



# Chamorro Land Trust Commission

## (Kumision Inangokkon Tano' Chamoru)

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### Commission Members

*Delfin R. Damian, Jr.*,  
Chairman

*Annie R. Perez*  
Commissioner

*David J. Matanane*  
Commissioner

*Oscar A. Calvo*  
Commissioner

## COMMISSION MEETING MINUTES

### Guam Ancestral Lands Commission Conference Room, Anigua December 1, 2005

#### I. CALL TO ORDER

Meeting was called to order at 4:05pm by Chairman Delfin Damian. Present were Commissioner Annie Perez, Commissioner David Matanane, Commissioner Oscar Calvo and Administrative Director Thomas Elliott.

#### II. APPROVAL OF MINUTES (October 19, 2005)

Commissioner Matanane moved to approve the minutes of October 19, 2005 subject to corrections. Commissioner Perez seconded the motion. There were no objections, **MOTION PASSED.**

#### III. OLD BUSINESS

##### A. **Hawaiian Rock Products – Temporary License Request**

The Administrative Director informed the Commission that Hawaiian Rock products is requesting a temporary license to study the feasibility of quarrying a portion of Lot 5412, Mangilao. There is a comprehensive write up on the minutes that was just approved subject to corrections. To briefly summarize the issue they would like to study the feasibility. They are not going to be removing any products whatsoever from the site. The hold up from the last time was the access to the property from Route 15. At that point we had determined that the access traversed through other properties before it got to Chamorro Land Trust property. A portion of one lot was under the Guam Community College fronting Route 15 and the other lot that the access travels across was through private property. Since then Hawaiian Rock had identified a 50 foot wide easement east of the property direct from Route 15 so the easement or access issue is no longer an impediment for approval of this request.

The Director's recommendation is that the request be approved for a one year license to assess feasibility with the option to renew for an additional 6 months under the following conditions:

1. Hawaiian Rock Products notify the Commission at least 30 days prior to expiration of the one year license if they need to renew but the renewal should not last longer than 6 months;

2. The license area will be subject to random inspections by CLTC personnel during the license period;
3. Hawaiian Rock Products shall not remove any products including existing boulders on the property;
4. Hawaiian Rock Products must take extra efforts to minimize environmental impact on endangered plant and animal species in the area; and
5. Other conditions as recommended by the Board.

Commissioner Calvo inquired if it really takes 1 year to do the feasibility study.

Dan Swavely commented that HRP is looking at the 1 year period to cover different activities such as cadastral, survey, topographical survey, archeological baseline survey, environmental survey and geotechnical exploration as well.

Commissioner Calvo commented that in terms of studying the land issues of what the land has to offer and should they do find things that are in value to them he wants to know what they are planning in the future. If there was something that they might of found on the property they must be up front with the Commission.

Dan Swavely inquired if Commissioner Calvo meant something that would prohibit quarrying.

Commissioner Calvo commented yes.

Dan Swavely commented that would then be the reason for the second part of the first phase which would be to try to put together a mass grading plan that is acceptable to the Commission and still yield enough quarry materials to make the project worthwhile. One of the reasons why they wanted to do the environmental and archeological study up front is so that if there are some problems they would know what and where they are and maybe even go around them.

Commissioner Calvo inquired if they would have a master plan for that.

Dan Swavely commented yes.

Dan Swavely commented that the second part of the phase one after they do the due diligence activities would be to come back to the Commission if it works now they would have to decide on a mass grading plan that would leave the property in the most desirable developable state for the Commission to develop in the future and yet still yield the most practical amount of quarry materials. This is a give and take between HRP and the Commission and eventually they are going to get a one bench or two bench site with a road going down and then at that point they would definitely know how much quarry materials would come out of the property then they can negotiate a rate on it.

Commissioner Matanane inquired that if they are done sooner than one year would they come in and let us know that you are ready to go or not.

Jere Johnson (President of HRP) – commented yes and that they are working on some other areas. They have some commitments on another property that the Commission owns to the raceway park to take some materials from there. We are looking at longer range projections for this because there is potentially a lot of aggregate that can be taken out of the property and get to the point where it is a developable piece of property. So it is not a one year project, it is a fifteen to twenty year project probably to take the material out of there and get to the point where it is developable. We want to make sure that it is a good long range plan and not rush into it. There is a lot of potential development coming.

Commissioner Calvo commented that hypothetically if they finish their study in 8 months would they still be willing to pay for the remaining months of the license.

Jere Johnson commented that it wouldn't be a problem.

Commissioner Perez inquired if they are done with their study and they report back to the Commission would we go to the next level now that it is no longer just a license for examination but now they are going to license it for something else.

Dan Swavely commented that is the essence of their request. It is up to a year to do the due diligence exploratory task but that's inextricably tied into then the license to do the quarrying thereafter. If it works for their technical point of view and if the Commission likes the mass grading plan that they come up with.

Jere Johnson commented that they would like an exclusive right to the second license agreement because they are going to be spending all the money on the environmental and other studies that is the only conditions that they would like on the license.

Chairman Damian commented since the issue of accessibility has been cleared and some of the mechanics that need to happen for the experimental stage as well as a negotiation once we get the green light for both sides then we can look back at some of the negotiations that are going to take place.

**Commissioner Matanane made a motion to approve the one year license request for the initial stage of the quarrying plan for Hawaiian Rock. Commissioner Calvo seconded the motion. There were no objections, MOTION PASSED.**

#### **B. Core Tech International – non-compliance**

The Administrative Director commented that based on reports of topsoil leaving CLTC property, CLTC staff conducted three site inspections over a two-week period. Aside from the removal of soil which was not evident, the following conditions were noted.

1. The area cleared was not at the far northeast corner of Lot 10090-1 but significantly farther west;
2. There were still abandoned vehicles and other metallic waste on the site;
3. The chain-link fence had not been erected; and

4. The licensee had not provided CLTC with the requisite survey, clearing and grading permits.

With the reports of soil leaving the site, the Director felt compelled to threaten cancellation of the license.

CLTC approved the use of no more than 5 acres at the northwest corner of Lot 10090-1, Machananao, Dededo. Core Tech was granted a license with specified conditions which became effective on September 1, 2005.

Core Tech responded promptly and they have taken the steps necessary to address all the concerns brought to light. Core Tech offered to stockpile topsoil from their private property to Land Trust property. The Director suggested that they may do so for the sake of convenience and that they should segregate the incoming stockpile to allow easier distinction in the event that the same stockpile is returned to the private property or removed from the licensed Land Trust site.

The Administrative Director recommended that Core Tech be allowed to proceed with the license requirements and that CLTC will continue weekly monitoring.

Commissioner Matanane inquired if they have erected the chain link fence.

The Administrative Director commented that they have not yet erected the chain link fence however they did make assurances that it is forthcoming.

## **C. Draft RFPs**

### **1. Legal Counsel**

The Administrative Director commented that in past board meetings this Commission discussed the termination of the Office of the Attorney General as legal counsel and procurement of legal services from the private sector. Attorney General Moylan himself attended a recent meeting on September 30, 2005 assuring this Commission that his office would be more responsive to our requests. Although we did receive legal counsel relative to a land exchange, we still have yet to receive responses from 4 different requests, the oldest one sent since June 2005. At the eleventh hour the Commission did receive two legal opinions reference to two requests that was submitted recently. Earlier last week the Director was informed by the Office of the Attorney General that CLTC's requests were mis-routed and had not reached their intended destination which is the AG himself. The Director was assured that the four requests will be answered shortly, hopefully in time for this afternoon's board meeting.

The Director suggested that the Board review the attached draft RFP for legal services. Given the variety of high profile cases on its plate, the Director does not believe that the Office of the Attorney General has the capacity to handle the needs of the Land Trust. At the very least the draft RFP for legal services should be weighed in comparison to the newly received memorandum of understanding from the Attorney General's office.

Chairman Damian commented that the Commission can either enter into a MOU with the Attorney General's office with specific recommendation and tasks that the Commission would like to make sure is adhered to or to terminate the services of the Attorney General completely and go out and send out an RFP for legal services.

Chairman Damian inquired from the Administrative Director if he is recommending that the Commission conduct the RFP for legal services.

The Administrative Director commented no and to clarify now that he had looked at the two responses to the Commission's request from legal counsel and the responses seem certainly confident and of high quality. At this point the Director would hold recommendation and allow the Board to review both the draft RFP and the MOU and discuss it at another meeting.

Chairman Damian commented that despite the fact that we may go into a transition period with respect to legal counsel the Attorney General has in the previous meeting made it known to us that he will continue to be our legal counsel until such time that a final decision is made regarding who the actual legal counsel is.

Commissioner Matanane inquired that should the Commission decide to go with the MOU with the Attorney General's Office, would he be charging us with the same rate as any other attorney would.

Chairman Damian commented that when we enter this phase of the contract we will look at the rates.

Commissioner Calvo inquired on what guarantee of representation would we get from the Attorney General's office. Commissioner Calvo commented that he thinks that the Commission should go ahead with the RFP.

Chairman Damian commented that on or before the next meeting the Commission would need to make a decision on that.

Commissioner Perez commented that she agrees with Commissioner Calvo because that was the obstacle that prevented the Commission on going through with the Ypao Point issues. We need to address legal representation immediately.

## **2. Ypao Point**

The Administrative Director edited and updated the old RFP for Ypao Development and called the Commission's attention to the following areas:

1. Section III, Master Developer Responsibilities, paragraphs 6 "Pay a non-refundable fee of USD Five Hundred Thousand Dollars (\$500,000) to the CLTC upon approval of the DA by the CLTC, such fee shall be applied to annual rent ~~covering the first few years of the lease~~, depending upon the fair market rental value of the property."
2. Section III, paragraph 7. "Upon selection as Master Developer by the CLTC, submit to CLTC a good faith deposit of \$50,000 in the form of cash or a performance bond; this

amount is non-refundable and not creditable toward any other amount paid or payable by the Master Developer." The Administrative Director commented that this clarifies the issue before any developer sits down with the Commission, they must submit this amount.

3. Section VI, Business Terms, paragraph 8.& 9 specifies the performance bond or cash in the amount of \$50,000 and the \$500,000 fee applied to the annual rent.
4. Submission deadline is tentative subject to the Commission's review of the draft and any other changes. The Administrative Director recommends that the submission deadline be set at Friday, January 27, 2006 and suggested for consideration to address the Perez family interest in the property for the inclusion of a medical/research facility in development proposal.

#### **D. Marilyn Borja status**

Marilyn Borja informed the Commission that her husband is Joaquin Fejeran Borja who passed away in the year 2000. When he passed away her sister-in-law took her house and her truck now she is homeless, jobless and sickly. All she is asking right now is for compensation for her house because she needs to go off-island for medical reasons and really needs the help.

The Administrative Director informed the Commission that Mrs. Borja is the widow of a qualified applicant however she herself is not qualified. They had built a 400 square feet semi-concrete home valued at \$16,000 at that time according to DPW's Building Permit Section. After Mrs. Borja had visited the office the Director had sent out requests for appraisals of the structure however no responses were received. Referring to Public Law 23-38 there is a section that allows a compromised valuation between this Commission and the lessee. The same law also asks for an appraisal by an independent firm or by negotiations with the Commission. The relatives of Joaquin Fejeran Borja are now occupying the property and they have agreed to reimburse the Commission on a payment schedule. The details of the payment schedule need to be worked out. At the request of the Commission, the Director forwarded a request for opinion regarding spousal rights. At this point the legal opinion received from the Attorney General's office indicates that the Chamorro Land Trust Commission should not consider spousal rights. Mrs. Borja is asking the Chamorro Land Trust Commission to expedite her case as she is seeking medical treatment off-island for severe rheumatoid arthritis.

Chairman Damian commented that the Director is going to be setting up meetings with respect to the payment schedule for the family to continue on the property.

Chairman Damian inquired from the Director on where did the valuation of \$13,000 come from.

The Administrative Director commented that it is his estimate based strictly on the depreciation of the improvements.



Commissioner Perez commented that Mr. Borja's family are now occupying the house and are they applicants of Chamorro Land Trust?

The Administrative Director commented yes.

Commissioner Perez inquired if they were ever issued property.

The Administrative Director commented that they were already occupying Chamorro Land Trust property and they would have to give that up in order to acquire this one.

Commissioner Calvo inquired on how did they acquire the property.

Mrs. Borja commented that they had their own land in the back and when her husband passed away they just moved into her house.

Commissioner Calvo commented that the property still belongs to the Commission and we can move them out. They are also breaking the law because they have no rights to walk into that because Mr. Borja had acquired that.

Commissioner Calvo commented that we would need legal opinion on this.

Chairman Damian commented that we will get legal opinion and we do have the authority to have them vacate the property if they have not followed guidelines and established rules and regulations.

Commissioner Calvo commented that until the Commission clarifies the matter, Mrs. Borja should still be on the property.

Chairman Damian inquired from the Director if the Attorney General had addressed the legality of the family moving into the property.

The Administrative Director commented that on the legal opinion received from the Attorney General's office it states that Section 9.5 of the rules provides both for the payment of the value of the improvements and the person to whom the payments are to be given. It is only after the payments have been made to the representatives of the estate of the deceased if no successor to the lease that the question of community property arises and that would be decided by the courts of the estate in the usual course of probate.

Commissioner Perez inquired if Mrs. Borja is residing in the same residence.

Mrs. Borja commented that she moved out because she fears for her life because they grouped up on her when her husband was still in the morgue.

Commissioner Perez inquired on when did Mrs. Borja inform the Chamorro Land Trust Commission when this had occurred because when you remove yourself out of the

residence then the Land Trust should have been informed immediately at that time so then we could rectify the problem.

Mrs. Borja commented that it was since former Director Joe Borja after her husband had died.

Chairman Damian commented that the issue is the valuation of the lot and what is due to Mrs. Borja based on the enabling act of the Trust.

Commissioner Perez recommended that the Commission turn this case to the Attorney General so that they can remove the existing people who are residing on the property and when they are removed that they are subject to paying back what they have owed since they have resided on the property. They are living in a house on someone's property and they are due to pay for that and if they don't want to go back to their original lease that they were given then that lease should be taken away from them. I feel that it is not right for the Commission to pay out the pocket of the Commission where we did not lease the property to these people and they just moved in. I think we should penalize that person or family, have them removed and then give them an ultimate decision whether they want to go back to the original lease or take it away.

The Administrative Director commented that at this point the family is well aware that they would have to reimburse the Commission for the value of the improvements. They are also aware of the consequences as well if they don't want to.

Commissioner Matanane commented that we need specific names and a secured note that payments will be made to the Commission.

Commissioner Calvo commented that we need to give them a timeline.

The Administrative Director commented that there is no specific link between one section of the law that address the compensation for the improvements and another section of the law that addresses our responsibilities with regard to who occupies the property.

Chairman Damian commented that we want to make sure that the money is due to Mrs. Borja legally by law based on the enabling act.

Chairman Damian commented that we will have legal counsel review the matter.

Commissioner Perez suggested that Mrs. Borja's medical referral be attached to the letter to the Attorney General to expedite the response.

## **E. Survey Requests**

### **1. Danny H. Jackson**

The Administrative Director commented that Mr. Danny Jackson is a preoccupant of Government land through the Land Use Permit program which was under his wife



Josephine Jackson. Mr. Jackson claims that at one point he had been maintaining 7 acres on a portion of Lot 5402 in Pagat, Mangilao. In December 2003, he signed a lease agreement for a half acre. There is a letter dated February 1, 1982 from Dept. of Land Management as evidence of a Land Use Permit contract executed March 28, 1980 for one acre. On October 25, 1982 Mr. Jackson applied to Dept. of Agriculture for 5 acres and submitted a detailed farm plan. On December 9, 2003 he had signed a lease agreement.

Mr. Jackson states that he was not given ample opportunity to study the lease and assumed it was for the entire area of 5 acres he had been maintaining. After realizing the significant reduction in size, he felt compelled to let the lease agreement stand at a half acre for fear he would lose the area.

Mr. Jackson and family currently maintain approximately one acre as farm and residence and had let the remaining area go. The Director had personally toured the perimeter where Mr. Jackson had planted various trees and which are now among overgrown vegetation. It became evident to the Director that at some point Mr. Jackson had cleared approximately 5 acres and had used an additional 2 acres for setting traps for coconut crab and wild pigs. Mr. Jackson requests that the lease be modified to right what he feels is wrong. He feels he was tricked into reducing his acreage and has struggled to maintain a livelihood by raising poultry and vegetables on the half acre while keeping a full acre clear.

The Director recommends that Mr. Jackson be granted his request of up to a minimum of 5 acres on the condition that he follow or maintain a farm plan similar to that on file and that he request support through programs at UOG and the Dept. of Agriculture for assistance with the latest farming technology and funding. The Director recommends that the survey maintain a buffer strip along the Cliffside overlooking Sasayan valley and a buffer strip of 40 feet along Route 15 for commercial use. In the interest of maintaining good public relations and to remedy this issue, the Director recommends that CLTC pay for the survey services and the Board appropriate an amount based on other survey projects paid by other applicants not to exceed \$5,500.

Chairman Damian commented that it sounds pretty clear that someone was misleading Mr. Jackson from the very beginning.

Chairman Damian commented that the request that Mr. Jackson made for the additional acreage is in question now.

The Director commented that the lease that Mr. Jackson had signed is for the same area but for .5 acres.

Chairman Damian inquired if the lease that was signed in 2003 was for Land Trust program and not for the Dept. of Agriculture program in 1982.

The Administrative Director commented that it is a separate document but for the same lot.

Chairman Damian commented that his question now is if the 5 acres was transferred to the Land Trust by the previous programs. Somewhere along the line Mr. Jackson was either misled, or due to non communication between the programs or there could have been a typographical error on the lease.

Chairman Damian commented that we need some historical data and before we render the 5 acres in his favor we would need to make sure that the supporting documents are there whether it is from Dept. of Agriculture or where ever that does say that in fact Mr. Jackson did request for 5 acres and that he was approved.

Chairman Damian commented that if he was approved for the 5 acres then it is due to Mr. Jackson but if there was no approval then we would have no other recourse to entertain him where he is now where a half acre was awarded to him because no record showed an approval of 5 acres under the previous programs.

Danny Jackson commented that in 2003 he was called by the Land Trust to come down to sign a lease agreement. Mr. Jackson commented that he asked why so that they could verify that they would transfer the records from the Dept. of Land Management to the Chamorro Land Trust. So I went ahead and signed the lease agreement in 2003 finding out that after I signed the lease agreement they made me wait for 45 minutes so that they can xerox the lease agreement. If you would look into the lease agreement it will show there that it was notarized on the 12 of December and they were saying that I had signed it on December 9, that is a rip off. Mr. Jackson commented that he doesn't really know what to say because he is not really educated in reading and writing but his mind is still okay. Mr. Jackson has the arrendo in Mangilao and has been occupying 7 acres for the past 30 years since 1976. He had applied for agriculture of 5 acres in 1980 they grant me a document saying that from agriculture to Land Management I really don't know what that really means whether I should take that paper and clear it at Land Management. Due to the fact coming back to 2003 I just got my lease agreement 3 months ago and at that moment when I was signing the lease agreement they don't really know where Joe Borja was supposed to be posted whether it is at Chamorro Land Trust or the Ancestral Lands Commission or the Land Management. Joe Borja was placed in Land Management so it happens that who ever notarized it had signed it in front of me and notarized it in front of me but I'm very sure that they had ripped me off from those things. Like I said I don't know how to read and write but my understanding is that I've been staying up there for the past 30 years and the Chamorro Land Trust have no jurisdiction on me due to the fact of what you guys are talking about here. I'm here to defend the property that I have been occupying there and I only ask Mr. Elliott to correct the half an acre and to put back the 7 acres that I have been occupying. Let me tell you, Chamorro Land Trust people that my kids grew up there, my roots have spread up on that area and I'm not about to uproot my own self there. If I would be an ifit tree or an agao tree that you would up root me and transfer me, you might as well kill me so if you would take the 6 and a half acres and grant me the half an acre you might as well take it all. I've been paying \$40 every year and it's

just because I can't show any documents because how many typhoons have passed by. How many times my house have been broke down. I never asked the Chamorro Land Trust for any dollar to buy me any materials. I went ahead and did it on my own. Right now you can see that it looks like I'm a normal person which I'm not. I have three spinal cord removed from my back, slip discs, I have a bullet at an inch and a half above my heart so that put me into a cripple situation where I cannot be a self sufficient person as I used to be. I only wanted the half acre to be corrected and put back my seven acres because that belongs to my own son not belong to me. I have eaten so much doughnuts and I don't care if you guys give it to me or not I only want the 7 acres back for my own kids in case I leave this place and I go to the other zone my kids will take care of whatever is remaining in the back. Thank you for listening to me and I appreciate this thing and I hope that you guys consider it in your own heart that I want back my own 7 acres and I have never applied for that half an acre.

Chairman Damian commented that apparently Mr. Jackson has been occupying the property way back in the 70s. What we do need is of course documentation and unfortunately Mr. Jackson is unable to provide that.

Chairman Damian inquired from Mr. Jackson if he has any kind of documentation for the property.

Mr. Jackson commented that he only has some documents from Dept. of Agriculture and that he can't find any form from Land Management. He had been trying to call Joe Borja and get his attention about this thing so that he can dig into the file at the Chamorro Land Trust and see at least to prove that I have been there since 1976. I have applied for this place since 1974 and I have been granted in 1986 by the land agent by the name of Edmund Guerrero and at that time Joe Cruz was the Director then Castro took over.

Chairman Damian commented that if the documents show that Mr. Jackson has occupied the acreage there is no reason for anyone to take any of the property away even with you signing on in 2003 that becomes null and void because you are grandfathered into the Land Trust via the Dept. of Agriculture. What we will need to do is to make sure that the supporting documents are available and I'm sure they are at the Dept. of Land Management.

Chairman Damian inquired from the Director if he has any documents that will clear any light with respect to the validity of Mr. Jackson sustaining the property.

The Administrative Director commented that the three documents that he had referenced here in the history are perhaps the most important documents on file. Everything else is pretty much duplication or of little consequence in determining the sequence of events that happened. However given the fact that these documents are so scarce I went out there and did a site inspection myself and it is very compelling to walk into the jungle and see a straight row of coconut trees. That straight row of coconut trees that I saw there is no way that mother nature could have done that. That was done by Mr. Jackson and

based on where that row of trees are going back all the way over to Mr. Jackson there is no way in my mind that the acre equals one acre let along a half acre.

Chairman Damian commented that after all that evidence and supporting documents whether it is tangible or on file at Land Management why do we suddenly go into a phase two December 9 2003 for a half acre? That is puzzling to me, the gentleman has been there since the 70s and got grandfathered into the Land Trust as a matter of law and then all of a sudden he is asked to start all over again and get only a half acre.

Chairman Damian commented that it is compelling to him based on the evidence and what we would like to do is to find out what Land Management has in terms of documents. It seems to me that this gentleman needs to be grandfathered in and he should be grandfathered in and has no reason why he has to sign another lease for the same property after he had been occupying that under a different program. So unless there are other documents that is going to change anything right now I have to go with Mr. Jackson's claim on this that the property is rightly due him.

Josephine Jackson, wife of Danny Jackson, commented that when they came down to sign the lease agreement the paper was flipped to the last page where he was supposed to sign and they did not let him see the front of the lease. Mrs. Jackson commented that why is it that Joe Borja signed the lease on December 9 and then we sign on December 12?

Danny Jackson commented that Roque Aguon came up in April 1993 and asked whose name is the property under and I told him that I don't know and to check if it is under Josephine he said there is none then I said to check under Danny and he said again that there is none. So I asked him what do you suggest I should do and then he said to go down to the Chamorro Land Trust and apply. I said sir, come and let me tell you, me I am one of the godfathers of the Chamorro Land Trust and I am one of the grandfather' of the Chamorro Land Trust. Look at me and understand me, the \$40 dollars each year since 1966 to now to 2009 and in 2009 it should be paid off, the 99 years and \$99. So let me say this, tell the Chamorro Land Trust to shut your mouth and to hurry up and give me back my change. The \$99 is already paid off all I need now is for you guys to straighten out the document. I do not intend to pay any more dollars a year. I've already paid that thing so if you guys are trying to make me pay \$1 a year for starting the 2005, I would like to find out where are the \$40s since 1976 I have been paying for? If you look into the law the Chamorro Land Trust was implicated since 1974. Our legislature and our governor had just shut their own mouths and said sell Kaiser Hawaii Kai, measure it for acres for acres and then divide it into four house lots and start selling the house lots for at least \$500,000. Mr. Chairman and Mr. Director Elliott forgive me like I said I'm not educated for reading and writing but I got mind and I got sense in it and all those things back since 1974. This is so ridiculous.

Vicente Garrido (Maga'Lahi, Nasion Chamorro)- I've met with Tom to check all of our brothers and sisters I've already said all that I have to say and you have already heard it. I am asking you guys for your consideration for this guy's direction to follow. I don't know

if he talked about this while we were outside, our brother here doesn't know how to read and his wife said when they told him to sign they flip to the last page that is already wrong because he doesn't know how to read. I am not asking anything from all of you, you are all doing a good job and I respect you and all that you are doing and not just what you have done in the past. Like what Mr. Calvo said back in the time of the arrendo more than 30 years ago, and I think his direction is only to ask back what was given because I think there were some mistakes here. Like what Mr. Elliott is saying what we have is too much and a lot, they should just give it. Thank you all.

**Commissioner Calvo made a motion to return the property that is due to Mr. Jackson legally prior to being grandfathered into the Land Trust. Commissioner Perez seconded the motion. There were no objections, MOTION PASSED.**

Commissioner Matanane inquired if the motion is for 7 acres or 5 acres.

Chairman Damian commented that what Mr. Jackson requested for was based on the documents that Mr. Elliott has which is for 5 acres on the farm issue and the Dept. of Agriculture document is the official document that is what we need to return.

Commissioner Perez inquired if there is a possibility for the Director to update the Commission with any lessees that are from the arrendo before and that has shifted now to Land Trust so that we know exactly how many cases so that when we are confronted with problems like this that we know that this is what's happening. Even with the document where Mr. Jackson signs for the half acre I'd like to know just who is that land agent who did that. To me that is a very un-justice that they have done to this guy. Just because he doesn't know how to read it does not give them a reason to be unjust to that individual.

Commissioner Calvo commented also that they cover the front page of the lease.

Commissioner Perez recommended that we be updated with the arrendo so that we are in-tuned with who is in the grandfather clock because I don't want to have to deal with another situation like this.

Commissioner Matanane requested the Director to provide the Commission with a copy of the signed lease agreement that Mr. Jackson had signed in 2003.

The Administrative Director commented that since Mr. Jackson was talking about 7 acres he will be coming back insisting that he get the full 7 acres however, this Commission is right in looking at 5 acres because that is what we have on record and his site visit certainly proved that he is using more than 1 acre but I am finding it difficult to believe that it was actually 7 acres unless there are other areas or there is an additional area that he did not reveal to me. Based on the conversation that the Director had with Mr. Jackson and other people who are familiar with his case the additional 2 acres he is claiming as part of the 7 acres he was using for trapping crabs and wild pigs.

Chairman Damian commented that it still requires permission and legal documents.

Commissioner Calvo commented that if he wants to apply for the other two acres then he would need to come back and apply for it.

Chairman Damian commented that there is a survey cost now that Mr. Jackson needs to know legally where the boundaries are.

The Administrative Director commented that he had identified two surveyors that are capable of taking this project right away and finishing it off expeditiously however I will negotiate with either one that gives us the best deal but certainly not to exceed the \$5,500.

**There were no other discussions or oppositions to the motion. MOTION PASSED.**

## **2. John E. Finona**

The Administrative Director informed the Commission that according to evidence on file, the applicant had been farming on Lot 7153 since 1992 with Pedro Cruz. After Pedro passed away, Finona remained on the land and maintained it. In September 2002, he signed a lease agreement for 3 acres on a portion of Lot 7150, Yigo. The sequence of events are as follows:

On September 6, 2002 – John Finona signed a lease for 3 acres on Lot 7150.

On September 2, 2003 – Ken Benavente signed a lease for 1 acre on Lot 7153.

On September 18, 2003 – Authorization to survey 1 acre on Lot 7153 was issued for Ken Benavente.

On April 29, 2004 – Ken Benavente was shown Lot 7153, Yigo.

On June 21, 2004 – CLTC realized that the lot occupied by Finona is Lot 7153 and not Lot 7150.

Mr. Finona has been displaced by placement of Mr. Benavente on the same area. Mr. Finona has been shown a different area at a portion of Lot 7150 but is reluctant to accept due to time and expense invested in the original area. Mr. Finona is requesting a solution to this error created by CLTC.

The Director recommends to award the original 3 acres in a different area subject to Finona's agreement and the Land Trust to shoulder the survey cost.

Chairman Damian commented that this is not the first of mistakes that we have to recoup.

The Administrative Director commented that they just keep coming.

Commissioner Perez inquired if the Commission has a master plan that when property is issued it is marked off so that the property is not again reissued.

The Administrative Director commented now we do.

Chairman Damian commented that every time mistakes like this are made it is costing us in the thousands of dollars which is not good for this Trust.

The Administrative Director commented that he has tasked the staff to maintain a map sketch of the areas where they are assigning people and they must do it in sequence.

Commissioner Matanane inquired if Mr. Finona had surveyed Lot 7153.

The Administrative Director commented that he had not.

Commissioner Matanane commented that if he had not surveyed it in the first place he would have known that he is on the wrong track. When you are given a lease you are supposed to survey it. Why is he requesting for us to pay for the survey when he didn't even survey the one that he is staying on?

The Administrative Director commented that he will verify that to be sure.

Commissioner Perez inquired if that that is part of the stipulation that when they are given the lease that they immediately have it surveyed so that they would know where their property is.

The Administrative Director commented that we have hundreds of leases that have not been surveyed.

Chairman Damian commented that you would have to know you are displaced because you would need to know where the boundaries are in the first place.

Commissioner Perez commented that only to find out 3 years later that he is displaced.

Chairman Damian informed the Administrative Director to bring back more supporting documents on this. It seems to me that there was a mistake with respect to Lot 7150 and Lot 7153. What we are questioning there is the issue of us to have to pick up the tab for a new survey that really was his responsibility in the first place.

Commissioner Calvo commented that he agrees with Commissioner Matanane and that they know that when they signed the lease that they would need to survey the lot. He knew that he had signed up for Lot 7150 but instead he is on Lot 7153. Did Mr. Finona ever survey the property? If he can't produce the document then he is trying to have us pick up the tab. If we start doing that then everyone is going to ask us to survey their properties.

Commissioner Calvo commented that if the fault was on the Commission then granted we will take the responsibility.

Chairman Damian directed the Director to get more supporting documentation on the issue and until then the matter will be tabled. Should the Director is not able to get any



clarification on the issue then to have Mr. Finona present at the next meeting to provide testimony on the matter.

#### **IV. NEW BUSINESS**

##### **A. Request for license by KGTF TV12**

The Administrative Director informed the Commission that KGTF is requesting use of 1 acre at the Barrigada Heights antennae site. This is where we have other antennae facilities and they want to reestablish a former translator station in Merizo. The Merizo station was abandoned after Typhoon Pamela due to damage and lack of funding so they never rebuilt it. Use of this site would allow KGTF to extend its broadcasting to the southern areas. I have tasked the staff to look at availability and impediments with regards to the Merizo area but the Barrigada Heights area is available and we can proceed forward with that part of their request.

Chairman Damian inquired if KGTF is a government entity.

Commission members commented yes.

Chairman Damian commented that there is a different way of dealing with Government entities with respect to Land Trust and the access of land.

Chairman Damian inquired from the Director if he is aware of any documents that are preexisting with regards to the Merizo site.

The Director commented that the Commission has those records.

The Director recommends that the Commission approve both requests pending that the areas are available. The Director further added that the Barrigada Heights property is available and that the Commission just needs to work out the license amount.

Chairman Damian commented that the Commission is in agreement with KGTF's request and requested the Director to report back to the Commission on the status at the next meeting.

#### **V. DIRECTOR'S REPORT**

##### **A. Guam Raceway Park – mitigation plan by Dept. of Agriculture**

Henry Simpson (General Manager, Guam Racing Federation) – has been working on this project since they first got their license to start up there since 1998. We've run into some logistics problem that kind of slowed our project down so we've tried to come up with some innovative ways to speed the process up. Earlier when you had Hawaiian Rock here they mentioned that they are also starting to get products from the racetrack. Like he was saying in the early 90s now their business has shrunk down to 30% of what it was back at that time. When we were first planning all of the rock companies were willing to come in and take out the rock we needed and just leave us the shape of the ground that

we needed for the racetrack. Mr. Swavely took us to the process, it took us three years for us to get through the archeological, environmental, agricultural and all the surveys that had to go on up there which are very, very time consuming. We go through with a full environmental impact assessment for the area but by that time 9-11 had happened and things started to really slow down so the end result to our construction part here was that we didn't have very many people who wanted to take the materials out. Over the past few years we have only had one group that wants to take the material out and they are only able to deal with soft material because as a company policy they decided not to blast. Instead of being able to have a person come in and blast and take out material and leave us with a level that we need to work with we've had to actually hire those people to come in and blast out areas so that we can get started. The temporary drag strip that the guys are using right now is a case in point. Our original contractor couldn't deliver the ground to a plus or minus one foot level. We had to hire an outside contractor to come in and blast that out and paid them an extra \$675,000 just for the blasting. Things are starting to change a little bit now. As the economy picks up there is more demand for this material but it is still a very time consuming and equipment consuming type of business. We had hired the Smithbridge Company to come in and blast out this one area where the main strade away is going to go. They weren't really interested in buying the material in the beginning, they were willing to come in and do the blasting. They came to me and said that there is an old road that goes right from the back of their quarry over to our area and they think it goes across Chamorro Land Trust property. They told me that this is what is known as Momo's road. It was Momo Taitano who had a permit for the property. I asked Smithbridge that if he gives them permission then he'll ask Chamorro Land Trust to go across the property. They talked to the Taitano family and they said that it was okay. I talked to Kimbo Lujan and I explained that we had an old road and if we could use it. It will make it a lot faster and it would make Smithbridge a customer for the material because they could use their big trucks. Kimbo told me that the Commission did not have it licensed out to anybody and doesn't see any reason why I can't use it. So I took that verbal permission to be okay and started to clean up the road. I made a mistake and should of followed it up through with the Board to get written permission to do that and I apologize. We are coming back at this date after we had already gone in and cleared up the road to ask the Commission's permission to use this road. It is about a half a mile to carry blasted materials out of this project and also to carry processed materials back into this project to lay the finish work for the racetrack. It benefits us because we are able to move the project up, it benefits the Land Trust because it gives a new customer to this material in which the Land Trust gets .50 cents a yard. We are estimating that this will be an increase of \$70,000 to the Land Trust by letting us use this road. We think we need to use it for about 3 years at the most. We are willing to work with Dept. of Agriculture to put it back to how ever they would like it or how ever the Commission would like it.

The Administrative Director commented that the issue was that Guam Raceway and Smithbridge cleared and widened an existing pathway in the jungle area without securing permits. A site visit by CLTC staff and Dept. of Agriculture was determined that 2,400 square meters of native limestone forest was lost. Dept. of Agriculture's division of Aquatic and Wildlife is offering to help Mr. Simpson and his group implement an environmental mitigation program instead of imposing monetary penalties. Guam

Raceway is now applying for a commercial license to use that road to facilitate the transportation of products from his site to Smithbridge. As he stated the Land Trust stands to get \$70,000.

Henry Simpson commented that amount is over a three year period.

Henry Simpson informed the Commission that it costs about \$80,000 to fix the road up.

The Director commented that as of this date no revenue projections reflecting cost savings or economic feasibility has been provided to the Commission.

The Director reminded the Board that this action by Guam Raceway and Smithbridge was taken for the purpose of generating additional revenue and apparently to fund the continued development of the raceway park.

The Director recommended that to prevent others from duplicating such actions on Land Trust property a nominal penalty should be imposed in accordance to Board policy whatever the Board decides. Secondly, Guam Raceway must clarify the basis of the assured \$70,000 and over time period that would be generated. Finally, the commercial license fee for the use of the interconnecting road way should stand alone and not be linked to any other agreement nor any part of the raceway park or Smithbridge site.

Chairman Damian commented that we need to look at separate licensing for the road and also looking at the potential monetary benefits from the materials that are being used by the company. With respect to the \$80,000 as far as getting the road through that would be an investment that Guam Raceway and Smithbridge would be putting together.

Mr. Simpson commented that they would be willing to do that.

Chairman Damian inquired from the Director on what does he envision happening in the area now.

The Director commented that at this point he doesn't see any future impediments however since that area is a limestone forest it is essentially regarded as a conservation area. There's very little farmable soil in the area and most of the growth there are pristine jungle according to the assessment by Dept. of Agriculture.

Chairman Damian inquired from Mr. Simpson if he has had any contact with Dept. of Agriculture regarding the mitigation process.

Mr. Simpson commented yes. Their plans have changed over the last few years, they were going to take out a whole section and make it a hole that would go down 40 feet so that there wouldn't be any trees or anything left in the area where the racetrack was going but because of the lack of demand for material we have brought it up and we are now working with the levels that are there plus/minus ten feet. We are going to stay within the ground levels that are already there. We were able to leave a lot more trees. What had

happened was there was a law from the 16<sup>th</sup> Guam Legislature that says anytime you cut a tree you had to get permission from the Dept. of Agriculture but when I went to get my clearing and grubbing permit I got a clearing and grubbing for the whole 250 acres but it doesn't require Dept. of Agriculture to sign on it. One thing that we are going to be helpful with is around the outside of the racetrack we are going to leave an opening of 10 to 20 feet to replant the fadang trees which has been under attack recently. This is our mitigation with Dept. of Agriculture. Agriculture realized that we weren't intentionally trying to kill the trees and that we are willing to work with them.

Commissioner Matanane inquired on how many acres is Mr. Simpson leasing from the Land Trust.

Mr. Simpson commented that the license is for 250 acres.

Commissioner Matanane inquired if he wants to take coral out of the area.

Mr. Simpson commented yes. The original plan was to take almost 3million cubic yards. The idea was that people sitting on the bleachers would be able to see the whole racetrack.

Chairman Damian commented that the Commission needs to sit down and do a lot of studying on the proposal regarding accessibility for the road and we will need to study the figures regarding the buy products of the clearing of the area and the Commission is going to go with the Dept. of Agriculture's recommendation that a nominal assessment be made with you as far as fines. The Commission's suggestion right now is to be in contact with the Director because he will have preliminary questions and some information that he is going to require prior to the Commission working out the details.

Mr. Simpson commented that he would really like to show the Commission members the road that he is talking about.

Chairman Damian informed Mr. Simpson to schedule the site visit with the Director.

**B. Website IAW P.L. 28-57**

The Administrative Director informed the Commission that the Commission's website is online.

**C. Revenues and Expenses for October 2005**

A copy of the First Hawaiian Bank account statement for October 2005 was provided to the Commission which lists the deposits and expenditures.

**D. Public Law 28-68**

The Administrative Director informed the Commission that he had met with Lou Perez from DOA and talked about the mechanics for setting aside the CLTC operations fund. According to Lou Perez she said that it is entirely a Board matter and it is something that the Commission can do by resolution and of course segregate away or outside of the

Commission's First Hawaiian Bank funds. The Commission can use it to draw from to pay our expenses.

Chairman Damian commented that the Commission has just been getting some conflicting messages.

Chairman Damian commented that the Commission does not want to be completely independent.

Commissioner Matanane commented that the legislature appropriates our budget and as far as the revenues that is generated at the Commission we take care of that as Trust money.

Chairman Damian commented that the Commission would need to meet in a working session to put together the management plan of the accounts.

Chairman Damian commented that he will verify this account with the legislative side of things. The Commission would have to take it that the decision by Lou Perez is the front office decision.

Commissioner Matanane suggested that the Director set aside petty cash for the meeting refreshments. He understands that the Commission has been purchasing its refreshments from one entity because payment is made by check. By having petty cash the refreshments can be purchased elsewhere.

The Administrative Director commented that he doesn't have any problems with that.

Commissioner Matanane commented that at previous meetings he had requested for the Commission's receivables and has yet to see anything.

The Administrative Director inquired if is it still the Board's intention for the Commission to move to the end of the building into a larger office space.

Chairman Damian instructed the Director to go ahead and look into it and report back at the next meeting.

The Administrative Director commented that he had spoken to Lou Perez about the arrears and she said that the CLTC should concentrate on depleting Fiscal Year 2005.

## **VI. PUBLIC COMMENTS**

**Jose Torres** – commented that it has been a decade since his problem has been going on. It just seems like nothing is going to happen with what he had requested. It looks bleak and doesn't seem like it is going to happen. All he is asking is a way to get onto his property with the water and his plants to plant. He has already given away some of his plants because they have already outgrown the containers that he had put them in. Some

are already producing at his house and the other plants are dying because there is no place to put them. As long as we put this out this long, my plants in Yigo will be dying with no water and no one is taking care of them. He has bills for water for the area and he has not used the water for one year mainly because the person up there is using his water. The plants are dying and they are being stolen and I hate to put plants up there even my equipment are being stolen. All I am asking is for a way to get onto the property and as long as it has already been declared as the easement on the southern part of his property an illegal survey I'm asking that they declare that as a public easement so I can bring in my equipment and water.

Chairman Damian commented that the Board was under the impression that Mr. Torres's problem was taken care of.

The Administrative Director commented that there is a preliminary drawing for the area. This is the area right there on Marine Corps Drive. The access from Marine Corps Drive is elevated so DPW would essentially have to cut into the embankment to get access to the area. There is another area going around the back.

Mr. Torres commented that they had already cut the access in the front which is how they were able to get to the property. The problem is his way of getting in there is getting around the other property. He got permission to use the property on the southern side of his property so that he can run a back hoe in there to bring his vehicle in. All I am asking is for an 18 feet easement on the southern area and that it be declared a public easement. It is an illegal survey in the first place so why don't we just go ahead and declare it a public easement.

Chairman Damian inquired from Mr. Torres if his access is on the south side of the property.

Mr. Torres commented that it is the only way he can go through.

Chairman Damian inquired from the Director if it is Land Trust property.

The Administrative Director commented that it crosses the utility easement and I don't think by law we could cut across that which is why we have a tentative plan to cut in from the back.

Chairman inquired if the proposed property is Trust inventory.

The Administrative Director commented yes.

Commissioner Matanane commented that he thought Mr. Torres was taken care of because he had water accessibility and the Commission had approved a certain easement.

Commissioner Matanane commented that he recalls that at a previous meeting the Commission had appropriated some funds for the project.

The Administrative Director commented that it was for clearing however the easement has to be surveyed before we can clear it.

Commissioner Perez commented she is so subtle about the deal of property being given to people without any easement.

The Administrative Director commented that he had done a site visit with Joe Borja and he pointed out that it may possibly be a federal easement that is why at that point it was suggested that we come around on the back which will be substantially longer in terms of cutting an easement into Mr. Torres's lot.

Chairman Damian inquired from Mr. Torres that should that be an issue that it is a federal easement on the front side is he amicable to a different access to his property at no cost to him.

Mr. Torres commented that he won't have any problems with it.

Commissioner Perez inquired if the Director has a ball park figure on the price of the survey.

The Administrative Director commented no and doesn't know the distance.

Mr. Torres commented that the easement that he is talking about is about 200 feet or more from the back of Marine Corps Drive. The access that they are using there now, everyone is using it so I don't see any reason why we are going to declare the easement on the back. I don't see any reason why I can't use the same entry as everyone else?

Chairman Damian commented that there may be some federal issues with that.

Mr. Torres commented that he had even volunteered to share some of the expense on the easement coming from the back but nothing ever happened.

Commissioner Calvo commented that if it does not fall under the federal jurisdiction then we will go with that route, the first choice.

Mr. Torres inquired on who has the authority to declare the back side of his property either a public or private access depending on the way it is right now being an illegal survey.

The Administrative Director commented that he doesn't understand what he means by illegal survey.

Mr. Torres commented that it is what the prior Director had been saying.



Chairman Damian commented that nothing has been brought up to the Commission that makes that illegal.

Chairman Damian commented that if both possible sites for the access cannot be done then the Commission can relocate Mr. Torres.

**Commissioner Calvo made a motion to appropriate money to pay for the survey for access to Mr. Torres subject to current price on survey and clearing. Commissioner Matanane seconded the motion. There were no objections, MOTION PASSED.**

**VII. EXECUTIVE SESSION – Yes.**

**VIII. NEXT MEETING DATE – None scheduled.**

**IX. ADJOURNMENT – Meeting was adjourned at 7:45pm.**