



OFFICE OF THE PUBLIC AUDITOR

## **EXECUTIVE SUMMARY**

OPA Report No. 02-07 November 2002

---

**Department of Land Management  
Investigative Audit on Permit for Use of Matapang Beach Park  
1984 through 1994**

The Office of the Public Auditor (OPA) received a tip alleging that the Holiday Inn Resort owed the Department of Parks and Recreation (DPR) rent for its use of Chief Matapang Beach Park (Matapang Park) in Tumon. The informant alleged that the rent was due under an agreement that gives Six D Enterprises (Six D) 50 years' use of Matapang Park in exchange for the development and 20 years' maintenance of the park. Based on this tip the OPA initiated an investigation.

The evidence gathered supports the allegation that the Holiday Inn Resort has not paid rent for its use of Matapang Park because no lease was ever established between the parties. We also found that that under 21 GCA §61531 the Department of Land Management (DLM) should have required 289 parking stalls for the hotel. The hotel has 110 parking stalls on its own land and 106 on Matapang Park, a shortfall of 73 stalls. The hotel also failed to provide adequate bus parking.

DLM did not ensure compliance by the developer of five conditions set forth by the Territorial Planning Commission (TPC) and did not adequately review the developer's application. On November 8, 1984, the application for conditional use and zone variance for the Suehiro Hotel - now the Holiday Inn Resort and previously the Parc Hotel - was approved for height, parking, and setback variances by the TPC, provided that the developer met the following conditions:

1. A lease, conforming to the Attorney General's opinion, must be entered into before any construction of development takes place;
2. The lease is to be with DPR, but approval must be had from all other concerned agencies;
3. If a lease is not made, the developer must resubmit plans dealing with the expansion of the then existing Suehiro Hotel and the variances sought;
4. The Commissioner of Tamuning is to be a party to any and all negotiations and agreements relative to the project; and
5. The amended plans are not to be altered without TPC approval.

Furthermore, the Department of Public Works (DPW) miscalculated the building permit/plan review fee for the expansion of the Suehiro Hotel, resulting in an underpayment of \$62,700 to the government. Neither DLM nor DPW have an occupancy permit on file for the Parc Hotel.

A 1988 quitclaim deed conveyed 124.95 square meters of government-owned Tumon land to the President of Six D Enterprises for \$3,124, a sum that appears to

be grossly out of line with then prevailing fair market values for comparable property. With such land then selling for as much as \$175 per square meter, the property reasonably could have commanded a price of up to \$21,866.

Based on information developed subsequent to our investigation, it appears that Six D is in default of the conditions under which it was granted use of Matapang Park. The Governor stated in his radio address on October 29, 2002, that the Guam International Airport Authority (GIAA) had paid for maintenance services for the public restrooms at Matapang Beach and Ypao Beach parks over the past year and has agreed to pay for such maintenance for another year. The permit granted to Six D requires the developer to "maintain the park and beach at a level of maintenance which is pleasing and attractive and safe to all persons who may use the facilities."

Our recommendations detailed in this report include:

1. DLM re-examine and reconstruct the application process of the Six D project to ensure that the application process complies with appropriate statutory and administrative provisions affecting the development.
2. DPR review all its park maintenance agreements. Matapang Park must be regularly monitored to ensure Six D is maintaining the property or if not action to terminate the permit granted to Six D should be considered.
3. The GIAA terminate its FY 2003 Matapang Park maintenance contract. Furthermore, GIAA should seek to recover sums it spent for maintenance Six D was responsible to perform.
4. The Attorney General should evaluate the following:
  - a. Whether a lease should be executed permitting Six D to continue its use of Matapang Park;
  - b. Whether the Government of Guam should seek rent from 1985 through 2002 or if the permit granted to Six D should be terminated;
  - c. Whether DPW can recover from Inland Builders, the contractor for the Six D development, the \$62,700 portion of the building permit fee that was not charged at the inception of the project;
  - d. Whether the Government of Guam has recourse against any individual or legal entity for the conveyance of the 124.95 square meters of government-owned Tumon land to the President of Six D Enterprises;
  - e. Review the record relative to the granting of the permit to Six D to determine if legal or administrative action is warranted against any government employees and principals involved in this development.

The Management of DLM and DPR generally concurred with our findings and recommendations. The management of DPW did not submit a response to our report.



Doris Flores Brooks, CPA  
Public Auditor