



Chamorro Land Trust Commission Oversight of the Removal of Coral Material from the Guam International Raceway Park

ANALYSIS

June 1, 1998 through January 31, 2023

OPA Report No. 23-08

September 2023





**Chamorro Land Trust Commission
Oversight of the Removal of Coral Material from
the Guam International Raceway Park**

**Analysis
June 1, 1998 through January 31, 2023**

**OPA Report No. 23-08
September 2023**

Distribution via E-Mail:

Governor of Guam

Lieutenant Governor of Guam

Speaker, 37th Guam Legislature

Senators, 37th Guam Legislature

Administrative Director, Chamorro Land Trust Commission

Chief Executive Officer/Administrator, Guam Economic Development Authority

Attorney General, Office of the Attorney General

Director, Department of Administration

Director, Bureau of Budget and Management Research

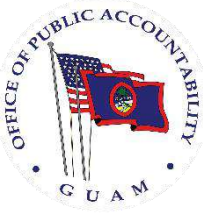
Controller, Superior Court of Guam

Guam Media



Table of Contents

| | |
|--|----|
| EXECUTIVE SUMMARY | 3 |
| Introduction | 6 |
| Results of Analysis | 9 |
| Insufficient Information Available to Accurately Determine How Much Material Was Extracted | 9 |
| Insufficient Information Available to Accurately Determine How Much Revenue Was Due to CLTC | 11 |
| No Evidence of GEDA Inspections, Monitoring, or Collecting Billing Reports from Contractors | 14 |
| Continued Occupancy Without License or Lease | 16 |
| Regulatory Oversight Unclear | 17 |
| Other Matters | 19 |
| Conclusion and Recommendations | 20 |
| Management Response and OPA Reply | 21 |
| Appendices: | |
| 1. Objective, Scope, and Methodology | 22 |
| 2. Timeline of Events | 23 |
| 3. Prior Audit Coverage | 25 |
| 4. Applicable Laws and Regulations | 27 |
| 5. CLTC's Management Response | 30 |
| 6. Status of Audit Recommendations | 31 |



EXECUTIVE SUMMARY
Chamorro Land Trust Commission Oversight of the Removal of Coral
Material from the Guam International Raceway Park
OPA Report No. 23-08, September 2023

Our analysis of coral/top soil extraction from the Guam International Raceway Park (Raceway) found that there was a lack of consistent oversight and monitoring of the Guam Racing Federation (GRF)'s management and operations of the raceway between June 1, 1998 and January 31, 2023, by the Guam Economic Development Authority (GEDA) and the Chamorro Land Trust Commission (CLTC). As a result, the total volume of materials extracted and how much total revenue was due to CLTC cannot be determined. In addition, GRF continued to allow mineral extraction activity beyond the Cease and Desist Order.

Records of royalties paid to CLTC and GRF show inconsistent amounts; whereas, GRF financial statements show reported revenues of \$2.2 million (M), and CLTC has recorded \$1.98M in royalties. Due to the fluctuating prices charged to each company (sometimes concurrently) and gaps in reporting periods, we could not validate the information we reviewed.

We further found that GEDA was the entity required by law to inspect and monitor pre-construction or construction activities and collect billing reports from contactors related to the Raceway, however, there was no evidence such inspections or monitoring were conducted or that billing reports were collected. After the agreement between CLTC and GRF expired in 2018, GRF continued to occupy the property without an approved license or lease as required by law.

Insufficient Information Available to Accurately Determine How Much Material Was Extracted
Supporting documents are missing for certain periods of extraction activity, and some of the information that is available is not consistent with GRF's records. The most recent report produced by Engineering Firm 1 in 2018 shows an estimated total of 2,603,639-2,898,718 cubic yards (CY) of material was extracted between 2007 and 2017. GRF's records indicate the estimated total volume of extracted materials is 4,938,175 CY between 2001 and 2021.

Insufficient Information Available to Accurately Determine How Much Revenue Was Due to CLTC

Available financial statements for GRF shows that at least \$2.2M was earned in royalties from the sales of coral material, of which \$1.8M was recorded in the financial statements from 2008 through 2019 and \$424K recorded in the profit and loss statements for 2020-2022. Due to the incompleteness of audited financial statements for GRF, we were unable to determine the full amounts earned in royalties from the sale of coral material.

CLTC financial audits for FYs 2012-2021 and OPA Report No. 05-09 reflect a sum of approximately \$1.98M in revenues earned from royalties for coral extraction activity. We inquired with CLTC Management if there were any other royalty revenues for prior years of activity, but their response is pending research as of the release of this report.

GRF's in-house record of payments made to CLTC shows a total of \$2.7M, but the record of payments provided by GRF contained computation errors. The same worksheet provided by GRF shows only

payments made to CLTC. We could not obtain records from Company A to confirm or validate GRF's in-house record of payments.

Without complete and correct statements of revenues reported by GRF or by CLTC, and without records from each company to validate GRF records, we cannot accurately determine how much revenue was paid to GRF or CLTC or how much may be due to CLTC.

No Evidence of GEDA Inspections, Monitoring, or Collecting Billing Reports

GEDA was the entity responsible for the inspection and monitoring of pre-construction or construction activities and collection of billing reports from contractors as required by law; however, there was no evidence such inspections or monitoring was conducted or that billing reports were collected. GRF confirmed that inspections were not conducted by GEDA and asserted that any GEDA oversight was limited to activities performed under the tax credit program.

The Guam Legislature's Committee Report for PL 30-204 contains copies of correspondence from GEDA to GRF, between 2008 and 2009, and an Annual Compliance Report Review for Calendar Year 2009 (Review). GEDA made at least three attempts to communicate with GRF regarding GRF's compliance with Rules and Regulations. In the Review, GEDA instructed GRF to forward all proposed construction contracts to GEDA prior to initiating work to be done, and GRF reported that all future contracts would be forwarded. The Review shows that GEDA deemed GRF as non-compliant, and there is no other evidence of the construction contracts that may have been forwarded to GEDA as promised. The Review also shows that GRF claimed there were no paid employees for the operations at the Raceway at the time, but GRF financial statements show payroll expenses in 2008 and 2010 and management and administration expenses in 2010.

Continued Occupancy Without License or Lease

GRF continued to occupy the property without an approved license or lease as required by law, and CLTC commissioners continued to extend occupancy of the property. Minutes from CLTC's January 19, 2023 meeting includes discussion with legal counsel stating that CLTC has been operating on a theory of a holdover tenancy for GRF to continue occupancy due to rental payments having been accepted by CLTC.

Regulatory Oversight Unclear

There may not be a regulatory agency in place that has jurisdiction over mineral extractions on CLTC properties. As a result, we could not determine what governing entities, policies and procedures, or rules and regulations were responsible for monitoring or regulating the mineral extraction activity at the Raceway property.

CLTC Management confirmed that there is no governing policy that requires CLTC to monitor or inspect mineral extraction activity. CLTC staff began monitoring the mineral extraction activity as a response to the finding in their FY 2015 financial audit.

Conclusion and Recommendations

Our analysis of coral/top soil extraction from the Raceway could not be completed as a result of the lack of information available for our review. GRF was unable to provide financial audits for years prior to 2008, and GRF did not maintain adequate files of invoices, statements, or receipts issued by each company. We could not validate GRF's records of extraction activity and royalties that were due to CLTC. For a more complete report, GRF would have to provide evidence supplied by each company, showing total volumes of extracted material for every month and year of activity.

To address these findings from occurring again, we made two recommendations to CLTC Management, specifically to establish (1) a Standard Operating Procedure for invoicing and collecting royalty fees accompanied by supporting documents of the nature of the invoice such as a statement of activity issued by the contracted company and (2) policies with Commissioners to ensure that all tenants meet their obligations before entertaining new motions.

We further recommend for the Guam Legislature to clearly define in statute all terms associated with activities of earth excavation and to identify or establish jurisdiction of the development or exploitation of natural resources on CLTC property or to include CLTC in statutory requirements regulated by the Guam Natural Resources Board (GNRB).


Benjamin J.F. Cruz
Public Auditor

Introduction

This report presents our analysis of coral/top soil extraction from the Raceway. Our analysis was initiated at the request of the Speaker of the 36th Guam Legislature.

Our objective was to determine how much coral or top soil material was extracted from property designated as the site for the Raceway, managed and operated by GRF, and to determine how much revenue was due to CLTC.

Our scope was from June 1, 1998 (the beginning of the authorized period of occupancy) to January 31, 2023.

Refer to [Appendix 1](#) for the objective, scope, and methodology.

Background

Authorized Occupancy and Use

Pursuant to 21 Guam Code Annotated (GCA) §§ 75105 & 75A101(c), all lands designated as Chamorro homelands fall under the control of CLTC.

Public Law (PL) 24-141 authorized tax credits for contractors, designers, and material suppliers for the development of a racing park—exemptions would be used for the cost of development and were capped at \$9M. All property used for the racing facility would be exempt from real property taxes throughout the term that such property is used as a Raceway¹.

CLTC entered into a License Agreement (License) with GRF, designating Lot No. 7161-R1, Yigo, Guam (approximately 1,022,012 square meters or 252 acres) for incidental purposes related to a raceway park. The License granted alteration of the property, including the removal of topsoil and/or coral, re-contouring, and construction of facilities. Fifty percent (50%) of the materials extracted or the value of the materials shall have been the property of CLTC; if CLTC declined to use the materials, the License permitted GRF to sell the materials and deliver the proceeds to CLTC. Compensation for the License was to be paid according to the fee schedule stated in the License or at 10% of GRF's gross revenues, whichever was greater. The License was in effect for 20 years, between June 1, 1998 and May 31, 2018.

PL 25-27 established the *Rules and Regulations (Rules and Regulations) of the Guam Economic Development Authority on the Operation of the Guam Raceway Park and on the Issuance of Tax Credits for its Design and Construction*, as adopted by the GEDA Board of Directors. According to these Rules and Regulations, **GEDA was required to conduct inspections and monitoring, to report on the construction of each phase until completion of all phases of construction of the Raceway, and to collect billing reports from contractors.**

These Rules and Regulations further required GRF to publish notices of the proposed construction of the Raceway, soliciting bids or proposals from contractors to carry out the construction. These contractors would then be eligible to apply for participation in the tax credit program.

¹ PL 27-85 amended PL 24-141, reducing the total amount of authorized credits against taxes for the design and construction of the Raceway from \$9M to \$8M.

CLTC adopted Resolution No. 2018-06, authorizing a month-to-month extension of the existing License for its existing terms until May 31, 2019.

PL 34-142 authorized CLTC to enter into a lease agreement for up to 50 years for the operation of a raceway, related support facilities, and various outdoor events, allowing GRF to express its intention of exercising the right of first refusal within 15 days upon enactment. CLTC had 180 days from the right of first refusal to submit a negotiated lease to the Guam Legislature for legislative approval. This law explicitly prohibited the inclusion of mineral extraction activity in negotiated lease terms.

GRF submitted notice of right of first refusal to CLTC, and CLTC passed a motion to grant GRF continued occupancy based on previous lease terms on a month-to-month basis for another six months. CLTC sent notice to GRF, advising that since a lease agreement could not be negotiated, the most recent six-month extension would be the final one. CLTC subsequently approved a Right of Entry Agreement with GRF, extending occupancy for another six months, to expire on May 31, 2020.

In August 2020, CLTC issued a letter to GRF, granting a temporary authorization for continued occupancy of the property, noting that the Right of Entry Agreement expired on June 30, 2020. CLTC also encouraged GRF to appear at the next regular board meeting to request an extension of the current month-to-month lease process covered by the Right-of-Entry².

On January 30, 2023, a 30-day Notice of Eviction (effective February 1, 2023) was issued to GRF, and CLTC advised the holdover tenancy was terminated. In February 2023, CLTC granted an extension of the effective date of the eviction to June 2, 2023.

Master Plan Required by Law

Pursuant to the Rules and Regulations, GRF was mandated to submit a Master Plan to the GEDA Administrator, *describing and identifying all phases of construction; the contractors and subcontractors employed in construction; and how tax credits were to be applied for each phase of construction.*

A Master Plan was prepared by Engineering Firm 1 on October 15, 1999 and submitted to GEDA on November 17, 1999, stating the intended completion period for the Raceway was five years, with four phases of development. The preliminary total development cost for the Raceway was \$8,998,713¹.

Although not included in the Master Plan, GRF began conceptualizing a new Phase 5 in 2015, a phase which includes a proposal for the construction of a gas station with a convenience store and other businesses that would provide services related to Raceway operations but also accessible to the public, such as a racetrack-themed restaurant. Discussions about Phase 5 between GRF and CLTC occurred in June 2016, and an application for a permit to clear, grade, and fill Phase 5A was submitted to the Department of Public Works (DPW) in December 2016.

Extraction of Materials

Since 2001, three companies have engaged in excavating and extracting coral rock or limestone material from the property. According to a report from Engineering Firm 1, an agreement between GRF and Company A, and correspondence from Company B to GRF, each company has removed coral rock or limestone material off site or processed the material to re-fill the excavated pits from which

² There is no documentation for authorized occupancy between May 31, 2020 and the date of the letter, and there was no explanation for the updated expiration of the Right of Entry.

the materials were extracted. According to GRF, excavation began in 2001 and occurred through 2021.

CLTC adopted Resolution No. 2016-06 placing a moratorium on all coral extraction from the property and required GRF to provide a validated and certified method of determining actual coral materials extracted and to report to CLTC at least quarterly. Company C continued grading activity under a permit for clearing and grading. The moratorium was lifted on December 19, 2019, specific to Phase 5A, Zone 1, via a motion passed by CLTC.

CLTC issued a Cease and Desist notice to GRF after a CLTC site inspection revealed extraction activity exceeded what was approved at a board meeting in December 2019.

Royalty Revenue

The License states that 50% of the materials extracted or the value of the materials would become CLTC property; if CLTC declined to use the materials, the License permitted GRF to sell the materials and deliver the proceeds to CLTC. Statements from each company show that royalty payments were computed according to the total volume of material extracted, measured in cubic yards (CY).

Records show that the extracted material was sold at different prices, sometimes concurrently, between \$0.25/CY and \$2.00/CY. In 2002, CLTC increased the cost per CY to \$1.50/CY and reaffirmed that rate in 2011. Prior to the official rate change by CLTC in 2011, GRF was charging different prices per company: Company A was purchasing the extracted material for \$1.00/CY; Company B was purchasing at \$0.50/CY; and Company C was purchasing at \$0.25/CY for backfilling the drag strip. In 2021, GRF requested for CLTC approval to increase the rate to \$2.00/CY.

Eviction

On January 19, 2023, the CLTC Board of Commissioners approved a motion to issue a 30-day Notice of Eviction to GRF—effective February 1, 2023—terminating the holdover tenancy created by the expiration of the License (May 31, 2018). CLTC Minutes include discussions of multiple reasons for eviction:

- GRF was in arrears for at least three months of rental payments;
- CLTC did not approve or have prior knowledge of GRF's subcontract with Company C;
- CLTC granted multiple extensions for occupancy, but negotiations for lease terms since the expiration of the License on May 2018 were unsuccessful; and
- The Raceway development was not completed according to the Master Plan and the funding provided.

See [Appendix 2](#) for the detailed Timeline of Events.

Results of Analysis

Our analysis of coral/top soil extraction from the Raceway found that there was a lack of consistent oversight and monitoring of GRF's management and operations of the raceway between June 1, 1998 and January 31, 2023, by GEDA and CLTC. As a result, the total volume of materials extracted and how much total revenue was due to CLTC cannot be determined. In addition, GRF continued to allow mineral extraction activity beyond the Cease and Desist Order.

- The estimated volume of material extracted and removed from the property is at least 4,938,175 CY. Gaps in the information provided resulted in an incomplete review, and we could not verify or validate GRF's in-house records.
- Records of royalties paid to CLTC and GRF show inconsistent amounts: GRF financial statements recorded approximately \$2.2M, while CLTC has recorded \$1.98M in royalties. Due to the fluctuating prices charged to each company (sometimes concurrently) and gaps in reporting periods, we could not validate the information we reviewed.

We further found that:

- 1) GEDA did not have evidence of inspections or monitoring pre-construction or construction activity or of collecting billing reports from contractors as required by law.
- 2) GRF continued to occupy the property without an approved license or lease as required by law.
- 3) The regulatory oversight of mineral extraction activity on CLTC properties is unclear.

Insufficient Information Available to Accurately Determine How Much Material Was Extracted

Supporting documents are missing for certain periods of extraction activity, and some of the information that is available is not consistent with GRF's records. Gaps in the information provided cause for an incomplete analysis to explain the varying estimates among the reported volumes. GRF reported that the total volume of material that has been extracted between 2001 and 2021 is approximately 4,937,574 CY. The most recent report produced by Engineering Firm 1 in 2018 shows an estimated total of 2,603,639-2,898,718 CY of material was extracted between 2007 and 2017. The Engineering Firm reported that there is an additional six years (2001 to 2006) that have not been accounted for in its analysis of material removed from the site.

Extraction Activity

Correspondence between GRF and Company A shows that excess graded material was removed from the Raceway beginning in 2001.

Table 1 reflects GRF's in-house accounting of the estimated total volume of material extracted.

Table 1: GRF In-House Record of Estimated Volumes of Extracted Materials

| Year | Company A | Company B | Company C | Total CY |
|------|-----------|-----------|-----------|----------|
| 2001 | 57,892 | 0 | 0 | 57,892 |
| 2002 | 136,537 | 0 | 0 | 136,537 |
| 2003 | 130,181 | 0 | 0 | 130,181 |
| 2004 | 122,795 | 0 | 0 | 122,795 |
| 2005 | 99,034 | 1,772 | 0 | 100,806 |
| 2006 | 88,480 | 184,139 | 11,407 | 284,026 |

| Year | Company A | Company B | Company C | Total CY |
|---------------|----------------|------------------|----------------|------------------|
| 2007 | 49,003 | 158,948 | 35,914 | 243,865 |
| 2008 | 30,490 | 413,154 | 0 | 443,644 |
| 2009 | 0 | 266,914 | 18,283 | 285,197 |
| 2010 | 0 | 365,683 | 11,940 | 377,623 |
| 2011 | 69,162 | 427,426 | 0 | 496,588 |
| 2012 | 124,610 | 446,575 | 0 | 571,185 |
| 2013 | 8,966 | 359,507 | 142,039 | 510,512 |
| 2014 | 0 | 288,787 | 195,234 | 484,021 |
| 2015 | 0 | 164,326 | 353 | 164,679 |
| 2016 | 0 | 62,686 | 0 | 62,686 |
| 2017 | 0 | 0 | 0 | 0 |
| 2018 | 0 | 0 | 0 | 0 |
| 2019 | 0 | 0 | 19,124 | 19,124 |
| 2020 | 0 | 0 | 300,282 | 300,282 |
| 2021 | 0 | 2,530 | 143,402 | 145,932 |
| 2022 | 0 | 0 | 0 | 0 |
| Sum CY | 917,150 | 3,142,447 | 877,978 | 4,937,575 |

In 2018, GRF sent letters to each company, requesting that they confirm and affirm GRF's estimated cubic yards of excess graded material and the total amount of funds paid to CLTC as of December 31, 2017 (see Table 2).

In two separate reports, Engineering Firms 1 and 2 provided material volume estimates: each for different periods, and each discussing cut volume estimates for two different companies. Engineering Firm 1 estimated that Company B removed approximately 1,735,759 CY of limestone or hard rock between 2007 and 2017, and Engineering Firm 2 estimated that Company C removed approximately 442,728 CY of coral limestone rock between 2019 and 2021.

Table 2 contains extraction estimates as mentioned above and as reported to GRF and CLTC for the periods indicated by each respective source. Table 2 does not contain enough information to compare total estimated volumes of extracted material with the information provided in Table 1.

Table 2: Reports of Estimated Volumes of Extracted Material

| Source | Report Date | Extraction Period | Total CY |
|---|-------------|-------------------|-----------|
| COMPANY A | | | |
| Report of Material Charges and Payments | 6/4/2002 | 2000-2002 | 173,668 |
| GRF & Company A Joint Affirmation Letter | 2/12/2018 | 2001-2003 | 966,152 |
| COMPANY B | | | |
| Financial Statements | 5/8/2015 | 2010-2014 | 1,890,342 |
| GRF & Company B Joint Affirmation Letter | 2/7/2018 | 2005-2016 | 3,298,864 |
| Engineering Firm 1 – Report of Material Volume Estimates | 2/12/2018 | 2007-2017 | 1,735,759 |
| COMPANY C | | | |
| GRF & Company C Joint Affirmation Letter | 2/4/2018 | 2002-2012 | 415,170 |
| Engineering Firm 2 - Report of Excess Graded Material Volume Summary, Company C | 1/14/2022 | 2019-2021 | 442,728 |
| Report of Outhaul Summary | 5/13/2021 | 2019-2021 | 400,609 |

| Source | Report Date | Extraction Period | Total CY |
|-------------------------------------|-------------|-------------------|---------------------|
| Letter to OPA | 4/18/2023 | 2019-2021 | 462,808 |
| ENGINEERING FIRM 1 | | | |
| Report of Material Volume Estimates | 2/12/2018 | 2007-2017 | 2,603,639-2,898,718 |

Moratorium

The moratorium on all coral extractions was in place as of June 16, 2016, with an agreement between CLTC and GRF that documentation and monitoring procedures of coral extractions were to be established and that GRF and CLTC were to work together to determine how royalties were to be calculated and received.

Despite the moratorium, one permit was applied for on December 8, 2016 for clearing and grading at the property. The permit shows the estimated starting date of June 28, 2019 and completion date of June 28, 2020. A later application and permit was submitted to DPW on November 1, 2017 for backfilling limestone, with the estimated starting date on December 4, 2017 and estimated completion date of December 4, 2018. GRF notified CLTC that Company C was engaged to continue the needed grading and to grade other areas, and Commissioners voted to lift the moratorium on coral extraction activity, specific to Zone 1, Phase 5A.

Cease and Desist

In September 2021, CLTC gave notice to GRF to cease and desist all extraction activity. Upon receipt of the Cease and Desist order, GRF responded to CLTC, apologizing for the over excavation and stated that GRF got ahead of themselves in grading ahead of the approved area. CLTC subsequently sent a notification letter to GRF, advising that per legal guidance, four checks would be returned to GRF as a result of the over-excavation. The same letter advised GRF that until the over excavation issue was addressed, CLTC would not accept future payments for mineral extraction activity. These checks, totaling approximately \$41K, were issued by Company C between July and October 2021.

The Raceway General Manager (General Manager) advised us that no excavation or extraction activity has been conducted at the Raceway since the cease and desist notice was issued, but GRF's profit and loss statements show that GRF earned approximately \$424K in material sales revenue between July 2019 and June 2022.

The General Manager has publicly stated that about 500,000 CY of material is left to excavate and sell. Several recent news articles also quote the General Manager as saying that the excavation, extraction, and sales of coral material are necessary for two reasons:

- 1) To sell excess graded material for royalties to cover operating costs and
- 2) For grading to shape the future layout of the racetrack.

Insufficient Information Available to Accurately Determine How Much Revenue Was Due to CLTC

Prior audits of CLTC's financial statements have found that revenues earned from royalties for extracted material were not evidenced by an underlying agreement between CLTC and GRF and that royalty revenues were not evidenced by a verification of actual coral materials extracted. This was a repeat finding for at least six fiscal years since FY 2012.

There are missing or incomplete records of GRF financial audits that GRF could not provide to us or has not submitted to CLTC, and our review could not be completed for accuracy. According to GRF, many documents from prior years were destroyed during a typhoon, and financial audits from years prior to 2008 could not be located for our review.

Available financial statements for GRF show that at least \$2.2M was earned in royalties from the sales of coral material, of which \$1.8M was recorded in the financial statements from 2008 through 2019 and \$424K recorded in the profit and loss statements for 2020-2022.

CLTC financial audits for FYs 2012-2021 and OPA Report No. 05-09 (April 2003 – September 2004) reflect a sum of approximately \$1.98M in revenues from royalties paid to CLTC for coral extraction activity.

Table 3 compares royalty payments reported in GRF’s financial statements and CLTC’s financial statements.

Table 3: Comparison of Royalty Revenues

| Year | GRF Financial Statements | CLTC Financial Statements |
|-------------|---|--|
| 2003-2004 | N/A | \$104,027 |
| 2007 | \$138,721 | |
| 2008 | \$106,484 | |
| 2009 | \$108,032 | |
| 2010 | \$111,067 | |
| 2011 | \$391,853 | \$187,223 |
| 2012 | \$354,633 | \$457,575 |
| 2013 | \$284,348 | \$319,861 |
| 2014 | \$135,468 | \$250,934 |
| 2015 | \$146,094 | \$153,662 |
| 2016 | \$8,701 | \$83,215 |
| 2017 | \$30,270 | |
| 2018 | | |
| 2020 | \$117,228 | \$229,855 |
| 2021 | \$263,624 | \$194,646 |
| 2022 | \$43,368 | |
| Sum | \$2,239,891 | \$1,980,998 |

GRF Charged Different Royalty Price Fees

At one point in time, GRF reported charging each company different prices concurrently and that GRF made its own determination of prices, depending on the demand for the extracted material and on the work that each company did. The grading value was set to be competitive with what other landowners in the area were charging.

In August 2011, GRF requested that CLTC consider increasing the royalties rate to \$1.50/CY based on the demand for the extracted material. CLTC reaffirmed a prior approval from 2002 and approved GRF’s request to collect royalties at \$1.50/CY, with \$0.75/CY paid to CLTC and \$0.75/CY to GRF.

In March 2021, GRF requested that CLTC consider increasing the rate to \$2.00/CY, but CLTC Minutes (December 2019) and statements from Company C show that they were already paying \$2.00/CY between 2019 and 2021. GRF reported that the two-dollar rate included the costs for the engineering contract, but CLTC objected, stating that there was no prior approval to pay for costs associated with the project, including engineering costs.

Records from each company indicate royalty payments were computed according to the total volume of material extracted, measured in cubic yards.

Table 4 shows the prices, per cubic yard, charged to respective companies for periods of excavation activity as indicated. Some prices were adjusted from one month to the next, in the same year.

Table 4: Schedule of Royalty Fees

| COMPANY | EXCAVATION PERIOD* | PRICE/CY | SOURCE | DOCUMENT DATE |
|-----------|--------------------|-------------------------------------|--------------------------------|---------------|
| Company A | 2001-2002 | \$0.25 (CLTC portion only) | GRF Record - Joint Affirmation | 2/4/2018 |
| Company C | 2002 | \$1.50 (\$1.00 CLTC, \$0.50 GRF) | Letter (Company C to GRF) | 7/7/2002 |
| Company A | 2003 | \$0.75 (1st 90 days) | Agreement (Company A & GRF) | 2/14/2003 |
| Company A | 2003 | \$1.00 (91st day) | Agreement (Company A & GRF) | 2/14/2003 |
| Company A | 2003-2010 | \$0.50 (CLTC portion only) | GRF Record - Joint Affirmation | 2/4/2018 |
| Company B | Feb 2005-Sep 2011 | \$0.50 | Financial Statements | 5/8/2015 |
| Company C | 2006 | \$0.50 (CLTC portion only) | Letter (Company C to GRF) | 1/3/2006 |
| Company C | 2006-2015 | \$0.25 (CLTC portion only) | GRF Record - Joint Affirmation | 2/4/2018 |
| Company B | 2011 | \$0.50 | CLTC Minutes 8/18/2011 | 8/18/2011 |
| Company A | 2011 | \$1.00 | CLTC Minutes 8/18/2011 | 8/18/2011 |
| Company C | 2011 | \$0.25 | CLTC Minutes 8/18/2011 | 8/18/2011 |
| Company B | Sep 2011 | \$1.25 (\$0.75 CLTC, \$0.50 GRF) | Financial Statements | 5/8/2015 |
| Company A | 2011-2012 | \$0.75 (CLTC portion only) | GRF Record - Joint Affirmation | 2/4/2018 |
| Company B | 2012-2016 | \$0.75 (CLTC portion only) | GRF Record - Joint Affirmation | 2/4/2018 |
| Company C | 2015 | \$1.50 | MOU (GRF & Company C) | 8/1/2015 |
| Company C | 2016 | \$0.75 (CLTC portion only) | GRF Record - Joint Affirmation | 2/4/2018 |
| Company C | 2019 | \$2.00 | Letter (GRF to CLTC) | 3/3/2021 |
| Company C | 2019-2021 | \$2.00 | Letter (Company C to GRF) | 5/13/2021 |
| Company C | 2021 | \$2.00 | Letter (GRF to CLTC) | 9/24/2021 |

*Some excavation periods are approximate, according to source documents.

Financial statements for Company B indicate that royalty fees were erroneously paid at \$0.50 per ton instead of per cubic yard, resulting in an overpayment of \$42K for 2011 and \$43K for 2010.

| COMPANY | EXCAVATION PERIOD* | PRICE/TON | SOURCE | DOCUMENT DATE |
|-----------|--------------------|-----------|----------------------|---------------|
| Company B | 2010-2011 | \$0.25 | Financial Statements | 2/4/2018 |

GRF's in-house record of payments, which contained computation errors, shows payments made to CLTC for a sum of \$2,675,060.34 (see Table 5). The same worksheet provided by GRF shows only payments made to CLTC. Records are missing for various periods of activity, and we are unable to make an accurate comparison between the total volume estimates and the amounts due or paid to either GRF or CLTC.

Table 5: GRF's In-House Record of Payments to CLTC

| Activity Years | Company | GRF Calculation | Corrected Sum | Sum Variance |
|----------------|--------------------|---------------------|---------------------|------------------|
| 2001-2013 | Company A | 428,729.43 | 421,106.83 | 7,622.60 |
| 2005-2021 | Company B | 1,682,085.06 | 1,679,554.66 | 2,530.40 |
| 2006-2021 | Company C | 566,776.25 | 566,776.25 | - |
| | Grand Total | 2,675,060.34 | 2,667,437.74 | 10,153.00 |

Without complete and correct statements of revenues reported by GRF or by CLTC, and without records from each company to validate GRF records, we cannot accurately determine how much revenue was paid to GRF or CLTC or how much may be due to CLTC.

We recommend CLTC Management establish a standard operating procedure for invoicing and collecting royalty fees accompanied by supporting documents of the nature of the invoice such as a statement of activity issued by the contracted company.

No Evidence of GEDA Inspections, Monitoring, or Collecting Billing Reports from Contractors

GEDA did not have evidence of inspections or monitoring pre-construction or construction activity or of collecting billing reports from contractors as required by law. As previously reported in OPA Report No. 07-15, GEDA did not prepare inspection reports indicating the completed phases of construction at the Raceway, nor did GEDA review documents to determine whether GRF adhered to the Rules and Regulations. We were unable to locate any inspection or status reports beyond dated photos from the period between July and September 2002.

GRF recently confirmed that inspections were not conducted by GEDA and asserted that any GEDA oversight was limited to activities performed under the tax credit program.

The Guam Legislature's Committee Report for PL 30-204 contains copies of correspondence from GEDA to GRF, between 2008 and 2009, and an Annual Compliance Report Review for Calendar Year 2009 (Review). GEDA made at least three attempts to communicate with GRF regarding GRF's compliance with the Rules and Regulations. In the Review, GEDA instructed GRF to forward all proposed construction contracts to GEDA prior to initiating work to be done, and GRF reported that all *future* contracts would be forwarded. The Review shows that GEDA deemed GRF as non-compliant, and there is no other evidence of the construction contracts that may have been forwarded to GEDA as promised. The Review also shows that GRF claimed there were no paid employees for the operations at the Raceway at the time, but GRF financial statements show payroll expenses in 2008 and 2010 and management and administration expenses in 2010.

The purpose of the Rules and Regulations was to set out the administrative procedures for 1) constructing the Raceway and 2) for issuing a tax credit certificate to applicants for the tax credit program.

At a minimum, GEDA should have conducted semi-annual on-site inspections of the Raceway under construction within 30-60 days prior to the completion of each phase of construction and a final inspection carried out within 30 days after the completion of all phases of construction. During the course of all inspections, GRF should have provided copies of all its records and documents to GEDA for GEDA to monitor GRF's compliance with PL 24-141 and the Rules and Regulations.

The Rules and Regulations state that from the start of construction, GEDA should have conducted on-site inspections to monitor adherence of tax credit certificate holders to PL 24-141 and the Rules and Regulations. GEDA was also required to collect billing reports that should have included descriptions of work done and payments made to subcontractors.

GRF's engineering firm was required to prepare and deliver reports of GEDA's inspections, status reports of construction activities after completion of each construction phase of the Raceway, and plans for mitigating environmental damage to the area once approved by the Guam Environmental Protection Agency (GEPA).

The Master Plan states that the development of the Raceway would require extensive grading, excavation, and disposal of an enormous quantity of coral rock to achieve the layout of the planned facilities. The Master Plan also states that construction of certain phases of the Raceway would be preceded by mass grading and the use of the excavated coral rock for building materials.

Both GEDA and GRF reported to us that clearing, grading, or extractions were not related to construction activity that would be considered as work performed under the tax credit program or activity governed by the Rules and Regulations. GEDA added that that they do not have regulatory oversight with respect to GRF's License with CLTC, relative to the extraction of top soil and/or coral, citing further reference to OPA Reports 07-15 and 15-06.

The Rules and Regulations required GRF to give public notice of the proposed construction of the Raceway, soliciting bids or proposals from contractors. OPA Report No. 07-15 found that no such public notice was given and that GRF selected 12 companies to participate and receive tax credits.

GEDA authorized tax credits without first ensuring the selections were made by competitive means, and GEDA records show that all three companies that were engaged in extraction activity were approved participants of the tax credit program (see Table 6).

Table 6: Guam Raceway Park Reconciliation

| DRT: Report of Tax Credits Participants | | | | |
|--|----------------|----------------|----------------|--------------|
| <u>As of 3/22/2007</u> | APPROVED | AUTHORIZED | USED | AVAILABLE |
| COMPANY A | \$107,852.53 | \$101,577.31 | \$103,364.40 | (\$1,787.09) |
| COMPANY B | \$1,434,130.50 | \$927,077.34 | \$733,682.67 | \$193,394.67 |
| COMPANY C | \$2,372,035.86 | \$1,712,871.10 | \$1,110,611.75 | \$602,259.35 |

| GEDA & DRT Tax Credit Reconciliation | | | | |
|---|--------------------|-------------------------|----------------------|----------------|
| <u>As of 10/7/2015</u> | MASTER PLAN BUDGET | APPLICATIONS AUTHORIZED | PENDING APPLICATIONS | UNUSED BALANCE |
| COMPANY A | \$107,852.53 | \$101,577.31 | \$0.00 | \$6,275.22 |
| COMPANY B | \$1,983,223.50 | \$1,846,204.44 | \$0.00 | \$137,019.06 |
| COMPANY C | \$1,805,640.86 | \$1,805,640.86 | \$0.00 | \$0.00 |

In OPA Report No. 07-15, we recommended for the governor and the Guam Legislature to repeal the tax credits balance of \$1.4M for the construction of the Raceway. In OPA Report No. 15-06, we found that as of December 2014, the remaining balance in tax credits was \$175,030, and we also found that the Guam Legislature and the governor did not take any action on this recommendation over the seven-year period between the two reports.

Continued Occupancy Without License or Lease

Our analysis found that GRF continued to occupy the property without an approved license or lease as required by law, but CLTC commissioners continued to extend occupancy of the property. There is no information available to determine what authority has been granted to CLTC to enter into these agreements with GRF and without legislative approval. Minutes from CLTC's January 19, 2023 meeting includes discussion with legal counsel stating that CLTC has been operating on a theory of a holdover tenancy for GRF to continue occupancy due to rental payments having been accepted by CLTC.

The License between CLTC and GRF granted an occupancy period of 20 years, from June 1, 1998 through May 31, 2018.

On May 3, 2018, CLTC adopted Resolution No. 2018-06, approving a month-to-month occupancy, not to exceed one year. The Resolution states that CLTC recognized the service provided by GRF to the community, by providing a regulated raceway course and that CLTC recognized the potential for adverse impact should the property be unused or unsecured until a lease agreement could be promulgated.

PL 34-142 required CLTC to grant GRF the right of first refusal and to transmit a negotiated lease to the Guam Legislature within 180 days after GRF exercised right of first refusal, and the lease would be subject to legislative approval. Such lease would be authorized for a 50-year term for the operation of a raceway, related support facilities, and various outdoor events. This law prohibited mineral extraction or the inclusion of mineral extraction in proposed lease terms.

On December 21, 2018, GRF submitted notice of right of first refusal to CLTC, and on June 6, 2019, CLTC Commissioners passed a motion to allow another six-month extension, effective June 1, 2019 through December 1, 2019.

A letter (dated July 24, 2019) was issued from CLTC to GRF, stating that CLTC and GRF were unsuccessful in negotiating a commercial lease and that the recent six-month extension granted was to be the final extension.

GRF submitted draft lease terms in November 2019, March 2020, and February 2021 to CLTC. CLTC acknowledged receipt of each draft and reviewed the draft documents, making notes and responding to GRF's proposed terms.

On February 5, 2020, a Right of Entry Agreement was issued, allowing GRF to enter, use, and operate facilities created for the Raceway on the property, until May 31, 2020.

On August 13, 2020, the CLTC Administrative Director granted authorization for GRF to continue to occupy and utilize the property, with a recommendation for GRF to appear before the Commission to request an extension of the month-to-month "lease."

On January 30, 2023, a 30-day Notice of Eviction (effective February 1, 2023) was issued to GRF, and CLTC advised the holdover tenancy was terminated. In February 2023, CLTC granted an extension of the effective date of the eviction to June 2, 2023.

The Oversight Chairwoman of the 36th and the 37th Guam Legislature's Committee on Health, Land, Justice, and Culture Guam Legislative Committee Oversight Chairwoman requested a legal opinion from the Attorney General of Guam (AG) to determine CLTC's authority to grant access beyond the expiration of the License. As of July 2023, the Oversight Chairwoman had not received the requested legal opinion.

We recommend CLTC Management establish policies with Commissioners to ensure that all tenants meet their obligations before entertaining new motions.

Regulatory Oversight Unclear

There may not be a regulatory agency in place that has jurisdiction over mineral extractions on CLTC properties. As a result, we could not determine what governing entities, policies and procedures, or rules and regulations were responsible for monitoring or regulating the mineral extraction activity at the Raceway property.

CLTC staff began monitoring the mineral extraction activity as a response to the finding in the FY 2015 CLTC financial audit (see [Appendix 3](#)), and CLTC Management confirmed that there is no governing policy that requires CLTC to monitor or inspect mineral extraction activity.

Based on the enabling legislation for the Guam Natural Resources Board (GNRB), created in 1970 (21 GCA §§ 60409-60411), the GNRB shall study and evaluate any plans or proposals for the utilization of government land for natural resource exploitation such as commercial mining or removing minerals, rocks, or sand for processing. The GNRB was empowered to promulgate rules, regulations, and procedures governing these activities.

In a memorandum issued to the Department of Land Management (DLM) by the Office of the Attorney General (OAG) on June 27, 2000, the Attorney General expressed agreement with a June 2000 legal opinion from CLTC legal counsel that the GNRB did not have jurisdiction over Chamorro homelands. The memorandum stated that government land was a reference to lands administered by DLM or other executive branch agencies but not CLTC.

On April 6, 2022, the 36th Guam Legislature's Committee on Health, Land, Justice, and Culture conducted an Information Hearing on *Existing Laws and agency regulatory, permitting, and environmental guidelines relative to mineral extraction on Guam*. In its report, the Committee concluded with the following points:

- There are various terms used: mineral extraction, rock quarrying, mining, and grading.
- No rules and regulations were promulgated pursuant to the enabling legislation for the GNRB;
- Government agencies have made it clear that the threshold between what is considered grading and what is considered quarrying needs to be more adequately defined;
- According to GEPA, applicants for permits are clearly engaged in quarrying but claim they are not, and GEPA recommended that the terms "quarrying" and "surface mining" should be defined; and
- DPW stated that the law is absent on anything relative to grading materials being sold as part of clearing and grading.

The Environmental Impact Assessment submitted by Engineering Firm 1 to the GLUC discussed the potential *clearing and grading* activities associated with each phase of the project during the pre-construction phase, and the Master Plan discussed the extensive *grading* of the project site to achieve the mandatory grades for the proper geometric layout of the facilities. The Master Plan explained that GRF intended to use the excavated coral rock as a resource, with Companies A and B expressing a keen interest in using the excavated coral rock for building materials. The fill material was to be used on-site or transported off-site, with 50% of royalties paid to CLTC and 50% to GRF.

GRF has and continues to report to CLTC that all excavation activity has been for the purpose of *clearing and grading* the property to get the level needed for the future drag strip. GRF has also reported to CLTC that the grading is to shape the future layout of the racetrack. In recent news articles, GRF has claimed that the extractions were not done for mining, mineral extraction, or quarrying, but other news sources have quoted the General Manager for stating that the money earned from the sale of excavated material is needed to continue operating the Raceway. One of the articles quotes the General Manager for stating that there is about 500,000 CY of material left to *excavate and sell*. According to the General Manager, the process could take a couple of years to remove and is part of grading the Raceway.

Company C notified GRF that their work on the property was not a mineral *extraction* act as depicted by CLTC and that *clearing and grading* has been specifically engineered to bring the current property levels to those required by the plans. The company explained that grading requires the removal and/or importation of suitable material to achieve the required elevations of the plan.

In a letter from DPW to Company C, dated July 28, 2020, DPW responded to the company's request to renew an expired grading permit for reasons that include: the grading permit previously issued for grading is not equivalent to the *extraction* activities the company has been engaged in and that the activities fall under a *conditional use for extractive industries*. DPW further advised that the company would have to submit plans to GLUC for approval to reclaim the company's *quarrying* operation and activities at the Raceway.

We recommend the Guam Legislature define in statute all terms associated with activities of earth excavation and to identify or establish jurisdiction of the development or exploitation of natural resources on CLTC property or to include CLTC properties in statutory requirements regulated by the GNRB.

Other Matters

Non-Competitive Selection of Extraction Contractors

The Rules and Regulations required GRF to give public notice of the proposed construction of the Raceway, soliciting bids or proposals from contractors. OPA Report No. 07-15, found that no such public notice was given and that GRF selected 12 companies to participate and receive tax credits.

We found that:

- Company A submitted a request to CLTC in 1996 to consider allowing the company to lease Lot 7161-R1, Yigo, Guam—the property later designated for the Raceway—as a quarry site for commercial operation.
- Companies A and B were named in the Master Plan as well as in the Final Environmental Impact Assessment as interested contractors for construction and for extracting the material.
- All three companies engaged in extraction activity were participants of the tax credit program, and GEDA authorized tax credits without first ensuring the selections were made by competitive means.
- In discussions with the General Manager, we found the potential for a familial conflict of interest between the sponsoring senator of PL 24-141 (granting tax credits to contractors of the Raceway project) and Company A, a participant of the tax credit program.

GRF May Not Be in Compliance with Laws Governing Non-Profit Status

The License and PL 34-142 each discuss GRF as a non-profit organization, registered with the DRT.

Our analysis of GRF's Articles of Incorporation found that GRF is registered for non-profitable purposes as a 501(c)(7) organization, a status designated as a Social Club by the Internal Revenue Service. Our review of the tax returns provided to us shows that GRF has been filing Forms 990 under the tax-exempt status of 501(c)(3). In reviewing DRT's 2023 Updated Non-Profit Listing, as of September 30, 2022, GRF is identified with the tax exempt status 26203c, commonly reserved for religious, charitable, scientific, educational, or indigenous cultural preservation purposes. This listing also shows GRF's tax exempt status has been revoked. The most recent tax return provided to us by GRF was for Tax Year 2018, filed in July 2021.

The last version of lease terms proposed by GRF (February 2021) includes a provision that extends the exemption of Real Property Taxes as authorized in PL 24-141:3, on the condition that GRF maintains its non-profit status.

Conclusion and Recommendations

Our analysis of coral/top soil extraction from the Raceway found that there was a lack of consistent oversight and monitoring of GRF's management and operations of the raceway between June 1, 1998 and January 31, 2023, by GEDA and CLTC. As a result, the total volume of materials extracted and how much total revenue was due to CLTC cannot be determined. In addition, GRF continued to allow mineral extraction activity beyond the Cease and Desist Order.

There is no evidence that GRF provided copies of records or documents to GEDA for GEDA to properly monitor GRF's compliance with the Rules and Regulations or with PL 24-141. GEDA could not provide any evidence of inspections or collecting billing reports from contractors. Inspections or monitoring reports could have been used for regulatory agencies and departments to act quickly in addressing concerns of over excavation or mineral extractions at the property. Billing reports from contractors would have contained information with detailed descriptions of work and charges associated with the work performed—this information could be used to determine how much was paid to GRF or CLTC or to determine if royalties were not paid as due to GRF or CLTC.

CLTC Minutes show that GRF failed to meet its obligations with CLTC reporting requirements, rental payments, unauthorized use of the property by third parties, and seeking CLTC approval where required.

GRF was authorized to occupy and use the property for incidental purposes related to a raceway park as well as to alter the property to make it usable for Raceway purposes. GRF has used its royalty proceeds from excess graded material to support Raceway operations.

We recommend that CLTC Management implement policies and procedures to:

1. Establish an SOP for invoicing and collecting royalty fees accompanied by supporting documents of the nature of the invoice such as a statement of activity issued by the contracted company.
2. Establish policies with Commissioners to ensure that all tenants meet their obligations before entertaining new motions.

We could not locate information to identify what governing entity, policies and procedures, or rules and regulations should be responsible for monitoring or regulating mineral extraction activity on CLTC property. We therefore recommend for the Guam Legislature to clearly define in statute all terms associated with activities of earth excavation and to identify or establish jurisdiction of the development or exploitation of natural resources on CLTC property or to include CLTC in statutory requirements regulated by the GNRB.

Management Response and OPA Reply

A draft report was transmitted to CLTC Management on July 31, 2023, and an exit conference was held on August 7, 2023 to discuss the report findings and recommendations.

On August 21, 2023, CLTC Management submitted an official response where they acknowledged and generally concurred with our findings and recommendations.

See [Appendix 5](#) for CLTC's official management response.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, document the progress in implementing the recommendations, and endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, we will be contacting CLTC to provide target dates and title of the official(s) responsible for implementing the recommendations.

We appreciate the consideration and assistance given to us from the staff and management of CLTC and GEDA during this audit.

OFFICE OF PUBLIC ACCOUNTABILITY



Benjamin J.F. Cruz
Public Auditor

Appendix 1:**Objective, Scope, and Methodology**

Our objectives were to determine (1) how much top soil or coral material was extracted from property designated as the site for the Raceway, and (2) how much revenue was due to CLTC.

Scope

Our scope covered the period of occupancy, beginning with the effective date of the License: June 1, 1998, through January 31, 2023.

We confined our analysis to reviewing and analyzing laws, rules and regulations, policies and procedures, CLTC Resolutions and meeting Minutes, and the License agreement. In virtual and in-person meetings, we made our observations and inquiries between February 2023 and August 2023. We conducted our reviews and analyses at the Office of Public Accountability in Hagåtña.

Methodology

To accomplish our objectives, we performed the following:

- Reviewed and researched applicable laws, rules and regulations, and policies and procedures relative to the terms and conditions of GRF's occupancy of the Raceway, Lot No. 7161-R1.
- Researched prior audits of CLTC and records of audits of GRF.
- Reviewed available legislative Committee Reports.
- Reviewed news articles about the Raceway.
- Reviewed and analyzed records provided by CLTC, including records of payments from GRF; applications and permits with DPW for clearing and grading at the Raceway; CLTC Meeting Minutes; correspondence; and other exhibits.
- Reviewed two versions of the Master Plan (required by the Rules).
- Reviewed the application for conditional use with the GLUC and the Final Environmental Impact Assessment prepared for regulatory agencies.
- Reviewed available correspondence from businesses engaged in extraction activity.
- Reviewed the Guam Legislature's Informational Committee Report for the April 6, 2022 Informational Hearing on Existing Laws and agency regulatory, permitting, and environmental guidelines relative to mineral extractions on Guam.

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

Timeline of Events

| DATE | DESCRIPTION |
|-------------------|---|
| February 22, 1998 | Public Law 24-141 passed into law, authorizing tax credits for the development of a racing park and exemption from real property tax for the site of the park. |
| June 1, 1998 | CLTC entered into the License Agreement with GRF, designating Lot No. 7161-R1, Yigo, Guam as the property to be used for the Guam International Raceway Park site. |
| February 26, 1999 | GEDA Board of Directors adopted the GEDA Rules and Regulations on the operation of the Raceway and on the issuance of tax credits for the design and construction of the Raceway. |
| June 4, 1999 | Public Law 25-27 established the GEDA Rules and Regulations adopted by GEDA's Board of Directors. |
| October 15, 1999 | Master Plan prepared, pursuant to Section 1.04(b) of the Rules and Regulations. |
| November 17, 1999 | A Master Plan was submitted to GEDA, stating the intended completion period for the Raceway was five years with four phases of development, with a budget of \$8,998,713. |
| November 17, 1999 | Master Plan submitted to GEDA. |
| January 2001 | Company A commences grading, processing, crushing, and removing coral material from the property. |
| June 16, 2016 | CLTC adopted Resolution No. 2016-06 placing a moratorium on all coral extraction from the property, requiring GRF to provide a method of determining and reporting coral materials extraction to CLTC. |
| May 3, 2018 | CLTC adopted Resolution No. 2018-06 authorizing a month-to-month extension of the existing License for its existing terms through May 31, 2019. |
| May 31, 2018 | Expiration of the License Agreement. |
| December 12, 2018 | Public Law 34-142 authorized CLTC to enter into a lease agreement for up to 50 years, subject to legislative approval, allowing GRF right of first refusal and prohibiting mineral extraction from lease terms. |
| December 21, 2018 | GRF submitted notice of right of first refusal to CLTC. |
| May 31, 2019 | Expiration of CLTC Resolution No. 2018-06. |
| June 6, 2019 | CLTC passed a motion to grant GRF continued occupancy based on previous lease terms on a month-to-month basis for another six months. |
| July 24, 2019 | CLTC Administrative Director sent notice to GRF that the most recent six-month extension would be the final one and that the unsuccessful negotiation of a lease agreement would mean that CLTC would proceed to adhere to the Commercial Rules and Regulations adopted via Public Law 33-95. |

Timeline of Events

| DATE | DESCRIPTION |
|--------------------|---|
| December 19, 2019 | CLTC passed a motion to lift the Moratorium on mineral extractions, specific to only Phase 5A, Zone 1 of the project. |
| February 5, 2020 | CLTC entered into a Right of Entry Agreement with GRF, permitting GRF to enter and use the property, through May 31, 2020, with a prohibition on constructing any other facilities or conducting public activities until proof of liability insurance was presented to CLTC. |
| August 13, 2020 | CLTC Administrative Director temporarily authorized GRF continued occupancy and use of the property, encouraging GRF to appear before the Commission to request an extension of the current month-to-month "lease process" covered by the Right of Entry Agreement of February 5, 2020. |
| September 15, 2021 | CLTC issued a notice to GRF to cease and desist all extraction activity. |
| January 19, 2023 | CLTC approved a motion to issue a 30-day Notice of Eviction to GRF. |
| January 30, 2023 | CLTC sent a letter to GRF of the 30-day Notice of Eviction, effective February 1, 2023, terminating the holdover tenancy created by the expiration of the lease on May 31, 2018. |
| February 24, 2023 | CLTC sent a letter to GRF, granting a 90-day extension to the effective date of the eviction, from March 2, 2023 to June 2, 2023. |

Prior Audit Coverage

OPA Report No. 05-09 | Chamorro Land Trust Commission Non-Appropriated Funds, issued December 2005 – Our audit found the Chamorro Land Trust Commission received proceeds from coral sales of \$104,027 (from April 2003 through September 2004).

OPA Report No. 07-15 | Government of Guam Tax Credit Programs, issued November 2007 – Our audit found that GEDA did not prepare inspection reports indicating the completed phases of construction at the Raceway or review documents whether GRF adhered to the Rules. We were unable to locate any inspection or status reports beyond dated photos from the period between July and September 2002. We further found that public notices were not published and that all 12 companies claiming tax credits were not selected competitively. Three of these 12 companies were engaged in excavation activity at the property, clearing and grading in preparation for construction activity. We recommended the repeal of the tax credits balance of \$1.4 million for the construction of the Raceway Park based on non-compliance with public law.

OPA Report No. 09-03 | Chamorro Land Trust Commission Commercial Division, April 2009 – Our audit found that CLTC did not have an adequate revenue collection system; did not assign sufficient staff to monitor activities of the Commercial Division; establish written collections policies and procedures. Our audit also found that collection responsibilities were not clearly defined.

OPA Report No. 15-06 | Government of Guam Tax Credit Programs, October 2015 – Our audit found that we found that as of December 2014, the remaining balance in tax credits was \$175,030 and that no action was taken on audit recommendations from OPA Report No. 07-15 to revoke the Raceway’s excess tax credits applied above the allowed 5% overhead until sufficient documentation was provided.

Independent Financial Audits

Chamorro Land Trust Commission Financial Statements (FYs 2012-2021) – Financial statements reported royalty revenues earned for mining activities or coral extraction from the property for fiscal years (FY) 2012-2016 and 2020-2021. Royalty revenues were not earned for the period of FYs 2017-2019. Between FY 2012 and 2015, financial statements contained a repeat finding that royalty revenues were not evidenced by verification of actual coral materials extracted. In FY 2020 and FY 2021, evidence of CLTC’s verification of actual coral extracted and reported by the construction company was not provided.

Guam Racing Federation Financial Statements (FYs 2009-2017) – Financial statements reported royalty revenues earned from the sale of coral material extracted at the property summed approximately \$2.2M.

Prior Audit Coverage

Company B Financial Statements (November 1, 2009 - October 31, 2014) – Material noncompliance pertained to royalty fees paid based on the rate of \$0.50 per ton instead of \$0.50 per cubic yard as agreed upon. As a result, Company B overpaid GRF and CLTC \$42-43K between October 2010 and 2011. Effective September 1, 2011, the royalty fee is based on \$1.25/CY, of which \$0.75/CY paid to CLTC, and \$0.50/CY paid to GRF.

Applicable Laws and Regulations

Public Law 24-141 – Established that any business that contributes to the cost of design, labor, and materials for the design and construction of the Guam Raceway Park shall be entitled to credit of business privilege taxes. All property used for the racing facility was exempted from real property taxes throughout the term that the property is used for such purposes. The total amount of credits shall not exceed \$9M.

Public Law 25-27 & Appended Rules and Regulations – All such special projects and activities of the Guam Economic Development Authority (GEDA), including the Guam Raceway Park, shall be administered by rules and regulations developed by GEDA. Administrative Rules and Regulations for the operation of the Raceway and the issuance of tax credits for the design and construction of the Raceway are hereby adopted.

Public Law 30-204 – Mandated all Raceway event organizers, sponsors, or managers to pay GovGuam 10% of the admissions price, per paid admission and required quarterly reporting requirements for GRF.

Public Law 34-142 – Authorized CLTC to enter into a lease agreement for up to 50 years for the operation of a raceway, related support facilities, and various outdoor events, granting the right of first refusal to GRF within 15 days upon enactment. A negotiated lease agreement would have to be submitted to the legislature for approval within 180 days from the notice of GRF's right of first refusal. This PL prohibited mineral extraction or the inclusion of mineral extraction in lease terms.

Rules and Regulations of the Guam Economic Development Authority on the Operation of the Guam Raceway Park and on the Issuance of Tax Credits for its Design and Construction – Adopted by the GEDA Board of Directors on February 26, 1999 and appended to PL 25-27. The Rules set out the administrative procedures for 1) constructing the Raceway and 2) for issuing a tax credit certificate to applicants for the tax credit program.

Chamorro Land Trust Commission CLTC License Agreement – Effective June 1, 1998, for a period of twenty years, between CLTC and GRF. The License allowed GRF to alter the property to make it usable for the development of the Raceway, including the removal of topsoil and/or coral, re-contouring the property, and construction of appropriate facilities upon the property. Fifty percent of the materials extracted, or the value thereof, from the property could either become the property of CLTC, or CLTC could authorize GRF to sell the material and deliver the proceeds to CLTC.

Chamorro Land Trust Commission Resolution No. 2016-06 | Declaration and Position on Guam Racing Federation License Agreement Provisions – Placed a moratorium on all coral extraction from Lot Number 7161-R1, Yigo, Guam; required GRF to provide a validated and certified method of determining actual coral materials extracted to report to CLTC quarterly; and required CLTC & GRF to engage in a Memorandum of Agreement regarding royalty rates.

Applicable Laws and Regulations

Chamorro Land Trust Commission Resolution No. 2018-06 | Declaration and Position on Guam Racing Federation License Agreement and Pursuing a New Lease Agreement for Lot No. 7161-R1, Yigo, Guam – CLTC authorized a month-to-month extension of the existing License terms not to exceed one year from May 3, 2018.

Chamorro Land Trust Right of Entry Agreement – Authorized and permitted GRF to enter the property to use and operate facilities created for a raceway park, made on February 5, 2020 and to expire on May 31, 2020 or until the recordation of a Commercial Lease.

21 GCA Chapter 75 – Chapter 75 of Title 21, Guam Code Annotated, shall remain intact for leases approved prior to January 1, 2021.

§ 75105. Control by Commission of Available Lands; Return to Department. Upon and after the enactment of this Chapter, all available lands shall immediately assume the status of Chamorro homelands and shall be under the control of the Commission to be used and disposed of in accordance with the provisions of this Chapter.

21 GCA Chapter 75A – A new Chapter 75A was enacted to mirror the existing Chapter 75 of Title 21 GCA, effective January 1, 2021.

§ 75A101(c). The term *Chamorro Land Trust property* means all available lands, which includes Chamorro homelands, under the control of the Chamorro Land Trust Commission under the provisions of § 75A105 of this Chapter and § 75105 of Chapter 75.

21 GCA § 75122(a)(3)

(3) Commercial use means commercial agriculture, commercial aquaculture, and any permitted use or a conditional use expressly allowed on an “A,” “R1,” “R2,” “C,” “P,” “S-1,” or “PF” zoned property pursuant to §§ 61304, 61305, 61306, 61307, 61308, 61312 and 61313 of Article 3, Chapter 61 of Title 21 GCA. Commercial use includes mineral extraction when specifically approved by the CLTC and *I Liheslaturan Guåhan* (the Guam Legislature). The appropriate regulatory clearances will be required for all commercial uses of CLTC lands.

Applicable Laws and Regulations

21 GCA § 66202.1. Clearing and Grading Permit Required for Government Agencies.

(a) A permit for Clearing, Grading, and Construction shall be required of government, autonomous, and public entities in the same manner as private citizens.


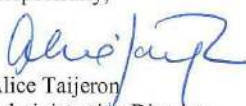
An application for the permit shall be submitted to the Department of Public Works by the entity who owns the property, or which is to authorize, complete, or contract for the proposed project on government land, with the approval of the following agencies indicated on the application to the Department of Public Works: Department of Land Management, Zoning Division; Department of Parks and Recreation; Guam Power Authority; Guam Environmental Protection Agency; Guam Geodetic Network Survey Division; Department of Agriculture; and the Department of Public Works. No fee shall be charged for government application for a permit pursuant hereto and the application shall be submitted in such form as the Building Official may prescribe. Government entities shall be subject to all other applicable provisions of this Chapter. Clearing, grading, or construction shall not begin on any government property or project in violation of this statute. Building Officials and Guam Peace Officers are authorized to issue citations to violators of this Section in accordance with the rules and regulations promulgated by the Department of Public Works in this regard.

Officers acting in violation of this statute shall be held personally liable for all damages resulting therefrom, and shall be subject to a fine of One Thousand Dollars (\$1,000) for each offense, and may be fined up to Five Thousand Dollars (\$5,000) for violations after the third violation of this Section.

21 GCA § 60409. Guam Natural Resources Board. The Guam Land Use Commission shall serve ex-officio as the Guam Natural Resources Board. It shall be the function of the Board to study and evaluate any plans or proposals for the utilization of government land for natural resource development or exploitation

21 GCA § 60410. Minerals: Mining. All proposals for the use, lease or purchase of government land for the purpose of commercial mining or removing therefrom any minerals, rocks or sand for processing shall be presented to the Guam Natural Resources Board. The Board shall determine if the proposal is consonant with the public interests and in keeping with proper conservation practices. The Board may recommend any such use, lease or sale of government land to the Governor including any such conditions that may be necessary such as bonds for compliance with the proposals presented.

Appendix 5: CLTC's Management Response

| | |
|---|---|
|  <i>Lourdes A. Leon Guerrero</i> Governor <i>Josina F. Tenorio</i> Lieutenant Governor <u>Commission Members</u> <i>Arlene P. Borifallo</i> Acting, Chairwoman <i>David B. Herrera</i> Commissioner <i>Earl J. Garrido</i> Commissioner (Vacant) Commissioner (Vacant) Commissioner <i>Alice Taijeron</i> Administrative Director | <p style="text-align: center;"><i>Kumision Inangokkon Tano' CHamoru</i> <i>(CHamoru Land Trust Commission)</i></p> <p style="text-align: center;"><small>P.O. Box 2950 Hagåtña, Guåhan 96932 Phone: 671-300-3296 Fax: 671-300-3319</small></p> <p>August 21, 2023</p> <p>Benjamin J. F. Cruz <i>Public Auditor</i> Office of Public Accountability Suite 401, DNA Building 238 Archbishop Flores Street Hagåtña, Guam 96910</p> <p>Re: <u>CHamoru Land Trust Commission Management Response to the Office of Public Accountability Draft Report regarding the CHamoru Land Trust Commission Oversight of the Removal of Coral Material from the Guam International Raceway Park</u></p> <p>Hafa Adai Public Auditor Benjamin J. F. Cruz:</p> <p>On behalf of the CHamoru Land Trust Commission (CLTC) as the Administrative Director, I concur with the findings contained in the draft report of the Office of Public Accountability (OPA) relative to the audit on the CHamoru Land Trust Commission Oversight of the Removal of Coral Material from the Guam Raceway Park.</p> <ul style="list-style-type: none">• The CLTC acknowledges, as recommended by the OPA, that management establish an SOP for invoicing and collecting royalty fees accompanied by supporting documents of the nature of the invoice such as a statement of activity issued by the contracted company.• The CLTC acknowledges, as recommended by the OPA, that management establish policies with Commissioners to ensure that all tenants meet their obligations before entertaining new motions.• The CLTC acknowledges the requirement for a corrective action plan to be submitted to the OPA, and its implementation prior to the beginning of the next fiscal year. <p>The CLTC appreciates the work and effort of the Office of Public Accountability in completing this audit. We remain available for any further discussion the OPA may require.</p> <p>Respectfully,</p> <p style="text-align: center;"> Alice Taijeron Administrative Director</p> |
| | <p>Rev. 1/23/2023</p> |

Appendix 6:**Status of Audit Recommendations**

| No. | Addressee | Audit Recommendation | Status | Action Required |
|------------|------------------|---|---------------|--|
| 1 | CLTC Management | Establish an SOP for invoicing and collecting royalty fees accompanied by supporting documents of the nature of the invoice such as a statement of activity issued by the contracted company. | OPEN | Submit a corrective action plan. Implement no later than the beginning of the next fiscal year. |
| 2 | CLTC Management | Establish policies with Commissioners to ensure that all tenants meet their obligations before entertaining new motions. | OPEN | Submit a corrective action plan. Implement no later than the beginning of the next fiscal year. |
| 3 | Guam Legislature | Clearly define in statute all terms associated with activities of earth excavation and to identify or establish jurisdiction of the development or exploitation of natural resources on CLTC property or to include CLTC in statutory requirements regulated by the GNRB. | OPEN | Submit a corrective action plan. Implement no later than the beginning of the next fiscal year. |

CHAMORRO LAND TRUST COMMISSION OVERSIGHT OF THE REMOVAL OF CORAL MATERIAL FROM THE GUAM INTERNATIONAL RACEWAY PARK Report No. 23-08, September 2023

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Selina Onedera-Salas, Accountability Auditor
Vincent Duenas, Supervising Accountability Auditor
Benjamin J.F. Cruz, Public Auditor

MISSION STATEMENT

To ensure public trust and good governance in the Government of Guam, we conduct audits and administer procurement appeals with objectivity, professionalism and accountability.

VISION

The Government of Guam is a model for good governance with OPA leading by example as a model robust audit office.

CORE VALUES

Objectivity

To have an independent and impartial mind.

Professionalism

To adhere to ethical and professional standards.

Accountability

To be responsible and transparent in our actions.

REPORTING FRAUD, WASTE, AND ABUSE

- Call our HOTLINE at 47AUDIT (472.8348)
- Visit our website at www.opaguam.org
- Call our office at 475.0390
- Fax our office at 472.7951
- Or visit us at Suite 401 DNA Building in Hagåtña

All information will be held in strict confidence.



Office of Public Accountability
Email: admin@guamopa.com
Tel: 671.475.0390
Fax: 671.472.7951
Hotline: 47AUDIT (472.8348)

