calvo requested that the Administrative Director follow up with the Attorney General's office on these issues. It is time consuming on the Land Trust, the developer as well as the public.

Harry Chang commented that since the start of the RFDP, the developer has traveled over 20 times to Guam in groups of 12 to 15. The developers are very sincere and are aware that this land is very political.

Relative to Item #2, Chairman Damian commented that Legal Counsel would have to look into it to provide the Commission feedback.

Chairman Damian commented that the Commission will provide a resolution for signature to the Attorney General regarding specific questions that need to be answered.

The Administrative Director inquired from both Harry Chang and Jerry Tang if there were any other issues or concerns regarding the issues of the constitutionality and what specifically does it relate to?

Harry Chang commented that they have studied the legal argument of the Hawaii case and that when someone wants to sue you they see a different perspective. They have met with Attorney Mike Phillips and are very comfortable with Mr. Phillips's legal opinions. The only thing they are afraid of is the troubles that they bring and from their prospective is it doesn't seem like it is a good project to get going where the moment they have a groundbreaking ceremony the Commission is slammed with a lawsuit. Relative to the constitutionality, the developers don't think they have a case.

Jerry Tang commented that from a legal standpoint nothing is ever certain. While they have their position that they think that the Land Trust does not use racial or ethnic classifications. Any type of suit on this issue would be at federal court and I think we just cannot predict what will happen in federal court. But if we look at the issue more deeply, I think that the issue is probably going to be very important for the Land Trust to resolve anyway because they are attacking the core purpose of the Land Trust. From the developers standpoint this issue could be very easily resolved but I don't think the solution that we have in mind would be acceptable to the Land Trust basically because what Mr. Sheldon's biggest beef is that the rent is going to benefit a certain classification of people. Well they would not have any beef if that money went to the general fund.

Commissioner Matanane commented that since the Government still has a handle on us it is indirectly going to the general fund.

Relative to Item #1, Claim of Interest by Perez Family, Chairman Damian commented that the Commission has had communication with the Perez family on working out a solution. If we settle the issue with the Perez family then the concern of whether the claim of interest can be used by third parties to challenge the proposed lease will become mute.

Chairman Damian further stated that the items of concerns will be forward to the Attorney General's office for review.

Commissioner Perez requested the Perez family to address their concerns before the Board.

Jim Baldwin (Representative for Perez Bros., Inc.) clarified that the meeting that was held was for the Board members of Perez Bros.,Inc. whom had come to the Chamorro Land Trust Commission and had discussed certain CLTC landholdings that we would rather not get into today. We need to clarify the legal status of the claim of interest. The claim of interest was filed by Frank D. Perez, his estate has already been probated. That claim of interest was transferred to Carmen D. Perez, his widow, her estate is currently in probate. The executor of the estate of Carmen D. Perez is

Joseph Perez. We hope that there will be a decree of final distribution in the near future. Until that decree is issued the legal entity that has all rights concerning the claim of interest is the estate of Carmen D. Perez. Once the distribution is made then you'll be dealing with the family members and we have to reach a collective consensus as to what to do. Perez Bros., Inc. hopes to be able to prevail upon the sibling groups to help support the plan that we have come up with because all of the sibling groups are stockholders of Perez Bros, Inc.

Chairman Damian inquired if there is any specific item on the property that might be a big stumbling block that provides another layer of questions that need to be answered.

Jim Baldwin commented that the question would need to be referred to Attorney Terry Brooks who represents the estate.

Commissioner Perez inquired if there is a possibility of requesting Mr. Joseph Perez to meet with the Commission and to see what direction we are going to take so that the prolonging of this matter would be expedited so that the developer can start moving rather than having to just wait.

John Perez (Representative for the Perez family as well as Perez Properties, Inc.) commented that the family will get in touch with Joseph Perez to arrange a meeting as soon as possible.

B. DPR request for Lots 1, 2 & 3, Block 24 - Clarification

The Administrative Director commented that at the April 27th board meeting, the Commission approved the request of Dept. of Park and Recreation and the Historic Preservation Office to acquire the Lujan house property in Block 24, Agana. Dept. of Parks and Recreation and the Historic Preservation Office requested Lots 2 and 3 of Block 24 to acquire and restore the Lujan house and resolve an encroachment issue created by the post-war lot and block system. The Historic Preservation Office also requested to take possession of Lot 1 directly north of the Lujan house to provide a buffer zone for the Lujan house.

The Lujan house was formerly identified as Lot 106 now straddles Lot 2 and Lot 3 of Block 24 in Hagatna. At the last board meeting, the transfer of Lot 106 was approved however, Lot 1 was not specifically addressed.

The Administrative Director's recommendation is that the Commission should clarify its intent by specifying the transfer of all three lots to the Historic Preservation Office. The transfer of Lot 1 should not include the existing abandoned modular home which remains the property of the Chamorro Land Trust Commission and perhaps find a buyer for it or transfer it elsewhere for other uses.

Chairman Damian commented that there is a modular home that needs to be addressed. There seems to be some feedback from Historic Preservation Office regarding the structure of the modular home.

Chairman Damian inquired if the parcels owned by the Cristobal family going to hinder the transfer of said lots.

The Administrative Director commented that the Cristobal parcels are located west of Lot 1.

Commissioner Matanane commented that as per the April 27 meeting minutes he had specifically asked Ms. Linda Aguon (HPO) on what were they were going to do with the modular home and was informed that they were going to clear the lot itself. According to Ms. Aguon she had spoken to Joseph Borja (DLM, Director) and was informed that there was still value in the modular home.

Commissioner Calvo commented that if we are to move it out that they should carry the burden of moving it at no cost to the Commission.

Commissioner Matanane made a motion to transfer Lots 1, 2 & 3 in Agana to the Historic Preservation Office subject to the removal of the modular home from the property at their expense. Commissioner Perez seconded the motion. There were no objections, MOTION PASSED.

C. Pending Licenses

1. **National Car Rental** - This had come before the Board in a previous meeting and CLTC staff has identified 1 acre available on Marine Corp Drive in Yigo. As of May 25, 2005 the requestor was issued an authorization to have the property surveyed and appraised. Once these documents are provided the Commission can execute a license.

2. **Choice Phone dba I-Connect** – In the Barrigada antennae site, CLTC staff has identified 929 square meters. The survey and the appraisal report are completed. The license has been prepared however there is an arrear on another site that we are trying to settle with this company. In Merizo they were issued a license to use the site however they claim that the site was inaccessible and they never used it. They are offering partial payment on the license agreement. The Administrative Director commented that they should pay for the entire arrears because when CLTC staff investigated the site we had found out that there were no impediments for them to use the property.

The Administrative Director stated that they were put on notice that there were no physical impediments.

Commissioner Matanane inquired if it is still their intentions to use the property.

The Administrative Director commented that they are reconsidering their strategy in lieu of paying the arrears they realize that they might as well use the property.

Commissioner Matanane commented that there should be clause that if they become late in the payments there would be notice to terminate the lease.

Commissioner Calvo inquired on how much are they in arrears.

The Administrative Director commented that he doesn't have the exact figures but his recollection is about $11,000 and that they have been in arrears for a couple of years.

3. **Guam Wireless Telephone Co. dba Hafatel** – Came in looking for property in Dededo for a repeater site. CLTC staff has identified approximately 233 square meters available in the area that they are requesting. They have been advised to have the property surveyed and appraised.

Commissioner Calvo inquired if the repeater site going to be high tower.

The Administrative Director commented that they were hoping to use an existing telephone pole however they were advised against it because it is a wooden pole and might not be stable.

According to the Director they have agreed to put in a new concrete pole.

4. **U.S. Postal Service** - They have notified the Chamorro Land Trust Commission that they intend to renew their Dededo contract station at 125 Iglesias Circle in Dededo. Their current term expires on February 28, 2007. The renewal amount is annual from $4620 to $5544 per annum which is a 20% incremental increase.

Chairman Damian clarified that they are trying to lock in the location so that there is no disruption in service.

D. Ramon Torres – Mr. Torres attended a roundtable discussion on May 2nd and was advised by Speaker Forbes to work with the Chamorro Land Trust Commission. At this point the Administrative Director did not forward the case to the Office of the Attorney General due to incomplete application process. There are certain documentations that he needs to provide before we consider the file complete and then at that point we can forward it to the Attorney General's Office for review by legal counsel. A working file copy will be prepared for review by Legal Counsel.

Commissioner Calvo inquired if Mr. Torres was informed about the additional information needed.

The Administrative Director commented that the Commission has not contact Mr. Torres and that this is something that was just recently discovered.

The Administrative Director informed the Commission that an appointment will be set up for Mr. Torres to advise him of what other documents are needed from him and to address other issues related to his sons applications.

Commissioner Matanane commented that as per the minutes of April 27, he had asked Mr. Torres if the payment fee made was for him and his two sons which should be $150.00 but his sons had paid later.

E. Communication Specialists – This is another company that is in serious arrears. Since March 2003 attempts to contact the principals were made with no results.

Commissioner Calvo inquired if they are still here.

The Administrative Director commented that the Commission does not know. The certified mail sent to the company had been returned un-opened. Phone calls have not been answered. All the corporate members have the same contact information in the Commission's files. A site inspection of the area in Barrigada Heights looks like the facility is still operating, the area is maintained and the chain link fence is padlocked.

Chairman Damian commented at the next commission meeting if we are still unable to meet with these people then it is time to send it to the Attorney General's Office.

IV. NEW BUSINESS

A. Thelma Cabrera Mendiola – Unqualified lessee

Ms. Mendiola was issued a lease in February 20, 1998. On March 8, 2005, Ms. Mendiola wrote to the Commission requesting a relocation due to her assigned Lot 7, Block 11, Tract 1022 which cannot be occupied for whatever reason. Records show that she and her parents were born on Saipan, making her unqualified according to the definition of Native Chamorro (21GCA Chapter 75). The Micronesia Area Research Center at UOG stated that documentation showing CNMI status is sufficient to verify claim of residency on Guam.

According to CLTC staff, many other leases were signed by non-qualified CNMI citizens.

Commissioner Perez inquired if communication has been made to Ms. Mendiola.

The Administrative Director commented no and the reason why this is brought before the Commission is a matter of notifying and advising the Commission that this is not an isolated case and perhaps establish policy.

Chairman Damian commented that the policy is in the enabling act of the Land Trust and as such as you being the Director that's within your power to facilitate those kinds of actions. The Commission members are backing you up on what needs to be done. This Commission takes into consideration a lot of human factors, we simply don't throw people out in the streets. There is a process we need to go through, we want to make sure that the claimants have ample time and notice and that we direct them to specific organizations or other Government entities that will provide some assistance once they vacate the premises.

Commissioner Perez commented that we need to follow the law that is spelled out in the Land Trust otherwise we will be finding more people outside the origin of Guam. People that were supposed to merit the award more would be subject to challenge us. To avoid any future encounter with the same situation we need to start addressing the law and with the applicants as we filter out the application we need to make sure that they are qualified applicants of Guam and not resident only of Guam.

Commissioner Perez commented that with the Homestead Act in Rota or Saipan none of us from Guam can merit property from there unless you are naturally born from that particular area.

Commissioner Matanane requested if the Administrative Director can provide numbers of those types of applications.

The Administrative Director commented that it may be difficult to do because these come up as they cross his desk for what the applicants is requesting for.

Commissioner Perez commented that a lot of the applicants who are native Chamorros have not received the land and the people who are not native are getting the property. We need to start addressing to find out how many are claiming to be Chamorro.

The Administrative Director informed the Commission that he will keep a log of these types of cases as they come before him.

Commissioner Matanane commented that even before the person is approved or given the property they are supposed to be screened.

Chairman Damian commented that if you look at the awarding time back in 1998, there have been known to be instances of such awarding without following procedures.

B. Shredding Machine at Lot 10125

On May 2, 2005, Triple Star Recycling, Inc. represented by Mr. Ben Santos, submitted a letter of interest to purchase a large shredding machine located on Lot 10125 in Dededo. On May 19, 2005, Triple Star Recycling, Inc. offers $21,000 for the machine, assuring removal of the equipment within 72 hours after CLTC's acceptance of payment. CLTC staff is attempting to verify ownership and that there is a probability

that the shredder is government property possibly due to abandonment and/or forfeiture as a result of non-payment of taxes.

The Administrative Director had spoken to individuals at Dept. of Public Works and another private sector company as well as the former Legal Counsel Randall Cunliffe who did inform him that at one point this particular equipment was owned by an Asian woman who was conducting a business and who had been conducting business with Dept. of Public Works. It seems that at one point Dept. of Public Works had paid her to do a certain project and she had never completed it so Dept. of Public Works took the machine in lieu of payment.

There is still some work to be done in identifying and securing the ownership of the equipment. Upon verification then the Commission can execute a sale. It would also be prudent to try to secure an appraisal and once the Commission is identified as the owner of the equipment then the Administrative Director will do an in-house appraisal.

C. Guam Power Authority request for temporary area at Ypao Point

GPA is requesting temporary use of 200x200 feet of Lot 5173-R2NEW-R2 at Ypao Point. The site requested is west of the Archbishop Flores Memorial Circle. The purpose of the request is for a groundbreaking ceremony for the project and for a temporary site office for the duration of the project which proposes to convert overhead power line to an underground system from the San Vitores Substation to GMH. A site inspection was done on May 26, 2005 along with Vince Sablan (GPA) and other engineers and private sectors. GPA requested to use one existing abandoned concrete building.

The Administrative Director recommended that GPA be allowed the use of the property not to exceed 6 months and that GPA assures minimum time frame of 3 months and no more than 6 months.

Commissioner Calvo inquired on what would happen if they exceed the 6 months.

The Administrative Director commented that GPA offered 3 months and he had given them 6 months.

Commissioner Perez commented that we don't want to jeopardize our developing company that we are working on if they exceeds 3 months.

Commissioner Calvo commented that they may probably be able to complete the project in 3 months but with the weather coming up there may be delays.

Commissioner Matanane commented that in the May 13, 2005 letter from GPA, Mr. Benavente (GPA) is requesting to utilize the site for 8 months from project start to completion.

Chairman Damian commented that if it is for 8 months it is unacceptable.

The Administrative Director commented that the memo is contrary to what they expressed to him when the site inspection was completed. The Administrative Director stated that he will get commitment for the 6 month period.

Commissioner Matanane commented that if GPA is putting the power lines underground, the Developer would be appreciative of that.

The Administrative Director inquired from the Commission if they are in agreement to the 8 months if GPA accommodates everything in line with the Developers.

The Commission members commented yes.

The Administrative Director commented that also inquiring into the same general area of Lot 5173-R2NEW-R2, Christine Paine of the Dept. of Mental Health and Substance Abuse called in reference to Public Law 22-23. Section 6 of this law authorizes the Governor to transfer and convey to the Dept. of Mental Health and Substance Abuse all title, right and interest in an area of 2,000 square meters for the construction of a temporary rape crisis center. This is in the same general area slated for development and closer to the hospital.

Chairman Damian commented that they might be amicable for relocation to another area in the Land Trust inventory and we need to look at the law whether there is a time period before it lapses. If there is no amicable solution we can request that the Legislature rescind the law.

Commissioner Perez commented that we have to be careful because now all these interests are surfacing.

Chairman Damian commented that they will bring it up with the Governor and the Legislature.

Commissioner Matanane made a motion that since the meetings usually take up 2 to 3 hours, they would like to have the Administrative Director provide petty cash in the amount of $50.00 for refreshments for the Commission and the general public. Commissioner Calvo seconded the motion. There were no objections, MOTION PASSED.

Chairman Damian clarified if it is $50.00 per meeting or $50.00 per month.

Commissioners commented $50.00 per meeting.

Chairman Damian commented that we are not reinventing the wheel and that there are established procedures for each agency with respect to slush funds.

Commissioner Perez commented that as long as we don't exceed $50.00 per meeting.

Chairman Damian announced a one minute recess before going into Director's Report

V. DIRECTOR'S REPORT

A. Budget Meetings with BBMR

The Administrative Director provided the Commission with a report from James Diaz, Acting Administrative Services Officer, summarizing his meeting with BBMR officials. This occurred after the budget hearing at the Legislature where we were questioned as to status of the special accounts at Dept. of Administration.

Commissioner Matanane inquired on what are the two types of special accounts that we have at Dept. of Administration.

The Administrative Director commented that there are two special accounts as opposed to the general fund. The revenues that go into the special accounts are not directed to the general fund. These are accounts are identified as Chamorro Land Trust Commission accounts.

Commissioner Matanane inquired on who funds the special accounts.

The Administrative Director commented that the special accounts are funded from our revenues such as the licenses, leases and application processing fees.

Commissioner Matanane inquired if we get reports from them as to the balance of these accounts since they have the authority to dispense from the special account and not making CLTC aware as to how they handle the special account.

The Administrative Director informed the Commission that he has not seen any correspondence from Dept. of Administration regarding these accounts.

Chairman Damian commented that we are not going to move until we see the correspondences.

Commissioner Matanane commented that he had been requesting for that since he first started. Commissioner Matanane wanted to find out where are we generating our funds and that his understanding is that the Legislature appropriates our budget as far as personnel. They still have a handle on us and we are not independent.

The Administrative Director commented that the balances that are showing with respect to the First Hawaiian Bank account are strictly what is in the First Hawaiian account. The Administrative Director stated that he cannot tell the Commissioners what the balance is in the two special accounts. He is told that it is in deficit and that we owe approximately 1.3 million dollars in those accounts.

Commissioner Calvo inquired on why do we owe that much money and where did it lead us and how did they derive to the 1.3 million deficit. If the Legislature is funding for personnel and everything in line when you submit a budget to the Legislature you would break down the cost of what the operation expenses are. The Administration should also have a copy of that.

Commissioner Calvo inquired if the Commission is held accountable for the deficit.

The Administrative Director commented that apparently the Legislature thinks that the Commission is liable. If you look at Mr. Diaz's memo it reads that the reason why the account is in deficit is because all revenues are deposited into the First Hawaiian Bank account and the Chamorro Land Trust Commission budget over the last few years has been identified to be funded by the special fund also known as the Chamorro Commercial Loan Fund. This fund is handled by DOA where all revenue by CLTC used to be deposited.

Commissioner Matanane inquired if this is a loan.

The Administrative Director commented that this is a not a loan but rather the Chamorro Commercial Loan Fund which is one of the funds mandated by the Chamorro Land Trust Act. We maintain this fund and when someone comes in to apply for a commercial loan then we disburse funds out of this fund.

Commissioner Perez commented that according to Mr. Diaz's report the two main items discussed by BBMR is the revenue from the Golf Course that must be deposited back to the Dept. of Administration into the treasury of the special fund account. If you look at the First Hawaiian Bank report the Guam Municipal Golf Course payment was deposited in April 2005 bringing the balance to $1,526,700.52. Commissioner Perez commented that this is conflicting because Mr. Diaz is saying that it should be deposited over the Dept. of Administration and why is it deposited into the First Hawaiian in the first place. Also in Mr. Diaz's report it states that the Chamorro Land Trust Commission will refund the Treasury for all expenditures on the Special Fund account from the First Hawaiian Bank Checking account. Since then all checks are now being deposited with DOA into the Special Funds revenue accounts.

Commissioner Perez commented since May there won't be anything deposited into the First Hawaiian account.

Commissioner Matanane commented that in essence the Chamorro Land Trust Commission is not a Trust because they are entrusted over to DOA and BBMR. All we do is send in the bill and they'll pay it and they don't need to tell us how much we should have.

Commissioner Perez commented that if that is the case she doesn't think that this Commission is going to approve anything like that because she herself will not sign off on it.

Commissioner Matanane commented that we would need to clarify all revenues coming in since the inception so that we can track that.

Commissioner Perez commented that what Mr. Diaz is showing in his report is that we owe DOA $1,335,346.

Commissioner Matanane commented that the Commission is mislead that we have in our account over 1 million dollars.

Commissioner Matanane inquired on who has authority to withdraw from the First Hawaiian account.

The Administrative Director commented that he does.

Commissioner Matanane inquired on how do we know that all moneys that have been collected for CLTC have been deposited into the First Hawaiian account and the special account.

Commissioner Perez commented that there are two accounts and inquired on which account belongs to the Land Trust.

Commissioner Perez further stated that according to Mr. Diaz everything needs to be deposited to DOA then we don't have money.

Commissioner Matanane commented that when he had requested for all the commercial licenses he now to finds out that the U.S. Post Office is leasing property from the Commission. If we are generating about $44,000 or $45,000 a month that would take care of the personnel itself. That's $492,000 or maybe even $500,000 to take care of all of our staff plus their increments. We are spending on the other special account for operations why isn't the other account taking care of that? If the Government is making a budget for us and sending it in for approval from the Legislature then it is coming out of the general fund that is why we are quasi. They are there to help but not to the extent to touch the Trust fund. I won't be responsible for any amount of money that has gone out from this Commission and be told that I am being responsible.

The Administrative Director commented that this started as a result from the budget hearing on May 11 at the Legislature. Up until then all revenues were going into the First Hawaiian account. The earliest discussion that he remembers having with Mr. James Diaz about this was in January when he first came on board and that for whatever reasons his predecessors had decided that the First Hawaiian Bank account is going to be used to deposit all the revenues and payroll was going to be funded out of the General Fund. When the Administrative Director had a meeting with Mr. Diaz and Lou Perez from Dept. of Administration in February regarding a different issue, this issue came up where Lou Perez advised us that Dept. of Administration was

supposed to be submitting to the Chamorro Land Trust an invoice. The Land Trust Commission was supposed to re-compensate the Dept. of Administration for payroll.

All Commission members inquired why is that when it is being paid by the General Fund.

The Administrative Director commented that he doesn't know and that was how things were supposed to have transpired.

Commissioner Matanane commented on how can we have a deficit when we have 1.2 million in the First Hawaiian Bank account.

Commissioner Calvo inquired as to who said that we have a deficit on the account.

The Administrative Director commented that the deficit that they speak about are from the two special accounts that are handled by Dept. of Administration not the First Hawaiian Bank account. This is where the Director's confusion was up until the budget hearing.

Commissioner Perez inquired if we can have a break down on where the special account is and what is it that we owe from the special account.

Chairman Damian commented that we are not moving an inch until we see documents. We will request from the Dept. of Administration documents to substantiate their invoicing or as the Legislature says moneys that owed the General Fund. We will need to meet with the Legislature on providing solutions because obviously there have not been mechanisms in place. There has been confusion in change of administration and change of directorship. We need to put that in order first to severe ourselves and begin to work towards a full fledge Trust. Until we do that we are subject to all kinds of confusion and every change in the political scene.

Commissioner Matanane commented that a year ago he had perceived that they were trying to wean the Chamorro Land Trust Commission out. We are not going to pay back $494,000 for personnel because of the fact that it went through the General Fund and the General Fund funded us for that. For any operations that we paid is our concern.

Chairman Damian commented that if we are going to be reimbursing the Government of Guam for personnel use from the General Fund then why do we need GovGuam?

Commissioner Perez commented that if this is a complete Trust, why are we having to wait for them to tell us who is going to be our Legal Counsel and so forth and we couldn't even make negotiations because we have to go through all that.

Chairman Damian commented that some of the initial steps that we would need to take right now is to request for documents from the Dept. of Administration with

respect to disbursement, invoicing, accounts receivables and payables. We will need to put together these issues and to go to the Executive Branch and then to the Legislature.

Commissioner Perez recommended that the Administrative Director make an appointment with the Governor to clear these issues up.

Chairman Damian commented that we will meet again prior to meeting with the Governor.

B. Revenues and Expenses for April and May 2005

The Business Checking account report for expenditures and revenues for the months of April and May 2005 was provided to the Commission.

The Administrative Director commented that as of May 31' 2005 there are no deposits for the Guam Municipal Golf course because the money had been deposited to the Special account at Dept. of Administration.

The Administrative Director commented that he can direct the staff to not do that for June until we resolve the issue on the two special accounts.

Chairman Damian commented that if they are going to handle that account then they really should take that out from our inventory.

The Administrative Director commented that it would then be contrary to other laws that require the Land Trust to receive revenues from public lands.

Commissioner Perez commented to direct staff that the money coming from the Golf Course should not be deposited into the special account until we settle once and for all what this account is for.

The Administrative Director commented that he did direct Mr. Diaz that no moneys will be given to DOA until the Board decides to. The Administrative Director commented that this was a contentious issue between himself and Mr. Diaz, however, he decided to proceed against his direction.

Commissioner Perez commented that a letter be given to Mr. Diaz advising him of the matter and a copy be given to the Chairman of the Commission.

C. Compliance with Open Government Law

The Administrative Director commented that as a result of inquiries by Attorney Mike Phillips regarding Oka/Ypao Point lease negotiations, certain issues related to the Chamorro Land Trust Commission board meetings have risen. These issues speak to work that the Commission must do to create greater transparency in its dealings and

meetings, and to validate all prior actions that may have been executed without full compliance with Open Government Law. An informational memorandum written by the Office of the Attorney General on this matter is referred to for guidance.

Issue No. 1: Quorum

The Chamorro Land Trust Commission's enabling legislation does not specify or define quorum for commission meetings. The Attorney General suggests that the Commission use the common law rule for construction "...unless a different intent appears in law or in a court decision." In other words, a simple majority of 5 members

constitutes quorum. Given the existence of quorum, the number of members needed to vote favorably to take action may also be a simple majority of the members present.

The Administrative Director's recommendation is that the Commission may consider this information and is advised to adopt policy accordingly.

Commissioner Matanane made a motion for Commission to continue to use simple majority as a way of defining quorum and the passing of any motions before, during and in the future until such time the Commission makes any changes. Commissioner Calvo seconded the motion. There were no objections, MOTION PASSED.

Issue No. 2: Public Notice

The Open Government Law requires two notices be given for regular or special meetings. At least one notice must be given exactly five working days prior to a scheduled meeting date and a second notice must be published at least 48 hours prior to the meeting.

Meetings that were convened but not in compliance with the notice requirement are deemed invalid and the actions taken at those meetings are void or of no effect. The Chamorro Land Trust Commission staff was directed to examine records of notices of prior meetings retroactive to September 2004 to determine if any meetings were held without having fully met the public notice requirement. We have found that the board meetings held on the following dates did not meet the public notice requirement:

September 1st, 15th & 29th, 2004
November 3rd & 18th, 2004
December 1st & 29th, 2004
February 7, 2005
March 9, 2005
April 27, 2005

The Commission is advised that the actions taken at these meetings may be deemed void and of no effect.

The Administrative Director's recommendation is on the advise of the Office of the Attorney General, the Commission should decide how to handle any actions taken or decisions made at prior meetings that are now deemed invalid and the original minutes should be annotated that there is no force or effect.

The Attorney General's Office cited a case where a court decided that invalid actions can be ratified at a later open meeting but the invalid action becomes effective on the date of ratification.

The Chamorro Land Trust Commission can collectively validate or ratify all actions taken at each of the meetings in question. If ratified today, those actions become valid and effective as of today's date.

Chairman Damian commented that it is one thing to ratify all of those issues so that they become a matter of public record. What we need to do is look back and make sure that there are no complications with the change in date. We can blanket all of those dates subject to the review of all the dates at the next meeting.

Commissioner Perez made a motion to ratify all the dates that were not in compliance with the public notice subject for review. Commissioner Matanane seconded the motion. There were no objections, MOTION PASSED.

Commissioner Matanane requested for a copy of all the minutes for those dates in question.

Issue No. 3: Executive Sessions

The Open Government Law requires that all government meetings be open to the public. Closed executive sessions are authorized only under the following conditions or circumstances:

2. To meet with the Attorney General or Police Chief on matters of public health, safety and welfare;
3. To consider the appointment, employment or dismissal of public employees, unless the employee requests public discussion (salaries are never discussed); and
4. To discuss actual or threatened litigation, but only upon written recommendation of legal counsel to close the meeting.

Executive sessions are illegal if held under circumstances other than those cited above and any minutes should be noted as improper.

The Administrative Director's recommendation is that since September of 2004, this Board has not recorded its executive sessions. Unless the Board members or staff can recall any action or decision made during any executive session since September 2004, no current action is required to remedy the issue.

Chairman Damian commented that he does not recall any kind of recordings for these sessions and believes that the Commission has only had maybe 4 at the most 5 meetings.

Chairman Damian requested the Administrative Director to report at the next meeting if there were any taken with respect to executive session otherwise we will vote to mute that it does not go into effect for respect to this Commission.

Commission Calvo requested that the Administrative Director prioritize and follow up with the Attorney General on the issues discussed today and also on the Perez family issue.

Commissioner Calvo inquired on the status of Mr. Baumgartner's case.

The Administrative Director commented that Mr. Baumgartner relinquished his claim on that particular issue in lieu of another available property.

VI. PUBLIC COMMENTS

None.

VII. NEXT MEETING DATE

The next meeting date is tentatively scheduled for the first week of July unless a special meeting is called before then.

VIII. ADJOURNMENT

Meeting was adjourned at 6:40pm.

TTc:\cltcboard\June1.05