

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No 845
Substitute Bill by Committee
on Ways and Means

Introduced by:

C. T. C. Gutierrez

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.

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

2 Section 1. Legislative Intent. The Legislature finds that the government of
3 Guam is the representative of the people of Guam, and therefore has the
4 responsibility of protecting and furthering the interests of the people of
5 Guam in their unequal struggle to gain access to both public and private
6 land and return of public and private land in Guam which has been either
7 in the possession of, or has access blocked by, agencies of the government
8 of the United States. Large tracts of land in Guam have been in the hands of
9 the United States military since the end of World War II. Much of this land
10 is still in the hands of the military, other land is in the hands of the United
11 States Fish and Wildlife Service of the Department of the Interior, and still
12 other land is in private hands with public access either blocked or limited
13 by the federal agencies. In their struggle to gain access to their land, our
14 citizens have mortgaged their homes and livelihood to hire professional
15 legal and other services to redress the issue. It is an unconscionable
16 situation to let continue, without government of Guam action. Although
17 there is activity taking place within the political process, through the Office

1 of Guam's Delegate to Congress, Robert Underwood, a parallel process can
2 also take place in the legal arena. The people of Guam, individually, will
3 never have the resources to undertake legal action against federal agencies.
4 For this reason, the resources of the government of Guam must be placed in
5 the service of the people in their quest to control the resources of their
6 island.

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

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

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

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

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

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

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

9 (f) That it is in the public interest to challenge the designation of
10 lands in northern Guam as a critical habitat or wildlife refuge, and the
11 transfer of lands in northern Guam to the U. S. Fish and Wildlife Service of
12 the Department of the Interior.

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

14 "§2944. Professional Services. (a) Mandate to obtain services. The
15 Authority [is directed to] shall represent the government of Guam as the
16 real party in interest to maintain any appropriate cause of action for
17 claims for return of public rights-of-way, for damages or injunctive or any
18 other cause of action or appropriate relief in connection with military
19 dumpsites, for challenging the designation of critical habitat and the
20 establishment of a wildlife refuge in [northwest] Guam, and is directed to
21 retain special legal counsel and appraisal, economic evaluation, land
22 survey, engineering and environmental consultants, if and as required, to
23 accomplish the purposes of this Article. The Attorney General of Guam, the
24 Director of Land Management and the Administrator of the Guam
25 Environmental Protection Agency shall provide the Authority their full
26 cooperation in the implementation of the provisions of §§2936 through
27 [2944] 2946 of this Article.

1 (b) Mandate to take action within thirty (30) days. Within thirty (30) days
2 of the effective date of the amendment adding this Subsection (b) to this
3 Section, the Authority shall obtain survey services and accomplish the
4 survey and mapping of public rights-of-way in northern Guam known as
5 Bahadan Gutos, Bahadan Uruno, Bahadan Sagua, Bahadan Talisai, Bahadan
6 Cotiez, Bahadan Ritidian, and any other areas determined to be public
7 rights-of-way; additionally, within thirty (30) days of the effective date of
8 the amendment adding this Subsection (b) to this Section, the Authority
9 shall file a complaint on behalf of the people of Guam and as the real party
10 in interest for land registration for the public rights-of-way specified in
11 this Subsection."

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

14 "§2946. Special Litigator. The Authority shall hire or retain an
15 attorney or law firm specifically to prosecute legal action on behalf of the
16 people of Guam as specified in §2944 of this Chapter. The attorney or law
17 firm retained by the Authority may hire, within the level of appropriation
18 made available for the Office of Special Litigator, an additional attorney,
19 attorneys, or a law firm, to assist in the furtherance of the legal action
20 authorized by §§2943 and 2944 of this Chapter. The Special Litigator shall
21 be hired or retained by the Board of Directors of the Guam Economic
22 Authority within thirty (30) days of the enactment of this Section. Funds
23 held within the Landowners Recovery Fund, as well as appropriations
24 made to the Authority pursuant to §§2937 and 2938 of this Chapter are to
25 be used for the purposes of §§2943 and 2944 of this Chapter. The
26 Authority shall enter, on behalf of the people of Guam, ongoing litigation

1 initiated by private landowners to challenge the designation of land in
2 northern Guam as critical habitat or a wildlife refuge."

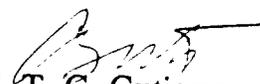


TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

94 FEB -7 PM 2: 26

Bill No. 845

Introduced by:


C. T. C. Gutierrez

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.

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

2 Section 1. Legislative Intent. The Legislature finds that the government of
3 Guam is the representative of the people of Guam, and therefore has the
4 responsibility of protecting and furthering the interests of the people of
5 Guam in their unequal struggle to gain access to both public and private
6 land and return of public and private land in Guam which has been either
7 in the possession of, or has access blocked by, agencies of the government
8 of the United States. Large tracts of land in Guam has been in the hands of
9 the United States military since the end of World War II. Much of this land
10 is still in the hands of the military, other land is in the hands of the United
11 States Fish and Wildlife Service of the Department of the Interior, and still
12 other land is in private hands with public access either blocked or limited
13 by the federal agencies. In their struggle to gain access to their land, our
14 citizens have mortgaged their homes and livelihood to hire professional
15 legal and other services to redress the issue. It is an unconscionable
16 situation to let continue, without government of Guam action. Although
17 there is activity taking place within the political process, through the Office
18 of Guam's Delegate to Congress, Robert Underwood, a parallel process can
19 also take place in the legal arena. The people of Guam, individually, will

1 never have the resources to undertake legal action against federal agencies.
2 For this reason, the resources of the government of Guam must be placed in
3 the service of the people in their quest to control the resources of their
4 island.

5 Section 2. §2944 of Title 12, Guam Code Annotated, is amended to read:

6 "§2944. Professional Services. The Authority is directed to
7 represent the government of Guam as the real party in interest to maintain
8 any appropriate cause of action for claims for return of public rights-of-
9 way, for damages, or injunctive or any other cause of action or appropriate
10 relief in connection with military dumpsites in [~~northwest~~] Guam, for
11 return of public and private land and to obtain rights-of-way to public and
12 private land which is either in the hands of agencies of the federal
13 government or has access to which is blocked or limited by agencies of the
14 federal government, and is directed to retain special legal counsel and
15 appraisal, economic evaluation, land survey, engineering and
16 environmental consultants, if and as required, to accomplish the purposes
17 of this Article. The Attorney General of Guam, the Director of Land
18 Management and the Administrator of the Guam Environmental Protection
19 Agency shall provide the Authority their full cooperation in the
20 implementation of the provisions of §§2936 through [~~2944~~] 2947 of this
21 Article.

22 Section 3. A new §2946 is added to Title 12, Guam Code Annotated, to
23 read:

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

1 made available for the Office of Special Litigator, an additional attorney,
2 attorneys, or a law firm, to assist in the furtherance of the legal action
3 authorized by §2944 of this Chapter. The Special Litigator shall be hired or
4 retained by the Board of Directors of the Guam Economic Authority within
5 six (6) months of the enactment of this Section."

6 Section 4. A new §2947 is added to Title 12, Guam Code Annotated, to
7 read:

8 "§2947. Appropriation for Special Litigator. One Million Six
9 Hundred Thousand Dollars (\$1,600,000) are appropriated from the General
10 Fund to the Authority for use of the Special Litigator to cover the costs of
11 the prosecuting legal action in furtherance of the provisions of §2944 of
12 this Article."

JOINT TESTIMONY OF GREGORIO L.G. CASTRO,
ENGRACIA CASTRO PEREZ AND CONCEPCION CASTRO CAMACHO

February 28, 1994

TO: COMMITTEE ON WAYS AND MEANS

MATTER: SUPPORT OF BILL NO. 845 TO PROVIDE A SPECIAL LITIGATOR TO REPRESENT THE PEOPLE OF GUAM IN GAINING ACCESS TO NORTHERN GUAM LAND

1. WE WOULD LIKE TO EXPRESS OUR GRATITUDE TO CHAIRMAN SENATOR CARL T.C. GUTIERREZ AND THE OTHER MEMBERS OF THE COMMITTEE ON WAYS AND MEANS IN INTRODUCING BILL NO. 845. WE HAVE JOINED WITH MANY OTHER FAMILIES THAT HAVE PROPERTY INTERESTS IN NORTHERN GUAM. WE ARE IN A UNIQUE SITUATION SINCE WE ARE BOTH LANDOWNERS AND LAND CLAIMANTS OF A PARCEL OF PROPERTY CONDEMNED BY THE UNITED STATES OF AMERICA FOR THE BENEFIT OF THE DEPARTMENT OF THE ARMY IN 1962. ATTACHED TO OUR TESTIMONY ARE THREE AFFIDAVITS OF EACH OF US WRITTEN TO SUPPORT THE LAWSUIT FILED IN A DISTRICT COURT IN SAN FRANCISCO IN ORDER TO GET AN INJUNCTION ON THE TRANSFER OF 370.9 ACRES FROM THE DEPARTMENT OF THE NAVY TO THE GENERAL SERVICES AGENCY AND AGAIN TRANSFERRED TO THE UNITED STATES FISH & WILDLIFE SERVICE. OUR AFFIDAVITS ALSO SUPPORT THE REASONS WHY LAND IN NORTHERN GUAM WHICH WE OWN AND LAND WHICH WE CLAIM AN INTEREST IN SHOULD NOT BE DESIGNATED AS EITHER CRITICAL HABITAT OR A WILDLIFE REFUGE. BEFORE WE CONTINUE WITH OUR TESTIMONY WE WOULD LIKE TO READ FOR THE

RECORD THE AFFIDAVIT OF GREGORIO L.G. CASTRO. READ THE ATTACHED AFFIDAVIT OF GREGORIO L.G. CASTRO BEFORE PROCEEDING TO PARAGRAPH 2.

2. OURSELVES ALONG WITH MANY OTHER FAMILIES DECIDED TO LITIGATE MATTERS REGARDING HAZARDOUS WASTE, THE REFUGE AND CRITICAL HABITAT. WE ALSO ALL DECIDED TO FILE A SEPARATE COMPLAINT FOR THE TAKING OF OUR FAMILIES' RIGHT OF ACCESS. THE ACCESS WHICH WAS SPECIFICALLY RESERVED OVER 30 YEARS AGO FOR OUR FAMILIES. LIKE THE OTHER FAMILIES, WE DO NOT FEEL IT IS FAIR FOR YET ANOTHER FEDERAL AGENCY, NAMELY THE UNITED STATES FISH & WILDLIFE SERVICE, TO MAKE OUR LAND VALUELESS AND OF NO USE AS A LEGACY FOR OUR CHILDREN. BY SUING BRUCE BABBITT, LESLIE TURNER, U.S. FISH & WILDLIFE OFFICIALS AND GENERAL SERVICES AGENCY OFFICIALS, WE BEGIN OUR ROAD TOWARDS THE POSSIBILITY OF FORCING FEDERAL AGENCIES TO RECOGNIZE OUR PROPERTY RIGHTS AND RESTORE THEM IN ORDER TO ALSO RESTORE THE DIGNITY WE AS U.S. CITIZENS RIGHTFULLY DESERVE. WE, AS FAMILIES, HAVE INITIATED LITIGATION WITH OTHER FAMILIES, FOR MATTERS CLEARLY FOR THE PUBLIC'S BENEFIT. IT IS OUR DESIRE THAT THE RESOURCES OF THE GOVERNMENT OF GUAM IN HAVING GEDA APPOINT A SPECIAL LITIGATOR IS A REMINDER TO GEDA OF WHAT IT ALREADY WAS MANDATED TO DO UNDER THE NORTHWEST TERRITORY OF GUAM ACT.

3. HOWEVER, WE HAVE NOT RECEIVED ANY SUPPORT OR ASSISTANCE FROM THE INTENDED PURPOSE OF THE NORTHWEST TERRITORY OF GUAM ACT. THE LITIGATION WE ARE NOW INVOLVED IN SHOULD BE PAID OUT OF GEDA FUNDS FROM PREVIOUS APPROPRIATION BUT THEY NEVER SHOWED AN INTEREST IN THE CRIES OF MANY FAMILIES TRYING TO SEEK JUSTICE AFTER OVER 30 YEARS OF BEING IGNORED. THE REFUGE AND CRITICAL HABITAT LAND TAKING WE DECIDED TO BE INVOLVED IN BY USING THE COURT SYSTEM IS A JUDICIAL MATTER THE GOVERNMENT OF GUAM SHOULD BE FIGHTING. WHY ARE FAMILIES, ALL RESIDENTS OF OUR ISLAND, BEING FORCED TO BATTLE A GIANT WITHOUT THE SUPPORT OF OUR GOVERNMENT AND ITS AGENCY, THE GUAM ECONOMIC DEVELOPMENT AUTHORITY.

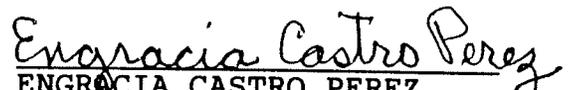
4. WHAT CHOICES ARE GIVEN TO OUR FAMILIES WHEN ANOTHER AGENCY OF THE FEDERAL GOVERNMENT SUDDENLY STEPS INTO THE PICTURE TO CREATE EVEN MORE PROBLEMS AND CONDITIONS ON HOW TO USE AN EASEMENT RIGHT PREVIOUSLY GRANTED TO US IN 1962. U.S. FEDERAL OFFICIALS HAVE INFORMED OUR ATTORNEYS THAT THE UNITED STATES MUST GRANT US AN ACCESS RIGHT. WE HAVE MADE IT VERY CLEAR, AND EVEN IN AN EFFORT TO SEEK GUAM'S ATTORNEY GENERAL'S SUPPORT, THAT THE UNITED STATES DOES NOT HAVE ANY RIGHT TO GRANT US AN ACCESS RIGHT WE WERE PREVIOUSLY AND SPECIFICALLY GIVEN. THE 1962 JUDGMENT DID NOT HAVE ANY PROVISIONS THAT GAVE ANY FEDERAL AGENCY THE RIGHT TO CONDITION THE USE OF OUR LAND

AND WE HIGHLY QUESTION THE LEGALITY OF HOW THEY
CONDITIONED ITS USE TO THE POINT OF EXTINCTION OF OUR
ACCESS RIGHT. EVEN TODAY, WE ARE NOT BEING TOLD HOW THE
HOW THE POSSESSION AND USE OF THE CONDEMNED AREA IN THE
NAME OF THE UNITED STATES FOR THE BENEFIT OF THE
DEPARTMENT OF THE ARMY. THE RIGHT OF USE AND POSSESSION
WAS TRANSFERRED TO THE DEPARTMENT OF THE NAVY FOR REASONS
WE DO NOT KNOW, EXCEPT AN EXPLANATION THAT IT WAS TOP
SECRET TO TRACK RUSSIANS SUBMARINES.

5. OUR FAMILIES AND THIS ENTIRE COMMUNITY OF GUAM HAS LIVED
IN TOP SECRET ONLY UNTIL AROUND 1988. WE NEVER KNEW MANY
OF THE RIGHTS WE NOW MAINTAIN AND MANY OF THE RIGHTS THE
GOVERNMENT MAINTAINS AND THE PEOPLE OF GUAM MAINTAIN,
UNTIL OUR ATTORNEYS REVIEWED SOME OF THE RECENTLY DE-
CLASSIFIED DOCUMENTS. WE ARE SEEKING THE SUPPORT OF BILL
NO. 845 FOR MANY REASONS, INCLUDING THE NEED FOR OUR
ENTIRE COMMUNITY TO NO LONGER LIVE IN SECRECY. IT IS
TIME FOR OUR COMMUNITY TO LIVE WITH KNOWLEDGE AND
INFORMATION REGARDING OUR LAND, THE USE OF OUR LAND AND
THE LANDS OF MANY OTHERS WHICH BILL NO. 845 WILL HELP TO
DO. WE CANNOT EMPHASIZE THE NEED FOR IMMEDIATE ACTION
SINCE NOT ONLY OUR LAND IS BEING AFFECTED. WE URGE YOU
TO CHANGE THE SECTION OF THE BILL THAT STATES THE SPECIAL
LITIGATORS FUNDING WILL BE AVAILABLE SIX MONTHS AFTER THE
BILL BECOMES LAW, TO A TIME PERIOD OF 30 DAYS. IN SIX

MONTHS, IT MAY BE TOO LATE TO RESTORE A PROBLEM THE GOVERNMENT OF GUAM AND GEDA SHOULD ACT ON RESOLVING TODAY. APPROXIMATELY 20% OF THE ISLAND WILL BE FOREVER CONTROLLED BY THE DEPARTMENT OF INTERIOR IF A REFUGE OR CRITICAL HABITAT IS CREATED. THAT IS THE LAW. FEDERAL LAW WILL NOT EVEN GIVE THE MEMBERS OF THE LEGISLATURE ANY SAY-SO OR ANY WORD NO MATTER WHAT AGREEMENTS ARE SIGNED IN HOW LANDS ARE USED WITHIN AND AROUND THE REFUGE. WE NEED YOUR SUPPORT AND GEDA'S SUPPORT TO STOP WHAT IS CLEARLY A PROCESS OF GREATER CONTROL IN THE DISGUISE OF CONSERVATION. IN CLOSING, THE REASONS FEDERAL OFFICIALS WANT AN OVERLAY REFUGE IS THAT IT GIVES THE DEPARTMENT OF DEFENSE AND THE SECRETARY OF INTERIOR THE BEST OF BOTH WORLDS. WITH AN OVERLAY REFUGE, THE DEPARTMENT OF DEFENSE AT ANY TIME CAN RECLAIM BACK IMMEDIATELY THE 370.9 ACRES TRANSFERRED TO THE U.S. FISH & WILDLIFE SERVICE. WE NEED GEDA'S HELP. WE NEED YOUR HELP. THE LOSSES WILL NOT ONLY BE OUR FAMILIES' LOSSES, BUT A TREMENDOUS LOSS TO OUR BEAUTIFUL ISLAND OF GUAM WE CALL HOME.


GREGORIO L.G. CASTRO


ENGRACIA CASTRO PEREZ


CONCEPCION CASTRO CAMACHO

of the Federal government to provide us the access reserved to us by the judgment. Our many efforts and spending of substantial amounts of money have not helped us;

5. Even today, the only way we can reach our property is to pass through the main gate of Andersen Air Force Base by showing Land Owner Passes before being allowed to go through. After we drive on paved roads to Tarague Beach area which military families use, we then come to the boundary point prior to reaching the Jinapsan area. A sign that says you are leaving United States Air Force property is the boundary marker. The Tarague Beach area just before the sign has paved roads, electricity, running water and many other nice improvements. After you pass the sign to reach our property, it is a very different and sad story;

6. To reach our property, there are no paved roads. We do not, and neither do our children, have a choice of the type of vehicles we can purchase. We are forced to travel across narrow and rocky areas to reach our property. We also have to travel across areas where the water tide hits our vehicles which makes it very dangerous. The vehicles we must buy, and our children must buy, must be four-wheel drive vehicles. It would be virtually impossible to reach our property without four-wheel drive vehicles. It is very sad we must live with these conditions of access but the Federal government has not offered us any other method of access without many conditions and at a large expense to ourselves and our children;

. . .

7. On Guam, the cultural value of land is important not from a dollar amount, but valuable because we would like to pass on as a gift to our children the land given to us by our parents. Some people call this the Legacy of the Land;

8. We have been trying for over 20 years to resolve the lack of access to our property and now we must deal with new problems. The problem of another Federal agency now wanting our property to be a part of a Guam National wildlife refuge. We always knew there was contaminated landfills caused by the military near our property, but only recently learned how serious the contamination is;

9. If the refuge is established, we have many concerns that the conditions on the use of our property which now exists will become even worse. Our hopes to use our property for residential, agricultural and recreational purposes could be another list of conditions on the use of our land since the uses we desire are not compatible with the refuge;

10. The access to our property is already a serious problem. If a refuge is established, we are concerned that we would have to pay a fee to get to our own property during a time when it is already almost physically impossible at times to get to our property;

11. We wish we could use our property without conditions to build homes for us and our children and to farm the land. The many hazardous landfills near the property concerns us since northern Guam is a main source of water for parts of the island. We do not

feel safe using the water knowing the hazardous landfills have not been cleaned. We would not want ourselves, our children and our children's children to be sick or their affected by drinking contaminated water. Contaminated water also will prevent us from irrigating our land for agricultural purposes and from raising of livestock. We certainly could not use water in homes we would like to one day build if water through the home is not healthy for drinking;

12. We did not participate in the preparation of the environmental impact assessment prepared by Fish & Wildlife Service. We were never personally interviewed by Federal representatives or ever asked of our feelings how the refuge would make an already difficult situation even more difficult for us and our children.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 24th day of February, 1994.

Concepcion Castro Camacho
CONCEPCION CASTRO CAMACHO

On this 24th day of February, 1994, before me, a Notary Public in and for the Territory of Guam, personally appeared CONCEPCION CASTRO CAMACHO, known to me to be person whose name is subscribed to the foregoing Affidavit, and acknowledge to me that she executed the same as her own free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Susan B. Nishimura
NOTARY PUBLIC

SUSAN B. NISHIMURA
Notary Public
655 S. MARINE DRIVE., SUITE 202
Tamuning, Guam 96911
In & for the Territory of Guam
My Commission Expires Feb. 10, 1997



AFFIDAVIT OF GREGORIO L.G. CASTRO

TERRITORY OF GUAM,)
 (ss.
City of Agana.)

I, GREGORIO L.G. CASTRO, being first duly sworn, hereby depose and state as follows:

1. I am a United States citizen and a resident of the Territory of Guam;

2. My Social Security No. is 550-36-8827;

3. I own an undivided interest in Lot No. 9992-1, Machanao, Guam. I received this parcel as part of a larger parcel given to me by my parents in 1955. I may only access my land by crossing military property at Anderson Air Force Base. The access area is part of the proposed Guam National Wildlife Refuge and Critical Habitat designation. The families that live in the Ritidian and Jinapsan area prior to World War II up to 1944, when the Americans recaptured Guam, were very independent. We were able to survive from the use of the land by fishing, agriculture and we even made our own soap and salt. I recall the days when the families of the Ritidian Point and Jinapsan areas where our property currently is located once lived without any conditions placed on the use of our lands -- when we were able to have family barbecues, climb our coconut trees and husk coconuts and so forth;

4. After the condemnation of the Ritidian lands in 1962, the parcel was divided into Lot No. 9992-1, which was retained by my family, and Lot No. 9992-2, which was condemned by the United

States. There is a 1962 District Court of Guam judgment that reserved for the original landowners and their heirs of my lot a right of ingress and egress. For many years, my brothers and sisters have tried to negotiate with representatives of the Federal government to provide us the access reserved to us by the judgment. Our many efforts and spending of substantial amounts of money have not helped us;

5. Even today, the only way we can reach our property is to pass through the main gate of Anderson Air Force Base by showing Land Owner Passes before being allowed to go through. After we drive on paved roads to Tarague Beach area which military families use, we then come to the boundary point prior to reaching the Jinapsan area. A sign that says you are leaving United States Air Force property is the boundary marker. The Tarague Beach area just before the sign has paved roads, electricity, running water and many other nice improvements. After you pass the sign to reach our property, it is a very different and sad story;

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Federal government has not offered us any other method of access without many conditions and at a large expense to ourselves and our children;

. . . .

7. On Guam, the cultural value of land is important not from a dollar amount, but valuable because we would like to pass on as a gift to our children the land given to us by our parents. Some people call this the Legacy of the Land;

8. We have been trying for over 20 years to resolve the lack of access to our property and now we must deal with new problems. The problem of another Federal agency now wanting our property to be a part of a Guam National wildlife refuge. We always knew there was contaminated landfills caused by the military near our property, but only recently learned how serious the contamination is;

9. If the refuge is established, we have many concerns that the conditions on the use of our property which now exists will become even worse. Our hopes to use our property for residential, agricultural and recreational purposes could be another list of conditions on the use of our land since the uses we desire may not be considered compatible with the refuge;

10. The access to our property is already a serious problem. If a refuge is established, we are concerned that we would have to pay a fee to get to our own property during a time when it is already almost physically impossible at times to get to our property;

11. Upon information and belief, activities which are now permitted on my property and while accessing my property may be prohibited or severely curtailed if the area adjoining my property is designated as critical habitat or as a wildlife refuge. The following are examples of such activities; 1) driving of vehicles off established roads; 2) digging or taking of sand; 3) hunting; 4) use of weapons; 5) operating motorized water craft; and 6) clearing of bushes or trees. In addition, upon information and belief, the authority of the Secretary of Interior to regulate property within the critical habitat or wildlife refuge will have an impact on my private property. In particular, the Secretary has authority to regulate water rights and uses in the refuge such that water flowing to my property may be affected; the Secretary may regulate the use of pesticides that may be needed for agricultural purposes; the Secretary may control the number and type of vehicles that can be brought to my property across the refuge or habitat; he may restrict the use of heavy machinery and the type of electrical equipment I may use; he may restrict the size and the type of buildings I can build and occupy. In essence, the Secretary may place restrictions on the way in which access to my property is gained, and, thus, his decisions will have an impact on the quality of human activities on my property.

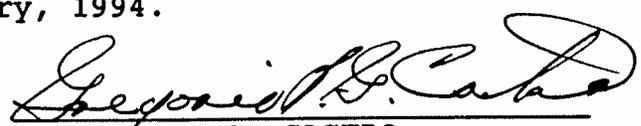
12. We wish we could use our property without conditions to build homes for us and our children and to farm the land. The many hazardous landfills near the property concerns us since northern Guam is a main source of water for parts of the island. We do not

feel safe using the water knowing the hazardous landfills have not been cleaned. Species in the proposed refuge may also be exposed to contaminated water and soil. We would not want ourselves, our children and our children's children to be sick or their affected by drinking contaminated water. Contaminated water also will prevent us from irrigating our land for agricultural purposes and from raising of livestock. We certainly could not use water in homes we would like to one day build if water through the home is not healthy for drinking;

13. We did not participate in the preparation of the environmental impact assessment prepared by Fish & Wildlife Service. We were never personally interviewed by Federal representatives or ever asked of our feelings how the refuge would make an already difficult situation even more difficult for us and our children.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 23rd day of February, 1994.


GREGORIO L.G. CASTRO

On this 23rd day of February, 1994, before me, a Notary Public in and for the Territory of Guam, personally appeared GREGORIO L.G. CASTRO to me to be person whose name is subscribed to the foregoing Affidavit, and acknowledge to me that he executed the same as his own free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.


NOTARY PUBLIC D#a:Aff.GC

SUSAN B. NISHIMURA
Notary Public
655 S. MARINE DRIVE., SUITE 202
Tamuning, Guam 96311
In & for the Territory of Guam
My Commission Expires Feb. 10, 1997



AFFIDAVIT OF ENGRACIA CASTRO PEREZ

TERRITORY OF GUAM,)
 (ss.
City of Agana.)

I, ENGRACIA CASTRO PEREZ, being first duly sworn, hereby depose and state as follows:

1. I am a United States citizen and a resident of the Territory of Guam;

2. My Social Security No. is 586-05-6065;

3. I own an undivided interest in Lot No. 9992-1, Machanao, Guam. I received this parcel as part of a larger parcel given to me by my parents in 1955. I may only access my land by crossing military property at Anderson Air Force Base. The access area is part of the proposed Guam National Wildlife Refuge and Critical Habitat designation. The families that live in the Ritidian and Jinapsan area prior to World War II up to 1944, when the Americans recaptured Guam, were very independent. We were able to survive from the use of the land by fishing, agriculture and we even made our own soap and salt. I recall the days when the families of the Ritidian Point and Jinapsan areas where our property currently is located once lived without any conditions placed on the use of our lands -- when we were able to have family barbeques, climb our coconut trees and husk coconuts and so forth;

4. After the condemnation of the Ritidian lands in 1962, the parcel was divided into Lot No. 9992-1, which was retained by my family, and Lot No. 9992-2, which was condemned by the United

States. There is a 1962 District Court of Guam judgment that reserved for the original landowners and their heirs of my lot a right of ingress and egress. For many years, my brothers and sisters have tried to negotiate with representatives of the Federal government to provide us the access reserved to us by the judgment. Our many efforts and spending of substantial amounts of money have not helped us;

5. Even today, the only way we can reach our property is to pass through the main gate of Andersen Air Force Base by showing Land Owner Passes before being allowed to go through. After we drive on paved roads to Tarague Beach area which military families use, we then come to the boundary point prior to reaching the Jinapsan area. A sign that says you are leaving United States Air Force property is the boundary marker. The Tarague Beach area just before the sign has paved roads, electricity, running water and many other nice improvements. After you pass the sign to reach our property, it is a very different and sad story;

6. To reach our property, there are no paved roads. We do not, and neither do our children, have a choice of the type of vehicles we can purchase. We are forced to travel across narrow and rocky areas to reach our property. We also have to travel across areas where the water tide hits our vehicles which makes it very dangerous. The vehicles we must buy, and our children must buy, must be four-wheel drive vehicles. It would be virtually impossible to reach our property without four-wheel drive vehicles. It is very sad we must live with these conditions of access but the

Federal government has not offered us any other method of access without many conditions and at a large expense to ourselves and our children;

. . . .

7. On Guam, the cultural value of land is important not from a dollar amount, but valuable because we would like to pass on as a gift to our children the land given to us by our parents. Some people call this the Legacy of the Land;

8. We have been trying for over 20 years to resolve the lack of access to our property and now we must deal with new problems. The problem of another Federal agency now wanting our property to be a part of a Guam National wildlife refuge. We always knew there was contaminated landfills caused by the military near our property, but only recently learned how serious the contamination is;

9. If the refuge is established, we have many concerns that the conditions on the use of our property which now exists will become even worse. Our hopes to use our property for residential, agricultural and recreational purposes could be another list of conditions on the use of our land since the uses we desire may not be considered compatible with the refuge;

10. The access to our property is already a serious problem. If a refuge is established, we are concerned that we would have to pay a fee to get to our own property during a time when it is already almost physically impossible at times to get to our property;

11. Upon information and belief, activities which are now permitted on my property and while accessing my property may be prohibited or severely curtailed if the area adjoining my property is designated as critical habitat or as a wildlife refuge. The following are examples of such activities; 1) driving of vehicles off established roads; 2) digging or taking of sand; 3) hunting; 4) use of weapons; 5) operating motorized water craft; and 6) clearing of bushes or trees. In addition, upon information and belief, the authority of the Secretary of Interior to regulate property within the critical habitat or wildlife refuge will have an impact on my private property. In particular, the Secretary has authority to regulate water rights and uses in the refuge such that water flowing to my property may be affected; the Secretary may regulate the use of pesticides that may be needed for agricultural purposes; the Secretary may control the number and type of vehicles that can be brought to my property across the refuge or habitat; he may restrict the use of heavy machinery and the type of electrical equipment I may use; he may restrict the size and the type of buildings I can build and occupy. In essence, the Secretary may place restrictions on the way in which access to my property is gained, and, thus, his decisions will have an impact on the quality of human activities on my property.

12. We wish we could use our property without conditions to build homes for us and our children and to farm the land. The many hazardous landfills near the property concerns us since northern Guam is a main source of water for parts of the island. We do not

feel safe using the water knowing the hazardous landfills have not been cleaned. Species in the proposed refuge may also be exposed to contaminated water and soil. We would not want ourselves, our children and our children's children to be sick or their affected by drinking contaminated water. Contaminated water also will prevent us from irrigating our land for agricultural purposes and from raising of livestock. We certainly could not use water in homes we would like to one day build if water through the home is not healthy for drinking;

13. We did not participate in the preparation of the environmental impact assessment prepared by Fish & Wildlife Service. We were never personally interviewed by Federal representatives or ever asked of our feelings how the refuge would make an already difficult situation even more difficult for us and our children.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 23rd day of February, 1994.

Engracia Castro Perez
ENGRACIA CASTRO PEREZ

On this 23rd day of February, 1994, before me, a Notary Public in and for the Territory of Guam, personally appeared ENGRACIA CASTRO PEREZ, known to me to be person whose name is subscribed to the foregoing Affidavit, and acknowledge to me that she executed the same as her own free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Susan B. Nishimura
NOTARY PUBLIC

Dfa:Aff.ECP

SUSAN B. NISHIMURA
Notary Public
655 S. MARINE DRIVE., SUITE 202
Tamuning, Guam 96911
In & for the Territory of Guam
My Commission Expires Feb. 10, 1997





DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

633 ABW/CC
Unit 14003
APO AP 96543-4003

22 FEB 1994

Mr Antonio Artero Sablan
131 Pahong Court
Sinajana GU 96926

Dear Mr Sablan

To assist landlocked landowners in maintaining maximum use and enjoyment of their private property, consistent with Federal law, Guam law and military mission requirements, the guidelines and Conditions for Access Rights of Private Landowners have been revised.

These Guidelines and Conditions are effective as of 1 March 1994.

As acknowledgment of receipt of the Guidelines and Conditions, I ask that each adult qualified for or possessing an indefinite or permanent permit/Visitor Pass or persons holding a leasehold interest in landlocked private property, sign the last page of the Guidelines and Conditions and return this document to the Real Property Section of our Civil Engineer Squadron. The address is:

633 CES/CERR
Unit 14007
APO AP 96543-4007

Questions concerning access to real property should be addressed to Ms Barbara Gumataotao, 366-6169. Questions concerning the legal basis for these rules should be addressed to Capt Andrew Turner or Mr Martin Pankove at the Legal Office, 366-2939.

Thank you for your cooperation.

Sincerely

A handwritten signature in black ink, appearing to read "Dennis R. Larsen".

DENNIS R. LARSEN, Colonel, USAF
Commander, 633d Air Base Wing

Attachment:
Guidelines and Conditions

Access Rights of Private Landowners

GUIDELINES AND CONDITIONS

Andersen Air Force Base, Guam

The following guidelines and conditions are established to define the nature and scope of access to private property via Andersen Air Force Base. These guidelines, based on the legal right of access held by "landlocked" landowners at Jinapsan and Urunao Beaches, are designed to assist private landowners in achieving use and enjoyment of their property. These guidelines are designed to comply with federal law, private property rights, environmental regulations, military mission requirements and installation security and safety requirements.

The following guidelines and conditions are entered into on this ___ day of _____, 1994, by and between the Commander, Andersen Air Force Base, Guam, and the signatory below.

1. Visitor Passes

a. Issuance. Visitor Passes will be issued to the following persons:

i. Registered Owners of the Jinapsan Property, Lots 9992 - 9997, and the Urunao Beach Property, Lots 10080 and 10081;

ii. Husbands and Wives of 1(a)(i);

iii. Sons and Daughters of 1(a)(i);

iv. Lessees of 1(a)(i); and

v. Agents of 1(a)(i) and 1(a)(iv).

b. Applications. Visitor Pass applications may be obtained by calling 366-6169, or by visiting the Real Property office in Building 18001. Persons identified in paragraph 1(a) and otherwise meeting the requirements herein will be issued an AF Form 75 Visitor Pass for entry to Andersen Air Force Base.

c. Guests. All guests, customers, and invitees of persons identified in paragraph 1(a) must be accompanied by an authorized Visitor Pass holder during transit across military property.

d. Scope. Visitor Passes are issued to persons identified in paragraph 1(a) for the sole purpose of access to private property via Andersen Air Force Base. These Visitor Passes do not authorize any other entry or use of lands or waters owned or under the jurisdiction of the United States

government or its agencies and departments. Any entry or use of military property other than for the sole purpose of access to private property, or any deviation therefrom, by persons identified in paragraph 1(a) or their guests, shall be considered a breach of this agreement.

e. **Transferability.** Visitor Passes are non-transferable, i.e., Visitor Passes may be used only by the person authorized, and only on the vehicle identified on the pass.

f. **Duration.**

i. Indefinite passes will be issued to persons identified in paragraph 1(a)(i), 1(a)(ii), and 1(a)(iii); and

ii. Limited passes will be issued to persons identified in paragraph 1(a)(iv) and 1(a)(v). Limited passes will be issued for a three-year period or the duration of the agency or lease, whichever is shorter. Limited passes will be renewable during the term of the agency or lease.

g. **Revocation.** Visitor Passes are subject to unilateral revocation by the installation commander. Revocation will normally occur only in cases of criminal misconduct, other serious misconduct which would usually result in barment from the base, or breach of the conditions herein. Revocation may also occur during times of national emergency or when military security needs so require. Revocation may be immediate.

h. Use of military retirees, dependents, or active duty members to sponsor access to the installation for your guests is prohibited. Privileges associated with the use of military identification cards is personal and may not be used for commercial purposes. Encouraging or permitting commercial use of military privileges may result in administrative, civil or criminal action being brought against you, your company and/or your employees. Employment of these individuals is permissible under appropriate circumstances, however these individuals must first obtain a Visitor Pass, the same as any other employee, to escort guests.

2. Transit

a. **Search.** All vehicles and personnel are subject to unrestricted search when entering and exiting military property.

b. **Traffic Regulations.** Drivers will comply with all traffic signals, posted speed-limits and all other traffic

regulations during transit of military property.

c. Insurance. All personal vehicles entering military property must be insured for at least the minimum amount of liability coverage required under Guam law.

d. Guests. All guests, customers, and invitees of persons identified in paragraph 1(a) will be accompanied by a pass holder at all times during transit of military property. A list of the names, social security or passport number, or a valid identification such as a driver's license (English version) must be provided to the security police upon request.

e. Firearms. All firearms must be declared to Security Police before entering military property. Registration in accordance with Guam law is a pre-condition to entry. Firearms must remain unloaded at all times while on military property.

f. Electronics. Equipment capable of emitting electronic interference is not authorized on military property.

3. Tour Operations

a. Approval. Commercial activities are permitted on Air Force installations only with prior approval of the Installation Commander. No person engaged in the operation or management of a tour activity will make any statement or take any action which implies official Air Force endorsement of the tour company or its operations in any manner.

b. Parking and Loading. Federal law strictly prohibits unauthorized commercial use of military property. No tour vehicles will park, off-load, or on-load tour passengers on Air Force property except at the southernmost end of Tarague Beach. Parking will be of reasonable duration and in a manner so as not to impede the orderly flow of traffic. Enforcement will be at the sole discretion of the Security Police.

c. Vehicles. Tour vehicles transiting Anderson Air Force Base must not exceed a seating capacity of 26 persons (including driver).

d. Drivers. All drivers must be able to present a current drivers license valid in the Territory of Guam, proof of current vehicle registration, and proof of current automobile insurance covering the vehicle and driver.

e. Insurance. Tour Operators will provide evidence of at least fifty thousand dollars per passenger general liability insurance to cover injuries to guests and employees while on

military property, whether such injuries result from the operation of motor vehicles, the conduct of commercial activities, or any other cause. Proof of insurance shall be provided to the Real Property Office prior to the issue of any passes.

f. Night Tours. Night tours and overnight guests will be permitted upon 24 hour prior notification to the Security Police.

4. Assumption of Risk

THE UNDERSIGNED, ON THEIR OWN BEHALF AND THAT OF THEIR GUESTS, HEREBY EXPRESSLY ASSUME ANY AND ALL RISKS OF INJURY OR DAMAGE TO THEIR PERSON OR PROPERTY ARISING OUT OF THEIR USE OF AND ENTRY UPON THE AFOREMENTIONED PREMISES PURSUANT TO THIS ACCESS AGREEMENT; WHICH RISKS SHALL INCLUDE, BUT NOT BE LIMITED TO, INJURY OR DAMAGE TO PROPERTY OR PERSONS RESULTING FROM THE CONDITION OF THE PREMISES IN THEIR NATURAL STATE OR AS THEY ARE USED BY THE GOVERNMENT IN THE COURSE OF ITS ACTIVITIES.

5. Indemnification

THE UNDERSIGNED HEREBY EXPRESSLY AGREES TO HOLD THE GOVERNMENT HARMLESS AND INDEMNIFY THE GOVERNMENT FROM ANY AND ALL LIABILITIES FOR ANY INJURY OR DAMAGE TO PERSON OR PROPERTY INCURRED BY ANY GUESTS OF THE UNDERSIGNED WHO COMES UPON SAID PROPERTY WITH THEIR CONSENT AND PERMISSION.

6. Pass Holder Accountability

THE UNDERSIGNED AGREES THAT ALL PASS HOLDERS ARE ACCOUNTABLE FOR ACTIONS OF THEIR GUESTS. ANY VIOLATION BY A GUEST IS CONSIDERED A VIOLATION OF THE PASS HOLDER.

7. Miscellaneous Provisions

a. No hunting or fishing is allowed without appropriate Government of Guam licenses and specific advance permission of the Installation Commander.

b. Reef walking and swimming in military/federally owned areas is prohibited. Use of Tarague Beach and its facilities are for the use of military members only.

c. Dumping or depositing of trash, refuse or waste material of any kind or nature whatsoever is strictly prohibited.

8. Emergency Restrictions

All persons are prohibited from entering areas determined to be in jeopardy during typhoon or other peacetime emergencies.

a. Upon declaration of Typhoon Condition Readiness 2 (TCOR2), Tropical Storm Condition 2 or at the Installation Commander's discretion, the road to Tarague Beach will be closed and will remain closed until TCOR 4 has been declared and damage assessment (if any) is completed. Individuals wishing to enter and secure their personal property should coordinate with and gain permission for entry from the 633 ABW Mission Director, 366-4200 or 366-4400.

b. Upon declaration of other peacetime emergencies, the Installation Commander will direct the closure and reopening of access roads as deemed necessary.

9. CONDITIONS TEMPORARY

These conditions for access across Andersen Air Force Base shall remain in effect until such time as an alternate access route becomes available. When an alternate access route becomes available, access across Andersen Air Force Base may no longer be permitted.

ACKNOWLEDGEMENT

The undersigned hereby acknowledges understanding and acceptance of all requirements and conditions contained herein, and further agrees that breach of any condition herein by persons identified in paragraph 1(a) or their guests shall be grounds for revocation of any Visitor Pass issued pursuant to this agreement. Failure to effect revocation due to breach of any condition herein shall not constitute a waiver of that or any other condition of this agreement.

Signature

Name

Date

Basis (Paragraph 1(a))

United States District Court

Northern

California

DISTRICT OF

Gregorio L.G. Castro,
Engracia Castro Perez, and
Francisco T. Agüero
Plaintiffs,
v.

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

See Attachment A
Defendants.

TO: (Name and Address of Defendant)

Honorable Bruce Babbitt
Secretary of Interior
6151 Main Interior Bldg.
Washington, DC 20240

Continued on Attachment B

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Mark L. Pollok
Michael J. Van Zandt
Keck, Mahin & Cate
One Maritime Plaza, 23rd Floor
San Francisco, CA 94111

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

DATE

BY DEPUTY CLERK

SUMMONS ATTACHMENT A

DEFENDANTS

Bruce Babbitt in his capacity as the Secretary of the Interior,
Leslie Turner in her capacity as Assistant Secretary of Interior
for Territorial and International Affairs,
Mollie Beattie in her capacity as Director of the U.S. Fish and
Wildlife Service,
Marvin L. Plenert in his capacity as Regional Director of the U.S.
Fish and Wildlife Service - Region I,
Roger W. Johnson in his capacity as Administrator of the General
Services Administration,
Aki Nakao in her capacity as Acting Regional Administrator of the
General Services Administration - Region 9, and
Clark Van Epps in his capacity as Director of the Office of Real
Estate Sales in the General Services Administration - Region 9,

SUMMONS ATTACHMENT B

Ms. Leslie Turner
Assistant Secretary of Interior
for Territorial and International Affairs
6151 Main Interior Bldg.
Washington, D.C. 20240

Ms. Mollie Beattie
U.S. Fish and Wildlife Service
Mail Stop 3156
Main Interior Bldg.
Washington, D.C.

Marvin L. Plenert
Regional Director
U.S. Fish and Wildlife Service
Region I
Eastside Federal Complex
911 NE 11th Avenue
Portland, OR 97232

Mr. Roger W. Johnson
Administrator
General Services Administration
General Services Building
18th and F Streets, N.W.
Washington, D.C. 20405

Ms. Aki Nakao
Acting Regional Administrator
General Services Administration
Region 9
525 Market Street, 28th Floor
San Francisco, CA 94105

Mr. Clark Van Epps
Director
Office of Real Estate Sales
General Services Administration
Region 9
525 Market Street (Code RDR)
San Francisco, CA 94105