

OFFICE OF THE GOVERNOR  
GOVERNMENT OF GUAM  
AGANA, GUAM

EXECUTIVE ORDER NO. 85-6

RELATIVE TO THE LEASING OF GOVERNMENT-OWNED  
LAND FOR COMMERCIAL PURPOSES

Whereas, Section 3 of Public Law 15-6 authorizes the Government of Guam to lease government-owned land for commercial purposes; and

Whereas, the Government of Guam desires to assist in the economic development of the territory; and

Whereas, the Government of Guam owns real properties which may have potential for commercial use and are not needed by the government for present or future use; and

Whereas, the Department of Land Management has cognizance of government real property;

Now Therefore, I, Ricardo J. Bordallo, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, do hereby order as follows:

1. Commercial Leases.

The Department of Land Management, subject to approval by the Governor, is authorized to declare available for lease, under the provisions of this Executive Order, government real property designated for development in the Guam Public Land Use Plan or as may be suitable for commercial use and which is not required for public use or reserved or needed for other use by any agency or department of the government, including any future use. All affected agencies and departments of the government shall have the opportunity to comment as to any intended use or potential future use of any government property proposed for commercial lease.

2. Property Available for Lease.

The Director shall annually prepare and submit to the Governor an inventory of government real property available for lease. The inventory shall include only those properties designated for development in the Guam Public Land Use Plan. Upon approval of the Governor, such inventory shall be published on

July 1 of each year, and at such other times as may be appropriate. Any deletion or addition shall be published in like manner. No application to lease government real property shall be accepted except as to real property included in such inventory.

3. Definitions.

As used in this Executive Order, the term "commercial use" shall include the use by individuals, partnerships and corporations qualified to do business in Guam for the purpose of operating commercial or industrial business enterprises. The term does not include use of the leased property for the purpose of securing a sublease, assignment or other transfer of rights under the lease.

4. Eligibility.

Any person who is a legal resident of the Territory of Guam and of legal age and licensed to do business in the territory of Guam and authorized to do business in the territory of Guam and authorized by its articles of incorporation to engage in a commercial enterprise, or any partnership, limited or general, licensed to do business in the Territory of Guam, shall, in accordance with the provisions of this Executive Order, be eligible to lease Government of Guam land for commercial purposes. No such person, partnership or corporation shall be eligible to lease more than one tract, lot or parcel.

5. Priorities.

The Director, in considering and acting upon applications for the lease of government real property for commercial purposes, shall give priority to such business enterprises as will, if established, contribute to the economic development of the territory or provide desirable goods or services not then available here and to such business enterprises already established as will, by expansion and improvement of their facilities, contribute to the economic development of Guam or provide desirable goods or services not then available here or, if available, not adequate to the needs of the territory.

If, under the application procedures, two or more applications for the same properties are determined by the Director to be of equal value when considering the above priorities, the Director may enter into negotiations with the applicants to obtain an agreement and lease that best meets the needs of the territory. Unsuccessful applicants under this section may obtain review of the Director's decision if such objection is filed with the Governor of Guam within fourteen (14) days of receipt of a notice of award of the lease to another applicant.

6. Same: Application: Restrictions.

No person, firm or corporation shall be allowed any priority who shall have previously, on the same facts establishing the priority, claimed and been allowed any priority under this Executive Order, or any equivalent priority or preference authorized under any other provision of law, whether or not the transaction in which the priority was claimed and allowed was ever completed, provided an opportunity to complete the transaction was offered.

7. Application for Leases.

Application for leases of government land for commercial use shall be made to the Department of Land Management. The application shall be in such form and contain such data as the Director of Land Management, with the approval of the Governor and the Attorney General, shall prescribe. Applications for such leases shall be accompanied by a detailed plan for the commercial use of the property by the Lessee, which may require submission and prior approval of detailed drawings and financial information to be provided by the applicant.

8. Same: Zoning.

All government property leased for commercial purposes must comply with the applicable zoning law before a lease may be entered into. If the property is not zoned for the use intended by an applicant, and the applicant in all other respects is eligible to lease the property, the Department of Land Management may issue the applicant a Notice of Intent to Lease Government of

Guam Land for a Commercial Use, in a form approved by the Attorney General. The applicant may then apply to the Territorial Planning Commission for the applicable zone change or variance for the property. Applications to lease government land not properly zoned for the intended commercial use shall not be approved by the Department of Land Management.

9. Approval of Applications.

The Department of Land Management shall verify the eligibility of the applicant and all essential facts set forth by the applicant. The Department shall approve or disapprove the application in accordance with such reasonable standards as the Director, with the approval of the Governor and the Attorney General, may prescribe.

10. Same.

Upon approval of the lease application by the Department of Land Management, the lease must be approved by the Attorney General and be submitted to the Governor for his signature. The lease shall be executed by the Department of Land Management upon the approval of the Governor. The lease shall not take effect until 60 days after presentment to the Legislature.

11. Term.

The term of the lease shall not exceed fifty (50) years.

12. Rent.

The amount of rent due shall be determined by the fair market rental value of the property at the time of the initial execution of the lease. The rental amount shall be redetermined at least every ten years to conform with the current fair market rental value of the property leased or at least every five years at a fixed amount stated in the contract not to exceed 10% of the immediate prior lease amount. The parties shall also have the option to lease the property with the first year's rent being forgiven. If this option is exercised by the parties, the lease document shall state the specific reasons for the forgiving of the first year's rental amount.

13. Cancellation.

The Government of Guam shall reserve the right to cancel at any time any lease executed hereunder if the lessee is not using the land for the specific purpose for which it was leased, unless good cause for such failure can be shown, except that no lease can be cancelled without a hearing pursuant to the provisions of the Administrative Adjudication Law.

If the Lessee does not use the land for the specific purpose for which it was leased within two years of the initial effective date of the lease, the lease shall be automatically cancelled on the second anniversary of the lease.

14. Taxes.

Holders of a lease under this Executive Order shall be responsible for all property taxes. Both the leasehold interest as well as any improvements shall be subject to real estate taxes.

15. Transfer or Encumbrances.

No rights derived from any lease executed under Section 3 of P.L. 15-6 and this Executive Order shall be assigned, sold, subleased, encumbered or hypothecated without the approval of the Governor after review and approval by the Attorney General and shall not take effect until 60 days after presentment to the Legislature. No person leasing under the provisions of this Executive Order shall sublease or otherwise transfer any interest in the leased property for more than the current lease amount.

16. Recording.

Every original lease under the provisions of this Executive Order shall be recorded with the Department of Land Management. A copy of every lease shall be filed with the Department of Administration. The property description shall contain a reference to a map recorded with the Department of Land Management which specifically identifies the property.

17. Annual Financial Statement.

Every lessee under a lease executed under Section 3 of P.L. 15-6 and this Executive Order shall annually submit to the Department of Land Management on the anniversary of each lease, a

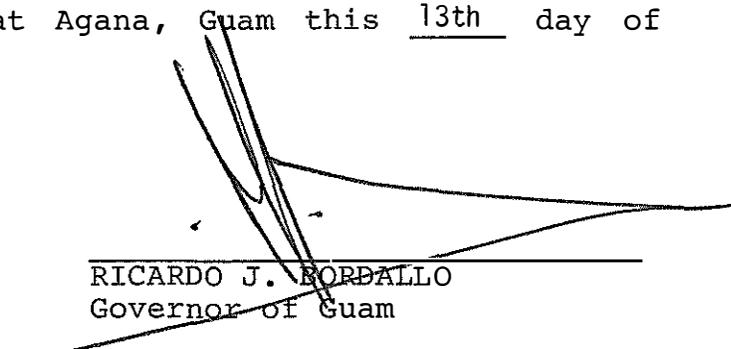
financial statement and report setting forth in detail the use, improvements and income derived from the leased property. The Director shall, with the approval of the Governor, prescribe the form of such financial statement and the data required.

18. A Lessee who desires to materially change the approved use of the property must submit an application to the Department detailing the specific reasons for the intended change. The application shall be accompanied by a detailed plan for the new intended commercial use of the property by the Lessee, which may require submission of detailed drawings and financial information to be provided by the Lessee. The Department shall approve or disapprove the application in accordance with such reasonable standards as the Director, with the approval of the Governor and the Attorney General, may prescribe.

19. All leases under the provision of this Executive Order must be in a form approved by the Attorney General.

This Order shall be effective upon approval of the Governor.

Signed and promulgated at Agana, Guam this 13th day of February, 1985.



RICARDO J. BORDALLO  
Governor of Guam

COUNTERSIGNED:



EDWARD D. REYES  
Lieutenant Governor of Guam