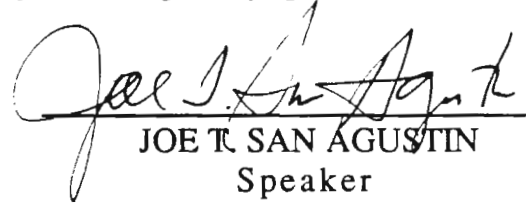


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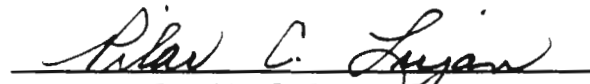
TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

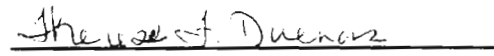
This is to certify that Substitute Bill No. 1671 (COR), "AN ACT TO ADD §§2936 THROUGH 2945 TO TITLE 12,, TO GUAM CODE ANNOTATED AND TO AMEND §2926 OF SAID TITLE, RELATIVE TO LAND CLAIMS AND LANDOWNERS' RECOVERY, TO BE KNOWN AS THE "NORTHWEST TERRITORY OF GUAM ACT," was on the 18th day of December, 1990, duly and regularly passed.

  
JOE T. SAN AGUSTIN  
Speaker


Attested:

  
PILAR C. LUJAN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 19<sup>th</sup> day of December, 1990, at 4:55 o'clock P.m.

  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
JOSEPH F. ADA  
Governor of Guam

Date: December 31, 1990

Public Law No. 20-222

**TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session**

**Bill No. 1671 (COR)**

**As Amended by the Committee on Ways and Means  
and Substituted by the Committee on Rules**

**Introduced by:**

**C. T. C. GUTIERREZ  
J. T. SAN AGUSTIN  
L. P. AGUON  
E. P. ARRIOLA  
J. G. BAMBA  
M. Z. BORDALLO  
D. F. BROOKS  
H. D. DIERKING  
E. DUENAS  
E. ESPALDON  
P. C. LUJAN  
G. MAILLOUX  
M. D. A. MANIBUSAN  
T. S. NELSON  
D. PARKINSON  
F. J. A. QUITUGUA  
E. D. REYES  
M. C. RUTH  
F. R. SANTOS  
T. V. C. TANAKA  
A. R. UNPINGCO**

**AN ACT TO ADD §§2936 THROUGH 2945 TO TITLE 12, TO  
GUAM CODE ANNOTATED AND TO AMEND §2926 OF SAID  
TITLE, RELATIVE TO LAND CLAIMS AND LANDOWNERS'  
RECOVERY, TO BE KNOWN AS THE "NORTHWEST TERRITORY  
OF GUAM ACT."**

1           **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF**  
2 **GUAM:**

3           **Section 1. Background and Legislative Intent.** By passage of Public  
4 Law 17-52 (the "Public Law"), the Legislature found and determined the need for  
5 private landowners to pursue appropriate remedies to redress the harm done to  
6 landowners as individuals, and to Guam as a whole, when a very substantial  
7 percentage of the land on Guam was taken by the Naval Government of Guam or  
8 the Government of the United States, whether through proceedings in eminent

1 domain, or under threat of eminent domain, following World War II. The Public  
2 Law granted additional powers to the Guam Economic Development Authority (the  
3 "Authority") not otherwise set out in law to accomplish appropriate remedies. The  
4 Legislature hereby finds and determines that powers granted the Authority by the  
5 Public Law are not adequate to address the needs of landowners, and that additional  
6 powers, not necessarily those set out in §2103 of Title 12, Guam Code Annotated, or  
7 other sections of such title must now be granted to the Authority to accomplish the  
8 legislative purposes set out in this section and as provided by the Public Law.

9         The Legislature recognizes that land takings have adversely affected nearly  
10 every family on Guam, inducing a macroeconomic transformation, dramatic  
11 social change, and severe reduction in the government of Guam's tax base.  
12 Moreover, the Legislature finds that the public well-being has suffered severely and  
13 continues to suffer from the loss of the use of land taken by the United States in that  
14 the untrammelled development of the civilian economy of Guam and its  
15 government's tax base have been constrained. Among the particular interests of  
16 Guam, revealed by on-going land claim proceedings, which have been adversely  
17 affected by restrictions imposed upon residents, are those restricting civilians  
18 attempting to exercise their long established right to make peaceful way across public  
19 rights-of-way leading to the ocean shoreline from Potts Junction at Routes 3 and 9  
20 and beyond to the places of Falcona, Urunao and Jinapson. The Legislature finds  
21 that the United States Air Force has deliberately and wantonly trespassed upon  
22 legally established Guam public rights-of-way under the jurisdiction of the  
23 government of Guam by virtue of the Organic Act of Guam and by so doing, unduly  
24 restricts passage beyond Potts Junction along that portion of Route 3 known as the  
25 Ritidian Spur leading to government of Guam's Lot No. P04.1, private Lots, Nos.  
26 10080 and 10081 and Lots Nos. 9991 through 9997 known as Jinapson, thereby  
27 adversely affecting nearly a thousand acres of Guam's tax base, approximately four

1 hundred thirty acres of which are zoned "Hotel Zone". Notwithstanding the loss of  
2 use and highly restricted access, resulting in extremely limited municipal service  
3 throughout much of Machanao, the private landowners continue to be unfairly  
4 assessed Guam real property taxes.

5 Moreover, the Legislature finds that the United States Air Force in trespassing  
6 on to this prime private property, deposited thereat extremely hazardous waste  
7 consisting of tires, aircraft parts, rusted drums, scrap metal, pots, pans, vehicle parts,  
8 AN-M50 Series incendiary bombs, M-89 and 90 target identification bombs, small  
9 arms, the remains of 100 lb. incendiary bombs, and other materials, rusted well  
10 beyond recognition. Only one to two feet of coral fill was placed on these explosive  
11 dump sites to cover the exposed dump material which remain today as highly  
12 dangerous landfill areas involving more than eleven acres of a portion of Lot No.  
13 10080 Machanao, Guam. Notwithstanding more than forty-five years of neglect of  
14 these dangerous and polluted dump sites and specific Congressional clean-up  
15 directions issued to the Secretary of the Air Force, May 15, 1985 with the passage of  
16 the Military Construction Authorization Act of 1986, the Air Force wilfully and  
17 contumaciously refuses to undertake the necessary clean-up of these hazardous  
18 dump sites.

19 The Legislature further finds that the Authority's administration of the  
20 Landowner's Recovery Fund has resulted in recovery by landowners of significantly  
21 higher compensation for prior land takings by the United States. For this, the  
22 Authority and land claimants are commended. However, land recovery in  
23 instances such as the Route 3 case cited above, beyond Potts Junction, remains  
24 outstanding. The Legislature finds and determines it is in the public interest to grant  
25 the Authority the additional powers required to recover the Guam public's right-of-  
26 way over all of Route 3, through and beyond Potts Junction and on to the lots

1 beyond the landlocked lots at Falcona, Urunao, Jinapson and Lot No. P04.1, which  
2 run along the ocean shore.

3 The Legislature finds the adverse economic impact of undue military  
4 restriction of peaceful civilian access to and development of public and private  
5 landlocked parcels is considerable and that an economic impact appraisal study is  
6 necessary to fully appraise this impact.

7 The Legislature also finds the adverse environmental impact of unclean,  
8 unsafe military hazardous waste dump sites is also considerable, and that it is  
9 necessary for the Guam Environmental Protection Agency to report on this adverse  
10 impact to the Legislature, following a study to be performed under agreement with  
11 the Authority.

12 Upon determination of the economic and environmental damage done to the  
13 private landowners, to the government of Guam, and to Guam as a whole, resulting  
14 from long term loss of use due to unduly restricted access and to the maintenance of  
15 unsafe land polluting dumps, it is desirable that the Authority be authorized and  
16 directed to seek recovery of land rights in land and all costs due private landowners  
17 and the government of Guam, the government's proceeds of which are to be  
18 earmarked for the Authority's development of parkland, beach and public amenities  
19 at Lot No. P04.1.

20 The Legislature finds and determines that the delay practiced by the United  
21 States in correcting the access and dump site problems in Northwest Guam is  
22 unconscionable and therefore requires the vigorous assertion of the public interest  
23 by the government of Guam. Furthermore, the Legislature, in conferring additional  
24 powers on the Authority to take this initiative, recalls the history of Tumon Bay  
25 which was once designated, in its entirety, for condemnation by the United States as  
26 an exclusive military recreation area. The condemnation of Tumon Bay was  
27 protested by leaders of the Diocese of Guam, and the business and professional

1 community of Guam and subsequently, in response to this protest, was reluctantly  
2 abandoned by military authorities. At the time of civic protest against the  
3 condemnation of Tumon Bay, not a single public beach would have remained  
4 accessible to Guamanians. All the beaches were designated either off limits because  
5 of military activities, or for the exclusive use of military personnel.

6 Had Tumon Bay been condemned, the site of the Christian Martyrdom of  
7 Father San Vitores, and the shrines at that location in his sacred memory would  
8 have been forever off limits to the religious and faithful of Guam. Had Tumon been  
9 condemned, no park for Guam's youth nor beaches for Guam's public would have  
10 been available to the civilian population. Moreover, from an economic point of  
11 view, the entire visitor industry of Guam would have had no site upon which to  
12 build. In the late 1940's, when the condemnation of Tumon was protested, the  
13 outraged leaders of the people of Guam recognized that the exclusive prerogatives  
14 enjoyed by the U.S. military were of less public interest to Guam than open general  
15 access to beach and recreation areas would be. Accordingly, the Legislature finds  
16 that the opening of shoreline resources at Falcona, Urunao, Jinapson, and the  
17 Government of Guam Lot P04.1 would, for the next generation, accomplish the  
18 same economic, financial, recreational and public interest benefits of Guam that  
19 has resulted from the abandonment of condemnation and the end of U.S. military  
20 restrictions over access to Tumon Bay. It is desirable that the Authority vigorously  
21 pursue the interests of the people of Guam in ending all restrictions that deny public  
22 utilization and deny private landowners the opportunity to develop, enjoy and fully  
23 exploit the shoreline resources of northwest Guam now frustrated by undue military  
24 restrictions of access and by the maintenance of hazardous dump sites which create  
25 pollution and danger both for its inhabitants and its visitors to that area.

26 **Section 2. §2936 is added to Title 12, Guam Code Annotated, to**  
27 **read:**

1                   **“§2936. Legislative Purpose for §§2936 through 2943.** The  
2 purpose of the enactment of §§2936 through 2943 of this Title is to supplement and  
3 further the aims established under Chapter VI of Title LIV of the Government Code  
4 and Article 9 of Chapter 2 of this Title. The Legislature finds and declares:

5           (a) That the portion of Route 3 known as the Ritidian Spur, running from  
6 Potts Junction to the cliff and shoreline beyond, is a public right-of-way under the  
7 jurisdiction of the government of Guam; and

8           (b) That it is in the public interest to seek from the United States of America  
9 adequate remedies for private Guam landowners and for the government of Guam  
10 an accounting of the adverse public impact on Guam and its citizens resulting from  
11 land takings during and after World War II; and

12           (c) That it is in the public interest to investigate and pursue on behalf of all  
13 landowners, including the government of Guam as an owner of any rights in land  
14 including rights-of-way and rights to tidelands, the taking of any initiative  
15 reasonably necessary to secure the restoration of title, possession or rights in land  
16 taken by the Naval Government of Guam or by the United States during and after  
17 World War II; and

18           (d) That it is in the public interest to secure for all landowners proper and  
19 just compensation for the use of lands from the time of taking until the time of its  
20 actual; and

21           (e) That it is in the public interest for landowners who desire to accept a  
22 settlement offer from the United States to be able to proceed with the necessary  
23 surveys, land valuations, legal work, consultant and support services already  
24 rendered or to be rendered in the future which will allow a settlement to take place.”

25           **Section 3. Subsection (a) of §2926, Title 12, Guam Code**  
26 **Annotated, is hereby amended to read:**

1                   “(a) ‘Landowner’ means the government of Guam and any  
2 person who has or whose predecessors in interest had beneficial ownership of any  
3 land interest on Guam which interest was adversely affected by taking of the Naval  
4 Government of Guam or the United States Government between July 21, 1944 and  
5 November 15, 1990, or the executor or administrator of the estate of such person;

6                   **Section 4. §2937 is hereby added to Title 12, Guam Code**  
7 **Annotated, to read:**

8                   **“§2937. Appropriations.** (a) Two Hundred Twenty Thousand  
9 Dollars (\$220,000) are appropriated from the General Fund to the Landowner’s  
10 Recovery Fund for the uses specified in this Article 9.

11                   (b) Two Hundred Fifty Thousand Dollars (\$250,000) are  
12 appropriated from the General Fund to the general operating fund of the Authority  
13 for the uses specified in this Article 9.

14                   (c) Notwithstanding any other provision of law, the Authority is  
15 authorized and directed to utilize additional funds as are required and which are  
16 derived from the Authority’s operations, commercial or industrial park lot rentals,  
17 or reimbursements, if any, to the Landowners Recovery Fund from the conclusion  
18 of ‘Option 3’ land claims litigation for the uses specified in this Article 9.”

19                   **Section 5. §2938 is hereby added to Title 12, Guam Code**  
20 **Annotated, to read:**

21                   **“§2938. Authorization for Appropriations.** (a) Four  
22 Hundred Ninety-Five Thousand Dollars (\$495,000) are hereby authorized to be  
23 appropriated from the General Fund to the Landowners Recovery Fund for the uses  
24 specified in this Article 9.

25                   (b) Seven Hundred Fifty Thousand Dollars (\$750,000) are hereby  
26 authorized to be appropriated from the General Fund to the general operating fund  
27 of the Authority for the uses specified in this Article 9.”



1           **Section 6. §2940 is hereby added to Title 12, Guam Code**  
2 **Annotated, to read:**

3           **“§2940. Easements and Rights-Of-Way.** The Authority is  
4 authorized to grant to private landowners or otherwise create such easements and  
5 rights-of-way across Lot No. P04.1, Machanao, as in its discretion are required to  
6 increase the use and enjoyment and facilitate the development of private property  
7 adjacent to Lot No. P04.1, Machanao.”

8           **Section 7. §2941 is hereby added to Title 12, Guam Code**  
9 **Annotated, to read:**

10           **“§2941. Environmental Impact Study.** The Guam  
11 Environmental Protection Agency is hereby directed to carefully study, determine  
12 and then report to the Legislature the full scope of the adverse environmental impact  
13 of unclean, unsafe military hazardous waste dumpsites following a study to be  
14 performed under funds to be provided by agreement with the Authority. The  
15 Authority is authorized to use funds appropriated in this Article or earned by the  
16 Authority from industrial parkland rentals or other operations for this purpose.”

17           **Section 8. §2942 is hereby added to Title 12, Guam Code**  
18 **Annotated, to read:**

19           **“§2942. Appraisal study.** The Authority is directed to produce  
20 an economic impact appraisal study to appraise the impact of undue military  
21 restriction upon peaceful civilian access to the development of public and private  
22 landlocked parcels in Northwest Guam. The Authority is authorized to use funds  
23 appropriated in this Article or earned by the Authority from industrial parkland  
24 rentals or other operations for this purpose.”

25           **Section 9. §2943 is hereby added to Title 12, Guam Code**  
26 **Annotated, to read:**

1           **“§2943. Authorization for use of proceeds resulting from**  
2 **the Authority’s receipt of damage claims awards.** Upon determination of the  
3 adverse economic impact and damage done private landowners and the  
4 government of Guam resulting from long term loss of use due to unduly restricted  
5 access and the maintenance of unsafe land polluting dumps, the Authority is  
6 authorized and directed to seek recovery of land, public rights in land, and all costs  
7 due private landowners and the government of Guam. The money proceeds of this  
8 recovery attr butable to damage or loss of use of land belonging to the government of  
9 Guam, if any, are earmarked for the Authority’s development of parkland, beach  
10 and public amenities at Lot No. P04.1.

11           **Section 10. §2944 is hereby added to Title 12, Guam Code**  
12 **Annotated, to read:**

13           **“§2944. Professional services.** The Authority is directed to  
14 represent the government of Guam as the real party in interest to maintain any  
15 appropriate cause of action for claims for return of public rights-of-way, for  
16 damages, or injunctive or any other cause of action or appropriate relief in  
17 connection with military dumpsites in northwest Guam and is directed to retain  
18 special legal counsel and appraisal, economic, land survey, engineering and  
19 environmental consultants, if and as required, to accomplish the purposes of this  
20 Article. The Attorney General of Guam, the Director of Land Management and the  
21 Administrator of the Guam Environmental Protection Agency shall provide the  
22 Authority their full cooperation in the implementation of the provisions of §§2936  
23 through 2944 of this Article.”

24           **Section 11. §2945 is hereby added to Title 12, Guam Code**  
25 **Annotated, to read:**

26           **“§2945. Title.** §§2936 through 2445 of this Article shall be known  
27 and may be cited as “The Northwest Territory of Guam Act”.

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

ROLL CALL SHEET

Bill No. 1671

Date: 12/18/90

Resolution No. \_\_\_\_\_

QUESTION: \_\_\_\_\_

	AYE	NAY	NOT VOTING	ABSENT
J. P. Aguon	✓			
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks	✓			
H. D. Dierking	✓			
E. R. Duenas	✓			
E. M. Espaldon	✓			
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux				✓
M. D. A. Manibusan				✓
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco	✓			

19      0      0      2      1

# Twentieth Guam Legislature

155 Hernan Cortez  
Pacific Arcade  
Agana, Guam 96910  
Telephone: (671) 472-3407/8/9  
FAX: (671) 477-3161



Chairman, Committee  
on Ways & Means  
  
Vice-Chairman, Committee  
on Tourism & Transportation

CARL T. C. GUTIERREZ  
Senator

November 1, 1990

Honorable Speaker Joe T. San Agustin  
Speaker, Twentieth Guam Legislature  
155 Hernan Cortez  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Ways & Means wishes to report out its findings on **BILL NO. 1671** to the full Legislature with the recommendation to do Pass as Amended.

The Committee Voting Record is as follows:

<b>TO PASS:</b>	<u>10</u>
<b>NOT TO PASS:</b>	<u>0</u>
<b>ABSTENTIONS:</b>	<u>0</u>
<b>REPORT OUT ONLY:</b>	<u>1</u>
<b>OFF-ISLAND:</b>	<u>0</u>

Copies of the Committee Report and all pertinent documents are attached for your information.

Sincerely,

CARL T. C. GUTIERREZ  
Chairman, Committee on  
Ways & Means

**Twentieth Guam Legislature  
Committee on Ways & Means  
VOTING SHEET**

**BILL NO.  
1671**

**AN ACT TO ADD A NEW 12 GCA §§2936 THROUGH 2934,  
INCLUSIVE ~~RELATIVE~~ TO LAND CLAIMS AND LANDOWNERS  
RECOVERY TO BE KNOWN AS THE "NORTHWEST TERRITORY OF  
GUAM ACT".**

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO REPORT OUT ONLY</u>	<u>TO PLACE IN INACTIVE FILE</u>
<i>[Signature]</i> Senator Carl T. C. GUTIERREZ Chairman	✓			
<i>[Signature]</i> Senator Herminia D. DIERKING Vice-Chairman	✓			
<i>[Signature]</i> Senator John P. AGUON Member	✓			
<i>[Signature]</i> Senator George BAMBA Member	✓			
<i>[Signature]</i> Senator Doris BROOKS Member	✓			
<i>[Signature]</i> Senator Ernesto ESPALDON Member	✓			
<i>[Signature]</i> Senator Marilyn MANIBUSAN Member	✓			
<i>[Signature]</i> Senator Ted S. NELSON Member			✓	
<i>[Signature]</i> Senator Don PARKINSON Member	✓			
<i>[Signature]</i> Senator Franklin J. A. QUITOGUA Member	✓			
<i>[Signature]</i> Senator Martha C. RUTH Member				

*10/29/90*  
*with some expanded language for environmental impact, etc. (§ 8)*

**COMMITTEE ON WAYS AND MEANS  
COMMITTEE REPORT ON  
BILL 1671**

**AN ACT TO ADD NEW 12 GCA §§2936 THROUGH 2934,  
INCLUSIVE RELATIVE TO LAND CLAIMS AND LANDOWNERS  
RECOVERY, TO BE KNOWN AS THE "NORTHWEST TERRITORY  
OF GUAM ACT".**

The Committee on Ways & Means held a public hearing on Thursday, October 11, 1990 to gather testimony on bill 1671. Committee Chairman Carl T. C. Gutierrez conducted the hearing, being joined by Honorable Senators Nelson, Bamba, Ruth and Brooks.

**BACKGROUND**

Since the end of World War II, access into the Northwest Territory of Guam has been restricted by military authorities for reasons of national security. For purposes of Bill 1671, the "Northwest Territory of Guam" is defined as beach lots running along the shoreline of Northwest Guam beginning with Lot P04.1 and continuing through Lot 10080 and 10081 Machanao, Guam, a place known as Urunao, north to points beyond Ritidian from lots 9992 through 9998, Yigo, known as the place of Jinapson. The restricted access over land occurs on a public right-of-way known as the "Ritidian Spur" at Potts Junction where Route 3 and 9 junction. The landlocked lots at issue lie below the cliffs along the shoreline from the area of Falcona (P04.1) along the northwest coast of Guam to the point of Tarague Beach.

Additionally, environmental problems exist in the Northwest Territory as a result of the creation of hazardous military dumpsites created on private lots of land, following the second World War which have yet to be cleaned up. Bill 1671 addresses both issues - restricted access and hazardous military dumpsites - by providing appropriations to ascertain the economic and environmental damages associated with the economic and environmental damages associated with restricted land use and to provide litigation resources to protect the Government of Guam's title to public rights-of-way into the now restricted area.

**TESTIMONY**

Written testimony was submitted to the Committee on Ways and Means by James P. Castro and Frank L. G. Castro writing for the Castro family as whole; Jesus M. Artero in his capacity as Chairman of the Artero/Urunao Income Trust; Admiral J. B. Perkins III, Commander U. S. Naval Forces, Marianas; George DeGovanni, Colonel United States Air Force for the Department of the Air Force; John D. Gilliam, an Economist testifying in his private capacity; Joseph Paul Bradley, an Economist testifying in his private capacity; Charles P. Crisostomo, testifying as Administrator, Guam Economic Development Authority; and Fred M. Castro, testifying as Administrator of the Guam Environmental Protection Agency. Also testifying were private landowner Damian C. Flores, Attorney Charles H. Troutman and David J. Santos, Chairman of the Board of the Guam Chamber of Commerce. Also testifying at the hearing without providing written testimony were Marc C. LaMantia and Henry Castro; Realtor Tony Artero also testified, providing written testimony at a later date.

**1. JAMES P. CASTRO/FRANK L. G. CASTRO FOR THE CASTRO FAMILY**

Frank and James Castro prepared written testimony to provide an extensive history of the access problem leading into parcels 8 and 9 at Jinapson Beach; James and Frank Castro are heirs to the property in this area. According to the testimony provided by James and Frank Castro, the Castros

actually possess a documented right to ingress and egress across Ritidian into the landlocked parcels from Route 3. This documented easement was provided the Castro families by Court Order in condemnation proceedings occurring through the District Court of Guam in 1962. According to James and Frank Castro, Military authorities refuse to honor the legal easement given their families forcing the families to instead cross Anderson Air Force Bas in order to access their private property at Jinapson which creates great inconvenience in as much as access to that area is often blocked by closure of gates leading into Tarague Beach or as a result of inclinant weather which blocks access beyond Tarague into Jinapson. the Castros pled with Committee Chairman Gutierrez to assist them in resolving this ancient access problem which they have repeatedly attempted to accomplish, on their own, without success.

## **2. JESUS M. ARTERO**

Mr. Artero testified in his position as Chairman of the Artero/Urunao Income Trust which is a Trust organized to consolidate the land interest of various branches of the Artero Family in Urunao Beach, Lot No. 10080, Machanao, Guam. Mr. Artero commended the Chairman for his initiative in sponsoring the Northwest Territory Act and gave details about military restrictions on access which prevent the development of Urunao Beach to accomplish its highest and best use.

According to Mr. Artero's testimony, Lot 10080 is zoned "Hotel" and the Artero/Urunao Income Trust has entered a development agreement with the Guam Urunao Resort Corporation to develop a world class resort in the hotel zoned area.

Additionally, Mr. Artero gave an explanation of the hazardous military dumpsites which were created on approximately eleven acres of Lot 10080, Machanao. Like the Castro's who testified before him, Mr. Artero requested the Committee's assistance in eliminating the environmental hazards in the area and opening the area to public use.

Mr. Artero offered several written amendments to the bill which have been duly noted by the Committee in its mark-up of the measure.

## **3. J. B. PERKINS, III, COMMANDER U. S. NAVAL FORCES MARIANAS**

J. B. Perkins did not appear to participate in the public hearing but indicated by letter that he was aware of the problem addressed by Bill 1671 and offered to meet for the purpose of providing the military's perspective on the issue.

## **4. COLONEL GEORGE DEGOVANNI, UNITED STATES AIR FORCE**

Colonel DeGovanni declined to testify in person but wrote to the Committee on 9 October 1990 indicating that the United States Air Force is interested in maintaining a safe and clean environment and is awaiting a "Record of Decision" from Washington, D. C. on the environmental impact statement concerning the historic Urunao Beach problem. As far as the issue of public access is concerned, Colonel DeGovanni assured the Chairman he is working with the Guam Urunao Resort Corporation to generate an Environmental Impact Statement on the access question. No timetable for either cleanup or resolution of the access issue was provided by Colonel DeGovanni.

## **5. JOHN D. GILLIAM, ECONOMIST**

John D. Gilliam is a resident of the Territory of Guam, since 1966, and testified as a professional Economist in his personal capacity. In his professional life, Mr. Gilliam is employed as Senior Economist of the Department of Revenue and Taxation, Government of Guam.

A lengthy background on the access and dumpsite issues was provided by Mr. Gilliam. Mr. Gilliam revealed that research in the land claims cases to which he had been connected, (the

Option III land cases) revealed that no condemnation of public rights-of-way into the Northwest areas has been accomplished by the United States and therefore, the right-of-way leading into the Northwest Territory across Route 3 is, in fact a public right-of-way owned by the government of Guam. Accordingly, the guard station restrictions presently in place at Potts Junction are without force and effect of law.

Mr. Gilliam's testimony also revealed that the Congress of the United States had directed the Secretary of the Air Force to cleanup the hazardous military dumpsites on Lot 10080 in 1985 and that as of the date of testimony, no cleanup efforts had commenced.

Mr. Gilliam's testimony underscored the public policy issues to Federal/Territorial relations and raised the question of confiscation of real property by Government authorities acting without basis in law or providing compensation to land owners for loss of use of lands due to U. S. military occupation. Mr. Gilliam reported the damages from restricted access and loss of use, to both private landowners and the public, were considerable in both economic and financial terms.

#### **6. JOSEPH PAUL BRADLEY, ECONOMIST**

Joseph Paul Bradley testified in his personal capacity as a resident of Guam. In his professional life, Mr. Bradley is Chief Economist for the Guam Department of Commerce and is also engaged in private consulting in Guam, including consulting on the Guam Option III Land Claims Case.

Mr. Bradley offered several technical amendments which the Committee has noted. Mr. Bradley also gave a historical perspective on the economic issues which emphasized the economic losses to private and public owners resulting from unwarranted military restrictions and the maintenance of hazardous dumpsites, in defiance of U. S. Congressional cleanup orders. Mr. Bradley commended the initiative and urged the committee's adoption of the measure.

#### **7. CHARLES P. CRISOSTOMO, ADMINISTRATOR, GUAM ECONOMIC DEVELOPMENT AUTHORITY**

Charles P. Crisostomo testified in favor of the measure indicating that the Guam Economic Development Authority Board of the Directors was enthusiastic about pursuing the remedy to the problem prescribed by bill 1671 providing appropriations to cover costs associated with the litigation and special studies was provided. Mr. Crisostomo offered technical amendments to the measure which were noted by the Committee.

#### **8. FRED M. CASTRO, ADMINISTRATOR, GUAM ENVIRONMENTAL PROTECTION AGENCY**

Fred M. Castro indicated GEPA's support for the intent of most aspects of the bill, however, emphasized it was GEPA's position that federal law requires federal action to correct the dumpsite problem. Mr. Castro provided information to the Committee revealing potential federal sources for the funding for such U. S. government cleanup activity.

#### **9. DAMIAN C. FLORES, PRIVATE LANDOWNER**

Damian C. Flores, a landowner in the Jinapson area, provided testimony indicating that if Bill 1671 was passed it would definitely resolve longtime denial of free access into family property maintained by the Flores and Castro family at Jinapson. Like James and Frank Castro before him, Mr. Flores revealed a documented legal easement had been granted to the landlocked landowners at Jinapson, by judgement ordered in the district court of Guam, which had not been honored by military authorities since being granted in 1962. Mr. Flores indicated his patience had expired and asked the Legislature's expeditious passage of the measure.



**10. DAVID J. SANTOS, CHAIRMAN, GUAM CHAMBER OF COMMERCE**

David J. Santos testified in writing by letter dated October 11, 1990 which generally supported Bill 1671 and the concept of opening a Northwest passage. After supporting the intent of the measure, however, Chairman Santos stated that the Chamber of Commerce opposed appropriations specified in Sections 4 and 5 of the Bill to utilize public funds for the purpose stated and recommended that those provisions be deleted in their entirety. The Committee, after careful consideration of this suggestion, has rejected it because, to eliminate appropriation support for the purposes of Bill 1671, would eliminate the capacity of the agency's tasked with remedy of the problem to, in fact, pursue an effective remedy thereto.

**11. MARC C. LAMANTIA**

Marc C. LaMantia testified as a professional appraiser with land-use background and land value experience that a great injustice was being done to the families whose highest and best use potentials of their real property was denied in the Northwest Territory. Like all witnesses appearing before him, Mr. LaMantia urged the Committee expeditiously report Bill 1671 for passage on the floor of the Twentieth Guam legislature. Mr. LaMantia provided the Committee with a statement of his credentials and professional experience as support for the expert opinion he provided on the issue.

**12. HENRY CASTRO, LANDOWNER**

Henry Castro testified briefly reciting the long standing access restriction as an impediment to the utilization of land by his family. Mr. Castro described how even drinking water had to be carried into the family lots because no municipal services extended beyond the restricted point at Potts Junction. Mr. Castro mentioned that all families in the area were paying real property taxes but receiving no municipal services, and therefore, requested the Committee to expedite the measure in order that property could be utilized and developed.

**13. TONY ARTERO, REALTOR**

Tony Artero, testifying in his personal capacity as a party of interest in Lot 10080 commended the Bill's sponsor, Senator Gutierrez for his initiative. Mr. Artero gave the Committee a historical and philosophical perspective on the problem and stated affirmatively that he believed the problem could not be resolved without Government of Guam intervention through the courts.

**14. CHARLES H. TROUTMAN, ATTORNEY**

Charles H. Troutman Esq., testifying in his personal capacity, is a former Attorney General of Guam and presently Compiler of (Guam) Laws. Attorney Troutman supports Bill 1671 stating "...we must take action. Time is wasting." However, Attorney Troutman testified statute of limitation problems may bar litigation and should therefore be researched. Attorney Troutman testified he believes the legal affairs proposed by Bill 1671 should be administered by the Attorney General, not the Guam Economic Development Authority.

**COMMITTEE FINDINGS**

All persons testifying on Bill 1671 testified in favor of its passage. Some recommendations were made by those testifying which were considered by the Committee and incorporated where appropriate. Amendments made in the original Bill have been minor and of a technical nature and therefore, the Committee approved the attached amended version of the original Bill. Recommendations by the Chamber of Commerce to delete appropriation provisions of the measure were considered but rejected. Amended Section 11 of the Bill (§2944 Professional Services) provides a mechanism for interagency coordination requiring the full cooperation of the Attorney General of Guam as well as other concerned agency heads such as the Director of Land Management and Administrator of the Guam Environmental Protection Agency. However,

the Committee believes supplemental legal and other designated professional services be required in assembling a competent staff tasked with the undertakings contemplated by this measure. Otherwise, the Committee adopts all recommendations provided in testimony and finds that an amended Bill 1671 should include all of these recommendations.

### **RECOMMENDATION**

The Committee on Ways & Means recommends that Bill 1671 be passed by the Twentieth Guam Legislature as Amended.

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

Bill No. 1671  
As Amended

Introduced by:

C. T. C. GUTIERREZ

*M. S. G. Manibusan*  
*[Other illegible signatures]*

AN ACT TO ADD NEW 12 GCA §§2936 THROUGH 2943,  
INCLUSIVE, RELATIVE TO LAND CLAIMS AND  
LANDOWNERS RECOVERY, TO BE KNOWN AS THE  
"NORTHWEST TERRITORY OF GUAM ACT."

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF  
2 GUAM:

3 Section 1. **Background and Legislative Intent.** By passage of P.L. 17-  
4 52, the Legislature found and determined the need for private landowners to pursue  
5 appropriate remedies to redress the harm done to landowners as individuals, and to  
6 Guam as a whole, when a very substantial percentage of the land on Guam was  
7 taken by the Naval Government of Guam or the Government of the United States  
8 through proceedings in eminent domain, or under threat of eminent domain,  
9 following World War II. P.L. No. 17-52 granted additional powers to the Guam  
10 Economic Development Authority (the "Authority") not otherwise set out in law to  
11 accomplish appropriate remedies. The Legislature hereby finds and determines that  
12 powers granted the Authority by P.L. No. 17-52 are not adequate to address the needs  
13 of landowners, and that additional powers, not necessarily set out in 12 GCA §2103  
14 or other Sections of this title must now be granted to the Authority to accomplish the  
15 legislative purposes set out in this Section and as provided by P.L. No. 17-52.

16 The Legislature recognizes that land takings have adversely affected nearly  
17 every family on Guam, inducing a macroeconomic transformation, dramatic

1 social change, and severe reduction in the territorial government's tax base.  
2 Moreover, the Legislature finds that the public well-being has suffered severely and  
3 continuously from the loss of the use of land taken by the United States in that the  
4 development of the non-military economy and future of Guam and its  
5 government's tax base has been constrained. Among the particular interests of the  
6 Territory of Guam, revealed by on-going land claim proceedings, which have been  
7 adversely affected by restrictions imposed upon residents, are those restricting  
8 civilians attempting to exercise their long established right to make peaceful way  
9 across public rights-of-way leading to the ocean shoreline from Potts Junction at  
10 Routes 3 and 9 and beyond to the places of Falcona, Urunao and Jinapson. The  
11 Legislature finds that the United States Air Force has unrepentantly trespassed into  
12 legally established Guam public rights-of-way under the jurisdiction of the  
13 Government of Guam by virtue of the Organic Act of Guam and by so doing,  
14 unduly restricts passage beyond Potts Junction along that portion of Route 3 known  
15 as the Ritidian Spur leading to Government of Guam's land Lot No. P04.1, private  
16 Lots, No. 10080 & 10081 and Lot Nos. 9992 through 9997 known as Jinapson,  
17 thereby adversely affecting nearly 1,000 acres of Guam's tax base, approximately  
18 430 acres of which are zoned "Hotel Zone". Notwithstanding loss of use and  
19 restricted access, resulting in limited municipal service throughout much of  
20 Machanao, private Landowners continue to be unfairly assessed Guam real  
21 property taxes.

22 Moreover, the Legislature finds that the United States Air Force also trespassed  
23 onto prime private property and deposited hazardous waste consisting of tires,  
24 aircraft parts, rusted drums, scrap metal, pots, pans, vehicle parts, AN-M50 Series  
25 incendiary bombs, M-89 and 90 target identification bombs, small arms, the remains  
26 of 100 lb. incendiary bombs, and other materials, rusted well beyond recognition.  
27 About one to two feet of coral fill was placed on explosive dump sites to cover the

1 exposed dump material which otherwise remains today as highly dangerous  
2 landfill areas strewn over more than eleven acres of that portion of Lot No. 10080  
3 Machanao, Guam. Notwithstanding more than 45 years of neglect of these  
4 dangerous and polluted dump sites and specific U.S. Congressional clean-up  
5 directions issued to the Secretary of the Air Force, May 15, 1985 with passage of the  
6 Military Construction Authorization Act of 1986, the clean-up of hazardous dump  
7 sites continues to be ignored.

8         The Legislature further finds that the Authority's administration of the  
9 Landowner's Recovery Fund has resulted in recovery by landowners of significantly  
10 higher compensation for prior land takings by the United States. For this, the  
11 Authority and land claimants are commended. However, land recovery in  
12 instances such as the Route 3 case cited above, beyond Potts Junction, remains  
13 outstanding. The Legislature finds and determines it is in the public interest to grant  
14 the Authority the additional powers required to recover the Guam public's right-of-  
15 way over all of Route 3, through and beyond Potts Junction and on to the lots  
16 beyond the landlocked lots at Falcona, Urunao, Jinapson & Lot No. P04.1, which  
17 run along the ocean shore.

18         Additionally, the Legislature finds and determines the public interest will be  
19 served by leasing unsurveyed Lot No. P04.1 identified by Land Square 4, Section 1,  
20 as Land Units a, b, i, j, k, & l from the Government of Guam to the Authority, to  
21 develop as a marine theme park oriented to light commercial, municipal and hotel  
22 projects, compatible with public beach and parklands, to be established and  
23 maintained for the benefit of the people of Guam and Guam's visitors.

24         The Legislature finds the adverse economic impact of undue military  
25 restriction of peaceful civilian access to and development of public and private  
26 landlocked parcels is considerable and that an economic impact appraisal study is  
27 necessary to fully appraise this impact.

1           The Legislature also finds the adverse environmental impact of unclean,  
2 unsafe military hazardous waste dump sites is also considerable, and that it is  
3 necessary for the Guam Environmental Protection Agency to report this adverse  
4 impact to the Guam Legislature, following a study to be performed under agreement  
5 with the Authority.

6           Upon determination of the economic and environmental damage done to  
7 private landowners, to the Government of Guam, and to Guam as a whole, resulting  
8 from long term loss of use due to unduly restricted access and to the maintenance of  
9 unsafe land polluting dumps, it is desirable that the Authority is authorized and  
10 directed to seek recovery of land rights in land and all costs due private landowners  
11 and the Government of Guam, the government's proceeds of which are to be  
12 earmarked for the Authority's development of parkland, beach and public amenities  
13 at Lot P04.1, which Lot is hereby placed under the jurisdiction of the Authority.

14           The Legislature finds and determines that the delay practiced by the United  
15 States in correcting the access and dump site problems in Northwest Guam is  
16 unconscionable and therefore requires the vigorous assertion of public interest by  
17 the Government of Guam. Furthermore, the Legislature, in conferring additional  
18 powers on the Authority to take this initiative, recalls the history of Tumon Bay  
19 which was once designated, in its entirety, for condemnation by the United States as  
20 an exclusive military recreation area. The condemnation of Tumon Bay was  
21 protested by leaders of the Diocese of Guam, and the business and professional  
22 community of Guam and subsequently, in response to this protest, was reluctantly  
23 abandoned by military authorities. At the time of civic protest against the  
24 condemnation of Tumon Bay, not a single public beach would have remained  
25 accessible to Guamanians. All the beaches were designated either off limits because  
26 of military activities, or for the exclusive use of military personnel.

1 Had Tumon Bay been condemned, the site of the Christian Martyrdom of  
2 Father San Vitores, and the shrines at that location in respectful memory thereof,  
3 would have been forever off limits to the religious and faithful of this territory. Had  
4 Tumon been condemned, no park for Guam's youth nor beaches for Guam's public  
5 would have been available to the civilian population. Moreover, from an economic  
6 point of view, the entire visitor industry of Guam would have had no site upon  
7 which to build. In the late 1940's, when the condemnation of Tumon was protested,  
8 the outraged leaders of the people of Guam recognized that the exclusive  
9 prerogatives enjoyed by the U.S. military were of less public interest to the Territory  
10 of Guam than open general access to beach and recreation areas would be.  
11 Accordingly, the Legislature finds that the opening of shoreline resources at  
12 Falcona, Urunao, Jinapson, and the Government of Guam Lot P04.1 would, for the  
13 next generation, accomplish the same economic, financial, recreational and public  
14 interest benefits to the Territory of Guam that has resulted from the abandonment of  
15 condemnation and the end of U.S. Military restrictions over access to Tumon Bay. It  
16 is desirable that the Authority vigorously pursue the interests of the people of Guam  
17 in ending all restrictions that deny public utilization and denies private land owners  
18 the opportunity to develop, enjoy and fully exploit the shoreline resources of  
19 Northwest Guam now frustrated by undue military restrictions of access and by the  
20 maintenance of hazardous dump sites which create pollution and danger for  
21 inhabitants and visitors to that area.

22 **Section 2. A new 12 GCA §2936 is added to read:**

23 **“§2936. Legislative Purpose for §§2936 through 2943.** The  
24 purpose of the enactment of §§2936 through 2943 is to supplement and further the  
25 aims established under Chapter VI of Title LIV of the Government Code (P.L. 16-  
26 111; Chapter II, Section 21) and Article 9 of 12 GCA Chapter 2 (P.L. 17-52). The  
27 Legislature finds and declares:

1 (a) That the portion of Route 3 known as the Ritidian Spur, running from  
2 Potts Junction to the cliff and shoreline beyond, is a public right-of-way under the  
3 jurisdiction of the Government of Guam; and

4 (b) That it is in the public interest to seek from the United States adequate  
5 remedies for private Guam landowners and for the Government of Guam for the  
6 adverse public impact on Guam and its citizens resulting from land takings during  
7 and after World War II; and

8 (c) That it is in the public interest to investigate and pursue on behalf of all  
9 landowners, including the Government of Guam when a party of interest in land,  
10 or as an owner of any rights in land including rights-of-way and rights to tidelands,  
11 the taking of any initiative reasonably necessary to secure the restoration of title,  
12 possession or rights in land taken by the Naval Government of Guam or by the  
13 United States during and after World War II; and

14 (d) That it is in the public interest to secure for all landowners proper and  
15 just compensation for use of lands from the time of taking until the time of actual  
16 return of land; and

17 (e) That it is in the public interest for landowners who desire to accept a  
18 settlement offer from the United States to be able to proceed with the necessary  
19 surveys, land valuations, legal work, consultant and support services already  
20 rendered or to be rendered in the future which will allow a settlement to take place.”

21 **Section 3. Subsection (a) of 12 GCA §2926 is hereby amended to**  
22 **read:**

23 **“§2926. As used in this Article:**

24 (a) ‘Landowner’ means the Government of Guam and any  
25 person who has or whose predecessors in interest had beneficial ownership of any  
26 land interest on Guam which interest was adversely affected by taking of the Naval  
27 Government of Guam or the United States Government between July 21, 1944 and



1 [August 23,1963] November 15, 1990, or the executor or administrator of the estate  
2 of such person;

3 **Section 4. A new 12 GCA §2937 is hereby added to read:**

4 **“§2937. Appropriations.** (a) The sum of Two Hundred Twenty  
5 Thousand Dollars (\$220,000) is appropriated from the General Fund to the  
6 Landowner’s Recovery Fund for the uses specified in this Article 9.

7 (b) The sum of Two Hundred Fifty Thousand Dollars (\$250,000) is  
8 appropriated from the General Fund to the general operating fund of the Authority  
9 for the uses specified in this Article 9.

10 (c) Notwithstanding any other provisions of law, the Authority is  
11 authorized and directed to utilize additional funds as are required and which are  
12 derived from the Authority’s operations, commercial/industrial park lot rentals, or  
13 reimbursements, if any, to the Landowners Recovery Fund from the conclusion of  
14 ‘Option 3’ land claims litigation for the uses specified in this Article 9.”

15 **Section 5. A new 12 GCA §2938 is hereby added to read:**

16 **“§2938. Authorization for Appropriations.** (a) There is  
17 authorized to be appropriated the sum of Four Hundred Ninety-Five Thousand  
18 Dollars (\$495,000) from the General Fund to the Landowners Recovery Fund for  
19 the uses specified in Article 9.

20 (b) There is authorized to be appropriated the sum of Seven Hundred  
21 Fifty Thousand Dollars (\$750,000) is hereby appropriated from the General Fund to  
22 the general operating fund at the Authority for the uses specified in Article 9.”

23 **Section 6. A new 12 GCA §2939 is hereby added to read:**

24 **“§2939. Lease.** The Government of Guam is authorized to lease  
25 to the Authority that unsurveyed government owned real property located in the  
26 Municipality of Machanao described as Lot No. P04.1 Machanao, additionally  
27 described by Land Square 4, Section 1 as Land Unit’s a, b, i, j, k, l adjacent to the

1 place of Falcona, approximately eighty-six acres in size, identified in the Land  
2 Transfer documents received from the United States of America by the Government  
3 of Guam dated February 26, 1952, filed March 30, 1953 as Document No. 25219  
4 recorded with the Department of Land Management, Government of Guam, for  
5 One Dollar (\$1.00) per year for ninety nine (99) years to be administered,  
6 maintained and used by the Authority as a marine theme park oriented to light  
7 commercial, municipal and hotel projects, compatible with public park and beach-  
8 lands, to be established and thereafter maintained by the Authority for the benefit of  
9 the people of Guam and their visitors.”

10 **Section 7. A new 12 GCA §2940 is hereby added to read:**

11 “§2940. **Easements and Rights-Of-Way.** The Authority is  
12 authorized to grant to private landowners or otherwise create such easements and  
13 rights of way across Lot No. P04.1 Machanao as in its discretion are required to  
14 increase the use and enjoyment and facilitate the development of private property  
15 adjacent to Lot No. P04.1 Machanao.”

16 **Section 8. A new 12 GCA §2941 is hereby added to read:**

17 “§2941. **Environmental Impact Study.** The Guam  
18 Environmental Protection Agency is hereby directed to carefully study, determine  
19 and then report the full scope of the adverse environmental impact of unclean,  
20 unsafe military hazardous waste dumpsites to the Guam Legislature, following a  
21 study to be performed under funds to be provided by agreement with the Authority.  
22 The Authority is authorized to use funds appropriated by this Act or earned by the  
23 Authority from industrial parkland rentals or other operations for this purpose.”

24 **Section 9. A new 12 GCA §2942 is hereby added to read:**

25 “§2942. **Appraisal Study.** The Authority is directed to produce  
26 an economic impact appraisal study to appraise the impact of undue military  
27 restriction upon peaceful civilian access to a development of public and private

1 landlocked parcels in Northwest Guam. The Authority is authorized to use funds  
2 appropriated by this Act or earned by the Authority from industrial parkland rentals  
3 or other operations for this purpose.”

4 **Section 10. A new 12 GCA §2943 is hereby added to read:**

5 **“§2943. Authorization for use of Proceeds Resulting from**  
6 **the Authority’s Receipt of Damage Claims Awards, if any.** Upon  
7 determination of the adverse economic impact and damage done private  
8 landowners and the Government of Guam resulting from long term loss of use due  
9 to unduly restricted access and the maintenance of unsafe land polluting dumps,  
10 the Authority is authorized and directed to seek recovery of land, public rights in  
11 land, and all costs due private landowners and the Government of Guam. The  
12 money proceeds of this recovery attribute to damage or loss of use of land belonging  
13 to the Government of Guam, if any, are earmarked for the Authority’s development  
14 of parkland, beach and public amenities at Lot P04.1. Lot P04.1, more fully  
15 described in §2938 of this Article is placed under the jurisdiction of the Authority.”

16 **Section 11. A new 12 GCA §2944 is hereby added to read:**

17 **“§2944. Professional Services.** The Authority is directed to  
18 represent the Government of Guam as the real party in interest to maintain any  
19 appropriate cause of action for claims for return of public rights-of-way, for  
20 damages, or injunctive or any other cause of action or appropriate relief in  
21 connection with military dumpsites in Northwest Guam and is directed to retain  
22 special legal counsel and appraisal, economic, land survey, engineering and  
23 environmental consultants, if and as required, to accomplish the purposes of this  
24 Act.

25 The Attorney General of Guam, the Director of Land Management and the  
26 Administrator of the Guam Environmental Protection Agency shall provide the

- 1 Authority their full cooperation in the implementation of the provisions of §§2936
- 2 through 2943 of this Article.”

ARTERO URUNAO INCOME TRUST  
251 Martyr Street  
P. O. Box GZ  
Agana, Guam 96910  
(671) 472-6895

October 10, 1990

Senator Carl T.C. Guitierrez  
Chairman, Committee on Ways & Means  
Twentieth Guam Legislature  
155 Hernan Cortez Avenue  
Pacific Arcade Building  
Agana, Guam 96910

**BILL NO. 1671: THE NORTHWEST TERRITORY OF GUAM ACT**

My name is Jesus M. Artero and I am the Chairman of the Artero Urunao Income Trust. Under the Trust, members of the six branches of the Artero Family have consolidated the ownership of approximately 90% of the Lot 10080, Machanao, more generally known to the people of the Territory as Urunao Beach. The Trust is committed to preserving local ownership of land. Only through local ownership may we assure that the benefits of development will be for the people of this Territory and not exclusively for outside investors. Only through local ownership of land may we assure the preservation of culturally and environmentally significant areas and assure their continued enjoyment by future generations.

I speak today in support of Bill 1671, "The Northwest Territory of Guam Act". For decades the Artero Family has struggled to secure access to its property at Urunao Beach. The denial of access rights through Potts Junction by the United States Government has deprived my family not only of the ability to develop the property, but to enter freely upon it for personal enjoyment and enrichment. In the early 1970's, the Artero Family entered into an option agreement with a Japanese developer which option rights were ultimately abandoned by the developer due to its frustration with the delays and obstacles imposed by the United States Government in granting the right of access. Many other prospective developers have expressed strong interest in the commercial potential of the property, but have been scared away by the lack of access.

The Trust is currently under an option agreement with the Guam Urunao Resort Corporation which is attempting to negotiate recognition of access rights to Urunao Beach with the United States Government. Though progress is being made, the United States Government continues to impose procedures and requirements that the Trust and the developer find to be unreasonable and burdensome.

The denial of access at Potts Junction is not the grievance of a few private land owners who are denied the use and full enjoyment of their property in the name of National Defense. It is rather an injury that is done to all of the people of the Territory of Guam. Access denial prevents development of private properties in Northwest Guam. This reduces the tax base, denies Territorial residents employment opportunities, discourages outside investment, and slows economic growth throughout the Territory. It further deprives the Government of Guam of the opportunity to use public lands in the area for recreational or commercial development or cultural preservation. "The Northwest Territory of Guam Act" recognizes that the struggle for access is a struggle which belongs to all the people of the Territory because the injuries suffered from the U.S. policies over these last decades have been suffered by all Guamanians and not just the Arteros, Castros, Agueros and other private landowners.

The Trust proposes that two amendments be made to the bill as it currently stands. A new Section 7 should be added which authorizes the authority to grant easements and rights of way across Lot No. P04-1 to increase the use and enjoyment and facilitate the development of private property adjacent to that lot.

The Trust further proposes that Section 9 be amended to provide that only money proceeds recovered that are attributable to damage or loss of use of land belonging to the Government of Guam be earmarked for the Authority's development of parkland, beach, and public amenities on Lot No. P04-1. As Section 9 currently stands, money proceeds recovered for damage or loss of use of private lands would also be earmarked for the Authority's development of Lot No. P04-1. Compensation for damage or loss of use of private land should be payable to the private landowners and not the Government of Guam. Drafts of these proposed amendments prepared by the Trust Legal Counsel are attached to my written testimony submitted herewith.

In closing, I would like to extend the appreciation of the Trust to all public officials who have worked with the Artero Family so diligently over the years in our struggle to secure access to Urunao Beach. Special recognition should be given to two officials for assistance far and above the call of duty. Congressional Delegate Ben Blaz has worked closely with the Trust and the Guam Urunao Resort Corporation in Washington D.C. to heighten the awareness of both the legislative and executive branches of the United States Government to the injustices' that have resulted from the denial of access and from the unreasonable application of federal statutes and regulations to private developments in Northwest Guam. Congressman Blaz has provided immediate, competent, and important assistance to the family and the developer whenever needed and those affiliated with the Trust shall always be deeply appreciative of his efforts.

The Trust further extends its deepest appreciation for the constant support and guidance of Committee Chairman Carl Guitierrez. Senator Guitierrez has met with family representatives for more than a decade to discuss the problems of access. He has traveled with the family to military installations on Guam, in Hawaii, and to Washington, D. C. to testify and lobby on behalf on the Arteros and others seeking a just resolution of the problems at Potts Junction. Without his wisdom and experience and his undying committment to seeing that justice and fairness finally come to Potts Junction, the struggle for access would be far less advanced than it is. Senator Guitierrez above all has recognized that the question of access is one that affects all of the people of this Territory. The passage of his Northwest Territory Act of Guam would provide the resources and the influence of the Government of Guam for the best interest of all people in the Territory. My appreciation for your time and attention.

Respectfully submitted,

*Jesus M. Artero (by authorization GM13)*

JESUS M. ARTERO  
Chairman  
Artero Urunao Income Trust

**Section 7.**

**"§2940 Easements and Rights-Of-Way.** The Authority is authorized to grant to private landowners or otherwise create such easements and rights of way across Lot No. P04.1 Machanao as in its discretion are required to increase the use and enjoyment and facilitate the development of private property adjacent to Lot No. P04.1 Machanao."

**Section 8. A new 12 GCA §2941 is hereby added to read:**

**"§2941. Environmental Impact Study.** The Guam Environmental Protection Agency is hereby directed to carefully study, determine and then report the full scope of the adverse environmental impact of unclean, unsafe military hazardous waste dump sites to the Guam Legislature, following a study to be performed under funds to be provided by agreement with the Authority. The Authority is authorized to use funds earned by the Authority from industrial parkland rentals or other operations for this purpose."



**Section 9. A new 12 GCA §2942 is hereby added to read:**

**"§2942. Appraisal Study.** The Authority is directed to produce an economic impact appraisal study to appraise the impact of undue military restriction upon peaceful civilian access to a development of public and private landlock parcels in Northwest Guam. The Authority is authorized to use funds earned by the Authority from industrial parkland rentals or other operations for this purpose."

**Section 10. A new GCA §2943 is hereby added to read:**

**"§2943. Authoriztion of use of Proceeds Resulting from the Authority's Receipt of Damage Claims Awards, if any.** Upon determination of the adverse economic impact and damage done private landowners and the Government of Guam resulting from long term loss of use due to unduly restricted access and the maintenance of unsafe land polluting dumps, the Authority is authorized and directed to seek recovery of land, public rights in land, and all costs due private landowners and the Government of Guam. The money proceeds of this recovery attributable to damage or loss of use of land belonging to the Government of Guam, if any, are earmarked for the Authority's development of parkland, beach, and public amenities at Lot P04.1. Lot P04.1, more fully described in §2938 of this Article is placed under the jurisdiction of the Authority.

Section 11. A new 12 GCA §2944 is hereby added to read:

"§2944. Professional Services. The Authority is directed to represent the Government of Guam as the real party in interest to maintain any appropriate cause of action for claims for return of public rights-of-way, for damages, or injunctive or any other cause of action or appropriate relief in connection with military dump sites in Northwest Guam and is directed to retain special legal counsel and appraisal, economic, land survey, engineering and environmental consultants, if and as required, to accomplish the purposes of this Act.

The Attorney General of Guam, the Director of Land Management and the Administrator of the Guam Environmental Protection Agency shall provide the Authority their full cooperation in the implementation of the provisions of §§2936 through 2943 of this Article."

October 11, 1990

Senator Carl T.C. Gutierrez  
Chairman, Committee on Ways & Means  
20th Guam Legislature  
Agana, Guam 96910

Dear Senator Gutierrez:

Thank you for inviting me to provide the following testimony in this hearing of the Committee of Ways and Means as it considers Bill #1671 known as the NORTHWEST TERRITORY OF GUAM ACT.

For purposes of the Committee's report, I am John David Gilliam, a resident of the Territory of Guam since 1966 here testifying in my personal capacity. In my professional life, I am employed as Senior Economist of the Department of Revenue and Taxation, Government of Guam. Also, I am presently certified as an expert economic consultant to Option 3 land claimants presently in litigation proceedings against the United States to recover compensation due them for loss of use of their lands following the Second World War. In the context of the work that I have done in the Option 3 litigation, I have researched the issue of access into the Ritidian, Urunao, Falcona and Jinapson areas as well as a number of other issues concerning the private land lots situated in Northwest Guam. Although I testify as a private citizen, In so doing, I draw upon the professional work that I have performed in the context of the Option 3 litigation and also upon my familiarity with the Guam economy and in particular the taxbase potentials of this jurisdiction.

Before I get into the details of my testimony, I would like to state it is my opinion that no local legislation, passed since the Guam Congress adopted the Joint Resolution of 1 May 1948 concerning the Tumon Bay area, surpasses Bill 1671 for positive potential impact on the economy of Guam! This legislative initiative is truly inspired and one which deserves widespread non-partisan public acclaim. As an economist, I believe the successful resolution of the Northwest Passage issue will assure the prosperity of the entire next generation of this territory. Although I testify principally from my expertise as an economist, it is as a father of two young children, one nine and the other

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two years of age, that I would like to say that if you are successful with this measure, Senator Gutierrez, you will have accomplished for my children's generation, all that was accomplished by the generation which preceded us whose efforts and leadership made possible the liberation of Tumon Bay and its subsequent development into a world class visitor destination and recreation area. The Urunao, Falcona, Jinapson area represents the future of the economy of Guam in the same way Tumon represents the private economy in the present day!

I commend you for having the persistence to stay with this long standing issue. I know your involvement dates back many years. I also applaud your elevation of what has previously been merely a private landowners complaint to recognize the significant public policy issues that exist. You have cleverly drawn upon the history of the United States in characterizing this the NORTHWEST TERRITORY ACT for it was the Northwest Territory Ordinance in United States history that set the basic ground rules for the relationship between the federal government and all its territories. I believe this bill, should it become law, will do likewise for Federal/Territorial relations in Guam. We recall the Lewis & Clark expedition when we think about the value of a Northwest Passage into the Northwest Territory now seriously contemplated by the increased prospect for the judicial removal of undue military restrictions at the Potts Junction intersection.

The fact that there is also a significant environmental issue involved also underscores the essential relationship between environment and the economy and the necessity of protecting both by wise public policy.

As historical, economic and environmental background, I would like to divide my testimony into three sections: first, dealing with access, next with the economic impact of undue restrictions on private and public lands in the Northwest Territory and finally, with the environmental issues associated with the hazardous military dumpsites remaining in the area.

With respect to the issue of access, we must return to the pre-Spanish history of Guam, for evidence of the "Ritidian Light." In those days, before electricity, the Ritidian Light was a fire set by Chamorros on the cliffs

overlooking Ritidian Point which acted as a beacon in the night sky to be followed by mariners sailing between Guam and Rota. The Ritidian Light was at the end of a road which is known as the "Ritidian Spur". The Ritidian Spur leads from Potts Junction to the Ritidian Light at the cliff top and extends to the shoreline at Ritidian Point Beach below. On modern day maps, the Ritidian Spur is considered a part of Route 3 running several miles from where Route 3, leading beyond Naval Communication Station, junctions into Route 9 going onto Anderson Air Force Base.

The Ritidain Spur has always been a public right-of-way and remains so today! It was a public right-of-way for pre-contact Chamorros who maintained the Ritidian (fire) Light. It was a public right-of-way for the Spanish era Chamorros and Spaniards who improved the light, created a lighthouse and maintained the Ritidian light as a beacon for mariners who traveled between Acapulco and Manila in the famous Spanish Gallion trade. Many references are made to the Ritidian Light and the Ritidian Spur appears on countless old maps. Like the Spaniards before them and the Chamorros before them, (who in pre-Spanish times constituted the Administering Authority of this island) the Americans also viewed public highways and roads as public rights-of-way falling under the jurisdiction of the governing authority. A public road was open to the public but maintained as property of the governing authority. This was true during the Spanish time and it was also true in the American period which followed. In documents collected from the archives of the Naval Government of Guam, we find many military map references to and descriptions, in once classified security reports, of the Ritidian Spur. The Japanese respected the public's right-of-way on the Ritidian Spur during the Japanese occupation and, after the re-occupation by the Americans and the fall of the Japanese regime in Guam in 1944, the Ritidian Spur continued to be operated as a public right-of-way and the Ritidian Light continued to be maintained as a night time beacon for those offshore. The Ritidian Light still stands, although today it is powered by electricity and only the rubble of the old lighthouse remains.

In the late 1940's and early 1950's there was massive condemnation of private lands for the purposes of building military bases on the island of Guam. Large sections of land in the Northwest Territory were taken for Anderson Air Force Base, Northwest Guam Airbase and Naval Communications Station. In the 1960's the Army condemned the Ritidian Point area to establish a station for the Army Signal Corp and that facility remains today as Naval Facility, aka, NAVFAC. Because the Ritidian Spur, like all other public roads, was owned by the United States and administered by the Naval Government of Guam prior to the condemnation of private lands in the vicinity, the road was excepted from the condemnation of private lands that now constitute Northwest Guam Air Force Base, and Naval Communications Station.

The U.S. military designated a military road system for condemnation purposes and advanced numerous condemnation actions to condemn all rights and interests in roadways and in the lands beneath them. Route 3 up to Potts Junction was one such road that was condemned by a specific condemnation action which extinguished the private landowners interests in underlying land and public's right of passage thereover. [1\*] However, NO condemnation exists for the Ritidian Spur!

No doubt the failure to effectively condemn the Ritidian Spur constitutes a significant oversight on the part of the U.S. Military real estate authorities of the time but that does not remove the fact that rights-of-way, long established as residing within the public's domain, have never been acquired by the United States through effective condemnation proceedings under eminent domain and therefore should, to this day, be open and unrestricted. Without going into all the details of this history, it is essential to understand that after passage of the Organic Act in 1950, those interests of the United States not reserved by the U.S. were transferred from the U.S. to either the Interior Department or to the Government of Guam and eventually those interests transferred to the Interior Department were transferred to the Government of Guam which makes up the land estate the Government of Guam now owns and controls. The right-of-way beyond Potts Junction to Ritidian is one of those interests in real property that was not reserved to

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1\* Rt. 3 was transferred by the United States to the Government of Guam in the early 1970's.

the United States nor subsequently condemned and therefore transferred, pursuant to the Organic Act of Guam, to the jurisdiction of the Government of Guam which is in fact holder of legal title to the property at issue today.

For a number of years after Northwest Guam Air Force Base was created, the U.S. military attempted to deal with the landlocked parcels along the beach below the cliffs. In the end, the military abandoned its intentions to condemn these private land areas and private interests today continue to own the Jinapson and Urunao areas.

I mentioned earlier that the Department of Interior received certain lands under the reservation by Presidential Order of President Harry S. Truman, pursuant to the Organic Act that were later transferred to the Government of Guam. One such lot is PO4.1 mentioned in the NORTHWEST TERRITORY ACT. PO4.1 is an 86 acre unsurveyed property, more or less, adjacent to what is known as the place of Urunao in the approximate area of Falcona Beach. Like Urunao and Jinapson to the North, PO4.1 which is now the property of the Government of Guam by virtue of its transfer from the Department of the Interior to Guam, is also landlocked by undue restriction at the Potts Junction intersection. So, the Government of Guam is certainly a real party in interest in this action by virtue of the fact that it owns approximately 86 acres of beach front and cliff top property in Northwest Guam, likewise inaccessible to the public because of the undue military restrictions of that portion of Route 3 beyond Potts Junction to the shoreline.

It is also important to remember that 30 feet from the high water mark inland along all this spectacular shoreline area (except for a very small portion of Ritidian which was, in fact, condemned) remains today in the domain of the public under the jurisdiction of the Government of Guam and this shoreline should be opened for the use of all Guam's residents. Unhappily the only access one can get to the public beach is by virtue of passage through the restricted military sentry station located at Potts Junction or by wandering from an isolated but beautifully maintained exclusive beach for military personnel at the NAVFAC Station.

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After the United States abandoned intentions to acquire the beach lots below the cliffs in Northwest Guam, the United States Attorney for Guam repeatedly requested the Air Force to resolve the problem of access to the landlocked private lots below clifflines. In the context of the condemnation of Ritidian for the U.S. Department of the Army's Signal Corp communication station, the landlocked condition of landowners adjacent to the condemnation area was recognized and a documented easement permitting the crossing of the NAVFAC Base to the Ritidian Spur and beyond to Route 3 was established in the Declaration of Taking and Court's Judgment in that case. However, with respect to access for other landlocked residents no documented easements were negotiated and for a long period of time the issue was simply ignored as private land owners were allowed to continue to freely cross the Potts Junction right-of-way and head into the Northwest Territory through the well established centuries old Ritidian Spur passage.

In the mid 1960's the U.S. military began to restrict passage in this area and the issue was drawn to the attention of the 8th Guam Legislature by Artero family members whose passage into their property became subject to U.S. military interference. Then Senator Kurt S. Moylan met with military officials at the time and was assured that the passage which the Artero family had traditionally used to enter their property at Urunao was in fact in the public domain; apologies for interference with their free and peaceful access into the area were issued. Notwithstanding this understanding, the Artero family was subsequently required to acquire visitors passes and display these passes before being permitted to enter their private land at Urunao Beach. In 1974 a guard station was established and a permanent sentry armed with automatic rifles and other military police weapons was posted at Potts Junction. Since that time, no private passage has been allowed, except that, which the military has permitted. To repeat a point made earlier, in the 1960's the military admitted it had no jurisdiction over the public right-of-way and apologized for interfering with it, but then changed its policy and simply moved to assert authority without any basis in law which subsequently led to stationing the guard which continues to restrict passage into the area today.



From the point of view of an economist, attempting to appraise the economic impact of those restrictive measures which limit the use of private lots of land of such high quality, I would remind the Committee that "property" to an economist and an appraiser, is defined as a "bundle of rights." It is property rights which have economic value. Jurisprudence, economics, and appraisal practice identify specific property rights to include the right to possess, use, to manage, to income, to the capital, and to security, as essential to the concept of full or liberal ownership as defined by existing mature legal systems. In simple terms, this means a property owner enjoys full ownership rights when able to possess, use or manage and enjoy the income from or the right to the capital of his property. The property owner is entitled to a right to security. In addition, that property owner should have the power of transmissibility, that is, the power to devise or bequeath. There should be an absence of term if these rights are to be full, that is, there must be an indeterminate length of ones ownership rights. However, ownership of a thing does not permit the harmful use of the thing for damage against others. In other words, it is one's duty to forbear from using property in certain ways harmful to others and we will return to this issue when the subject of the dumpsites is discussed.

By defining a property as a "bundle of rights" we can see in the case of the Northwest Territory that property rights are less than full and complete because of restricted access and because of the trespass on the private lots of hazardous waste. If the landowner is unable to possess, use, manage and develop his property to its highest and best use, which is the conventional appraisal standard for value, then he suffers a loss of right, a loss of economic power and a loss of economic benefit. It is precisely this kind of a loss that is occurring to private land owners in the Northwest Territory by virtue of unduly restricted access and trespassing dumps.

However, because of the pristine quality of these lots of land and the fact that they are part of the Guam tax base, there is the larger loss to the community as a whole, of those revenues associated with the highest and best use potentials of the area. As in the case of Tumon, which produced the highest appraised values of real property on

Guam, and therefore, the highest real property tax assessments, the Urunao and Jinapson areas, if developed, would increase in value and generate a greater property tax revenue for the Government of Guam. More importantly than real property tax revenues however, the income taxes, fees, withholding taxes and the like, generated from the commercial development of properties like we find in the Tumon area. Collectively, the revenue potentials of developed property are very significant to the Government of Guam and its continued ability to meet community municipal service requirements.

To restate the obvious point, when private landowners lose the right to possess, use and develop the capital value of their land, they lose the capacity to generate income from their land and as it is these different forms of income that the government uses as a basis for tax, the ability of the government to realize its revenue potentials is likewise, stimate. The cost to private landowners and to the Government of Guam, of that single guard station at Potts Junction, can already be counted in the millions of dollars and if made analgious to the potentials associated with the Tumon area, could conservatively account for billions in the future.

Without doing a proper appraisal, there is no way of estimating accurately the losses and costs of restricted access and trespassing dumpsites. Bill #1671 proposes an appraisal report in order to quantify these public and private losses and this is an important step to measuring the economic impact of undue restriction in the area. I also applaud the proposed environmental impact study for the same reasons.

Turning to the subject of hazardous dumpsites, we must again return to history and recall that Northwest Guam Air Force Base was a B-29 base hastily built following the American re-occupation of Guam in 1944 and 1945 for the purpose of prosecuting the air war against Japan. Mission after mission of conventional bombers launched from the Northwest Guam Air Force Base to deliver incendiary and other conventional bombs to specified Japanese targets on the east coast of Japan. There was, after the war, alot of war surplus and some of that surplus included incendiary bombs,

other forms of explosives, unspent ammunition, as well as aircraft parts, old tires, various kinds of rubber and chemicals, metal construction materials and a wide assortment of other military/industrial type debris. As a convenience to the military authorities at the time, dump trucks were loaded with these military scrap materials, including the hazardous ordinance, and were driven to cliff tops over lot #10080 and dumped below the cliff line onto the private parcels where these remains can be found today. At some point following the war, a thin layer of coral was applied to the top of the area to conceal the worse of the debris and revegetation occurred. No removal of explosive or other hazardous materials has ever been performed.

In 1984 the Secretary of the Air Force was ordered to study the issue of restricted access. In 1985 the Secretary of the Air Force reported certain findings to the Congress and the Congress replied with an order that the Secretary of the Air Force clean up the hazardous dumps in the Northwest Territory at the earliest time possible. Following the congressional cleanup directive, the Air Force did undertake an environmental impact study and performed an appraisal to determine the cost of the cleanup. Beyond that point there is no visible proof that any other action occurred. The Congress allowed that some time might be required for resolution of the access and the dumpsite issue but the time estimated has now long since elapsed. No appropriation for cleanup has been proposed, no cleanup under existing appropriations was even started.

It is estimated that over 11 acres of lot #10080 is now consumed by dumps of military origin. To confiscate land without compensation for loss of use is unconstitutional under the 5th Amendment and furthermore blatant confiscation that would not be permitted in any other jurisdiction of the United States and should never have been permitted in this U.S. Territory. More than 45 years have passed since the problem developed without adequate remedy being provided by either the administration or the U.S. Congress. However, I would not want to criticise the Congress in this regard in as much as it is the Air Force's responsibility to seek appropriation for a job, under law, it must perform and furthermore, I am aware that Congressman Blaz has been working tirelessly to try to resolve these problems without resort to the litigation Bill 1671 proposes. I am sure that Congressman Blaz has made progress in this area but I am uninformed of the specific details thereof.

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The time for patience, the time for optimism and the time for negotiation is passing quickly and the time for litigation may now be upon us. Bill 1671 would provide litigation resources to force this matter to a satisfactory conclusion and if not settled, because it is wise and just to do so, then by the litigation parties can be ordered under penalty of law to do what so long ago should have been accomplished voluntarily.

I have read the 1984/1985 report to Congress by the Air Force on this matter and believe the Air Force deliberately misled the Congress of the United States with respect to the development potentials of the private land. There is no price that private land owners should be assessed or expected to legitimately pay, beyond taxes to their Government, for the security of military base perimeters. If the base requires security perimeters that limit activity then this should be provided by Defense Department appropriation and not be accomplished in a defacto matter at the expense of private landowners who are simply told they cannot enter their property because no fence around the military perimeter adjacent to it has yet been funded. Likewise, a private landowner should not be expected to play host to a contaminating, dangerous and hazardous military dump site. If I were to wander into this dumpsite and become injured as a result, I would have recourse against these private landowners in the same way I would against the United States. Private landowners should not be exposed to such liability as a result of military negligence and military negligence should not be allowed to continue in defiance of aging Congressional clean-up orders.

The entire matter of the future of the development of the Territory of Guam is at issue in the question of the Northwest Territory. 430 acres of Urunao have been zoned "Hotel." Perhaps as much as 60% of the modern day economy of Guam can be traced to the visitor industry now housed in a smaller area in Tumon Bay. Tumon Bay developed project by project while Urunao has been selected for comprehensive master planning. The Artero family maintains a development agreement with a competent developer to bring a world class resort into this area.

I neglected to mention when reciteing my credentials, that I have been recently selected by the Sablan family to be their representative on the Artero Urunao Income Trust and in that capacity, I now serve as one of seven trustees

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responsible for the business relationship between the trust and the Guam Urunao Development Corporation which intends to develop lot 10080. In that fiduciary capacity, I am certainly concerned to see the Northwest Territory liberated in the same way all of Guam was once liberated from unfair, undue, and unconstitutional restriction. Guam was once under a military security clearance system which denied investors easy access to the territory. Perhaps the military security system has since shrunk and is now confined to the Northwest Territory but that does not relieve us from recognizing that by virtue of that clearance requirement, a freezing ordinance is administered.

To conclude, the public's right to passage into the Northwest Territory has been unduly restricted by the United States Government which is practicing a policy of confiscation that will not stand up in a court of United States law. Furthermore, the trespass of the United States military onto private lots of land to lay waste that is explosive and a hazard to people and wildlife while generally degrading of the environment is an object of neglect and a blight upon the environment that directly and adversely affects all inhabitants of Guam; together the undue restrictions on access and the trespass for purposes of dumping hazardous materials adversely affects the standing of the United States and unnecessarily strains its relationship with the Territory of Guam. There is a loss of use and a loss of value that is experienced by private landowners but there is also a loss of use and a loss of value to the community in general and to the Government of Guam which is responsible for protecting this community's interests. There is no reason in law or equity that the people of Guam should be denied the use of miles of pristine shoreline and beach sites dedicated to public domain adjacent to the shore in Northwest Guam. There is no reason why U.S. military personnel and their dependents should enjoy exclusive privileges in this area which is, in the main, in the public domain. The Government of Guam's own property in Lot #PO4.1 is unusable and given the shortage of beachside recreational facilities in Guam ought to be made accessible for public use. It will take large sums of money to develop these areas. Fortunately they will not develop like Tumon on an ad hoc peacemeal basis but can be masterplanned and Bill #1671 establishes a wonderful opportunity for the Government of Guam to join in the masterplanning efforts being taken to protect the

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environment of Urunao Beach by structuring a cooperative venture that allows for the development of public amenities, private interests, archiological and environmental protection.

There is no defense for continuing either the restricted access or the hazardous dumps. If there is to be equity between the United States and Guam in the envisioned Commonwealth of Guam, matters as fundamental as constitutional property rights being upheld in this territory by all officials, whether federal or local, is essential to the bargain. All officials, whether federal or local should be committed to a clean and safe environment. No official, federal or local, and especially no U.S. military official or an official of the U.S. Department of Justice should be party to any efforts which delay the clean-up of hazardous, environmentally blighted, dumpsites. Likewise, no official of the United States should be any party to the economic blight that has been cast over the entire area by undue restrictions upon peaceful movement over a centuries old right-of-way that was first established in the public domain by pre-contact Chamorros and maintained by every jurisdiction that has governed the Territory of Guam since that time including, at least in principle, the United States. The U.S. Military must be subordinate to and subservient of the Constitution of the United States as any other American institution. As the defenders of our Constitution, it is not too much to expect that the U.S. military would also undertake to uphold its principal provisions.

Every day, week, month, year that these conditions continue, means lost opportunity for my children and yours. I commend you for the initiative that you have taken, Senator Gutierrez. I plead with each member of your Committee to favorably report this measure out of Committee and I urge Governor Ada, should this measure be enacted by this Legislature, to immediately sign it into law and have all officials charged to work thereunder consider it an urgency measure.

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Thank you for this opportunity to appear before you. If you would like to ask me any questions, I will answer them at this time. A copy of my 28 February 1990 Economic Analysis of Lot 10080 in 3 volumes with Executive Summary has been placed on file with the Committee for its reference in this matter.

  
JOHN D. GILLIAM

# JPC

James p. castro

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P.O. Box 20731  
GME Guam 96921  
(671) 472-3429

October 11, 1990

Honorable Carl T. C. Gutierrez  
Chairman  
Committee on Ways and Means  
Twentieth Guam Legislature  
Agana, Guam 96910

Re: Public Hearing on Bill No. 1671  
Thursday, October 11, 1990

Dear Mr. Chairman:

For the record, my name is Frank L.G. Castro, and with me is James P. Castro. We are here to represent the Castro Families, owners of approximately 40 hectares of prime beachfront property on Guam. Bounded on the west by Naval facilities and to the east Andersen Air Force Base's Tarague Beach, the beauty and serenity of Jinapsan Beach can truly be called a paradise in paradise.

We appear before this Committee to plead our case and request for permanent access to our property. Over the years since World War II we have been denied truly open access to our heritage. The access we are given is restricted and restrictive and does not permit us the full use of the land and beach on which our forefathers toiled and which they protected for their progeny. We are here to humbly request your advocacy and the assistance of this Committee to resolve an injustice that has been a cancerous and festering sore for many years.

Simply stated, we are asking that the military and United States government honor its commitment to provide unfettered access, ingress and egress, to the property to the families and heirs of Jinapsan Beach, specifically, Parcel Nos. 8 and 9.



Mr. Chairman, on June 15, 1962, the United States filed a Complaint in Condemnation in the District Court of Guam. This action was brought by the Secretary of the Army exercising the power of eminent domain in order to take the property despite the fact that Jinapsan Beach would not be utilized for any vital national security function. Paragraph 4 of the complaint states:

"The interest in the property to be acquired is an estate in fee simple subject to existing easements for public roads and highways, public utilities, railroads and pipelines, reserving, however, to the owners respectively of Parcel Nos. 8 and 9, their heirs, executors, administrators, successors, and assigns a right of ingress and egress over and across Parcel Nos. 8 and 9." [emphasis added]

This same clause was also contained in the "Declaration of taking" filed on June 15, 1962, by Elvis J. Sthar, Jr., Secretary of the Army. More importantly, when the "Judgement" was filed, District Court Judge Paul Shriver reiterated that "There is reserved, to the heirs of Parcel No. 8, a right of ingress and egress over and across Parcel No. 8."[emphasis added]

Since 1962, the Federal government has deprived our family the full benefits of unfettered access to 249,382 square meters of prime beachfront property,. We have been denied the full potential of our inheritance and heritage. The only compensation received by the Castros was ten cents per square meter in order that the Federal government may lock in the property, restrict access and exercise general police powers over private property. This in direct contradiction to the provisions of that government's own agreements and the mandate of the Federal District Court of Guam. Our property is ours in name bu full use and full harvest of its potential is not under our control. For this reason we beg and solicit your support to secure a permanent access to Jinapsan Beach.

For many years now, we have had access to our property only through Andersen Air Force Base. This access is made possible only through property passes issued by the Air Force and which may be revoked faster than they are issued. We are thus at the mercy of the Air Force. Should there be any reason for a closure of the base to civilian traffic, we would not be able to access the property. Already, when the Tarague Beach gates are closed, we are denied access. We are required to enter the property only at such times as that gate is opened and if we are at Jinapsan Beach

when the gates are closed, we would not be able to exit the area. This is not the intent of the Paragraph 4 of the aforementioned Complaint in Condemnation, nor is it the intent of the ruling and mandate of the Federal District Court of Guam. More seriously, we are not able to extend basic utilities such as water, power and telephone to the property and it is difficult to bring adequate quantities of building materials into the property to even build quarters or just picnic and barbecue facilities.

We are asking for your most able and understanding assistance to secure a permanent right-of-way via Ritidian Point, which at one time also belonged to the Castro Family. Such a right-of-way would be pass the Naval facility at Ritidian thereby eliminating the need for ingress and egress through Andersen Air Force Base and its Tarague Beach gate. Such a right-of-way would be permanent in nature and would be viable and totally satisfactory to the Castro family as a means of egress and ingress.

Mr. Chairman, the Jinapsan property has pristine beauty unmatched by any other area on Guam. There are wide stretches of white sandy beaches and considerable hinterland. The Castro Family with the permanent right-of-way through Ritidian Point, would be able to extend to our property the basic utilities with which we could build and develop the property. For many years we have had to carry even drinking water into the property. Building materials for the lean-to-ranches and beach bungalows built for family use have had to be carted in on a piecemeal.

As our suggestion for the access via the Naval facility at Ritidian Point, we point to the existence of a bulcart trail which would facilitate the building of a more adequate access. However, this would not resolve the problems of the restrictions and restrictive orders under which access to the property is granted to the family and their friends and relatives. In the name of Justice, we are requesting your assistance to secure an unrestricted and unrestrictive permanent access to Jinapsan Beach through Ritidian Point.

We ask this because we know that the military will be resistive to the granting of such access. The Castro Family has already been approached by the Commander of the Naval Forces Marianas in regards to the families' willingness to exchange the Jinapsan Beach property with other federal properties on Guam which will be declared excess. A letter to that effect has already been issued. Without further qualifications the family must sate such an exchange would not be acceptable because it is our opinion that there are no properties on Guam that can compare to the pristine and serene beauty of Jinapsan. Additionally, the property to be declared

excess was owned by other families who have a right to the return of that property when it is declared excess. For the Castro family to accept such an exchange offer would be an insult to that other family and would subject that other family to the same injustices that have existed for so many years on Guam.

Additionally, what would the Navy want with additional beachfront property? This is totally out of character and out of sync with the statements of former Defense Secretaries Casper Weinberger and Frank Carlucci who have made statements on the record supporting the release of all excess military lands on Guam.


Mr. Chairman and Honorable Members of this Committee, thank you, a sincere Si Yu'os Ma'ase, for your kind attention and consideration.

Sincerely,

For the Castro Family:



Frank L. G. Castro



James P. Castro

Enclosures



DEPARTMENT OF THE NAVY  
U.S. PACIFIC FLEET  
COMMANDER U.S. NAVAL FORCES MARIANAS  
FPO SAN FRANCISCO 96630-0051

IN REPLY REFER TO:

10 October 1990

Senator Carl T. C. Gutierrez  
Twentieth Guam Legislature  
155 Hernan Cortez, Pacific Aracde  
Agana, Guam 96910

Dear Senator Gutierrez,

Thank you for your letter of 26 September 1990 inviting me and other military commanders to comment on Bill 1617.

While we will not participate in the public hearing, I want to assure you that the concerns contained in your bill have my personal attention and I am committed to working with the family members involved to find an equitable solution. This solution must protect the operational capabilities and security of military facilities, address the concerns of the interested families, and comply with all pertinent environmental laws and regulations.

I would welcome the opportunity to discuss this matter with you and provide the military perspective.

Warm regards,

J. B. PERKINS III



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 633D AIR BASE WING (PACAF)  
APO SAN FRANCISCO 96334-5000

09 OCT 1990

Honorable Carl T. C. Gutierrez  
155 Hernan Cortez, Pacific Arcade  
Agana, Guam 96910

Dear Senator Gutierrez

I received your letter, dated September 26, 1990, and appreciate your personal invitation to discuss this matter with you on October 11, 1990. Unfortunately, I will be unable to meet with you on that day.

I do want to assure you that the United States Air Force is interested in maintaining a safe and clean environment, and we also anxiously await the Record of Decision from Washington D. C. on the Environmental Impact Statement concerning the historic Urunao Beach problem. As far as the issue of public access through Northwest Field, presently we are earnestly working with the Guam Urunao Resort Corporation who will be hiring a contractor to generate the Environmental Impact Statement.

As soon as I receive the Record of Decision on either of these environmentally sensitive actions, I will share the information with you and the general public.

Thank you again for your invitation.

Sincerely

A handwritten signature in dark ink, appearing to read "G. DeGovanni".

GEORGE DEGOVANNI, Colonel, USAF  
Commander

**TESTIMONY REGARDING BILL 1671:  
AN ACT TO ADD NEW 12 GCA §§2936 THROUGH 2943,  
INCLUSIVE, RELATIVE TO LAND CLAIMS AND  
LANDOWNERS RECOVERY, TO BE KNOWN AS THE  
"NORTHWEST TERRITORY OF GUAM ACT."**

Good morning, Mr. Chairman and Distinguished Members of the Committee. My name is Joseph Paul Bradley, and I am here to testify in favor of the Bill before you. However, I would like to make it clear from the outset that, although I am the Chief Economist for the Guam Department of Commerce and I am also engaged in private consulting in Guam (including the so-called "Option 3" land claims case), I am here on my own behalf as a private citizen; the views that I express here today are not necessarily those of the Department of Commerce or the current Administration of the Government of Guam. Nevertheless, because I feel that the issues addressed in this Bill are of substantial importance to the people and the government of the island, I have taken leave from work to be here today and to support the efforts of the sponsor of Bill 1671 to gain a greater measure of equity for the civilian community in their relationship with the military establishment that occupies so much of Guam's land.

With that said, and with your acquiescence, I would like to address several of the provisions of Bill 1671 in turn.

I find Section 1 of the Bill to be accurate and in line with the information that I have reviewed regarding the lots situated in the northwest region of the island, near Ritidian Point. The attitude of the military government of Guam in the early post-war years toward land and the rights of landowners in Guam is clearly evident in the disregard of both exhibited during that period of land occupation and condemnation. What is most disturbing to me in this is that this attitude seems to have changed very little in the intervening decades since civilian government was established here, with the Air Force now apparently ignoring the Congressional mandate to make their aging dump sites safe; perhaps the Air Force

is not aware that the American people who they profess to defend have adopted a more enlightened view of human rights over the last thirty years, particularly toward the oppressed peoples of less-developed and non-self-governing places.

With regard to the economic assessment proposed in the Bill, I believe that this is desirable and would be a valuable exercise, but I would like to alert you to the fact that no such assessment will ever be complete because of the wide-ranging nature of the economic impacts of long-standing interference with access rights; many of the effects will simply be unmeasurable. Nevertheless, those impacts which can be incontrovertibly shown will be both large and negative, having been the result of one of many constraining practices of the military here that have so strongly inhibited the economic growth of Guam and left her citizens so far behind the rest of the nation in standards of living until just recently. I would like to point out that, among other things, the economic assessment should take into account all of the costs incurred by landowners in the area in attempting to gain unrestricted access to their land; it should include the loss of potential revenues to the landowners and to the government because of the de facto prohibition of commercial and residential development of these large tracks of prime real estate; it should incorporate an estimate of the economic costs of the environmental damage done over the years by the irresponsible neglect of public health and safety by the Air Force and the Navy in the area, and it should attempt to address the loss of income and the corresponding tax revenues due to the lack of meaningful employment opportunities over the span of four decades because of the thoughtless abandon with which the Air Force has abused private property rights. This last will be difficult and speculative at best. Even more difficult will be the attempt to assess the defense benefits obtained by the people of the several States, with no compensation to the people of Guam, from the captivity of this private property under the auspices of a defense mission which barely even pretends to be of any use to the U.S. citizens living

in this remote American colony. Of course, these benefits should be included in any economic assessment, but in this case they will be of more than the usual importance if it is determined that Guam should seek adjudicated damages for wrongful actions on the part of the United States government over the years.

I find the comparison of the land situation in Northwest Guam to the earlier situation in Tumon to be astute and adroit, placing the policy issues of Bill 1671 into perspective. Were it not for the acquiescence of the military in allowing the civilian retention of Tumon Bay and its shoreline, Guam's economy today would be much the same as it was before 1967: we would be almost entirely dependent upon the "altruism" of the United States government and upon the few military jobs that would be accorded to the resident civilian population here. We would be poor. Our youth would still have no meaningful career opportunities other than to join the armed forces (certainly a high aspiration), public services would be far more deficient than they are today, and the people of Guam would not have the political leverage necessary to assert their interests in the national and international forums to which we now have access on a regular basis.

I would like to point out that the lands in Northwest Guam should provide even greater benefits to our populace than has Tumon Bay. As Tumon developed, Guam did not have the luxury of careful planning, gradual development or cultural preservation. We were willing to suffer substantial losses in social, cultural and environmental terms in order to create the economic prosperity that we experience today. The lands near Ritidian Point, on the other hand, remain pristine (with the obvious exception of the eleven acres of hazardous waste). They are replete with intact historical and archeological sites that will be of immense value to the Chamorro people and their cultural heritage for generations to come. These lands can and presumably will be developed in accordance with the lessons that we have learned from our mistakes in Tumon Bay because we now have the knowledge and the resources



to take a more careful approach to our next major tourism and commercial development zone. I hope that this Bill has the ultimate effect of bringing a greater degree of structure to our economic development efforts.

I would like to make a minor technical note to my testimony on Section 1 of the Bill: the square brackets on lines 23 and 25 of page 2 should be replaced with parentheses.

With regard to Section 2 of the Bill, I am somewhat puzzled. By my reading, paragraph (c) of the new 12 GCA §2936 would seek the recovery of all land taken by the United States in Guam during and after World War II. Although I am not qualified to express a judgement as to the propriety of this objective, it has long been my understanding that the objective of the people of Guam (as evident in the proposed Commonwealth Act and in other initiatives) was to recover only that land which is held idle by the U.S. government here, along with just compensation for those lands that are actually in use by the Department of Defense and other federal agencies; it was not my understanding that the people sought the return of all land taken after the U.S. reoccupied Guam in 1944. This is of some concern to me, since the enormous transition that would occur in this event would cause massive, albeit temporary, disruption in our economy and society. Perhaps I have misread this paragraph, and it refers only to expeditiously dealing with land which is intended to be returned to civilian control; if so, it may be wise to clarify the point so that it is not misconstrued by some well-intentioned bureaucrat in the future.

There is also a technical note to be made in Section 2. On line 11 of page 4 of the Bill, the reference to P.L. 16-11 should be a reference to P.L. 16-111. I know that the Compiler of Laws would have caught and corrected this typographical error, but with Bills numbering so many in this Legislature, perhaps we can give him some assistance with his considerable tasks.

Although I have no direct and specific comments regarding the remaining eight Sections of Bill 1671, I would like to point out that the appropriation and the authorization for appropriation to GEDA's general operating fund in Sections 4 and 5 do not have any corresponding uses in the Bill. Unfortunately, the copy of 12 GCA to which I have access omits §§2901 through 2911 (referenced in Article 9A of the Chapter as having predated P.L. 17-52, leading to that statute's provisions being renumbered, but indicated as additions by P.L. 17-52 in the index of Sections Affected in the Session Laws of the Eighteenth Guam Legislature), so I was unable to discover other uses to which these funds might be put in the existing provisions of Article 9. I would like to recommend, though, that the wording of Sections 7, 8 and 10 of Bill 1671 be modified to allow for the use of these current and prospective appropriations for the purposes set forth therein. This would allow a more clearly identified source of funding for the activities which the Bill anticipates the Authority will pursue.

As a final technical note, it may be of value to append a severability clause and an effective date Section to the end of Bill 1671 so that its purposes cannot be undermined by those who rely upon the literal interpretation of the law. These would make the Bill complete.

In closing, I would like to mention that, as a professional government economist, I am usually adamantly opposed to the designation of public monies for expenditure in the furtherance of private purposes. However, this is a special case: the private landowners in Northwest Guam who will benefit from the passage of this Bill have been doing battle for a long time with powers that overwhelmingly outweigh them. They have fought these battles consistently, without turning away for a moment, and I firmly believe that any just government or society has the responsibility to step in and assist one of its own in circumstances such as this. Given that the Government of Guam also stands to benefit directly in terms of recovered lands from the successful accomplishment of

the objectives of this Bill, and particularly given that the government also stands to significantly expand its tax base from the development of the lands (both public and private) that are the subject of this legislation, I feel that it is not only appropriate to expend public funds for the desired purpose, but that this should have commenced years ago. Therefore, I applaud the sponsor of Bill 1671 for introducing this important issue before the Legislature, and I commend this Committee for taking an active interest in the Bill's content, as evidenced by this public hearing.

I thank you, Mr. Chairman, for your invitation to address this forum today, and for the opportunity to do my small part toward improving the lot of the people of Guam in their ongoing relationship with the forces of the government of the United States of America. If you have any questions which I might answer or if you would like explanation of or elaboration upon any of the points that I have made in this testimony, please do not hesitate to ask.

A handwritten signature in cursive script that reads "Joe Bradley".

Joseph Paul Bradley



# GUAM ECONOMIC DEVELOPMENT AUTHORITY

# GEDA

ATURIDAD INADILANTON IKUNUMIHA GUAHAN

TESTIMONY ON BILL NO. 1671:  
AN ACT TO ADD NEW 12 GCA §§2936 THROUGH 2943  
INCLUSIVE, RELATIVE TO LAND CLAIMS AND  
LANDOWNERS RECOVERY, TO BE KNOWN AS  
THE "NORTHWEST TERRITORY OF GUAM ACT".

October 11, 1990

Mr. Chairman and Members of the Committee on Ways and Means, my name is Charles P. Crisostomo, Administrator of the Guam Economic Development Authority. On behalf of the GEDA Board of Directors, it is my pleasure to present testimony today fully endorsing Bill 1671. The Authority is both willing and eager to accept the responsibilities conveyed in this Bill and pledge a long term commitment to fulfilling the purposes as set forth.

GEDA agrees with the finding of the Legislature in Bill 1671, that the over 40 years of restricted access by private landowners in this area has caused them severe hardships. GEDA additionally agrees that restricted access to 86 acres of public property has further deprived all the people of Guam of this resource.

In careful review of this Bill, we provide the following comments by Section:

Section 1: We agree with the findings of Bill 1671 by the Guam Legislature particularly the recognition that substantial future economic expansion potential rests with the successful recovery of public rights of way in the northwest region of Guam.


Section 4: GEDA generally agrees with the amount of funds appropriated to the Landowners Recovery Fund and to GEDA as sufficient to begin the extensive amount of work required.

Section 5: The Authority also generally agree with the amount of funds authorized for appropriation in this Section, with recognition that the full costs for this effort remains unclear.

Section 6: GEDA supports the mandate of this Section to lease Lot No. P04.1 Machanao from the Government of Guam and will consider development of these properties in accordance with the Comprehensive Development Plan which is currently being prepared.

Sections 7 & 8: The Authority recognizes that the preparation of environmental impact and economic impact appraisal studies of this military dump site referenced will be an expensive undertaking. We suggest that the language of Sections 7 and 8 allows the use of funds referenced in Sections 4 and 5 of this Bill for such purpose.

In conclusion we reiterate GEDA's full support of Bill 1671 in order to correct past inequities and provide growth opportunities for the future.



CHARLES P. CRISOSTOMO



# GUAM ENVIRONMENTAL PROTECTION AGENCY

AHENSIAN PRUTEKSION LINA'LA GUAHAN

POST OFFICE BOX 2999 AGANA, GUAM 96910 TELEPHONE: 648-8863/64/65

OCT 11 1990

Honorable Carl T.C. Gutierrez  
Chairman, Committee on Ways and Means  
Twentieth Guam Legislature  
155 Hernan Cortez, Pacific Arcade  
Agana, Guam 96910

Dear Senator Gutierrez:

We have reviewed the Northwest Territory of Guam Act as proposed under Legislative Bill No. 1671. Although we are supportive of the intent of most aspects of this Bill, we wish to offer the following comments relating to Guam E.P.A.'s mandate to assess military hazardous waste dump sites under Section 7 of the Bill.

Section 7 of this Bill directs the Guam E.P.A. to fully assess the adverse environmental impact of hazardous waste dump sites established by the military on currently owned public and private lands. However, there is presently a Federal law entitled the Defense Environmental Restoration Act (DERA) which mandates the Army Corps of Engineers to assess and, if necessary, mitigate solid and hazardous waste disposal sites on formerly owned Department of Defense properties within the states and territories.

It is our position that Section 7 of Bill No. 1671 will require the Guam E.P.A. to duplicate the efforts which are required to be undertaken by the Army Corps of Engineers under the DERA. Moreover, we feel that it is a legal obligation of the Federal Government rather than the Government of Guam, to expend the necessary funds to assess the environmental impact of dump sites created by military activities on public and private lands.

We are appreciative of the opportunity provided to our Agency to review and comment upon Bill No. 1671.

Sincerely,

FRED M. CASTRO  
Administrator



**Territory of Guam**  
**OFFICE OF THE ATTORNEY GENERAL**  
**Division of Compiler of Laws**



Elizabeth Barrett-Anderson  
 Attorney General  
 Charles H. Troutman  
 Compiler of Laws

Phone: (671) 472-8841-4  
 Fax: (671) 472-2493

October 22, 1990

Honorable Carl T.C. Gutierrez  
 Chairman  
 Committee on Ways and Means  
 Twentieth Guam Legislature

Agana, Guam 96910

Re: Bill 1671

Dear Senator Gutierrez,

While this letter is strictly my own, and does not represent either the Attorney General nor the Administration, I do want to make some suggestions regarding Bill 1671, relative to the Northwest Area Land Claims.

First, I agree that we must take action. Time is wasting. However, it may be that too much time has gone by. In 1986-87, the Legislature authorized Howard Trapp to file suit to regain the Utilities withheld by the U.S. government after the Organic Act. The Ninth Circuit ruled that there was a 12 year statute of limitations, and that for Guam it began in 1970. Of course, we are dealing with a quite different action here, so our chances of success may be greater. Still, this is one matter which must be researched.

Second, I strongly believe that the Attorney General, not GEDA, should be in charge of any legal action taken with respect to Government of Guam land or rights-of-way involved. This involvement may be either done in-house or through outside counsel, but it is not a matter for GEDA! The Legislature has been too ready, at a much greater cost, to permit the legal affairs of the Government to be channelled away from the Attorney General.

GEDA can handle legal matters directly related to its own affairs, but matters of overall governmental interest should be handled by the Attorney General. Likewise, general governmental affairs should not be channelled to GEDA just for the sake of having them handle it!

Sincerely yours,

*Charles H. Troutman*

CHARLES H. TROUTMAN

ACKNOWLEDGMENT OF RECEIPT

DATE: 10-22-90

TIME: 3:20 AM

BY: *[Signature]*

October 10, 1990

Senator Carl T.C. Gutierrez  
Chairman, Committee on Ways & Means  
Twentieth Guam Legislature  
155 Hernan Cortez Avenue  
Pacific Arcade Building  
Agana, Guam 96910

**BILL NO. 1671: THE NORTHWEST TERRITORY OF GUAM ACT**

Dear Mr. Chairman and Committee Members:

Thank you for giving me this opportunity to testify in support of Bill No. 1671, The Northwest Territory of Guam Act.

Mr. Chairman, if enacted into law this measure would definitely resolve the long time denial of our free access into family property. Bill 1671 certainly addresses a very sensitive problem and highlights the frustrations experienced by the Castro and the Flores's families. This situation has existed more than four decades because the military here on Guam either is not making a positive move to seriously, and conciously resolve the problem or don't give a damn about the whole issue! Time has proven our problem is of the very least important to their military mission on our island.

You may be aware that all our families earned their total



livelihood, during the pre-war time, on income derived from their properties. I can imagine that this would have been more so following the American reoccupation of Guam. The irreparable damage resulting from continued U.S. Air Force denial of free access is hard to measure up to this point and time, but the amount is huge. However, let me give you some of the highlights surrounding our access problem.

My father, Luis Torres Flores owned Lot No. 9998 at Tarague which was condemned in 1950. Lot Nos. 9990 and 9991 were owned by Juan R. Castro and Lot No. 9992 was owned by Francisco R. Castro, respectively situated at Ritidian; both are my mother's brothers. Either route we take to get to our remaining Jinapson property, which was not condemned (via Anderson or Nav. Fac.), the military have us enclosed and at their mercy. However, Civil Case No. 29-62 established ingress and egress to private parcel nos. 8 and 9. Also, the Assistant Secretary of the Navy assured the Castro family access over and across Parcel No. 8 in his letter dated July 19, 1974. In other words, we have a court ordered, documented legal easement recognized by the Navy but denied our use. This policy decision rendered by the Assistant Secretary of the Navy, in my opinion, is nothing but garbage! I do not know how you would treat this matter, but the free access problem has existed too long without valid or justifiable reason. And to top it all, we are subjected to a pass to get to our property. This is a

very ironic situation, in that it is just like demanding a pass to get to your house. Therefore, I feel not only my constitutional rights have been grossly violated as a U.S. Citizen but also as a local property tax payer. I hope that this matter will soon come to an end through the help of your office. Certainly, if Bill No. 1671 is enacted into law, my family will use those resources it provides to force the military to uphold the lawful right of way and have been given by the Court. Your Bill is a good one and draws attention to a very unfair, illegal restrictions on both private and public property. Thank you very much for your concern.

Respectfully submitted,

  
DAMIAN FLORES



**GUAM CHAMBER OF COMMERCE**  
**PARTNERS IN PROGRESS**

October 11, 1990

Senator Carl T. C. Gutierrez  
Chairman, Committee on Ways and Means  
Twentieth Guam Legislature  
155 Hernan Cortez  
Pacific Arcade Building  
Agana, Guam 96910

Re: Bill No. 1671, "Northwest Territory of Guam Act"

Dear Senator Gutierrez:

Thank you for the opportunity to comment on Bill No. 1671 which you have introduced as the Northwest Territory Act.

In 1985, the Chamber supported the return of surplus federal land to the Government of Guam when it presented testimony to the Joint Economic Committee of Congress. In that statement, we pointed out our island's need for the use of the identified surplus federal land because of our limited resources, especially Guam's small land area, civilian population growth and the Government of Guam's civic responsibilities to provide commercial, industrial and residential facilities necessary to sustain and further induce island growth. While in Washington, we met with federal officials and urged that the access restrictions on the Artero family's Urunao property be removed.

Bill 1671 seeks to rectify the longstanding issues of restricted access to private and government land and the dumping of hazardous materials by the military. It also addresses the island's same needs with regards to the return of excess federal land holdings particularly the need to be able to utilize and develop idle areas of our limited land resources landlocked in military installations, and the owners' rights to develop their property within local land use guidelines. Because Bill 1671 addresses the issues related to access restrictions, we support the general intent of the bill.

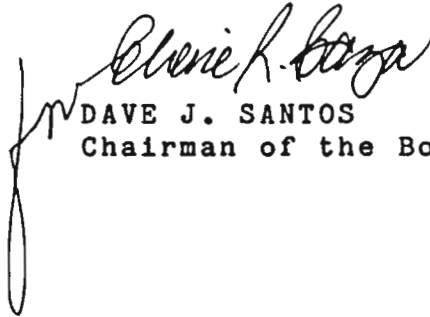
We would like to comment specifically on the provisions of the bill which authorizes GEDA to lease and develop approximately 86 acres of public land (Lot P04.1) for a marine theme park oriented to commercial, municipal and hotel projects. It has been the Chamber's longstanding position that government should not compete with private enterprise. Accordingly, it is our recommendation that the private landowners in the area first be consulted to see if they do not object to the leasing and development of government land for commercial purposes and that they do not compete with the proposed development projects of those private landowners.

We find that government land could be better utilized to provide affordable housing for the residents of Guam or for public parks and beaches or other public-sponsored projects such as the Territorial Aquarium. These are community needs which we suggest should first be addressed before the government engages in private development projects which could possibly compete directly with those proposed by private landowners in the same vicinity.

The Chamber supports the efforts of local families to remedy the problems they have had with their land. However, we oppose the use of tax revenues to finance the cost associated with landowner recovery involving privately-owned lands. As such, we recommend the deletion of those sections of the bill, specifically Sections 4 and 5, dealing with the appropriation and authorization of public funds for the purpose stated, in their entirety.

Thank you again for the opportunity to comment on the bill.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dave J. Santos", is written over the typed name. The signature is fluid and cursive, with a long vertical flourish extending downwards from the end of the name.

DAVE J. SANTOS  
Chairman of the Board

# Twentieth Guam Legislature

155 Hernan Cortez  
Pacific Arcade  
Agana, Guam 96910  
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Chairman, Committee  
on Ways & Means

Vice-Chairman, Committee  
on Tourism & Transportation

CARL T. C. GUTIERREZ  
Senator

September 25, 1990

## FOR IMMEDIATE RELEASE

The Chairman of the Legislature's Ways and Means Committee, Senator Carl T.C. Gutierrez, on September 25, 1990, introduced the legislation required for hundreds of acres of prime beach lands, located in Northwest Guam, to be opened for unrestricted recreational use and commercial development. Called the Northwest Territory of Guam Act, Bill No. 1671 seeks the elimination of undue U.S. Air Force restrictions at Potts Junction and beyond over Route 3 running to the shoreline and public beaches at Falcona, Urunao and Jinapson. Over 430 acres at Urunao Beach is Hotel Zoned but owner/developers are unable to develop the site because free public access to the area is severely restricted by the military. The USAF also maintains hazardous dumps in the same area that have not been cleaned up since World War II when live explosives and other hazardous material was recklessly strewn over eleven acres of the private parcel. In all, nearly 1,000 acres of Guam's tax base and real property is unuseable because of U.S. Air Force dumps and

interference with the centuries old public right-of-way known as the Ritidian Spur.

Public rights-of-way along Route 3, beyond Potts Junction to the cliff and shoreline beyond, were established well before the Spanish era and maintained throughout Spanish, American and Japanese occupations until falling under the jurisdiction of the Government of Guam following World War II, pursuant to the Organic Act of Guam. Armed U.S. Air Force sentries guard passage and restrict civilian access preventing passage to the public beach and shoreline beyond. "Miles and miles of public beaches remain restricted while military personnel frolic undisturbed in the sun and public's sand and surf," Gutierrez said.

Bill 1671 recalls the history of Tumon Bay which the U.S. Navy designated for condemnation as an exclusive military recreation area until outraged church and civil leaders protested and a military retreat from Tumon was finally called. "History has a way of repeating; our forefathers fought to recover Tumon and now we must follow the spirit of that tradition along the Northwest Passage," Gutierrez said.

**The Northwest Territory of Guam Act...**

1. Declares Route 3 open beyond Potts Junction to the cliffs and shoreline beyond thereby opening all public beach sites in the area.

2. Directs the Guam Economic Development Authority (GEDA) to immediately institute proceedings to recover public

rights-of-way along Route 3 and force military clean-up of the hazardous dumps.

3. Authorizes GEDA to lease and develop approximately eighty-six (86) acres of public land-locked beach land.

4. Orders GEDA and the Guam Environmental Protection Agency (GEPA) to cooperate in determining the adverse environmental and economic impact associated with restricted access and military dump sites.

5. Appropriates funds to permit private landowners legal and consulting services required to litigate their claims for land recovery.

Senator Gutierrez said, "For years the private landowners have struggled alone - millions have been spent and lost because the Air Force refuses to clean up its dumps and move off public rights-of-way. We have all been patient, but the military's neglect can no longer be tolerated. This is a significant public policy issue involving the environment government lands, Guam's tax base and the general public's rights-of-way all of which the Government of Guam is entrusted to protect. Private landowners should not have to fight this fight alone when all of Guam has a significant stake in the issue. It is time that the Government of Guam aggressively join this fight for our peoples' rights," Gutierrez concluded.

ooOoo

For info:  
Call 472-3408  
Office of Senator Carl T.C. Gutierrez

# Twentieth Guam Legislature

1989-1990  
1st Session  
September 1990

Chairman, Committee  
on Ways & Means

Vice-Chairman, Committee  
on Tourism & Transportation

C. M. F. C. GUTIERREZ  
Senator

September 25, 1990

Mr. Joe Murphy  
"PIPE DREAMS" COLUMN  
Pacific Daily News  
P. O. Box DN  
Agana, Guam 96910

ACKNOWLEDGMENT OF RECEIPT  
DATE: 9/26/90  
TIME: 8:45 am  
BY: Suzie E. Kelly

Dear Joe:

Thank you for your "Don't Dump..." column of September 14, 1990. Military waste dumping in the Pacific and on Guam must stop and we residents must vigorously protest until it does.

After World War II, the U.S. Air Force dumped explosives, tires, aircraft parts, incendiaries and other hazardous waste on eleven acres of private property in Northwest Guam. In 1985 the U.S. Congress ordered the Air Force Secretary to clean the hazardous dump sites up. To date, no clean-up has occurred from a war fought over forty-five years ago!

In frustration with the U.S. Military's failure to do its own K.P., I have introduced Bill No. 1671 to provide the Guam Economic Development Authority (GEDA) and the Guam Environmental Protection Agency (GEPA) the resources to sue, if necessary, to force the military to clean up its dangerous dumps. To make matters worse, the Air Force dumped its old bombs and other waste onto private property and to this date, has never compensated the landowners for loss of use of their land.

The fact the Air Force has established hazardous dumps on private land which remains a public menace is well known, even to the U.S. Congress. The fact of years of neglect is also notorious. Whatever pressure Guam



Publications can place on the military to force clean-up will help in implementing Bill No. 1671 when enacted into law.

For too long private landowners have fought in vain to have Guam's environment made clean and safe. The military dumps have become a public nuisance issue only because the military ignored the Congress. For this reason recourse to the courts now seems inevitable.

In a world where Exxon is compelled to clean up Prince William Sound and business people across the U.S. are going to jail for environmental crimes, it is not too much to expect the United States Government to set a clean, safe environmental example. Bill No. 1671 will help to see that they do, but it is a sad comment that we must prepare to sue and possibly litigate to get attention to a local dumping issue now approaching 50 years of age.

Sincerely yours,



**SENATOR CARL T.C. GUTIERREZ**  
Sponsor of Bill No. 1671,  
"Northwest Territory of Guam Act"

October 10, 1990

**FOR IMMEDIATE RELEASE**

**NORTHWEST TERRITORY OF GUAM ACT  
SCHEDULED FOR PUBLIC HEARING ON  
THURSDAY, OCTOBER 11, 1990**

The Chairman of the Guam Legislature's Committee on Ways & Means, Senator Carl T.C. Gutierrez, announced today that Bill 1671, known as the Northwest Territory of Guam Act, will be publicly heard at the Legislative Hearing Room in Agana, tomorrow, October 11, 1990, beginning at 9:00 a.m.

The Northwest Territory of Guam Act is a bill addressing military restriction at Potts Junction in Northwest Guam which presently prevents free public access and right-of-way beyond Potts Junction to the cliff and beachfront property which lies below known as the place of Urunao, Falcona and Jinapson.

The purpose of Bill 1671 is to establish a passage into the Northwest Territory. Additionally, Bill 1671 proposes the Guam Economic Development Authority to initiate litigation, if necessary, to force the military to clean up hazardous dumpsites which have existed on Lot 10080, Machanao, Guam, since the end of the Second World War. Bill 1671 would also authorize the Authority to litigate the Government of Guam's claim for a public right-of-way across the now restricted Potts Junction. Senator Gutierrez said, "I have introduced the Northwest Territory of Guam Act in order to secure passage across private and public rights-of-way now unduly restricted by the U.S. military. Research

reveals no federal government condemnation of rights of way beyond Potts Junction under eminent domain has occurred and that the right-of-way into Urunao and Jinapson falls under the jurisdiction of the Government of Guam. I also am seeking cleanup of hazardous military dumpsites which have littered private property in this area for decades."

In formulating Bill 1671, the Legislative Purposes indicate that the Congress of the United States directed the Secretary of the Air Force to clean up the military dumpsites in Machanao, Guam in 1985, but the Congressional cleanup order has been ignored and the dumpsites continue to be neglected. "Our forefathers fought and won the battle against condemnation of Tumon Bay which was originally designated an exclusive beach and recreation area to be limited to military personnel and their dependents. In our generation, the battleground has moved from Tumon, where we have proven our abilities to generate private sector activity, to the Northwest Territory, where this next generation's prosperity is sure to come from once the military removes unwarranted restrictions in the area and cleans up the hazards to the environment left behind from World War II," Senator Gutierrez concluded.

Among witnesses invited to testify to the public hearing are representatives of the Artero and Castro families who maintain large holdings of private property now landlocked by virtue of military restrictions as well as the Guam Urunao Development Corporation which proposes a world class resort in this vicinity. Economists, accountants and concerned private citizens who have

land claims have also been invited as well as representatives of the Guam Environmental Protection Agency and Guam Economic Development Authority who would administer the Act. Also, U.S. Military authorities representing the Departments of the Air Force and Navy have been invited to testify.

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# ARTERO REALTY

International Real Estate Marketing

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PUBLIC HEARING TESTIMONY OF TONY ARTERO IN SUPPORT  
OF THE CESSATION OF RESTRICTION ON ACCESS TO THE ARTERO  
URUNAO BEACH PRIVATE PROPERTY AND CESSATION OF OPPRESSION  
IN GENERAL TO PRIVATE PROPERTY OWNERS ON GUAM BY THE MILITARY

October 11, 1990

Chairman and Honorable Carl T. C. Gutierrez and members of the committee of Ways and Means, greetings and a warm hafa adai. My name is Antonio Torres Artero. I appear before you on my own personal behalf as a property owner and a tax payer.

I can say that I have, for 46 years, looked forward to this day. It is indeed a pleasure to testify in favor of Bill 1671. As a local Real Estate Broker and more so as the President of the Guam Board of REALTORS, and as a member of the Real Estate Commission, Government of Guam, I can better say with a quotation of President Abraham Lincoln when he said, "The Strength of a Nation Lies in the Homes of its People." Mr. Chairman and members of your committee, 800,000 plus REALTORS on Guam and nationwide and possibly every citizen of this great nation believe every word of of that quote.

Having said that, I like to bring your attention to the fact that idle lands are counterproductive. We cannot afford to continue to live with improper land restrictions. Land ownership makes people innovative and productive which increases the island's revenue and the prosperity of the community. But with the oppression enforced by the military, Guam essentially lies idle and becomes a welfare state.

Private Property Rights are inalienable rights protected by our Constitution and defended by the courts. The logical thing to do is to restore Private Property Rights. Our peace-loving nature is taxed beyond comprehension. But faith not despair is what we have in our great nation. Citizens are entitled to compensation when government regulations bar them, even temporarily, from using their property. Therefore, landowners must also be compensated justly for the damages of the denial of their property's economic use over the years.

To support my foregoing comments, I would like to express my observation on the life span of the people on Guam as it compares to the U.S. mainland. The average life span of the people here on our little island has a direct relationship to the issues on

Bill 1671. America had been bragging about the average life span of Americans getting longer and longer, while we on Guam are dying at a younger and younger age.

Although I do not wish for my life to expire at an earlier age than that of my parents, I fear the inevitable. My grandfather died at age 82 and my father at age 79. Two of my cousins have died, one in his 50s and the other in his 40s. I wouldn't be surprised if many more on Guam including other elected "leaders" would follow suit. We have already lost two young Senators namely: John Quan and Gene Ramsey.

I believe that the reason for this is obvious even to a casual observer. In pre WWII days, the people of Guam eat mainly locally produced foods that are freshly prepared daily. Mockingly, a Chamorro steak today are corned beef and Spam. We now rely heavily on imported canned and frozen foods including frozen vegetables and other fast foods.

I know that we cannot go back to the past but we can and must address and correct the problems created by wrong government actions that are now manifested in the expiring of the life of our people prematurely.

Our island Mayors are now brainstorming the idea of revitalizing agricultural activities that once made Guam self-sufficient for thousands of years. The reason why Guam has never recovered its food production capabilities is because the military selectively grabbed the economically viable and productive lands that were in use by local Chamorros. The military taking extends from the northern tip to within four miles of the southern end of the island.

Obviously we were once a proud, dignified agrarian society. But a good number of our people are now deprived of their possessions, divested of their honor and stripped of their dignity. It is no wonder that some of us depend on food stamps, welfare, and even crime as we become a gravely disadvantaged social group.

Guam's thriving local economy was crippled in WWII and has never recovered. It appeared as though the federal government wanted us to be unable to exist without their aid. This habitual, impervious unilateral attitude of the federal government is seen regularly in a multitude of isolated issues. Aside from the antiquated land restrictions and land misuse, we lock horns on issues relating to speaking the chamorro language, pollution control, immigration, electrical power generation, fresh water distribution, beetle nut importation and many others.

Imagine, in prewar days, ships calling on Guam were able to replenish their supplies of beef, pork, fowl, eggs, water, fruits, and vegetables. Today, ships bring all those commodities to Guam as Guam steers a course that was charted by the military during WWII with goals and objectives purely that of a military forward outpost. Now, one shipload of food not reaching Guam as scheduled would render us in critical shortage. Ironically, when that happens, the military, although the culprit, would be called upon to provide emergency humane assistance, coming through as heroes.

The fact that the military took control of Guam when the Chamorros were razed socially and economically and without any political power, only dramatizes the unjust and truly imperialistic acts of America. The Chamorro people are bonded together on this problem because their collective powerlessness made it possible for their land to be taken originally.

Since money motivates everything, it's no great wonder why outsiders with money are in control of choice properties. This of course, includes the powerful military who were even able to create a fictitiously low real estate prices to their advantage.

By taking large amounts of land out of circulation on Guam, the military has denied the Chamorro people the right and the opportunity to effectively participate in the economic recovery of their island after World War II. Instead, the military, supported by federal bureaucrats, has aided outside interest over the past 46 years to profit from the Chamorros who were made to be very poor. Some people were forced to sell what property they had left because they can't afford to pay the taxes. A good example is our Tumon Bay and the tourist industry. This situation is spreading to various other parts of the island.

Americans find "oppression" to be down right sadistic, ruthless, and brutal. What would one say upon learning that the U.S. military, under the auspices of "national defense interests," is oppressing Americans? Incredible? That's precisely the situation on Guam USA. To claim that conditions on Guam are normal is an out-right lie and the proofs are everywhere.

As far as Guam is concern, America has acted purely on its own terms, always looking after its own selfish interests. Categorically, all three branches of the federal government chose not only to ignore Guam but to treat Guam like an unwanted hot potato. America would just soon point its fingers at the wrongs of other countries, shifting the attention away from its own horrendous wrongdoings on Guam USA.

Guam, without a true representation, finds America unapproachable to deal with especially on the most basic and important issues. Of course, the Department of Defense, like the Department of Justice, always in the bosom of Uncle Sugar in Washington D.C., always have the final say even if their actions would only increase the deficit without any tangible or intangible gain.

"All power corrupts and absolute power corrupts absolutely." It's on account of absolute power that our rights have been alienated. The U.S. military on Guam needs a wake-up call. They need to be alerted to the fact that the biggest part of their strategic plan for the defense of America is by oppressing the Chamorro people on Guam.

I find it utterly repulsive and I am totally frustrated by the oppressive powers of the military on Guam. The military, using oppressive powers together with the insensitive bureaucrats in Washington D.C., orchestrated unilateral acts for the past 92 years sanctifying the violation of private property rights and the plundering of the Chamorro people on Guam.

It is not the position of the military to grant us our rights to our property. We had that right all along and that right was suppose to be even made sacred after we became U.S. citizens in 1950. The position of the tax funded military is to protect the inalienable rights of its citizens, not take them away by force at our weakest moment.

I know that on this issue I am standing up for what I know is right. I, and a lot of people on this island, in this country, and worldwide deplore this blatant use of military might and violation of one's basic rights.

In the case of the Artero Family however, my father had told me that the Congressional Medal of Freedom awarded him by President Truman for his bravery in harboring George Tweed, a U.S. Navy Radioman throughout WWII, "turned out to be a slap on the face." Practically all the Artero family lands, including the area where Tweed was kept, were seized by the military taking away our livelihood with unjust to no compensation.

The will in the estate of the Artero Family on this island in the sun, would have included: Upi, now known as Andersen Air Force Base and Toguac, now known as Naval Communication Station. The Urunao Beach property in retrospect was the appendix of our estate. That appendix has now become a major holding after the primary holdings were taken by force, again, without just compensation. We waited patiently and prayed for deliverance, but 46 years have passed and America continues to ignore our plea, while we continue to pay our real estate tax.



## SANCTIFIED EXTORTION AND PLUNDERING, A PEOPLE TRAGICALLY ROBBED

Collectively as a nation, we must reactivate our concern for the maximum and best utilization of our soil and resources for quality food on our dinner tables. Guam's dependency on importation of food is dismal, to say the least. That dependency and the dependency for various imported commodities and federal aid have a direct relationship with the fact that the local correctional facility is bursting at the seams. This is not progress but rather regression.


"We must remember that any oppression, any injustice, any hatred, is a wedge designed to attack our civilization." - Franklin Delano Roosevelt.

The actions of the Department of Defense on Guam in the violation of Private Property Rights is Indefensible! I like to appeal to someone in power with a backbone who will stand up for freedom and justice not just for the Artero Family, but for all the other families on Guam with similar problems.

Attached to this testimony is the amount owed the Artero family for the damages caused by the denial of the economic use of the Urunao Beach property.

## QUESTIONS THAT NEED TO BE ANSWERED

1. Underneath all is the land. If the land was not here, we wouldn't have a single issue. Private property rights are inalienable rights protected by the Constitution and defended by the courts, yet, it has been 46 years since the U.S. military violated property rights on Guam USA. Why haven't the people's representatives taken proper and expedient collective action in resolving this injustice?
2. Is it not the right to private property for every American?
3. Do you think that America should continue to abuse little Guam like the way a parent can abuse a child?
4. Are we forever to be the spoils of the "free?"



Tony Artero  
Principal Broker  
President, Guam Board of Realtors  
Member, Real Estate Commission, Government of Guam  
Submariner-U.S. Navy, Retired



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## DAMAGES OWED THE ARTERO FAMILY FOR DENIAL OF THE ECONOMIC USE OF THE URUNAO BEACH - A PRIVATE PROPERTY

See Graph and Compensation Schedule for additional information.

1. From 1944 to 1962 the increase in land value throughout Guam has been extremely low due to naval and air blockades imposed on Guam.
2. In 1947, the land value of Urunao Beach was estimated at \$3.19 per square meter for a total value of \$6,374,000.00.
3. Land value doubled in 1967 after the federal government lifted some restrictions and allowed tourism. This action was followed by liberal land value increases through at 30%.
4. During the worldwide oil crisis in 1974, the rate of increase in land value reduced, averaging around 12.4%.
5. In 1987 the land value was estimated at \$555,440,000.00 conservatively. The market condition had just started an aggressive upward trend.
6. In 1988, the Urunao Beach land value was estimated at \$1B. Market was very strong.
7. In 1989, the Urunao Beach property value was estimated at least \$2.2B.

Suggested solution to the problem:

1. All lands adjacent to and or part of Lot No. 10080, taken from the Artero Family by the military without compensation must be returned.
2. The compensation for the denial of ingress/egress and restrictions on quiet enjoyment, utilization, and development of the Family's property to be in accordance with the following conservative payment schedule.

The payment schedule is based on 10% of the property value per year plus a minimal of 3% interest per annum.

This compensation schedule is prepared by:

  
Tony Artero, REALTOR  
Real Estate Counselor  
Member, Real Estate Commission, Government of Guam  
Submariner-U.S. Navy, Retired

## Compensation Schedule for Losses in the past 44 Years

YEAR	%i	LAND VALUE	10% of VALUE	# OF YEARS	AMOUNT DUE w/
----	---	-----	-----	-----	-----
1947	3	\$6,374,000.00	\$637,400.00	44	\$ 2,340,183.70
1948	"	6,565,220.00	656,522.00	43	2,340,183.70
1949	"	6,762,176.60	676,217.66	42	2,340,183.70
1950	"	6,965,041.90	696,504.19	41	2,340,183.70
1951	"	7,173,993.20	717,399.32	40	2,340,183.70
1952	"	7,389,212.90	738,921.29	39	2,340,183.70
1953	"	7,610,889.30	761,088.93	38	2,340,183.70
1954	"	7,839,216.00	783,920.60	37	2,340,180.70
1955	"	8,074,392.50	807,439.25	36	2,340,183.70
1956	"	8,316,624.30	831,662.43	35	2,340,183.70
1957	"	8,566,123.00	856,612.30	34	2,340,183.70
1958	"	8,823,106.70	882,310.67	33	2,340,183.70
1959	"	9,087,799.90	908,779.99	32	2,340,183.70
1960	"	9,360,433.90	936,043.39	31	2,340,183.70
1961	"	9,641,246.90	964,124.69	30	2,340,183.70
1962	"	9,930,484.30	993,048.43	29	2,340,183.70
1963	"	10,228,399.00	1,022,839.90	28	2,340,183.70
1964	"	10,535,251.00	1,053,525.10	27	2,340,183.70
1965	"	10,851,308.00	1,085,130.80	26	2,340,183.70
1966	"	11,176,848.00	1,117,684.80	25	2,340,183.70
1967	D	22,353,695.00	2,235,369.50	24	4,544,045.90
1968	30	29,059,804.00	2,905,980.40	23	5,735,203.70
1969	30	37,777,745.00	3,777,774.50	22	7,238,606.60
1970	30	49,111,068.00	4,911,106.80	21	9,136,105.30
1971	30	63,844,389.00	6,384,438.90	20	11,531,007.00
1972	30	82,997,705.00	8,299,770.50	19	14,553,698.00
1973	30	107,900,000.00	10,790,000.00	18	18,369,253.00
1974	15	124,080,000.00	12,408,000.00	17	20,508,533.00
1975	15	142,690,000.00	14,269,000.00	16	22,897,556.00
1976	14	162,670,000.00	16,267,000.00	15	25,343,456.00
1977	14	185,440,000.00	18,544,000.00	14	28,049,464.00
1978	13	209,550,000.00	20,955,000.00	13	30,773,124.00
1979	13	236,790,000.00	23,679,000.00	12	33,760,592.00
1980	12	265,210,000.00	26,521,000.00	11	36,711,266.00
1981	12	297,040,000.00	29,704,000.00	10	39,919,692.00
1982	11	329,710,000.00	32,971,000.00	9	43,019,676.00
1983	11	365,980,000.00	36,598,000.00	8	46,361,251.00
1984	10	402,570,000.00	40,257,000.00	7	49,511,032.00
1985	10	442,830,000.00	44,283,000.00	6	52,876,218.00
1986	11	491,540,000.00	49,154,000.00	5	56,982,958.00
1987	13	555,440,000.00	55,544,000.00	4	62,515,261.00
1988	80.04	1,000,000,000.00	100,000,000.00	3	109,270,000.00
1989	100	2,000,000,000.00	200,000,000.00	2	212,180,000.00
1990	10	2,200,000,000.00	220,000,000.00	1	226,600,000.00

Total Compensation Due to Date ----- \$1,246,850,000.00

This graph is prepared by:

Tony Artero  
Principal Broker, REALTOR  
Real Estate Counselor  
NAR Director - Guam  
U.S. Navy Submariner - Retired

Property Value

449M  
390M  
360M  
330M  
300M  
270M  
240M  
210M  
180M  
150M  
120M  
90M  
60M  
30M

1947

{ Time period where property values  
were suppressed by the military }

6.4 7.4 8.6 9.9

22

11

83

179

278

82

77

72

66

67

62

57

52

Years the property was under the control of the U.S. Navy and the U.S. Air Force,

Introduced

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

DEC 18 '90

Bill No. 1671 (COR)

Introduced by:

  
C. T. C. GUTIERREZ

**AN ACT TO ADD NEW 12 GCA §§2936 THROUGH 2943, INCLUSIVE, RELATIVE TO LAND CLAIMS AND LANDOWNERS RECOVERY, TO BE KNOWN AS THE "NORTHWEST TERRITORY OF GUAM ACT."**

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1. Background and Legislative Intent.** By  
3 passage of P.L. 17-52, the Legislature found and determined the need for  
4 private landowners to pursue appropriate remedies to redress the harm  
5 done to landowners as individuals, and to Guam as a whole, when a very  
6 substantial percentage of the land on Guam was taken by the Naval  
7 Government of Guam or the Government of the United States through  
8 proceedings in eminent domain, or under threat of eminent domain,  
9 following World War II. P.L. No. 17-52 granted additional powers to the  
10 Guam Economic Development Authority (the "Authority") not otherwise set  
11 out in law to accomplish appropriate remedies. The Legislature hereby  
12 finds and determines that powers granted the Authority by P.L. No. 17-52  
13 are not adequate to address the needs of landowners, and that additional  
14 powers, not necessarily set out in 12 GCA §2103 or other Sections of this  
15 title must now be granted to the Authority to accomplish the legislative  
16 purposes set out in this Section and as provided by P.L. No. 17-52.

1           The Legislature recognizes that land takings have adversely affected  
2 nearly every family on Guam, inducing a macroeconomic transformation,  
3 dramatic social change, and severe reduction in the territorial  
4 government's tax base.   Moreover, the Legislature finds that the public  
5 well-being has suffered severely and continuously from the loss of the use  
6 of land taken by the United States in that the development of the non-  
7 military economy and future of Guam and its government's tax base has  
8 been constrained.   Among the particular interests of the Territory of  
9 Guam, revealed by on-going land claim proceedings, which have been  
10 adversely affected by restrictions imposed upon residents, are those  
11 restricting civilians attempting to exercise their long established right to  
12 make peaceful way across public rights-of-way leading to the ocean  
13 shoreline from Potts Junction at Routes 3 and 9 and beyond to the places of  
14 Falcona, Urunao and Jinapson.   The Legislature finds that the United States  
15 Air Force has unrepentently trespassed into legally established Guam  
16 public rights-of-way under the jurisdiction of the government of Guam by  
17 virtue of the Organic Act of Guam and by so doing, unduly restricts passage  
18 beyond Potts Junction along that portion of Route 3 known as the Ritidian  
19 Spur leading to government of Guam's land Lot No. P04.1, private Lots, No.  
20 10080 & 10081 and Lot Nos. 9992 through 9997 known as Jinapson,  
21 thereby adversely affecting nearly 1,000 acres of Guam's tax base,  
22 approximately 430 acres of which are zoned "Hotel Zone."  
23 [Notwithstanding loss of use and restricted access, resulting in limited  
24 municipal service throughout much of Machanao, private Landowners  
25 continue to be unfairly assessed Guam real property taxes.]

26           Moreover, the Legislature finds that the United States Air Force also  
27 trespassed onto prime private property and deposited hazardous waste

1 consisting of tires, aircraft parts, rusted drums, scrap metal, pots, pans,  
2 vehicle parts, AN-M50 Series incendiary bombs, M-89 and 90 target  
3 identification bombs, small arms, the remains of 100 lb. incendiary bombs,  
4 and other materials, rusted well beyond recognition. About one to two  
5 feet of coral fill was placed on explosive dump sites to cover the exposed  
6 dump material which otherwise remains today as highly dangerous  
7 landfill areas strewn over more than eleven acres of that portion of Lot No.  
8 10080 Machanao, Guam. Notwithstanding more than 45 years of neglect  
9 of these dangerous and polluted dump sites and specific U.S. Congressional  
10 clean-up directions issued to the Secretary of the Air Force, May 15, 1985  
11 with passage of the Military Construction Authorization Act of 1986, the  
12 clean-up of hazardous dump sites continues to be ignored.

13 The Legislature further finds that the Authority's administration of  
14 the Landowner's Recovery Fund has resulted in recovery by landowners of  
15 significantly higher compensation for prior land takings by the United  
16 States. For this, the Authority and land claimants are commended.  
17 However, land recovery in instances such as the Route 3 case cited above,  
18 beyond Potts Junction, remains outstanding. The Legislature finds and  
19 determines it is in the public interest to grant the Authority the additional  
20 powers required to recover the Guam public's right-of-way over all of  
21 Route 3, through and beyond Potts Junction and on to the lots beyond the  
22 landlocked lots at Falcona, Urunao, Jinapson & Lot No. P04.1, which run  
23 along the ocean shore.

24 Additionally, the Legislature finds and determines the public interest  
25 will be served by leasing unsurveyed Lot No. P04.1 identified by Land  
26 Square 4, Section 1, as Land Units a, b, i, j, k, & 1 from the government of  
27 Guam to the Authority, to develop as a marine theme park oriented to light

1 commercial, municipal and hotel projects, compatible with public beach  
2 and parklands, to be established and maintained for the benefit of the  
3 people of Guam and Guam's visitors.

4 The Legislature finds the adverse economic impact of undue military  
5 restriction of peaceful civilian access to and development of public and  
6 private landlocked parcels is considerable and that an economic impact  
7 appraisal study is necessary to fully appraise this impact.

8 The Legislature also finds the adverse environmental impact of  
9 unclean, unsafe military hazardous waste dump sites is also considerable,  
10 and that it is necessary for the Guam Environmental Protection Agency to  
11 report this adverse impact to the Guam Legislature, following a study to be  
12 performed under agreement with the Authority.

13 Upon determination of the economic and environmental damage  
14 done to private landowners, to the government of Guam, and to Guam as a  
15 whole, resulting from long term loss of use due to unduly restricted access  
16 and to the maintenance of unsafe land polluting dumps, it is desirable that  
17 the Authority is authorized and directed to seek recovery of land rights in  
18 land and all costs due private landowners and the government of Guam.  
19 The proceeds of this recovery are to be earmarked for the Authority's  
20 development of parkland, beach and public amenities at Lot P04.1. That  
21 Lot should thereby be placed under the jurisdiction of the Authority.

22 The Legislature finds and determines that the delay practiced by the  
23 United States in correcting the access and dump site problems in  
24 Northwest Guam is unconscionable and therefore requires the vigorous  
25 assertion of public interest by the government of Guam. Furthermore, the  
26 Legislature, in conferring additional powers on the Authority to take this  
27 initiative, recalls the history of Tumon Bay which was once designated, in



1 its entirety, for condemnation by the United States as an exclusive military  
2 recreation area. The condemnation of Tumon Bay was protested by  
3 leaders of the Diocese of Guam, and the business and professional  
4 community of Guam and subsequently, in response to this protest, was  
5 reluctantly abandoned by military authorities. At the time of civic protest  
6 against the condemnation of Tumon Bay, not a single public beach would  
7 have remained accessible to Guamanians. All the beaches were  
8 designated either off limits because of military activities, or for the  
9 exclusive use of military personnel.

10 Had Tumon Bay been condemned, the site of the Christian  
11 Martyrdom of Father San Vitores, and the shrines at that location in  
12 respectful memory thereof, would have been forever off limits to the  
13 religious and faithful of this territory. Had Tumon been condemned, no  
14 park for Guam's youth nor beaches for Guam's public would have been  
15 available to the civilian population. Moreover, from an economic point of  
16 view, the entire visitor industry of Guam would have had no site upon  
17 which to build. In the late 1940's, when the condemnation of Tumon was  
18 protested, the outraged leaders of the people of Guam recognized that the  
19 exclusive prerogatives enjoyed by the U.S. military were of less public  
20 interest to the territory of Guam than open general access to beach and  
21 recreation areas would be. Accordingly, the Legislature finds that the  
22 opening of shoreline resources at Falcona, Urunao, Jinapson, and the  
23 government of Guam Lot P04.1 would, for the next generation, accomplish  
24 the same economic, financial, recreational and public interest benefits to  
25 the territory of Guam that has resulted from the abandonment of  
26 condemnation and the end of U.S. Military restrictions over access to  
27 Tumon Bay. It is desirable that the Authority vigorously pursue the

1 interests of the people of Guam in ending all restrictions that deny public  
2 utilization and denies private land owners the opportunity to develop,  
3 enjoy and fully exploit the shoreline resources of Northwest Guam now  
4 frustrated by undue military restrictions of access and by the maintenance  
5 of hazardous dump sites which create pollution and danger for inhabitants  
6 and visitors to that area.

7 **Section 2. A new 12 GCA §2936 is added to read:**

8 **"§2936. Legislative Purpose for §§2936 through**  
9 **2943.** The purpose of the enactment of §§2936 through 2943 is to  
10 supplement and further the aims established under Chapter VI of Title  
11 LIV of the Government Code (P.L. 16-11; Chapter II, Section 21) and  
12 Article 9 of 12 GCA Chapter 2 (P.L. 17-52). The Legislature finds and  
13 declares:

14 (a) That the portion of Route 3 known as the Ritidian Spur, running  
15 from Potts Junction to the cliff and shoreline beyond, is a public right-of-  
16 way under the jurisdiction of the government of Guam; and

17 (b) That it is in the public interest to seek from the United States  
18 adequate remedies for private Guam landowners and for the government  
19 of Guam for the adverse public impact on Guam and its citizens resulting  
20 from land takings during and after World War II; and

21 (c) That it is in the public interest to investigate and pursue on  
22 behalf of all landowners, including the government of Guam when a party  
23 of interest in land, or as an owner of any rights in land including rights-of-  
24 way and rights to tidelands, the taking of any initiative reasonably  
25 necessary to secure the restoration of title, possession or rights in land  
26 taken by the Naval Government of Guam or by the United States during  
27 and after World War II; and

1 (d) That it is in the public interest to secure for all landowners  
2 proper and just compensation for use of lands from the time of taking until  
3 the time of actual return of land; and

4 (e) That it is in the public interest for landowners who desire to  
5 accept a settlement offer from the United States to be able to proceed with  
6 the necessary surveys, land valuations, legal work, consultant and support  
7 services already rendered or to be rendered in the future which will allow  
8 a settlement to take place."

9 Section 3. Subsection (a) of 12 GCA §2926 is hereby  
10 amended to read:

11 "§2926. As used in this Article:

12 (a) 'Landowner' means the government of Guam and  
13 any person who has or whose predecessors in interest had beneficial  
14 ownership of any land interest on Guam which interest was adversely  
15 affected by taking of the Naval Government of Guam or the United States  
16 Government between July 21, 1944 and [August 23,1963] September 15,  
17 1990, or the executor or administrator of the estate of such person;"

18 Section 4. A new 12 GCA §2937 is hereby added to  
19 read:

20 "§2937. Appropriations. (a) The sum of Two Hundred  
21 Twenty Thousand Dollars (\$220,000) is appropriated from the General  
22 Fund to the Landowner's Recovery Fund for the uses specified in this  
23 Article 9.

24 (b) The sum of Two Hundred Fifty Thousand Dollars  
25 (\$250,000) is appropriated from the General Fund to the general operating  
26 fund of the Authority for the uses specified in this Article 9.

1 (c) Notwithstanding any other provisions of law, the  
2 Authority is authorized and directed to utilize additional funds as are  
3 required and which are derived from the Authority's operations,  
4 commercial/industrial park lot rentals, or reimbursements, if any, to the  
5 Landowners Recovery Fund from the conclusion of 'Option 3' land claims  
6 litigation for the uses specified in this Article 9."

7 Section 5. A new 12 GCA §2938 is hereby added to  
8 read:

9 "§2938. Authorization for Appropriations. (a) There  
10 is authorized to be appropriated the sum of Four Hundred Ninety-Five  
11 Thousand Dollars (\$495,000) from the General Fund to the Landowners  
12 Recovery Fund for the uses specified in Article 9.

13 (b) There is authorized to be appropriated the sum of Seven  
14 Hundred Fifty Thousand Dollars (\$750,000) is hereby appropriated from  
15 the General Fund to the general operating fund at the Authority for the  
16 uses specified in Article 9."

17 Section 6. A new 12 GCA §2939 is hereby added to  
18 read:

19 "§2939. Lease. The government of Guam is authorized to  
20 lease to the Authority that unsurveyed government owned real property  
21 located in the Municipality of Machanao described as Lot No. P04.1  
22 Machanao, additionally described by Land Square 4, Section 1 as Land  
23 Units a, b, i, j, k, l adjacent to the place of Falcona, approximately eighty-six  
24 acres in size, identified in the Land Transfer documents received from the  
25 United States of America by the government of Guam dated February 26,  
26 1952, filed March 30, 1953 as Document No. 25219 recorded with the  
27 Department of Land Management, government of Guam, for One Dollar

1 (\$1.00) per year for ninety nine (99) years to be administered, maintained  
2 and used by the Authority as a marine theme park oriented to light  
3 commercial, municipal and hotel projects, compatible with public park and  
4 beach-lands, to be established and thereafter maintained by the Authority  
5 for the benefit of the people of Guam and their visitors."

6 **Section 7. A new 12 GCA §2940 is hereby added to**  
7 **read:**

8 **"§2940. Environmental Impact Study. The Guam**  
9 **Environmental Protection Agency is hereby directed to carefully study,**  
10 **determine and then report the full scope of the adverse environmental**  
11 **impact of unclean, unsafe military hazardous waste dump sites to the**  
12 **Guam Legislature, following a study to be performed under funds to be**  
13 **provided by agreement with the Authority. The Authority is authorized**  
14 **to use funds earned by the Authority from industrial parkland rentals or**  
15 **other operations for this purpose."**

16 **Section 8. A new 12 GCA §2941 is hereby added to**  
17 **read:**

18 **"§2941. Appraisal Study. The Authority is directed to**  
19 **produce an economic impact appraisal study to appraise the impact of**  
20 **undue military restriction upon peaceful civilian access to and**  
21 **development of public and private landlock parcels in Northwest Guam.**  
22 **The Authority is authorized to use funds earned by the Authority from**  
23 **industrial parkland rentals or other operations for this purpose."**

24 **Section 9. A new 12 GCA §2942 is hereby added to**  
25 **read:**

26 **"§2942. Authorization for use of Proceeds Resulting**  
27 **from the Authority's Receipt of Damage Claims Awards, if any.**

1 Upon determination of the adverse economic impact and damage done  
2 private landowners and the government of Guam resulting from long term  
3 loss of use due to unduly restricted access and the maintenance of unsafe  
4 land polluting dumps, the Authority is authorized and directed to seek  
5 recovery of land, public rights in land, and all costs due private  
6 landowners and the government of Guam. The money proceeds of this  
7 recovery, if any, are earmarked for the Authority's development of  
8 parkland, beach and public amenities at Lot P04.1. Lot P04.1, more fully  
9 described in §2938 of this Article is placed under the jurisdiction of the  
10 Authority."

11 **Section 10. A new 12 GCA §2943 is hereby added to**  
12 **read:**

13 **"§2943. Professional Services.** The Authority is  
14 directed to represent the government of Guam as the real party in interest  
15 to maintain any appropriate cause of action for claims for return of public  
16 rights-of-way, for damages, or injunctive or any other cause of action or  
17 appropriate relief in connection with military dump sites in Northwest  
18 Guam and is directed to retain special legal counsel and appraisal,  
19 economic, land survey, engineering and environmental consultants, if and  
20 as required, to accomplish the purposes of this Act.

21 The Attorney General of Guam, the Director of Land Management and  
22 the Administrator of the Guam Environmental Protection Agency shall  
23 provide the Authority their full cooperation in the implementation of the  
24 provisions of §§2936 through 2943 of this Article."