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 Commission Conference Room, Anigua
June 22, 2005; 4:15pm

I. CALL TO ORDER

Meeting was called to order at 4:15pm by Chairman Delfin Damian. Present were Commissioner David Matanane, Commissioner Oscar Calvo and Administrative Director Thomas Elliott. Not present was Commissioner Annie Perez

II. OLD BUSINESS

A. Ypao Point Status Report – Administrative Director's Assessment

The Administrative Director commented that the representatives for the Himalaya Group are unavailable for today's meeting.

The Administrative Director's assessment:
On May 20, 2005, Attorney Jerry J. Tang, legal representative for Developer YTT/Himalaya Group, wrote to the Chamorro Land Trust Commission requesting CLTC's position on concerns raised by the Developer at a CLTC Special Meeting on May 13, 2005. At the request of the Chairman, this letter was forwarded to the Office of the Attorney General for legal review and comment. To date, the CLTC has not received a response from the Office of the Attorney General regarding theses issues.

Since the beginning of my tenure as Administrative Director of the Chamorro Land Trust Commission in January of this year, the negotiations have been characterized as "final" in status. However, the opposite has proven true. Meetings have been postponed or canceled mostly as a result of the Developer's failure to attend. Now we have more creative reasons for delaying negotiations, ranging from untangling a complex web of red tape imposed by 9-11 on financial requirements to sudden illnesses to concerns that impediments to Development negotiations are growing and/or real. Real public sentiment has little regard for likelihood that the project would move forward anytime soon, if at all.

As to the more recent concerns expressed by Mr. Tang, I believe that arguments can be made on the basis of common sense. Members of the Commission, I believe we should move forward with negotiations with the following thoughts:

1. **On the issue of the Perez Claim of Interest:** Mr. Tang would be more able to secure an opinion from a colleague regarding this issue. Years ago, Mr. Perez conveyed title on the condition that the Government would build a hospital on the property. Subsequently, GMH was built, satisfying that condition and perhaps rendering moot the claim of interest. According to the Preliminary Title Report, CLTC owns the property in Fee Simple and title insurance should mitigate any claim on the property.
2. **On the issue of the threatened lawsuit:** Again, Mr. Tang may have easier access to information involving cases similar to the Sheldon/Davis claim of ethnic distinction, racial exclusivity and constitutional violation. Without claiming legal expertise, each point of contention by Sheldon & Davis can be argued on the basis of common sense. They draw comparisons between the Chamorro Land Trust and the Hawaiian Homelands without addressing the obvious difference between the two in terms of qualification. The CLTC qualifies its on the basis of the definition of Native Chamorro, which is "...any person who became a U.S. Citizen by virtue of the authority and enactment of the Organic Act of Guam or descendants of such person." 21GCA Chapter 75, Section 75101: Definitions. Although this definition probably excludes Sheldon and Davis, many non-Chamorro-blooded families (American, Japanese, Filipino, etc.) meet the definition of Native Chamorro and are qualified to participate in CLTC leases and programs. Furthermore, revenues generated by the CLTC would directly benefit CLTC lessees and still filter out into the economy. The revenues generated from Ypao Point will allow the CLTC to become independent from the General Fund, creating a fundamental benefit to the island.
3. **On the issue of the $50,000 bond:** The RFDP calls for a $500,000 non-refundable fee to be applied to the initial annual ground lease payment upon approval of the Development Agreement by the CLTC. Upon its selection by the CLTC as Master Developer, the Master Developer must submit a performance bond in the amount of $50,000. The $50,000 should be kept separate and apart from the $500,000 non-refundable fee, and not be an issue for a project that would cost nearly $200 million.

As stewards of public land, we must not allow the Developer unreasonable latitude with this project as it has already created unnecessary delay. As time is of the essence, I strongly urge this Commission to impose a time limit for the Developer to meet and negotiate the ground lease and development agreement.

Chairman Damian commented that what we are going to do based on the Commission's feedback and concurrence is draft a letter of concern to the Developer. In the last meeting a resolution was sent by the Commission to the Attorney General to specifically set out the language in so far as how the $50,000 is going to be handled because right now in its legal stature it is still listed down as a performance bond. We have all agreed along with the Developer that this language needs to change so that it becomes an act of good faith deposit.

Chairman Damian inquired from the Administrative Director if the Commission had received the Resolution from the Attorney General's office.

The Administrative Director commented no.

Chairman Damian commented that with respect to issue #3 of the Director's assessment, the Commission will forward a letter to the Attorney General requesting that we get a response to the language so that the money can be deposited which is already due to the Commission. The Commission would however, have to establish an account for this money.

Commissioner Calvo commented that he does agree and further commented that the timeframe of this project is dragging too long. We have to really emphasize this not only to the Attorney General but to the Developer as well.

Commissioner Calvo commented that if the Attorney General cannot assist the Commission on the legal issues then the Commission should seek another legal counsel.

Chairman Damian commented that Commissioner Calvo's comments will be put on the letter to the Attorney General.

Commissioner Matanane commented that the Commission should get a written timeframe from the Developer.

Chairman Damian commented that a letter of concern will be given to both the Developer and the Attorney General.

Chairman Damian commented that with respect to issue #2 this will also be in the letter of concern, that we have not seen any legal action from out legal counsel with respect to some of the issues raised by the Developer on a possible lawsuit.

Chairman Damian commented that with respect to issue #1 the Commission can write a letter of some assurance to the Developer that there is some legal precedence set aside that the Commission owns the property in fee simple.

The Administrative Director commented that he does agree with the title report and also with the Perez family request for some consideration regarding other properties that they would like to explore in terms of business opportunities, properties within our inventory as well.

The Administrative Director commented that in terms of the property adjoining Ancestral Lands the Commission has not yet secured a license with the Perez family because there was a vague environmental comment made by Senator Joanne Brown on that particular area. The Commission wanted to be sure that there are no impediments in that regard from entertaining a license with Perez Bros. in that area or perhaps in another area north of the Guam Race Track.

Chairman Damian inquired if the Perez family is aware of the concern by Senator Brown.

The Administrative Director commented that he had informed the family.

Chairman Damian commented that the Commission will need to request a letter from Senator Brown or her committee if there are any concerns on the property.

B. Accounts Payable to the General Fund

An invoice accompanied by a statement of accounts receivable was provided to the Commission from the Department of Administration.

The invoice shows what the Department of Administration has been expending in terms of payroll obligations of the Commission.

According to the Administrative Director the Commission is obligated to reimburse the Department of Administration on these amounts however, they essentially have indicated to the Commission of how much the Commission would be able to pay right away would be up to the Commission.

According to the invoice, the payment due to the Department of Administration is $699,068.07.

Chairman Damian inquired from the Administrative Director if the Commission has the funding source.

The Administrative Director commented yes.

Commissioner Matanane inquired on why is the operations cost higher in FY2004 as opposed to FY2005.

Chairman Damian commented that he believes the amount is a carry over of previous years.

The Administrative Director commented that the difference between the amounts of FY2004 and FY2005 is that we still have 3 more months remaining in FY2005.

Commissioner Matanane commented that we should bring this up to the Legislature also because they were the ones who approved the budget.

Commissioner Matanane made a motion to send this amount as the Commission's first billing and further billings subject to the amounts approved by the Commission. Commissioner Calvo seconded the motion. There were no objections, MOTION PASSED.

Chairman Damian directed the Administrative Director to start the mechanics on drawing the amount out.

III. NEW BUSINESS

None.

IV. PUBLIC COMMENTS

None.

V. ADJOURNMENT

Meeting adjourned at 5:45pm.

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