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January 6, 1999

Dr. Joaquin A. Tenorio
Secretary, Department of Lands and Natural Resources
Commonwealth of Northern Mariana Islands
Lower Base, Caller Box 10007, Saipan MP 96950

Dear Dr. Tenorio:

Subject: Report on the Audit and Investigation of an Agricultural Homestead Grant Tract Nos. 189 E02 and 189 E03 (Report LT 99-01)

This report presents the results of our audit and investigation of an agricultural homestead grant. This is in relation to a request received from the former Governor to audit all land transactions in the CNMI. In this audit, our objective was to determine whether the grant of the strip of land to an existing homesteader was made in accordance with the Homestead Act and its rules and regulations.

Our audit and investigation showed that the Division of Public Lands (DPL), through a Homestead Review Committee, reviewed and rendered a decision on an agricultural homestead case which was already decided and closed seven years earlier by the former Marianas Public Land Corporation (MPLC). In addition, we noted that the DPL awarded this homestead lot to an existing homesteader on the basis of "moral" grounds and not on the legal merits of the case.

We recommended that the Director of the Division of Public Lands, (1) invalidate the grant of 10,716 square meters of agricultural homestead land to the homesteader, (2) order the full restoration of the said public land at the expense of the homesteader, and (3) issue a memorandum emphasizing strict adherence to the Homestead Act and its rules and regulations.

In his response letter dated July 10, 1998, the Secretary of DLNR disagreed with Recommendations 1 and 2, and agreed with Recommendation 3 (APPENDIX D). According to the Secretary, DPL can only request the Court to declare the grant void, however, he is not persuaded that there is sufficient basis to make such a request. DLNR believes that the law was properly interpreted and applied by the Homestead Review Committee based on substantial evidence on the record. According to the Secretary of DLNR, (1) OPA improperly reviewed the facts and made

incorrect conclusions, and (2) OPA ignored the fact that the old file was lost, making the second homestead review committee's reconsideration legally permissible.

Based on the response received, we consider Recommendations 1 and 2 open and Recommendation 3 closed. We disagree with the Secretarythat the only relevant inquiry in this case is whether the decision of the second homestead committee was based on substantial evidence on the record. The substantial evidence standard of review cited by the Secretary is provided for in the hearing procedures of the Coastal Resources Management Office (CRM), the agency which granted a permit to the appellee in a case cited by the Secretary[1]. However, the Homestead Waiver Act (HWA) does not provide a standard for judicial review, therefore, we believe that the standards of review under the Administrative Procedures Act (APA) should apply in this case. Based on our review, we have concluded that DPL acted beyond its jurisdiction when it created an in-house homestead committee to reconsider a closed case.

We found nothing in the minutes of the second committee hearing to support the "fact" that old files were lost, which the Secretary alleges caused the second committee to reconsider the case. Assuming that the files were lost, there is no indication that they were lost during the original appeal period.

As to the proper course of action, we are revising Recommendation 1 and 2, as follows. We recommend that the Director of the Division of Public Lands, (1) file a civil action in the Superior Court to invalidate the grant of 10,716 square meters of agricultural homestead land to the homesteaders, and (2) determine what adverse action should be taken against the officials responsible in making the illegal transfer.

The additional information needed to close these recommendations is presented inAPPENDIX F.

BACKGROUND

Public lands within the Commonwealth suitable for agricultural or grazing purposes or for the establishment of community sites, and which are not required for government use or reserved for other purposes by any other provision of law, may be designated by the Public Land Corporation[2] on behalf of the Commonwealth government for homesteading purposes. Such areas may be allotted to qualified persons for the purpose of farming or developing village lots with the right to acquire title upon fulfillment of certain conditions.

[1] In re Hafadai Beach Hotel Extension, 4 NMI 37, 43 (1993). See Secretary's July 10, 1998 letter, APPENDIX D, page 21.

[2] In the Second Reorganization Plan of 1994, MPLC was dissolved and its functions were transferred tothe Division of Public Lands under the Department of Land and Natural Resources (DLNR).

The Division of Public Lands is mandated to verify the eligibility and all essential facts set forth by the applicant, and approve or disapprove the application. Upon the approval of the application, the Division of Public Lands shall issue a permit to enter upon, use and improve the land in accordance with certain standards. This permit shall describe the land and shall contain a reservation of any and all public roads, rights of way, easements, mineral rights and uses essential to the public welfare. A deed of conveyance shall be issued within two years from the time the homesteader becomes eligible and until the expiration of three years from the date of entry and the execution of certificate of compliance by the Public Land Corporation. Such deed shall convey to the homesteader any and all rights of the Commonwealth government to the property, excepting such rights as reserved by law or by permit.

The Homestead Waiver Act of 1980 (HWA) provided the Division of Public Lands sufficient authority to waive requirements, limitations and regulations relating to agricultural homesteads. Under this Act, qualified persons occupying public lands may obtain a homestead permit, or even an absolute title to the land being occupied, without the usual homestead requirements.

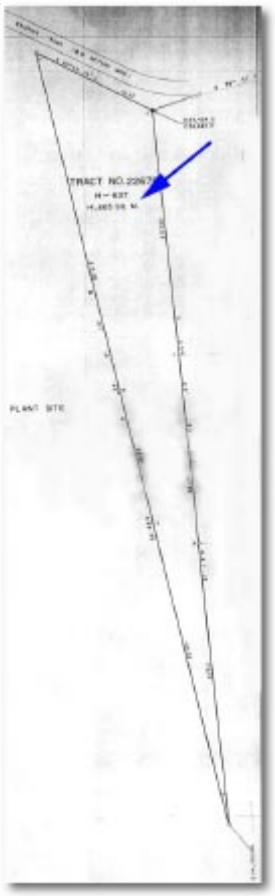

Figure 1 Tract no. 22670, as shown in Survey Plat No. 2092/74 also showing the area of the homestead lot granted.

The Homestead Grant

On September 19, 1977, a homesteader was authorized by the then Trust Territory Government to enter upon, use and improve for agricultural and residential purposes only, a homestead lot with an area of 14,665 square meters[3] (Tract no. 22670, as shown in the Division of Lands and Surveys Plat No. 2092/74, see **Figure 1**). The Permit to Homestead (referenced as Agricultural Homestead No. 637) required the homesteader, among other things, to enter upon and commence the use and improvement of the land for agricultural purposes in accordance with a land utilization and planting program. Moreover, the permit also provided that all construction for housing of people shall include sanitation facilities, and the buildings and grounds shall be maintained in a state of cleanliness and sanitation, but no permanent buildings or structures, i.e., reinforced concrete or hollow concrete block construction, shall be constructed during the term of the homestead.

In accordance with Section 208, Title 67 of the Homestead Act, a quitclaim deed was issued after three years on November 3, 1980 by the former MPLC, releasing all its rights, title, interest, or claim to homestead tract no. 22670 in favor of the homesteader. On February 14, 1985, the Land

[3] At the time when the homesteader was granted an agricultural homestead, he was already a holder of a village homestead lot located at Beach Road, Garapan, based on his application for agricultural homestead dated July 13, 1977 and June 28, 1961.

Commission issued a certificate of title on homestead tract no. 22670 under the name of the homesteader showing the size, shape and boundaries of the lot awarded.

On November 21, 1986, the homesteader filed an application for an agricultural grazing permit. The public land requested was the strip of land adjacent to their homestead (referred to in the homesteader's affidavit as File 87-1469) estimated to have an area of about 0.5 hectares of public land. In the application, the homesteader stated that the intention for this piece of land is to widen their existing lot (Lot 22670) and raise pigs for family use. The application was made by the homesteader's wife, on behalf of her husband.

The homesteader's wife used to work as an Statistical Recorder at the District Land Management Office during the time of the Trust Territory Government. Her duties included keeping statistical records of government property, private property, and homestead areas occupied; and assigning and issuing permits of homestead to eligible homesteaders. She returned to local government service in 1994 as a Land Title Investigator/ Adjudicator under the Division of Land Registration and Survey, with duties of furnishing and maintaining land registration records and supporting historical, graphical and statistical data. In addition, she was also assigned to deal with land title disputes, participate in adjudication of claims, and meet with land owners in establishing their boundaries. She is currently the Chairperson of the Land Registration Team of the Division of Land Registration and Survey, DLNR.

On November 24, 1987, the homesteaders requested MPLC to grant this second tract of land to them and their heirs. On November 27, 1987, the MPLC Executive Director denied the request stating that MPLC can only dispose of public land through the village homestead program, through exchange with private land if there is a determination that the private land is needed to serve a public purpose, or through lease for commercial purposes. According to the Executive Director, the homesteaders' case did not fall under any of these criteria.

In a report dated August 18, 1988 to the Board of Directors, the decision to deny the request was upheld by the Homestead Hearing Committee (hereinafter referred to as the "First Homestead Committee"). The Committee stated that MPLC has no authority to give more land than what is indicated on the approved plat. In the letter of the Homestead Administrator to the homesteaders, dated August 30, 1988, the Homestead Administrator stated that the Board (of MPLC) did not find any evidence that the homesteaders were misinformed by the government or that they do not know the actual shape of their homestead lot after years of being an occupant.

On January 31, 1989, Vicente Songsong issued an affidavit attesting that he was working as a Land Surveyor at the Land Management Office during the time of the Trust Territory Government, and that he was aware of the decision and instructions of the late Jose Sn. Attao (a former Homestead official) to TJ Davis, a private surveying company awarded to survey homestead properties, to consolidate Lot No. 22670 with the adjacent public land.

On March 16, 1989, the Chairman of the MPLC Board issued an Agricultural and Grazing Permit (Permit No. AGP-8911S) to the homesteaders for the use ofthis additional tract of unsurveyed land estimated to have an area of 0.5 hectare, for a fee. Under the terms of the grazing permit, the permittee shall use the land for cattle grazing, raising of agricultural livestock, and for agricultural and farming purposes, at $15.00 per annum. Article 7 of the Grazing Permit provides that "...The Permittee may, with the prior written approval of the Corporation, erect and maintain non-permanent structures on the premises necessary for the livestock and agricultural activities...." However, on August 20, 1992, public land inspectors discovered that the homesteaders built a three-bedroom concrete house on this agricultural lot, which clearly violated the terms of the grazing permit. The said housing unit was reported to be leased by the homesteaders to a third party. Commonwealth Utilities Corporations' (CUC) record of electric meter history revealed an electrical service connection in this concrete house on June 21, 1991, two years after the grazing permit was issued.

On March 18, 1994, the homesteaders requested the Marianas Public Land Corporation to convey the land to them under short conveyance. In their affidavit, the homesteaders cited that, (1) they were authorized to enter and improve the land for agricultural homestead purposes; (2) in 1965, the late Jose Sn. Attao and Manuel B. Sablan showed them the boundaries to occupy and improve, which is approximately 4.0 hectares, including the additional strip of land on the western area; (3) by mistake, this additional strip of land was eliminated from the original homestead; and (4) they have demonstrated continuous and actual occupancy and use of this public land for agricultural purposes, together with Tract No. 22670, prior to January 9, 1978.

On January 4, 1995, the Homestead Administrator reported his findings and recommended awarding the strip of public land to the homesteaders, citing the affidavit made by Songsong and the resulting property interest.

On February 9, 1995, the Director of the Division ofPublic Lands, with the concurrence of the Secretary of DLNR, issued a notice to terminate the grazing permit issued to the homesteaders effective 30 days from the receipt of the notice. The notice ordered the homesteaders to vacate the leased agricultural premises within the given time, and restore the public premises to the same conditions existing at the time of their original entry upon the land. This was not, however, enforced. The CUC electric meter history showed that on April 24, 1995, CUC service was re-established in this three-bedroom concrete house.

On May 22, 1995, a new Homestead Administrator recommended names of individuals composing the Homestead Review Committee (hereinafter referred to as the "Second Homestead Committee") who were to hear the homesteaders case, among other homestead cases.

After a series of committee hearings, on June 26, 1996, the Second Homestead Committee, through the Director of Public Lands, presented their recommendations to the Governor. In this report, the Committee recommended that the Governor grant, through short conveyance, the

entire additional strip of public land to the homesteaders. In one of their hearings, the four-man committee agreed that the homesteaders were not afforded what they "morally deserved".

On January 23, 1997, the former Governor signed the homestead permit and the quitclaim deed in the names of the homesteaders for this strip of public land, surveyed as lots 189 E02 and 189 E03, totaling to 10,716 square meters, or 1.08 hectares.

OBJECTIVE, SCOPE AND METHODOLOGY

The objective of our audit was to determine whether the additional strip of public land granted to the homesteaders was made in accordance with the Homestead Act and its rules and regulations.

Our audit was limited mainly to review of homestead applications, permits, deeds, affidavits and other pertinent documents, and interviews with current and former employees of DLNR. As part of our audit, we evaluated the system of internal controls related to the granting of homestead lots to the extent we considered necessary to accomplish the audit objective. We performed the audit in December, 1997 at the Division of Public Lands office in Saipan.

Our audit was made, where applicable, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as were necessary under the circumstances.

FINDINGS AND RECOMMENDATIONS

A. Second Homestead Review Committee Does Not Have Jurisdiction to Hear the Case

Under the Homestead Waiver Act Rules and Regulations, the decision of a Homestead Hearing Committee on an appeal filed by a homestead applicant shall be deemed finalfor MPLC. The Administrative Procedures Act gives the aggrieved party the option toappeal the decision of the agency to the Commonwealth Superior Court. Our audit showed that the Division of Public Lands, through another Homestead Review Committee, reviewed and rendered a decision on an agricultural homestead case which was already decided by the first Homestead Review Committee of the former MPLC. Its decision reversed the first Homestead Committee's decision in favor of the homesteaders. This resulted from the Division of Public Lands acting beyond its jurisdiction. As a result, the Division of Public Lands Homestead Review Committee violated the HWA regulations.

Time to Appeal the Decision Has Expired

Section 6 of the Homestead Waiver Act Rules and Regulations provides that "...An applicant whose application for an agricultural homestead waiver has been received, verified, and found not eligible, shall be informed in writing, in the language the applicant is conversant with, of such decision, the reason therefore [sic], and the right of each applicant to appear before the Hearing Committee set up by the Corporation to hear and determine why his/her application should not be denied. Such a hearing shall be held no later than 90 days after receipt of such notice by the applicant. If the applicant has reason to believe that his/her application should not be denied, he/she should present his/her case before the Committee for consideration. No later than 30 days after the hearing, the Committee, on behalf of the Corporation shall issue its decision. If the Committee finds that it should deny the application a written decision to that effect shall be prepared and given to the applicant. *Such a decision shall be deemed final for MPLC*. The applicant has the right to be represented by a counsel of his/her choosing and to bring witnesses at the said hearing...." (Emphasis added)

Section 9112(b) of the Administrative Procedure Act states that "... A person suffering legal wrong because of agency[4] action, or adversely affected or aggrieved by agency action, is entitled to judicial review of the action within 30 days thereafter in the Commonwealth Superior Court...."

Second Homestead Review Committee Lacks Jurisdiction on the Case

In our review of pertinent documents, we determined that the second Homestead Review Committee formed by DPL in 1995 does not have jurisdiction to hear the homesteader's short conveyance case. The November 27, 1987 letter from MPLC showed that the former Executive Director denied the short conveyance request, stating that MPLC can only dispose of public land either through a village homestead program or through an exchange with private land. This decision was affirmed by the First Homestead Committee when it reviewed the case after almost a year. In a letter to the homesteaders dated August 30, 1988, the former Homestead Administrator stated that "...the Board (of MPLC) in reviewing all documents available finds no evidence that you have been misinformed by the government or that you did not know the shape of your property...." (APPENDIX A)

Under the Homestead Waiver Act Rules and Regulations, this decision shall be deemed final for MPLC and the only way this decision can be appealed is through the Commonwealth Superior Court after final agency action, under the Administrative Procedures Act. We cannot find any provision in the CNMI law to support the action taken by the second Homestead Review Committee reversing the decision of a committee created for the same purpose.

[4] Agency means each authority of the Commonwealth government whether or not it is within or subject to review by another agency, but does not include: (1) The Commonwealth Legislature, or (2) The courts of the Commonwealth.

B. One Hectare of Homestead Lot Granted Based on "Moral Grounds"

Issuance of homestead lots in the Commonwealth must be based solely on the CNMI homestead laws and regulations. Our audit showed that the Division of Public Lands awarded a homestead lot to an existing homesteader on the basis of "moral grounds". This occurred because the second homestead hearing committee failed to hear the case in accordance with the homestead laws and regulations. As a result, a 1.08 hectare agricultural homestead lot was inappropriately granted to an existing agricultural homesteader.

The Homestead Waiver Act

The Homestead Waiver Act provided the now Division of Public Lands sufficient authority to waive requirements, limitations and regulations relating to agricultural homesteads. Under this Act, qualified persons occupying public land may obtain a homestead permit, or even absolute title to land being occupied, without the usual homestead requirements.

Section 4323 of this Act provides that the Division of Public Lands shall waive any requirements, limitations or regulations relating to the agricultural homesteading program in effect prior to January 9, 1978. Any person who can demonstrate continuous and actual occupancy or use of public land for agricultural purposes for a period of 15 years prior to January 9, 1978 shall be legally entitled to all the rights and interests of ownership of such land, and the Division of Public Lands shall convey such land by deed to any person who complies with procedures and requirements for granting of deeds. In addition, Section 4327 provides that any person whohas continuously occupied or possessed, with permission of the government, a parcel of public land, who began using such land for agricultural purposes prior to January 9, 1978, and who used such land continuously for such purpose through February 9, 1981, but who has not been granted a homestead permit, shall be granted an agricultural homestead permit, which shall be valid for all legal purposes, including acquisition of freehold title upon completion of homestead requirements, as if issued pursuant to other provisions of law relating to homestead rights and procedures.

There are only two instances where homestead requirements can be waived. The*first* instance would entitle a person to all the rights and ownership of public land. It requires that an applicant be able to demonstrate continuous and actual occupancy or use of public land for agricultural purposes for a period of at least 15 years prior to January 9, 1978. The*second* instance, under the Special Homestead Procedures, would qualify a person for an agricultural homestead permit which shall be valid for all legal purposes, including acquisition of freehold title upon completion of homestead requirements. It requires that a person (1) have continuous possession or occupancy of the land; (2) have government permission to use the land; (3) use the land for agricultural purposes prior to January 9, 1978, and use such land continuously for such purpose through February 9, 1981; and (4) not previously been granted a homestead permit.

In our review of the minutes of the second Homestead Review Committee hearings, we noted that the case was favorably resolved by the Committee on the basis of "moral grounds," (APPENDIX B) and not on any statute. The Committee placed too much weight on the three-bedroom concrete house, which was being leased to a third party, and on the permanent trees that were allegedly planted on the disputed public land. This caused the issuance of a homestead permit and a quitclaim deed for 10,716 square meters (1.08 hectare) of additional homestead land to the homesteaders, giving them a total of 2.5 hectare of agricultural homestead land.

In addition, we note that there were significant points raised by a member of the Second Homestead Committee which did not seem to get resolved prior to deciding the case. Some of those relevant points are summarized as follows:

- The coconut trees should be the same age in the original homestead as in the additional land that the homesteaders are claiming.
- Having great knowledge of land matters, the homesteader (wife) should have complained earlier before obtaining title.
- The homesteaders signed the document which clearly shows that the land is triangular in shape, and not rectangular as they purport it to be.

In applying the law to this case, we note that none of these legal points are applicable in this matter. First, the homesteaders did not occupy the land*until after* September 17, 1977, the date on which the Agricultural Homestead lot was granted (assuming that the additional land in question was occupied at the same time as the original homestead lot). Furthermore, we note that the homesteader requested the use of the land on March 22, 1973 (APPENDIX C), in which he mentioned that they were currently using a small portion in their village homestead lot on Beach Road for raising hogs and to plant crops, which was against sanitary regulations. We believe that this is sufficient proof that the homesteaders were not in possession of or were not occupying the public land 15 years prior to January 9, 1978, or January 9, 1963.

With regard to the second legal basis for waiving the homesteading requirement, the Act specifically requires that a person have government permission to use the land at the time of occupation. We believe that any verbal authorization, as those claimed in the homesteader's and Songsong affidavits, are not valid, especially when land is involved. (The Attorney General concedes that it is unclear whether such authorization must be in writing [APPENDIX E, Page 5]).

Conclusion and Recommendation

The Homestead Act and its rules and regulations clearly provide procedures for a fair and equitable distribution of agricultural and village lots in the Commonwealth. The Division of Public Lands, in reviewing the homesteader's case, acted beyond its jurisdiction when it rendered a decision on a closed case after the time for appeal had run. Moreover, we believe that DPL acted negligently when it favored existing "moral" evidence over the legal merits of the case.

Accordingly, we recommend that the Director of the Division of Public Lands, (1) invalidate the grant of 10,716 square meters of agricultural homestead land tothe homesteaders; (2) order the full restoration of the said public land; and (3) issue a memorandum emphasizing strict adherence to the Homestead Act and its rules and regulations.

DLNR Response

In his response letter dated July 10, 1998, the Secretary of DLNR disagreed with Recommendations 1 and 2, and agreed with Recommendation 3 (APPENDIX D). According to the Secretary, DPL can only request the Court to invalidate the grant, however, he is not persuaded that there is sufficient basis to make such a request. DLNR believes that the law was properly interpreted and applied by the Homestead Review Committee to this case. According to the Secretary of DLNR, (1) OPA improperly reviewed the facts and made incorrect conclusions, and (2) OPA ignored the fact that the old file was lost making the second homestead review committee's reconsideration legally permissible.

Homestead Review Committee's Decision Based on Legally Sufficient Evidence

According to the Secretary, the only relevant inquiry is whether the Homestead Review Committee's decision was based on legally sufficient evidence [1 CMC §9101 et. seq.;*In re Hafadai Beach Hotel Extension*, 4 NMI 37, 43 (1993)][5]. The Secretary stated that the affidavit of the surveyor, Vicente Songsong, along with the existing road, are sufficient legal grounds to support the grant of additional land to the homesteaders. He stated that OPA's statement that the Second Homestead Committee's decision was based on "moral grounds" was not true, although admitting that the statement does appear to be in the record. He believes the homesteaders are entitled to the additional strip of land under both the 15-year and the 3-year provision, and all of the later issued grants, deeds, permissions, denials and other facts are legally irrelevant to this claim, based on Songsong's affidavit.

The DLNR Secretary claims that OPA's draft letter incorrectly concludes that verbal permission by former officials would not have been sufficient for a compensation grant under the HWA. He stated that the HWA, created by PL 2-13, was amended by PL 3-44 to include the deletion of the word "written" so that the law now reads "any form of permission." He added that the head of the homestead committee who decided in favor of the homesteaders was among the congressmen who introduced PL 3-44 in the House. According to the Secretary, this was a legislative override in this category of cases of the more general Commonwealth Statute of Frauds cited by OPA in its draft report.

[5] APPENDIX E, Secretary's July 10, 1998 Letter, page 21.

Second Homestead Review Committee's Reconsideration Legally Permissible

The Secretary stated that OPA ignored the fact that the old file was lost, and that new evidence was introduced. He believes that this made the second committee's reconsideration legally permissible under the Commonwealth Administrative law and procedure. The Secretary, however, did not cite any particular provision in the Commonwealth administrative law and procedures to support his claim.

With regard to OPA's third recommendation to issue a memorandum emphasizing strict adherence to applicable legal standards, the Secretary stated that this has already been substantially implemented. In line with this recommendation, the Secretary attached a copy of the checklist to be used by DPL in reviewing HWA files.

OPA Comments

Based on the responses we received, we consider Recommendations 1 and 2 open, and Recommendation 3 closed.

We disagree with the Secretary that the only relevant inquiry in this case is whether the decision of the Second Homestead Committee was based on substantial evidence.*In re Hafadai Beach Hotel Extension* (supra), applied the substantial evidence standard of judicial review which, as stated by the Secretary, only inquires whether the decision is supported by substantial evidence on the record. It should be noted, however, that the substantial evidence standard was specifically provided in the hearing procedures of the Coastal Resources Management Office (CRM) [2 CMC §1541(b)], the agency which granted the permit to that appellee. In that case, the CNMI Superior Court *was confined* to determining whether there was substantial evidence before the (CRM) board supporting its affirmance [sic] of that agency's decision to grant the permit. The Legislature specifically mandated a standard of review for CRM not applicable under the Administrative Procedure Act (APA). [*In re Hafadai Beach Hotel Extension*, (supra), page 38].

The HWA Rules and Regulations do not provide a standard for judicial review. In the absence of set guidelines, the standards of review under the APA should apply, in which the substantial evidence standard of review is only one of several standards. Section 9112(f) of the APA provides, among other things, that the reviewing court shall hold unlawful and set aside agency action, findings, or conclusions also found to be; (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, (2) contrary to constitutional right, power, privilege or immunity, or (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory rights.

The jurisdiction of DPL in deciding HWA claims has been clearly defined in its regulations. We find no provision in the regulations to support the "reconsideration" made by the Second Homestead Committee. Again, we conclude that this case should be considered closed when the

homesteaders failed to timely appeal DPL's First Homestead Committee's decision to the proper courts.

Apparently, the Second Homestead Committee ignored the jurisdiction issue which we believe is a major consideration in every case. During their first meeting, the Chairman of this committee revealed that the Board has already acted on this matter by denying the request (possibly referring to the August 30, 1988 letter to the homesteaders by the then Homestead Administrator), and yet we found nothing in the minutes or other records to support the resolution of the issue, or the Second Committee's action to proceed with the case.

Another aspect which the Second Committee ignored is the additional credible evidence such as the September 19, 1977 permit to homestead issued to the homesteaders, which defines the actual shape of the lot and the size of the lot granted, and is only 1.5 hectares. It took the homesteaders 8 years to discover that what was written on the face of the homestead permit is *2.5 hectares less* than what the two District Land Management Officials allegedly assigned to them. Again, we note that this was among the issues raised by a second committee member, but there was no record to support how this issue was resolved, if at all. We find this unusual since the boundaries and size of the lot for the homestead were clearly described on both the homestead permit (which was signed by the homesteaders) and the Certificate of Title issued subsequently by the Land Commission on February 14, 1985. In addition, the homesteader (wife) worked as a statistical recorder for 11 years (1957-1968) at the District Land Management (DLM), and part of her duties was to assign and issue permits to homestead to eligible homesteaders. We believe that her extensive experience in homesteading dismissed the possibility of her overlooking the main subject of the homestead.

The existence of this evidence raises serious questions as to the affidavit of a land surveyor, which was issued months after the Board decision. For whatever reason, this affidavit was not used by the homesteaders until March, 1994, when they requested the short conveyance of the public land adjacent to their homestead.

Even the Attorney General's Office (AGO), in their comments[6] to the OPA's Investigation Report (**APPENDIX E**), stated that the Homestead Review Committee erred, in that their decision was against the weight of the evidence, and based their decision, in part, on moral grounds. He also stated that there is legally sufficient evidence to support the decision, however, he also agreed that the evidence *strongly favors an opposite result*. He further agreed with OPA that the *weight of the evidence* supports the conclusion that there was not the required 15 year use. The Attorney General finds it arrogant of the homesteaders to have built a house on land that was the subject of a pending dispute. He said that it also appears that a land official insider sought and received special treatment from other insiders and perhaps from the former Governor.

[6] APPENDIX E, Letters from AG dated February 6, 1998 and March 19, 1998.

With regard to the Secretary's allegation that OPA incorrectly concludes that the statute of frauds precludes verbal authorization, we must first offer a brief background of the statute of frauds. The statute of frauds originated in England in 1677. The purpose was to prevent fraud by requiring certain transactions to be in writing. Most, if not all, U.S. jurisdictions have a statute of frauds by legislation. Prior to legislation, some states adopted the "statute of frauds"*as part of the common law*. New Mexico is an example. [*ADES v. Supreme Lodge Order of AHEPA*, 181, P2d 161, 165 (1941). Transactions involving real property have traditionally involved a writing, even in the Trust Territory. We agree with the AG that it is not entirely clear in this case whether government permission to occupy and use the land required a writing. In their letter to OPA, the AG admitted that "...it is unclear whether permission must be in writing...." Absent a statute of frauds, the better approach would be to apply the common law.

Second Review Committee's Reconsideration Not Sanctioned by the HWA Regulations

There was nothing in the minutes of the Second Committee hearing to support the "fact" that old files were lost, which the Secretary claimed to have caused the Second Committee to reconsider the case. In the October 3, 1995 memo transmitting the Second Committee's recommendations to the DPL Director, the Chairman of the Committee stated that at the time of denial, there were no witnesses to collaborate the affidavit submitted by the homesteader (husband) and his wife. Over a year later, in January 1989, Mr. Vicente A. Songsong, a Registered Land Surveyor for the Trust Territory of the Pacific Islands, alluded to the fact that there was merit, according to the affidavit submitted by the homesteaders, to consolidate Tract No. 22670 and the remaining public land to the west. The matter of lost files was never raised asan issue by the Second Committee, nor was it cited as a basis to reconsider the case. Assuming that the files were in fact lost, there was no indication or evidence to show that they were lost*within the appeal period*.

The HWA rules and regulations have clearly provided for procedures in handling HWA claims, and these should be strictly observed in all cases. In its August 18, 1988 report to the former MPLC Board, the First Homestead Committee upheld the November 27, 1987 decision of the then MPLC Executive Director, and ruled that MPLC has no authority to give more land to the homesteaders than what was indicated on the approved plat. The creation of an in-house second homestead committee after almost 7 years to retry the case was clearly not provided for in the HWA rules and regulations.

As to the proper course of action, we are revising Recommendation 1 and Recommendation 2, as follows. We recommend that the Director of the Division of Public Lands, (1) file a civil action with the Superior Court to invalidate the grant of 10,716 square meters of agricultural homestead land to the homesteaders, (2) determine what adverse action should be taken against the officials responsible in making the transfer.

The additional information needed to close these recommendations is presented in**APPENDIX F**.

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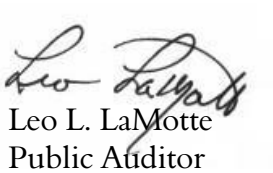
Our office has implemented an audit recommendation tracking system. All audit recommendations will be included in the tracking system as open or resolved until we have received evidence that the recommendations have been implemented. An *open* recommendation is one where no action or plan of action has been made by the client (department or agency). A *resolved* recommendation is one in which the auditors are satisfied that the client cannot take immediate action, but has established a reasonable plan and time frame of action. A *closed* recommendation is one in which the client has taken sufficient action to meet the intent of the recommendation or we have withdrawn it. Please provide to us the status of the recommendation implementation along with the documentation showing the specific actions taken.

Please provide to us the status of recommendation implementation within 30 days along with documentation showing the specific actions that were taken. If corrective actions will take longer than 30 days, please provide us additional information every 60 days until we notify you that the recommendation has been closed.

Sincerely,



Leo L. LaMotte
Public Auditor

cc: Governor
Lt. Governor
Eleventh CNMI Legislature (27 copies)
Attorney General
Secretary of Finance
Director, Division of Public Lands
Special Assistant for Management and Budget
Public Information Officer
Press

APPENDIX A

Marianas Public Land Corporation
P.O. Box 380
Saipan, MP 96950

August 30, 1988

Capitol Hill
Saipan, MP 96950

Dear Mr. :

Your request to be given additional land adjacent to your private property is hereby denied.

The Trust Territory Agriculture Homestead Program which you became eligible and received deed is no longer the law of the Commonwealth and hence MPLC has no authority to grant additional land.

The record shows that you first applied on June 28, 1961. On July 13, 1977 you updated your application. On September 2, 1977 you signed the Land Utilization and Planting Program in which Tract No. 22670 was used as the reference map. On September 16, 1977 you signed your Permit to Homestead Agricultural Homestead No. 637) with the land being described as Tract No. 22670 containing an area of 14,064 square meters, as shown on Division of Lands and Surveys Survey Plat No. 1092, T-1, approved on October 7, 1976. The Resident Commissioner signed the Permit on September 19, 1977. In November 3, 1980 both the Certificate of Compliance and Quitclaim Deed was issued to you for Tract No. 22670. After almost 8 years have lapsed from the date you received the deed you now just became aware that the map of your property shows a triangular shape. The survey map was never changed since it was first issued. The Board in reviewing all documents available finds no evidence that you have been misinformed by the government or that you did not know the shape of your property.

Thank you for your understanding.

Sincerely yours,

Justin S. Manglona
Homestead Administrator

Discussion on _____

Mr. Sablan was persuaded to believe the validity of the claim based on the Certificate of Title in which Mrs. gave a description of her land which correlates as described according to the map. The affidavit from Mr. Vicente Songsong stated that there was instruction from the Land Management Office to pass the instruction on the TJ Davis surveyors who were then given the charge of surveying the 's property. Because of problems of communication, the instruction was not accomplished by TJ Davis. According to his own observation of the area, the boundary was clearly marked by certain permanent trees the family planted. Mr. Sablan refers to an illustration on the chalk board and describes how awkward the shape the lot is in which is somewhat like an arrow. Despite all those planting and showing, upon receiving their title, they found out that it was not part of the property which is legally theirs. They continued to occupy and improve on the lot up until now. Based on these, he supports their claim.

The Chairman inquires the size of the lot to be awarded if approved. Mr. Sablan stated that it would depend on the markers (coconut trees).

Mr. Guerrero shares his concern for the committee to do the right thing and that if the truly deserves what they should get then he is all for it. He still finds it difficult to understand the inconsistency of the statement made from Mr. Vicente Songsong and the written statement. Second, before the Certificate of Title was issued, described where her lot is located in which she mentioned that on the southwest, which she is claiming to be part of her homestead, is a government road. In other words, she knew that it was government land. He also stated if he were to agree to the claim the coconut trees should be the same age from inside her legal property and outside He also shared the Lt. Governor's concern of this case. Mr. Guerrero feels that Mrs. has experience of reviewing the documents and inquires why she didn't complained earlier before getting the title.

Mr. Chairman stated that this may be a perception problem. As she(Mrs.) stated, she believed that the road on the west was the main road and at a subsequent time she found out the problem. Mr. Sablan refers to the illustration on the board as he tries to explain the case and pointed out what TJ Davis, who were responsible for the survey, might have done and what the government, who were responsible for incorporation, should have done. Mr. Guerrero refers to the illustration again to try and get an understanding of the situation. He supports Mr. Sablan's view of it being a weird shape but the fact of the matter is Mrs. has great knowledge of land matters and she could have avoid this problem from happening.

Mr. Santos shared the 1960's law disallowing 2 homestead lot. Agricultural lot #637 was deeded to Mr. and Mrs. . To give additional would give them 2 agricultural lot which violates the law. Mr. Sablan explained that it was not. Mr. Sablan also tried to make it clear that they are not applying for another land but a for short conveyance of the land they already own.

Mr. Santos touched on Mr. Songsong's affidavit and feels he should not accept it. Mr. Sablan explains the purpose for the affidavit. Mr. Santos inquired what proof should they have and Mr. Sablan stated that it is a common knowledge as a waiver act. That prior to surveying, they planted on the lot. Mr. and Mrs. were there before the issuance of the permit. Mr. Sablan shared that the 's had a permanent structure which heavily has an impact on this case. With this he felt that if he did not support the claim then he would be condoning to government practices.

Mr. Guerrero again shares his disagreement stating that they signed the document that shows the triangular shape of the land which explains the planting being done. There is no document that supports the short conveyance (rectangular shape). Mr. Sablan stated he has no further comments.

Chairman shares his concern and feels that they should take more time in considering action on the matter for it is a tough issue.

Mr. Santos feels for the approval of the claim provided that it be only limited to what they improved. He feels that the government also had ample time to let Mr. and Mrs. aware of the encroachment of government or rather public land. The Chairman inquires about the notice of encroachment. Mr. Santos presents the August 1988 denial notice by former homestead administrator Justin Manglona. Mr. Sablan inquires whether Homestead Administrator did it on his own(decision) or was there a hearing conducted.

Recess five minutes.

Meeting resumed at 4:00pm.

Chairman asked if committee is ready to make a motion.

Mr. Sablan feels that Mr. & Mrs. were not afforded what they morally deserve. Considering all the arguments presented, his opinion is that the family truly deserve their short conveyance and he asked the committee should support the motion.

Mr. Santos seconded the motion.

Mr. Guerrero asked what additional land would they be accommodated. Mr. Sablan replied about 7,000 square meters or less. Mr. Sablan explained that the perception is not to make a perfect rectangle but to depend on the developments(permanent trees). Mr. Sablan also asked the committee that if approved, to include the land which encompass the concrete house. He also suggested for the committee to conduct a site visit. Mr. Guerrero then stated that he wants to make sure the are present and to notify them of the maximum 7,000 square meters.

Motion carried by a two(2) yes, one(1) no and one(1) sustained vote.

APPENDIX C

March 22, 1973

Chairman Land Advisory Board
Mariana Islands District
Saipan, M. I., 96950

Thru: Land Management Officer, Marianas

Gentlemen:

Please permit me to submit this letter concerning my application of Agricultural Homestead.

On June 21, 1961, I submitted application for Agricultural lot but instead I was assigned Suburban lot located at East District southern part of Capitol Hill. And therefore, survey of homesteading lot is required, but since I am indeed urgently in need of the land I am asking the Land Advisory Board to grant me permit and use the land on more or less basis.

At the present time, we are raising hogs and plans to plant crops on a small lot on my village homestead located at the Beach Road in Garapan, in which against the sanitary regulations and also against the tourist attraction.

Again, I will appreciate temporary permission for using the land before any survey.

Respectfully yours,

Garapan
Saipan, M. I., 96950

cc: Sanitary Officer, Marianas
Tourist Commission, Marianas

Commonwealth of the Northern Mariana Islands
Office of the Governor
Department of Lands and Natural Resources
Lower Base
Caller Box 10007
Saipan, Mariana Islands 96950

July 10, 1998

Leo LaMotte
Public Auditor
Office of the Public Auditor
P.O. Box 1399
Saipan, MP 96950
VIA FACSIMILE 234-7812 and REGULAR MAIL

Re: Draft Letter Report on the Audit and Investigation of
Homestead Grant; OPA Investigation Case No. 97-0025

Dear Mr. LaMotte:

This letter is in response to your June 4, 1998 letter in connection with the above-referenced matter. After careful review of the matter and discussion with our assigned counsel from the Office of the Attorney General (AGO), we agree in part and disagree in part with your recommendations

You recommend that. 1) the grant to the be invalidated, 2) the land fully restored at the ; and 3) a memorandum be issued emphasizing the need for strict compliance with the "Homestead Act "

There is no legal basis for the Division of Public Lands (DPL) to "invalidate" the grant. We could request the Court to declare the grant void, but are not persuaded that there is sufficient legal basis to make that request. Hence, the second recommendation regarding restoration of the "public land" is not applicable (but in any event, there is no legal basis to make a private party pay for the alleged legal mistakes of the government officials- if you are aware of such legal authority, then please let me know)

We do agree with the substance of your third recommendation, which is that DPL should strictly tailor its reviews of claims to the standards in the applicable statutes. Along that line, enclosed at Tab A is the checklist prepared by our counsel for DPL staff to use when reviewing Homestead Waiver Act (HWA) files. Please note that this is simply the first step. We are in the process of overhauling all DPL reviews of land claims, including ensuring that involved staff are trained to standard on the applicable laws

A. **OPA misinterprets the law**

There is a whole series of homestead laws in the Commonwealth Code, and they are easily misunderstood and misinterpreted

Currently, there are two Agricultural Homestead Acts, one for Rota (2 CMC § 4381 *et seq.*), and one for Tinian (2 CMC § *4371 et seq.*). Then there is the village homestead law (2 CMC § 4331 *et seq.*), the law relating to surviving spouses (2 CMC § 4341 *et seq.*), and the general homestead provisions (2 CMC § 4301 *et seq.*)

Finally, there are the two "homestead" statutes aimed at compensating past wrongs. There is the Homestead Compensation Act (2 CMC § 4351 *et seq.*) and the Homestead Waiver Act (2 CMC § 4321 *et seq.*).

These statutes must not be confused. The Village and Agricultural Acts are designed to allocate limited public land resources to NMI persons according to the criteria established by the Constitution, Legislature and DPL In contrast, the two homestead compensation statutes are designed merely to compensate persons for their pre-existing land rights, again according to the criteria established by the Legislature Hence, the former is a government-created give away according to set criteria The latter is a government authorized *recognition* of pre-existing ownership interests in land

Several critical points derive from understanding that there are two separate types of homestead laws. First, as OPA recognizes, all of the laws must be carried out according to the criteria established by the laws Second, as OPA seems to miss, it is inaccurate and somewhat insulting to confuse the so-called give away programs with the compensation laws.

A third point is that these statutes are intricate For example, the Homestead Compensation Act was largely designed to compensate persons who lost their pre-war land with homesteads, so that law was not so much a homestead program as a means of compensating for past injuries By its express terms, that Act is now closed 2 CMC §

4355(a). However, the Public Purpose Land Exchange and Authorization Act of 1987 (the Land Exchange Act) reopened the Homestead Compensation Act in part by providing that those persons qualifying for compensation under the Homestead Compensation Act qualify for land exchanges under the Land Exchange Act. 2 CMC § 4143(e)(4)

Because the statutes are intricate, their interpretation is not an easy task. For example, OPA's draft letter incorrectly concludes that *verbal* permission by former officials would not have been sufficient for a compensation grant under the HWA. OPA supports its mistaken position with reference to the statute of frauds

The HWA was passed into law as P.L. 2-13. The HWA was first amended by P.L 3-44. P.L. 3-44 amended 2 CMC § 4327 by deleting one word. The word "written" was deleted from the statute, so that the law now reads, "any form of permission" *and not* "any form of written permission." Clearly, this was a Legislative override in this category of cases of the more general Commonwealth statute of frauds. You may also wish to note that Miguel M. Sablan was one of the Congressmen who introduced P.L. 3-44 (as a House Bill). As you know, Mr. Sablan headed the Homestead Review Committee that approved the grant in question. Hence, the Committee was well aware that verbal permission was sufficient.

We also agree with the AGO that OPA misapplies administrative law to this matter. OPA asserts that the first Homestead Review Committee decision was binding, and that the second committee lacked jurisdiction to hear this matter

OPA ignores the fact that the old file was lost and that apparently new evidence, the affidavit of Vicente Songsong, was introduced. We believe this made the second committee's reconsideration legally permissible under Commonwealth administrative law and procedure.

B. <u>OPA is entitled to its own interpretation of the facts, but the only relevant legal issue is whether the Homestead Review Committee's decision was based on legally sufficient evidence.</u>

We disagree with OPA's interpretation of the facts It appears that OPA focuses on certain facts and ignores others. Regardless, and as OPA must know, the only relevant legal inquiry is whether the Homestead Review Committee's decision was based on legally sufficient evidence. 1 CMC § 9101 *et seq.*; *In re Hafadai Beach Hotel Extension*, 4 NMI 37, 43 (1993).

In fact, there is legally sufficient evidence to support the decision, and we remain convinced that it was correctly decided. OPA appears to have fun stating again and again that the decision was based on "moral" grounds. That statement does appear to be in the record.

However, also in the record is the sworn, unimpeached testimony of respected elder surveyor Vicente Songsong, that the entered the land in the 1960's and had the permission of the government to do so. Moreover, and while it is less clear from the record than it should be, there was evidence that the land was always meant to border on the currently existing road and not on the (apparently planned but never built) road in the so-called Master Plan. Both the Songsong affidavit and the existing road support the grant to the of the additional land on legal grounds, and not just on moral grounds.

Indeed, according to the facts in Mr. Songsong's statement, the are entitled to the additional strip of land under both the 15 year provision (2 CMC § 4323) and the 3 year provision(2 CMC § 4327), and all of the later grants, deeds, permissions, denials and other facts cited in the OPA draft letter are legally irrelevant to an HWA claim. *See* legal checklist for consideration of HWA claims at Tab A.

C. Conclusion

In the interest of brevity, we are not responding to each point in the June 4, 1998 OPA draft letter. Instead, the above merely responds to the key points.

In summary, DPL and the Department of Lands and Natural Resources disagree with OPA's findings and recommendations.

OPA misinterprets the law primarily by:

1) ignoring the P.L. 3-44 amendment to the HWA, making *verbal* permission to enter land legally sufficient (*see* 2 CMC § 4327, as amended by P.L. 3-44 to remove one word, "written"), and

2) improperly reviewing the facts and then making its own conclusions, rather than merely reviewing the administrative fact finders' decision for legal sufficiency (*i.e.* whether there is substantial evidence, *see* Administrative Procedures Act at 1 CMC § *9101 et seq.*; *In re Hafadai Beach Hotel Extension*, 4 NMI 37, 43 (1993)

Additionally, and even if OPA's role were to second guess the fact finders, we disagree with OPA's interpretation of the facts. A consideration of all of the facts demonstrates that the decision of the Homestead Review Committee was fair and reasonable, and that the statement regarding "moral" grounds was certainly not the true basis of the decision to approve the claim. When one peels away that statement, and then equally disregards the passions of the two warring factions of the family, the independent facts tend to support the approval.

Therefore, OPA's first two recommendations are rejected DPL and DLNR believe the law was properly interpreted and applied by the Homestead Review Committee in this matter.

However, DPL and DLNR concur that improvements in DPL's handling of adverse claims need to be made. OPA's third recommendation, to issue a memorandum emphasizing the need to strictly apply the applicable legal standards, had already been substantially implemented (*see* Tab A) as part of DPL's effort to overhaul and improve its handling of land claims to ensure that all claims are promptly, fairly and legally resolved. The Director of DPL is primarily responsible for this effort.

Please let me know if you have any questions or if you require additional information.

Very truly yours,

Dr. Joaquin A. Tenorio
Secretary, Department of Lands and Natural Resources

Bertha C. Leon Guerrero
Director, Division of Public Lands

HOMESTEAD WAIVER ACT 2 CMC §§ 4321-4327

LEGAL TESTS TO QUALIFY FOR COMPENSATION

Under the Homestead Waiver Act, an NMI person is legally entitled to land ***only if*** the person qualifies under at least one of the two following tests:

1. An NMI person (as defined by Article XII, Section 4 of the Constitution) is legally entitled to a deed where the person:

    a. can demonstrate (the person must present affirmative evidence);

    b. continuous and actual occupancy or use (the person must have, on a non-stop basis, actually occupied or used the land);

    c. of public land (the land must have been public land at the time of use or occupancy);

    d for agricultural purposes; and

    e. for a period of 15 years prior to January 9, 1978 (must be 15 years as of 1/9/78; and it is not sufficient even if the person were moved off by the government if the move occurred prior to the 15 years being satisfied; in other words, a person is not entitled to anything if the person were removed from the land before completing at least 15 years continuous occupancy or use).

    (2 CMC § 4323); or

2 An NMI person (as defined by Article XII, Section 4 of the Constitution) is legally entitled to a permit (and then upon compliance with the permit conditions, a deed) where the person

    a. can demonstrate that the person (the person must present affirmative evidence);

    b. entered public land (the land must have been public at the time of the entry);

    c. with any form of express permission (written or verbal),

    d. prior to January 9, 1978 (the entry must have been before 1/9/78), and

    e. then used or possessed the land continuously for agricultural purposes through February 9, 1981 (the use must have been agricultural and on a non-stop basis from before 1/9/78 and then

through at least 2/9/81; also, this test does not apply to AGP and lease situations).

(2 CMC § 4327).

There are no exceptions. To legally qualify for land under the Act, a person must satisfy at least one of the above tests.

Note that the above legal tests are to be used as a guide for Division of Public Lands staff in applying the facts in particular cases to the legal standard established in the Homestead Waiver Act. The intent is that the guide should facilitate the substantive review of files and the drafting of the Division of Public Lands recommended dispositions for Homestead Waiver Act claims.

This guide should be used in conjunction with the Homestead Waiver Act, the Regulations and other papers in the official Division of Public Lands Homestead Waiver Act Notebook.

Two final notes. First, this guide is no substitute for a careful, attention-to-detail review of each line of each page in a claim file. Such a review is essential if you are to accomplish your job correctly. Your job is to ensure that claimants are granted land (deeds or permits) where, and only where, they are legally entitled to such compensation. This is your job, and it is your duty to the individual claimants, and equally, to the NMI people, collectively.

Second, please be sure to note where there have been prior recommendations, approvals, disapprovals or other actions on a file. Such actions can inform the Director's official recommendation to the Board, as well as the Board's final decision on a file. (Your note should also include the stated or apparent factual basis for any such action).

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August 5, 1998

Leo LaMotte
Public Auditor
Office of the Public Auditor
P O Box 1399
Saipan, MP 96950
VIA FACSIMILE 234-7812

Re OPA Investigation Case No. 97-0025

Dear Mr LaMotte

This letter is in response to your July 27, 1998 letter to the Acting Attorney General in connection with the above-referenced matter. As we discussed during our telephone conversation on this date, the Office of the Attorney General agrees that the letters exchanged between our offices may be included in OPA's final report on this matter

While our offices may differ on how the Homestead Waiver Act applies in this particular case, we certainly appreciate the interest of the Public Auditor in helping to ensure that precious, limited public land assets are not illegally distributed to claimants

Please let me know if you have any questions. Thank you for your consideration and courtesy in this matter

Very truly yours,

Thomas E. Clifford
Assistant Attorney General
Division of Public Lands

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July 27, 1998

Ms. Maya Kara
Attorney General (Acting)
Caller Box 10007
Capitol Hill, Saipan, MP 96950

Re Homestead Grant
OPA Investigation Case No 97-0025, Draft Letter Report

Dear Ms Kara

This office is in the process of preparing a Letter Report on the audit and investigation of an agricultural homestead grant as referenced above After completion of our investigation report, we referred the matter on January 8, 1998 to Mr Loren Sutton, then acting Attorney General, with recommendations for civil action Our January 8, 1998 letter was marked "confidential " Mr Sutton responded on February 6, 1998 by letter, also marked "confidential " On February 9, 1998 we wrote another "confidential" letter to Mr Sutton in an attempt to clarify certain questions and concerns raised by Mr Sutton On March 19, 1998 Mr Robert Dunlap, then acting Attorney General, responded to our February 9, 1998 letter, also indicating "confidential" at the beginning of the letter

Prior to completion of an audit or investigation, our policy has been to mark our correspondence as confidential Now that we are about to release our Letter Report, we wish to include the foregoing correspondence between our offices as an appendix We are uncertain as to the purpose of your office marking your letters confidential, and we can only assume that you did so because we marked ours as such Since this matter does not involve ethics violation allegations we feel that it is appropriate to disclose our respective positions in our Letter Report If you have any objection to our including your office's February 6, 1998 and March 19, 1998 letters in our Letter Report, please so state in writing by August 10, 1998, including your reasons for any such objection If we do not hear from you by that time, we will assume you have no objection and our Letter Report will follow with all correspondence included

Thank you for your courtesy in this matter

Sincerely,

LEO LAMOTTE
Public Auditor

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March 19, 1998

CONFIDENTIAL

Leo LaMotte
Public Auditor
Office of the Public Auditor
P.O. Box 1399
Saipan, MP 96950
VIA FACSIMILE 234-7812 and REGULAR MAIL

Re: Homestead Grant; OPA Investigation Case No. 97-0025

Dear Mr LaMotte:

This letter is in response to your February 9, 1998 letter to Loren Sutton as the Acting Attorney General in connection with the above-referenced OPA investigation. We have considered the points in your letter, and unfortunately, continue to believe that it is not appropriate to take any legal action in this matter.

It is unclear what causes of action OPA believes the AGO should bring, or against whom any such causes of action should be brought. Any anti-insider cause of action would need to be based on some form of common law fraud, or else on our sole anti-corruption statute, the Government Ethics Act (anti-conflict of interest provisions). Such causes of action require affirmative evidence of bribery, improper influence or other wrongdoing. We find no such affirmative evidence in this case. One can make conclusions, and as we noted in our review of the OPA report, we agree with the basic conclusions made by your investigator. However, we do not see the evidence with which

we must prove those conclusions. Put another way, the relevant inquiry is not what one believes, but what one can prove.

It might also be possible to bring a lawsuit to undo the decision of the Homestead Review Committee. However, and as explained in more detail in our review of the OPA report, the legal standard for reviewing such administrative decisions merely inquires whether there is legally sufficient evidence to support the decision. In other words, the Homestead Review Committee is entitled to make a bad decision so long as there is legally sufficient evidence to support their decision. We believe there is in fact legally sufficient evidence to support the decision, even though we also agree with your point that the evidence strongly favors an opposite result.

Hence, it is unclear what causes of action you believe should be brought. The causes of action discussed above do not seem to be appropriate, either for lack of evidence or due to the applicable legal standard. We would love to be able to interject ourselves into every decision we believe is wrong. Unfortunately, we are limited to addressing problems not as right or wrong, but legal or illegal. Here, we see no evidence of an illegal decision.

Please let me know if you have any questions. We would also be glad to sit down and discuss this matter in additional detail. Thank you for your consideration.

Very truly yours,

Robert B. Dunlap
Acting Attorney General

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CONFIDENTIAL

February 9, 1998

Mr Loren Sutton
Acting Attorney General
P O Box 10007
Saipan, MP 96950

Re Homestead Grant
OPA Investigation Case No 97-0025

Dear Mr Sutton

Thank you for your February 6 1998 response to our investigation referral in the above-entitled matter We appreciate your detailed response and the points you have raised We would, however, like to offer the following reply to your comments

We agree that the facts in this case may be in dispute and, under normal circumstances, could possibly give rise to difficulty in court This case should not be considered "under normal circumstances " Any dispute of facts appear to strongly disfavor the . The parties gaining from the ruling of the Homestead Review Committee and the actions of the former Governor should not be allowed to profit from their inside advantage and superior knowledge of land matters This was not an arms length transaction The clearly manipulated the system to their advantage at public expense

We disagree with your contention that our report is wrong in concluding that the use of the land began in 1977 The report clearly establishes this date, and if you examine the deed itself, it specifies *September 19, 1977 as the date of possession.*

As for the period from 1/9/78 to 2/1/81 wherein the claim that they continuously occupied or used the additional strip of land *with government permission*, we feel that the Statute of Frauds precludes any verbal authorization (if there really was any), and the Government must require such authorization to be in writing when land in involved

With regard to the legal issue of whether or not the time for appeal has expired, we disagree with your conclusion that 1 CMC 9112(b) controls in this case We feel that this section pertains to adversary proceedings only, which this was not There was no aggrieved party that could have complied with the 30 days provision We feel that the basis for civil action in this case is the

violation of law in wrongfully making the grant of property to the , hence, a civil action seeking to invalidate the grant.

We hope these additional points will persuade you to reconsider your decision in this matter Thank you again for your courtesy and responsiveness.

Sincerely,

Leo LaMotte
Public Auditor

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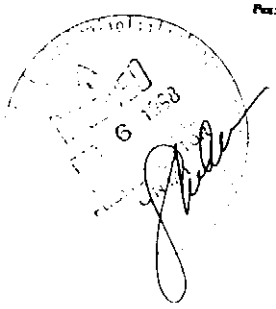
February 6, 1998



CONFIDENTIAL

Leo LaMotte
Public Auditor
Office of the Public Auditor
P.O. Box 1399
Saipan, MP 96950
VIA FACSIMILE 234-7812 and REGULAR MAIL

Re: Homestead Grant; OPA Investigation Case No. 97-0025

Dear Mr. LaMotte:

This letter is in response to your January 8, 1998 letter to me in connection with the above-referenced OPA investigation. Based on a careful review of the OPA Case Investigation Report, the Office of the Attorney General has, unfortunately, determined that it is not appropriate to take any action in this matter.

In summary, it does appear that the Homestead Review Committee erred in that their decision was against the weight of the evidence. Additionally, it appears arrogant of the to have built a house on land that was the subject of a pending dispute. Had the matter been resolved differently, then they would have been liable for constructing a house on public land.

However, despite the fact that we disagree with the fact finders and despite the apparent arrogance of the involved land official/insider, an objective review of the Homestead Waiver Act in light of the applicable standard for judicial review does not support a law enforcement action by this office. Enclosed for your information and consideration is a more detailed analysis.

Please let me know if you have any questions or if you would like to meet to discuss this matter in more detail. As always, my thanks to you and your staff for your efforts to ensure the Commonwealth government is as clean, open and honest as possible.

Very truly yours,

Loren A. Sutton
Attorney General (Acting)

AGO REVIEW OF OPA REPORT RE HOMESTEAD

The intent of this report is to outline the review of the December 15, 1997 OPA report regarding " Homestead Grant," OPA Investigation Case No. 97-0025 (the "Report").

Review Points

1. The Report considers whether the were legally entitled to be deeded an additional strip of land adjacent to their agricultural homestead.
2. The former Governor, on the recommendation of the Homestead Review Committee, deeded the additional strip of land to the
3. The Report disagrees with that decision, and the Public Auditor labels the decision "shameful."
4. As the Report correctly notes, there are two possible legal bases for deeding the additional land to the
5. The first is whether the have continuously occupied or used for agricultural purposes the additional strip of land for 15 years as of 1/9/78. If so, they are legally entitled to the land regardless of whether they had any permission or authority to be on the land. The only facts relevant to this issue are those that show whether they were on the land for the 15 years or not. The testimony and the testimony of Vicente Songsong, a well respected elder surveyor, are evidence that they did. Others, with the assistance of their arch family enemy, , may testify that they did not. Their request for permission to use the land after that period is also probative that they were not already using the land, but in my experience, such requests are not considered that probative. Missing documents and the totality of the circumstances (*e.g.* the late-breaking affidavit) also appear to suggest that there was not the 15 years use required. I believe that the weight of the evidence supports the conclusion that there was not the required 15 years' use. However, the bottom line is that there is legally sufficient evidence to conclude either way, and the later permits, permissions, requests, maps, etc. are expressly legally irrelevant to the 15 years use test. *See* 1 CMC § 4323, *and also see* the purpose of the act, *i.e.* to waive the legal requirements that were apparently troublesome to the lawmakers at the time (for whatever reasons), at 1 CMC § 4322. (Hence, the Report is wrong to conclude that the use began in 1977. As noted above, the use commencement date is a disputed material fact. Additionally, Homestead Waiver Act decisions are first made administratively, and then can only be appealed under the general standard for appealing administrative decisions, which with respect to fact finding, merely asks whether there was "substantial evidence" to support the decision. As discussed above, I believe the decision was wrong, and favored the factually weaker side, but there is legally sufficient evidence to support the decision.)
6. The second legal issue is whether the have continuously occupied or used for agricultural purposes the additional strip of land with government permission from 1/9/78 to 2/1/81. This is a vague test, and it is unclear whether the permission must be in writing. It is also unclear what happens if the written permission is more limited

than a verbal permission, or if the written permission and map mistakenly exclude land that was intended to be included. We cannot know how a court would interpret the Act. The vague legal standard is further complicated by the material facts in dispute There is evidence, such as the permit and map, that the permission only included the boundaries in the map. However, there is also evidence, such as the and Songsong testimony, that the permission was broader, and that the permit and map inadvertently omitted the additional strip of land in question. Again, the review of the Homestead Review Committee's and Governor's decision, with respect to fact finding, would merely ask whether their decision was supported by substantial evidence. There is legally sufficient evidence to support the conclusion that the permission was intended to be broader. With respect to the ambiguities in the legal standard, a Superior Court appeal would review those findings *de novo*, or in other words, would show no deference to the administrative decision.

7. An additional difficulty in seeking to undo the deeding of the thin strip of land is that the time for appeal of the deeding arguably expired 30 days from the granting of the deed, at the latest. *See* Administrative Procedure Act, 1 CMC 9112(b)
8. It does appear that a land official insider sought and received special treatment from other insiders and perhaps from the former Governor However, there does not appear to be any legal basis, given the possible "insider facts," to undo the deeding and/or move against the involved insiders.
9. It also appears to have been arrogant and illegal for the to build the house on the land prior to their claim having been resolved in their favor. However, given the resolution in their favor, which basically means that they had the right to construct the house when they did, I do not believe the construction is actionable at this point in time.
10. employment history is mixed into the Report's chronology. However, those positions are irrelevant to the two Homestead Waiver Act legal issues Those positions are relevant, if at all, only to some possible anti-insider action.
11. In conclusion, I sympathize and agree with the outrage of the investigator/author of the Report. The Homestead Review Committee erred in basing their decision, in part, on "moral grounds." We must now avoid a similar error. We cannot base our actions on whether the conduct in question was "shameful." Instead, the inquiry must focus solely on whether laws were broken, and if so, what we can do about it

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CONFIDENTIAL

January 8, 1998

Mr Loren Sutton
Acting Attorney General
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Re Homestead Grant
OPA Investigation Case No 97-0025

Dear Mr Sutton

Enclosed is OPA's Investigation Report dated December 15, 1997 concerning possible violations of the Homestead Act resulting in an inappropriate homestead grant of public land We are referring the matter to you for your review and possible action as we believe that the grant of property by quitclaim deed by the Governor on January 23, 1997 was illegal and improper

It is clear from the official documentation, statements of individuals, and sequences of events involving this strip of public land that the beneficiaries ( ) of the grant were not, and are not, entitled to the property These individuals have had actual and constructive knowledge of their rights to this property since 1977, and they have expertise in property matters, including surveying, boundary disputes and title matters The offer no substantive evidence supporting their claim, and have demonstrated a wilful disregard for the law by building a rental house on public land that was clearly not theirs Adverse determinations on more than one occasion had previously been made concerning their claims to this property

The actions of the Homestead Review Committee and the Governor in agreeing to transfer the public land to the on "moral" grounds notwithstanding the flagrant abuse of property rights demonstrated by the is shameful We are, therefore, recommending that your office seek to reverse the grant of public land to the at a minimum, and that you take whatever administrative action you deem appropriate against the individuals involved in making the transfer

We will very much appreciate your keeping us advised of all actions your office takes

Sincerely,

Leo LaMotte
Public Auditor

APPENDIX F

STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/Additional Information or Action Required
1. File a civil action in the Superior Court to invalidate the grant of 10,716 square meters of agricultural homestead land to the homesteaders.	DLNR	Open	The Secretary of DLNR stated that he is not persuaded that there is sufficient basis to make such a request. He believes that the law was properly interpreted and applied by the Homestead Review Committee to the homesteaders' case. *Further Action Required* The Secretary of DLNR, together with the Director of DPL should reconsider filing a civil action to the Superior Court and let the Court decide based on the merits of the case, and submit to OPA the status of the case every 60 days until the case has been resolved by the proper courts.
2. Determine what adverse action should be taken against the officials responsible in making the illegal transfer.	DLNR	Open	Please see above. *Further Action Required* Based on the resolution of the case in the courts, provide OPA copy of adverse action taken on the officials responsible in making the transfer.
3. Issue a memorandum emphasizing strict adherence to the Homestead Act and its rules and regulations.	DLNR	Closed	