
**Management Audit of the
Chamorro Land Trust
Commission**

A Report to the
Governor, the
Judiciary and
the Legislature
of the Government
of Guam



Management Audit of the Chamorro Land Trust Commission

SUMMARY

The Chamorro Land Trust Commission (CLTC) is primarily a social program created to give land to Chamorros. The CLTC administers the Chamorro Land Trust Act, which provides for the leasing of land to qualified applicants for residential, agricultural and commercial purposes. It also provides for six loan programs that are not yet funded. The CLTC provides for the development of residential, agricultural and commercial properties for leasing. It also reviews, identifies and surveys land parcels; processes lease applications, and maintains the lease applications database.

The objectives of our audit were to determine whether (1) CLTC funds were properly used and managed according to established rules and regulations; (2) accurate inventory of available Chamorro Lands and other property was being maintained; (3) applications for commercial leases of Chamorro land were being processed timely; (4) processes for which applications were received, processed, and leases issued for residential and agricultural properties were in accordance with established rules and regulations; and (5) proper staffing exists to perform professional, technical and clerical functions.

Our review showed that: (1) the CLTC started the lease program process with a small cadre of Commission personnel and an ad hoc staff that ignored or inadvertently overlooked the rules; (2) the CLTC made some mistakes in awarding residential and agricultural leases and in administering the program; (3) the CLTC is severely understaffed with a small cadre of unclassified clerical personnel, and various employees detailed from other Government of Guam agencies; (4) the Chamorro Homelands Inventory is not accurate, and the CLTC does not have procedures or personnel to identify, acquire, and transfer land to the inventory; (5) revenue accounts need to be reconciled with the Department of Administration, and funds provided to the DLM to survey and map CLTC land were not used as intended. We also found that commercial leases of CLTC property were not being processed, written and executed promptly.

We concluded that there is no assurance that the CLTC will be able to effectively carry out the mandates embodied in the Chamorro Land Trust Act, unless it is staffed properly with professional and technical personnel to execute vital programs. The CLTC has been operating for more than six years, and the Legislature still has not approved a FTE staffing pattern.

RECOMMENDATIONS AND RESPONSE

We recommend that the Director request the Legislature to approve a staffing plan and pass legislation to transfer employees and budgets to match programs previously transferred to the Commission. The transfers should include surveyors and land agents from the DLM and agricultural management specialists from the Department of Agriculture. The Director should prepare a strategic plan, including milestones, to show when the Commission could be independent from the general fund, if it was properly staffed to implement all of its programs. The Director should fill positions approved by P.L. 24-48 through the merit system if the Department of Administration does not process the paperwork to classify incumbent employees.

We recommend that the Director conduct adequate reviews of lease files to ensure rules were followed before signing leases. He should ensure that lease application forms are modified to provide additional information that can be used to accurately determine qualifications.

We recommend that the Director update the Chamorro homeland inventory to include all available land. He should consult with each government agency (particularly autonomous agencies), and establish a computerized database of commercial leases of public lands, and have legal counsel determine when revenue should accrue to the Commission.

We recommend that the Director promulgate rules and regulations for the use of lease payments from the Guam Municipal Golf Course, and publish an annual financial statement in a newspaper of general circulation as required by P.L. 22-76. The Director should ensure that all proceeds from land sales and property rentals are deposited into the Chamorro Home Loan Fund in accordance with P.L. 22-31. We recommend that the Director open an interest bearing bank account, and establish policies and procedures for using funds and reconciling revenue accounts.

We recommend that the Director expedite the execution of commercial lease agreements for communication operations on pre-occupied Land Trust properties. We also recommend that the Director review all pending commercial license requests and expedite the processing and execution of commercial lease agreements.

The Director concurred with the findings and recommendations in our report and plans to implement most of our recommendations. He generally concurred with some findings and recommendations and strongly concurred with others.



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
P.O. BOX 23667, GMF, Barrigada, Guam 96921
(1208 East Sunset Boulevard, Tiyan)
(671) 475-0393/0394/0395 - FAX: (671) 472-7951

November 26, 1999

The Governor of Guam
Speaker of the Guam Legislature
Presiding Judge of the Superior
Court of Guam
Agana, Guam 96910

Dear Governor, Speaker and Presiding Judge:

Pursuant to the Guam Code Annotated Title 1 Chapter 19, Section 1909, as amended, the Office of the Public Auditor submits its report concerning the management audit of the Chamorro Land Trust Commission for fiscal years 1994 – 1999. This report consists of introduction, findings, recommendations, and response of the affected agency received November 3, 1999.

Respectfully submitted,

Frances G. Balajadia
FRANCES G. BALAJADIA
Acting Public Auditor

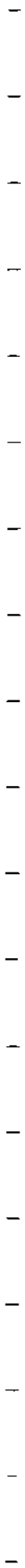
Enclosure

OPA-04-99



Table of Contents

<u>INTRODUCTION</u>	<u>PAGE</u>
Background	1
Objective and Scope	1
Prior Audit Coverage	1
<u>FINDINGS AND RECOMMENDATIONS</u>	
Proper Staffing	2-5
Improving the Lease Award Process	6-8
Inventory of Available Lands	9-10
Proper management and Use of Funds	11-15
Commercial Leases/Licenses	16-17
Comments on Agency Response	22-30
<u>RESPONSE OF THE AFFECTED AGENCY</u>	
Comments on Agency Response	31



INTRODUCTION

BACKGROUND

The Chamorro Land Trust Act was created in 1975 by Public Law 12-226, and implemented in 1993. The Act is primarily a social program and not an economic one. It was created to give as much land to as many Chamorros for the cheapest price and for the longest time. The Chamorro Land Trust Commission (CLTC) adopts and implements rules, regulations and policies to administer the Land Trust Act. The CLTC is composed of five members appointed by the Governor with the confirmation of the Legislature. The Governor appoints the Chairman of the CLTC from among the members. The CLTC employs an Administrative Director who serves in a full-time capacity and exercises powers and authority as may be delegated to him by the Commission.

OBJECTIVE AND SCOPE

The objective of the CLTC is to implement the Chamorro Land Trust Act. The Act provides for the leasing of land to qualified applicants for residential, agricultural and commercial purposes. The Act also provides for six loan programs that are not yet funded. The CLTC provides for the development of residential, agricultural and commercial properties for leasing under the Act. The CLTC also reviews, identifies and corrects the Available Lands Inventory List. It reviews and surveys land parcels, processes lease applications, and maintains the applications database.

The CLTC awarded a total of 1,377 leases since its inception in 1993. There were 1,034 residential and 343 agricultural lots awarded. The first lot was awarded in 1997. The CLTC has received more than 11,000 applications for residential and agricultural land. When we concluded our field work in August 1999 there were more than 9,500 applicants waiting for leases. This included 2,800 applicants that have not paid the \$50 processing fee.

The CLTC has been operating under an annual budget ceiling of \$450,000 since 1994. The appropriation for FY 99 was \$290,456. The original start-up budget in 1993 was \$500,000. There were 12 full time equivalent employees authorized for FY 1999.

PRIOR AUDIT COVERAGE

No prior audit has been conducted of the Chamorro Land Trust Commission.

Proper Staffing

Section 75102 (b) of 21 GCA provides that the Commission may employ such clerical and other assistants who shall be classified employees as may be necessary to effectively execute its responsibilities. Since its implementation in 1993, the Chamorro Land Trust Commission (the Commission) has attempted to get various staffing plans approved to ensure that the proper number of technical and professional personnel would be hired to implement the Act.

Commission Severely Understaffed

Since its inception in March 1993, the Commission has been staffed and operated by a Director, Deputy Director, a small cadre of unclassified clerical personnel, limited term appointments, and various employees detailed from other Government of Guam agencies. Notwithstanding that the Commission has been operating for more than six years it does not have an approved FTE staffing pattern. Therefore, it has not been able to hire technical and professional personnel to carry out the Commission's mandate. Meanwhile, to implement programs mandated by the Legislature, the "start-up" Commission clerical personnel are performing duties outside and above their job descriptions. Clerks are assigned as division directors, and they are performing higher level duties that would normally be performed by technical or professional personnel.

Details From Other Agencies

Title 21, Guam Code Annotated Section 60105, provides that "The Director of Land Management, with the approval of the Governor, is hereby authorized to assign, transfer or allocate to the Chamorro Land Trust Commission current personnel and other resources deemed necessary to fulfill the purposes and intent of this Act and to assist the Commission with its mandate. Funding for said transfer should be made from the annual operations budget of the Department of Land Management as appropriated by the Legislature." Legislative language authorized the Director to transfer personnel to the Commission. It did not direct him to do so. In fact, the Director of Land Management (DOM) has notified the Commission that he does not plan to provide funding for FY 2000 to support the four employees still detailed from his agency. The decision to augment the Commission's staff with detailed employees from other government agencies was necessary to get the Commission started. However, the current staffing arrangement, which still includes detailed employees, is not feasible any longer.

Inability to Hire Staff

The Commission has not been able to get approval for a proper staff since its inception in March 1993. It has experienced excessive employee turnover, primarily because of its inability to offer permanent employment or classified status, even to employees that have

been on board for several years. A chronology of events related to staffing is shown below.

DATE	EVENT
1993	Seven employees detailed from DLM
1993	Commission hired several LTA employees
1994	P.L. 22-140 froze all hiring.
1995	Submitted budget for 55 FTEs
1996	Submitted budget for 22 FTEs
1997	Staff reduced to 13 FTEs
1997	P.L. 24-48 authorizes classification of 10 employees
1997	A.G. response to DOA-P.L. 24-48 violates Organic Act
1999	Testimony on Bill No. 142 to transfer 12 employees from DLM and eight (8) employees from Department of Agriculture to the Commission

Department of Administration Refuses to Classify Employees

The Department of Administration (DOA) cited the 1997 AG opinion as the reason why it cannot classify the ten employees. However, the AG's opinion stated that P.L. 24-48 might resolve the previous mistake of hiring the employees in unclassified positions. The opinion stated that "in the long run, if the conversion of the ten unclassified employees is challenged it could result in lawsuits and court rulings which would not be to the government's benefit". The AG also stated that P.L. 22-48 could be considered an appropriate remedial step to ward off future difficulties. The ten unclassified employees are long-term Commission employees. They were previously qualified and certified by the DOA. They provide much needed stability and continuity to the commission. The intent of the Legislature, stated in P.L. 24-48 is to convert the ten incumbent employees to classified positions. The AG believes that the conversion could resolve a mistake. We believe that the Commission's Director should continue with the necessary paperwork to have the employees classified.

Programs Transferred But Not Staff

Bill 142 recognized that numerous responsibilities and services formerly authorized or tasked to the Department of Agriculture and the Department of Land Management, now falls within the administrative purview of the Commission. Numerous responsibilities and services formerly authorized or tasked to the DLM and the Department of Agriculture, now fall within the purview of the Commission, e.g., long term leasing of government land and land lease permits. Although the DLM and the Department of Agriculture are no longer responsible for administering these programs they still retain the administrative staff and support budgets. According to the Commission, the Department of Agriculture handles 38 leases with 17 staff members while the Commission's Agricultural Division handles 365 leases with 3 staff members. The DLM handles two subdivisions of approximately 600 lots with 17 staff members while the

Commission's Residential Division handles 6,000 lots with two staff members. This staffing pattern shows a definite disparity in staffing versus workload among the different agencies.

Lack of staffing is Serious Obstacle

A serious obstacle facing the Commission is the lack of a classified staffing pattern that insures stability, continuity, and efficiency. Now that the Commission has started awarding leases, the clerical phase is over. There are technical problems with some of the leases. Further, most of the land transferred to the Commission to establish the Chamorro Homelands Inventory, was not surveyed into lots which can be readily distributed to applicants. Additionally, without planners, the Commission cannot determine the highest and best use of transferred land. The upcoming work and specialized projects that are required for the Commission to fulfill its mandate cannot be done with the present staff. Specialized and technical people such as Planners, Surveyors, Land Agents, Agricultural Management Technicians / Specialists and Program Coordinators are needed to carry out its programs.

Benchmark for Staffing

A benchmark exists for staffing the Commission. The Commission used the Department of Hawaiian Home Lands (DHHL) as a model when it prepared its organizational chart and staffing plan. The staffing plan was presented to various legislatures and legislators, however, the organizational structure and the staffing plan has still not been approved. The Commission is patterned after the DHHL, and it has a similar mission. The mission of the DHHL is to administer Hawaiian home lands for the benefit of native Hawaiians, primarily through homestead awards. In order to accomplish this, the DHHL has a staff of approximately 128 employees and an average annual operating budget of about \$8-10M. The DHHL operating budget sources are the general fund (about 16%), and special funds (about 84%). The special funds are created from revenues earned by the DHHL. Since its inception, the DHHL has received more than 27,000 applications, and awarded more than 6,000 leases. In contrast, the Commission is staffed with 13 FTE's, a few detailed employees, and it has a budget of about \$450,000. It has received over 11,000 applications and awarded almost 2,000 leases. Currently the Commission receives its operating budget from the general fund. However, with proper staffing to implement the various Commission programs, such as commercial leasing, it could quickly earn sufficient revenue to support itself with no help from the general fund.

Recommendation:

1. The Director requests the Legislature to approve a staffing plan and pass legislation to transfer employees and budgets to match programs previously transferred to the Commission.

2. The Director re-submit paperwork to DOA to classify employees occupying positions approved by P.L. 24-48.
3. The Director prepare a strategic plan, including milestones, to show when the Commission could be independent from the general fund, if it was properly staffed to implement all of its programs
4. The Director fills positions approved by PL 24-48 through the merit system if DOA again refuses to process the paperwork to classify incumbent employees.

Improving The Lease Award Process

Public Law 23-38 established rules and regulations of the CLTC pursuant to GCA Sections 75103 and 75107 of chapter 75 Title 21. The rules and regulations are known as the "Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission".

We found that in spite of the fact that the rules and regulations set forth the necessary procedures to ensure fairness with respect to accepting and processing lease applications, some discrepancies did occur. In the July 1996 Commission minutes the Director stated that the Commission did not have the type and number of employees to determine eligibility and priority of applicants. He also stated that the Commission needed help from the Legislative and Executive branch to provide for the technical staff necessary to complete the research into real property tax records and to review documentation necessary to determine an applicant's qualifications, eligibility, and priority. This was a massive undertaking for a small agency that was not prepared to conduct an operation of this magnitude. However, our review showed that once the Commission was directed to start the lease program, they proceeded with a small cadre of Commission personnel and an ad hoc staff that ignored or inadvertently overlooked the rules. Mistakes were made.

The goal of the Commission is to give as much land to as many Chamorros for the cheapest price and for the longest time. The Commission did not have sufficient ready lots in its inventory to make unlimited awards. It awarded the ready lots then continued the award process by focusing on applicants already legally occupying Commission lands. The "first come, first served" rule was ignored when an otherwise qualified applicant was already occupying government land. The Commission awarded 1,034 residential and 343 agricultural leases. A total of 1,377 leases have been awarded since the Act was implemented in 1993. The first lot was awarded in 1997. The Commission has received more than 11,000 applications for residential and agricultural land. When we concluded our fieldwork there were more than 9,500 applicants still waiting for land.

Program Problems

We documented the following problems with the program:

- Island-wide waiting lists for agricultural tracts were not established nor maintained.
- Copies of priority listings for the previous month as of the last day of the month was not recorded at the Department of Land Management.
- Names, file numbers, and dates of application of all that received lease awards were not posted within two weeks of award, in every municipal Mayor's office or publication of general circulation.
- Almost 2,800 applicants have not paid the \$50.00 processing fee and the applications are still on file.
- Some lease awards were not facilitated within 90 days of notice of award.
- No determinations were made whether applicants were qualified to fulfill lease terms.

- Current local property tax rolls were not used to determine whether local applicants owned property. There were no procedures to determine whether of-island applicants were property owners.

Application of Rules

To determine how the rules were applied in specific cases we conducted reviews on a judgment sample of 170 (12%) of 1,377 completed lease award files. We reviewed 113 residential and 57 agricultural files respectively. We noted the following instances where the rules for accepting and processing applications and awarding leases were not followed.

Section 75108 of 21 GCA provides that in case two lessees marry they shall choose the lease to be retained, and the remaining lease shall be transferred or canceled. We found 17 cases where leases were not transferred or canceled and the married couple retained both lots.

Section 6.2 (c) of the rules provides that the commission shall prioritize awards for residential tracts to applicants according to land ownership (priority (1), no land owned, priority (2), one acre or less owned). We found that six landowners, priority (2), were given leases ahead of non-landowners, priority (1). We also found that the interviewers did not fill in the Tax Check block on 71 Residential Review Reports (62.8%), of 113 files reviewed in our sample. The Tax Check block is used to show that property tax records were reviewed to determine property ownership.

Section 5.7 provides that applicants shall be considered for award in the order in which the Commission received their completed applications. We found eight cases where leases were awarded although there were no applications on file.

Section 6.5 (b) provides that the agricultural lessee shall occupy and commence to use the tract to cultivate as his farm, within one year after the lease is made. The Commission should have made inspections to determine the status of the leased property after one year. However, we could not find any records of inspection in 39 files to indicate whether the land was occupied or cultivated.

Section 6.7(b) (1) provides that a commercial plan must be submitted in order for lessees to raise animals on a commercial basis. Only three of eighteen commercial lessees submitted a commercial plan.

Section 6.3 (a) requires the Commission to determine if an applicant is qualified to fulfill the terms of the lease. No determinations were made whether lessees were in a position to perform lease conditions. Eighty-three residential applicants in our sample (93.7%) indicated no bank financing. No other proofs of qualifications were requested by the Commission or provided by the applicants.

Section 3.1 requires the Director to sign all leases. Fourteen files had discrepancies such as, lease not signed by the Director, or the lessee, or no lease in file.

Need to Accelerate Leasing Program

Less than 12 percent of qualified applicants have received leases from the Commission since the Act was implemented in 1993. Thousands of eligible applicants have been waiting for years to obtain leases. The Commission needs to do more to accelerate its lease program to fulfill its mandate. The most serious problems hindering the Commission are the lack of qualified technical staff and scarcity of ready lots.

The Commission needs legislative support to obtain qualified staff that is knowledgeable of technical requirements and program rules. The staff must be able to conduct land surveys or work with other government agencies to get land surveyed, ensure that an agricultural program is started, implement a commercial leasing program, and determine the status and qualifications of applicants. Furthermore, the Commission needs to amend the lease application form to obtain additional information so that a valid determination can be made of the applicant's property ownership, marital status and other qualifications to perform under the terms of the lease.

Recommendations:

1. The Director request the Legislature to approve and direct an immediate budget based transfer of a cadre of skilled surveyors and land agents from the Department of Land Management, to perform land surveys, and address technical land issues.
2. The Director request the Legislature to approve and direct an immediate budget based transfer of a cadre of skilled agricultural management specialists from the Department of Agriculture to provide agricultural leasing, training, and inspections.
3. The Director ensures that lease application forms are modified to provide additional information that can be used to accurately determine qualifications.
4. The Director conducts adequate reviews of lease files to ensure rules were followed before signing leases.

Inventory of Available Lands

Section 75104 of GCA 21 provides that all government lands excluding (1) all lands dedicated to a specific public use by law, and (2) all lands reserved in accordance with Section 60105 of this title are designated as available lands. All available lands shall immediately assume the status of Chamorro homelands and be under the control of the Commission. Any government land under lease, permit or agreement shall not assume the status of Chamorro homelands until the lease, permit or agreement expires or the lands are withdrawn from the operation of the lease, permit or agreement.

Inventory Not Updated

All government lands, not specifically excluded, was automatically transferred to the Commission when it convened for the first time in March 1993. However, the Department of Agriculture had processed many long-term agricultural leases that were later found to be invalid. The land covered by these leases was not included in the initial Chamorro homeland inventory that was compiled by the Department of Land Management. Also, land made available by expired land use permits is not included in the inventory. Furthermore, P.L. 23-39, enacted September 15, 1995, terminated the so-called "land for the landless programs," and mandated that all government-owned real properties, not specifically excluded, are designated as available land. All available land assumed the status of Chamorro Homelands. This law significantly increased the Commission's land inventory. However, the inventory has not been updated to reflect changes. The last inventory of Chamorro Homelands was compiled in February 1994. The Commission is still in an evolutionary mode. It does not have procedures for identifying, acquiring, and transferring land to the Chamorro Homeland inventory.

P.L. 22-18 specifies that all government of Guam lands, excluding all lands dedicated to a specific public use by law, and all lands reserved in accordance with Section 60105, Title 21, GCA, are designated as available lands for the purposes of the Commission. It also provides that if a government of Guam agency commercially leases reserved land, revenues realized should accrue to the Commission, and that the lease rates shall reflect fair market values.

Commission May be Losing Revenue

If the inventory is not accurate the Commission does not know what it is entitled to and may be losing revenue that it desperately needs. Many acres of commercially leased public land are not in the Commission's inventory. Much of this land is encumbered with long-term revenue generating leases. One government agency makes more than \$2.0M annually by leasing public land. We believe that the Commission should establish a computerized database of all commercial leases of public land, in order to determine when it can expect to receive some of this revenue. At a minimum, the database should

show lease expiration dates and when the leased land should be transferred into the Chamorro homeland inventory.

Recommendation:

1. The Director ensures that the Chamorro homeland inventory is updated to include all available lands.
2. The Director coordinates with each government agency (particularly autonomous agencies) and establishes a computerized database of commercial leases of public lands.
3. The Director reviews the database of commercial leases with the CLTC's legal counsel to determine when revenue should accrue to the Commission.

Proper Management and Use of Funds

Fund resources are inherent in carrying out the mission and objectives of any organization and the funds must be properly managed and used for purposes established by policies, rules and regulations. Sources of funds should be continually explored.

Management and Accounting of Funds

Better accounting and business practices dictate that all funds should be properly accounted for and payment documents reconciled with the recorded revenues on a monthly basis.

Funding resources made available to the Chamorro Land Trust Commission (the "Commission") from various public laws are as follows:

Public Law 22-140, Section 25, authorized funds from the Department of Land Management Land Survey Revolving Fund for surveying and mapping of government lands to be made available for leasing to eligible applicants by the Commission. The Department of Land Management (the "Department") may expend \$250,000 from the Land Survey Revolving Fund to employ four (4) Surveying Technicians and one (1) Survey Cartographer, to purchase necessary surveying and mapping equipment, including one (1) vehicle, and to make other needed purchases to carry out surveying and mapping. Further, it provided that such personnel and equipment shall be used only on programs directly connected with the needs of the Commission.

Public Law 22-76, Section 75120(b) requires that the Commission shall establish rules and regulations for the use of the lease payments from the Guam Municipal Golf Course in accordance with the procedures set out in the Administrative Adjudication Law and publish annually an audited financial statement in a newspaper of general circulation.

According to Public Law 22-31, Section 3, land rentals and sales proceeds arising from the leasing of property under the land use permit "arrendu" program and sale of lands pursuant to Sec 1, Public 16-118; Sec 2, Public Law 20-133; Sec 2, Public Law 20-189 shall be deposited in the Chamorro Home Loan Fund established by Public Law 12-226. Public Law 24-168, Sec 7 appropriated \$2,500,000 from the General Fund to the Chamorro Loan Guarantee Fund (Fund) for the purpose of guaranteeing mortgages and loans issued to Chamorro Loan Trust Beneficiaries pursuant to both public and private lending programs, as further provided for pursuant to Chapter 75, Title 21, Guam Code Annotated.

Revenue Accounts Need Reconciliation

We reviewed the Chamorro Land Trust Commission (CLTC) revenue funds and noted that reconciliation of accounts was not done by CLTC with the Division of Accounts (DOAccts), Department of Administration (DOA). The total revenues recorded as of July 1, 1999 for the Land Trust Application Fee (Account 341152101) were \$451,488; the revenues were earned as follows: FY 1999, \$11,751; FY 1998, \$33,725; FY 1997, \$114,842 and FY 1996, \$291,170. The mandated one time application processing fee is \$50.00 but the total of \$451,488 did not equate to the correct number of applicants and it is equivalent to 9,030 applicants. This could have included payments for Land Trust leases. The reconciliation could have determined the cause of the discrepancy. However, the CLTC listing of paid applicants of June 23, 1999 indicated 8,359. In addition, there were thirty-eight (38) Guam Treasurer's Receipts that were not matched to applications, increasing the number of paid applicants to 8,397, in the total amount of \$419,850. DOAccts. DOA recorded more revenues in the amount of \$31,638 and equivalent to 633 applicants. Further, we found that the CLTC has 2,788 applications that were not processed and awaiting appropriate action by the Commission. Applicants who made payments to the Treasurer of Guam did not return or present the payment receipts to the Commission to ensure that payments were made.

Monitoring the Use of Authorized Funds

We found that authorized funds for surveying and mapping of government lands for leasing by the Commission were not used as intended. The funds were to be used only on programs directly connected with the needs of the Commission. However, we noted that the control of these funds was in the Department rather than the Commission. In our interview with the CLTC senior staff personnel, the surveying and mapping services were neither provided by the Department or equipment purchased for the Commission needs. There was only one (1) communication between the Department and the Commission. In a letter of May 26, 1995 to the Director of CLTC, the Department stated their inability to provide the services to CLTC with the suggestion to contract the survey projects.

We reviewed the appropriation account 5222C959975CT002 and we found that \$250,000 was allotted and as of July 22, 1999 the funds available were \$120,102. The total expenditures were \$125,368 and the outstanding encumbrances were \$4,530. These do not appear consistent with the intent of Public Law 22-140. We examined the transactions as of July 22, 1999 and selected eight (8) transactions costing over \$500 each transaction and with the overall total amount of \$10,653. One of these was for 199 SPG Polo Shirts and Cap costing \$2,123. The items on the (8) transactions appear not for use on programs directly connected with the needs of the Commission.

Management of Commission Funds

We found that the Commission Funds were not managed to the full advantage. In April 1999, the Commission had established a business checking account non-interest bearing

account. The lease payments from the Guam Municipal Golf Course, originally under Commercial Loan Fund Account, the largest monthly revenue of the Commission, \$16,422 (\$197,060 annually) was transferred to this account and rentals from radio communication services were also deposited in this account. We reviewed the Commission revenue accounts that were maintained by DOAccts, DOA and we noted that the Leases – Commercial Loan Fund (Municipal Golf Course) earned interests in the total amount of \$136,154 from FY95 through FY99 (at July 1, 1999). Because of this transfer to and establishment of the non-interest-bearing checking account, the Commission lost interest income that is much needed for its operation. Furthermore, the Commission has 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 newspaper of general circulation pursuant to Public Law 22-76. Also, we found that monies were improperly disbursed. Surveying services were paid without a covering Service Contract. An original service contract was executed and services rendered complete and paid in full with money appropriated and allotted by Public Law 24-48. Nevertheless, the survey service was allowed to continue and additional charges accrued in the total amount of \$52,900. Bank statements from April 30,1999 to July 31, 1999 indicate total payments of \$46,200. These appear to be improper disbursement of funds. We did not find a service contract, new or amended, that represent a legal obligation properly certified for funds available to cover the stated or agreed amount.

Access to Funds for Commission Needs

We found that the Commission has failed to searchingly focus on available funds. We reviewed the Combining Statement of Revenues and Expenditures and Changes in Fund Balance (Unaudited) ending September 30, 1998 for the Housing Revolving Fund and Land for the Landless Fund and the Fund Balances were \$97,223 and \$431,863, respectively, and the combined balance of \$529,086. These covered fiscal years 1995, 1996, 1997, and 1998. The Commission has yet to access these funds although they are funds properly belonging to them. In accordance with Public Law 22-31, the Commission Legal Counsel on November 20, 1998, requested the Department to transfer all the monies earned from leasing property under the former Land Use Permit (arrendu) and sales of land under the Land for the Landless programs to be deposited to the Chamorro Home Loan Fund. However, the Department has not responded to the request and we did not find any subsequent communication. We did not find money deposited in the Chamorro Home Loan Fund although preliminary information from the Land Administration Division of the Department indicated that there were 920 lots sold under the Land for the Landless Program but not all may have been paid. We believe that the Commission should have taken more aggressive action to access these funds for CLTC use in its wide range of operations.

Unfunded Chamorro Loan Guarantee Fund

We examined the Appropriation Accounts Record and noted that the account was set up. However, the allotments were not release. Therefore, the Loan Guarantee Fund was not funded. We reviewed the Commission Loan Guarantee Program for 1998 and 1999 and

there were thirty (30) Small Business Administration loan in the total amount of \$1,281,700 that were guaranteed. This is not in accord with the intent of the law. This is not a sound or accepted business practice. The Commission should have first ensured that the loan guarantee funds were available. Furthermore, the Commission's guarantee of repayment should be adequate security for a loan and should never exceed the ability of the Fund to provide for loans authorized.

Established Policies and Procedures Useful

We have determined that the Commission's failure in balancing Revenue Accounts was due to the absence of established policies and procedures for handling CLTC funds. Policies and procedures constitute the governing principles and courses of action which give direction to and bind all actions of all employees of the Commission. It is useful by providing the necessary guidance for unity of action and standardizes certain procedures to assure a uniform method of carrying out Commission policies. Also, because of the faulty organizational arrangement, and unfamiliarity with requirements, duties and responsibilities were not properly delineated. Moreover, there is lack of personnel training and not enough technical personnel. The Commission was not able to use the authorized funds. The loss of potential funds from interest income, the funds improperly disbursed and the inability to access several funds were all due to management's insufficient attention. The Commission has a myriad of responsibilities that called for management attention and resulted in failures in managing fund resources. There should be more supervisory review and aggressive involvement of top management.

Mission Accomplished with Accounting and Management of Funds

In order to meet the needs of the Commission, funds must be properly accounted for and managed. If the account balances were properly reconciled monthly, and revenues properly accounted for, the status of available funds would be readily known. Serious focus on sources of funds and uses of funds and continual monitoring will result in the Commission meeting operational requirements, more technical personnel could be employed and equipment could be purchased. This should result in the Commission achieving its mission of leasing lands timely to as many people for the longest time for the cheapest amount of money.

Recommendations:

1. The Director establish policies and procedures for handling CLTC funds including reconciliation of all revenue accounts.
2. The Director take immediate action to access all available funds for use in the CLTC operation.
3. The Director open an interest bearing account with the bank and continually explore the sources of funds.

4. The Director promulgate rules and regulations for the use of lease payment from Guam Municipal Golf Course and publish annually a financial statement in a newspaper of general circulation pursuant to Public Law 22-76.
5. The Director immediately determine the status of the proceeds from the rentals of properties and sale of lands for deposit to the Chamorro Home Loan Fund and in accordance with Public 22-31.
6. The Director initiate a purchase order or services contract to represent the legal obligation certified for funds available in compliance with the Certifying Officers Law.
7. The Director take immediate action to have funds allotted to the Chamorro Loan Guarantee Fund to be able to guarantee loans.

Commercial Leases/Licenses

Commercial Leases/Licenses for the commercial use of Land Trust properties will help benefit the beneficiaries to produce and improve their livelihood, and will provide a revenue stream to fund various programs of the Commission. Licenses that are issuable should be written and executed expeditiously.

Leasing of Land Trust Properties

The Commission's desire to pursue the leasing of Land Trust properties for commercial uses to the general public for revenue purposes is clearly focused. It requires that the commercial leasing process be carried on with precise and prompt action.

Commercial Lease/License Execution

We found that commercial licenses to use Chamorro Land Trust properties were not being processed, written and executed promptly. Our review of the Chamorro Land Trust Commission (CLTC) Board Minutes showed discussion on several requests for commercial license that are potential sources of revenue. In the March 3, 1998 Minutes, the Director reported that he was signing five (5) commercial licenses to radio communication services companies who have been occupying Land Trust properties. We noted that Federal Communication Commission rules and regulations that facilitate the issuance of the commercial license govern radio communication services. The CLTC senior staff personnel indicated that appraisals on these properties were made and the commercial lease rental could be determined on the fair market value of the property. However, only one (1) commercial lease agreement was signed and executed on April 22, 1999 (a year after the Director's report) with the stated monthly rental of \$1,060, (\$12,720 annually). When this license was issued, the lessee also paid for back rentals in total amount of \$15,219 and the current month rental of \$1,060.00. Back rentals are collected on execution and signing of the Commercial Lease Agreement. On July 19, 1999, the CLTC senior staff personnel stated that back rentals from radio communication service companies occupying Land Trust properties approximate to \$115,000. While the projected revenue would be \$122,000 total per year for communication licenses. In the September 24, 1998 Board minutes, the Director reported eight (8) commercial requests and the Board authorized the Commission to proceed with the licensing. However, licenses have yet to be written and executed. As a result, the collection of back rentals is delayed. Also, the Commission could incur losses in interest income when the money is not on deposit with the bank.

The rules and regulations on commercial leases provided in Bill 235 (24th Guam Legislature) governs the general commercial leasing. This includes the commercial agricultural lease, commercial lease, and residential commercial lease. One (1) license agreement was executed on March 26, 1997 with no monetary consideration with the stipulation that payment will be made when the compensation is determined. In the Board Minutes of September 27, 1996, there were seventy-four (74) commercial requests

reported. Also, there were two (2) requests for pre-occupied land trust agricultural property in Merizo for commercial agricultural operation.

Commercial Licensing Needs Improvement

We believe that the commercial licensing process for requests on pre-occupied properties was not fully and expeditiously carried out because of lack of authority to implement commercial leasing and the absence of rules and regulations for commercial leases. It appears that to have the rules and regulations was not a priority. In June 1999, Bill 235 was re-submitted to the 25th Guam Legislature. However, the status of the bill is unknown. The commercial licenses for the radio communication companies, although governed by the Federal Communication Commission rules and regulations, allow expeditious issuance of the licenses. Licenses were not processed and executed because of faulty organizational arrangement. Duties and responsibilities were not properly delineated, and CLTC does not have enough technical personnel. We observed that the commercial licensing process is a solo operation handled by CLTC senior staff personnel who has a wide range of responsibilities that call for attention. This resulted in the weakness in the commercial licensing program. Also, appraisal of property is not done timely, because of management's insufficient attention.

Land Trust Beneficiaries Improved Livelihood and Commission Added Fund Support

In order to assist the Land Trust beneficiaries to improve their livelihood and to help them produce, commercial licenses must be processed and executed expeditiously. If they have the license they are encouraged to work on their properties, and become productive, and eventually contribute to the economy. If the communication licenses are executed promptly and rentals collected, the Commission would have additional funds to function in today's economic situation.

RECOMMENDATIONS:

1. The Director initiate an aggressive follow-up with the 25th Legislature for the passage of Bill 235 (first introduced in the 24th Legislature).
2. The Director expedite processing and execution of Commercial Lease Agreements for the communication leases on pre-occupied Land Trust Properties, and collect all back rentals.
3. The Director immediately conduct an extensive review of all pending commercial license requests and expedite processing and execution of Commercial Lease Agreements including new requests for communication licenses on other sites.



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
P.O. BOX 23667, GMF, Barrigada, Guam 96921
(1208 East Sunset Boulevard, Tiyan)
(671) 475-0393/0394/0395 - FAX: (671) 472-7951

ROBERT G.P. CRUZ
PUBLIC AUDITOR

April 5, 1999

Mr. Joseph M. Borja
Administrative Director
Chamorro Land Trust Commission
901 Central Ave Tiyan
P.O. Box 2950
Hagatna, Guam 96910

Dear Mr. Borja:

The Office of the Public Auditor will be conducting an audit of the operations of the Chamorro Land Trust Commission. The audit will encompass the Commission's operations from October 1, 1996 through September 30, 1998. The review may encompass additional time periods if it may be deemed necessary.

Section 1908 of Title 1 of the Government of Guam Code Annotated mandates that the Public Auditor annually audit, or cause to be conducted post-audits, of all the transactions and accounts of all departments, offices, corporations, authorities, and agencies in all of the branches of the government of Guam. The Office of the Public Auditor respects the legal confidentiality of these records and does not publicly release them when legal restrictions prohibit such release.

Mr. Les Kuykendall, Auditor III, will be conducting the Audit. Mr. Ernesto Sales, Auditor II, will be assisting him. We have scheduled an entrance conference with your agency on April 19, 1999 at 10:00 a.m. If this date and time are not convenient, please let me know and we will reschedule the visit. The Public Auditor, Mr. Robert G. P. Cruz, and the Chief Auditor, Mr. Eloy S. Lizama will attend the entrance conference.

Your assistance in this regard will be highly appreciated. Should you have any questions during the course of the review, please do not hesitate to call my office.

Sincerely,

Robert G. P. Cruz

cc:

Joseph T. Gumataotao, Commissioner
Rita C. Okada, Commissioner
John Q. Finona, Commissioner
Tomas T. Aguon, Commissioner

cc'd: Annette Amigues



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
P.O. BOX 23667, GMF, Barrigada, Guam 96921
(1208 East Sunset Boulevard, Tiyan)
(671) 475-0393/0394/0395 - FAX: (671) 472-7951

ROBERT G.P. CRUZ
PUBLIC AUDITOR

October 7, 1999

Mr. Joseph M. Borja
Administrative Director
Chamorro Land Trust Commission
901 Central Avenue
Tiyan, Barrigada, Guam

Dear Mr. Borja

We conducted the management audit of the Chamorro Land Trust Commission from March 1999 to August 1999. Herewith is the draft report for your review and comments. We ask that you respond to each recommendation and please state what steps are being taken to correct the problem. Also, please provide a time frame for completion. Your comments will be included in this report. We also invite you to provide us with any of your agency's "Best Practices" or specific accomplishments to be included in our report. We appreciate receiving your response by October 21, 1999.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting in preparing your response. Public release of the report will be made solely by our office when the report is published in its final form.

Thank you for your cooperation in this effort.

Sincerely,

ELOY S. LIZAMA
Chief Auditor

Chamorro Land Trust Commission

P.O. Box 2950 Hagåtña, Guam 96910

Phone: 475-4251 Fax: 477-8082

Joseph T. Gumataotao, Chairman
Rita C. Okada, Commissioner
John Q. Finona, Commissioner
Tomas T. Aguon, Commissioner

Joseph M. Borja
Administrative Director
Ronald E. Teehan, Jr.
Dep. Administrative Director

October 20, 1999

Mr. Eloy S. Lizama
Chief Auditor
Office of the Public Auditor
P.O. Box 23667
GMF, Barrigada, Guam 96921
FAX: 472-7951

Re: Request for extension of time to respond to 'Draft' management audit report.

Dear Mr. Lizama:

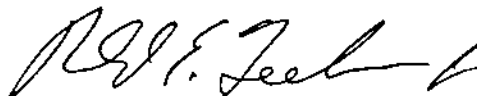
On behalf of the Chamorro Land Trust Commission, I wish to request for an extension of time to respond to the 'Draft' management audit report on the Commission. As per your letter of October 7, 1999, the deadline to respond is October 21, 1999.

Please be advised, Mr. Borja has been on medical leave since October 10th, but is anticipated to return to work on Monday, October 25, 1999. Commission staff are preparing a draft response for his review.

In light of this situation, and the desire to provide your office with a well considered response, I wish to respectfully request that the deadline be extended to Friday, October 29, 1999.

Your favorable consideration of this request would be greatly appreciated.

Sincerely,



Ronald E. Teehan, Jr.
Administrative Director, Acting



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
P.O. BOX 23667, GMF, Barrigada, Guam 96921
(1208 East Sunset Boulevard, Tiyan)
(671) 475-0393/0394/0395 - FAX: (671) 472-7951

ROBERT G.P. CRUZ
PUBLIC AUDITOR

October 21, 1999

Mr. Ronald E. Teehan, Jr.
Administrative Director, Acting
Chamorro Land Trust Commission
901 Central Avenue
Tiyan, Barrigada, Guam

Dear Mr. Teehan:

This refers to your letter of October 20, 1999 requesting an extension to respond to our draft management audit report on the Commission.

We are extending the deadline of your response from October 21, 1999 to Friday, October 29, 1999.

Sincerely,

ELOY S. LIZAMA
Chief Auditor

Chamorro Land Trust Commission

P.O. Box 2950 Hagåtña, Guam 96910

Phone: 475-4251 Fax: 477-8082

Joseph T. Gumataotao, Chairman
Rita C. Okada, Commissioner
John Q. Finona, Commissioner
Tomas T. Aguon, Commissioner
Lucy San Nicolas, Commissioner

Joseph M. Borja
Administrative Director
Ronald E. Teehan, Jr.
Deputy Administrative Director

November 3, 1999

Mr. Eloy S. Lizama
Chief Auditor
Office of the Public Auditor
P.O. Box 23667
GMF, Barrigada, Guam 96921
FAX: 472-7951

Re: CLTC Response to 'Draft' management audit report.

Dear Mr. Lizama:

On behalf of the Chamorro Land Trust Commission, I would like to thank your office for the conduct of the management audit of the Commission. Looking at the audit from a long term view approach, your findings cannot but help in the development of the Commission and its programs.

Our comments, by section, are as follows:

BACKGROUND

The Chamorro Home Loan Fund has appropriation authorization, \$1,000,000 from the Unappropriated Surplus of the General Fund. The CLTC Available Lands Inventory can only be corrected by legislative action (statute). After 30 days from date of submittal if these 2,800 unpaid applications are not paid they are invalid. The \$50 is a processing fee not an application fee and is non-refundable.

OBJECTIVE AND SCOPE:

The Chamorro Land Trust Commission does not administer the "government housing rental program". The referred program is administered by the Housing Division of the Department of Administration. Some of the 77 housing units administered by DoAd are located on CLTC property such as the Old GMH Staff Housing units.

PROPER STAFFING

Commission Severely Understaffed: Generally concur. The Commission was first staffed on August 9, 1993 (the day after the earthquake) and then only by the Administrative Director who did not receive his first paycheck until 6 months later when another employee was hired in March 1994. Turnover has been tremendous. List of all employees since 1993 attached. *

At the request of the Commission, the Legislature funded the 4 positions at Department of Land Management for those personnel which have been detailed to the Commission. Funding for these positions were not requested by DLM which listed them as vacant. Now that the positions are funded, DLM is threatening to take back the personnel.

Details From Other Agencies: Generally concur. On the majority of occasions detailed personnel were usually problem employees. Of the 7 DLM employees detailed to the Commission, 1 went on Doc Sanchez Scholarship, 1 had a drug problem, 1 filed a grievance with Civil Service Commission because of the transfer, 1 eventually resigned because of official misconduct (prior to coming to the Commission), 1 requested to return to DLM because she did not agree with the mission of the Commission and 2 were excellent employees. The Chamorro Land Trust Commission is on record as to having requested manpower assistance from the Department of Land Management and the Department of Agriculture to perform land surveys, residential leasing, agricultural leasing and related activities on several different occasions.

The Chief of the Agricultural Division comments: *"As one involved in land leasing for over 16 years, it is unjust to continue to operate at this level. Product delivery to the people of Guam is behind by 4 years. Staff are overburdened, burnt out and are suffering stress related ailments. We have to move beyond the clerical capability which now comprise the makeup of the Commission's present staffing pattern. Otherwise, we have frustrated Chamorros and staff continuously on sick leave due to heavy stress."*

Inability to Hire Staff: Generally concur.

Department of Administration Refuses to Classify Employees: Generally concur. At the last Commission meeting the Commission discussed legal action to classify.

Programs Transferred But Not Staff: Incredible, that this does not seem to be recognized and that no respond has been made.

Lack of Staffing is Serious Obstacle: Generally concur, though "obstacle" is too mild, more like death knell or a slow cancer that manifests itself in customer complaints, unanswered phone calls and department impotence.

*List of employees not included with report. The Office of the Public Auditor felt that names of employees were not necessary to corroborate the Director's response.

Benchmark for Staffing: Incredible comparison, considering funding levels, staffing levels, production levels, political environment and time since implementation of Chamorro Land Trust Act.

Recommendations: Generally concur with Nos. 1, 2, and 3. However, No. 4 would be unfair to existing employees. Would also include legal action as a recommendation given past efforts and time already invested. The position of Administrative Director is not listed in the Hay Study and is one of the few if not the only director position whose salary has a ceiling specifically limited by law.

IMPROVING THE LEASE AWARD PROCESS: A concern is raised, that, once the available lots were distributed on a first come, first served basis, as determined by the order of applications submitted, the Commission went on to issue leases to legal occupants.

As to the Commission focusing on the issuance of leases to qualified Chamorros legally occupying Chamorro Homelands pursuant to CLTC Rule 6.4(a) and (b), that is simply a matter of proper land use management and planning. Rule 6.4 is in fact a regulatory pre-approval for otherwise qualified Chamorros. The issue is, what lands are already, as a matter of applicable law, rules and regulations, committed? The legal occupants cannot be evicted, and the Commission cannot utilize adjacent lands without the designation of appropriate metes and bounds. As a practical matter, the Commission found it necessary to organize Chamorro Homelands, through the lease and concurrent survey process.

Further, the Commission continues to design subdivisions for non-preoccupying applicants. However, almost without exception, an as-built map of an area slated for development, invariably finds numerous, legal, pre-occupying, qualified Chamorros. These persons must be assigned a designated lot. Only then, can you go on to distribute the remaining, non-committed portions on a first come, first served basis.

TOTAL PAID APPLICATIONS (residential and agricultural)	8,470
TOTAL NOT PAID (residential and agricultural):	2,850

RESIDENTIAL

Total applications:	5,904
Total leases:	1,014
Total waiting:	4,890

AGRICULTURE

Total applications:	2,566
Total leases:	365
Total waiting:	2,201

In addition there are approximately 1,000 commitments to lease as evidenced by the utility authorizations granted so far under authority of Public Law 22-157.

Program Problems: Those bullet points not specifically cited in our response to this subsection is to be taken to mean that we generally concur.

- Island-wide waiting lists for agricultural tracts were not established nor maintained.

Comment: The Commission has in fact established an island-wide list of tracts designated for agricultural development by lessees. This listing of tracts is available for review by applicants. Further, the Commission maintains a database specifically comprised of agricultural applicants. However, our reading of Rule 5.5 finds it to be extremely vague as to whether the Commission has to establish an island-wide list for a specific, individual tract. The language calls for an island-wide list (singular) for designated agricultural tracts (plural). It is our reading of this to mean that we make available to all agricultural applicants a list of available agricultural tracts. There are over 2,500 agriculture applicants, 365 agricultural leases have been issued.

- Almost 2,800 applicants have not paid the \$50.00 processing fee and the applications are still on file.

Comment: The Commission has repeatedly found that applicants paid the filing fee, but failed to deliver it to the Commission. The Commission never directly collected the fee. Many thought the Treasurer of Guam would automatically forward a copy, just as they would a utility payment. Later, they contact the Commission to inquire as to their status. Rule 5.3 Application Processing, states in pertinent part, "[t]he applicant shall pay a onetime processing fee of \$50.00 to the Commission within 30 days from application submittal." There were originally 192 unmatched receipts, staff has reduced that number significantly. Unpaid applications are maintained in a separate database and are not commingled with active files.

- Some lease awards were not facilitated within 90 days of notice of award.

Comment: In some cases, this may possibly mean, that problems or complications were encountered, or, due to a continuing review, cause was established to hold back from final execution. No application in this category will be released until all outstanding are resolved. Though the Commission desires to resolve all such cases in a timely manner the lack of technical personnel to review these cases continue to be the major impediment. Also some applicants do not have a current telephone number or a current mailing address.

- No determinations were made whether applicants were qualified to fulfill lease terms.

Comment: As this pertains to residential leases, no such requirement is found in the regulations, other than that they build residential dwelling that meets building codes within three (3) years from the installation of basic utilities infrastructure.

As for agricultural applicants, there is a requirement that they develop 2/3 of the leased area by the end of the first year. Only through the year end review process can we determine as to whether they are capable of meeting the performance criteria. Some lessees have discovered that agriculture is a difficult endeavor. As of October 29, 1999, all agricultural leases have been inspected and notices of noncompliance, when applicable, have been issued.

• Current local property tax roles (sic) were not used to determine whether local applicants owned property. There were no procedures to determine whether off-island applicants were property owners.

Comment: In February 1998, the Department of Revenue & Taxation detailed Mr. Johnny Castro, Real Property Appraiser IV to the Commission for the purpose of performing research on property ownership and conducting appraisals. Though he has been reviewing pending applications, he will, henceforth, additionally be assigned to review all previously executed leases. Any cases wherein we determine that an applicant either falsified an application or Commission staff failed to adequately research tax rolls, action will be taken, to include the revocation of the lease, when appropriate.

Please be advised that there seems to be a contradiction in the Rules and Regulations pertaining to legal preoccupying situations. Case law generally holds, that, when a rule(s) is 'vague' or 'ambiguous', then, the Rule should be applied in favor of the applicant, when such is consistent with the overall mission intent and mandate, and is not 'clearly' prohibited in a 'plain language' reading of the applicable governing statute.

Whereas there is no national property owners database, it would be virtually impossible to determine whether off-island applicants owned property elsewhere. We are on the "honor system" and cannot deny a lease without cause. An applicant's signature on the application form accepts the sanctions for false information and lease revocation but there is no fool proof process to determine off-island land ownership.

Application of Rules: This subsection raises a number of issues. Please also see our response to "Program Problems", above, which is also applicable to this subsection.

Marriage by two (2) Lessees: To date, the Commission has not had adequate staff to research situations wherein two lessees marry after execution of leases. However, this regulatory provision will be enforced, as cases are discovered. A more in-depth, thorough review will be dependent upon the acquisition of additional staff. The Commission shall inquire with the Department of Public Health & Social Services as to the availability of a marriage database that could be accessed. Lease revocation is a sanction.

Leases without applications: No lease should have been issued without an application. This may simply be due to an error in filing. However, this is a serious matter and the Commission would appreciate obtaining the names for the purpose of immediately initiating a review. Cross reference could be done with the Applications Log Book and the Applications Database if there is no application in the folder.

Incomplete annual inspections:

As of October 29 we have fully completed annual inspections of all 365 agricultural leases. All non-compliance situations are being called in for administrative and corrective action.

Commercial plan for commercial leases not submitted:

The Chamorro Land Trust Commission Agricultural Division staff currently is reviewing all requests for commercial agriculture use to insure all folders contain a commercial farm plan. Projected completion date is November 15, 1999.

Need to Accelerate Leasing Program: Generally concur.

Recommendations: Strongly concur. Discussions on this matter are ongoing with the Legislative Committee on Land, Agriculture, Military Affairs and the Arts. The Commission has specifically identified the positions within the Department of Land Management and the Department of Agriculture where position descriptions are no longer consistent with the respective department's statutorily prescribed mission mandates.

The Commission since 1994 and each subsequent budget year has prepared and submitted to the respective legislatures a performance based budget and staffing pattern in the amount of 1.7-1.9 million dollars with 55 full-time classified positions.

INVENTORY OF AVAILABLE LANDS: Generally concur. The Commission is on record on several different occasions that the lands inventory as submitted by DLM is fraught with errors. The Commission recommends a task force from related agencies to make recommendations for legislation relative to *lands inventories*.

Inventory Not Updated: Strongly concur. This situation is directly due to a lack of attention and lack of cooperation by the management of the Department of Land Management. The inventory situation relative to DLM can be judged by their use of the Land Survey Revolving fund as it pertains to priorities and needs of the Commission not even mentioning statutory obligations. Again here the Commission is on record on several occasions as having called for at least a roundtable discussion on at the very minimum the CLTC lands inventory. A total government lands inventory should have been done.

Section 75119 is a legislative mandate to conduct a land exchange review that will significantly impact the Commission's lands inventory.

Commission May be Losing Revenue: Strongly concur. Fearful, yet supportive, Department of Land Management personnel have been reduced to 'sneaking' information to the Commission, with the request that their Director not be informed as to their actions. The Department of Land Management already has a commercial lease database(?). But their Land Administration Division does not seem to be aware of their administrative responsibilities for existing DLM leases of GovGuam property, their expiration dates, notification procedures or rent payment status.

Recommendation: Strongly concur. The Commission also recommends a thorough audit of all accounts where the Commission has an interest in and in all accounts setup to receive interest amounts from other accounts.

COMMERCIAL LEASES/LICENSES: Generally concur.

Leasing of Land Trust Properties: Strongly concur.

Commercial Lease/License Execution: Strongly concur. Since the commencement of the audit, another commercial communications license has been executed for two sites. It is clearly recognized that the rate of processing must be increased.

Commercial Licensing Needs Improvement: Strongly concur. As the audit report notes the commercial licensing section is a solo operation. This matter has been raised with the Office of the Governor and two personnel are being transferred to the Commission pursuant to the Governor's authority under P.L. 25-72. One formerly held a upper management position with the Guam Economic Development Authority.

Land Trust Beneficiaries Improved Livelihood and Commission Added Fund Support: Strongly concur. Though there might be a concern that the Commission may place too much emphasis upon commercial programs, it stands to reason that the services applicants and others demand cannot be delivered or achieved without solid continuous sources of revenue.

Recommendations: Strongly concur. A bill relative to giving the Commission, with the assistance of GEDA, the authority to offer Oka Point for lease to the general market, has recently been introduced by Senator Lamorena. One more employee will be transferred to the Commission and will be assigned to the Commercial License program under the Deputy Director.

A second bill, providing for necessary statutory amendments and proposed rules and regulations, relative to leasing, is being finalized and will be submitted to the Governor within three weeks.

PROPER MANAGEMENT AND USE OF FUNDS: Generally concur.

Management and Accounting of Funds: Generally concur. There is also another public law that appropriates \$500,000 to GPA for the installation of infrastructure in Commission properties.

Revenue Accounts Need Reconciliation: Generally concur. Obtaining account information, let alone accurate information, from the Department of Administration and the Bureau of Budget and Management Research is extremely difficult. The Commission is also hampered by the fact that we are not electronically connected to the GovGuam financial management system. This is a situation that must be resolved. However, it will require that the Commission obtain the technical personnel and hardware necessary to knowingly request and subsequently review and confirm the information obtained.

Monitoring the Use of Authorized Funds: Please make absolutely clear that the Land Survey Revolving is under the control of the Department of Land Management and that NO expenditure has been made on behalf of the Chamorro Land Trust Commission. All references in the section to "Department" should be clear that it is Department of Land Management.

Management of Commission Funds: The Commission still has a claim on interest that its moneys have gained although they seemed to have been deposited in a different account. The Commission has made previous efforts to track and collect this interest account. Staff priority shifts have temporarily halted this effort. The lack of technical personnel and connection to the GovGuam financial management system has hampered our efforts in tracking this down. Commission Resolution No. 99-02 establishes the procedures for expenditures from the FHB account. I believe the survey services contract provided for an extension as it could not be certified beyond a one fiscal year budget term. The survey services contract was extended by Commission action, a copy of those meeting minutes is being researched and will be provided.

Access to Funds for Commission Needs: Generally concur. A lack of technical staff has prevented the Commission from aggressively pursuing this important matter. Efforts were previously made by the Commission (Acting Administrative Services Officer James Diaz) to address this concern but staff priority shifts and the lack of connection to the GovGuam financial management system prevented us from pursuing this further.

Un-funded Chamorro Loan Guarantee Fund: It was not until the initiation of the audit that the Commission became aware that the account had been set up but

that allotments were not released. As per conversations with BBMR, we were of the belief that the appropriation had been credited to the fund. Again, this is a situation where the account should be directly managed by the Commission. The Commission will contact BBMR and require that the appropriation be released.

Established Policies and Procedures Useful: Generally concur. All this can be traced to a lack of staff, a lack of trained staff. The existing staffing pattern and organization setup of the Commission, hampered the lack of trained technical employees provides for a setup to failure. The myriad of responsibilities that has to be addressed by top management is not done with the adequate staff support necessary accounting for these management failures.

Mission Accomplished with Accounting and Management of Fund: Generally concur. On certain occasions the Commission has had the funds necessary to employ people but Department of Administration and BBMR resistance and the various hiring freezes has prevented us from doing that.

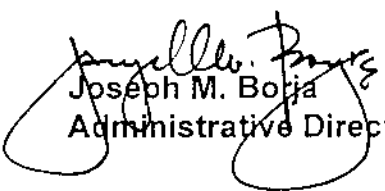
Recommendations: Generally concur.

CLOSING STATEMENT: Section 75116 mandates a review by all agencies of their statutory authorities to determine deficiencies and inconsistencies with the Chamorro Land Trust Act. This might have prevented a lot of problems and might have made things go a little smoother relative to jurisdiction and control of funds.

There are 21 recommendations made by the audit report. ALL of them begin with "The Director.....". The director's position is really and accurately an "administrative director". If the Director had the adequate staff ALL recommendations could be accomplished. All findings and recommendations are reasonable.

Thank you for the professional conduct of your audit.

If you need further information please do not hesitate to contact me.


Joseph M. Borja
Administrative Director

RESPONSE OF THE AFFECTED AGENCY

Comments on Agency Response

We transmitted a draft of the report to the Chamorro Land Trust Commission (CLTC) on October 7, 1999. We received the Director's comments on November 15, 1999. We took the comments under consideration and made changes to our report, as we deemed necessary. The Director's comments are included as attachment 1.

The Director concurred with our findings and recommendations. However, he did not specifically address all of our concerns nor indicate specific action to be taken. The Director did not provide a timeline for implementing recommendations. Immediate action is needed to have funds allotted to the Chamorro Loan Guarantee Fund so that loans can be guaranteed. Aggressive follow-up is required with the Legislature to pass legislation to enact general commercial leasing rules and regulations.

The Director clearly recognized that the rate of processing commercial leases/licenses must be increased. Notwithstanding, he did not state what specific action would be taken to increase the rate.

Finally, we believe that the Director missed our point on the management and use of funds. He commented that the CLTC Board Resolution No. 99-02 established procedures for making expenditures from the bank account. However, Public Law requires that the Director promulgate rules and regulations for the "use" of lease payments from the Guam Municipal Golf Course and publish an annual financial statement in a newspaper of general circulation. We recognize that the CLTC lacks technical personnel resources to access and manage Commission funds. Nevertheless, we believe that management of funds is properly a responsibility of the Administrative Services Officer, since it is stated as one of the duties and responsibilities of that position.