

**Chamorro Land Trust Commission
Commercial Division**

**Performance Audit
October 1, 2005 through September 30, 2008**

**OPA Report No. 09-03
April 2009**



OFFICE OF THE PUBLIC AUDITOR

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OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

**Chamorro Land Trust Commission Commercial Division
Report No. 09-03, April 2009**

No substantial changes in the control and oversight of the Chamorro Land Trust Commission's (CLTC) Commercial Division have occurred since the Office of the Public Auditor (OPA) audit issued in December 2005.¹ In our recent review, we found that CLTC still does not have an effective system to manage and administer commercial leases and licenses in the interest of the beneficiaries of the Chamorro Land Trust Act. Specifically, the Commercial Division lacks management and control systems, procedures, and assigned staff to adequately attend to the tasks of issuing commercial properties.

Inadequate Management Systems and Controls

We found exceptions in all three of the commercial licenses we tested:

- A license that was issued to an ineligible company;
- A license that may have circumvented the maximum acreage requirement for the agricultural lease; and
- A license for a commercial entity that was operating a business other than what was approved by the CLTC.

The CLTC does not have (1) an adequate revenue collection system to ensure that all revenues are monitored for collection on a timely basis; (2) assigned sufficient staff to monitor the activities of the Commercial Division; and (3) established written collection policies and procedures. Collection responsibilities are not clearly defined. One staff told us that his task was only to record payments and not to assess or bill licensees. As of December 31, 2008, CLTC had an accounts receivable of \$305,472 for four licensees. Of this amount, \$261,337 or 86% were over 90 days past due, some payments dating back to 2005.

Past and current CLTC Directors have not developed a land use plan outlining properties for agricultural, residential, and commercial use. We note that as thousands of applicants wait for residential and agricultural leases, CLTC's lack of a land use plan hampers its ability to identify what lots will be required for these purposes. Without such a tracking mechanism, the Administrative Director (Director) and other staff were unable to disclose the total acreage under CLTC jurisdiction. Nor were they able to say how much land is available or how much was distributed for residential, agricultural, and commercial leases or licenses, respectively.

More Commercial Land Issued Than Agricultural/Residential Land In the Past Three Years

Since October 2005, licenses for 106 acres, or 428,967 square meters, were issued to 10 commercial applicants. The price per square meter was less than seven cents per annum for

¹ OPA Report No. 05-09, Chamorro Land Trust Commission's Non-Appropriated Funds issued December 2005. View full report at <http://www.guamopa.org/docs/OPA0509.pdf>.

these 10 licenses. By comparison in our previous report, CLTC issued 1,474,936 square meters for less than 16 cents per square meter per annum for 28 licenses.

On the other hand, only 62 acres, or 250,905 square meters, were awarded to 60 agricultural and residential lease applicants compared to the 106 acres to commercial licensees. While commercial applicants were fewer in number, they accounted for the largest amount of awarded property, thus reducing the availability of land for agricultural and residential applicants.

The Chamorro Land Trust Act was intended to advance the well-being of the Chamorro people by way of equitable land distribution and CLTC was created to carry out this mission. However, more than 60 percent of the land awarded by CLTC over the past three fiscal years was for commercial purposes. Based on a recent public announcement in local print media, CLTC has 140 pending commercial license applications waiting to be processed, while over 10,000 paid residential and agricultural lease applications also wait.

Inadequate Revenue Collection System

With the enactment of Public Law 28-68, CLTC no longer became a recipient of General Fund appropriations. This change made the CLTC totally reliant on its commercial license revenues to fund its day-to-day operations. Since 2000, the Commercial Division was managed by one employee. In February 2006, the employee went on medical leave and is not expected to return to CLTC. He continues to receive his salary through donated leave sharing. The Director stated because of the leave sharing, he is unable to hire a replacement. In the meantime, administrative duties, such as data entry and records management of the Commercial Division, were assigned to other CLTC employees.

Conclusion and Recommendations

We saw that CLTC's revenues have fluctuated over the last three years. In fiscal year 2006, revenues were reported to be \$497,835; in FY 2007, \$626,040; and in FY 2008, \$509,894. The Administrative Director stated that the increase in FY 2007 revenues was due to a one-time delinquent payment made by a particular licensee. With just 39 commercial licenses, the task of monitoring collections should not be arduous. CLTC management and board have been provided with monthly accounts receivable summary reports showing delinquency payments of \$261,337, some dating back to 2005. Of these amounts, \$4,800 are more than three years old, \$42,000 are more than two years old, \$48,000 are more than one year old, and \$166,000 are greater than 90 days. Management and the board have not taken the initiative to resolve these past due delinquencies, which represent nearly 50% of an average years revenues of \$544,000.

We recommended the CLTC Director develop a land use plan and written collection policies and procedures for commercial licenses. We also recommended the CLTC Board review a quarrying feasibility and honey production license to determine whether their award is in accordance with their enabling legislation or if it circumvented the maximum acreage requirement for agricultural leases. The CLTC Director generally concurred with the audit findings and recommendations. See Appendix 7 for the CLTC management response.

Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

This report presents the results of our review of the Chamorro Land Trust Commission's (CLTC) Commercial Leases/Licenses program. This engagement was mandated by Public Law (P.L.) 29-113, the FY 2009 Appropriations Act, which states that the Office of the Public Auditor (OPA) "shall conduct a financial and management audit of cost and benefits of the commercial leases of the Chamorro Land Trust encompassing the period since the initiation of the commercial lease program to the present."

Since OPA conducted an initial audit of commercial licenses in December 2005, our objective for this engagement was to determine whether CLTC (1) had developed and maintained a system to ensure that commercial licenses are managed and administered in the interest of the beneficiaries of the Chamorro Land Trust Act and (2) had taken action on our previous report (OPA Report No. 05-09) recommendations. The scope, methodology, and prior audit coverage are detailed in Appendices 1 and 2.

Background

The Chamorro Land Trust Act, P.L. 12-226, was enacted in February 1975 to protect and ensure trust lands are awarded to native Chamorros through residential, agricultural, and commercial leases for \$1 per year for 99 years. The CLTC's mission is to act in the interest of beneficiaries,² hold and protect trust property, maintain and uphold fiduciary responsibilities for the beneficiaries, and exercise due diligence in the management of Chamorro homelands.

In 1995, P.L. 23-38, established the rules and regulations for residential and agricultural leases and stated that the CLTC cannot issue commercial leases until such rules and regulations are developed. Chapter 21 G.C.A. §75107 (c) (2) allows residential and agricultural lessees, or organizations formed and controlled by these lessees, to obtain commercial licenses for business purposes.³ CLTC can issue leases or licenses to the general public for any lands not required for leasing under 21 G.C.A. §75107.

In April 1999, pursuant to Board Resolution 99-02 and P.L. 12-226, CLTC opened a checking account to "directly manage its own financial accounts...." Proceeds from commercial leases and licenses were deposited into the checking account until September 2005, when P.L. 28-68 required all land use permit revenues, monetary contributions, and fees be deposited into the Chamorro Land Trust Operations Fund maintained by the Department of Administration.

As of September 30, 2008, an Administrative Director⁴ (Director) and 11 classified employees operate CLTC's four divisions: Administrative Services, Logistical Support, Residential and Agricultural Leasing, and Commercial Licensing.

² 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.

³ Public utility companies or corporations also may be granted licenses for telephone and electric power lines, gas mains, etc., and to churches, hospitals, public schools, post offices and for other public improvements, such as theaters, garages, service stations, markets, and stores.

⁴ The current Director has served in that capacity from August 1993 to September 2000; January 2003 to January 2004; September 2006 to December 2006; and March 2007 to Present.

Results of Audit

We found that CLTC does not have a system designed to ensure commercial licenses are managed and administered in the best interest of the beneficiaries of the Chamorro Land Trust Act. The activities of the commercial division lack adequate management and control systems, procedures, and assigned staff.

CLTC does not have an adequate system to enforce delinquent remittances or to ensure lands are being used for approved purposes. CLTC does not regularly perform site inspections to determine if occupants are duly licensed. These conditions occurred because CLTC did not assign sufficient staff to the Commercial Division to monitor activities and did not have an adequate database to monitor whether licensees are current in their obligations.

Since the previous OPA audit in December 2005, CLTC has created a database, which can provide management with information as to the number of commercial lease applicants from FY 2005 to present, the number approved, and the status of the issuance of licenses (i.e., whether issued or pending). The maintenance and organization of records has improved compared to our last audit where we saw disorganized files.

Despite these improvements, we found that some of the issues we previously identified remain unaddressed. Specifically, there are no checks and balances to ensure that commercial licenses are issued in accordance with law or that revenues derived from the licenses are timely collected.

Between October 2005 and September 2008, CLTC leased 106 acres to 10 commercial applicants. In comparison, only 62 acres were issued to 60 residential and agricultural applicants. Of the 168 acres awarded, 63% was for commercial use, lessening the inventory available for residential and agricultural use.

In our previous audit, we found that CLTC issued 28 licenses totaling 1,474,936 square meters for less than 16 cents per square meter per annum. By contrast, the 10 commercial licenses totaled 428,967 square meters and were issued for less than seven cents per square meter per annum.

As of December 31, 2008, CLTC's accounts receivable listing shows \$305,472 is past due from four licensees. Of this amount, \$261,337 or 86% were over 90 days past due, some dating back to 2005. We found that the CLTC management and board have not taken the initiative to resolve these past due delinquencies which account for nearly 50% of their average annual revenues.

We tested three commercial licenses and found that one was issued to an ineligible company, another may have exceeded the maximum acreage allowance for commercial agricultural lease, and the third was for a business other than what is authorized by CLTC's enabling legislation.

Lack of Management System and Controls

During our review, we found that CLTC did not have written policies or procedures for the management and accounting of CLTC's commercial licenses. Because there were no written

policies or procedures, employees were not provided with the proper guidance as to how to manage, account, report on revenues generated from commercial properties, and collect from delinquent licensees. It is management's responsibility to establish and maintain internal controls (i.e., checks and balances) necessary to safeguard assets, improve efficiency, and prevent and detect errors and fraud. We provided CLTC management with a set of guidelines for internal controls.

We observed a lack of cohesiveness and ownership among staff to ensure that all the related tasks of the commercial division are accomplished in unity. Staff have compartmentalized their duties and responsibilities and often state that other tasks are not their responsibility. Written policies and procedures can provide general guidance and foundation, however, without esprit de corps and coming together, these policies and procedures will have no force and effect.

Lack of Land Use Plan

We noted that CLTC's lack of a land use plan hampers its ability to identify what lots will be required for residential, agricultural, and commercial leases/licenses. Without such a plan, the Director and other staff were unable to determine the total acreage under CLTC jurisdiction. Nor were they able to say how much land is available or how much was distributed for residential, agricultural, and commercial leases or licenses, respectively.

Since land is such a limited and precious resource on our island, CLTC should be deliberative in deciding how best to allocate and utilize its land inventory. A properly authorized and comprehensive land use plan is essential to CLTC's overall operation and effective management and distribution of trust lands in its inventory. The land use plan would provide a conceptual layout for the location, distribution, character, and identification of current and future land needs and uses. The plan would provide a basis for establishing and modifying zoning prior to issuance of a license and other land uses, as well as serve as a valuable communications tool between CLTC and the public on matters of land use and development.

We realize it would be a gargantuan task to develop a land use plan and recognize that CLTC has been working with the Bureau of Statistics and Plans and other government of Guam agencies on a draft of the north and central Guam land use plan. We recommend CLTC continue to work with these entities to finalize a land use plan which would determine what properties are available for residential, agricultural, and commercial leases or licenses, and establish a deadline to complete this valuable plan.

We reviewed three licenses and found that without a land use plan the following inconsistencies occurred:

Quarrying Feasibility License

Section 75105(d) of 21 G.C.A. states that lands not required for stipulated purposes may be leased or licensed to the general public and to public utility companies or corporations for telephone, power, and gas lines, and the like for no more than 21 years. A construction company was issued a license to "conduct various assessments & studies necessary for determining feasibility and environmental impact for implementation of quarrying activities." The license granting the quarrying feasibility is a purpose not authorized in § 75105. We recommend the Board review this license to determine whether the award of the license is in accordance with

their enabling legislation. This license for 80 acres further depletes the land available for residential and agricultural leases.

Honey Production License

Under the agricultural lease program, an individual can lease a maximum of 20 acres. One licensee had already received the maximum acreage under the agricultural lease program when the Board approved the use of 10 more acres for a commercial license utilized for agricultural purposes (i.e., for honey production facilities). As a result, this individual now leases 30 acres. We found no policies or guidelines prohibiting such practices. We recommend the Board review this license to determine whether the award of the additional 10 acres may have circumvented the maximum acreage requirement for the agricultural lease. This license for 10 acres further depletes the land available for other applicants of residential and agricultural leases.

Piggery License

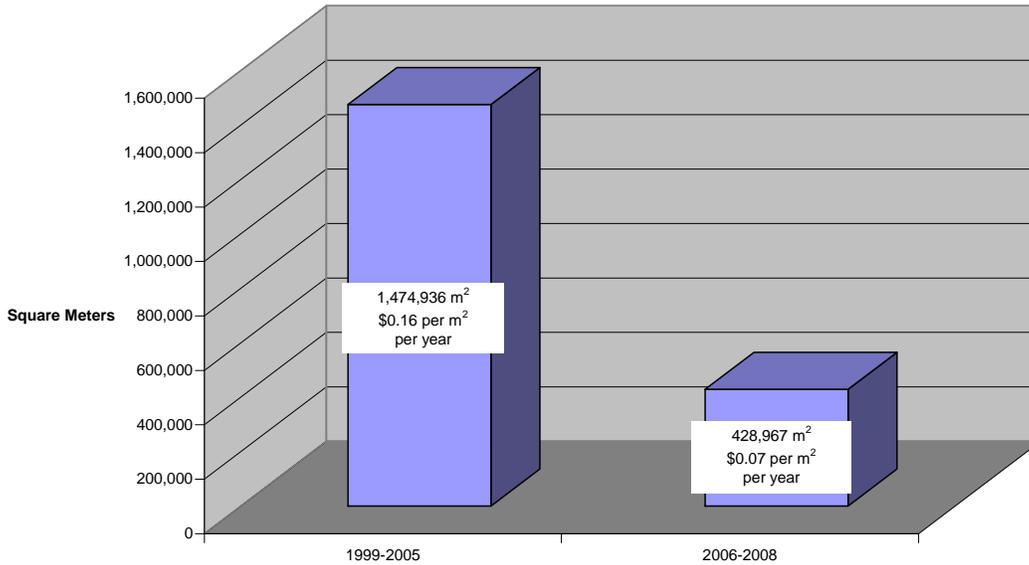
In June 2006, the Board approved a commercial license for a commercial piggery production farm. In August 4, 2008, CLTC received a hotline tip that prompted the current Director to conduct a site inspection on August 5, 2008. Upon inspection, the commercial licensee was found to be using the land for the fabrication of construction materials. Under the terms of the license, the licensee can provide space and accommodations to others within related activities, but written approval by the Board is required and 40 percent of any rental payments, fees, or assessments made to the licensee should be remitted to CLTC. However, no written approval was obtained nor fees submitted to CLTC. Since no staff is assigned to monitor and enforce license agreements, the task is not performed regularly. It was not until October 10, 2008, that the licensee requested for approval of a joint venture for fabrication of construction materials. The licensee has not yet received approval by the Board. This license for 4.72 acres further depletes the land available for residential and agricultural leases.

For the three licenses we tested, we did not find any appraisal reports to determine the basis for the monthly rates solely negotiated by the Director.

More Land Issued for Commercial Purposes

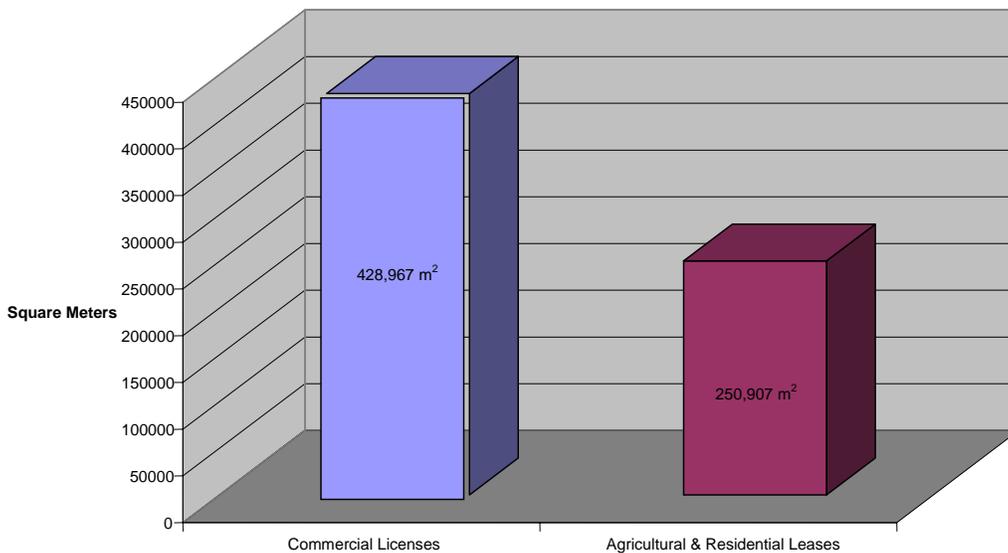
Since October 2005, licenses for 106 acres, or 428,967 square meters, were issued to 10 commercial applicants. By contrast, only 62 acres, or 250,905 square meters, were awarded to 60 agricultural and residential lease applicants. While commercial applicants were fewer in number, they accounted for the larger amount of awarded property, thus reducing the availability of land for agricultural and residential applicants. The price per square meter was less than seven cents per annum for these 10 licenses. By comparison in our previous report, CLTC issued 1,474,936 square meters for less than 16 cents per square meter per annum for 28 commercial licenses. See Graph 1 for the comparison:

Graph 1: Commercial License Comparison



The Chamorro Land Trust Act was intended to advance the well-being of the Chamorro people by way of land distribution and CLTC was created to carry out this mission. However, more than 60 percent of the land awarded by CLTC over the past three fiscal years was for commercial purposes. Based on a recent public announcement in local print media, CLTC has 140 pending commercial license applications, while over 10,000 paid residential and agricultural lease applications also await. See Graph 2 for Comparison of Commercial Leases and Agricultural/Residential Leases.

**Graph 2: Commercial Acreage Licensed Compared to Agricultural/Residential Acreage Leased
Fiscal Years 2006-2008**



P.L. 28-68 no longer authorized general fund appropriations to CLTC. Since that time, CLTC has had to rely exclusively on generating its own revenues, the bulk of which revenues come from its commercial licenses. According to the Director, CLTC has placed more emphasis on issuing commercial licenses, which provide more revenue than agricultural and residential leases.

Inadequate Revenue Collection Administration

We identified several problems with CLTC's collection of commercial license revenues. We found no clear direction for its revenue collection function other than the receipt and deposit of payments. No staff was assigned to monitor and enforce delinquent commercial license accounts.

Poor Accounts Receivable Management

CLTC utilizes the QuickBooks Pro accounting program to generate monthly accounts receivable reports. These monthly reports were provided to Management and the board, but action has not been taken to collect on any past due accounts. With just 39 commercial licenses, the task of monitoring and enforcing collections should not be arduous.

Although commercial licenses remain CLTC's main source of funding, we found that CLTC's management and Board have not:

- taken the initiative to resolve past due delinquencies;
- failed to utilize the system to generate monthly billing notices to individual commercial licensees;
- reconciled the number of licenses between the commercial license master database (39 licenses) and the A/R summary report (30 commercial accounts), and
- tracked payments by lot numbers for commercial licensees holding multiple lots.

No Staff Assigned to Commercial Division

Since 2000, the Commercial Division has been managed by one employee, a Planner IV. In February 2006, the employee went on medical leave and is not expected to return to the CLTC because he is applying for disability retirement. The employee continues to receive his salary through donated leave sharing. The Director stated because of the leave sharing, he is unable to hire a replacement. In the interim the Director assigned some of the Planner IV's workload to other CLTC employees. These three employees assist with data entry, records management, deposits, and receiving and tracking of payments, in addition to their current workload. The Director has requested for recruitment of additional staff, however the Bureau of Budget and Management Research and the Department of Administration have yet to authorize the recruitment of new staff.

According to the Director, the lack of staff in the Commercial Division precludes regular monitoring and enforcement of delinquent commercial accounts. According to CLTC staff, their job responsibility is only to receive the payments, not to assess, bill or collect from licensees. These responsibilities need to be better defined and executed in order to regularly monitor commercial accounts.

No Written Collection Policies and Procedures

We found no written collection policies to provide the framework for an effective revenue collection system. Detailed policies and procedures guide daily operations, produce timely information, and ensure efficient revenue collection efforts. They also support overall accountability for cash and checks received and processed by collections staff. They should clearly communicate to the staff what their duties are and how to carry them out.

As a result of CLTC's inadequate revenue collection administration, delinquent accounts have accumulated to over \$305,472 from four licensees dating as far back as 2005. Of this amount, \$261,337 or 86% were over 90 days past due of which \$4,797 are more than three years old, \$42,235 are more than two years old, \$47,813 are more than one year old, and \$166,492 are less than one year old. See table 1 for the aging summary.

Table 1: Aging Summary

| | >90 days | >1 year | > 2 years | >3 years | TOTAL |
|------------------|-------------------|------------------|------------------|-----------------|-------------------|
| 1 Retail Outlet | \$ 35,000 | \$ 42,000 | \$ 36,500 | \$ - | \$ 113,500 |
| 2 Parking Lot | \$ 260 | \$ 78 | \$ - | \$ - | \$ 338 |
| 3 Golf Course | \$ 126,453 | \$ - | \$ - | \$ - | \$ 126,453 |
| 4 Towing Company | \$ 4,779 | \$ 5,735 | \$ 5,735 | \$ 4,797 | \$ 21,046 |
| TOTAL | \$ 166,492 | \$ 47,813 | \$ 42,235 | \$ 4,797 | \$ 261,337 |

*As of December 31, 2008

Revenue collection administration is one of the most important functions of governments at any level. The main goal of any revenue collection operation is to collect what is owed.⁵ Improving the collection of revenues increases the amount of cash available for use and assures accountability. Management and the board have not taken the initiative to resolve these past due delinquencies, which represent nearly 50% of an average years revenues of \$544,000.

It is incumbent upon CLTC to collect what is owed to them. We recommend CLTC develop written collection policies and procedures. See Appendix 3 for best practices for revenue collection administration.

Processing a Commercial License

The process for obtaining a commercial license is quite different from that for an agricultural and/or residential lease. Based on interviews with CLTC staff and management, an applicant for a commercial license must submit a letter of interest which is then treated as an application. Agricultural and residential lease applicants must fill out an application form and submit it with a \$50 non-refundable application fee.

In general, commercial license applicants have done research and have an idea of where and how much property they want, unlike residential and agricultural applicants. This information is usually incorporated in their interest letter. CLTC staff then review the letter, complete checklist, and report orally to the Board. See Appendix 4 for the commercial license checklist.

⁵ Government Finance Officers Association: *Revenue Collection Administration, A Guide for Smaller Governments*

No written report is given to the Board for each commercial applicant; instead the meeting minutes record the presentation of the proposal, any discussions and Board action, if any. The Board decides whether to approve or disapprove the concept. If approved, the proposal goes back to the Director who negotiates the terms of the agreement. After successful negotiations, a license is issued. The final approval and sign-off is done solely by the Director, without approval by the Board. The Director's sole and final approval of commercial licenses is contrary to P.L. 23-38.

We recommend that the Board approve all negotiated licenses and sign-off on agreements. Pursuant to P.L. 23-38 Section 3.1 "(t)he Chairperson of the Commission shall countersign on behalf of the Commission where approval of the Commission is required."

Status of OPA Report 05-09 Recommendations

We reviewed CLTC's progress in implementing audit recommendations identified in OPA Report No. 05-09, Performance Audit of the Chamorro Land Trust Commission's (CLTC) Non-Appropriated Funds issued in December 2005. In that report, OPA made seven recommendations to the CLTC. In October 2008, the Director submitted an update on CLTC's corrective action plan. As a result, CLTC has implemented five recommendations, while two were not implemented. These include:

- Recommendation No. 3: Follow-up with legal counsel on the action taken to evict the defaulted lessee and recover the \$72,970; and
- Recommendation No. 6: Pursuant to law, obtain annual financial audits, and publicize the audited financial statements.

See Appendix 5 for the Director's response and plan of action and policy initiatives and Appendix 6 for OPA's status of recommendations.

Conclusion

There has been no substantial change in the control and oversight over the Chamorro Land Trust Commission's Commercial Division since OPA's December 2005 audit.⁶ We found that CLTC does not have an effective system to manage and administer commercial leases and licenses in the interest of the beneficiaries of the Chamorro Land Trust Act.

Specifically, we found that past and current CLTC Directors have not (1) developed a land use plan outlining properties for agricultural, residential, and commercial use; (2) assigned sufficient staff to monitor the activities of the Commercial Division; (3) established written collection policies and procedures; and (4) developed a system of monitoring revenues and enforcing their collection from commercial licenses.

P.L. 28-68 made CLTC a self-sufficient entity and it has not received General Fund appropriations since 2005. CLTC's operations are funded by revenues generated from commercial leases and licenses. With only 39 commercial licenses, there is no monitoring and follow-up with licensees who have not paid. With the small number of licenses, the monitoring responsibilities should not be arduous.

⁶ OPA Report No. 05-09, Chamorro Land Trust Commission's Non-Appropriated Funds issued December 2005. View full report at <http://www.guamopa.org/docs/OPA0509.pdf>.

Recommendations

We recommend the CLTC Director to:

1. Develop a land use plan to determine what properties are available for residential, agricultural, and commercial leases or licenses, respectively.
2. Develop written collection policies and procedures for commercial licenses.

We recommend the CLTC Board to:

3. Review the quarrying feasibility and honey production licenses to determine whether their award is in accordance with their enabling legislation or if it circumvented the maximum acreage requirement for agricultural leases.
4. Pursuant to P.L. 23-38 Section 3.1, review and approve all commercial licenses that have and will be negotiated and approved for issuance.

Refer to Appendix 8 for the status of these recommendations.

Management Response and OPA Reply

A preliminary draft report was transmitted to the CLTC Director in March 2009. We met with the CLTC Director and the Program Coordinator III to discuss the preliminary draft report.

The CLTC Director generally concurred with the findings and recommendations of this report. See Appendix 7 for the management response.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of the implementation of the recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, our office will be contacting CLTC to establish target dates and titles of officials responsible for implementing the recommendations.

We appreciate the cooperation and assistance shown by the Chamorro Land Trust Commission Administrative Director and staff.

OFFICE OF THE PUBLIC AUDITOR



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:**Scope and Methodology**

The scope of our follow-up review encompassed progress made from October 1, 2005 to September 30, 2008. Our objective for this engagement was to determine whether CLTC (1) had developed and maintained a system to ensure that commercial licenses are managed and administered in the interest of the beneficiaries of the Chamorro Land Trust Act and (2) had taken action on our previous report recommendations.

Our methodology included gaining an understanding of the policies, procedures, applicable laws and regulations pertaining to CLTC's commercial leases/licenses program. We determined the status of efforts to address our recommendations based on interviews with the Director and staff, as well as reviews of documents and reports. We also judgmentally selected three licenses issued between October 2005 and September 2008 to determine whether commercial licenses were subjected to the same processing procedures and determined eligibility.

Our audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions.

External Impairment

The requirement for the Office of the Public Auditor to conduct a financial and management audit of the CLTC's commercial lease program since its inception to the present was contained in the FY 2009 Appropriations Act.

OPA conducts its audits in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. These standards require audit organizations to be free of external impairments that could compromise the independence, objectivity, and professionalism of government auditors. Unreasonable time restrictions to conduct and complete audit are considered an impairment. The 60-day deadline for this report was an unreasonable external impairment. In light of the restricted timeframe, we modified the mandated scope of work as appropriate in our professional judgment.

Appendix 2:**Prior Audit Coverage**

In December 2005, OPA issued Report No. 05-09, Non-Appropriated Funds of the Chamorro Land Trust Commission. OPA found that CLTC management 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) CLTC-guaranteed lessee loans were appropriately monitored, and (4) financial statements were prepared for the Legislature as required by law. OPA made seven recommendations to CLTC to correct these deficiencies. Of the seven recommendations, five have been addressed and two remain open. See Appendix 6 for a status of these recommendations.

In November 1999, the previous OPA administration issued a Management Audit of the Chamorro Land Trust Commission (Report No. OPA-04-99), which identified that the Chamorro Land Trust Commission (CLTC):

- Personnel and ad hoc staff ignored or inadvertently overlooked leases program rules.
- Made mistakes in administering the program and awarding residential and agricultural leases.
- Severely understaffed composed of unclassified clerical personnel.
- Inaccurate Chamorro Homeland Inventory and does not have procedures or personnel to properly transfer land inventory.
- Revenue accounts not reconciled with the Department of Administration.
- Land inventory is not accurate, many acres of commercially lease public lands are not in the Commission's inventory, thus the Commission does not know what it is entitled to and may be losing revenue.

We reviewed the Basic Financial Statements and Single Audit Reports for information pertinent to the Chamorro Land Trust Operations Fund from FY 2006 through 2007 and obtained FY 2008 unaudited figures of CLTC. See details in the table below.

Table 1: Audited Figures of the Chamorro Land Trust Operations Fund

| Fiscal Year | Revenues | Expenditures | Ending Fund Balance |
|--------------------|---------------------|-----------------------|----------------------------|
| 2006 | \$ 497,835 | \$ (478,794) | \$ 19,041 |
| 2007 | \$ 626,040 | \$ (440,100) | \$ 185,940 |
| 2008* | \$ 509,894 | \$ (481,541) | \$ 28,353 |
| TOTAL: | \$ 1,633,769 | \$ (1,400,435) | \$ 233,334 |

*Unaudited

Appendix 3:**Best Practices for Revenue Collection Administration**

During our review of CLTC's commercial licensing division, we identified several problems with CLTC's administration of commercial revenues. Specifically, clearly defined collection responsibilities are lacking, CLTC has not assigned high priority to billing its commercial licensees, and temporary staff not adequately trained in collections and proper enforcement techniques. These conditions have led to inefficient revenue collections.

The following are suggested best practices for revenue collection administration from the Government Finance Officers Association: *Revenue Collection Administration, A Guide for Smaller Government* which CLTC can utilize to develop written collection policies and procedures to ensure that billing and collections are properly performed, and that the proper recording receivables of delinquent lessee/licensees are timely.

Billing System

A billing system to ensure that individuals and businesses are billed on a timely basis needs to be developed. The billing instrument should contain the following information:

1. The name of the person or company billed, the correct address, the amount billed or due, the account number (lease or license number) of the person or company billed, whom to make the check out to, telephone number to call for assistance, etc.;
2. Instructions on where to send payments;
3. Due dates clearly indicated. Where possible, payments should be due upon receipt or by a certain date;
4. Penalties and interest charges that would apply to overdue payments; and
5. Color coding to make it easier for collections staff to identify and process payments.

Accounts Receivable System

A connection must be established between the billing system and the accounts receivable system. There must be a mechanism in place for updating customer accounts once payments have been received. Records of bills that have been mailed to customers must be transmitted to the accounts receivable system for entry. This requires the collection of accurate and complete information at the time of billing. Once entered into the accounts receivable database, accounts must be tracked and flagged should they become delinquent. It is equally important to bring accounts receivable up to date when payments are received. The accounts receivable system should be able to generate an accounts receivable aging analysis that indicates how much revenue is owed and how long it has been owed. This type of analysis is useful in identifying problem accounts and can be used by CLTC to make decisions.

Appendix 4:

Checklist for Commercial Applicants

| | |
|---|--|
|  | <h2><i>Chamorro Land Trust Commission</i></h2> <p><i>(Kumision Inangokkon Tano' Chamoru)</i></p> <p>P.O. Box 2950 Hagåtña, Guam 96932 Phone: 475-4251 Fax: 477-8082</p> |
| | <p>COMMERCIAL LICENSE REQUEST: <i>Sample Business Plan Outline</i></p> <ul style="list-style-type: none">• Executive Summary (history, purpose, financial requirements, owners, legal information, etc.)• Description of Business<ul style="list-style-type: none">○ What it does○ Why it does it○ Who does it○ Where it does it○ How it does it• Financial<ul style="list-style-type: none">○ Source & Use of Funds○ Income & Expense and Cash Flow Projects- Minimum of 2 years with notes and supporting documentation.○ Summary of business financial statement (balance sheet & profit and loss).○ Collateral- identity and value○ Return to investor (if applicable).• Management<ul style="list-style-type: none">○ Identification and background of management○ Personnel requirements / labor pool○ Legal and Insurance issues• Marketing<ul style="list-style-type: none">○ Market Analysis & Market Base○ Competition○ Competitive Advantages and Disadvantages• Marketing Strategy<ul style="list-style-type: none">○ Operations○ Process & Procedures○ Pricing & Cost Control• Site Location and Site Control<ul style="list-style-type: none">○ Management Goals for the Future○ Expand, sell, incorporate, etc.• Exhibits<ul style="list-style-type: none">○ 3 years business (if applicable) and personal tax returns○ Current business (if applicable) and personal financial statements○ Management resumes○ Legal documents (articles or incorporation, partnership agreement, business license, etc.)○ Supporting documents (contracts, technical data, purchase orders, surveys, media articles, statistics, etc.) |

Felix P. Camacho
Governor of Guam

Michael W. Cruz, M.D.
Lieutenant Governor of Guam

Commission Members

David J. Matanane
Commissioner

Oscar A. Calvo
Commissioner

Pauline Gumataotao
Commissioner

Carmen G. Tajalle
Commissioner

(Vacant)
Commissioner

Joseph M. Borja
Administrative Director

Rev. 09/26/2008

Doc. Printed: 12/29/2008

CLTC's Status of Corrective Action Plan



Felix P. Camacho
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Commissioner

Joseph M. Borja
Administrative Director

Chamorro Land Trust Commission

(Kumision Inangokkon Tano' Chamoru)

P.O. Box 2950 Hagåtña, Guam 96932

RECEIVED
OFFICE OF THE PUBLIC AUDITOR

October 31, 2008

TO: Doris Flores Brooks
Public Auditor

FR: Administrative Director

RE: Performance Audit – Oct. 1, 1999 to Sept. 30, 2004

DATE: 11/5/08

TIME: 9:15 am

BY: Vince D

Pursuant to your letter of January 7, 2007 please be advised that Mr. Tom Elliott left the Commission on February 16, 2007. Mr. Michael James became Acting Administrative Director of the Commission on December 25, 2006 and left on March 12, 2007. I was appointed by the Governor as Acting Administrative Director on March 12, 2007 and was accepted by the Commission in their meeting on March 28, 2008.

Relative to the 7 (actually 11) Audit Recommendations, please be advised of the following status:

1. **Write Commercial License Guidelines.**
Draft Commercial rules and regulations were completed since December 1999. No action was taken. Board will take the Commercial Lease rules and regulations through the Administrative Adjudication Legislative process. Board will review and approve, conduct public hearing and otherwise promulgate. Public Hearing scheduled for November 26, 2008. Because staff assigned has been on medical leave since February 2006, the Administrative Director will be the staff assigned to this project.
2. **Compile Commercial Database.**
A commercial database (Microsoft Access) has been compiled and completed. Data entered is being verified and missing data being researched and obtained.
3. **Payment-arrears collections.**
There is only one person in the Commercial Division. In the FY08 CLTC budget positions were created to address this staff shortage, however due to CLTC's imposed budget ceiling these positions were unfunded. The position is now funded under FY09. Collection efforts for delinquent accounts are made as they are discovered delinquent by the commercial database compilation. Collections have been increased from \$497,835 in 2006 to \$626,038 in 2007.
4. **Evict defaulted lessee.**
Legal Counsel has been instructed by the Board on April 16, 2007 to begin eviction proceedings.
5. **Recover \$72,970.**
No case filing has been initiated yet by Legal Counsel. Administrative staff will attempt to negotiate the previous mortgage to same applicant/occupant.

Rev. 09/26/2008

CLTC's Status of Corrective Action Plan

6. Annual status report of guaranteed loans from lenders.

CLTC staff has been meeting quarterly with lenders. Written reports including trends and percentages are discussed with lenders. Staff assigned to this project resigned January 5, 2007. No action was ever taken on this project prior to that date. The default (only one so far) was referred to Legal Counsel on April 16, 2007. The recovery process and from whom is being reviewed by Legal Counsel. Total loan guarantees issued and a creation and compilation of the total CLTC loan portfolio was recently undertaken with GHC (USDA, VA, HUD and GHC loans) and with SBA (loans). There are no existing summaries or comprehensive reports. CLTC is lacking qualified staff to prepare these.

7. Establish rules for use of Golf Course Lease payments.

Staff assigned: Administrative Director will take this project until staff is hired. No rules have been established or drafted.

Subsequent to this requirement P.L. 28-68 was enacted which authorizes the Commission to use monetary contributions and fees for operational expenses. These funds now fall under P.L. 28-68. There are no plans to draft or establish rules.

8. Issue Form 1099-MISC to vendors providing \$600 in services or more.

Staff assigned: James Diaz

Form 1099-MISC have been issued to vendors providing \$600 in services or more. See attachments. Issuance of 1099-MISC have been processed to date as required.

9. Accounting software reports to Legislature Financial Audit Services.

Staff assigned: James Diaz

Completed. All reporting requirements to Lehislaturan Guahan and OPA have been complied with to date.

10. Publish audited financial statements.

Staff assigned: James Diaz

Letters were sent to CPA firms requesting for quotes on CPA services, they are stale and need to be redone. OPA will request for RFP (notice, publication funded by CLTC) and final decision on selection of audit firm.

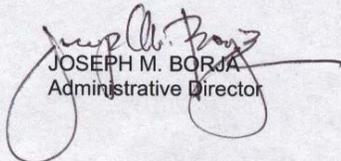
11. Performance Evaluation of Administrator.

No Performance Evaluation of former Administrative Director Tom Elliott could be found although previous Chairman Delfin Damian states that one was done. I am working with administrative staff to determine if one was ever done and processed.

A Performance Evaluation for present Administrative Director Joseph M. Borja was completed in September 2008.

We are developing a plan of action for the achievement of all the recommendations in the Performance Audit but the lack of staff severely hampers our prioritization.

Upon employment by the Board in March 2007 a list of initiatives suggested by the Administrative Director was approved by the Board in April 2007. A copy is attached.


JOSEPH M. BORJA
Administrative Director

CLTC's Status of Corrective Action Plan

CHAMORRO LAND TRUST COMMISSION

as of April 18, 2007

PLAN OF ACTION AND POLICY INITIATIVES

| PRIORITY | DESCRIPTION | AUTHORITY / FUNDING | | TIMELINE | | CURRENT STATUS and REMARKS | |
|----------|---|--|--|----------|----------|--|---------|
| | | Source | Amount | Start | Complete | Current Status | Remarks |
| 1 | Complete Board composition, appoint Chair, appoint Director; governance, substance & policy session | Governor | staff cost | | | 5 member board, 4 confirmed members, 1 vacancy, Governor needs to appointment 1 more member and appoint Chairman | |
| 2 | Realign Staff for maximum contribution per qualifications and skills, recruit critical and additional positions | CLTC Administrative Director | \$200,000 | | | getting account balance from DoAd, BBMR to load funds (\$204,000) as per FY09 Budget Law for recruitment of additional positions | |
| 3 | Re-Create Commercial Division (Budget Critical) | CLTC Administrative Director | None but needs DLM personnel transfer | | | Loading funds (\$204,000) for recruitment of additional positions | |
| 4 | Provide adequate and realistic space for operations and office | Board vote and approval, staff execution | \$2600 per month | | | adequate office being renovated | |
| 5 | Respond to and implement OPA Recommendations | Director and Board | None, but needs wp and clerical assistance | | | see letter to OPA | |

CLTC's Status of Corrective Action Plan

| PRIORITY | DESCRIPTION | AUTHORITY / FUNDING | | TIMELINE | | CURRENT STATUS and REMARKS | |
|----------|--|--|---|----------|----------|---|---------|
| | | Source | Amount | Start | Complete | Current Status | Remarks |
| 6 | Construction of new building in Block 24 Hagatna | DLM-LSRF, DLM-FEMA HazMit grant, GEC grant | 8000000 construction cost | | | land donated to building by Board resolution, DLM and DPW taking lead in RFP and construction | |
| 7 | Compliance Review of Issued Leases and Licensees | Board direction | \$100,000 per year for CLTC | | | m.o.a. developed, ready for signature after legal review by AGO | |
| 8 | Reconciliation of Inventory and Land Registration of CLTC Lots | 21 GCA, Chapter 75 / PL 22-18 | unknown cost, legal counsel services instead of AGO | | | reconciliation attempted twice with DLM but work products unacceptable, LR has begun with 15 lots by legal counsel, 71 lots need land registration proceedings | |
| 9 | Develop Master Land Use Plan for CLTC lands, update lots zoning, develop zoning maps | Board Policy | \$20,000 (supplies and staff cost), DLM assistance needed | | | not yet started, need to recruit staff or outsource contract | |
| 10 | Continue Processing of Lease Applications | Board Policy | FY09 Budget Levels | | | publishing By-Passed List in PDN, office will open on Saturdays to process by-passed applicants only, publishing Unpaid List in MV, assigning 2 staff members to Unpaid Project | |

CLTC's Status of Corrective Action Plan

| PRIORITY | DESCRIPTION | AUTHORITY / FUNDING | | TIMELINE | | CURRENT STATUS and REMARKS | |
|----------|---|----------------------------------|---------------------|----------|----------|--|---------|
| | | Source | Amount | Start | Complete | Current Status | Remarks |
| 11 | Organizational, Administrative, Financial and Budget Review | Board Report and Recommendations | None | | | not yet started, need to recruit staff or outsource contract | |
| 12 | Review lease amount for possible adjustment | Board | increase in revenue | | | not yet started | |
| 13 | Implement and collect PILOT as per Sec. 75112 | Dept. of Revenue and Taxation | DRT staff cost | | | DRT has begun assessments, but capture is probably less than 3% | |
| 14 | Review Priority Processing for possible adjustment | Board | staff cost | | | priorities being reviewed, financing ready, veterans, handicapped, emergency placement | |
| 15 | Promulgate Commercial Rules and Regulations, promulgate Fees Schedule | Board, AAL | staff cost | | | rules and regs drafted, being processed through Administrative Adjudication Law | |

OPA Report No. 05-09 Status of Recommendations

| Recommendation | Status | Status Notes |
|--|---|--|
| 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. | Closed. | Implemented. CLTC provided a copy of rules and regulations developed in 1999. A public hearing took place on December 24, 2008 and the rules may be subject to change. CLTC asked for guidance from the Attorney General regarding the issuance of licenses to ineligible applicants. On December 1, 2005, the Attorney General's Office stated that if CLTC has licensed the use of any properties which do not comport with the operation of 21 GCA § 75107 and § 75105(d), the lease should be terminated as soon as possible, but according to their terms of the agreement. No further action is required. |
| 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. | Closed. | Implemented. On November 5, 2008, the Director provided OPA with a copy of the commercial lease/license database they created. |
| 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. | Open. Additional information needed. | Not Implemented. The Board instructed legal counsel to begin the eviction proceedings in April 2007, however, the CLTC Director stated that no case filing has been initiated yet by legal counsel. |
| 4 Comply with P.L. 27-79 by establishing rules and regulations for the use of lease payments received from the Guam Municipal Golf Course. | Closed. | Not Applicable. P.L. 27-79 required CLTC to establish rules and regulations for the use of the lease payments received from Guam Municipal Golf Course, Inc; however, in September 2005, P.L. 28-68 required that all proceeds from land use permits, monetary contributions and fees be deposited into the Chamorro Land Trust Operations Fund, which shall be used for the operational expenses of CLTC. |

OPA Report No. 05-09 Status of Recommendations

| | Recommendation | Status | Status Notes |
|---|---|---|--|
| 5 | Follow 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 in to only if after advertising for sealed bids in a newspaper of general circulation. | Closed | Implemented. On October 31, 2008, CLTC issued 1099-MISC forms to its vendors from 1999 to 2007. Due to time constraints, however, we were unable to verify whether CLTC issued Form 1099-MISC to all vendors who provided services of at least \$600. |
| 6 | Utilize an accounting software program to track and record financial activities and 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 | Open. Additional information needed. | Partially implemented. CLTC has implemented Quickbooks to track its financial activities and produce financial reports. This recommendation remains open because CLTC has not obtained an independent auditor pursuant to its enabling act. |
| 7 | As required by 5 G.C.A. § 43202, the Board shall conduct the semi-annual performance evaluations of its Director every six months during his appointment, and documenting his performance and accomplishments, and the Board's reasons for retaining him. | Closed. | Implemented. The former Director was replaced in February 2007. There were no evaluations found on record for the former Director. According to the current Director, his performance evaluation was completed in September 2008. OPA was provided a copy of the evaluation in March 2009. |

Appendix 7:
CLTC Management Response

| | | |
|--|--|---|
|  <p><i>Felix P. Camacho</i> Governor of Guam</p> <p><i>Michael W. Cruz, M.D.</i> Lieutenant Governor of Guam</p> <p><i>Commission Members</i></p> <p><i>Oscar A. Calvo</i> Acting Chairman</p> <p><i>David J. Matanane</i> Vice-Chairman</p> <p><i>Pauline Gumataotao</i> Commissioner</p> <p><i>Carmen G. Tajalle</i> Commissioner</p> <p><i>(Vacant)</i> Commissioner</p> <p><i>Joseph M. Borja</i> Administrative Director</p> | <p>Chamorro Land Trust Commission <i>(Kumision Inangokkon Tano' Chamoru)</i></p> <p><i>ang LRS file VD</i></p> <p>P.O. Box 2950 Hagåtña, Guam 96932 Phone: 475-4251 Fax: 477-8082</p> | |
| | April 7, 2009 | <p>RECEIVED OFFICE OF THE PUBLIC AUDITOR</p> <p>DATE: <u>4/7/09</u></p> <p>TIME: <u>4:40 PM</u></p> <p>BY: <u>AZ</u></p> |
| | TO: Lourdes R. Perez Audit Supervisor Office of the Public Auditor | |
| | FR: Joseph M. Borja Administrative Director | |
| | RE: Management Response to Draft Audit Report | |
| | Thank you for the opportunity to response to the findings as stated in the Draft Audit Report – Chamorro Land Trust Commission's Commercial Division. | |
| | The Administrative Director generally concurs with the draft report's findings and recommendations. | |
| | A land use plan is being developed for northern and central Guam by the Bureau of Statistics and Plans with Department of Land Management and Chamorro Land Trust staff assistance. | |
| | The inadvertent priority unconsciously placed on commercial licenses and leases maybe due to the CLTC's transition of funding sources for its operation from the General Fund to its own special cash account. | |
| | The present Administrative Director has instituted a procedure insuring final Board approval of commercial licenses (and other major documents) by requiring the signature of the Board Chairman to execute. Prior to this the Administrative Director would negotiate the license as delegated by the Board and then sign and execute the license without further Board review or approval. | |
| Because of the size and present level of CLTC's staff, separation of responsibilities and authority(s) is not always possible. The ratio of applicants to land agents does not lend itself to efficient and timely service. | | |
| This present Board has made revenue collection a priority, the revenue collection numbers will show an increase in FY 2009. | | |
| Rev. 01/15/2009 | <p><i>Joseph M. Borja</i> Joseph M. Borja Administrative Director</p> | |

Appendix 8:
Status of Recommendations

To the Director of CLTC:

| | Audit Recommendation | Status | Action Required |
|---|--|--------------------------------------|---|
| 1 | Develop a land use plan to determine what properties are available for residential, agricultural, and commercial leases or licenses, respectively. | Open. Additional information needed. | Provide evidence of the establishment of a land use plan. |
| 2 | Develop written collection policies and procedures for commercial licenses. | Open. Additional information needed. | Provide evidence of written collection policies and procedures for commercial licenses. |

To the Board of Directors for CLTC:

| | Audit Recommendation | Status | Action Required |
|---|---|--------------------------------------|---|
| 1 | Review the quarrying feasibility and honey production licenses to determine whether the award is in accordance with their enabling legislation or if it circumvented the maximum acreage requirement for agricultural leases. | Open. Additional information needed. | Provide evidence that the CLTC board reviewed the quarrying feasibility and honey production licenses to determine whether each had been awarded appropriately. |
| 2 | Pursuant to P.L. 23-38 Section 3.1, review and approve all commercial licenses that have and will be negotiated and approved for issuance. | Open. Additional information needed. | Provide evidence that all commercial licenses have been reviewed, approved, and countersigned by the CLTC 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;**
- **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.