

I MINA'TRENTAI TRES NA LIHESLATURAN GUĀHAN
2015 (FIRST) Regular Session

Bill No. 175-33 (OK)

Introduced by:

T.C. Ada 
R.J. Respicio 

1 AN ACT TO PRIORITIZE THE SURVEYING,
2 REGISTRATION, AND CONSTRUCTION OF
3 INFRASTRUCTURE FOR CHAMORRO LAND
4 TRUST COMMISSION (CLTC) RESIDENTIAL
5 AND AGRICULTURE PROPERTIES USING
6 THE PROCEEDS OF COMMERCIAL LEASES,
7 THROUGH THE ENACTMENT OF RULES AND
8 REGULATIONS FOR CLTC COMMERCIAL
9 LEASES.

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11 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

12 **Section 1. Legislative Findings.**

13 *I Liheslaturan Guåhan* finds that there exists a backlog of approximately 8,000
14 applications for Chamorro Land Trust Commission (CLTC) residential and agricultural
15 lands. A majority of the applications were filed since the onset of the program in December
16 2, 1995. The backlog is attributed primarily to the reason that much of the CLTC lands have
17 not been surveyed and registered pursuant to §75105(f) of Chapter 75 Title 21 Guam Code
18 Annotated.

19 *I Liheslaturan Guåhan* further finds that the CLTC does not have the funds necessary to
20 procure land-surveying services or to hire the manpower needed for the Commission to
21 perform these surveys. *I Liheslaturan Guåhan* also finds that the CLTC properties do not
22 have in place the water infrastructure necessary to support a decent standard of living,
23 wastewater infrastructure to adequately protect the northern Guam aquifer, to support
24 productive agricultural activities, and.

25 *I Liheslaturan Guåhan* asserts that the CLTC can generate revenue by leasing or
26 licensing for commercial use certain properties in its land inventory. The adoption of rules

1 and regulations pursuant to §75107(f) of Chapter 75 Title 21 Guam Code Annotated is
2 however a prerequisite which to date has not been accomplished.

3 *I Liheslaturan Guåhan* finds that the CLTC initiated a Memorandum of Understanding
4 (MOU) on November 17, 2011 with the Guam Economic Development Authority (GEDA)
5 “to allow GEDA to provide real property management and development assistance to the
6 Commission.” On April 24, 2013 the Governor of Guam approved the MOU.
7 Implementation of the MOU however, was contingent upon the adoption of commercial
8 leasing/licensing rules and regulations by the Guam Legislature pursuant to §75107(f) of
9 Chapter 75 Title 21 Guam Code Annotated. A similar partnership has been successfully
10 implemented between the Guam Ancestral Lands Commission and GEDA.

11 *I Liheslaturan Guåhan* intends to facilitate the leasing of selected CLTC properties for
12 commercial activities in order to begin generating revenues needed to accomplish land
13 surveys and registration and to provide infrastructure to residential and agricultural CLTC
14 land tracts.

15 **Section 2. Designation of Land for Commercial Use.**

16 a. Notwithstanding §75107(f) of Chapter 75 of 21 Guam Code Annotated and Section
17 6.9 of Exhibit A of Public Law 23-38, upon declaration by the CLTC and approval by the
18 Legislature that certain lands are not required for residential, subsistence agriculture, or
19 subsistence aquaculture leasing, those lands may be leased or licensed by the CLTC to the
20 general public pursuant to §75105(d) of Chapter 75 of 21 Guam Code Annotated, for
21 commercial use for a term not to exceed twenty-five (25) years. All income arising out of
22 any lease or license of those properties shall be credited to and deposited in the *Chamorro*
23 *Land Trust Survey and Infrastructure* Fund.

24 b. The CLTC shall transmit to the Legislature 60 days prior to solicitation of a
25 commercial lease, or license its list of lands declared as not required for residential,
26 subsistence agriculture, or subsistence aquaculture leasing . by vote of the Commissioners in
27 an open meeting and subsequent to public hearing by the CLTC. The adoption of the list
28 shall be subject to the approval of both the Legislature and the Governor.

29 **Section 3. Lease Agreement Stipulations.** The execution of long term commercial lease
30 agreements or licenses shall be subject, at minimum, to the following stipulations:

31 a. Notice of lands available for commercial use and solicitation for interest and

1 proposals thereof shall be published at least thirty (30) days prior to the deadline for
2 submittal of statements of interests and proposals from prospective Lessees or Licensees.
3 Said notice shall be posted in the websites of the CLTC and the Department of Land
4 Management continuously, and through any methods of electronic publication capable of
5 providing notice to the general public, and at least once in a newspaper of general circulation.

6 b. Leases shall be competitively solicited and negotiated with entities deemed to be
7 responsible and responsive to the requirements stipulated by the CLTC.

8 c. The CLTC may also accept unsolicited proposals, but must subsequently place such
9 proposals to competitive solicitation.

10 d. Lessee and Licensee awards shall be posted on the CLTC website for a period of one
11 (1) year after award.

12 e. Minimum annual rent shall be no less than nine percent (9%) of the current appraisal
13 of fair market value of the land that is to be leased. Rent shall escalate at a minimum of five
14 (5) year intervals based at a minimum upon current appraisals of fair market value of the land
15 being leased, but in no event shall rent be lower than the rent charged during the previous
16 five (5) year period. CLTC may require accelerated or advanced rental payments as a
17 condition of the lease.

18 f. All lease and license agreements shall require tenants and subtenants to have business
19 liability insurance which indemnifies and holds CLTC harmless; shall have tenants maintain
20 storm water management systems pursuant to generally accepted maintenance standards or as
21 required by applicable laws and government regulations; and shall require the tenant to
22 respond to CLTC requests for information on a timely basis. All lease and license
23 agreements shall require that any improvements made to or upon the real property shall
24 belong in title to the CLTC upon termination or expiration of the lease or license, and that
25 any removal required by the CLTC of improvements or items remaining on the property shall
26 be the responsibility of the tenant at no cost to the CLTC.

27 g. All commercial tenants of CLTC shall be required to pay to CLTC a negotiated
28 amount of participation rent which is defined as a percentage of the gross annual income
29 derived from the use of the property or the sale of extracted minerals or natural resources.

30 h. Land uses for properties under CLTC jurisdiction shall be utilized in a manner
31 consistent with the zoning category applicable to the property pursuant to the zoning laws of

1 Guam.

2 i. Tenants shall pay all taxes and assessments lawfully levied against the leased
3 premises and against any business conducted thereon or in connection therewith. Tenant
4 shall also pay all charges for utility services furnished or provided to the leased premises.

5 j. Tenants shall pay for those expenses associated with the processing of leases,
6 amendments, assignments, estoppels, consents or other such documents, including, but not
7 limited to, attorneys' fees, appraisal fees, title report fees, survey fees, credit report fees,
8 recording fees, and documentation fees but not including CLTC staff time. Payment of fees
9 shall be made prior to document recordation or pick up.

10 k. Applicants must be licensed to do business in Guam prior to the execution of a lease
11 or license and all tenants must maintain a valid license to do business in Guam during the
12 term of their lease or license.

13 l. All activities on leased or licensed available real property shall be in compliance and
14 maintained in accordance with existing environmental laws. Failure to comply with
15 environmental laws shall be cause to terminate the agreement.

16 m. Tenants shall be required to prepare at their own expense, a Phase I Environmental
17 Site Assessment (ESA) of the leased property to serve as a baseline of conditions at the site
18 prior to the start of the lease. The complexity of the assessment shall be dependent on the
19 previous use of the property. The Phase I ESA shall be referenced in any lease or license
20 agreement for the property. Prior to the issuance of any agreement, tenants or prospective
21 tenants must conduct a Phase I ESA of the site at tenant's expense.

22 n. At the end of the lease or license period, or upon termination, tenant shall restore the
23 land to baseline levels established at the start of their lease or license, or better/higher
24 environmental levels agreed upon in the lease or license and shall bear all expenses relating
25 to such restoration and Phase I and Phase II evaluations. However, in the case where mineral
26 extraction or the extraction of natural resources at the site was authorized initially in the lease
27 or license agreement, the site shall be returned to the CLTC baseline environmental levels
28 established at the start of their lease or license or in the better/higher environmental end-state
29 that was agreed upon at the beginning of the lease or license. CLTC shall require that a
30 performance bond be provided to ensure that property is returned in an acceptable end-state,
31 but that said bond shall not relieve the lessee of the responsibility of returning the line to the

1 required base line state.

2 o. Rent Amendments and Payments Schedules. Tenants may submit written requests for
3 temporary reductions in rent. Tenants shall submit audited financial statements covering the
4 previous three (3) year period. CLTC shall consider the current financial position of the
5 tenant and the prospect for improvements in the tenant's financial position, market
6 conditions, the benefit to the Trust in temporarily reducing the rent, and such other
7 information as may be required in considering tenant's request for rent reductions. Any rent
8 reductions authorized by CLTC shall not exceed one (1) year and shall be for the benefit of
9 the Trust. As temporary rent reductions are intended to assist tenants over a short period of
10 time, tenants must agree in writing that such temporary reductions shall in no way affect the
11 schedule and amount of rent escalations for future option terms identified in the lease
12 agreement. Requests for rent reductions shall be subject to Commission approval. The
13 CLTC shall not allow the exercise of options for additional terms unless all past due rent is
14 paid .

15 p. Payment Plans. Requests to develop a payment plan for back rent shall be submitted
16 in writing with the reasons for the request. In addition, tenants shall submit a copy of audited
17 financial statements covering the previous three (3) year period. Payment plans must include
18 a provision for payment of interest on the unpaid balance. In addition, payment plans must
19 contain the requirement that late fees using the industry standard be paid, in the event the
20 lessee does not make payments as scheduled and if the lessee is not deemed to be in breach
21 of the lease. Financial institutions must be provided with copies of approved payment plans,
22 if estoppel, mortgage or other such agreements require such notification. To the extent
23 possible, payment plans for outstanding rent must be paid off within the fiscal year to avoid
24 budgetary problems within CLTC.

25 **Section 4. Annual Report.** The Administrative Director shall prepare an annual report for
26 presentation to the Commission summarizing the benefits received by CLTC on activities of the
27 Program for the fiscal year. The annual report shall contain findings on employment, payroll,
28 gross receipts taxes paid, local purchases made and total and annual capital investments by
29 tenants and their sub-tenants, if any. The report shall not contain proprietary information of
30 tenants. The report shall also contain a projection of revenues over the next five-year time
31 period and a discussion on outstanding issues and recommendations. The report shall be

1 submitted no later than December 31 covering the previous fiscal year ending September 30.

2 **Section 5. Public-Public Partnership Encouraged.** The CLTC is encouraged to partner
3 with the Guam Economic Development Authority (GEDA) for the purposes of this Act, for
4 general consultancy on real property development and property management services.

5 a. For its part, GEDA shall invest in and provide the following services:

6 1. preparation of appraisals, environmental studies, title reports, land surveys,
7 development plans, infrastructure studies and other studies that may be appropriate;

8 2. formulation of requests for development and lease proposals for the leasing of
9 lands declared available pursuant to this Act;

10 3. maximum dissemination through print and electronic media to promote
11 competitive solicitation for offerors interested in the commercial development and long
12 term leasing of available CLTC lands that yield the highest return for the CLTC.

13 4. receipt and evaluation of proposals, preparation of recommendations to the CLTC
14 for the selection of prospective lessees, and for the negotiation of lease agreements to be
15 entered into;

16 5. manage leases and collect rent therefrom; rent collected by GEDA from
17 commercial lessees and licenses shall be remitted to the CLTC no later than twenty (20)
18 days after receipt from the commercial lessees and licensees.

19 6. collaborate with the CLTC and its employees to achieve identified goals;

20 7. provide periodic updates to the CLTC on the status of the development and
21 leasing of the lands;

22 8. do all other things necessary to carry out the above objectives to include retaining
23 subject matter experts, technical consultants, and legal counsel as necessary.

24
25 b. For its part in the leasing of lands listed in, the CLTC shall do the following to assist
26 GEDA in performing the services set forth in this section:

27 1. provide all information pertaining to the lands to be leased under the scope of this
28 Act;

29 2. participate in the formulation of development and lease specifications, and the
30 evaluation and selection of prospective lessees;

31 3. review reports submitted by GEDA and provide guidance;

1 4. obtain all necessary approvals for the commercial leasing or licensing of the lands
2 declared available for commercial leasing and licensing.

3 5. execute development and lease agreements recommended for execution;

4 6. Execute all other documents necessary to carry out the intent of this Act.

5
6 **Section 6. Creation of the Chamorro Land Trust Survey and Infrastructure Fund.**

7 a. A special Fund called the *Chamorro Land Trust Survey and Infrastructure Fund* (the
8 *Fund*) is hereby created and shall be funded by the proceeds received from the commercial
9 leasing and licensing of CLTC lands.

10 b. Expenditures from the Fund shall be subject to Legislative appropriation and shall be
11 restricted for the following expenditures:

12 1. payment to GEDA as a fee for general real property development consultancy and
13 property management services provided to the CLTC; said fee however shall be limited
14 to no more than three percent (3%) of the annual lease payments during the first year of
15 said public-public partnership, and for reimbursement to GEDA for costs related to any
16 mutually agreed upon engagement of technical and legal services needed to carry out the
17 intent of this Act, and

18 2. surveying and registration of tracts of residential and agricultural land in the
19 CLTC property inventory, and

20 3. for the construction of infrastructure, to include access roads, water, and power
21 utilities, to service CLTC tracts of land..

22 c. the Fund shall be maintained separate and apart from any other funds and shall not be
23 subject to the transfer authority of *I Maga'lahen Guahan*.

24 **Section 7. Affirmation of legislative action.** *I Liheslaturan Guåhan* affirms that if the
25 Chamorro Land Trusts Commission's proposed rules and regulations submitted to the Speaker
26 of *I Liheslaturan Guåhan* on June 3, 2015 are deemed effective by any authority, then such rules
27 and regulations are hereby repealed and shall NOT be in effect. *I Liheslatura* passed Bill No.
28 139-33 (COR), which is AN ACT TO DISAPPROVE THE PROPOSED CHAMORRO LAND
29 TRUST (CLTC) RULES AND REGULATIONS FOR COMMERCIAL USE TRANSMITTED
30 BY *I MAGA'LAHEN GUÅHAN* TO THE SPEAKER OF *I LIHESLATURAN GUÅHAN* ON
31 June 3, 2015. *I MAGA LAHEN GUÅHAN*, however, vetoed Bill No. 139-33 (COR) on

1 September 8, 2015 and maintained that these rules and regulations have lapsed into law. *I*
2 *Liheslatura* herein affirms that these rules and regulations did NOT lapse into law because *I*
3 *Liheslatura* passed Bill 139-33 (COR) on August 28, 2015, which is well within the 90-day
4 period to legislatively act on any proposed rule or regulation pursuant to the Administrative
5 Adjudication Law.

6 **Section 8. Reports.** The CLTC shall provide quarterly reports on the revenue,
7 surveying, and infrastructure being made from the leasing or licensing of CLTC lands pursuant
8 to this Act to *I Maga'lahen Guåhan*, the Speaker of *I Liheslaturan Guahan*, and the Office of the
9 Public Auditor.

10 **Section 9. Severability.** If any provision of this law or its application to any person
11 or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other
12 provisions or applications of this law, which can be given effect without the invalid provisions or
13 application and to this end the provisions of this act are severable.