

**Chamorro Land Trust Commission  
Non-Appropriated Funds**

**Performance Audit  
October 1, 1999 through September 30, 2004**

**OPA Report No. 05-09  
December 2005**



OFFICE OF THE PUBLIC AUDITOR

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December 2005**

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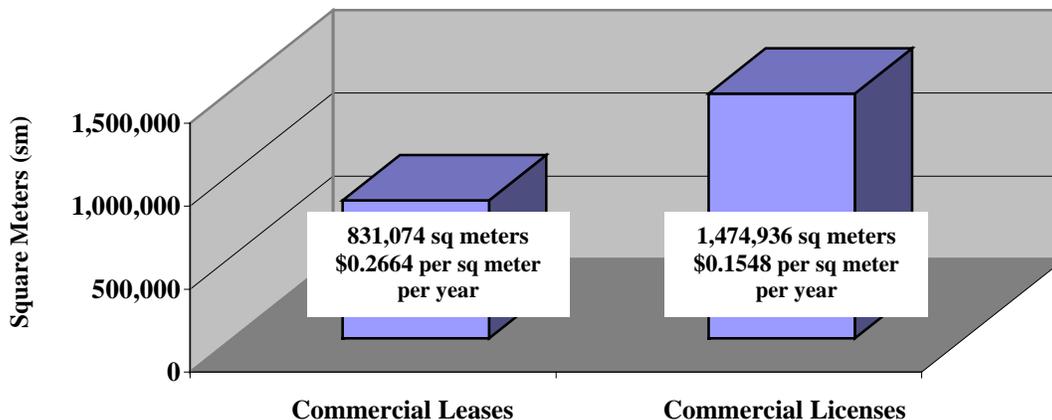
## EXECUTIVE SUMMARY

### Non-Appropriated Funds of the Chamorro Land Trust Commission Report No. 05-09, December 2005

Our audit found that the Chamorro Land Trust Commission's (Commission) former and current Administrative Directors and Boards did not provide an effective system of checks and balances to ensure that (1) commercial licenses of Chamorro homelands were awarded in accordance with rules and regulations, (2) revenues derived from commercial leases and licenses were collected and spent in the best interest of the Commission's beneficiaries, (3) lessees' loans guaranteed by the Commission were monitored, and (4) financial statements were prepared for the Legislature as required by law. Specifically, the Commission:

- Issued commercial *licenses*, without any guidelines, instead of commercial *leases*, because the Commission did not establish commercial lease rules and regulations as required by Public Law 23-38. As a result:
  - The Commission issued 28 licenses totaling 1,474,936 square meters for **less than 16 cents per square meter per annum**, which was 42% less than the three commercial leases approved by the Legislature. The three leases totaled 831,074 square meters for less than 27 cents per square meter annually.

#### Commercial Leases and Licenses Comparison



- 18 licenses totaling 369,033 square meters were awarded without Board approvals; 18 licenses totaling 1,112,900 square meters were not reviewed by legal counsel reviews, and 13 licenses totaling 1,026,154 square meters did not have appraisal reports.
- Favorable terms and conditions to some commercial licensees may have been granted:
  - A raceway park, the largest licensed property (1,011,714 square meters), generates less than 4 cents per square meter annually. This is the second lowest rental rate of \$0.0033 per square meter per month. Rental payments were waived for two years and the licensee adhered to a written yet, unsigned addendum, resulting in lost Commission revenue of \$89,550. Further, the raceway park was allowed to retain 50% or \$104,027, of proceeds derived from the sale of the property's coral.
  - A privately operated landfill license, the second largest licensed property (352,872 square meters) generates 15 cents per square meter annually, and is the third lowest rate per square

meter for the second largest piece of property. The license was issued on December 31, 2002, just one day prior to the change in administration. The licensee paid the required \$30,000 sign-up fee. However, the license failed to specify a time restriction for the licensee to obtain permits. The balance of \$70,000 remains unpaid while the licensee continues to occupy the land.

- The Commission allowed a licensee to operate a privately owned telecommunications business without a license. A license was later issued and the licensee only then remitted \$21,115 for delinquent rent.
- Did not establish a system for monitoring commercial revenues to ensure that all commercial occupants were current in their obligations. We estimated that the Commission may not have collected revenues of \$420,345 from October 1, 1999 through September 30, 2004.
- Did not establish a system of checks and balances over disbursements. As a result, \$179,427 was either not procured competitively, or represented a questioned use of funds spent for unauthorized travel, an employee party, an unaccounted 10 kilowatt generator and camcorder, and extensive vehicle repairs due to lack of maintenance. Additionally, the Commission office lease was not advertised and competitively bid and \$42,162 was improperly expended over the life of the lease.
- Lacked a system of monitoring \$6.5 million in loans guaranteed by the Commission. As a result, the Commission had to assume a defaulted borrower's loan totaling \$72,970 including interest in 2003. The defaulted borrower continues to occupy the property and has yet to remit any payments. Although it is unlikely that all of the \$6.5 million in loan guarantees will default at the same time, without financial statements, it is difficult to ascertain the Commission's ability to meet these contingent liabilities.
- Did not publish its audited financial statements and report finances to the Legislature as required by law. As a result, \$1,692,013 of proceeds from commercial leases and licenses from October 1, 1999 through September 30, 2004 was not reported.

These conditions occurred because the former and current Administrative Directors and Boards did not provide sufficient oversight and monitoring over the Commercial Division and demonstrated a lack of understanding of the importance of checks and balances.

Other matters not related to our audit objectives that came to our attention include: (1) the Commission has not yet established the Chamorro Land Trust Operations Fund required by P.L. 28-68, and (2) the Board had not yet conducted the semi-annual performance evaluation of the Administrative Director as required by law.

Our recent audits have revealed that small entities with checking accounts often lacked an understanding of the importance of internal control, i.e. checks and balances. While we recognize it is the prerogative of the Legislature to authorize entities to have checking accounts, we urge the Legislature to reconsider the policy of allowing small entities to have non-appropriated checking accounts and designate the Department of Administration to account for the funds.

A draft report was provided to the Commission's Administrative Director and Chairman of the Board in November 2005. Both the Administrative Director and Chairman generally agreed with the findings and recommendations in the report and have provided an action plan to address these issues.



Doris Flores Brooks, CPA, CGFM  
Public Auditor



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## Introduction

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This report represents the results of our audit of the non-appropriated funds of the Chamorro Land Trust Commission (Commission). This audit was initiated (1) at the requests of the Commission's prior and current Administrative Directors and a Senator of the 28<sup>th</sup> Guam Legislature, and (2) as part of our on-going review of Government of Guam agencies with non-appropriated fund checking accounts. The audit objectives were to determine whether:

- The Commission's non-appropriated funds were properly managed and accounted for in accordance with applicable laws and regulations, and
- Checks and balances were in place to ensure that commercial licenses were independently evaluated and fairly issued in accordance with rules and regulations.

The audit scope, methodology, and prior audit coverage are located in Appendices 2 and 3.

## Background

In January 1975, Public Law (P.L.) 12-226 created the Chamorro Land Trust Commission to protect and ensure trust lands are efficiently and effectively awarded to native Chamorros through residential, agricultural, and commercial leases. The Commission's objectives are to act in the interest of beneficiaries,<sup>1</sup> maintain and uphold fiduciary responsibilities for the beneficiaries, and to exercise due diligence in the management of Chamorro homelands. The Commission currently has a trust land inventory of 12,731 acres or 51,520,529 square meters.



**Image 1: Property map files at the Chamorro Land Trust Commission.**

The Commission leases residential and agricultural lots for farming and dwelling to native Chamorros for one dollar a year for 99 years. P.L. 23-38 established rules and regulations for these residential and agricultural leases and stated that the Commission cannot issue commercial leases until such rules and regulations are developed. These residential and agricultural lessees are allowed to obtain commercial licenses to use Chamorro homelands for lessee-owned (or

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<sup>1</sup> Beneficiaries are "native Chamorros" identified in 21 G.C.A. §75101 (d) as 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.

organizations formed and controlled by the lessee) mercantile establishments<sup>2</sup>, pursuant to 21 G.C.A. §75107 (c)(2). Licenses may also be granted to public utility companies, or corporations for telephone lines, electric power, gas mains, etc. and to churches, hospitals, public schools, post offices, and other public improvements.

The Commission's Board is composed of five members, who are appointed by the Governor and confirmed by the Legislature.<sup>3</sup> At the beginning of the new administration, from January 2003 through January 2004, the Governor did not appoint a Board; therefore, decisions were made by the Administrative Director. Currently, eleven classified employees and an Administrative Director, appointed by the Board, staff the Commission's four divisions: Administrative, Residential, Agricultural, and Commercial.

From FY 2000 through FY 2004, the Commission received appropriations of \$2,955,147 to fund personnel and operations. In April 1999, pursuant to Board Resolution 99-02, the Commission opened a checking account to "directly manage its own financial accounts..." This checking account may have been authorized by P.L. 12-226, which stipulates that Commission funds "shall be maintained separate and apart from any other government fund and shall be in the custody of the Commission Certifying Officer." Proceeds from commercial leases and licenses are the sources of revenue for the checking account.

Revenues from residential and agricultural leases are instead deposited into the Chamorro Commercial Loan Fund, one of six funds established by P.L. 12-226 and maintained at the Department of Administration (DOA) and reported in the Government of Guam's annual audit as special revenue funds. Prior annual audits reported that the Commission's five other funds: the Chamorro Home Loan Fund, Chamorro Home Repair Fund, the Chamorro Home Development Fund, Chamorro Educational Assistance Fund, and Chamorro Loan Guarantee Fund, have not had any financial activity from October 1, 1999 through September 30, 2004. See Appendix 9 for a detailed description of these funds. The Commission has not prepared any financial reports of its non-appropriated fund checking account nor has there been any financial reporting to any oversight body, the Legislature, the Governor of Guam, or DOA.

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<sup>2</sup> Such as theaters, garages, service stations, markets, and stores.

<sup>3</sup> 21 G.C.A. §75102.

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## Results of Audit

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We found that the Chamorro Land Trust Commission's former and current Administrative Directors and Boards did not provide an effective system of checks and balances to ensure that (1) commercial licenses of Chamorro homelands were awarded in accordance with rules and regulations, (2) revenues derived from commercial leases and licenses were collected and spent in the best interest of the Commission's beneficiaries, and (3) lessees' loans guaranteed by the Commission were monitored.

These conditions occurred because the former and current Administrative Directors and Boards did not provide sufficient oversight and monitoring of the Commission's Commercial Division and demonstrated a lack of understanding of the importance of checks and balances, i.e. internal controls.

Specifically, the former and current Administrative Directors and Boards:

- Issued commercial *licenses*, without any guidelines, instead of commercial *leases*, because the Commission did not establish commercial lease rules and regulations as required by Public Law 23-38. As a result:
  - The Commission issued 28 licenses totaling 1,474,936 square meters for **less than 16 cents per square meter per annum**, which was 42% less than the three commercial leases approved by the Legislature. The three leases totaled 831,074 square meters for less than 27 cents per square meter annually.
  - 18 licenses totaling 369,033 square meters were awarded without Board approvals.
  - 18 licenses aggregating 1,112,900 square meters were not reviewed by the Commission's legal counsel.
  - 13 licenses totaling 1,026,154 square meters did not have an appraisal report.
  - Favorable terms and conditions to some commercial licensees may have been granted as illustrated:
    - A raceway park, the largest licensed property (1,011,714 square meters), generates less than 4 cents per square meter annually. This is the second lowest rental rate of \$0.0033 per square meter per month. This license did not have an appraisal report to determine the percentage of the fair market value charged for the monthly rate and waived rental payments for two years, thus resulting in lost Commission revenue of \$89,550. The licensee is now paying an additional \$250 a month for this deferment, and will take nearly 30 years to be paid.
    - A license for a privately operated landfill, the second largest licensed property (352,872 square meters) generates the third lowest rental rate of 15 cents per square meter per annum. The license was issued on December 31, 2002, just

one day prior to the change in administration, which failed to specify a time restriction for the licensee to obtain permits. Although the licensee paid the \$30,000 sign-up fee, the balance of \$70,000 has yet to be paid while the licensee continues to occupy the land.

- Allowed a licensee to operate a privately owned telecommunications business without a license. A license was later issued and the licensee remitted \$21,115 for rent.
- Did not establish a system for monitoring commercial revenues to ensure that all commercial occupants were current in their obligations. We estimated that the Commission did not collect revenues of \$420,345 from October 1, 1999 through September 30, 2004.
- Lacked a system of monitoring \$6.5 million in loans guaranteed by the Commission. As a result, the Commission had to assume a defaulted borrower's loan totaling \$72,970 including interest in 2003. The defaulted borrower continues to occupy the property and has yet to remit any payments. The Commission has made no attempt to collect the past due amounts from the defaulted borrower or reassign the property to another eligible candidate. Although it is unlikely that all of the \$6.5 million in loan guarantees will default at the same time, without financial statements it is difficult to ascertain the Commission's ability to meet these contingent liabilities.
- Did not publish its audited financial statements and report finances to the Legislature as required by law. As a result, \$1,692,013 of proceeds from commercial leases and licenses from October 1, 1999 through September 30, 2004 was not reported.
- Did not establish a system of checks and balances over disbursements. As a result, we found \$179,427 were either not competitively procured, not completely documented, not independently checked or represented a questioned use of public funds. These disbursements were for unauthorized travel, an employee party, an unaccounted 10 kilowatt generator and a camcorder, and incurred extensive vehicle repairs due to lack of maintenance. From calendar years 2000 to 2004, we estimated \$181,919 was paid to vendors for which the Commission did not issue Form 1099-MISC as required by the Department of Revenue and Taxation for all individuals who provided services of at least \$600 per calendar year.
- Lacked rules and regulations for the use of the Guam Municipal Golf Course (Golf Course) lease payments as required by law. As a result, the Commission proportionately spent \$296,009 of Golf Course proceeds in the absence of required rules and regulations.

## **Board and Management Review and Monitoring Needed for Commercial Licenses**

The Board and management of an organization have a duty to ensure that a system of adequate checks and balances, i.e. internal controls, are established so that goals and objectives are met, and resources are safeguarded and used economically and efficiently. Monitoring is the capstone of effective checks and balances, requiring management to continually:

- Set the tone for the entire operation,
- Educate employees as to the purpose and importance of checks and balances, and
- Provide resources necessary to ensure that the structure of checks and balances is properly designed and maintained.

We found that the former and current Administrative Directors and Boards did not establish an adequate system of checks and balances to ensure that commercial licenses were awarded in accordance with rules and regulations, issued to qualified applicants, that all commercial revenues were collected, and financial activities were monitored.

### **Commercial Licenses and Commercial Leases**

We found that the Commission resorted to issuing commercial *licenses* for commercial uses of Chamorro homelands because the Commission had not adopted rules and regulations for issuing commercial *leases*, as required in P.L. 23-38. We did not find any requirement for establishment of rules and regulations for commercial licenses. According to the Administrative Director, a commercial *lease* grants interest and transfers the Commission's homeland rights to the lessee. On the other hand, a commercial *license* is a permit to utilize Commission homelands. Additionally, *sub-leasing* is allowed pursuant to 21 G.C.A. §75103(b), which requires the Commission to report *sub-leases* to the Legislature. However, we were not able to find stipulations in the law that allow licensees to *sub-license* Chamorro homelands.

The requirement of rules and regulations for commercial leases ensures that leases are awarded fairly and consistently and may include more scrutiny by various parties, such as legal counsel, before a lease is approved. There were also no rules and regulations or internal procedures for the issuance of commercial licenses.

### ***Commercial Licenses Issued to Ineligible Applicants***

It was the understanding of the Administrative Director and the Planner IV that any individual or entity can apply for a commercial license. However, after we pointed out that 21 G.C.A. §75107 (c)(2) states that only certain individuals and entities may license Chamorro homelands, the Administrative Director agreed that commercial licenses of mercantile establishments should be issued only to agricultural and residential lessees of the Commission.

We found five commercial licenses of mercantile establishments such as a retail store, a raceway park, a landfill, a shooting gallery, and an automotive towing storage totaling 1,448,027 square meters whose owners did not have existing agricultural or residential leases with the Commission, contrary to 21 G.C.A. §75107 (c)(2). Therefore, these licensees may have been

ineligible to utilize Chamorro homelands for mercantile establishments. Because this involves a matter of legal determination, we have referred this matter to the Attorney General to determine whether these are eligible licensees.

On December 1, 2005, the Attorney General's Office responded to the Administrative Director's inquiry for guidance concerning past practice of licensing to non-lessees. The Commission was advised to "not take any action which would cause undue loss to the licensees without first contacting this office, as the possibility of a lawsuit against the Commission would be present..." Therefore, we recommend that the Administrative Director continue communication with the Attorney General's Office in determining appropriate actions pertaining to commercial licenses that may have been issued to ineligible applicants.

### ***Licensee Allowed to Sub-license***

We found that the Commission allowed a private telecommunications licensee to sub-license part of its 3,080 square meter property in Barrigada although we were unable to find provisions in law that allow licensees to ***sub-license*** Chamorro homelands. However, ***sub-leasing*** is allowed pursuant to 21 G.C.A. §75103 (b).

This license allocated 40% of the sub-license proceeds to the Commission while the licensee received 60%. Based on our review, the licensee profited \$8,281, which represents 60% of the sub-licensee's payments while the Commission received \$5,521 from August 2000 through April 2001.<sup>4</sup> The licensee's monthly rental fee was \$2,016 or \$0.6547 per square meter per month. The Acting Administrative Director, the licensee's Vice President, and the Commission's legal counsel signed the license.

Sub-licensing may be inappropriate since a commercial license is a *permit* to utilize Chamorro homelands and does not transfer homeland rights to a licensee. Because this involves a matter of legal determination, we have referred this matter to the Attorney General for a determination of the legality of sub-licensing.

### **Commercial Licenses Issued Absent Guidelines and Board Approvals**

Our audit found that instead of issuing commercial ***leases***, which required the establishment of rules and regulations pursuant to P.L. 23-38, the Commission resorted to issuing commercial ***licenses without rules and regulations***. Although a decade has passed since P.L. 23-38, as of the date of this report, the Commission has continued to issue commercial licenses and has not adopted rules and regulations for commercial leases or commercial licenses. A timeline follows:

- September 1995: Pursuant to P.L. 23-38 §6.9, "no commercial leases shall be entered into by the Chamorro Land Trust Commission until Rules and Regulations ... have been adopted..." by the Commission for commercial lease applications.
- December 1997: Bill 235 of the 24<sup>th</sup> Guam Legislature attempted to provide rules and regulations for commercial leases, but was not passed.

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<sup>4</sup> License was terminated in April 2001 and assumed by another private telecommunications company.

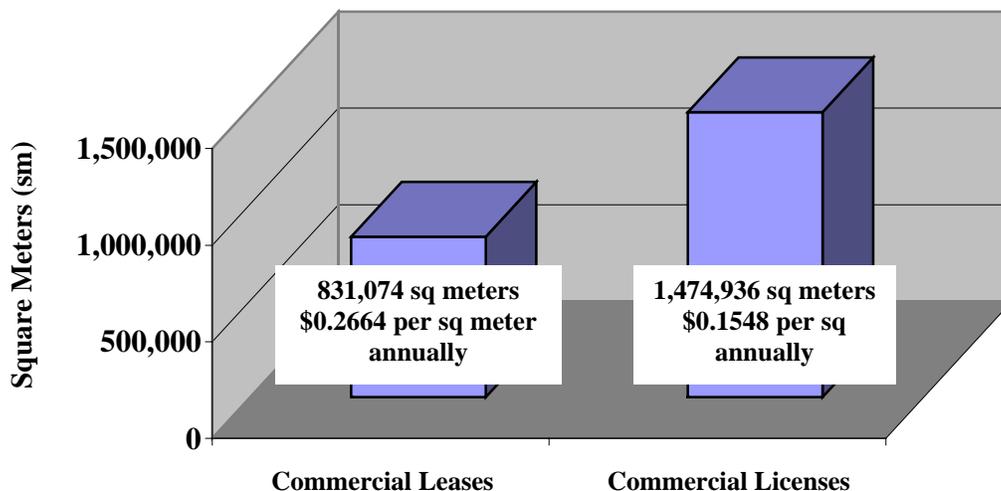
- September 1998: The Commission Board minutes revealed that the former Administrative Director "...suggested issuing commercial licenses..." absent commercial lease rules and regulations.

In June 2005, the Planner IV of the Commission’s Commercial Division provided us a receivable listing of 38 items consisting of commercial leases, licenses, and coral mining royalties. We were unable to ascertain whether the Commercial Division had documented all commercial leases and licenses in this listing because the files were disorganized. We resumed our testing, although we were unable to determine whether this listing was complete.

This listing identified two commercial leases, 34 commercial licenses, and two coral mining royalties. From this listing, we compiled an inventory listing of three commercial leases and 28 commercial licenses totaling 2,306,010 square meters,<sup>5</sup> while seven licenses were outside of the period of our scope of review.

The three commercial leases<sup>6</sup> approved by the Legislature for 831,074 square meters resulted in monthly revenue of \$18,458 or less than 27 cents per square meter per annum. On the other hand, the 28 licenses for 1,474,936 square meters issued by the Commission resulted in monthly revenue of \$18,995 or **less than 16 cents per square meter**. This is **42%** less than the leases approved by the Legislature (Appendices 4 and 5). The licenses were for telecommunications antenna sites, a landfill, a shooting gallery, a raceway park, a retail store, and automotive towing storage.

**Chart 1: Commercial Licenses and Leases Comparison**



We found that of the 28 commercial licenses:

- 18 licenses or 58% totaling 369,033 square meters were approved solely by the Administrative Director and not approved by the Board, however, three of these licenses were issued during the period a Board was not appointed.

<sup>5</sup> Of the 29 commercial leases and licenses, we found that one license was not issued. We added two licenses that were not included in the listing because other companies assumed them. We found one lease not included in the list.

<sup>6</sup> We did not test the commercial leases since they were approved by the Legislature by statute.

- 18 licenses aggregating 1,112,900 square meters were not reviewed by the Commission’s legal counsel although the Commission had access to the Attorney General or its private legal counsel since March 1993.
- 13 licenses totaling 1,026,154 square meters did not have an appraisal report.
- 10 licenses totaling 92,513 square meters were appraised by government employees and not by independent appraisers.

Since 2000, the Planner IV has solely managed the Commission’s Commercial Division, which oversees the Commission’s commercial leases and licenses. See Appendix 10 for the Commission’s organizational chart. The Planner IV informed us that he has neither reviewed nor updated the commercial lease and license files for the past two years because he is the only staff assigned to carry out the Commercial Division’s objectives. However, from the available records, we were able to review and compile a commercial license listing during our audit.

We did not find internal documented procedures or guidelines, much less promulgated rules and regulations for which the commercial licenses were issued. For example, none of the 28 licenses were accompanied by application forms. The Planner IV, the only staff familiar with the commercial license process, informed us that all he required was a business plan. Rental rates were negotiated on a case-by-case basis.

Of the 28 commercial licenses, 23 commercial licenses totaling 26,909 square meters were telecommunications antenna site licenses, ranging from a low of \$0.000013 per square meter to a high of \$0.7427 per square meter per month. We found considerable disparities in rental rates (Table 1) and inconsistencies in the licenses.

**Table 1: Telecommunications Monthly Rental Rate per Square Meter for Various Locations**

<b>Village</b>	<b>Licenses Count</b>	<b>Lowest Rate</b>	<b>Highest Rate</b>	<b>Variance</b>
Barrigada	8	\$ 0.3313	\$ 0.7427	\$ 0.4114
Merizo	2	\$ 0.000013	\$ 0.3760	\$ 0.3760
Inarajan	2	\$ 0.1363	\$ 0.3700	\$ 0.2337
Dededo	3	\$ 0.3003	\$ 0.4700	\$ 0.1697
Yigo	3	\$ 0.2317	\$ 0.2646	\$ 0.0329
Agat	1	\$ 0.4000	\$ 0.4000	\$ -
Malojloj	1	\$ 0.1961	\$ 0.1961	\$ -
Santa Rita	1	\$ 0.3391	\$ 0.3391	\$ -
Umatac	1	\$ 0.4574	\$ 0.4574	\$ -
Yona	1	\$ 0.4472	\$ 0.4472	\$ -
<b>TOTAL:</b>	<b>23</b>			

***Guam Telephone Authority Antenna Site Agreement***

On August 30, 1994, the Commission issued a license to the Guam Telephone Authority (GTA) for the use of 6,421 square meters of Merizo property for an antenna site for a period not to exceed 21 years. The license did not establish a compensation rate and indicated, “when details of compensation have been determined it (licensee) will make payments as agreed upon as

evidenced by written modification...” The Commission’s former Chairman of the Board and GTA’s former General Manager signed the license.

GTA did not make payments for this license. For our 60-month scope period, we calculated projected revenue loss of \$86,684 from the GTA license. See **Projected Lost Commercial Revenues** section of this report. We found no documentation of an agreed compensation rate, but according to the Planner IV’s file notes dated May 2003, almost nine years later, GTA owed the Commission \$150,252, or \$1,444.73 per month, which is \$0.2250 per square meter per month, for non-payment since August 1994. The Planner IV stated that efforts were made to collect the payments prior to the sale of GTA in December 2004. However, the Interim Transition Coordinating Committee<sup>7</sup> informed OPA that they had no knowledge of the amounts owed by GTA and it is unlikely the Commission will collect this amount.

In December 2004, just before the effective transfer of assets to the privately owned GTA, the Commission issued a commercial lease to the new GTA for \$1 per year for 10 years or \$0.0002 per square meter per annum for the same antenna site that was licensed to the government-owned GTA. However, P.L. 23-38 indicates that the Commission is not allowed to issue commercial leases until rules and regulations are established. The lease allowed a 40-year renewal with the rate adjusted by the fair market value and “...supercedes...the Chamorro Land Trust License Agreement and any prior understandings...written or oral...” The former Administrative Director and former GTA General Manager signed the lease.

#### ***License Issued after Extended Occupancy***

We found that the Commission allowed a private telecommunications company to occupy 1,338 square meters of property at Mt. Santa Rosa in Yigo without a valid license. In August 2004, the Commission subsequently issued a license and required payments of \$310 per month or \$0.2317 per square meter per month. The Planner IV informed us that an oral agreement was made between the former Administrative Director and the licensee.

In September 2004, the Commission received \$21,115 for rent payments from the licensee. We could not determine the length of time the licensee occupied the site.



**Image 2: Sample picture of a telecommunication antenna site.**

Moreover, we found several inconsistencies in the terms and conditions incorporated in other licenses by the Commercial Division, where it appeared some licensees may have been granted favorable treatment as illustrated in the following occurrences:

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<sup>7</sup> Group in charge of GTA’s privatization transition.

### ***Raceway Park License***

In June 1998, the Commission issued a 20-year license for the use of 1,011,714 square meters of property for a raceway park in Yigo. The monthly weighted average rental fee from June 1998 through September 2004 was \$2,400, or less than 4 cents per square meter per annum. This is the largest piece of commercial property and generates at less than a quarter of a cent per square meter per month or \$0.0033. The Acting Administrative Director and a raceway park representative signed the license. Refer to Table 2 for the rent schedule.

**Table 2: Raceway Park Monthly Rental Fee Schedule**

<b>Tier</b>	<b>Periods</b>	<b>Number of months</b>	<b>Monthly Rate</b>	<b>Income per Periods</b>	<b>Square Meters (sm)</b>	<b>Monthly Rent per sm</b>
1	June 1, 1998 ~ May 31, 1999	12	Waived	\$ 0	1,011,714	\$0.0000
2	June 1, 1999 ~ May 31, 2000	12	Waived	\$ 0	1,011,714	\$0.0000
3	June 1, 2000 ~ May 31, 2001	12	\$1,000	\$ 12,000	1,011,714	\$0.0010
4	June 1, 2001 ~ May 31, 2002	12	\$2,000	\$ 24,000	1,011,714	\$0.0020
5	June 1, 2002 ~ May 31, 2003	12	\$3,000	\$ 36,000	1,011,714	\$0.0030
6	June 1, 2003 ~ May 31, 2008	60	\$3,300	\$ 198,000	1,011,714	\$0.0033
7	June 1, 2008 ~ May 31, 2013	60	\$3,630	\$ 217,800	1,011,714	\$0.0036
8	June 1, 2013 ~ May 31, 2018	60	\$4,000	\$ 240,000	1,011,714	\$0.0040
<b>Total Projected Income:</b>				<b>\$ 727,800</b>		

We found several deficiencies in this particular license agreement:

1. We did not find an appraisal report to determine the percentage of the fair market value charged for the monthly rate of the license. Instead, we found a memorandum from a Department of Revenue and Taxation government employee detailed to the Commission stating that the land value of the property was \$20 per square meter or \$20,234,282.
2. Rental payments were waived for two years from June 1998 to June 2000. The licensee also followed an unsigned addendum, which deferred rental payments for two years thus resulting in lost Commission revenue of \$89,550<sup>8</sup> from October 1999 to September 2004. Although the addendum delayed payments by two years, total rental payments were equivalent to the original license since the addendum determined a payment schedule for overdue rent of \$57,000 with a balloon payment due in December 2007. The Planner IV informed us that the addendum modifications were made via an oral agreement between the former Administrative Director and licensee. Because the original license required written modifications signed by both parties, we did not consider the addendum binding. See **Projected Lost Commercial Revenues** section of this report.
3. Instead of the Commission receiving 100% of proceeds from the sale of the property's coral, the licensee was allowed to receive 50% of the proceeds. In February 2003, the raceway park entered into an agreement with a construction company to sell the property's coral for royalty fees equally paid to the raceway park and the Commission. Since the Commission received proceeds from coral sales of \$104,027 (from April 2003 through

<sup>8</sup> Since the addendum was unsigned, we utilized the June 1998 fee schedule derived by subtracting \$35,250 (payments remitted) from \$124,800 (projected payments) or \$89,550.

September 2004), we can reasonably conclude that the raceway park also profited \$104,027.

### ***Balance of \$70,000 Landfill Fee***

On December 31, 2002, just one day prior to a change in administration, the Commission issued a license for the use of 352,872 square meters of property in Santa Rita for a privately operated landfill for a period not to exceed 21 years. The agreed rental fee for the landfill was \$4,400 per month,<sup>9</sup> or 15 cents per square meter annually for the second largest property leased and licensed by the Commission. This is the third lowest rate per square meter. See Appendix 6 for details. The monthly rental fees have been timely remitted by the licensee. This license was approved solely by the Administrative Director without Board approval and was signed by the former Acting Attorney General.

In January 2003, the licensee paid a nonrefundable one-time \$30,000 fee and was required to pay an additional \$70,000 upon obtaining all permits, without a time restriction, for the development of the landfill. As of the date of this report, the licensee had not obtained the required permits and has not paid the remaining \$70,000. The Commercial Division has not followed up on the landfill's permit status.

The Guam Environmental Protection Agency (GEPA) informed us that obtaining a landfill permit can take more than two years and a property assessment is required to determine the viability of building a landfill. The license failed to specify a time restriction for the licensee to obtain the permits. Thus, without a deadline, the likelihood of the Commission receiving the \$70,000 fee is unknown while the licensee occupies the property.

The license was signed on the eve of the former governor's departure from office. The licensee was also embroiled in a legal controversy over an incinerator contract, which was eventually nullified by the Supreme Court in June 2003 because the contract violated the Legislature's Organic Act authority to appropriate and because it also violated procurement laws.

We are of the opinion that the inconsistencies in the issuance of commercial licenses occurred because the former and current Administrative Directors and Boards did not monitor and provide sufficient oversight to the Commercial Division. Specifically, they did not (1) establish written rules and regulations for commercial leases and licenses to ensure a consistent process to issue commercial leases and licenses, and (2) review all commercial license applicants. This allowed the Commercial Division to determine terms, conditions, and rates for licenses on a case-by-case basis rather than on a consistent basis, possibly resulting in preferential treatment given that the annual income per square meter is less than 16 cents.

### **Projected Lost Commercial Revenues**

We projected that the Commission did not collect lease and license revenues of \$420,345 from October 1, 1999 through September 30, 2004. We reviewed commercial lease and license agreements for rental rates, terms, and conditions, and calculated projected revenues by multiplying the rental rate by the length of the lease or license per fiscal year and compared the amounts to the actual deposits recorded in the check register and bank statements (Table 3).

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<sup>9</sup> 12% per annum of the estimated fair market value of \$440,000.

**Table 3: Commission Actual Deposits vs. OPA Projected Deposits**

<b>Fiscal Year</b>	<b>Commission Collected Rental Fees</b>	<b>OPA Projected Rental Fees</b>	<b>Variance</b>
2000	\$ 218,066	\$ 293,218	\$ (75,152)
2001	250,446	311,384	(60,937)
2002	245,875	361,515	(115,641)
2003	295,974	421,494	(125,520)
2004	417,813	460,907	(43,095)
<b>TOTAL:</b>	<b>\$ 1,428,174</b>	<b>\$ 1,848,519</b>	<b>\$ (420,345)</b>

Of the \$420,345 in projected lost revenue, we found:

- \$227,187 was not collected during our scope period from a shooting gallery (\$101,175), the Guam Telephone Authority for an antenna site (\$86,684), and a private telecommunications company for an antenna site (\$39,328) since the issuance of these licenses dates as far back as 1994.
- \$190,842 was not collected from a raceway park (\$89,550), a private telecommunications company for an antenna site (\$86,913), an automotive towing company (\$9,673), and a retail store (\$4,706), although partial payments have been remitted.
- \$2,316 in receivables that were more than 90-days old as of September 2004, which related to a private telecommunications license (\$2,016) and a non-profit cultural center lease (\$300).

### ***Undercharged Licensee***

The Commission undercharged a general merchandise retail store licensee \$4,680<sup>10</sup>. Although the license stated that compensation shall be equal to 1% per month of the mutually agreed upon \$26,000 fair market value of the property, the agreement also stated a monthly fee of \$26, or .01% per month. The licensee paid the Commission a total of \$494 for its monthly rental fees from February 2003 through August 2004, or \$4,706<sup>11</sup> less than the \$5,200 the Commission should have received. We informed the Planner IV of the miscalculation, but he responded that the former Administrative Director facilitated the license and “the space was small anyway.”

### ***Summary***

These conditions occurred because the former and current Administrative Directors and Boards failed to establish a system of commercial revenue collection and did not designate staff to monitor the collections of licenses and leases to ensure that all commercial occupants were current in their obligations.

To correct these deficiencies, we recommend that the Administrative Director and the Board (1) establish written guidelines pursuant to the Administrative Adjudication Act for the application and award of commercial leases and licenses to include, at a minimum, uniform application forms, business plans, financial statements of the applicant, independent appraisals, rate

<sup>10</sup> Derived by subtracting \$26 from \$260 and multiplying the difference (\$234) by 20 months.

<sup>11</sup> Derived by subtracting \$494 (payments remitted) from \$5,200 (projected monthly income of \$260 multiplied by 20 months).

schedules consistent with appraisals, legal counsel reviews, and Board approval of all licenses and leases, (2) continue communication with the Attorney General’s Office in determining appropriate actions pertaining commercial licenses that may have been issued to ineligible applicants, and (3) instruct the Commercial Division to compile a database of all leases and licenses to include at a minimum, lot numbers, names of lessees and licensees, monthly rental payments, commencement and termination dates of the agreement, payment due dates, and actual payment dates with accompanying pre-numbered receipts. The responsibility for collection of payments should be assigned to the Administrative Division and monitored by the Administrative Director and the Board.

### Monitor Loan Guarantees

The Commission is authorized to loan or guarantee the repayment of or otherwise underwrite any authorized loan of a Chamorro homeland lessee, up to a maximum amount not to exceed the financial ability of the borrower, pursuant to 21 G.C.A. §75112 (b)(2). These loan guarantees shift the lender’s default risk entirely to the Commission because in the event of default, the lender can call upon the Commission to make partial or full payment of the guaranteed loan. A lender, such as a commercial bank or mortgage lender, may make a loan to a borrower that they would not otherwise make, because of the Commission’s guarantee.

Upon inquiry, the Commission indicated that as of April 2005, it had guaranteed 135 loans of Chamorro homeland residential lessees totaling \$11.2 million to two institutions, the Guam Housing Corporation (GHC) and the Small Business Administration (SBA). However, the Commission could not provide us the current number and current amount of the loans because it did not have a system in place to track its loan guarantees. Accordingly, we confirmed with GHC and SBA that the amount of the loans as of October 2005 was \$6.5 million or 42% less than the \$11.2 million recorded by the Commission (Table 4 below). The Commission was unable to explain the \$5 million disparity between the amount confirmed with GHC and SBA.

**Table 4: Commission Issued Loan Guarantees**

Financial Institution	Commission’s Listing		Confirmed by OPA	
	Count of Loans Guaranteed	Amount of Loans Guaranteed	Count of Loans Guaranteed	Amount of Loans Guaranteed
SBA	122	\$ 10,041,187	Unidentified by SBA	\$ 5,900,000
GHC	14	1,150,402	8	593,445
<b>TOTAL:</b>	<b>136</b>	<b>\$ 11,191,589</b>	<b>8</b>	<b>\$ 6,493,445</b>

Although it is unlikely that all of the \$6.5 million in loan guarantees will default at the same time, without financial statements it is difficult to ascertain the Commission’s ability to meet these contingent liabilities. The Commission’s loan guarantees are not included in the annual audit of the Government of Guam, and may be considered a contingent liability to the Government of Guam. It is not known whether the General Fund may be called upon to fulfill the guarantees. Because of this potential liability to the General Fund, the Legislature should reevaluate whether or not the Commission should continue to issue loan guarantees. In 2003, the Commission had to assume a borrower’s loan totaling \$72,970 including interest.

## **Loan Guarantee Assumed by the Commission**

In March 1999, the Commission guaranteed the loan of a lessee to SBA in the sum of \$72,700. In October 2001, SBA sent a notice of delinquency to the Commission. In June 2002, almost eight months later, the Commission informed the borrower to advise the Commission on how they wish to proceed. After several notices from SBA, the Commission paid \$4,511 in August 2002 and \$694 in November 2002 to bring the loan current. The Commission continued to receive delinquency notices as the lessee only made three payments. Finally, in May 2003, SBA demanded full payment and the Commission was forced to pay the remaining balance of \$67,765, which included principal and interest.

Pursuant to 21 G.C.A. §75112 (h)(3), upon notification of a guaranteed loan default, the Commission shall, during the period pending reassignment or the determination, directly repay the loan and accrued interest, bring current the payments due the lender with funds reserved for in the Chamorro Loan Guarantee Fund (Loan Fund). Because the Loan Fund has had no financial activity, the Commission paid off \$72,970, the entire loan, as the guarantor of the SBA loan. Since May 2003, the Commission has taken no action to recover and reassign the property to another eligible candidate, specifically; the defaulted lessee still resides on the property and has not made any payments to the Commission.

We recommend that the Board and Administrative Director (1) consider evicting the defaulted lessee and recover the \$72,970 paid to SBA as guarantor, (2) develop a system of tracking loan guarantees issued by the Commission, and (3) annually request status reports of the loans they have guaranteed with the respective loan institutions.

## **Establish Required Rules and Regulations for the Use of Golf Course Revenue**

The Guam Municipal Golf Course (Golf Course) is the Commission's main source of revenue, for which the Commission collected annual lease revenue averaging \$196,000 per year from October 1, 1999 through September 30, 2004.

In January 1989, the Legislature entered into a 25-year lease agreement with the Golf Course for 829,124 square meter of property in Dededo, with an option to renew for a term not to exceed 50 years. In March 1994, P.L. 22-76 transferred title of the Golf Course to the Commission and appointed the Commission as administrator of the lease and to receive all payments.<sup>12</sup> From October 1, 1999 through September 30, 2004, the Commission received \$980,419 from the Golf Course lease and deposited these proceeds into its non-appropriated checking account.

The Department of Land Management determined the property's value to be \$1,401,393. Ten percent of this amount, or \$140,139, was the annual rent during the first five-year tier of rate escalations, beginning February 1, 1990 until January 31, 1994. The Commission is currently on its fourth tier of rate escalations, receiving \$216,776 annually.

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<sup>12</sup> Codified in 21 G.C.A. §75120.

The Commission did not establish rules and regulations for the use of Golf Course proceeds as required by P.L. 27-76 and a February 20, 1997 informational memorandum from the Attorney General. Because Golf Course proceeds were deposited with other revenues in the non-appropriated fund, we can reasonably conclude that the Commission spent proportionately \$296,009<sup>13</sup> of Golf Course proceeds in the absence of required rules and regulations.

To correct these deficiencies, we recommend that the Board and Administrative Director follow P.L. 27-79 by establishing rules and regulations for the use of lease payments from the Golf Course.

## **Checks and Balances Needed Over Disbursements**

The Commission issued 212 checks totaling \$510,361 from its non-appropriated fund account from October 1, 1999 through September 30, 2004. See Appendix 7 for receipts and disbursements schedule. We selected a sample of 15 disbursements for testing totaling \$181,361, for a variety of goods and services including, computer equipment, a generator, a video camcorder, aluminum doors, rent, engine repair, hazardous waste disposal, an appreciation party, per diem, and airfare. Of the \$181,361, we found \$179,427 or 99% of the disbursements tested were either not competitively procured, not completely documented, not independently checked or represented a questioned use of public funds.

## **Guam Procurement Laws and Regulations Not Followed**

The non-appropriated funds expended by the Commission's checking account are subject to the procurement laws of Guam.<sup>14</sup> The Guam Procurement Law and the Guam Procurement Regulations provide guidance for the government's procurement of goods and services for effective and broad-based competition. The following are guidelines to ensure broad-based competition:

- For the purpose of acquiring land surveying services, the competitive selection procedures shall be followed, 2 G.A.R. §5108 (c).
- All leases where the total sum of money paid to the same lessor exceeding \$10,000, may be entered into only after advertising for sealed bids in a newspaper of general circulation, 14 days prior to the formal bid opening, 5 G.C.A. §22704 (c).
- No less than three written quotations from businesses are to be solicited, recorded, and placed in the procurement file for small purchases between \$500 and \$15,000, 2 G.A.R. §3111 (c)(1).

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<sup>13</sup> Derived by dividing \$980,419 (Golf Course proceeds) by \$1,692,013 (total proceeds), which equates to 58 percent and taking 58 percent of \$510,361 (total disbursements).

<sup>14</sup> 5 G.C.A. §5030 (k), defines governmental body as any department, commission, board, agency, or other establishment or establishment or official of the executive branch of the Government of Guam. Further, 5 G.C.A. Section §5004 (b), states that procurement shall apply to every expenditure of public funds irrespective of [its] source.

We found that eight disbursements totaling \$96,470 were procured absent competition as discussed below.

- Check 1051 for \$60,000 was issued in October 2000 to a surveyor based on an extension to a contract that expired two years earlier. The services required in the extension were not advertised and competitively bid. This surveyor was paid a total of \$168,160 from the Commission's non-appropriated checking account fund from October 1999 through October 2000.
- Check 1213 for \$2,477 was issued in June 2004 for monthly office lease absent advertisement and competitive sealed bidding. Total lease for the 12-month period was \$29,722, which is greater than the \$10,000 threshold stipulated in 5 G.C.A. §22704 (c). Over the life of the lease, \$43,162 was improperly expended for the Commission's office lease. The Commission again renewed the lease in FY 2005 without advertisement and competitive bidding as required by law.
- Six disbursements totaling \$33,993 for computer hardware, camcorder, appreciation party, engine repair service, airfare ticket, and hazardous waste disposal, were procured without the required three written quotations.

### **Questioned Use of Non-Appropriated Funds**

The public must have confidence that public funds are being spent diligently on its behalf, and not for the personal benefit of government employees, officials, or their friends.

We questioned \$92,046<sup>15</sup> that the Commission expended for an unauthorized off-island trip, an employee appreciation party, engine replacement, and unaccounted equipment.

#### ***Unauthorized Off-Island Trip***

We found two disbursements totaling \$3,382 for the former Administrative Director's travel in February 2001 that was not initially authorized by the Board. It was not until the former Administrative Director had returned from the trip that he received the Board's after-the-fact approval.

#### ***Employee Appreciation Party***

We found several disbursements totaling \$3,539 for the former Administrative Director's employee appreciation party in January 2003 despite Governor's Circular No. 97-01, which prohibits government funds being used to pay for non-government social activities such as parties. Additionally, the party's invoice charged for 100 people although the Commission had less than 20 employees at that time.

#### ***Unaccounted Equipment***

During the aftermath of Typhoon Pongsona in December 2002, the Commission purchased a 10-kilowatt generator for \$4,995, which was supported by three quotations. In September 2003, the

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<sup>15</sup>Of \$92,046 questioned use of funds, four disbursements totaling \$17,674 was previously reported in disbursements procured absent three written quotations. Three disbursements totaling \$72,970 for a loan guarantee were questioned as explained in the Loan Guarantee Assumed by the Commission section of this report.

Commission purchased a video camera recorder and accessories for \$1,681. However, the Commission is unable to locate the generator and the video camera recorder.

### ***\$4,000 Check Payable to Cash***

In OPA Report No. 03-04, *Liberation Day Committee Funds and Activities Investigative Audit*, we found that in May 2001, the former Deputy Administrative Director was issued a \$4,000 check payable to cash for Liberation Day float expenses, which he repaid in February 2003. We did not test this disbursement during this audit as it was already tested as part of the Liberation Day Committee Funds and Activities Investigative Audit. See Appendix 3, Prior Audit Coverage.

### ***Lack of Maintenance of a Government Vehicle***

We found that in January 2000, three years after the purchase of a new vehicle, the Commission disbursed \$12,434 to replace the vehicle's engine. The Program Coordinator III informed us that the extensive repair was necessary because the Commission did not adequately maintain the vehicle.

### ***Lack of Separation of Incompatible Accounting Duties***

Separation of duties means that no employee should be in the position to have custody of an asset and be responsible for the approval and accounting for that asset. Ideally, no single individual should be able to (1) authorize a transaction, (2) record the transaction in the books of the account, and (3) have custody of the asset resulting from the transaction.

According to the current Administrative Director, the Chairman of the Board granted him the authority to expend the non-appropriated funds as sole signatory on the checking account. However, there were no Board minutes to confirm this authorization of a single signatory. Of the 13 disbursements we tested, six disbursements totaling \$90,556, were signed solely by the Administrative Director. Without a second signatory on disbursement checks, staff may be reluctant to question disbursements signed only by the Administrative Director. Dual check signatories is part of a good system of checks and balances that divides accounting responsibilities between two or more individuals or departments to ensure that the work of one acts as a check on the other. No one person should be allowed to disburse funds without an independent review by a second person to ensure proper checks and balances.

In our June 2005 preliminary findings letter to the Administrative Director and Board Chairman (See Appendix 11), we recommended that the Commission discontinue the practice of allowing only one signatory on disbursement checks and that dual signatories be required on all checks. The Board took action in October 2005 and now requires dual check signatories.

We also found that the Program Coordinator III performed incompatible duties by receiving payments, making bank deposits, recording transactions, reconciling the bank statements, and controlling the inventory of blank checks. This means that one individual controls the entire process from beginning to end, allowing ample opportunity for errors and misuse of non-appropriated funds to occur without detection. This illustrates management's lack of understanding of their role in fostering an effective environment of checks and balances and monitoring by the Administrative Director and Board.

The Commission's organizational structure (Appendix 10) indicates that they have sufficient staff to independently collect, record, and monitor the financial activities of the Commission.

### **Failure to Issue Form 1099-MISC**

26 U.S.C §6041 states Form 1099-MISC, Miscellaneous Income, must be filed for each person to whom at least \$600 in services (including parts and materials) or other income payments have been paid in a calendar year (CY). The payments are reported to the Department of Revenue and Taxation (DRT). In January of 2003, DRT issued a memorandum to all Government of Guam department and agencies, after they were informed that many of departments and agencies were not issuing Forms 1099-MISC for payments of contractual services.

The Commission did not issue Form 1099-MISC to applicable vendors that were paid \$600 or more because the Commission claimed to be unaware of this requirement. From CY 2000 through CY 2004, we estimated \$181,919 of earnings that were not reported on Forms 1099-MISC to DRT.

To correct these deficiencies, we recommend that the Administrative Director and the Board follow the Guam Procurement Regulations and issue Form 1099-MISC to all individuals (including prior years) who provided services of at least \$600 each calendar year. This matter has been referred to DRT for review and disposition.

### **Lack of Required Financial Reports and Audits**

Accountability is the cornerstone of all financial reporting in government. Pursuant to 21 G.C.A. §75120 (b), the Commission is required to annually publish audited financial statements in a newspaper of general circulation. Additionally, the Commission is required to make an annual finance and progress report to the Legislature, 21 G.C.A. § 75103.

The Commission received \$1,692,013 of revenue from October 1, 1999 through September 30, 2004. These amounts were not reported as required by law, nor were these amounts included in the annual audit of the Government of Guam. In April 2005, the Commission submitted a *Status Report* to the Legislature. The former Administrative Director indicated he was unaware that the Commission was required to publish financial statements even though this is a requirement of the Commission's enabling legislation. Further, the Commission did not implement prior audit recommendations since this matter has been brought to the Commission's attention in the *Management Audit of the Chamorro Land Trust Commission* Report No. OPA-04-99 in November 1999.

In July 2005, the Administrative Director and Program Coordinator III installed accounting software and attended a workshop to set up various accounts, enter organization data, and create invoices, bank reconciliation, and basic financial reports.

We recommend that the Administrative Director and the Board to produce financial reports for the Guam Legislature and the Governor of Guam, and obtain annual financial audits.<sup>16</sup>

## **Other Operational Matters**

Other matters not related to our audit objectives came to our attention during the course of our review of the non-appropriated funds at the Commission.

### **Chamorro Land Trust Operations Fund**

Before the Commission opened its non-appropriated fund checking account in April 1999, revenues from commercial leases and licenses were deposited to the Chamorro Commercial Loan Fund at DOA (Loan Fund), along with proceeds from land sales, residential lease application fees, and rentals. As a result of the creation of the non-appropriated checking account, the bulk of the Loan Fund's revenues have declined because revenues from commercial leases and licenses have been deposited into the non-appropriated fund account. The Loan Fund has had deficit fund balances during our scope period of FY 2000 through FY 2004, and the Government of Guam's General Fund has subsidized the Commission's costs for personnel and operations.

In June 2005, the Commission paid DOA \$699,068 for General Fund subsidies for FY 2004 and 2005 operations. Subsequently, in September 2005, P.L. 28-68 established a new special fund called the Chamorro Land Trust Operations Fund (Operations Fund) to be used for the operational expenses of the Commission. This law states that proceeds from all land use permits, monetary contributions, and fees shall be remitted into the Operations Fund at DOA.

The Commission has not complied with P.L. 28-68 as monies are still being deposited into the Commission's non-appropriated checking account instead of the Operations Fund at DOA.

### **Administrative Director's Pay Increase**

21 G.C.A. §75118 (1)(i) sets the Commission's Administrative Director's salary at \$55,000. However, in February 2000, a Civil Service Commission (CSC) memorandum, CSC No. 2000-184, increased the Administrative Director's salary by 20% to \$66,364, excluding benefits. As a result, the Commission's Administrative Directors may have been overpaid approximately \$56,800 during the 56 months from February 2000 through September 2004.

The Commission's Administrative Director and Program Coordinator III were unaware of any amendment to the law adjusting the Administrative Director's salary. The Administrative Director's salary of \$55,000 is specified in law however, when we brought this matter to the attention of the Department of Administration (DOA) Human Resources Division, we were informed that the pay adjustment back to \$55,000 would not be made until they are advised to do so by the CSC.

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<sup>16</sup> In preparation for the audit, the Office of the Public Auditor has the authority to oversee, direct, and supervise the audits, 1 G.C.A. §§1908 and 1909.

We referred this matter to the CSC in July 2005 and September 2005 and received a response in November 2005. The CSC replied that authority to increase the salary was in 4 G.C.A. §6302, which states that the CSC shall implement the unified pay schedule and salary implementation in a manner it deems appropriate. We have referred this matter to the Attorney General to provide additional clarification to the CSC's response.

### **Administrative Director's Performance Evaluation**

Beginning May 2003, 5 G.C.A. § 43202 required governing boards of agencies to conduct and issue semi-annual performance evaluations of the department head to include accomplishments and the Board's reasons for retaining him or her six months after appointment and every six months thereafter.

According to the Commission staff, the Board did not conduct performance evaluations of its Administrative Directors. In September 2005, we sent a letter to the Board Chairman requesting a copy of performance evaluations of the Commission's Administrative Directors.

As of the issuance date of this report, the Board Chairman has yet to respond to our request. We recommend that the Board conduct the semi-annual performance evaluations of the Administrative Director every six months documenting performance, accomplishments, and the Board's reasons for retaining the Administrative Director as required by law.

### **Payments in Lieu of Taxes on Improvements and Real Property Taxes**

21 G.C.A. § 75112 (i) requires that all taxes on improvements to Chamorro homelands or payments in lieu of real property taxes shall be deposited into the Chamorro Loan Guarantee Fund and that the Department of Revenue and Taxation (DRT) shall maintain a separate record for all such taxes collected. According to the DRT Acting Accounting Administrator, there is no monitoring system for the maintenance of a separate record of all tax payments collected for this purpose.

Due to the Government of Guam's significant deficit of \$313.6 million as of September 30, 2004, and its related financial difficulties, the Legislature may want to re-evaluate whether 21 G.C.A. § 75112 (i) is still appropriate.

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## Conclusion

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During the 60-month audit period from October 1, 1999 through September 30, 2004, we concluded that the former and current Administrative Directors and Boards of the Chamorro Land Trust Commission failed to establish an effective system of checks and balances to ensure that

- Commercial licenses of Chamorro homelands were awarded in accordance with rules and regulations,
- All commercial occupants were current in their obligations,
- Proceeds were disbursed in compliance with procurement laws and regulations; and
- \$6.5 million in loan guarantees were monitored.

Additionally, management lacked an understanding of their role in fostering an effective environment of checks and balances, i.e. internal controls.

We have seen a growing trend with the Legislature permitting small entities to have their own checking accounts. Based on our recent audits, these small entities appear to lack an understanding of the importance of internal control, i.e. checks and balances, and personnel's lack of sufficient accounting knowledge, including the ability to prepare monthly and annual financial reports. Our audits also consistently found non-compliance with Guam procurement regulations and a lack of sufficient oversight by management to properly account for, report, and monitor the non-appropriated funds activities.

While we recognize it is the prerogative of the Legislature to authorize entities to have checking accounts, we have found that there has been a consistent lack of accountability and transparency from these entities. The activities of the non-appropriated funds have not been reported to DOA for inclusion in the Government of Guam's annual audit nor have they been reported to the Governor of Guam or the Legislature. We urge that the Legislature reconsider the policy of allowing small entities to have non-appropriated checking accounts and instead require that all non-appropriated funds be accounted for by DOA.

Overall, the Chamorro Land Trust Commission Administrative Director and Chairman of the Board concurred with the findings and recommendations of this report and have provided an action plan to address these issues. See Appendix 12 for their official management response.

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## **Recommendations**

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### **We recommend that the Administrative Director and Commission Board:**

1. Establish written guidelines for the application and award of commercial leases and licenses to include, at a minimum, uniform application forms, business plan, financial statements of the applicant, independent appraisals, rate schedules consistent with appraisals, and Board and legal counsel approval of all licenses. Continue communication with the Attorney General's Office in determining appropriate actions pertaining to commercial licenses that may have been issued to ineligible applicants and to instill these criteria in the guidelines.
2. Instruct the Commercial Division to compile a database of all leases and licenses to include at a minimum, lot numbers, names of lessees and licensees, monthly rental payments, commencement and termination dates of agreements, payment due dates, and actual payment dates with use of accompanying pre-numbered receipts. The responsibility for collection of payments should be assigned to the administrative division.
3. Consider evicting the defaulted lessee and recover the \$72,970 paid to SBA and annually request status reports of the loans guaranteed with the respective loan institutions.
4. Follow P.L. 27-79 by establishing rules and regulations for the use of lease payments received from the Guam Municipal Golf Course.
5. Follow the Guam Procurement Regulations and issue Form 1099-MISC (including prior years) to all who provide services of at least \$600 each calendar year. This matter has been referred to DRT for review. As required by 5 G.C.A. §22704 (c), all leases exceeding \$10,000 may be entered only if after advertising for sealed bids in a newspaper of general circulation.
6. Utilize an accounting software program to account for its financial activities to produce financial reports for the Guam Legislature and the Governor of Guam, obtain annual financial audits, and publicize the audited financial statements as required by law.
7. As required by 5 G.C.A. § 43202, the Board shall conduct the semi-annual performance evaluations of its Administrative Director every six months during his appointment documenting performance, accomplishments, and the Board's reasons for retaining him.

### **We urge the Legislature to:**

1. Reconsider the policy of allowing small entities to have non-appropriated checking accounts and instead require all non-appropriated funds be accounted for by DOA since there has been a lack of accountability and transparency from these entities.

2. Reevaluate whether the requirements of 21 G.C.A. § 75112 (i) that all taxes on improvements or payments in lieu of taxes should be deposited into the Chamorro Loan Guarantee Fund should continue, given the significant deficit and related financial difficulties of the Government of Guam.

On December 14, 2005, the Office of the Public Auditor met with the Commission's Administrative Director and Chairman of the Board to discuss the preliminary draft. They informed us that as of July 2005, accounting software has been installed and staff have been trained to use the software. Therefore, we removed the recommendation to utilize accounting software program to account for its financial activities.

The legislation creating the Office of the Public Auditor requires agencies to submit an action plan to implement audit recommendations within six months after report issuance. Accordingly, our office will be contacting the Chamorro Land Trust Commission to provide the target date and title of the staff responsible for implementing the recommendations.

We appreciate the cooperation shown by the Chamorro Land Trust Commission's Administrative Director, Chairman of the Board, and staff.

OFFICE OF THE PUBLIC AUDITOR



Doris Flores Brooks, CPA, CGFM  
Public Auditor

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**Appendix 1:**  
**Classification of Monetary Amounts**

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<u>Finding Area</u>	<u>Lost/Potential Revenue</u>	<u>Cost Exception</u>	<u>Unreported Revenues</u>	<u>Contingent Liability</u>
Management Involvement Needed for Commercial Licenses	\$ 420,345	\$ -	\$ -	\$ -
Monitor Loan Guarantees	\$ -	\$ 72,970 <sup>17</sup>	\$ -	\$ 6,493,445
Establish Rules for the Use of Golf Course Payments	\$ -	\$ -	\$ -	\$ -
Checks and Balance Needed Over Disbursements	\$ -	\$ 106,457	\$ -	\$ -
Lack of Required Financial Reports and Audits	\$ -	\$ -	\$ 1,692,013	\$ -
Other Operational Matters	\$ -	\$ -	\$ -	\$ -
Payments in lieu of Improvements and Real Property Taxes	\$ -	\$ -	\$ -	\$ -
<b>TOTAL:</b>	<b><u>\$ 420,345</u></b>	<b><u>\$ 179,427</u></b>	<b><u>\$ 1,692,013</u></b>	<b><u>\$ 6,493,445</u></b>

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<sup>17</sup> Had the Commission reassigned this lease and attempted to collect payments from the delinquent borrower, this amount would not have been questioned.

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## Appendix 2: Audit Scope and Methodology

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The audit scope included a review of the Commission's enabling legislation, applicable public laws, checking account and bank related documents, disbursements, commercial leases and licenses and other periods as warranted, and other relevant documents for fiscal years 2000, 2001, 2002, 2003, and 2004. The location of the audit was the Chamorro Land Trust Commission Office in Anigua. Officials from the Small Business Administration, Department of Land Management, Department of Administration, and Civil Service Commission were interviewed. Bank statements, commercial leases, and related documents for FY 2005 were reviewed only for comparative purposes.

The audit methodology included gaining an understanding of the policies, procedures, and applicable laws and regulations pertaining to the non-appropriated funds handled by the Commission. We tested commercial licenses because revenues generated are deposited into the non-appropriated fund. We did not test commercial leases because they were passed by the Legislature by statutes and were used for comparative purposes with commercial licenses. During this review, other matters came to our attention not specifically related to our audit objectives that we classified as "Other Operational Matters." We reviewed controls over cash transactions (i.e. receipts and disbursements) and the controls over the procurement of goods and services.

We determined that the Commission had 419 receipts totaling \$1,692,013 and 212 disbursements totaling \$510,361 for October 1, 1999 through September 30, 2004. We judgmentally selected and tested the following:

- 10 receipts, totaling \$171,239, to determine whether receipts were accurately accounted for, recorded and deposited.
- 13 disbursements totaling \$176,156, to determine whether disbursements were duly authorized, recorded, and documented.
- 28 commercial licenses to determine whether licenses were independently evaluated and fairly issued in accordance with rules and regulations.

We confirmed that as of October 2005, outstanding loan guarantees to the Guam Housing Corporation and Small Business Administration were \$593,445, and \$5,900,000, respectively.

Except as noted in the scope limitation below, our audit was conducted in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. Accordingly, we obtained an understanding and performed an evaluation of the internal controls of the Chamorro Land Trust Commission. We included tests of records and other auditing procedures that were considered necessary under the circumstances. Internal control weaknesses were identified and discussed in the Results of Audit section of the report.

### **SCOPE LIMITATION**

We were unable to ascertain the accuracy and reliability of the inventory listing of commercial leases and licenses because (1) we identified one lease and two licenses excluded from the listing, and (2) commercial files have not been reviewed or updated for the past two years and were disorganized. Of the 29 commercial leases and licenses, we found that one license was not issued. We added two licenses that were not included in the listing because other companies assumed them. We found one lease not included in the list.

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**Appendix 3:**  
**Prior Audit Coverage**

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We reviewed the following prior audits related to the Chamorro Land Trust Commission.

**Office of the Public Auditor (OPA)****November 1999**

OPA issued *Management Audit of the Chamorro Land Trust Commission* (Report No. OPA-04-99), which identified the following findings related to the Commission: (1) inaccurate Chamorro Homeland Inventory; (2) did not establish rules and regulations for the use of the Municipal Golf Course lease payment and did not publish an annual audited financial statement in the newspaper pursuant to P.L. 22-76; (3) Chamorro Loan Guarantee Fund not funded; and (4) lacked supervisory review and management involvement. Based on our audit, these conditions have not been resolved. As of September 2004, the Commission has yet to respond and implement the recommendations of Report No. OPA-04-99.

**May 2003**

OPA issued *Liberation Day Committee Funds and Activities Investigative Audit* (Report No. 03-04), which reported that in May 2001, the former Deputy Administrative Director of the Chamorro Land Trust Commission was issued a \$4,000 check payable to cash for Liberation Day float expenses. In February 2003, the former Deputy Administrative Director paid the \$4,000 to the Commission. In October 2004, the former Deputy Administrative Director pleaded guilty to official misdemeanor and misapplication of entrusted funds.

**Single Audit Reports**

The Single Audit Reports of the Government of Guam for fiscal years 2000 through 2004 identified the (1) Chamorro Home Loan Fund, (2) Chamorro Home Repair Fund, (3) Chamorro Home Development Fund, (4) Chamorro Educational Assistance Fund, and (5) Chamorro Loan Guarantee Fund have had no financial activity. A recommendation was made to bring the accounts' inactivity to the Legislature's attention and determine whether such funds should be eliminated by public law. No response has been made to address the recommendation.

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**Appendix 4:**  
**Commercial Licenses and Leases Summary**

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<b>Nature of License/Lease</b>	<b>Number of Licenses/Leases</b>	<b>Square Meters (sm)</b>	<b>Monthly Rental Rate</b>	<b>Monthly Rental Rate per sm</b>
Telecommunications	23	26,909	\$ 9,105	\$ 0.3384
Automotive Towing & Storage	1	2,000	478	\$ 0.2389
Retail Store	1	504	26	\$ 0.0516
Shooting Gallery & Outdoor Range	1	80,937	1,686	\$ 0.0208
Landfill	1	352,872	4,400	\$ 0.0125
Raceway Park	1	1,011,714	3,300	\$ 0.0033
<b>Licenses Total:</b>	<b>28</b>	<b>1,474,936</b>	<b>\$ 18,995</b>	<b>\$ 0.0129<sup>18</sup></b>
Non-Profit Cultural Center	1	1,920	8	\$ 0.0043
Golf Course	1	829,124	18,065	\$ 0.0218
Post Office	1	30	385	\$ 12.8333
<b>Leases Approved by</b>				
<b>Legislature Total:</b>	<b>3</b>	<b>831,074</b>	<b>\$ 18,458</b>	<b>\$ 0.0222<sup>18</sup></b>
<b>Total Licenses &amp; Leases:</b>	<b>31</b>	<b>2,306,010</b>	<b>\$ 37,453</b>	<b>\$ 0.0162<sup>18</sup></b>

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<sup>18</sup> Derived by dividing monthly rental rate by total square meters.

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## Appendix 5 Commercial Leases

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Lot Description	Nature of Lease	Start Date	Village	Square Meters (sm)	Estimated Fair Market Value	Annual Rent Percentage of FMV	Monthly Rental Rate	Monthly Rental Rate per sm	Term (Years)	Public Law
1 Lot 9 T1143	Non-Profit Cultural Center	1-Jan-01	Dededo	1,920	No Appraised Value	Unable to Determine	\$ 8.33	\$ 0.0043	25	P.L. 22-18 & 26-145
2 Lot 10122-12	Golf Course	17-Jan-89	Dededo	829,124	\$ 1,401,393.00	15%	\$ 18,064.67 <sup>19</sup>	\$ 0.0218	25	P.L. 22-76
3 Unable to Identify by the Commission	Post Office <sup>20</sup>	1-Mar-02	Dededo	30	No Appraised Value	Unable to Determine	\$ 385.00	\$ 12.8333	5	P.L. 21-108
			<b>Total:</b>	<b>831,074</b>			<b>\$ 18,458.00</b>	<b>\$ 0.0222<sup>21</sup></b>		

<sup>19</sup> Current rate remitted by the Golf Course to the Commission since February 2004.

<sup>20</sup> The lease stipulates that the Commission shall provide utilities, fixtures, and equipment.

<sup>21</sup> Derived from dividing \$18,458 monthly rental rate by 831,074 total square meters.

**Appendix 6:**  
**Commercial Licenses (Page 1 of 3)**

**Commercial Licenses Issued through 2004**

Lot Description	Nature of License	Start Date	Village	Square Meters (sm)	Estimated Fair Market Value	Annual Rent Percentage of FMV	Monthly Rental Rate	Monthly Rental Rate per sm	Term (Years)	Board Approval
1 Lot 248-1	Telecommunications	1-Nov-01	Agat	356	\$ 14,247.14	12%	\$ 142.47	\$ 0.4000	5	No
2 Lot 17-1-1 BF T9	Telecommunications	1-Oct-99	Barrigada	966	\$ 25,533.00	12%	\$ 320.00	\$ 0.3313	5	No
3 Lot 10-1 BD T9	Telecommunications	1-May-04	Barrigada	1,619	\$ 85,000.00	12%	\$ 850.00	\$ 0.5250	21	No
4 Lot 10-4 BD T9	Telecommunications	1-Sep-00	Barrigada	2,060	\$ 134,868.00	12%	\$ 1,348.68	\$ 0.6547	5	30-Mar-00
5 Lot 17-1-R1 BF T9	Telecommunications	1-Aug-00	Barrigada	3,080 <sup>22</sup>	\$ 201,648.00	12%	\$ 2,016.48 <sup>22</sup>	\$ 0.6547	5	27-Jul-00
6 Lot 17-1-R1 BF T9	Telecommunications	1-Jun-01	Barrigada	3,080	\$ 201,648.00	12%	\$ 2,016.48	\$ 0.6547	5	No
7 Lot 10-1 BD T9	Telecommunications	22-Apr-99	Barrigada	1,619 <sup>23</sup>	\$ 106,000.00	12%	\$ 1,060.00 <sup>23</sup>	\$ 0.6547	21	29-Mar-96
8 Lot 16-BF-T9	Telecommunications	01-Nov-01	Barrigada	929	\$ 69,000.00	12%	\$ 689.99	\$ 0.7427	5	No
9 Lot 10-3 BD T9	Telecommunications	01-Jan-00	Barrigada	929	\$ 68,997.00	12%	\$ 689.97	\$ 0.7427	5	16-Dec-99
10 Lot 5149-6	Automotive Towing & Storage	9-Apr-99	Dededo	2,000	No Appraised Value	Unable to Determine	\$ 477.88	\$ 0.2389	21	21-Mar-97
11 Lot 10125-R12-1	Telecommunications	5-Jan-00	Dededo	232	\$ 62,000.00	1.3%	\$ 69.68	\$ 0.3003	5	No
12 Lot 10129-4	Telecommunications	1-May-03	Dededo	929	\$ 34,931.52	12%	\$ 349.32	\$ 0.3760	5	No
13 Lot 10129-3	Telecommunications	1-Nov-01	Dededo	232	\$ 10,915.75	12%	\$ 109.15	\$ 0.4700	5	No
14 Lot 354-7 & Lot 354-R6-RW	Telecommunications	10-Aug-99	Inarajan	999	\$ 12,987.00	12%	\$ 136.21	\$ 0.1363	5	No
15 Lot 354-8	Telecommunications	1-Nov-01	Inarajan	952	\$ 35,226.60	12%	\$ 352.26	\$ 0.3700	5	No
16 Lot 360-2-3	Telecommunications	1-Nov-01	Malojloj	1,262	\$ 24,753.00	12%	\$ 247.53	\$ 0.1961	5	No

<sup>22</sup> The \$2,016.48 monthly rental and 3,080 square meters from licensee #5 were omitted from calculating the total monthly rate and square meters because licensee #6 assumed the same lot in separate license in June 2001.

<sup>23</sup> The \$1,060 monthly rental and 1,619 square meters from licensee #7 were omitted from calculating the total monthly rate and square meters because licensee #3 assumed the same lot in a separate license in May 2004.

Lot Description	Nature of License	Start Date	Village	Square Meters (sm)	Estimated Fair Market Value	Annual Rent Percentage of FMV	Monthly Rental Rate	Monthly Rental Rate per sm	Term (Years)	Board Approval
17 Lot 5412	Shooting Gallery & Outdoor Range	26-Mar-97	Mangilao	80,937	\$ 2,023,500.00	10%	\$ 1,686.25	\$ 0.0208	21	24-Jun-99
18 Lot 527	Telecommunications	30-Aug-94	Merizo	6,421	\$ 144,472.50	12%	\$ 0.08 <sup>24</sup>	\$ 0.000013	21	18-Aug-94
19 Lot 527-1	Telecommunications	1-Jun-03	Merizo	929	\$ 35,931.52	12%	\$ 349.32	\$ 0.3760	5	No
20 Lot 439-R1, Portion "B"	Landfill	31-Dec-02	Santa Rita	352,872	\$ 440,000.00	12%	\$ 4,400.00	\$ 0.0125	5	No
21 Lot 470-2-1	Telecommunications	1-Jun-03	Santa Rita	929	\$ 31,587.00	12%	\$ 315.00	\$ 0.3391	5	No
22 Lot 212	Retail Store	1-Feb-03	Umatac	504	\$ 26,000.00	1.20%	\$ 26.00	\$ 0.0516	5	8-Aug-02
23 Lot 278-5	Telecommunications	1-Nov-01	Umatac	319	\$ 14,572.31	12%	\$ 145.72	\$ 0.4574	5	No
24 Lot 7161-R1	Raceway Park	1-Jun-98	Yigo	1,011,714	\$ 20,234,282	0.20%	\$ 3,300.00	\$ 0.0033	20	20-May-98
25 Lot 7117-4	Telecommunications	1-Aug-04	Yigo	1,338	\$ 31,000.00	12%	\$ 310.00	\$ 0.2317	5	29-Mar-96
26 Lot 7117-3-1-1	Telecommunications	1-Nov-01	Yigo	929	\$ 23,420.85	12%	\$ 234.20	\$ 0.2521	5	No
27 Lot 7117-4-1	Telecommunications	5-Jan-00	Yigo	1,323	\$ 35,000.00	12%	\$ 350.00	\$ 0.2646	5	No
28 Lot 102-2	Telecommunications	1-Nov-01	Yona	176	\$ 7,868.49	12%	\$ 78.68	\$ 0.4472	5	No
			<b>Total:</b>	<b>1,474,936</b>			<b>\$ 18,994.87</b>	<b>\$ 0.0129<sup>25</sup></b>		

<sup>24</sup> We used the commercial lease annual compensation of \$1 per year (\$0.0833 per month) because the Commission issued a commercial lease in December 2004, which replaced the August 1994 commercial license for the same antenna site.

<sup>25</sup> Derived from dividing \$18,995 monthly rental rate by 1,474,936 total square meters.

**Commercial Licenses Issued in FY 2005\***

Lot Description	Nature of License	Start Date	Village	Square Meters (sm)	Estimated Fair Market Value	Annual Rental Rate	Monthly Rental Rate	Monthly Rental Rate per sm	Term (Years)	Board Approval
1 Lot 1417-1 & 1418-1	Warehousing & Cold Storage Facilities	1-Apr-05	Agana	189	\$ 19,500.00	8%	\$ 130.00	\$ 0.6869	21	No
2 Lot 10122-R18 BC L7	Merchandise Retail & Laundry Service Outlet	1-Apr-05	Dededo	5,701	\$92,000.00	6%	\$ 460.00	\$ 0.0807	21	No
3 Lot 10068-R1	Operate Hardware Retail Outlet	1-Apr-05	Dededo	1,914	180,000.00	2%	\$ 300.00	\$ 0.1567	21	No
4 Lot 35 T14119	Retail Outlet	1-Aug-05	Mangilao	4,047	\$58,854.00	8%	\$ 392.36	\$ 0.0970	21	No
5 Lot 5172 T1	Photography and Video Services	1-Apr-05	Tamuning	711	50,000.00	6%	\$ 250.00	\$ 0.3516	21	No
6 Lot 15 Block F T9**	Telecommunications	1-Apr-05	Barrigada	929	Unknown	Unknown	\$ 840.00	\$ 0.9042	Unknown	Unknown
			<b>Total:</b>	<b>13,491</b>			<b>\$ 2,372.36</b>	<b>\$ 0.1758<sup>26</sup></b>		

\* This table is presented for comparison purposes only.

\*\* The license agreement cannot be located; therefore, the information for this license was not verified.

<sup>26</sup> Derived from dividing \$2,372 monthly rental rate by 13,491 total square meters.

**Appendix 7:**

**Chamorro Land Trust Commission Receipts and Disbursements (Page 1 of 2)**

**Non-Appropriated Fund Account**

	<b>Months</b>	<b>Beginning Balance</b>	<b>Receipts</b>	<b>Disbursements</b>	<b>Ending Balance</b>
<b>FY 2000</b>	October 1 - 31,1999	85,181.66	16,422.42	8,000.00	93,604.08
	November 1 - 30, 1999	93,604.08	16,422.42	10,383.08	99,643.42
	December 1 - 31, 1999	99,643.42	16,422.42	40,005.25	76,060.59
	January 1 - 31, 2000	76,060.59	16,422.42	28,922.62	63,560.39
	February 1 - 29, 2000	63,560.39	22,561.78	6,800.00	79,322.17
	March 1 - 31, 2000	79,322.17	16,422.42	10,257.41	85,487.18
	April 1 - 30, 2000	85,487.18	28,082.42	10,380.00	103,189.60
	May 1 - 31, 2000	103,189.60	20,241.46	15,084.16	108,346.90
	June 1 - 30, 2000	108,346.90	17,902.10	15,365.00	110,884.00
	July 1 - 31, 2000	110,884.00	16,842.10	150.00	127,576.10
	August 1 - 31, 2000	127,576.10	20,962.10	1,031.77	147,506.43
	September 1 - 30, 2000	147,506.43	17,902.10	-	165,408.53
<b>FY 2000 Total</b>			<b>\$ 226,606.16</b>	<b>\$ 146,379.29</b>	
<b>FY 2001</b>	October 1 - 31,2000	165,408.53	21,948.14	61,727.48	125,629.19
	November 1 - 30, 2000	125,629.19	19,250.78	435.09	144,444.88
	December 1 - 31, 2000	144,444.88	16,842.10	202.00	161,084.98
	January 1 - 31, 2001	161,084.98	35,309.64	828.60	195,566.02
	February 1 - 28, 2001	195,566.02	21,906.17	3,915.71	213,556.48
	March 1 - 31, 2001	213,556.48	20,860.38	9,514.31	224,902.55
	April 1 - 30, 2001	224,902.55	21,467.35	4,251.20	242,118.70
	May 1 - 31, 2001	242,118.70	79,366.18	4,127.50	317,357.38
	June 1 - 30, 2001	317,357.38	21,959.29	3,569.00	335,747.67
	July 1 - 31, 2001	335,747.67	18,337.99	-	354,085.66
	August 1 - 31, 2001	354,085.66	19,405.16	3,569.00	369,921.82
	September 1 - 30, 2001	369,921.82	20,406.79	-	390,328.61
<b>FY 2001 Total</b>			<b>\$ 317,059.97</b>	<b>\$ 92,139.89</b>	
<b>FY 2002</b>	October 1 - 31, 2001	390,328.61	90.88	-	390,419.49
	November 1 - 30, 2001	390,419.49	40,119.89	-	430,539.38
	December 1 - 31, 2001	430,539.38	18,246.67	-	448,786.05
	January 1 - 31, 2002	448,786.05	17,960.01	-	466,746.06
	February 1 - 28, 2002	466,746.06	24,245.02	-	490,991.08
	March 1 - 31, 2002	490,991.08	24,374.47	-	515,365.55
	April 1 - 30, 2002	515,365.55	22,254.87	8,856.22	528,764.20
	May 1 - 31, 2002	528,764.20	18,910.38	4,307.77	543,366.81
	June 1 - 30, 2002	543,366.81	21,030.17	736.10	563,660.88
	July 1 - 31, 2002	563,660.88	16,915.02	-	580,575.90
	August 1 - 31, 2002	580,575.90	23,867.51	5,001.00	599,442.41
	September 1 - 30, 2002	599,442.41	22,708.88	3,956.84	618,194.45
<b>FY 2002 Total</b>			<b>\$ 250,723.77</b>	<b>\$ 22,857.93</b>	

	Months	Beginning Balance	Receipts	Disbursements	Ending Balance
FY 2003	October 1 - 31, 2002	618,194.45	6,544.66	1,893.40	622,845.71
	November 1 - 30, 2002	622,845.71	35,041.48	166.50	657,720.69
	December 1 - 31, 2002	657,720.69	1,796.17	7,364.95	652,151.91
	January 1 - 31, 2003	652,151.91	31,759.03	4,389.75	679,521.19
	February 1 - 28, 2003	679,521.19	29,217.35	-	708,738.54
	March 1 - 31, 2003	708,738.54	21,377.82	4,878.00	725,238.36
	April 1 - 30, 2003	725,238.36	26,584.49	-	751,822.85
	May 1 - 31, 2003	751,822.85	26,985.73	70,981.97	707,826.61
	June 1 - 30, 2003	707,826.61	30,382.35	7,191.34	731,017.62
	July 1 - 31, 2003	731,017.62	51,551.04	4,255.79	778,312.87
	August 1 - 30, 2003	778,312.87	46,371.27	6,133.85	818,550.29
	September 1 - 31, 2003	818,550.29	99,837.29	32,759.31	885,628.27
<b>FY 2003 Total</b>			<b>\$ 407,448.68</b>	<b>\$ 140,014.86</b>	
FY 2004	October 1 - 31, 2003	885,628.27	19,088.64	5,800.88	898,916.03
	November 1 - 30, 2003	898,916.03	63,268.34	7,154.85	955,029.52
	December 1 - 31, 2003	955,029.52	32,574.47	7,119.12	980,484.87
	January 1 - 31, 2004	980,484.87	52,027.49	2,691.01	1,029,821.35
	February 1 - 28, 2004	1,029,821.35	31,365.10	14,651.78	1,046,534.67
	March 1 - 31, 2004	1,046,534.67	32,452.23	9,306.08	1,069,680.82
	April 1 - 30, 2004	1,069,680.82	34,625.41	9,819.65	1,094,486.58
	May 1 - 31, 2004	1,094,486.58	36,475.09	2,476.80	1,128,484.87
	June 1 - 30, 2004	1,128,484.87	33,769.28	36,592.60	1,125,661.55
	July 1 - 31, 2004	1,125,661.55	26,632.43	89.95	1,152,204.03
	August 1 - 30, 2004	1,152,204.03	65,599.38	4,117.95	1,213,685.46
	September 1 - 31, 2004	1,213,685.46	62,296.25	9,148.08	1,266,833.63
<b>FY 2004 Total</b>			<b>\$ 490,174.11</b>	<b>\$ 108,968.75</b>	
<b>Grand Total:</b>			<b>\$ 1,692,012.69</b>	<b>\$ 510,360.72</b>	

Source: Chamorro Land Trust Commission Bank Statements

**Appendix 8:**  
**FY 2000~2004 Commission Revenues and Expenditures**

**Revenue Sources by Type**

<b>Revenue Type</b>	<b>Total Revenues</b>
Commercial Lease	\$ 980,518.53
Commercial License	427,051.42
Coral Hauling Royalty Fee	104,026.50
Reimbursement *	66,469.35
Other Commercial License	66,404.85
Others	14,943.25
Interest	2,598.79
Subtotal:	1,662,012.69
Unrecorded Deposit**:	30,000.00
<b>TOTAL:</b>	<b>\$ 1,692,012.69</b>

\* Reimbursements comprise of (1) \$60,000 advanced payment, (2) \$4,000 payable to cash, (3) \$2,069 DOA overpayment to GWA, and (4) \$400 prepaid account.

**Expenditures by Type**

<b>Expenditure Type</b>	<b>Total Expenditures</b>
Survey Fees	\$ 173,780.00
Computer	76,308.41
Repayment of Loan Guarantee	72,969.97
Rent	43,161.60
Automotive	37,150.89
Equipment	15,389.95
Others	12,418.94
Repair	10,250.00
Legal Fees	8,409.43
Office Supplies	7,917.79
Utilities	6,235.41
Renovation	5,507.67
Party	3,539.00
Travel	3,382.46
Furniture	2,951.00
Typhoon Pongsona Petty Cash	500.00
Training	445.00
Subtotal:	480,317.52
Debit item charge back**	30,000.00
Debit item for check order fee	43.20
<b>TOTAL:</b>	<b>\$ 510,360.72</b>

\*\* The variance of \$30,000 is due to an unrecorded deposit on 9/17/03, which was later debited to the account. The net effect is \$0.

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**Appendix 9:****Chamorro Land Trust Commission Revolving and Special Funds**

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Revolving Funds are established for a certain purpose with the stipulation that repayments to the fund may be used anew for the same purpose.<sup>27</sup>

1. **Chamorro Home Loan Fund** was created to loan or guarantee repayment of loans of native Chamorro lessees of Chamorro homelands. In the event of the death of the lessee or the cancellation of a lease, the Commission is authorized to make payment and to permit the assumption of loans. One million dollars was authorized to be appropriated from the unappropriated surplus of the General Fund as initial capital, however, this amount was never transferred into the fund.
2. **Chamorro Commercial Loan Fund** was created to fund loans to lessees for the development of theatres, garages, service stations, markets, stores, and other mercantile establishments. The law is silent about the funding source of this fund.
3. **Chamorro Home Repair Fund** was created to make loans in amounts not to exceed \$5,000 to lessees for repairs to their existing homes and for necessary additions to such homes due to increases in family size. One hundred thousand dollars from the unappropriated surplus of the General Fund was authorized for this fund, however, this amount was never transferred into the fund.

Special revenue funds are used to account for specific revenues that are legally restricted to expenditure for particular purposes:

4. **Chamorro Home Development Fund** was created to fund the construction of sanitary sewage facilities, road construction through and over Chamorro homelands, and other improvements after approval from the Governor. Twenty five percent of the amount covered into the Chamorro Home Loan Fund shall be transferred into this fund.
5. **Chamorro Educational Assistance Fund** was created to fund the educational improvement of the children of lessees. Annually, 10% of the amount covered into the Chamorro Home Loan Fund shall be transferred into this fund.
6. **Chamorro Loan Guarantee Fund** was created to guarantee loans made by governmental agencies or lending institutions to lessees or licensees for home or for commercial purposes. Taxes on improvements or payments in lieu of real property taxes shall be deposited into this fund. The Department of Revenue and Taxation shall maintain a separate record of all payments in lieu of taxes collected.

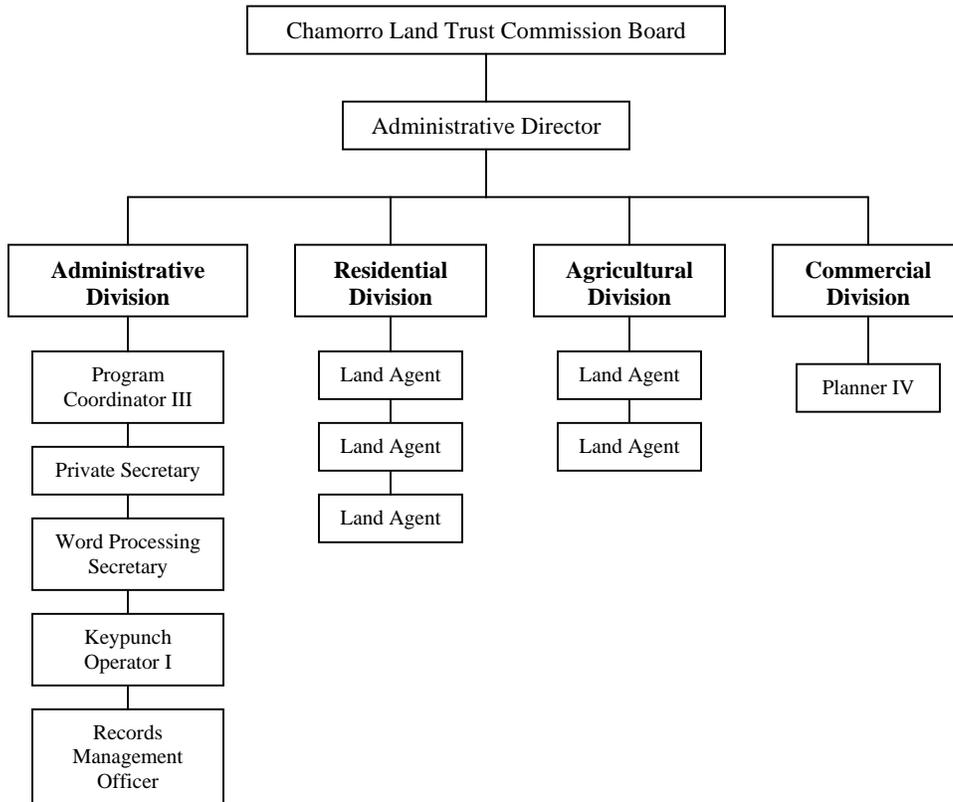
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<sup>27</sup> [www.dictionary.com](http://www.dictionary.com)

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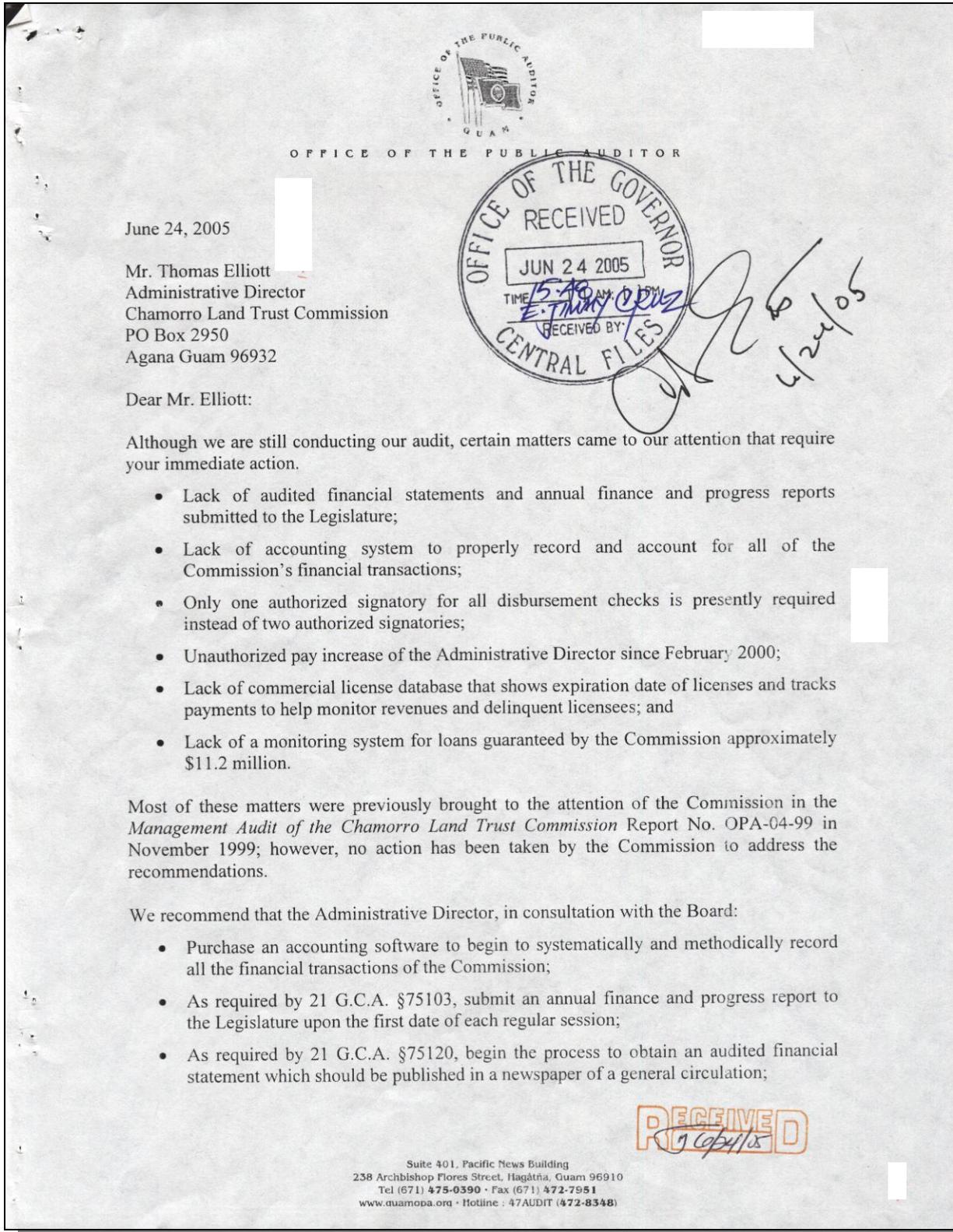
**Appendix 10:**  
**Chamorro Land Trust Commission Organizational Chart**

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Source: Chamorro Land Trust Commission

**Appendix 11:  
OPA Preliminary Findings Letter and CLTC Management Response**



- In preparation for the audit, the Office of the Public Auditor has the authority to oversee, direct, and supervise the audits, 1 G.C.A. §§1908 and 1909. A request for proposal for audit service template has been provided to guide you in the process;
- Discontinue the practice of allowing only one signatory on all disbursement checks and instead have dual signatory on all disbursement checks;
- Pursuant to 21 G.C.A. §75118(1)(i), the salary of the Administrative Director shall not exceed the sum of \$55,000 per annum; however, based on Civil Service Commission memorandum (CSC No. 2000-184), the salary was adjusted to \$66,340. To our knowledge this is unauthorized because there was no legal authorization, therefore the salary should be adjusted to that authorized by law;
- Compile a database identifying all leases and licenses to include lot numbers, names of lessees and licensees, monthly rental payments, commencement and termination dates of the agreement, and when payments were made.
- Implement a tracking and monitoring system for all loan guarantees that the Commission has issued, which is approximately \$11.2 million. Pursuant to 21 G.C.A. §75112(h)(1), in the event of a loan default, the Commission shall offer and reassign to the next qualified applicant the opportunity to assume any loan. We understand that one loan defaulted in which the Commission pursuant to the loan guarantee paid \$72,970; however, the Commission has taken no action to collect payments or evict the lessee.

These matters will be further expanded in our audit report. We are informing you of these issues because they require immediate action.

Although we have already provided you our *Internal Control Procedures* to assist you in establishing internal control in your entity's operations, attached is another copy.

Should you have any questions, please contact Maripaz Perez at 475-0390 ext. 203 for assistance.

*Senseramente,*



Doris Flores Brooks, CPA, CGFM  
Public Auditor

Cc: Governor Felix Camacho  
Delfin Damian Jr., Chamorro Land Trust Commission Board Chairman

Attachments



*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

## Chamorro Land Trust Commission

(Kumision Inangokkon Tano' Chamoru)

P.O. Box 2950 Hagåtña, Guam 96932

Phone: 475-4251 Fax: 477-8082

**HAND DELIVERED**

August 18, 2005

Doris Flores Brooks  
Public Auditor  
Suite 401 Pacific News Building  
238 Archbishop Flores Street  
Hagatna, GU 96910



Buenas yan Hafa Adai

We have received a copy of the preliminary findings of your audit of CLTC which included a request for immediate action on specific items. At your recommendation, the following actions have been, or will be implemented:

1. The Trust has purchased software (Quickbooks Pro) to allow us to properly record transactions, establish a commercial license database and to generate financial reports for publication and submission to the legislature. The Administrative Director and the Acting Administrative Services Officer (James Diaz) have attended a basic Quickbooks course given by the University of Guam;
2. The commission is considering a second authorized signatory, most likely the Chairman or another commission member, for disbursement checks. We anticipate a decision by September 2005.
3. Regarding the Administrative Director's salary, CLTC Chairman Delfin Damian has been assured by the Speaker of the legislature that an amendment to the law is forthcoming, possibly prior to the end of this fiscal year;
4. Monitoring of guaranteed loans is conducted by the lender (Guam Housing, Small Business Administration, etc.); the CLTC is notified when such loans are nearing foreclosure and the Trust forwards lease recipients' names to GHC for loan pre-qualifying. The commission requires legal counsel to proceed with collections or evictions for foreclosed loans.

We apologize for any delay to your requests as we are inundated with demands from numerous sources. Please contact me at 475-4241 should you have any questions.

Senseramente,

Thomas A. Elliott

**Appendix 12:**  
**Chamorro Land Trust Commission's Management Response (Page 1 of 2)**



*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

## Chamorro Land Trust Commission

*(Kumision Inangokkon Tano' Chamoru)*

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

December 16, 2005

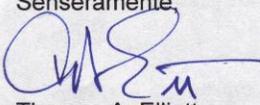
Doris Flores Brooks  
Public Auditor  
Suite 401 Pacific News Building  
238 Archbishop Flores Street  
Hagatna, GU 96910

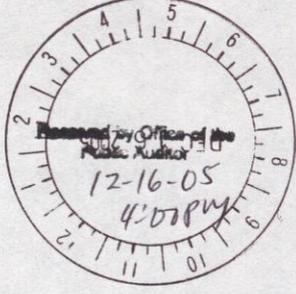
Ref.: Performance Audit  
October 1, 1999 to September 30, 2004

Buenas yan Hafa Adai!  
Pursuant to our discussions regarding the preliminary draft audit, the following plan of action based on your recommendations will be implemented:

1. Commercial license guidelines will be drafted and implemented by February 1, 2006.
2. Auditor staff has provided a spreadsheet containing a sample of leases and licenses with the described categories. CLTC staff will utilize and fine-tune this tool to track all licenses. The Acting Administrative Services Officer (ASO) will be charged with collections.
3. The Attorney General will be notified by CLTC of an unauthorized occupant in a foreclosed home. While eviction is in progress, CLTC staff will contact Guam Housing Corporation to refer to CLTC the next qualified individual to assume the loan and occupy the residence.
4. In accordance with P.L. 27-79, CLTC will establish rules and regulations for the use of golf course revenue, by February 1, 2006.
5. Form 1099-MISC will be issued for the calendar year 2005 to all vendors with contracts in excess of \$600, by January 31, 2006.
6. CLTC is now using QuickBooks Pro to properly record transactions and to generate financial reports for publication and submission to the legislature by January 15, 2006. CLTC will secure an audit of the financial statements prior to publication, by April 15, 2006.
7. The board has begun evaluation of the Administrative Director's performance for the year 2005. The evaluation is expected to be completed by January 2006.

Attached you will find the action plan in spreadsheet format. Please contact me at 475-4241 should you have any questions.

Senseramente,  
  
Thomas A. Elliott  
Administrative Director



**OBJECTIVES:** To address all recommendations by the Office of the Public Auditor as stated in the Performance Audit covering October 1, 1999 through September 30, 2004

**ACTION PLAN NO.:** I

**AREA FOR IMPROVEMENT:** Commercial section and administration

**RATIONALE:** Audit Recommendations

ACTIVITIES	Staff Assigned	Resources	Timeframe	Progress Report
1 Write Commercial License Guidelines		Chap 75	2/1/2006	Draft & Correspondence
2 Compile Commercial Database		Auditor & CLT records	2/1/2006	Spreadsheet
Payment - arrears collections		Acctg. Software	5/1/2006	Spreadsheet
3 Evict defaulted lessee; Recover \$72,970.		OAG	1/15/2006	Inspection report
Annual status reports of guaranteed loans from lenders		GHC & SBA	1/15/2006	Status report
4 Establish rules for use of Golf Course Lease payments.		P.L. 27-79	2/1/2006	Draft & Correspondence
5 Issue Form 1099-MISC to vendors providing \$600 in services or more		Proc. Regs.	1/31/2006	Correspondence
6 Accounting software Reports to Legislature		n/a	1/15/2006	Draft reports
Financial Audit Services			1/15/2006	
Publish Audited Financial Statements			4/15/2006	
7 Performance Evaluation of Administrative Director	Board Members	n/a	1/30/2006	Correspondence by Board

**Do you suspect fraud, waste, or abuse in a government agency or department? Contact the Office of the Public Auditor:**



- **Call our HOTLINE at 47AUDIT (472-8348);**
- **Visit our website at [www.guamopa.org](http://www.guamopa.org);**
- **Call our office at 475-0390;**
- **Fax our office at 472-7951;**
- **Or visit us at the PNB Building, Suite 401  
In Hagåtña**

**All information will be held in strict confidence.**