



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
UEFINAN I MAGA LAH
AGANA, GUAM 96910 USA

COM-
 Rec'd by: BC Date: 4/21
 Routing: _____ Date: _____
 Jackie Blas _____
 Action: _____

APR 20 1994

Frank Blas

The Honorable Herminia D. Dierking
Acting Speaker, Twenty-Second Guam Legislature
155 Hessler Street
Agana, Guam 96910

Dear Madame Speaker:

Transmitted herewith is Bill No. 845, which has been designated as Public Law
No. 22-111.

Sincerely yours,

FRANK F. BLAS
Governor of Guam
Acting

220640

Attachment




Commonwealth Now!

✓

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 845 (LS), "AN ACT TO AMEND §§2936 AND 2944 OF TITLE 12, GUAM CODE ANNOTATED, AND TO ADD A NEW §2946 TO SAID TITLE TO PROVIDE FOR A SPECIAL LITIGATOR TO REPRESENT THE PEOPLE OF GUAM IN GAINING ACCESS TO GOVERNMENT OF GUAM LAND LOCATED IN NORTHERN GUAM AT FALCONA, AND TO CHALLENGE THE DESIGNATION OF LAND ON GUAM AS A CRITICAL HABITAT OR WILDLIFE REFUGE; AND TO ADD A NEW SECTION TO CHAPTER 30, TITLE 5, GUAM CODE ANNOTATED, TO AUTHORIZE THE ATTORNEY GENERAL TO PURSUE MARITIME LITIGATION," returned to the Legislature without the approval of the Governor, was reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 11th day of April, 1994, agree to pass said bill notwithstanding the objection of the Governor by a vote of two-thirds or more of all the members thereof, to wit: by a vote of twenty (20) members.




JOE T. SAN AGUSTIN
Speaker

Attested:



HERMINIA D. DIERKING
Senator and Acting Legislative Secretary

This Act was received by the Governor this 15th day of April, 1994, at 5:15 o'clock P.M.



Theresa F. Duenas
Assistant Staff Officer
Governor's Office

Public Law No. 22-111

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No. 845 (LS)
As substituted by Committee
on Ways and Means

Introduced by:

C. T. C. Gutierrez
H. D. Dierking
J. P. Aguon

T. S. Nelson
T. C. Ada
E. P. Arriola
J. G. Bamba
A. C. Blaz
M. Z. Bordallo
D. F. Brooks
F. P. Camacho
P. C. Lujan
M. D. A. Manibusan
V. C. Pangelinan
D. Parkinson
E. D. Reyes
J. T. San Agustin
F. E. Santos
D. L. G. Shimizu
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO AMEND §§2936 AND 2944 OF TITLE 12, GUAM CODE ANNOTATED, AND TO ADD A NEW §2946 TO SAID TITLE TO PROVIDE FOR A SPECIAL LITIGATOR TO REPRESENT THE PEOPLE OF GUAM IN GAINING ACCESS TO GOVERNMENT OF GUAM LAND LOCATED IN NORTHERN GUAM AT FALCONA, AND TO CHALLENGE THE DESIGNATION OF LAND ON GUAM AS A CRITICAL HABITAT OR WILDLIFE REFUGE; AND

TO ADD A NEW SECTION TO CHAPTER 30, TITLE 5,
GUAM CODE ANNOTATED, TO AUTHORIZE THE
ATTORNEY GENERAL TO PURSUE MARITIME
LITIGATION.

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

2 **Section 1. Legislative intent.** The Legislature finds that the government
3 of Guam is the representative of the people of Guam, and therefore has the
4 responsibility of protecting and furthering their interests in the unequal
5 struggle to gain access to both public and private land and the return of public
6 and private land in Guam which has been either in the possession of, or has
7 had its access blocked by, agencies of the government of the United States.
8 Large tracts of land in Guam have been in the hands of the United States
9 military since the end of World War II. Much of this land is still in the hands of
10 the military, other land is in the hands of the United States Fish and Wildlife
11 Service of the Department of the Interior, and still other land is in private
12 hands with public access either blocked or limited by the federal agencies. In
13 their struggle to gain access to their land, Guam's people have mortgaged
14 their homes and livelihood to hire legal and other services to redress their
15 wrongs. It is an unconscionable situation to let continue, without
16 government of Guam action. Although there is activity taking place within
17 the political process, through the Office of Guam's Delegate to Congress,
18 Robert Underwood, a parallel process can also take place in the legal arena.
19 The people of Guam, individually, will never have the resources to undertake
20 legal action against federal agencies. For this reason, the resources of the
21 government of Guam must be placed in the service of the people in their quest
22 to control the resources of their island. In addition, the Legislature wishes to

1 make it a matter of record that the people of Guam do not in any way wish
2 any land in Guam to be designated without their consent as a critical habitat
3 or wildlife refuge and that the action of the executive branch of the
4 government of Guam in approving such a designation is contrary both to the
5 best interests of the people of Guam and to their will.

6 Section 2. §2936 of Title 12, Guam Code Annotated, is amended to
7 read:

8 "§2936. Legislative purpose for §§2936 through 2943 of this
9 Chapter. The purpose of the enactment of §2936 through §2943 of
10 this Chapter is to supplement and further the aims established under
11 Chapter VI of Title LIV of the Government Code and Article 9 of
12 Chapter 2 of this Title. The Legislature finds and declares:

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

17 (b) That it is in the public interest to seek from the United
18 States of America adequate remedies for private Guam
19 landowners, and obtain for the government of Guam an
20 accounting of the adverse public impact on Guam and its
21 residents resulting from landtakings during and after World
22 War II; and

23 (c) That it is in the public interest to investigate and
24 pursue on behalf of all landowners, including the government
25 of Guam as an owner of any rights in land including rights-of-
26 way and rights to tidelands, the taking of any initiative

1 reasonably necessary to secure the restoration of title,
2 possession, or other rights in land taken by the Naval
3 Government of Guam or by the United States during and after
4 World War II; and

5 (d) That it is in the public interest to secure for all
6 landowners proper and just compensation for the use of their
7 lands from the time of taking until the time of its actual return
8 from the federal government; and

9 (e) That it is in the public interest for landowners who
10 desire to accept a settlement offer from the United States to be
11 able to proceed with the necessary surveys, land valuations, leg
12 work, consultant and support services already rendered or to
13 be rendered in the future which will allow a settlement to take
14 place; and

15 (f) That it is in the public interest to challenge the
16 designation of lands in Guam as a critical habitat or wildlife
17 refuge, and the transfer of lands in Guam to the U. S. Fish and
18 Wildlife Service of the Department of the Interior.

19 Section 3. §2944 of Title 12, Guam Code Annotated, is amended to
20 read:

21 **"§2944. Professional services. (a) Mandate to obtain services.**
22 The Authority shall represent the government of Guam as the real
23 party in interest to maintain any appropriate cause of action for
24 claims for return of public rights-of-way, for damages or injunctive
25 relief or any other cause of action or appropriate relief in connection
26 with military dumpsites, and for challenging the designation of

1 critical habitat and the establishment of a wildlife refuge in Guam,
2 and is directed to retain special legal counsel and appraisal,
3 economic evaluation, land survey, engineering and environmental
4 consultants, if and as required, to accomplish the purposes of this
5 Article. The Attorney General of Guam, the Director of Land
6 Management and the Administrator of the Guam Environmental
7 Protection Agency shall provide the Authority their full cooperation
8 in the implementation of the provisions of §§2936 through 2946 of
9 this Article.

10 (b) **Mandate to take action within thirty days.** Within thirty
11 (30) days of the effective date of the amendment adding this
12 subsection (b) to this section, the Authority shall obtain survey
13 services and accomplish the survey and mapping of public rights-of-
14 way in northern Guam known as Bahadan Gutos, Bahadan Uruno,
15 Bahadan Sagua, Bahadan Talisai, Bahadan Cotiez, Bahadan
16 Ritidian, and any other areas determined to be public rights-of-way.
17 Additionally, within thirty (30) days of the effective date of such
18 amendment, the Authority shall file a complaint on behalf of the
19 people of Guam and as the real party in interest for land registration
20 of the public rights-of-way set out in this subsection."

21 **Section 4.** A new §2946 is added to Title 12, Guam Code Annotated, to
22 read:

23 "§2946. **Special Litigator.** The Authority shall hire or retain an
24 attorney or law firm specifically to prosecute legal action on behalf
25 of the people of Guam as specified in §2944 of this Chapter. The
26 attorney or law firm retained by the Authority may hire, within the

1 level of appropriation made available for the Office of Special
2 Litigator, an additional attorney, attorneys, or a law firm, to assist
3 in the furtherance of the legal action authorized by §§2943 and 2944
4 of this Chapter. The Special Litigator shall be hired or retained by
5 the Board of Directors of the Authority within thirty (30) days of the
6 enactment of this section. Funds held within the Landowners
7 Recovery Fund, as well as appropriations made to the Authority
8 pursuant to §§2937 and 2938 of this Chapter, are to be used for the
9 purposes of §§2943 and 2944 of this Chapter. The Authority shall
10 enter, on behalf of the people of Guam, the ongoing litigation
11 initiated by private landowners to challenge the designation of land
12 in Guam as critical habitat or a wildlife refuge and is authorized to
13 make grants for this purpose. In the event such private landowners
14 receive monetary damages or any recovery of legal costs in the
15 course of such litigation, they shall reimburse the Landowners
16 Recovery Fund their *pro rata* share of such damages and costs that
17 the Court determines in such action represents the value of the
18 services to such landowners rendered by the Special Litigator."

19 **Section 5. (a) Authorization for Attorney General to pursue maritime**
20 **litigation.** A new section, to be given a number by the Compiler of Laws, is
21 added to Chapter 30 of Title 5, Guam Code Annotated, to read:

22 "§_____. **Authorization for the Department of Law to**
23 **pursue maritime litigation.** The Department of Law is authorized to
24 pursue litigation before the Federal Maritime Commission, and in
25 any court of competent jurisdiction, to challenge the reasonableness
26 of shipping rates established by the ocean carriers in the Guam trade.

1 This authorization shall continue until such time that the Attorney
2 General determines that the litigation is no longer in the best interest
3 of the territory.

4 (b) **Legislative intent for source of funding in subsection (c) of**
5 **this section.** Section 26 of Public Law 22-41, the General
6 Appropriation Act of 1994, appropriated Nine Million Five Hundred
7 Sixty Thousand Thirty-Eight Dollars (\$9,560,038) to the Government
8 of Guam Retirement Fund to pay for the increased contributions to
9 the Retirement Fund for all branches of the government as provided
10 for in the amendment to §8137 of Title 4, Guam Code Annotated,
11 made in Section 8 of Public Law 22-06. The Governor has been
12 applying the appropriations within the various departments and
13 agencies to fund this increase, thereby leaving an excess in the
14 appropriation in Section 26 of Public Law 22-41 which can be
15 redirected to use for the maritime litigation.

16 (c) **Reappropriation of Two Million Four Hundred Fifty**
17 **Thousand Dollars to Department of Law's Ocean Freight Rate**
18 **Legal Fund for legal fees and expenses in the continuation of the**
19 **Government of Guam's case before the Federal Maritime**
20 **Commission.** Two Million Four Hundred Fifty Thousand Dollars
21 (\$2,450,000) are reappropriated from the appropriation of Nine
22 Million Five Hundred Sixty Thousand Thirty-Eight Dollars
23 (\$9,560,038) previously made in Section 26 of Public Law 22-41 to the
24 Department of Administration for the payment of increased
25 contributions to the Government of Guam Retirement Fund as
26 mandated by law, to the Ocean Freight Rate Legal Fund, under the

1 Department of Law, for legal fees and expenses in the continuation
2 of the Government of Guam's case before the Federal Maritime
3 Commission challenging current shipping rates in the Guam trade.
4 Funds appropriated to the Ocean Freight Rate Legal Fund may be
5 utilized to accommodate billings for legal fees and expenses incurred
6 in prior fiscal years."

TWENTY-SECOND GUAM LEGISLATURE

1993 (FIRST) Regular Session

Date: 4/11/94

VOTING SHEET (AS REVISED)

Bill No. 845

Resolution No. _____

Question: shall B 845 be enacted into law, notwithstanding the objection of the Governor

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George				✓
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.	✓			
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.	✓			
NELSON, Ted S.	✓			
PANGELINAN, Vicente	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL 20 0 1



Territory of Guam
Territorio Guam

OFFICE OF THE GOVERNOR
UFISINAN I MAGA'LAHI
AGANA, GUAM 96910 U.S.A.

Recd. by Melva L. Lujan
April 1, 1994
5:00 pm.
Overridden 4/1/94
RECEIVED
OFFICE OF THE SPEAKER
DATE: 4/1/94
TIME: 8:00am
RECD BY: [Signature]

April 1, 1994

The Honorable Joe T. San Agustin
Speaker
Twenty Second Guam Legislature
Agana, Guam 96910

REFER TO
LEGISLATIVE SECRETARY
[Signature]

Dear Mr. Speaker:

Enclosed herewith is Substitute Bill No. 845 which I have vetoed in its entirety.

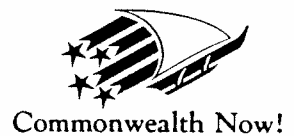
This administration has already taken action to accomplish the purposes of the bill. It is not necessary. This is especially true following this week's announcements that the Department of Interior has withdrawn its critical habitat proposal and the Department of Defense's proposes to excess additional land.

Under existing statutory mandates this administration has undertaken the following:

1. Access in the Northwest area of Guam:
 - a. In a settlement agreement in a civil lawsuit, the U.S. government has agreed to grant an easement across federal lands to the Artero/Aguero properties. The route has been identified and as soon as necessary environmental impact studies are completed, the U.S. will convey a permanent easement (with conditions) to the Government of Guam allowing public use.
 - b. Similarly, the U.S. has agreed to continue negotiation of a satisfactory access to the Flores/Castro properties. Environmental impact studies are required to complete negotiations for the best route.

Yesterday, the military informed us that Route 3A is identified as excess property in the Preliminary Land Use Plan II (GLUP II.) Assuming that the government of Guam acquires Route 3A then securing these and other easements assures us that access will eventually exist to government of Guam and private parcels.

It is in the public interest to expend funds to prepare whatever environmental studies, surveys and documents necessary to secure in this region as many public access easements as possible. Thus, the Guam Economic Development Authority has earmarked funds to do whatever is necessary to secure public access.



Mr. Speaker
Page Two
April 1, 1994

2. Designation of Critical Habitat:

In 1993 this Administration tried to intervene in litigation that sought the establishment of a critical habitat in Guam. Our attempt to intervene was denied by the Court because of a settlement agreement between the parties that required the Department of Interior to decide before March 31, 1994 whether or not to establish a critical habitat on Guam.

The Department of Interior has decided not to establish a critical habitat on Guam. The Departments of Interior and Defense have entered agreements establishing a wildlife refuge on federal lands. However, environmental groups may seek declaration of critical habitat once the Department of Interior's final decision is published.

Finding that a declaration of critical habitat is injurious to the territory of Guam, the Guam Economic Development Authority has earmarked funds to oppose anyone seeking the designation through litigation.

3. Establishment of a Wildlife Refuge

Research conducted by the Attorney General's office and Morrison & Forester, the off-island firm which represents Guam with respect to this issue, indicates that a judicial challenge to the establishment of a wildlife refuge by the federal government on its own land would not be successful. [See attached letter opinion.]

The establishment of a wildlife refuge is less onerous than critical habitat. Although likely to be appealed, a recent case from the U.S. Court of Appeals for the District of Columbia Circuit restricts the power of the federal government to place restrictions on the use of private lands to conserve the habitats of threatened plants and animals. If this case is sustained then it appears that the owners of private property in northwest Guam will be able to make use of their property with little federal interference.

The U.S. Secretary of Interior retains broad discretion in the management of wildlife refuges. The Secretary may decide to end a property's status as a refuge. He may alter the refuge's boundaries, i.e. what properties remain or are removed from the refuge. Thus, unlike with a critical habitat designation, the Secretary through administrative action may reduce the size of a refuge or otherwise change it.

The Guam Wildlife Refuge involves property held by the federal government and is governed by a Memorandum of Understanding and two Cooperative Agreements entered by various federal departments. The Government of Guam is not a party. Some of the lands within the

Mr. Speaker
Page Three
April 1, 1994

refuge have been proposed to be excessed under GLUP II. Should these lands revert to Guam then they need not remain in the wildlife refuge. The Cooperative Agreements provide in Paragraphs V.A.3.¹ that should title to the property leave the federal government then the successor would determine whether or not it will maintain the wildlife refuge status of the property.

Thus, Guam's battleground with respect to return of excess federal lands is in the Administration and Congress -- not in the Courts. Congressman Underwood has been asked to seek return of the excess property to Guam. He has indicated that he will introduce legislation to do so.

Litigation over the wildlife refuge designation will only waste government resources. A better use of these resources is supporting Congressman Underwood's legislation.

4. Research on Toxic Waste Sites:

The hazardous or toxic waste sites in the northwest area of Guam have been studied by the federal government. The Guam Economic Development Authority has earmarked funds to conduct any additional environmental studies of the toxic waste sites which are necessary to assure public health and safety. Under United States law, the U.S. must clean up such sites before returning them to Guam.

¹Paragraph V.A.3. of the Air Force and Fish and Wildlife Service Cooperative Agreement states:

Inclusion of Air Force lands within the Guam National Wildlife Refuge shall not preclude the Air Force from determining that those areas are excess to the military mission of the Department of Defense and reporting them as excess to the General Services Administration for disposition in accordance with the Federal Property and Administrative Service Act of 1949, as amended (40 U.S.C. 471-535). As to such Air Force lands, this Cooperative Agreement shall have no further application upon title passing from the Air Force under that Act or any other Act of Congress or Executive Order.

The Navy and Fish and Wildlife Service Cooperative Agreement's Paragraph V.A.3. is identical.

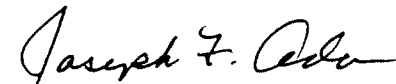
Mr. Speaker
Page Four
April 1, 1994

The Guam Economic Development Authority under its existing authority has taken actions necessary to protect the public interest. It has encumbered all available funds in pursuit of these actions.

Substitute Bill 845 requires GEDA to intervene in existing litigation (Civil Case No. 94 0667 SBA Northern District of Ca.) but it may not be in our best interest to do so. If the environmental groups file another lawsuit seeking designation of critical habitat then our resources are better spent in fighting in that forum. Since the Wildlife Refuge overlays only federal properties then public resources should not be wasted fighting what the federal government does on its own property. In the next few weeks we will have more information on what litigation, if any, Guam should enter.

Existing law is sufficient for the fulfillment of the stated purposes of Substitute Bill 845. Its enactment is not necessary.

Cordially,


JOSEPH F. ADA,
Governor of Guam

220603

MORRISON & FOERSTER

SAN FRANCISCO
LOS ANGELES
SACRAMENTO
ORANGE COUNTY
PALO ALTO
SEATTLE

ATTORNEYS AT LAW

PLEASE RESPOND TO:
P. O. BOX 8130
WALNUT CREEK, CA 94596-8130

NEW YORK
WASHINGTON, D.C.
DENVER
LONDON
BRUSSELS
HONG KONG
TOKYO

101 YGNACIO VALLEY ROAD, SUITE 450
WALNUT CREEK, CA 94596-4095
TELEPHONE (510) 295-3300
TELEFACSIMILE (510) 946-9912

DIRECT DIAL NUMBER

(415) 677-7124-Corash
(510) 295-3317-Morrison

March 28, 1994

VIA FACSIMILE

Ms. Madeleine Austin
Assistant Attorney General
Territory of Guam
Suite 2-200 E, Judicial Center Building
120 West O'Brien Drive
Agana, Guam 96910

**Re: Establishment of National Wildlife Refuge in
Territory of Guam**

Dear Ms. Austin:

You have asked for our views on the proposed establishment, by the United States Fish and Wildlife Service ("USFWS"), of a National Wildlife Refuge covering certain federally-owned land located in the Territory of Guam (the "Property"). The Property would include (i) approximately 370 acres to be transferred from the United States Navy to USFWS and (ii) approximately 22,130 acres to be managed as a wildlife refuge under military ownership.

The Secretary of the Interior ("Secretary") has broad authority to acquire and manage lands for the protection and conservation of fish and wildlife. Such authority exists under the Endangered Species Act of 1973, 16 U.S.C. §§1531-34, the Fish and Wildlife Coordination Act of 1956, 16 U.S.C. §§661-67e, and other laws. Such lands are administered by the Secretary (through the USFWS) under the provisions of 16 U.S.C. §668dd (the "Wildlife Refuge System Act").

Ms. Madeleine Austin

March 28, 1994

Page Two

While there are no cases squarely addressing the Secretary's authority to designate lands for inclusion in the National Wildlife Refuge System, cases examining the scope of the Secretary's authority under the National Wildlife Refuge System Act allow the Secretary broad discretion. See, e.g., Animal Lovers Volunteer Ass'n, Inc. v. Cheney, 795 F.Supp. 994 (C.D.Cal. 1992).¹ The absence of cases challenging designation is not surprising since the decision of the United States to place its own land within the System would appear, on its face, to be unreviewable. The case which comes closest to such a situation is Sierra Club v. Walter J. Hickel, 467 F.2d 1048 (1972), where the Sixth Circuit considered whether the Secretary had acted properly in conducting a land exchange that would result in the construction of a nuclear power facility adjacent to an existing National Wildlife refuge. The court held that, because the National Wildlife Refuge System Act gave the Secretary discretion to include and exclude lands from the National Wildlife Refuge System by exchange, the act was not reviewable under the Administrative Procedures Act (the "APA"). See 5 U.S.C. §701 et seq.

The Wildlife Refuge System Act was enacted in 1966 to "consolidat[e] the authorities relating to the various . . . areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction." 16 U.S.C. §668dd(a)(1) (emphasis added). Under the Wildlife Refuge System Act, "all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas" are designated as the National Wildlife Refuge System. Id. Lands may be included in the system by withdrawal, donation, purchase, exchange or pursuant to a cooperative agreement with any State or local government, any Federal department or agency, or any other governmental entity. See 16 U.S.C. §688d(a)(3). Once lands are included in the National Wildlife Refuge System, their use is restricted by the provisions of the National Wildlife Refuge Act and certain regulations promulgated thereunder by USFWS.

It is our understanding that the purpose of establishing a National Wildlife Refuge on the Property is to provide for the protection and recovery of certain endangered bird species that have suffered demonstrably from predation by the brown

¹ In fact, the exercise of the Secretary's discretion generally has been overturned only where the decision of the Secretary did not go far enough in protecting wildlife. See, e.g., Wilderness Society v. Babbitt, 5 F.3d 383 (1993) (USFWS not justified in allowing continued cattle grazing in the Hart Mountain Refuge).

MORRISON & FOERSTER

Ms. Madeleine Austin
March 28, 1994
Page Three

tree snake. We also understand that the Property will be under the management of USFWS pursuant to the terms of a March 4, 1994 Memorandum of Understanding between the Department of Defense and the Department of Interior, and that the proposed establishment of a refuge has been reviewed under the provisions of the National Environmental Policy Act, 43 U.S.C. §4321 et seq.

As noted above, the National Wildlife Refuge System may include "areas for the protection and conservation of fish and wildlife that are threatened with extinction." 16 U.S.C. §688d(a)(1). Based on our understanding of the facts of this matter, it appears that this language is sufficiently broad to accommodate USFWS' proposed establishment of a National Wildlife Refuge covering the Property. Even assuming there are persuasive arguments against such establishment, a court would not disturb any such decision by USFWS absent a clear abuse of discretion. Accordingly, any legal action to challenge such a decision (as being inconsistent with the National Wildlife Refuge Act) would be likely not to prevail.

Please call the undersigned if you have any questions or would like to discuss this matter further.

Very truly yours,

Michèle B. Corash /ks

Michèle B. Corash

R. Clark Morrison

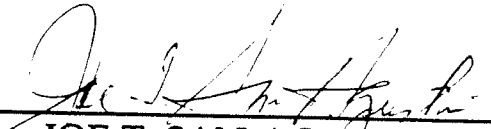
R. Clark Morrison

RCM:ks

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

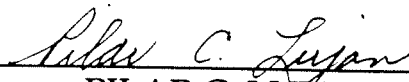
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 845 (LS), "AN ACT TO AMEND §§2936 AND 2944 OF TITLE 12, GUAM CODE ANNOTATED, AND TO ADD A NEW §2946 TO SAID TITLE TO PROVIDE FOR A SPECIAL LITIGATOR TO REPRESENT THE PEOPLE OF GUAM IN GAINING ACCESS TO GOVERNMENT OF GUAM LAND LOCATED IN NORTHERN GUAM AT FALCONA, AND TO CHALLENGE THE DESIGNATION OF LAND ON GUAM AS A CRITICAL HABITAT OR WILDLIFE REFUGE; AND TO ADD A NEW SECTION TO CHAPTER 30, TITLE 5, GUAM CODE ANNOTATED, TO AUTHORIZE THE ATTORNEY GENERAL TO PURSUE MARITIME LITIGATION," was on the 14th day of March, 1994, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



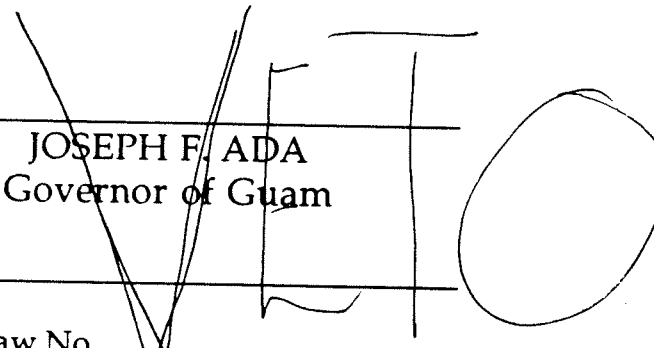
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 21st day of March, 1994, at
11:15 o'clock A.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: _____

Public Law No. _____

4/11/94

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No. 845 (LS)
As substituted by Committee
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Introduced by:

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- H. D. Dierking
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- T. V. C. Tanaka
- A. R. Unpingco

AN ACT TO AMEND §§2936 AND 2944 OF TITLE 12, GUAM CODE ANNOTATED, AND TO ADD A NEW §2946 TO SAID TITLE TO PROVIDE FOR A SPECIAL LITIGATOR TO REPRESENT THE PEOPLE OF GUAM IN GAINING ACCESS TO GOVERNMENT OF GUAM LAND LOCATED IN NORTHERN GUAM AT FALCONA, AND TO CHALLENGE THE DESIGNATION OF LAND ON GUAM AS A CRITICAL HABITAT OR WILDLIFE REFUGE; AND

TO ADD A NEW SECTION TO CHAPTER 30, TITLE 5,
GUAM CODE ANNOTATED, TO AUTHORIZE THE
ATTORNEY GENERAL TO PURSUE MARITIME
LITIGATION.

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

2 **Section 1. Legislative intent.** The Legislature finds that the government
3 of Guam is the representative of the people of Guam, and therefore has the
4 responsibility of protecting and furthering their interests in the unequal
5 struggle to gain access to both public and private land and the return of public
6 and private land in Guam which has been either in the possession of, or has
7 had its access blocked by, agencies of the government of the United States.
8 Large tracts of land in Guam have been in the hands of the United States
9 military since the end of World War II. Much of this land is still in the hands of
10 the military, other land is in the hands of the United States Fish and Wildlife
11 Service of the Department of the Interior, and still other land is in private
12 hands with public access either blocked or limited by the federal agencies. In
13 their struggle to gain access to their land, Guam's people have mortgaged
14 their homes and livelihood to hire legal and other services to redress their
15 wrongs. It is an unconscionable situation to let continue, without
16 government of Guam action. Although there is activity taking place within
17 the political process, through the Office of Guam's Delegate to Congress,
18 Robert Underwood, a parallel process can also take place in the legal arena.
19 The people of Guam, individually, will never have the resources to undertake
20 legal action against federal agencies. For this reason, the resources of the
21 government of Guam must be placed in the service of the people in their quest
22 to control the resources of their island. In addition, the Legislature wishes to

1 make it a matter of record that the people of Guam do not in any way wish
2 any land in Guam to be designated **without** their consent as a critical habitat
3 or wildlife refuge and that the action of the executive branch of the
4 government of Guam in approving such a designation is contrary both to the
5 best interests of the people of Guam and to their will.

6 **Section 2.** §2936 of Title 12, Guam Code Annotated, is amended to
7 read:

8 **"§2936. Legislative purpose for §§2936 through 2943 of this**
9 **Chapter.** The purpose of the enactment of §2936 through §2943 of
10 this Chapter is to supplement and further the aims established under
11 Chapter VI of Title LIV of the Government Code and Article 9 of
12 Chapter 2 of this Title. The Legislature finds and declares:

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

17 (b) That it is in the public interest to seek from the United
18 States of America adequate remedies for private Guam
19 landowners, and obtain for the government of Guam an
20 accounting of the adverse public impact on Guam and its
21 residents resulting from landtakings during and after World
22 War II; and

23 (c) That it is in the public interest to investigate and
24 pursue on behalf of all landowners, including the government
25 of Guam as an owner of any rights in land including rights-of-
26 way and rights to tidelands, the taking of any initiative

1 reasonably necessary to secure the restoration of title,
2 possession, or other rights in land taken by the Naval
3 Government of Guam or by the United States during and after
4 World War II; and

5 (d) That it is in the public interest to secure for all
6 landowners proper and just compensation for the use of their
7 lands from the time of taking until the time of its actual return
8 from the federal government; and

9 (e) That it is in the public interest for landowners who
10 desire to accept a settlement offer from the United States to be
11 able to proceed with the necessary surveys, land valuations, leg
12 work, consultant and support services already rendered or to
13 be rendered in the future which will allow a settlement to take
14 place; and

15 (f) That it is in the public interest to challenge the
16 designation of lands in Guam as a critical habitat or wildlife
17 refuge, and the transfer of lands in Guam to the U. S. Fish and
18 Wildlife Service of the Department of the Interior.

19 Section 3. §2944 of Title 12, Guam Code Annotated, is amended to
20 read:

21 "§2944. Professional services. (a) **Mandate to obtain services.**
22 The Authority shall represent the government of Guam as the real
23 party in interest to maintain any appropriate cause of action for
24 claims for return of public rights-of-way, for damages or injunctive
25 relief or any other cause of action or appropriate relief in connection
26 with military dumpsites, and for challenging the designation of

1 critical habitat and the establishment of a wildlife refuge in Guam,
2 and is directed to retain special legal counsel and appraisal,
3 economic evaluation, land survey, engineering and environmental
4 consultants, if and as required, to accomplish the purposes of this
5 Article. The Attorney General of Guam, the Director of Land
6 Management and the Administrator of the Guam Environmental
7 Protection Agency shall provide the Authority their full cooperation
8 in the implementation of the provisions of §§2936 through 2946 of
9 this Article.

10 (b) **Mandate to take action within thirty days.** Within thirty
11 (30) days of the effective date of the amendment adding this
12 subsection (b) to this section, the Authority shall obtain survey
13 services and accomplish the survey and mapping of public rights-of-
14 way in northern Guam known as **Bahadan Gutos, Bahadan Uruno,**
15 **Bahadan Sagua, Bahadan Talisai, Bahadan Cotiez, Bahadan**
16 **Ritidian,** and any other areas determined to be public rights-of-way.
17 Additionally, within thirty (30) days of the effective date of such
18 amendment, the Authority shall file a complaint on behalf of the
19 people of Guam and as the real party in interest for land registration
20 of the public rights-of-way set out in this subsection."

21 **Section 4.** A new §2946 is added to Title 12, Guam Code Annotated, to
22 read:

23 "§2946. **Special Litigator.** The Authority shall hire or retain an
24 attorney or law firm specifically to prosecute legal action on behalf
25 of the people of Guam as specified in §2944 of this Chapter. The
26 attorney or law firm retained by the Authority may hire, within the

1 level of appropriation made available for the Office of Special
2 Litigator, an additional attorney, attorneys, or a law firm, to assist
3 in the furtherance of the legal action authorized by §§2943 and 2944
4 of this Chapter. The Special Litigator shall be hired or retained by
5 the Board of Directors of the Authority within thirty (30) days of the
6 enactment of this section. Funds held within the Landowners
7 Recovery Fund, as well as appropriations made to the Authority
8 pursuant to §§2937 and 2938 of this Chapter, are to be used for the
9 purposes of §§2943 and 2944 of this Chapter. The Authority shall
10 enter, on behalf of the people of Guam, the ongoing litigation
11 initiated by private landowners to challenge the designation of land
12 in Guam as critical habitat or a wildlife refuge and is authorized to
13 make grants for this purpose. In the event such private landowners
14 receive monetary damages or any recovery of legal costs in the
15 course of such litigation, they shall reimburse the Landowners
16 Recovery Fund their **pro rata** share of such damages and costs that
17 the Court determines in such action represents the value of the
18 services to such landowners rendered by the Special Litigator."

19 **Section 5. (a) Authorization for Attorney General to pursue maritime**
20 **litigation.** A new section, to be given a number by the Compiler of Laws, is
21 added to Chapter 30 of Title 5, Guam Code Annotated, to read:

22 "§_____. **Authorization for the Department of Law to**
23 **pursue maritime litigation.** The Department of Law is authorized to
24 pursue litigation before the Federal Maritime Commission, and in
25 any court of competent jurisdiction, to challenge the reasonableness
26 of shipping rates established by the ocean carriers in the Guam trade.

1 This authorization shall continue until such time that the Attorney
2 General determines that the litigation is no longer in the best interest
3 of the territory.

4 (b) **Legislative intent for source of funding in subsection (c) of**
5 **this section.** Section 26 of Public Law 22-41, the General
6 Appropriation Act of 1994, appropriated Nine Million Five Hundred
7 Sixty Thousand Thirty-Eight Dollars (\$9,560,038) to the Government
8 of Guam Retirement Fund to pay for the increased contributions to
9 the Retirement Fund for all branches of the government as provided
10 for in the amendment to §8137 of Title 4, Guam Code Annotated,
11 made in Section 8 of Public Law 22-06. The Governor has been
12 applying the appropriations within the various departments and
13 agencies to fund this increase, thereby leaving an excess in the
14 appropriation in Section 26 of Public Law 22-41 which can be
15 redirected to use for the maritime litigation.

16 (c) **Reappropriation of Two Million Four Hundred Fifty**
17 **Thousand Dollars to Department of Law's Ocean Freight Rate**
18 **Legal Fund for legal fees and expenses in the continuation of the**
19 **Government of Guam's case before the Federal Maritime**
20 **Commission.** Two Million Four Hundred Fifty Thousand Dollars
21 (\$2,450,000) are reappropriated from the appropriation of Nine
22 Million Five Hundred Sixty Thousand Thirty-Eight Dollars
23 (\$9,560,038) previously made in Section 26 of Public Law 22-41 to the
24 Department of Administration for the payment of increased
25 contributions to the Government of Guam Retirement Fund as
26 mandated by law, to the Ocean Freight Rate Legal Fund, under the

1 Department of Law, for legal fees and expenses in the continuation
2 of the Government of Guam's case before the Federal Maritime
3 Commission challenging current shipping rates in the Guam trade.
4 Funds appropriated to the Ocean Freight Rate Legal Fund may be
5 utilized to accommodate billings for legal fees and expenses incurred
6 in prior fiscal years."

TWENTY-SECOND GUAM LEGISLATURE

1994 (SECOND) Regular Session

Date: 3/14/94

VOTING SHEET (AS REVISED)

Bill No. 845
 Resolution No. _____
 Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.			✓	
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George	✓			
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.	✓			
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.	✓			
NELSON, Ted S.	✓			
PANGELINAN, Vicente C.	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL 20 0 1 _____

Twenty-Second Guam Legislature

155 Hesler Street
Pacific Arcade
Agana, Guam 96910
Telephone: (671) 472-3407 thru 9
Fax: 477-3161



CARL T.C. GUTIERREZ
Senator

Chairman, Committee
on Ways & Means

Vice-Chairman, Committee
on Rules

Vice-Chairman, Committee
on Tourism & Transportation

March 10, 1994

Honorable Speaker Joe T. San Agustin
Speaker, Twenty-Second Guam Legislature
155 Hesler St.
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Ways & Means wishes to report out its findings on **BILL NO. 845 "AN ACT TO PROVIDE FOR A SPECIAL LITIGATOR TO REPRESENT THE PEOPLE OF GUAM IN GAINING ACCESS TO GOVERNMENT OF GUAM LAND LOCATED IN NORTHERN GUAM AT FALCONA, AND TO CHALLENGE THE DESIGNATION OF LAND IN NORTHERN GUAM AS A CRITICAL HABITAT OR WILDLIFE REFUGE"** to the full Legislature with the recommendation to do Pass as Substituted by the Committee on Ways and Means.

The Committee Voting Record is as follows:

TO PASS:	<u>9</u>
NOT TO PASS:	<u>0</u>
ABSTENTIONS:	<u>0</u>
INACTIVE FILE:	<u>0</u>

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

Sincerely,

Handwritten signature of Carl T. C. Gutierrez.

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

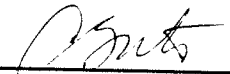
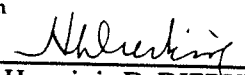

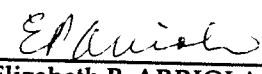
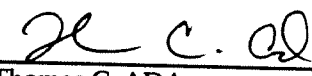



Twenty-Second Guam Legislature
Committee on Ways and Means

VOTING SHEET

BILL NO.

845

AN ACT TO PROVIDE FOR A SPECIAL LITIGATOR TO REPRESENT THE PEOPLE OF GUAM IN GAINING ACCESS TO GOVERNMENT OF GUAM LAND LOCATED IN NORTHERN GUAM AT FALCONA, AND TO CHALLENGE THE DESIGNATION OF LAND IN NORTHERN GUAM AS A CRITICAL HABITAT OR WILDLIFE REFUGE.

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
 Senator Carl T. C. GUTIERREZ Chairman	✓			
 Senator Herminia D. DIERKING Vice-Chairman	✓			
 Senator John P. AGUON Member	✓			
 Senator Elizabeth P. ARRIOLA Member	✓			
 Senator Thomas C. ADA Member	✓			
Senator J. George BAMBA Member				
Senator Anthony BLAZ Member				
 Senator Pilar C. LUJAN Member	✓			
Senator Marilyn MAMIBUSAN Member				
Senator Ted S. NELSON Member				
 Senator Vicente C. PANGELINAN Member	✓			
 Senator David SHIMIZU Member	✓			
Senator Antonio R. UNPINGCO Member				
Speaker Joe T. SAN AGUSTIN Ex-Officio Member				

**COMMITTEE ON WAYS AND MEANS
COMMITTEE REPORT ON**

BILL NO. 845

**AN ACT TO PROVIDE FOR A SPECIAL LITIGATOR TO REPRESENT
THE PEOPLE OF GUAM IN GAINING ACCESS TO GOVERNMENT
OF GUAM LAND LOCATED IN NORTHERN GUAM AT FALCONA.**

PURPOSE AND ESSENTIAL ELEMENTS

Bill No. 845 contains four sections. The first section consists of legislative intent, and recites that the government of Guam is the representative of the people, and has the responsibility of protecting and furthering the interests of the people of Guam in their unequal struggle to gain access to both public and private land, and return public and private land in Guam which has been either in the possession of, or has access blocked by, agencies of the government of the United States.

The second section of the bill amends §2944 of Title 12, Guam Code Annotated. The language inserted into this section broadens the authority of the Guam Economic Development Authority (GEDA) in utilizing appropriations made to it in the Northwest Territory Act to allow funds to be utilized for "return of public and private land and to obtain rights-of-way to public and private land which is either in the hands of agencies of the federal government or has access to which is blocked or limited by agencies of the federal government."

The third section of the bill adds a new §2946 to Title 12, Guam Code Annotated, to authorize the hiring of a litigation attorney to pursue the goals of gaining access and returning land from agencies of the federal government to government of Guam and to private hands.

The final section of the bill adds a new §2947 to Title 12, Guam Code Annotated, appropriating \$1.6M from the General Fund to GEDA to pay an attorney to litigate the gaining of access to, and the return of land from, agencies of the federal government to government of Guam and private hands.

PUBLIC HEARING

The Committee on Ways and Means conducted a public hearing on Monday, February 28, 1994 at 9:00 a.m. in the Legislative Public Hearing Room to gather testimony on Bill No. 845. Present at the hearing were the Chairman, Senator Carl T. C. Gutierrez, who conducted the hearing, and Senator D. L. G. Shimizu, who conducted a portion of the hearing in the temporary absence of the Chairman. They were joined by Senators T. C. Ada, V. C. Pangelinan, and T. S. Nelson,

TESTIMONY

The following people testified on Bill No. 845: Mr. Tony C. Perez, representing Ritidian families; Mr. John Gilliam, representing the Department of Revenue and Taxation; Mr. Tony Artero Sablan, representing Jungle Beach Tour and Urunao Beach Corporation; Ms. Lou Hernandez, representing herself and Mr. Peter Sgro, Jr.; Mr. Charles Crisostomo, representing the Guam Economic Development Authority (GEDA); Mr. James P. Castro, representing himself; Mr. Gregorio L. G. Castro, representing himself; Attorney Duncan McCully, representing GEDA, Ms. Madeleine Austin, representing the Department of Law (Attorney General).

1. **Mr. Tony C. Perez, representing some Ritidian families,** testified first. He submitted written testimony, which is attached. He read the initial statement and the affidavit of Gregorio L. G. Castro, attached to the initial statement, to the Committee. The statement indicates that the families represented have decided to file lawsuits regarding hazardous waste, the refuge and critical habitat issues concerning northern Guam, and the right of access issue. Mr. Perez states that the Ritidian/Jinapsan families have not received any support from the government for their problem, and that funds that have already been appropriated to GEDA have never been used for these problems. The testimony cites the unfairness of the federal government in suddenly stepping in and creating more problems by saying that it is necessary for the federal government to grant an easement, when a previous court judgment indicated that a right of easement was reserved across some of the lots taken.

The testimony states that it is only recently that a number of federal documents have been made available, and up until this time, the families and the entire community of Guam have been in the dark on what happened in regard to the federal takings. The testimony advocates that the 6-month period for GEDA to hire a special litigator be reduced to a time period of 30 days. The reason for this is that it is felt that the Department of the Interior will have finalized their interest in a wildlife refuge in this area. The testimony states that the families feel that the federal government is seeking greater control over this area in the guise of conservation, as the U. S. Department of Defense can reclaim back immediately the 370.9 acres transferred to the U. S. Fish and Wildlife Service.

The affidavit of Gregorio L. G. Castro, also read, recites the history of the particular parcel of land owned by Mr. Castro, and recites that the land cannot be accessed without crossing over land occupied by the federal government, and cannot be accessed without using 4-wheel drive vehicles. The affidavit also recites the curtailing of activities, or even the prohibition, which would occur if a wildlife refuge is established in the area. It states that the families did not participate in the preparation of the environmental impact assessment prepared by the U. S. Fish and Wildlife Service, and were never personally interviewed by federal representatives on this issue.

2. **Director Joaquin G. Blaz, through Mr. John Gilliam, representing the Department of Revenue and Taxation,** then testified. Mr. Gilliam pointed out that the written testimony was prepared on Friday, and over the weekend, another document was brought to their attention, which the Department of Revenue and Taxation would like to attach to its testimony as "Exhibit C". This "Exhibit C"

consists of a letter and attachments entitled "Access Rights of Private Landowners, Guidelines and Conditions, Andersen Air Force Base, Guam", from Colonel Dennis R. Larsen, Commander, 633rd Air Base Wing, addressed to Mr. Antonio Artero Sablan, and dated February 22, 1994. This letter, the letter's attachment, as well as the written testimony of the Department, is attached.

Mr. Gilliam requested Mr. Gregorio L. G. Castro to join him in presenting testimony, and Mr Castro then moved to the testimony table.

Mr. Gilliam then corrected the Department's testimony by indicating that on the "Exhibit A" attached, that the reference to "Tun Gregorio Flores" should read "Tun Gregorio Castro", to indicate Mr. Gregorio L. G. Castro present at the table.

Mr. Gilliam read his written testimony. Some highlights of this testimony are the following points: the government property which is landlocked at Falcona is 86± acres. The private landlocked property zoned "H" for hotel use at Urunao is 480± acres, public land at Ritidian consists of 380± acres, and land at Jinapsan is 500± acres. Mr. Gilliam pointed out that Public Law 20-222, known as the Northwest Territory Act, directed GEDA to take action for the return of public rights-of-way to the place of Falcona. P.L. 20-222 provided an appropriation and authorized the use of funds obtained from the Guam Landowners Recovery Fund. \$700,000 is now available to GEDA for this purpose. Bill No. 845 reiterates what P.L. 20-222 already mandates that GEDA is to do at the present time.

The government, through GEDA, has taken no action, and thus private landowners have undertaken a costly private lawsuit, and two other lawsuits are about to be filed. The artificially low value of the land caused by the landlocking constrains growth of the territory's tax base and visitor industry's economic base. Falcona is not accessible to the people of Guam, and so cannot be utilized as a public recreation area.

The Department does not feel that special litigation is necessary, because all of the avenues of diplomacy have not been exhausted. The Department recommends that a resolution be adopted instead of Bill No. 845. The provisions of P. L. 20-222 should be implemented, and if GEDA is unwilling or incapable of being the lead agency, then the Department of Revenue and Taxation will be willing to take control of the situation.

The government of Guam already holds undeveloped access rights to this area, because all existing public rights-of-way were reserved from the taking in Civil Case No 29-62, which condemned certain lands in northern Guam. The testimony advocates that funding be given to build a road over the rights-of-way in northern Guam that the people already own, rather than fund special litigation.

Mr. Blaz' written testimony attaches "Exhibit A", which is a listing of road names in the northern Guam area, which are Bahadan Gutos (situated in Urunao), Bahadan Uruno (known before World War II), Bahadan Sagua and Bahadan Talisai (situated in Jinapsan), Bahadan Cotiez (situated in Jinapsan), and Bahandan Ritidian. An "Exhibit B" is also attached, which consists of a judgment in Civil Case No. 29-62,

dated March 13, 1963, which is a condemnation case of certain lands in Machanao (Dededo), the area in question. The judgment indicates that the lands taken are subject to existing easements for public roads and highways, public utilities, railroads, pipelines, and the right of ingress and egress over and across parcels no. 8 and 9.

Mr. Gilliam indicated that the "Guidelines and Conditions" sent to Mr. Tony Artero Sablan by Colonel Larson of the U. S. Air Force give some access to members of the families in the area, but effectively bar the rest of the public from access to Falcona. The private landowners have a limited and conditional access to the public roads, but the public does not have access to the public roads.

Mr. Gilliam indicated that the areas in question, and linked by the roadways cited above, were linking commercial areas before World War II. Atkins-Kroll had a copra plantation in the Tarague and Ritidian areas, and Urunao was also used for the growing of copra. When the seas were too rough to get the copra out, the trails over the cliffs were used to get the copra out. The roadways were never taken by any condemnation. Development of these roadways is the best solution to the access problem.

3. Mr. Antonio Artero Sablan, representing himself, testified orally in favor of the intent of Bill No. 845. Mr. Sablan asked for the implementation of P. L. 20-222. Mr. Sablan thanked Senator Gutierrez for the passage of P.L. 20-222. Mr. Sablan said that he has appeared twice before the GEDA board to ask for assistance, and has received none. He pointed out that he has been barred from entering his own property. He said that the Navy and the Air Force have both barred him, and now the United States government is suing him for \$120,000 for trespassing, in order to go to his family's land.

Mr. Sablan indicated that he is also being sued for widening an existing road, which was done in June, 1992. He said that the military, however, assessed the damage in December, 1992. Mr. Sablan said that part of the damage assessed was done by Typhoon Omar. The damage to trees was assessed at \$120,000. Mr. Sablan indicated that the Atkins-Kroll company received some compensation for loss of trees on the property by the federal government, however, none of the local people of Guam received any compensation. The federal government also has contaminated the property, yet pursues lawsuits against a local person for widening an existing road. Mr. Sablan said that he was bringing in a few tourists to the area over the widened road, and that the pickup truck used was damaged by waves to reach the property, which was why the road was widened in the first place. When the water is too rough, the tourists cannot be brought to Urunao, yet employees who tried to bring in the tourists must be paid. A lot of money is lost trying to have a small tourism business. The provisions of P. L. 20-222 are supposed to help, but Mr. Sablan said that he has spent over \$20,000 of his own money. Lawyers are not cheap, and there is no solution to his lawsuit at this time. All attorney fees are being spent by the family. Mr. Sablan made reference to the time that the military personnel at Andersen Air Force Base stopped him at gun point and prevented him from entering his property.

Mr. Sablan said that the landowners need some kind of assistance, such as is the intent of Bill No. 845. He pointed out that another fence is being constructed so that landowners cannot drive into the area.

Mr. Sablan asked for help from the Committee members and members of agencies of the government of Guam to move on this issue, as private landowners such as himself cannot continue to fight and continue to pay for lawyers over the issues concerning the land. The treatment of the land by the federal government of Guam is one-sided.

4. **Ms. Lou Hernandez, representing herself,** read a written testimony to the Committee, which is attached. Ms. Hernandez' testimony indicated the frustration that her family has experienced trying to deal with the situation of her family land. She reported that their family has filed a lawsuit in the District Court of Northern California challenging the U. S. Fish and Wildlife Service action. They will also be filing suit in the U. S. Court of Claims, in Washington, D. C., relative to the access issue. Her family has paid with their own funds for the services of Attorney Peter Sgro, Jr., who has helped by trying to cut costs. The issues that the family is litigating are the hazardous waste issue, the access issue, the National Environmental Policy Act (NEPA) issue regarding the proposed wildlife refuge, and there are other issues also.

Although the Governor has been appealed to, no help is coming from the government on these issues. The Governor has indicated that not one penny of the funds appropriated to GEDA for these problems will be released.

Ms. Hernandez inquired whether the funds appropriated for the litigation of these issues could not be kept within the Legislature itself, rather than be put into agencies of the Executive Branch which will not release them. Although the family has tried to give information to the Governor, no one is convinced that there is a case to be won. The Northwest Territory Act is useless as it is, without release of the funding.

Ms. Hernandez appealed to the Committee members to find a way to release funds to help the landowners prosecute their case.

5. **Mr. James Castro, representing his father and his father's brothers and sisters, owners of lot 9990 and 9991, Ritidian, and 9997, Jinapsan,** then submitted oral testimony. He provided written testimony to the Committee after the public hearing, which is attached. Mr. Castro said that he has appeared before in favor of gaining some help in gaining access to his family property in northern Guam. He said that because of what the federal government took, that the federal government owes it to the families to provide access to the remaining land, which is still in ownership of the family. Mr. Castro stated that "one must view this issue as an islander, and islanders understand the fact and value the land, and the beach, and its waters, as one. Each part and each facet plays an integral role in the survival of the community." The federal government has denied beneficial usage of the land. They do not honor the sanctity of private property rights, as set out in American values. The federal government is acting like a totalitarian or communist bloc country. The swift change in the international attitudes now because of peaceful accords indicates

that the unjust policies now in effect in northern Guam are archaic and have no place in the modern world.

Since 1962, the land of the Castro family has been denied. On June 16, 1962 the condemnation complaint was filed. Paragraph 4 of the complaint states that the taking is subject to the public access and the rights of ingress and egress. The judgment also states the same. The property can only be reached through Andersen Air Force Base, and the access can be closed off swiftly. If the base is closed to civilian traffic, there is no access. When the Tarague gates are closed, there is no access, and if the family is on the property at the time that the gates are closed, no one can leave the area. Mr. Castro pointed out that this is not the intent of the complaint or the judgment regarding access.

Mr. Castro said that in the name of justice, that his family is in favor of the passage of Bill No. 845, and hopes that a speedy resolution of this problem can be had. Mr. Castro summarized his testimony by saying "Taotao Tano are the endangered species."

6. **Mr. Charles Crisostomo, Executive Director of the Guam Economic Development Authority**, then testified on behalf of the agency, assisted by Attorney Duncan McCully, the authority's legal counsel. Mr. Crisostomo submitted written testimony, which is attached. Some highlights from this testimony are the following: GEDA believes that Bill No. 845 as presently drafted does not clearly allow GEDA to either loan or grant appropriated funds to private litigants or their attorneys in order to fund litigation to recover private property interests, as individual claimants have requested. The GEDA testimony says that GEDA supports the objectives of the bill, but believes that an appropriation at this time is unnecessary. GEDA cites that the Guam Attorney General does not believe that the case is a strong one to justify the expense.

GEDA has just over \$800,000 in the Landowners Recovery Fund. GEDA believes that this money can only be used 1) to obtain an economic impact appraisal of the restrictions on civilian access to public and private lands, 2) to obtain, with GEPA's assistance, an environmental impact assessment of the dumping of hazardous waste, and 3) to recover land, damages, and public rights of way. Present funds are sufficient for these tasks. GEDA has already hired attorneys to investigate the potential claims, and has consulted with the Attorney General's office.

GEDA has identified three types of claims that could be brought: 1) certain landowners have continuing private property rights, 2) certain landowners can solve the access problem by claiming that a regulatory taking justifies compensation, and 3) the rights of way in northern Guam are property of the government of Guam due to the creation of the Organic Act. GEDA does not feel that these claims can be asserted to any end. One object that is pointed out is that since landowners received compensation that the land claims may be considered *res judicata*, or already litigated and settled and cannot be raised again in another lawsuit. The federal statute of limitations may also be a bar to new litigation.

GEDA does not believe that the current draft of Bill No. 845 clearly states how GEDA can use the money to hire attorneys, whether GEDA is to represent the landowners and control how the money is spent, or whether the money should be given to the claimants and the claimants hire attorneys to do the litigation.

GEDA recommends that if money is to go directly to the landowners, then the appropriation should be made directly to them. If GEDA is to make loans or grant, or represent the landowners with their consent, this should be clarified.

GEDA would rather that a political route be utilized instead of a lawsuit, and that money be spent on lobbying instead of a lawsuit.

7. **Attorney Peter Sgro, Jr., representing some of the families,** submitted written testimony which is attached. Ms. Lou Hernandez informed the Committee that Mr. Sgro was off-island. Some highlights of this testimony are: Attorney Sgro feels that the GEDA has not undertaken any meaningful action to further the purposes of P. L. 20-222, the Northwest Territory Act. Attorney Sgro attached to his testimony a copy of the complaint that he and other attorneys, Attorney Mark Pollot and Attorney Michael Van Zandt, have filed in the U. S. District Court for the Northern District of California.

Attorney Sgro indicates that the issues addressed in the lawsuit are those that should have been resolved prior to this, before the designation of wildlife refuge came up. The designation of critical habitat and a Guam National Wildlife Refuge will result in over 21% of Guam's land becoming of no economic benefit to the government of Guam. Based on population, this would result in a density of 1.2 acres per person on Guam.

Attorney Sgro feels that it is unfair for private families to have to undertake such a burden as the restoration of property rights in northern Guam. He pointed out that the documents submitted originally by government of Guam were not submitted for the purpose of protecting environment, but to prevent the construction of the over-the-horizon radar system.

The testimony recommends that the time limit of 6 months contained in Bill No. 845 be amended to 6 months instead.

The value of the land, unimproved, by calculation of the Department of Revenue and Taxation's methods, would generate \$400,000 annually, if not in the hands of the federal government. The return of Ritidian Point lands would also increase the tax base of the government for the purpose of issuing bonds and increase the borrowing ability by approximately \$250M.

Issues specifically listed in the testimony are:

Status Issues and Resource Utilization Issues

Hazardous Waste and Department of Defense Authority on Land

Use Policies

Legal, Economic, and Social Impacts of Preservation

For particulars of this testimony, which is lengthy, please see the attached.

General Discussion and Questioning then took place.

Senator Nelson inquired concerning the meaning of the judgement in Civil Case No. 29-62 regarding rights-of-way, and Mr. Gilliam indicated that the rights-of-way reserved were public rights-of-way. The public rights-of-way were not created, but reserved. Senator Nelson inquired if Mr. Gilliam was representing the Administration, and was informed that he was not, only the Department of Revenue and Taxation. Senator Nelson then indicated that if the government owns the rights-of-way, that it can then go in and pave the roads. Mr. Gilliam agreed.

Mr. Crisostomo said that he would love to just pave the roads, but feels that this is impossible. GEDA had also received some documentation by the U. S. Department of the Defense from the Adjutant General's office. Senator Shimizu asked if the Committee could get a copy of that documentation.

Senator Nelson asked if anyone was representing the Artero family at this public hearing, and there was no answer. He pointed out that the intent of P. L. 20-222 was meant for the Artero family, and that the Artero family is not present. Senator Nelson indicated that it is hard to find out exactly what are the difficulties with the implementation of P. L. 20-222 without the input from the Artero family.

Senator Nelson inquired if the GEDA doesn't have about \$1M in their accounts. Mr. Crisostomo cited \$800,000 from the former litigation, a \$400,000 appropriation, and another authorization for appropriation of \$400,000.

Senator Nelson indicated that he could not comprehend the attitude of the Administration on this issue. He believes that the Administration should take the lead on this problem. He pointed out that the Governor is very close to the Admiral, and that the two play golf together. Senator Nelson said that it would be of no use to pass Bill No. 845 if the Administration does not want to release a penny of the money. Senator Nelson then discussed his frustration over the years with helping some of the family members with this problem.

Senator Pangelinan then inquired of Mr. Gilliam's contention that the government of Guam has ownership of rights-of-way, and whether this is reflected on any map. Mr. Gilliam answered in the affirmative, and that in the 1600 and 1700's, Ritidian was a religious destination and was accessed for maintenance of the Ritidian Light, which was a utility in the Spanish and pre-Spanish days. The roads were established by name and by place.

Senator Pangelinan then inquired of Mr. McCully why GEDA should not take the case because the easements are not owned by the government. Mr. McCully responded that when discussing all of Route 3-A north of Potts Junction, all the way to Ritidian Point, the judgement in Civil Case No. 29-62 does not cover all of these lands, but that Civil Case No. 29-62 is only the last in a series of federal takings. Earlier takings were in the 1950's when large areas were taken, which were NCS and the lower Andersen base. The lands covered in Civil Case No. 29-62 are those

further to the north. Mr. McCully indicated that he had reviewed all of the maps of the takings and the provisions of the Organic Act of Guam, and had come to the conclusion that there were no colorable claims of the government of Guam to the lower portion of Route 3-A. The lower portions of land were taken, including the roadway. A metes and bounds description of the land in the earlier takings did not reserve the roadway, and the roadway was contained within the metes and bounds description and so was taken also. The United States reserved to themselves, to the military, the roadways within the lower portion. The roadways to the north, if there are public easements in them, are not connected up to the road below Potts Junction.

Senator Pangelinan inquired whether the easements reserved in the northern portion were able to be developed as government of Guam easements. Mr. McCully responded that he did not see how they could be, because they would be taking small portions of the lots and putting a road between them, but there would be no beginning to the road, you couldn't get to it, there would be no access to the road.

Senator Pangelinan inquired of Mr. McCully if he would call them "landlocked easements" and Mr. McCully responded in the affirmative.

Senator Pangelinan inquired of Mr. Crisostomo what lobbying efforts would the money be better spent on. Mr. Crisostomo made reference to the issues brought up in recent land conference conducted by Congressman Robert Underwood. He pointed out the statute of limitations, the authorizations for takings, the process of releasing lands back to private property owners. Courts only decide these things that are already in the law, and lawsuits to date have not been very successful in these matters. Mr. Crisostomo reiterated his position that GEDA, the board members, and himself, are all in favor of trying to get the land back to the landowners.

Senator Pangelinan pointed out that the government is not backing the position that the government would like the lands returned to the original landowner, but has supported the position that if any land is returned, it should be returned to the government of Guam. Mr. Crisostomo then gave his own personnel opinion, that if the properties go back in all cases where possible to the original landowners, that there are some original landowners who would receive nothing. This makes it hard on the government to take a stand. Mr. Crisostomo believes that it is important to get the land back to the government.

Senator Pangelinan asked if the Governor had requested the return of the funds in the Landowners Recovery Fund to the General Fund. Mr. Crisostomo said that he did not receive an official request, but that the Bureau of Budget and Management Research (BBMR) has been looking for funds. Mr. McCully spoke up to clarify that he had made an opinion that funds appropriated for a specific use to an autonomous agency, such as the appropriation to the Landowners Recovery Fund, should not be returned to the General Fund. GEDA did not transfer the money.

Senator Shimizu asked why the Department of Revenue and Taxation is more proactive in this area than the GEDA. He said that after listening to the landowners, that he gets the feeling that the landowners have the sense that they are abandoned by their own government. He asked if there has been any attempt to make the policy

as stated in P. L. 20-222 workable. Mr. Crisostomo indicated again that they have consulted with the Attorney General's office. Senator Shimizu asked if Mr. Crisostomo feels that the judgment in Civil Case No. 29-62 is a valid judgment. Mr. McCully said that the judgment is a valid judgment for the portion of land described in the case. Senator Shimizu then discussed the testimony of the Department of Revenue and Taxation. Senator Shimizu emphasized that the government should do what they can do, and not say what cannot be done.

Assistant Attorney General Madeleine Austin then testified that she was familiar with the judgment in Civil Case No. 29-62, and that the judgment is worth looking into. She indicated that the facts concerning where the easements are that are mentioned in the judgment should be looked into. She felt that the easements could be established by reference to old maps. She informed the Committee that the Attorney General had offered to negotiate with the U.S. Attorney General's office, particularly because of this judgment, but that the Attorney General of Guam was told by Attorney Peter Sgro, Jr. that they were not to be involved, without his consent, which he has not given.

Mr. Tony Perez then responded by indicating that the Attorney General of Guam and the Governor's office had been trying to negotiate with the U. S. Attorney General for access rights over parcels 8 and 9, however, these negotiations were without the knowledge or consent of the owners of those parcels. Mr. Frank Aguerro, present in the audience, was pointed out as one of the owners of the parcels, as well as the elder members of Mr. Tony Perez' family. Mr. Perez indicated that Mr. Sgro had informed the Attorney General that they should not have any negotiations without the input of the landowners of the parcels involved.

Mr. Tony Perez then criticized the actions of GEDA, because if the government of Guam does nothing, then the government of Guam has surrendered all of northern Guam to the federal government, despite the easements in the judgment. He felt that the local government has a moral duty to establish the easements. He felt that it was wrong for GEDA to say that it was a losing battle before anything was ever tried.

Mr. Crisostomo said that GEDA and the Department of Revenue and Taxation were working off of the same research, that GEDA had used the law firm of Keogh and Butler to get some of the data, that GEDA had spoken to Mr. Gilliam and some of the landowners, in coming to their conclusion.

Mr. Crisostomo said that they wanted to sit down with attorneys Peter Sgro and Mr. Pollot, however, this has not been possible, and the lawsuit that was filed in San Francisco today was never seen by GEDA before it was filed.

Mr. McCully then stated that GEDA does not want to give the impression that they are abandoning all hope that rights to the easements described in the judgment cannot be established, however, the easements are only to the lands described, and the easements are landlocked. Mr. McCully then indicated that he is willing to sit down again on this issue and look at the data again, especially in light of the fact that the Attorney General has indicated that the matter is worth looking into, and to make sure that this important issue is not just summarily dismissed. Perhaps the

initial research is in error. Mr. McCully then indicated that he wanted to sit down with Mr. Gilliam and establish just what easements are conveyed by the judgment referenced.

Senator Shimizu indicated that the landlocked property should be established and then later some negotiations could be made. Senator Shimizu said that it doesn't matter if you have to drop into it by helicopter, that the right to it should be established. The political issue can then be dealt with. He gave the example that an undivided interest in property should be established, and then later a specific portion of property can be established. He pointed out that private attorneys have been deputized as special Attorneys General. This could be done in this case.

Mr. Crisostomo indicated that a meeting was held to establish what the families and Mr. Peter Sgro, Jr. would bring before a GEDA board meeting, but they withdrew their request. There is another request that will come before the board later. Legal analysis will be needed in order to deal with the statute of limitations and res judicata issues. He indicated that GEDA wanted to speak to Attorney Mark Pollot, however, they were told not to speak to him. Mr. McCully tried to call Mr. Pollot, and he was informed by Attorney Peter Sgro, Jr. not to ever call him again.

Mr. Crisostomo said that Attorney Sgro requested the first request to go before the GEDA board. Ms. Lou Hernandez said that the request was withdrawn because the Governor had gotten on television and indicated that none of the money would be released. Ms. Hernandez then noted that the families were told that the Attorney General had done a thorough review, yet she then brought up a number of issues that were never discussed if the Attorney General had reviewed them.

Mr. Tony Perez then indicated that the families do not want a blind handout, but the money is just sitting there in a bank account.

Chairman Gutierrez then stated that he would, if he were in the position to do so, direct GEDA to go forward with the issues raised. He asked Mr. McCully if there was ever any compensation paid for the easements taken. Mr. McCully said that the easements to the lower portion of Route 3-A were not reserved to the government of Guam pursuant to the provision in the Organic Act of Guam calling for the President to reserve lands to the government of Guam by a certain deadline after the passage of the Organic Act. A reservation of these lands was never done. Mr. McCully did not know for certain which agency of the United States Government kept the land, whether it was the Department of the Navy or the Department of the Interior.

Mr. Gilliam indicated that a lot of real estate is at stake with the recent developments. There are 1000 acres from Tarague to below Falcona. All of the land below the cliffline to the shoreline is at stake. There is an economic issue at stake, as well as an environmental one. This is why the matter was given to GEDA, which is sensitive to these issues. Even if the roadways below the cliffs are landlocked, there is a necessity to develop them. Under Guam law, this has to be done. Mr. Gilliam said that he did not think it was the federal government's intent to landlock all 1000 acres of land along the shoreline from their owners. Otherwise, the federal

government would have condemned those lots. They left those lands uncondemned. Half of those lots are now zoned Hotel, and that portion of the island is where the future economic interests of the island are going to lie. Mr. Gilliam indicated that he felt that if the parties were to get together in one room, that they would eventually come out with solutions. The government itself could see its own interests, its own property interests here.

Chairman Gutierrez inquired of Mr. Gilliam what he thought that the problem, was it personality conflicts. Mr. Gilliam indicated that there were some personality conflicts, but that the real problem was incomplete homework and no positive attitude in solving the problem. A realization that all the parties are angry, and that some resolution has to be made. Mr. Gilliam said that the current law is adequate and the current funding that has already been given is sufficient. Mr. Gilliam said that he was very positive that if the right time and effort was given by those present at the public hearing, that even the Governor would be persuaded.

Chairman Gutierrez said that it was troublesome to him, that despite the refusal of the government to help the private landowners, that they had mortgaged their properties to pay attorneys to file a lawsuit in San Francisco. Chairman Gutierrez indicated that these few private landowners are the ones that are going to dislodge these lands in northern Guam from the federal government, and that there must be something that the Legislature can do to assist in getting all of the government agencies together for the fight to achieve this. GEDA has the authority now to do this, and upon their recommendation, the Legislature is ready to make some amendments to the Northwest Territory Act to make the provisions more clear. Chairman Gutierrez indicated that the responsibility for clearing up these issues could be transferred to a more willing department.

Mr. Gilliam then interjected that some of the issues have been made moot by the action of the Air Force in removing the guard station from the Route 3-A Potts Junction. Everyone can drive on that road, but the problem remains, what happens when you reach the bottom of the hill, and reach a gate, which closes a decommissioned military facility. Mr. Gilliam felt that these problems were not unsolvable, that the lands are not physically landlocked.

Chairman Gutierrez indicated then, that by comparison, the government is putting a lot of effort into the Ocean Freight Rates lawsuit, the Sealand fight, and if the same effort was put into the access problem to northern Guam, that the problem would have been solved a long time ago. Chairman Gutierrez indicated that Mr. McCully would have some constraints, but that he was happy to hear him say that he was willing to look into the issue again, and also Ms. Madeleine Austin from the Guam Attorney General's office. He pointed out to Mr. Crisostomo that his position at the GEDA was not long term, and that he would probably be elected to the Legislature, and when elected, that he would be advocating a solution for the landowners.

Chairman Gutierrez asked Mr. Crisostomo if he would like to have the issue removed from GEDA's jurisdiction. Mr. Crisostomo replied that GEDA would like to look at this issue again. He indicated that the parties would have to disclose their legal theories to the members of the GEDA board, realizing that GEDA is the client.

Chairman Gutierrez inquired how the law firm of Keogh and Butler was hired to research the issue, and Mr. Crisostomo replied that the law firm was hired with GEDA as their client.

Mr. Gilliam indicated that the Northwest Territory Act was drafted with the idea that GEDA would take the initiative, that GEDA would be the real party of interest and take the case for the good of the people of Guam. The Northwest Territory Act was created not to place the problem on the backs of the private owners, or their lawyers, but to get GEDA to take the initiative. Chairman Gutierrez said that he thought that GEDA had started to take the initiative, however, their lawyer had indicated that they should stop.

Mr. McCully responded to the inquiry by stating that he had researched the status of Route 3-A north of Potts Junction belonged to the government of Guam, and that the putting up of the guard station there by the military was illegal, and he did not find any legal theory or fact situation to support that. Mr. McCully did not want to file suit for that claim, as he did not feel that it was meritorious. Since then, the Ritidian families have come up with a lot of new theories, that they still have property rights and can get their land back, the refuge has come into existence, and that is a new issue. GEDA needs more disclosure from them of their legal theories, so that GEDA can judge their chances of success. Mr. McCully said that the problems of confidentiality can be resolved by making GEDA the client, and nothing would be disclosed. Mr. McCully said that before the filing of the present lawsuit in San Francisco that GEDA had never seen the new legal theories.

Mr. Gilliam said that the GEDA should focus now on how they can best represent the interests of the people of Guam by recovering public rights-of-way, and how it could utilize funds that it already has in its possession for that purpose. The public easements lead to Falcona and Jinapsan. This would moot the issue of getting into private easements. It would resolve the problem. Mr. Gilliam advised GEDA to use their negotiation tactics first, before litigation, to see if satisfactory rights of passage could be had.

Mr. Gilliam stated that the complaint, the lawsuit, in San Francisco, that the private landowners have filed is to stop the designation of critical habitat, and to stop the transfer from the Navy to the U. S. Fish and Wildlife Service, in part because there are private landowners rights contained there, but also because there is a government of Guam interest there, also.

Chairman Gutierrez asked if this could be done by GEDA, the getting back of the public easements to Falcona for the government, so that the issue of private easements would be moot. Mr. McCully pointed out that the suit already filed has to do with enjoining the declaration of the area as a wildlife refuge. Chairman Gutierrez indicated that that would continue, but that the government could go forward with the rights-of-way issue. Mr. McCully said that the government could revisit that issue, and whatever rights that the government has, that the government could assert them.

Chairman Gutierrez asked if the government could assert its rights and let the federal government do the challenging. Mr. Gilliam said that that is exactly what should be done. He pointed out that the easements were ancient. Chairman Gutierrez pointed out that ancient Chamorro villages existed there. Chairman Gutierrez emphasized that the government should take the initiative here. Even if they are late to act, they can now go to the front.

Mr. Crisostomo indicated that the issue is before the GEDA board for its next meeting on March 9, 1994. The first issue is Mr. Juan Flores' request to address the board. The second issue would be an examination of, or a preliminary re-review of some of the issues. He pointed out if the GEDA counsel would be ready to discuss the issues with the board at the time, or certainly within 30 days, that the GEDA board would give it intense scrutiny. GEDA would include Mr. Gilliam.

Chairman Gutierrez asked Mr. Gilliam what the government could do now to show that it has ownership of the easements. Mr. Gilliam said that the Route 3-A issue is moot because of the removal of the guard station, that it is open all the way down to the gate to NAVFAC. Mr. Gilliam said that as to the roads beyond that, that survey parties could be sent in, locate the easements on a map, and initiate a land registration action. This would necessitate the participation of the federal government if they had any objection. There is a year to object, and after that the deadline is past. The land designate by name should be identified by survey.

Chairman Gutierrez asked if Bill No. 845 should be passed, mandating that GEDA go into the area with a surveyor, and then mandate them to file the land registration. Mr. Gilliam thought that the Northwest Territory Act mandates this already. Chairman Gutierrez inquired of Mr. McCully if the present language is a mandate to GEDA to take action. Mr. McCully replied that it was. Chairman Gutierrez inquired if the language stated that the GEDA "shall" hire surveyors, and map the easements, and file the land registration lawsuit on behalf of the government of Guam within 30 days, if that language would be a mandate. Mr. McCully replied that that would be a clear mandate. Chairman Gutierrez replied that the Committee would change the bill to reflect that language.

Senator Pangelinan inquired how the government could map easements that belong to the landowners. Mr. Gilliam replied that the easements are public easements, not private easements. He clarified that the pre-existing rights to public roadways were reserved in the prior land condemnation case. Because two lots were severed, one on the north side and one on the south side, new private easements were created to get to the severed lots, at either end of the Andersen Air Force Base.

Mr. Gilliam pointed out that the public rights-of-way link the parcels, one to each other. After these are established, the private parties can establish private rights of way. The public rights-of-way, once established, and once paved, are going to create a situation where someone will eventually say, let's let them get out or let them get in. The military's history with respect to the management of roads has been to cooperate with Guam on a joint use basis, most of the roads now in use have been turned over to the government of Guam by the military. Mr. Gilliam said that he is very optimistic. He indicated that even if the roads were not turned over to the local

government, that there would probably be some kind of joint use agreement, in use except for a military necessity.

Chairman Gutierrez inquired how Bill No. 845 should be reported out. Mr. Gilliam said that the parties should get together. Chairman Gutierrez said that after the meeting, that recommendations would come back to the Committee, and then the Bill would be amended.

Mr. Crisostomo indicated that some scheme may be devised on how to divide the issues. Mr. Gilliam said that the parties could come up with a game plan. Chairman Gutierrez said that the research done by GEDA and the problems that have come up should have been brought to the attention of the Committee and the Legislature, so that problems could be resolved.

Mr. Gilliam then reported on Mr. Tony Artero Sablan's present litigation, that the federal government has made it clear that as an element of settlement they are willing to identify an easement that would create a permanent solution to part of the problem, to some of the lots in the area. The federal government realizes the necessity for an easement and it would be contained in a court order, supervised by the District Court of Guam. There is an expression of willingness here, that the Attorney for the federal government, Mr. Lynch, is leaving in June, and these kinds of suggestions should be taken advantage of at the present time.

Mr. Gilliam indicated that Attorney Sgro represents 2 of the 4 Aguerro family members. Mr. Tony Artero Sablan also owns property interests in the Aguerro portion, as well as other portions.

Senator Ada then inquired what battle that GEDA is supposed to be working on. There is the return of the land, the access problem, and the refuge problem. Ms. Lou Hernandez indicated that all of the issues were related, that you have to hit one to get to the next one. Senator Ada then inquired if it was the expectancy of the Ritidian landowners that the initial litigation on the refuge issue would be paid for by GEDA. Ms. Hernandez replied that that was the understanding of the Ritidian families. Senator Ada indicated that the access issue was different, but that apparently, from the point of view of the attorney for the Ritidian landowners, that the first battle to be fought is the one concerning the refuge.

Mr. Gilliam said that he had tried to get the government to take action on the refuge issue, but to no avail. Senator Ada said that all would need to agree that the refuge issue is the one to be addressed first, and that this issue also affects the rest of the community.

Senator Ada indicated that the policy for using GEDA's funds should be widened to include the issue regarding the Ritidian landowners, because these cases do not simply affect those landowners, but the public as a whole on Guam.

Mr. Gilliam pointed out that there are several lawsuits now ongoing at the same time, that there is the case against Mr. Tony Artero Sablan, the case just filed over the weekend regarding the United States Fish and Wildlife Service, another case is

also is going to be filed this coming week. Mr. Gilliam indicated that the government of Guam is going to be drawn into lawsuits over which it has no control and for which it will not be prepared. The government will have public policy issues to protect in these cases, nonetheless. The situation is a tar-baby.

Senator Ada indicated that the discussion on regaining access does not match up with the substance of the lawsuit presently filed by the Ritidian landowners, which deals with issues concerning the transfer of land in northern Guam to the U. S. Fish and Wildlife Service. Senator Ada pointed out that the wildlife refuge issue is the broader issue, and once that is settled, that the other issues will be easier to deal with.

Mr. Gilliam indicated that he agrees with GEDA, that it is not clear what the Ritidian landowners want to use the GEDA resources for, but that they have already brought a lawsuit and do not want to wait and lose any of their rights.

Senator Ada said that the government of Guam will have to reverse the position that it took previously, indicating that it was in favor of a wildlife refuge, in order to assist the Ritidian landowners in their lawsuit. The Governor, or the Legislature, will have to step in and state that wanting a wildlife refuge is no longer the government's position.

Senator Gutierrez agreed with Senator Ada, that the position of the government on the wildlife refuge will have to change, and that the Ritidian landowners group will bring this about. Senator Ada indicated that he hoped that GEDA and other government of Guam agencies would agree to this. Senator Gutierrez said that he did not think that the government of Guam agencies would reverse their position at this time, but that the Legislature would have to mandate this position. Senator Ada agreed with this necessity.

Senator Gutierrez requested that a representative from his office be present at a forthcoming meeting between representatives of the Department of Revenue and Taxation, GEDA, the Attorney General of Guam, and Ritidian landowners. Mr. Gilliam indicated that the case should be examined once again, and that once all the facts are in, that the Governor could be convinced of the new approach.

Senator Pangelinan indicated that the Governor has already received three or four requests from members of the Legislature to change his position on the designation of a wildlife refuge, and that the Governor has not changed his position. He does not feel that the Executive Director of GEDA will be able to convince the Governor, either.

Mr. Chuck Crisostomo said that the Legislature would have to reverse its position, as well. Senator Gutierrez said that a resolution had been passed, but that resolutions do not have any force.

Mr. Duncan McCully indicated that the amendments stated in the bill would have to be changed to reflect the discussion of the Committee, that the money should be

used for the Ritidian families' lawsuit regarding the designation of a wildlife refuge, and this would need to be stated. The amendment needs to be clear.

Chairman Gutierrez indicated that he wanted GEDA to get together with other parties and draft the final bill. Chairman Gutierrez said that he was waiting for the recommendations concerning the final version of the bill.

Senator Nelson brought up the clean up of hazardous waste on the land. Chairman Gutierrez pointed out that the federal government has been ordered to clean up the hazardous waste, and so far, it has not. Senator Nelson indicated that land that is contaminated may not be able to be returned. Mr. Gilliam indicated that the hazardous waste sites are all on private land. None of the hazardous wastes are on the rights of way.

Ms. Madeleine Austin of the Attorney General's Office indicated that the court may not be the right forum to deal with these issues, and that the issues should be taken up by the Congress.

Chairman Gutierrez asked that some result be achieved by March 9, 1994, as a deadline. Mr. Gilliam agreed to meet before March 9, 1994, and that date be utilized because it is already a scheduled meeting of GEDA. Senator Gutierrez said that he would wait until March 10, 1994, and that he wanted to be informed of any meetings so that a representative could be present.

Chairman Gutierrez indicated that he was satisfied that GEDA and the Department of Revenue and Taxation, and the landowners, were coming together with a possible solution, in light of the restraints now in place.

Discussion then took place regarding the place where a meeting could take place where all parties could be present. Mr. Crisostomo of GEDA indicated that he would arrange for a meeting.

At this point, the Chairman thanked those appearing to testify regarding Bill 845, and adjourned the hearing on this bill.

COMMITTEE ACTION

The Committee on Ways and Means, after consideration of the testimony offered at the public hearing, decided to incorporate the following recommendations of those offering testimony at the hearing:

- 1) to clarify that the issue of challenging the designation of lands in northern Guam as a critical habitat or wildlife refuge is in the interest of the people of Guam.
- 2) to clarify that attorney and other services are to be obtained by GEDA to challenge the designation of critical habitat or a wildlife refuge in northern Guam.

3) to set out specifically the requirement that GEDA obtain survey services and map the public rights-of-way in northern Guam that are at the Ritidian, Falcona, Jinapsan area and file a lawsuit to register the land in the name of the Government of Guam.

COMMITTEE RECOMMENDATION

The Committee on Ways and Means wishes to report out Bill No. 845 to the full legislature to **do pass, as substituted.**