Chamorro Land Trust Commission

(Kumision Inangokkon Tano' Chamoru)

P.O. Box 2950 Hagåtña, Guåhan 96932 *Phone: 649-5263 Ext. 400 Fax: 649-5383*

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Ray Tenorio
Lieutenant Governor

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Commissioner

Michael J.B. Borja
Administrative Director

October 18, 2018

Vice Speaker Therese M. Terlaje
34GL-18-2447
OCT 18 2018
Time: 3:06 Pm
Received by: JG

Honorable Therese Terlaje
Acting Speaker, 34th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagatna, Guam 96910

RE: Chamorro Land Trust Commission Transmittal of Resolution Regarding Proposed Revisions to CLTC Laws

Hafa Adai Madam Speaker:

Enclosed with this letter is the following Chamorro Land Trust Commission (CLTC) resolution:

a. **CLTC Resolution No. 2018-09** *Declaration and Request for Legislative Revisions to Title 21, Guam Code Annotated, Chapter 75; and, The Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission, Enacted as Public Law 23-38*

CLTC Resolution No. 2018-09 recommends changes to its governing statutes that are necessary to update the processes of issuing leases and to avoid hindrance to the process, moving forward.

The Commission is prepared to answer all questions regarding this resolution and to assist with the necessary legislation.

Senseramente,

MICHAEL J.B. BORJA
Administrative Director

Enclosure: CLTC Resolution No. 2018-09

cc: Office of the Governor
Legislative Committee on Land

2018 OCT 18 PM 3:30

Rev. 03/17/2017

2447

CHAMORRO LAND TRUST COMMISSION
Kumision Inangokkon Tano' Chamoru
RESOLUTION NO. 2018-09

Declaration and Request for
Legislative Revisions to Title 21, Guam Code Annotated, Chapter 75;
and, The Senator Paul Bordallo Rules and Regulations
for the Chamorro Land Trust Commission, Enacted as Public Law 23-38

WHEREAS, the Chamorro Land Trust Commission ***(hereafter CLTC)***, in accordance with Title 21, Guam Code Annotated, Chapter 75, is tasked with issuing residential and agricultural land leases to qualified applicants. Issuance of these leases is further governed by The Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission, enacted as Public Law 23-38; and

WHEREAS, the Attorney General of Guam opined on May 11, 2018, that leases issued to applicants situated and located in Tract 9, and Basic Lot 5382, in the Municipality of Barrigada, were either "voidable" because the Board of Commissioners did not explicitly approve the leases; or, "null and void" because the applicant switched their application date and time to another applicant resulting in an issued lease; and

WHEREAS, the Guam Legislature held three oversight hearings on the Chamorro Land Trust Commission leases from May 22, 2018 to May 29, 2018, ending with CLTC chairwoman vowing an extensive review of all CLTC residential and agricultural leases and processes; and

WHEREAS, the CLTC staff reviewed the files of all residential and agricultural leases creating five separate listings with each file reviewed to gather other more specific data to add to the master database. Additional data collected include conditions for lease transfers, authorizing authority and officials, status of the leased property, status of applicants not yet issued leases, and other pertinent information necessary for the Board of Commissioners to make sound assumptions and conclusions; and

WHEREAS, the CLTC Board of Commissioners transmitted CLTC Resolution No. 2018-08, *Declaration and Ratification of Residential and Agricultural Leases*; and, Resolution No. 2018-10, *Declaration and Request for Legislative Validation of Ratified Residential and Agricultural Leases; and, for Legislative Authorization and Ratification of Leases Issued from Switched Application Date & Time*; to *I Liheslaturan Guahan* outlining its findings and recommendations; and

WHEREAS, the CLTC Board of Commissioners has reviewed Title 21, Guam Code Annotated, Chapter 75, and The Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission, enacted as Public Law 23-38, and makes recommendations for changes to these governing statutes which are necessary to update the process of issuing leases and avoid hindrance to the process moving forward:

Doc. No. 34GL-18-2447.

21 GCA, Chapter 75, The Chamorro Land Trust Commission

1. **§75109(a)**: ~~From the following relatives of the lessee, husband and wife, children, widows or widowers of the brothers and sisters, or nieces and nephew, t~~The lessee shall designate the person ~~or persons~~ whom he directs his interest ~~in the tract or tracts~~ to vest upon his death.

   In the absence of such a designation as approved by the Commission, the Commission shall select from the relatives of the lessee ~~in order named above as limited by the foregoing paragraph one or more persons~~ **one person within the third degree of consanguinity of the lessee** who ~~are~~ **is** qualified to be **a** lessee~~s~~ of Chamorro homelands, ~~except as hereinabove provided,~~ as the successor ~~or successors~~ of the lessee's interest ~~in the tract or tracts~~, and upon the death of the lessee, his interest shall vest in the person ~~or persons~~ so selected. The Commission may select such a successor ~~or successors~~ after the death of the lessee, and the rights to the use and occupancy ~~of the tract or tracts~~ may be made effective as of the date of the death of such lessee.

2. **§75121(d) The *Chamorro* Land Trust Commission *shall* designate and make available a parcel of land in the southern part of the island that *shall* be designated as a Biodiversity Conservation Easement for the purpose of transplanting and cultivating herbal plants, and establishing *Hatdin Åmot Chamorro.***

Public Law 23-38, The Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission

1. **§2.2 Offices.** The commission offices are located at **590 South Marine Corps Drive, Tamuning, Guam; ITC Building, 3rd floor;** ~~Buildings 903,905, and 907, Tiyan Barrigada, Guam~~ or whatever successor office it might relocate to in the future.

2. **§2.3 Mailing Address.** P.O. Box 2950, Agana, Guam ~~96910~~ **96932**

3. **§2.4 Contact** ~~numbers~~ **Information:**
   1. Telephone: (671) ~~475-4281~8~~ **649-5263 ext 400**
   2. Fax: (671) ~~477-8082~~ **649-5383**
   3. **Email: cltc@land.guam.gov**
   4. **Webpage:** http://dlm.guam.gov/chamorro-land-trust-commission/

4. **§5.6** ~~Village and i~~Island-wide-**Residential and agricultural** waiting lists.

5. **§5.6(a)** Applicants will be placed on the respective island-wide residential ~~and/~~or agricultural ~~tract~~ waiting list in the order ~~specified~~ **in which they were received** ~~in section 5.3(a)~~.

6. **§5.6(c)** An applicant who **receives a notice of an intent to award** ~~is awarded a lot~~ shall be able to decline **twice** ~~lots in two different villages~~. After declining a third **notice of intent to** award, an applicant's name shall be removed from the waiting list.

7. **§5.6(d)** ~~On or before~~ **By** the **20~~15~~th** day **of the end of the calendar year** ~~of every month~~, a copy of the **residential and agricultural** ~~priority~~ ~~listing~~ **redacted master data-base listing** for the previous **year** ~~month as of the last day of the month~~ shall be recorded at the Department of Land Management.

8. **§5.6(e) Residential and agricultural island-wide waiting list shall be posted online and made available at the CLTC office.**

9. **§5.7** Contract for award~~; priority~~. Applicants shall be considered for award in the order in which their completed applications were received by the commission; provided that awards shall first be made according to **their** ranking in ~~existing priority waiting lists in that order until those waiting lists are exhausted~~ **the island-wide residential or agricultural waiting list.**

10. **§5.8** Transfer **or switch** of application rights.

11. **§5.8(a)** An applicant may designate a ~~relative~~ qualified **person** under the Act to include **a qualified** husband ~~and~~ **or** wife,~~ children, widows or widowers of the brothers and sister, or nieces and nephews~~ to succeed to the applicant's application rights upon the death of the applicant. Upon the death of an applicant who dies without designating a successor, the application rights may be succeeded by the qualified ~~relative~~ **person within the third degree of consanguinity of the applicant** as provided in (1) and (2) in this section upon application therefor. In the absence of such a designation, the commission may

    (1) Designate, in its absolute discretion, a successor to **include a qualified husband or wife; or a qualified person** ~~from among the applicants for succession~~ **within the third degree of consanguinity of the applicant** to the application rights of the deceased applicant ~~in the order named in this paragraph (a)~~; or

    (2) Allow an unqualified spouse to designate a qualified child to succeed to the deceased applicant's application rights.

    (3) Requests for succession to application rights shall be made to the commission in writing not later than ~~180~~ **90** days after the~~ death of the applicant;~~ **notice of intent to award if the applicant is deceased**; otherwise, the application shall be cancelled and the applicant's name removed from the waiting list.

9. **§5.8(b) An applicant may, once in his/her lifetime, transfer or switch their application date and time rights to a qualified person within the third degree of consanguinity of the applicant under the Act. Requests for a transfer or switch of application date and time shall be made to the commission in a notarized letter and the board of commissioners shall consider the request which must be approved to be made effective. No other switching of the application rights of either party shall be permitted, thereafter. Requests for transfers or switches may be considered if the commission, in its considered opinion, finds that an emergency exists which makes transfer or switch imperative.**

10. **§5.9** The commission shall post, in every municipal mayor's office and **on the website** ~~once in a publication of general circulation~~, the names, ~~file~~

~~numbers~~ **waiting list number**, and date~~s~~ **and time** of application of all who **have been awarded leases** ~~receive lease awards~~ within two weeks after awards are made. They shall remain posted for a period of sixty (60) days.

11. **§5.10(a)** An applicant for awards must notify the commission, in writing, of any change in address or other information contained in the application within fifteen calendar days of such change. ~~Whenever the commission initiates action for awards, all applicants whose application information is not current will be given ninety (90) days written notice to update the information. Written notice shall either be served personally upon the applicant or be sent to the applicant by registered mail addressed to his mailing address, as indicated on the applications. If notice is not personally served, it shall also be published once in a daily newspaper of general circulation in the territory of Guam within three days of the date the notice is mailed out. If the applicant does not furnish the information necessary to facilitate the award within 90 days of notice, the commission shall remove the applicant from the award list and the applicant must re-apply as a new applicant.~~ <Moved to §6.2(b)>

12. ~~**§5.10(b)** The applicant may appeal the commission's decision to remove his name from any award list as provided by the Administrative Adjudication Law.~~ <Moved to §6.2(b)>

13. **§6.1(a)** Whenever residential ~~tracts~~ **lots or units** are available, the commission shall award ~~residential tract~~ leases to applicants who, in the opinion of the commission, are qualified to perform the conditions of such leases. The commission's opinion as to the applicant's qualification shall be based on criteria specified in the Act.

14. **§6.1(b)** The lessee shall occupy and commence to use the ~~tract~~ **lot or unit** as ~~his~~ **their** home within one year after the lease is ~~made~~ **executed**.

15. **§6.1(c)** Lot size for a residential ~~tract~~ lease to be awarded shall be not less ~~than 10,000 square feet with public sewer connection available nor less than~~ one-half (1/2) acre with no public sewer connection available, ~~but in neither case shall be more than one (1) acre~~; or lot size for a residential ~~tract~~ lease shall be specified by zoning, subdivision, environmental, or administrative policies**.** ~~, but in no circumstance may the area exceed one (1) acre.~~

16. **§6.2(b)** ~~The commission shall award lots on a first-come-first-served basis at the discretion of the applicant.~~ **When the commission initiates action for awards, written notice shall be mailed by USPS First Class mail. For all notices, the Commission shall publish twice in a daily newspaper of general circulation in the territory of Guam a notice of intent to award for applicants listed. Notice of the list of the intent to award shall simultaneously be issued to each village mayor for posting and be posted on the CLTC webpage. If the applicant does not respond to the notice within 90 calendar days of the second published notice, the commission shall remove the applicant from the award list and the applicant must re-apply as a new applicant. The applicant may appeal the commission's**

decision to remove their name from any award list as provided by the Administrative Adjudication Law.

17. **§6.2(c)** ~~In addition to (a) and (b) above, the commission shall prioritize awards for residential tracts to applicants in the following descending order:-~~

    ~~(1) Those who do not own land anywhere;~~
    ~~(2) Those who own one (1) acre or less anywhere;~~
    ~~(3) Those who own more than one (1) acre anywhere."~~

    The board of commissioners shall approve a listing of eligible applicants who have been duly noticed and have accepted and are ready to be awarded a lease. Upon approval of these applicants, a lease shall be prepared and processed. These approved leases shall be deemed as ratified.

18. **§6.3** Award of **Residential** lease; lessee's performance.

19. **§6.3(a)** The commission shall, whenever ~~tracts~~ **lots or units** are available, enter into such a lease with any applicant who, in the opinion of the commission, is qualified to perform the conditions of such lease.

20. **§6.5** Agricultural ~~tract~~ leases.

21. **§6.5(a)** Whenever agricultural ~~tracts~~ **lots** are available, the commission shall award agricultural ~~tract~~ leases to applicants who, in the opinion of the commission, are qualified to perform the conditions of such leases. The commission's opinion as to the applicant's qualification shall be based on criteria specified in the Act.

22. **§6.5(b)** The lessee shall occupy and commence to use the ~~tract~~ **lot** to cultivate as ~~his~~ **their** farm, within one year after the lease is made.

23. **§6.6(a)** Residences shall be permitted ~~upon~~ **on** agricultural ~~tracts~~ **leased lots**. Only one residence will be permitted per lessee on Chamorro homelands, subject to the following conditions:

24. **§6.6(a)(1)** The lessee has actively cultivated or developed at least two-thirds of the agricultural ~~tract~~ **lot** at all times;

25. ~~**§6.6(b)** A lessee possessing a residential tract lease may construct a residence on the lessee's agricultural tract; provided that, the lessee complies with all other conditions imposed by this section, section 7.3, and:~~

    ~~(1) Lessee makes prior arrangements to surrender or transfer the residential tract lease upon the completion of construction of the residence on the lessee's agricultural tract. Should it be feasible, the lessee may relocate the present house;~~

    ~~(2) Lessee must be financially able to assume the cost of relocation or construction of the new residence plus any related expenses~~

~~necessary to maintain the agricultural tract. The commission may assist the lessee under chapter 8; and~~

~~(3) In the event the lessee surrenders the residential tract lease, the net proceeds thereof shall be first credited to any loan granted by the commission for the construction of a home on the agricultural tract.~~

26. **§6.6** ~~(c)~~**(b)** The commission shall not be liable for expenses incurred by the lessee for amenities brought to the **lot** ~~tract~~. The commission shall not provide nor be required to provide such amenities, except as it may determine in the planned development of its lands.

27. **§6.6**~~(d)~~**(c)** Upon cancellation, surrender, or transfer of the agricultural **lot** ~~tract~~, the lessee shall relinquish the entire leasehold interest including the residence.

28. **§6.9** Commercial leases ~~[Reserved]~~
~~No commercial leases shall be entered into by the Chamorro Land Trust Commission until Rules and Regulations covering the same have been adopted pursuant to the Administrative Adjudication Law.~~ **See 21 GCA, Chapter 75, Section 75122.**

29. **§7.5** Transfer of leases. Requests for transfers will be considered for approval only if the lessee has held such lease for a period of at least seven years, unless the commission, in its considered opinion, finds that an emergency exists which makes transfer imperative. A lessee may transfer the leasehold to ~~any individual who qualifies under the Act, and is at least eighteen (18) years old~~ **a qualified spouse or a qualified person within the third degree of consanguinity**. The transferee must immediately occupy the residential ~~tract~~ **lot** or use or cultivate the agricultural ~~tract~~ **lot**. Failure to occupy or use such ~~tract~~ **lot** within sixty (60) days from date of transfer shall constitute grounds for cancellation of such lease. ~~A transferee may own an interest in non-Chamorro homelands real property regardless of degree of ownership.~~

WHEREAS, at the October 18, 2018, CLT Board of Commissioners meeting, the commissioners approved a motion to recommend the changes outlined above to *I Liheslaturan Guahan.*

NOW THEREFORE BE IT RESOLVED,

1. The Chamorro Land Trust Commission Board of Commissioners approved motion and submits this resolution respectfully requesting *I Liheslaturan Guahan* to modify Title 21, Guam Code Annotated, Chapter 75, and The Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission, enacted as Public Law 23-38, with the recommended changes outlined above.

2. The Chamorro Land Trust Commission Board of Commissioners transmits Resolution No. 2018-09 to *I Liheslaturan Guahan*.

CHAMORRO LAND TRUST COMMISSION RESOLUTION NO. 2018-09
IS DULY AND REGULARLY ADOPTED BY THE CHAMORRO LAND TRUST COMMISSION
BOARD OF COMMISSIONERS THIS 18th DAY OF OCTOBER 2018.

Date: 10-18-18

G. PIKA FEJERAN, Chairwoman
Chamorro Land Trust Commission

Date: Oct 18, 2018

MICHAEL J.B. BORJA, Administrative Director
Chamorro Land Trust Commission

Doc. No. 34GL-18-2447.