

**Department of Administration
Dededo Buffer Strip Revolving Fund**

Performance Audit

**OPA Report No. 04-13
December 2004**



OFFICE OF THE PUBLIC AUDITOR

Department of Administration Dededo Buffer Strip Revolving Fund

Performance Audit

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EXECUTIVE SUMMARY

Dededo Buffer Strip Revolving Fund
Department of Administration
Government of Guam
Report No. 04-13, December 2004

This report represents the results of our audit of the Dededo Buffer Strip (DBS) Revolving Fund. The audit was completed as part of our overall review of Special Revenue Funds administered by the Department of Administration (DOA). Our audit objective was to determine whether the Fund was utilized and accounted for in accordance with its intended purpose. In conjunction with our audit, we performed a cursory review of the Dededo Municipal Planning Council (MPC) Revolving Fund.

The DBS Revolving Fund was created in 1993, to receive proceeds from the lease of the Dededo Buffer Strip (DBS). The DBS is the area of land between Marine Drive and the commercial business buildings, situated between Harmon Loop and I Sengsong Road, in the village of Dededo.

Public Law (P.L.) 22-40 authorized the Department of Land Management (DLM), the Dededo Municipal Planning Council (MPC), and the Department of Parks and Recreation (DPR) to enter into negotiated commercial leases with businesses and individuals in the DBS. Two-thirds and one-third of proceeds generated by these leases are earmarked to the municipalities of Dededo and Yigo, respectively. Further, P.L. 23-45 authorized the Dededo Mayor to issue vendor permits to individuals requesting use of a temporary stall for the weekend swap meet, now commonly referred to as the Dededo Flea Market. All these proceeds are earmarked to the municipality of Dededo. In 1997, P.L. 24-97 repealed the DBS Revolving Fund, re-directing all DBS proceeds into the MPC Revolving Funds of Dededo and Yigo.

DOA records show that the DBS Revolving Fund has remained open and continues to receive payments from a single DBS commercial lease. The DBS Revolving Fund shows an ending balance of \$130,815, as of September 30, 2003, which should have been transferred to the Dededo and Yigo MPC Revolving Funds. Based on our review, the Government of Guam would have difficulty in repaying the \$130,815 debt to the MPC Revolving Funds because of the General Fund's current financial deficit.

The Legislature, through P.L. 24-97, mandated the Dededo and Yigo Mayors, along with all village Mayors to regularly report their respective MPC Revolving Funds to the Mayor's Council of Guam (MCOG). The Legislature, through P.L. 24-237, also mandated that the MPC's of Dededo and Yigo promulgate rules for the expenditure of DBS proceeds. We found that the Dededo and Yigo Mayors had not submitted the required annual financial reports to the MCOG and have not promulgated any rules or regulations on the use of DBS proceeds. Since one-third

of the DBS commercial lease proceeds have not been remitted to Yigo, we did not conduct an assessment of the Yigo MPC Revolving Fund.

In our preliminary assessment of the Dededo MPC Revolving Fund, we identified cash management deficiencies, such as the absence of monthly bank reconciliations and separation of duties for cash custody, recordkeeping, and transaction authorization. Annual revenues from DBS Flea market activities may range from \$67,000 to \$124,000. We estimated that in the past four years \$328,000 in Flea Market vendor permits has not been reported to the MCOG as required. We do recognize that the Dededo Mayor Office has made efforts to document revenue and expenditure transactions and prepare monthly financial reports to its village MPC.

We also found that the Dededo MPC has not actively promoted nor controlled the use of the DBS property for commercial lease. Our physical observation of the land available for commercial lease showed several commercial businesses using the area for parking and general advertisement rent-free. Department of Land Management (DLM) records show that only one DBS commercial lease agreement has existed since the DBS became available for lease in 1993. When businesses are allowed to continue using the area without entering into lease agreements, it means lost income for the Government of Guam. We projected that the Dededo MPC may not have realized an estimated \$1 million in potential revenues over the past 11 years.

We made eight recommendations to correct these deficiencies, including:

- Continue to withhold the \$8,591 in lease rent for FY 2004 from the Dededo and Yigo MPCs until the Dededo and Yigo Mayors submit the required financial reports to the MCOG.
- Comply with legislative mandates and submit quarterly financial reports to the MCOG, the Guam Legislature, DOA and OPA.
- Work in conjunction with DLM to initiate plans to actively promote the DBS, establish lease agreements, and prohibit the unauthorized use of the DBS.
- Establish accounting procedures to provide appropriate separation of duties among the staff and perform monthly bank reconciliations.
- Amend P.L. 24-97 to allow the General Funds to retain the balance of \$130,815 owed to the Dededo and Yigo MPC Revolving Funds.

We received responses from the Director of Administration and the Dededo and Yigo Mayors, dated December 20, 2004, in which they generally concurred with the findings and recommendations. However, the Dededo and Yigo Mayors disagreed with our recommendation to allow the General Fund to retain the balance of \$130,815 owed to the Dededo and Yigo MPC Revolving Funds. We believe that because of the Government of Guam's current financial deficit and the need to prioritize government operations, the General Fund should retain the \$130,815.

Doris Flores Brooks, CPA, CGFM
Public Auditor

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Introduction

This report represents the results of our audit of the Dededo Buffer Strip (DBS) Revolving Fund. The audit was completed as part of our overall review of Special Revenue Funds administered by the Department of Administration (DOA). Our audit objective was to determine whether the Fund was utilized and accounted for in accordance with its intended purpose. In conjunction with our audit, we performed a cursory review of the Dededo Municipal Planning Council (MPC) Revolving Fund. The scope, methodology, and prior audit coverage are detailed in Appendices 2 and 3.

Background

The Dededo Buffer Strip (DBS) is the 23,926 square meters of land, located between the privately owned commercial buildings and the southern edge of Marine Corps Drive, extending from the Harmon Loop Road to the Dededo I Sengsong Road,¹ as illustrated in Appendix 5.

In 1993, Public Law (P.L.) 22-40 authorized the Department of Land Management (DLM), the Dededo Municipal Planning Council (MPC), and the Department of Parks and Recreation (DPR) to enter into negotiated annual leases with businesses and individuals in the “buffer zone”² of Dededo. Two-thirds and one-third of proceeds generated by these leases are earmarked to the municipalities of Dededo and Yigo, respectively. The Dededo Buffer Strip (DBS) Revolving Fund was established by DOA to account for the DBS proceeds.



Over the next several years, the Guam Legislature made several amendments to P.L. 22-40. In 1995, P.L. 23-45 allowed the lease term to be extended to ten years at the prevailing market value of adjacent properties. The law also authorized the Dededo Mayor to issue semiannual vendor permits, at the cost of \$20 per weekend, to individuals requesting use of a temporary stall for the weekend swap meet, which is commonly referred to as the Dededo Flea Market. In 1997, P.L. 24-59 capped the maximum rent for commercial leases at 20% of the fair market value. That same year, P.L. 24-97 created the Municipal Planning Council (MPC) Revolving Funds for all the village municipalities and redirected vendor permit and commercial lease proceeds into the newly established Dededo and Yigo MPC Revolving Funds. According to a May 14, 1999 memorandum from the Acting

¹ 21 G.C.A. §68901(a).

² Commonly referred to as the Dededo Buffer Strip (DBS).

Attorney General, this law implicitly repealed the DBS Revolving Fund and replaced it with the Dededo and Yigo MPC Revolving Funds.

Because the MPC Revolving Funds are non-appropriated funds, P.L. 24-97 required that each MPC exercise accountability by adhering to the following requirements:

- (a) the MPCs of each village shall approve all expenditures for that particular village;
- (b) the MPCs must ensure that authorization of expenditures are documented and verified in the minutes of the meetings;
- (c) the Mayors and the Chairpersons of the Municipal Planning Councils or a member designee shall determine two (2) authorized signatures for the Fund;
- (d) the Mayors shall be responsible for receipts and other substantiation as determined by the Municipal Planning Council for all checks issued; and
- (e) the Mayors shall submit a financial statement at the end of each fiscal year to the Mayors' Council of Guam (MCOG).

Furthermore, P.L. 24-237 required the Dededo and Yigo MPCs to promulgate and adopt rules governing how the DBS proceeds are to be expended, pursuant to the Administrative Adjudication Act.

The Public Auditor issued a letter, dated July 19, 2004, to all 19 village Mayors requesting information to determine whether the Mayors had established proper controls for their respective MPC Revolving Funds and had filed copies of their annual reports with the Mayors Council of Guam. The Public Auditor has yet to receive any annual financial reports from any of the Mayors, as of December 2004.

The Dededo Mayor had verbally informed us that he had not established written accounting procedures for the Dededo MPC Revolving Fund. The Yigo Mayor also informed us that he has yet to establish the Yigo MPC Revolving Fund because Yigo has not received its share of DBS commercial lease proceeds.

Adherence to the requirements of P.L. 24-97 and 24-237 are particularly critical to the Dededo and Yigo MPCs due to the significant amount of DBS revenue generated annually. Moreover, the Dededo and Yigo MPC Revolving Funds are non-appropriated funds and require no further legislative approval to expend. Failure to comply with these requirements results in the lack of transparency through accountability and the potential risk of fraud and misuse of public funds. As such, the Office of the Public Auditor will audit the Municipal Planning Council Revolving Funds of all 19 villages. We recommend all village mayors to submit annual financial reports of their Municipal Revolving Funds to the MCOG and comply with other requirements pursuant to P.L. 24-97.

Results of Audit

We found that the Department of Administration (DOA) and the Dededo Municipal Planning Council (MPC) did not comply with Guam laws pertaining to the Dededo Buffer Strip (DBS). Specifically, DOA continues to maintain the DBS Revolving Fund despite a memorandum issued by the Attorney General (AG) indicating that the DBS Revolving Fund had been repealed and that DBS proceeds were redirected to the Dededo and Yigo Municipal Planning Council (MPC) Revolving Funds. This condition occurred because DOA was not aware of the AG's memorandum. Furthermore, a single DBS commercial lease agreement showed that all proceeds were still being paid to the DBS Revolving Fund. As a result, the DBS Revolving Fund had inappropriately accumulated a fund balance of \$130,815, as of September 2003.

Additionally, the Dededo MPC did not comply with the laws regarding the accountability of the Dededo MPC Revolving Fund and the effective management of the DBS. These conditions occurred because the Dededo Mayor did not establish written procedures for managing the MPC Revolving Fund and did not take sufficient action to control and prohibit the use of un-leased commercial property. As a result, an estimated \$328,000 in Flea Market vendor permits collected over the last four years has not been reported to the Mayors' Council of Guam (MCOG) and potential commercial lease earnings of about \$1 million were lost over the past 11 years.

Dededo Buffer Strip (DBS) Revolving Fund

In 1993 and 1995, as authorized by P.L. 22-40 and P.L. 23-45, DOA established the DBS Revolving Fund to account for the commercial lease and Flea Market vendor permit earnings from the DBS. In 1997, the DBS Revolving Fund was repealed when the Legislature, through P.L. 24-97, redirected all DBS proceeds to the Dededo and Yigo MPC Revolving Funds.

On April 14, 1999, the DOA Director requested an opinion from the Office of the Attorney General on the DBS Revolving Fund. In response to DOA's request, the Acting Attorney General issued an informational memorandum dated May 14, 1999, stating that "Public Law No. 24-97 impliedly repealed the Dededo Buffer Strip Revolving Fund..." and "If any funds remain in what we assume to be the Dededo Buffer Strip Revolving Fund, they should have been divided in the correct proportions between the two new special funds [known as the Dededo and Yigo Municipal Planning Council Revolving Funds]..." (Emphasis added)

During our review, we found that the DBS Revolving Fund had not been closed and continued to receive proceeds from the DBS commercial lease. According to DOA, the DBS Revolving Fund ceased to recognize revenues from the Flea Market vendor permits in FY 2000. As shown in Table 1, the revenues of the DBS Revolving Fund declined in the last six years, from \$124,370 in 1998 to \$17,182 in 2003. Proceeds received from the one commercial lease continue to be deposited into the DBS Revolving Fund while proceeds from the Flea Market vendor permits go directly to the Dededo MPC Revolving Fund. We determined that DOA was not aware that the DBS Revolving Fund had been repealed and that the commercial lease agreement still required the lessee to remit payments to the DBS Revolving Fund rather than the Dededo and Yigo MPC Revolving Funds.

We recommend DOA continue to withhold the \$8,591 in lease rent for FY 2004 from the Dededo and Yigo MPCs until the Dededo and Yigo Mayors submit the required financial reports to the MCOG. We also recommend the Department of Land Management (DLM) amend the lease agreement and direct future payments beginning in FY 2005 to the MPC Revolving Funds of Dededo and Yigo, to be divided by two-thirds and one-third respectively.

**Table 1. Dededo Buffer Strip Revolving Fund
Fund Balance
FY1998 through FY2003**

	1998	1999	2000	2001	2002	2003
Beginning Fund Balance	\$92,030	\$56,305	\$103,358	\$105,044	\$113,634	\$113,634
Revenues:						
Vendor Permits	\$124,370	\$67,464	\$0	\$0	\$0	\$0
Commercial Leases	\$0	\$0	\$1,686	\$8,590	\$0	\$17,181
Less:						
Expenditures	(\$35,725)	(\$20,411)	\$0	\$0	\$0	\$0
Transfers out	(\$124,370)	\$0	\$0	\$0	\$0	\$0
Ending Fund Balance	<u>\$56,305</u>	<u>\$103,358</u>	<u>\$105,044</u>	<u>\$113,634</u>	<u>\$113,634</u>	<u>\$130,815</u>

As of September 2003, the DBS Revolving Fund had a fund balance of \$130,815, consisting entirely of receivables due from the General Fund. In layman terms, the General Fund owes the DBS Revolving Fund, which in turn, owes the Dededo and Yigo MPC Revolving Funds for the said amount. Based on our review, we have concluded that this amount should not be remitted to the Dededo and Yigo MPC Revolving Funds because of the General Fund's current financial deficit. The Government of Guam would have difficulty in repaying the \$130,815 debt to the MPC Revolving Funds. We recommend that the Legislature amend P.L. 24-97 to allow the General Fund to retain the balance of \$130,815 owed to the Dededo and Yigo MPC Revolving Funds.

Municipal Planning Council (MPC) Revolving Funds

The Dededo and Yigo MPCs have been given the authority to use the Dededo Buffer Strip (DBS) proceeds at their discretion. To provide for accountability, the Legislature, through P.L. 24-97 and P.L. 24-237, mandated that the Mayors and their MPCs establish controls and ensure compliance with these requirements.

Limited Accountability

We requested copies of the financial reports and rules and regulations to determine whether the Dededo and Yigo Mayors complied with P.L. 24-97 and P.L. 24-237. We found that the Dededo Mayor has not submitted the required annual financial reports to the MCOG and has not promulgated any rules or regulations on the use of DBS proceeds.

According to the Dededo Mayor, the Dededo MPC Revolving Fund account was established in FY 1999 to receive DBS proceeds and revenue from various village activities. Prior to the

creation of the account, Flea Market vendor permits were deposited to the DBS Revolving Fund. Thus, we conducted a limited assessment of the Dededo MPC Revolving Fund's internal controls because of the significant amount of Flea Market vendor permit earnings raised.

During our observation, we noted that revenue totaling \$124,370,³ \$67,464,⁴ and \$82,000⁵ were collected from DBS Flea Market vendor permits in FY 1998, 1999, and 2003. These amounts illustrate that revenue collected from DBS Flea market proceeds can range from \$67,000 - \$124,000. Our comparison was based on records available at the Department of Administration and our limited review of calendar year 2003 records at the Dededo Mayor's Office.

In our preliminary assessment, we identified that the Dededo Mayor's staff documented revenue and expenditure transactions for the Dededo MPC Revolving Fund and prepared monthly financial reports for their village MPC. Annual financial reports, however, were not submitted to the Mayors Councils of Guam as required by law. While the recording of cash receipts and expenditures occurred, they were limited to manual logs, which are updated periodically. We also noted cash management deficiencies, such as the absence of monthly bank reconciliations, and separation of duties, such as the collection, recording, and depositing of cash.

Neither the Dededo nor Yigo Mayors had promulgated any rules or regulations on the use of DBS proceeds. The Yigo Mayor had not promulgated any rules or regulations because he has not received a share of DBS commercial lease proceeds. Since one-third of the revenue from the DBS commercial lease had not been remitted to the Yigo MPC Fund, we did not conduct an assessment of that Fund.

The Yigo Mayor does acknowledge that Yigo maintains a separate bank account for funds raised from other village activities. Further, the Yigo Mayor has provided documents of revenue and expenditure transactions for the Yigo MPC Fund and has prepared monthly financial reports for their village MPC. We found however that Yigo has not submitted the required annual financial reports to the MCOG for this account. Financial statements for this Fund account are required to be submitted to the MCOG at the end of each fiscal year, as required by P.L. 24-97.

A major part of managing an organization is establishing proper internal controls. Internal controls are basically the policies, procedures, techniques, and mechanisms used by an organization to ensure that actions are taken to address risks. An example of an internal control is cash management procedures. These procedures include the creation of financial reports and budgets, segregation of duties, and performance of monthly bank reconciliations. Establishing the proper internal controls serve in safeguarding an organization's assets and preventing and detecting errors; thus, minimizing the risk of fraud or misuse.

To correct these deficiencies, we recommend the Dededo Mayor establish accounting procedures, provide appropriate separation of duties among the staff, and perform monthly bank reconciliations. We also recommend the Dededo and Yigo MPCs immediately comply with legislative mandates and submit quarterly financial reports to the MCOG, the Guam Legislature, DOA, and the Office of the Public Auditor (OPA).

³ \$124,370 was collected over the course of 6 months in FY 1998 per DOA records.

⁴ \$67,464 was collected over the course of 10 months in FY 1999 per DOA records.

⁵ \$82,000 was collected over the course of 12 months in FY 2003 per Dededo Mayor's Office records.

In October 2003, the MCOG initiated the groundwork for accountability by submitting a draft of proposed Standard Operating Procedures (SOP) to our office for review and comment. The draft SOP focused primarily on procurement and had limited comments on the accounting and control of village fundraising and other non-appropriated activities. We did not provide comments to the draft due to limited staff resources. However, we are now in the process of working with the MCOG in order to finalize the procedures.

Although we acknowledge that the Legislature has authorized certain government entities to establish individual non-appropriated fund accounts, the accounting, control, and reporting aspect of these funds are often not considered. Requiring entities to provide financial reports plays a major role in fulfilling the government's duty for accountability and transparency. In P.L. 27-106 (the Budget Act of FY 2005) at the request of the Public Auditor, the Guam Legislature required each village Mayor to submit quarterly reports to the Speaker, the MCOG President, and the Public Auditor. We recommend the Legislature require all government entities that have non-appropriated funds, to submit quarterly reports to DOA and OPA and annual reports to the Legislature and the Governor, summarizing the activity of their non-appropriated funds.

No Action Taken to Control DBS Property

P.L. 24-59 authorized the Department of Land Management (DLM), in consultation with the Dededo Municipal Planning Council (MPC), to lease land along the Dededo Buffer Strip (DBS) adjacent to commercial businesses. The law permits the government to charge up to 20 percent of the fair market value for the land under a term not to exceed ten years. We found that the Dededo MPC has not actively promoted nor controlled the use of the DBS for commercial lease.



Our physical observation of the land available for commercial lease showed several commercial businesses using the area for parking and general advertisement. Records at Department of Land Management (DLM) showed that only one DBS commercial lease agreement has existed since 1993 when the DBS became available for lease. The lease agreement was signed in November 2000 and allowed for 1,912 square meters of land to be leased at the cost of \$4.49 per square meter, which is equivalent to an annual rate of \$8,591 or approximately five percent of the fair market value.

During our audit, DLM officials notified us that a draft lease agreement had been initiated between the Dededo MPC and another local business; however, the agreement has not been finalized because of concerns raised by the Office of Attorney General. In the meantime, the business and others continue to utilize the DBS without lease agreements or compensation to the Government of Guam.

While the Dededo Mayor is aware of several businesses utilizing the DBS area rent-free, he did not take sufficient measures to prohibit the unauthorized use of the DBS and ensure that potential lessees have agreements with the government. When businesses are allowed to continue using the area without entering into lease agreements, it means lost income for the Government of Guam. We estimated that the Dededo MPC failed to realize potential revenues of over \$1 million in the past 11 years when the DBS became available for lease in 1993.

Even though businesses adjacent to the DBS are given priority to lease, the government should seek other alternatives to lease the DBS. Therefore, we recommend the Dededo MPC work in conjunction with the Yigo MPC and the DLM to initiate plans to actively promote the DBS, establish lease agreements, and prohibit the unauthorized use of the DBS.

Recommendations

We recommend the Director of Administration:

1. Continue to withhold the \$8,591 in lease rent for FY 2004 from the Dededo and Yigo MPCs until the Dededo and Yigo Mayors submit the required financial reports to the Mayors Council of Guam (MCOG) and fully comply with the legislative mandates of P.L. 24-97 and 24-237.

We recommend that the Mayors of Dededo and Yigo:

2. Comply with legislative mandates and submit quarterly financial reports to the MCOG, the Guam Legislature, DOA, and OPA.
3. Work in conjunction with DLM to initiate plans to actively promote the DBS, establish lease agreements, and prohibit the unauthorized use of the DBS.

We recommend the Mayor of Dededo:

4. Establish accounting procedures to provide appropriate separation of duties among the staff and perform monthly bank reconciliations.

We recommend each village Mayor:

5. Submit annual financial reports of their Municipal Revolving Funds to the MCOG and comply with other requirements pursuant to P.L. 24-97.

We recommend the Director of Land Management:

6. Amend the lease agreement and direct future payments beginning in FY 2005 to the MPC Revolving Funds of Dededo and Yigo, to be divided by two-thirds and one-third respectively.

We recommend the Speaker of the Guam Legislature:

7. Amend P.L. 24-97 to allow the General Fund to retain the balance of \$130,815 owed to the Dededo and Yigo MPC Revolving Funds.
8. Require all government entities that have non-appropriated funds to submit quarterly reports to DOA and OPA and annual reports to the Legislature and the Governor, summarizing the activity of their non-appropriated funds.

The legislation, creating the Office of the Public Auditor, requires agencies to submit an action plan to implement audit recommendations within six months after report issuance. Accordingly, our office will be contacting you to provide the target date and title of the official responsible for implementing the recommendations.

Management Response and OPA Reply

We provided the draft audit report to the Director of Administration, the Director of Land Management, the Mayor of Dededo and the Mayor of Yigo for review and comment.

In her response, the Director of Administration generally concurred with the findings and recommendations of the report (see Appendix 6). Although the Director of Land Management did not provide a written response to the final draft report, he verbally concurred with the findings and recommendations. Therefore, we request that DOA and DLM provide the additional information indicated in Appendix 9.

In their response the Mayors of Dededo and Yigo generally concurred with the recommendations of the report, except they expressed disagreement to amend P.L. 24-97, allowing the General Fund to retain the \$130,815 balance of the DBS Revolving Fund (see Appendices 7 and 8). Both Mayors assert that the legislative action would take away DBS proceeds, which rightfully belong to Dededo and Yigo. The respective municipalities have already begun plans for the use of these funds. Because of the Government of Guam's current financial deficit and the need to prioritize government operations, we believe that the General fund should retain the \$130,815.

The Dededo Mayor also expressed concern of "the round about way that Dededo and Yigo MPCRFR were audited." Our audit was to assess the level of financial accountability, financial controls, financial reporting, and compliance with applicable laws and regulations by the auditee. As explained in the report, a limited assessment on the Dededo MPC Revolving Fund was conducted because the Flea Market proceeds were re-directed to this Fund.

Further, the Dededo Mayor stated that "Numerous sections of the DBS commercial property fronting commercial establishments were being utilized before the passage of P.L. 24-97" and considered "the estimated loss of potential revenue of \$1 million over an eleven- year period, is highly overstated." We do not believe that the \$1 million is overstated. Our calculation was based on only five percent of the fair market value considering that the government is allowed to charge rent for commercial leases at 20 percent of the fair market value. Therefore, the \$1 million is a conservative amount. Finally, the Dededo Mayor did not provided any information to substantiate a lower estimate.

We appreciate the cooperation shown by the Department of Administration, the Dededo and Yigo Mayors' Office, and the Department of Land Management.

OFFICE OF THE PUBLIC AUDITOR

Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:
Classification of Monetary Amounts

<u>Finding Area</u>	<u>Unrealized Revenues</u>	<u>Cost Exceptions</u>
A. Dededo Buffer Strip Revolving Fund	\$ -	\$ 130,815
B. Municipal Planning Council Revolving Funds		
Lack of Accountability	\$ -	\$ 328,000
No Action to Control DBS Property	<u>\$ 1,000,000</u>	<u>\$ -</u>
Total	<u>\$ 1,000,000</u>	<u>\$ 458,815</u>

Appendix 2: Objectives, Scope, and Methodology

The audit objective was to determine whether the Dededo Buffer Strip (DBS) Revolving Fund was utilized and accounted for in accordance with its intended purpose. The audit also included a limited review of the Dededo Municipal Planning Council (MPC) Revolving Fund, which involved determining compliance with legislative mandates and assessing the internal controls of the Dededo MPC Revolving Fund.

The audit scope included a review of the applicable laws and regulations of the DBS, the DBS commercial lease agreement, financial records (including receipts and disbursements), and other relevant documents for fiscal years 2002 and 2003. We visited the Department of Administration, Department of Land Management, and the Dededo Mayor's Office to interview officials and review records pertaining to the DBS. We also made site visits to the DBS property, which included the Dededo Flea Market and commercial areas along the Marine Corps Drive.

The audit methodology included gaining an understanding of the policies, procedures, applicable laws, and regulations pertaining to the DBS. For the DBS Revolving Fund, we attempted to select three revenue and three expenditure transactions, however, there were no revenue and expenditure transactions recorded during our audit period. For the Dededo MPC Revolving Fund, we reviewed the internal controls over revenue and expenditure transactions (including receipts and disbursements) through observations and interviews with the Dededo Mayor and his staff.

Our audit was conducted in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. Accordingly, we obtained an understanding and performed an evaluation of the internal controls of the Dededo MPC Revolving Fund. We included tests of records and other auditing procedures that were considered necessary under the circumstances.

Internal control weaknesses were identified and are discussed in the Results of Audit section of the report.

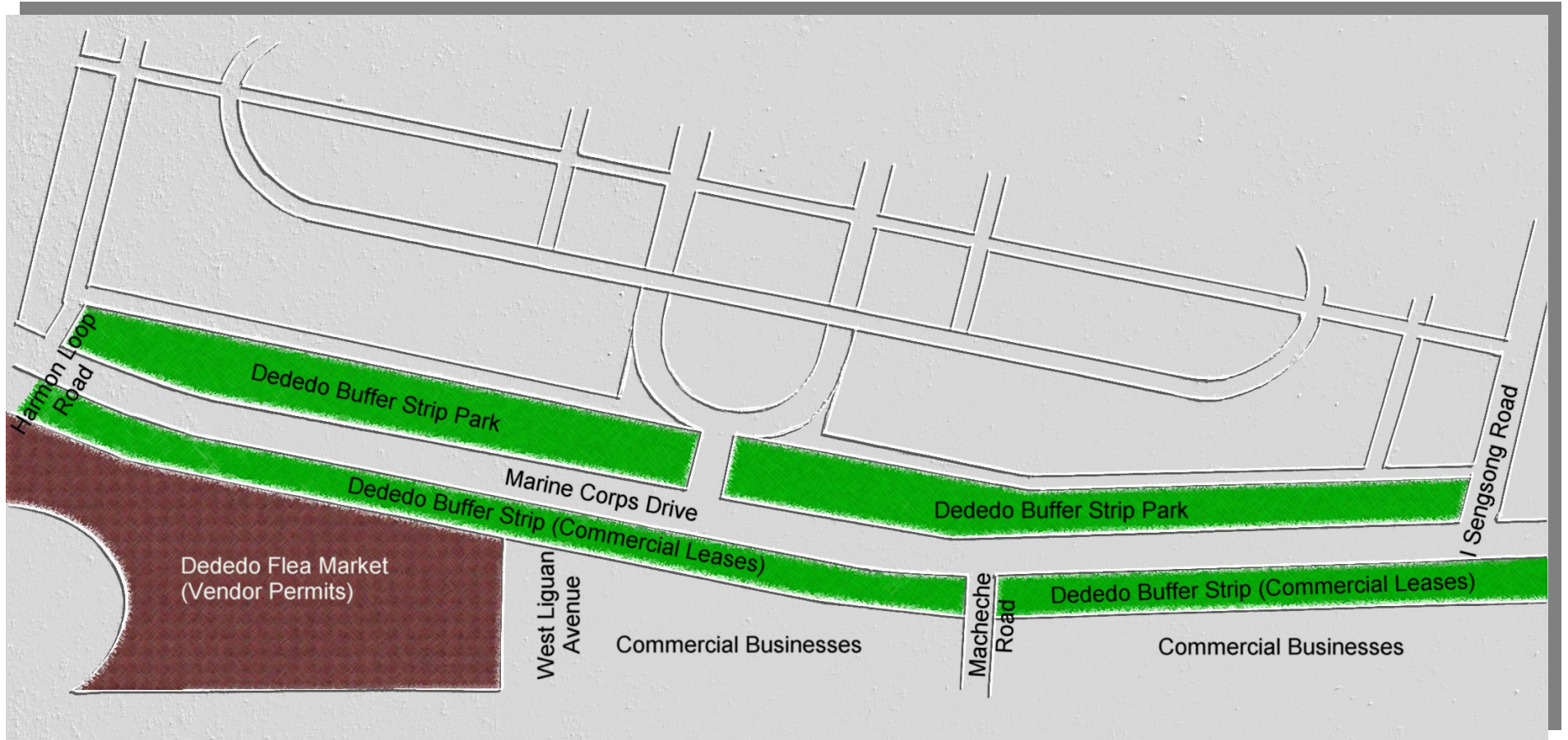
Appendix 3:
Prior Audit Coverage

The Dededo Buffer Strip (DBS) Revolving Fund was presented in the Government Wide General Purpose Financial Statements as part of the annual Single Audit for the Government of Guam. No findings were identified in the Single Audit Reports for FY 2003; however, the independent auditors reported findings in the Single Audit Reports for FY 2001 and 2002. In FY 2002, the audit indicated that the DBS Revolving Fund should reflect continuing appropriation balances rather than unreserved fund balances. In FY 2001, auditor's cited that the DBS Revolving Fund had not received DBS lease-related proceeds and was in potential violation of law.

Appendix 4: Summary of Dededo Buffer Strip Lease Legislation

<i>Effective Date</i>		<i>Description</i>
September 1993	P.L. 22- 40	Authorized Department of Land Management, in conjunction with Dededo Municipal Planning Council (MPC) and Department of Parks and Recreation, to lease to businesses and individuals the “buffer zone” for parking areas, landscape beautification projects, and a public market for locally produced goods, agriculture, and seafood.
October 1995	P.L. 23-45	Repealed and re-enacted P.L. 22-40, and clearly identified two sources of revenue for the Dededo Buffer Strip: (1) commercial leases and (2) vendor permits. This was the first law to allow the Dededo Mayor to charge for the rental of stalls for the weekend swap meet, commonly referred to as the Dededo Flea Market.
September 1997	P.L. 24-59	Repealed and re-enacted 21 GCA § 68901(a), the only change being that lease rents would not be more than 20 per cent of the fair market value.
October 1997	P.L. 24-97	Created the 19 Municipal Planning Council Revolving Funds. Amended subsection (c) of 21 GCA§ 68901 by requiring the lease proceeds to be deposited into the MPC Funds of Dededo and Yigo, two-thirds and one-thirds, respectively. It also added a provision requiring all proceeds from vendor permits authorized by subsection (b) of 21 GCA 68901 to be deposited into Dededo MPC Revolving Fund.
August 1998	P.L. 24-237	The amendment granted the authority to the Dededo and Yigo MPCs to spend the funds derived from the leases and required MPCs to adopt regulations “governing the use of such proceeds.” The regulations were to be adopted pursuant to the Administrative Adjudication Law by February 8, 1999.

**Appendix 5:
Map of Dededo Buffer Strip**



Appendix 6: DOA Management Response



Felix P. Camacho
Governor
Kaleo S. Moylan
Lieutenant Governor

Department of Administration
(DIPATTAMENTON ATEMENSTRASION)
DIRECTOR'S OFFICE
(UFISINAN DIREKTOT)
Post Office Box 884 Hagatña Guam 96932
Tel: (671) 475-1101/1250 Fax: (671) 477-6788



Lourdes M. Perez
Director of Administration
Joseph C. Manibusan
Deputy Director of Administration

December 17, 2004

Mrs. Doris Flores Brooks
Public Auditor
Office of the Public Auditor
238 Archbishop Flores Street
Suite 401 Pacific News Building
Hagatna, Guam 96910

Received by Office of the
Public Auditor
4:05 PM
12/20/2004

Dear Mrs. Brooks:

We have received and reviewed the copy of your Draft Audit Report, Performance Audit of the Department of Administration's Dededo Buffer Strip Revolving Fund.

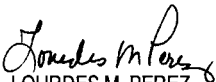
To be able to comment on your findings and recommendations, we researched enabling legislations on a limited and selective basis and also made a review of the activities of the fund.

We generally agree with your findings and recommendations. In reference to your specific recommendation to DOA, we will continue to be in status quo until the Dededo and Yigo Mayors comply with the legislative mandates of P.L. 24-97 and P.L. 24-237.

We at the Department of Administration, in particular the Division of Accounts, appreciate the efforts exerted by your office in coming up with this report and we hope that the legislature will positively react to your report and enact legislation as a response to your recommendations.

Should you have any questions or need any clarification pertaining to our response, please give me a call at 475-1101.

Sincerely,


LOURDES M. PEREZ
Director of Administration

Appendix 7: Dededo Mayor's Management Response



SCOTT D. DUENAS
MAYOR

DEDEDO MAYOR'S OFFICE

MUNICIPALITY OF DEDEDO
c/o P.O. Box 786, Agana, Guam 96932
Tel: (671) 632-5203/5019 • Fax: (671) 637-1129



MELISSA B. SAVARES
VICE-MAYOR

December 20, 2004

MEMORANDUM

To: Doris Flores Brooks, Public Auditor
Office of the Public Auditor

From: Scott D. Duenas
Mayor of Dededo

Subject: Reference Office of the Public Auditor (OPA) Letter dated December 9, 2004 Dededo Buffer Strip (DBS) and Municipal Planning Council Revolving Fund (MPCRF) Audit Report

I am concerned of the round about way that Dededo and Yigo MPCRF were audited. The Mayor of Yigo and I should have been given the courtesy of being informed of the impending audits. That being said, I welcome the Office of the Public Auditor's (OPA) initiative to audit all Government of Guam Non-appropriate Funds. The most important result of this audit is the discovery of existing DBS Revolving Fund still being maintained by the Department of Administration with a balance of \$130,815. The other issue pointed out is the insufficient action to control and prohibit the use of un-leased DBS commercial lease property. In my defense, in 2002 I did try to ascertain which commercial lease properties were being leased from Department of Land Management (DLM). At that time, only one lease was currently in their records, which coincided with my records. The only other commercial lease properties that were being negotiated at that time were the ones fronting the Dededo Mall and the Dededo Payless. The Dededo Mall lease failed because of the original mall owners' financial crisis and the Dededo Payless took a year for approval through government bureaucracy. Focusing on recovery of the Municipality's facilities, I did not pursue the other leases after of the two typhoons hit in 2002. Numerous sections of the DBS commercial property fronting commercial establishments were being utilized before the passage of P.L. 22-97 and without DLM records on how those usage were approved it will take extensive research to determined if they are still legal and binding.

As for establishing formal procedures on the rules and regulations to complying with P.L. 24-97 and P.L. 24-237, I depended on the text of the laws, which delineate the list of approved activities and spending authority. I have no problem with any of the recommended actions to comply with what is mandated by law. However, I strongly object to any movement or proposal to remove the Mayors authority to establish and maintain the MPCRF if they comply with reasonable rules and regulations commiserate with the set number each Mayor employccs.

**To: Doris Flores Brooks Public Auditor
Office of the Public Auditor**

December 20, 2004

**From: Scott D. Duenas
Mayor of Dededo**

Page 02 of 03

On the estimated loss of potential revenue because of un-control and unauthorized usage of DBS by commercial businesses of \$1 million over an eleven-year period, it is highly overstated. Initially in 1993 P.L. 22-40, the commercial lease was restricted to annual lease, which was non-conducive to the commercial businesses good investment strategy. It was not until August 1998 when the commercial lease was increase to not more than 10 years. Additionally, even with the lease being open to other than the commercial businesses fronting the DBS, it is unlikely anyone else will be willing to lease them because of the activity restriction.

As to the Office of the Public Auditor recommendations as a results of the audits:

Recommendation to the Director of Administration:

1. All Dededo Buffer Strip Commercial Lease (DBSCL) proceeds should be released and transferred to the Dededo and Yigo MPCRF, two-thirds to Dededo and one-third to Yigo as mandated by P.L. 24-24-97 and P.L. 24-237 and be in compliance with the reporting mandates beginning with FY-2005. To date none of the DBSCL proceeds have been released to Dededo and Yigo MPCRF.

Recommendations to the Mayors of Dededo and Yigo:

2. Concur with the Legislative "2005 Budget" mandates concerning the reporting of activities utilizing non-appropriate funds to supplement inadequate general funds account.
3. Concur.

Recommendation to the Mayor of Dededo:

4. Concur with exception to separation of duties among the staff, taking into consideration the set number of employees to each Mayor's office mandated by law.

Recommendation to each village Mayor:

5. Concur.

Recommendation to the Director of Land Management:

6. Concur.

**To: Doris Flores Brooks Public Auditor
Office of the Public Auditor**

December 20, 2004

**From: Scott D. Duenas
Mayor of Dededo**

Page 03 of 03

Recommendation to the Speaker of the Guam Legislature:

7. Disagree, should request an appropriation from the general funds to replenish the miss-spent DBS non-appropriate funds on the "2006 Budget" bill if not sooner.
8. Concur, except a semi-annual report to OPA and DOA vice quarterly report.

It is for the good of all concerns that these recommendations be taken into consideration when determining the final recommendations. For more information, please contact me at any of the above numbers.


Mayor Scott D. Duenas
President, MCOG

**Cc: Juan F. Blas, Executive Director
MCOG**

Appendix 8: Yigo Mayor's Management Response



MUNICIPALITY OF YIGO
Mayors' Council of Guam

KonseheLEN MaHOT Juahan

P.O. Box 11670 Yigo, Guam 96929

Robert Sanchez Lizama
Mayor

December 20, 2004

Doris Flores Brooks, CPA, CGFM
Public Auditor,
Suite 401, Pacific News Building
238 Archbishop Flores Street,
Hagatna, Guam 96910

Received by Office of the
Public Auditor

12-20-04 3:15 PM
au

Subject: Preliminary Draft Report
Ref; Dededo Buffer Strip and Municipal Planning Council Revolving Funds

Dear Public Auditor Flores Brooks:

First allow me to thank you and your staff for all the efforts you have all taken to review the subject matter. The meetings that I have attended with you and your staff is appreciated and educating for me to understand the process of an audit review. The initial meeting that was conducted at the Mayors' Council Conference Room, on November 26, 2004 and again with your staff on December 10, 2004, was interesting and conducted to dialog the final audit report.

As I had indicated in those meetings, I am pleased to see that there have been adjustments made with my input. As you are aware, the Municipality of Yigo receives one-third of the fees collected at the Dededo Buffer Strip Account. However, as I had mentioned, I have yet to date utilized any fund for Yigo, and that I have yet to establish any guidelines and procedures for this account. However, since taking office back in January 1997, the Yigo Municipal Planning Council opened an account with Bank of Guam in Yigo. The purpose for the bank account is to deposit any fundraising and donation to the Y.M.P.C. for the use of the village operations, functions and programs. This account has always been controlled by the Y.M.P.C. members with a double signature system. Although Public Law 24-97 became law later, my council and I continued to safeguard all funds under this account. However, section (e) of this law requires me to submit a financial statement at the end of each fiscal year to the Mayors' Council of Guam, this I have not provided to the council and henceforth will be followed with my office.

As for Public Law 24-237, this law was in place for all village mayors' to adopt rules governing how funds in the village will be controlled. As I understand this law, sometime back in 2001-2002, when I was President for the Mayors' Council of Guam, I



OFFICE OF THE MAYOR
Office: (671) 653-YIGO (9446), 653-5248
Fax: (671) 653-3434



had form a Policy Task Force appointing members with in the council to establish rules and regulations to control any funds collected in our individual villages. Through efforts of the task force, we were able to come up with some form of rules and regulation, voted on the proposal and submitted the draft to the M.C.O.G. oversight Chairperson, Senator Tina Muna Barnes for legislative action. To this date we have yet to receive any legislative action. Also, the same draft proposal was submitted to your office and we have yet to receive a response. I wish to say that this proposed draft of rules and regulation was drafted by members of the M.C.O.G., without any professional input and guidance. We came about this draft with our best judgement and now await feedback.

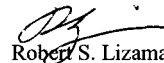
Public Auditor Flores-Brooks, as requested from your good office, I am providing the financial /treasurer's report from the period of January 2002 and ending December 2003 for your review and disposition.

The recommendations that is reflected in your report, I am hopeful that you will reconsider having the Director of Administration from holding the existing amount in the account for Yigo. I can assure you that I will be complying with the mandates of P.L. 24-97 and P.L. 24-237.

As for the recommendation to the Speaker of the Guam Legislature, I totally disagree and object for any amendment to Public Law 24-97. I believe that Dededo and Yigo have all the right to have our account reimbursed. This is a non-appropriated fund account that authorizes Dededo and Yigo to receive fees from the Buffer Zone. I am very much disappointed to learn from your review that the Department of Administration, who is responsible for the accountability for such fund, be so careless to have no control. Public Auditor Flores-Brooks, I am requesting that you strike out this recommendation to the Speaker, the 1/3 share for Yigo has already been voted by the Y.M.P.C. members to utilize our 1/3 share for the renovation and repair of the Agafa Gumas Recreation Park. I believe that the Department of Administration, Director, be held responsible and reimburse the account.

Ma'am, I thank you for the opportunity to reply and look forward in future dialog with your office. Should you need to contact me, please feel free to call my office.

Sincerely,



Robert S. Lizama
Mayor

Cc: Executive Director, M.C.O.G.
Mr. John F. Blas
Y.M.P.C. Members

Appendix 9: Status of Audit Recommendations

Finding/ Recommendation Reference	Status	Action Required
1	Resolved	No action required.
2	Management concurs; additional information needed.	Provide copies of the financial reports submitted to the Legislature, DOA, and MCOG.
3	Management concurs; additional information needed.	Provide copies of an action plan to actively promoted the DBS.
4	Management partially concurred; additional information needed	Provide copies of accounting procedures to provide the appropriate separation of duties. Separation of duties reduces the opportunity for one person to both perpetuate and conceal errors or fraud.
5	Management concurs; additional information needed.	Provide copies of the annual reports submitted to the MCOG on their respective MPC Funds.
6	Management concurs; additional information needed.	Provide a copy of the amended lease agreement.
7	Unresolved	Provide the target date and the title of the official assigned to amend the Public Law.
8	Unresolved	Provide the target date and the title of the official responsible for considering the proposed legislation.