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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 Gregorio L.G. Castro, Igracia Castro)
12 Perez and Francisco T. Aguero,)

13 Plaintiffs,)

Case No.)

14 vs.)

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

25 Defendants.)
26

27 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

Plaintiffs bring this lawsuit to challenge defendants' determinations under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., that the designation of critical habitat for the Territory of Guam endangered species and the establishment of the Guam National Wildlife Refuge are not major federal actions which significantly affect the quality of the human environment. Plaintiffs seek temporary and permanent injunctive relief to enjoin: (1) the designation of certain areas of Guam as critical habitat; and (2) the establishment of the Guam National Wildlife Refuge. Plaintiffs also seek temporary and permanent injunctive relief to enjoin the transfer of federal lands associated with the designation of critical habitat or establishment of a wildlife refuge from the United States Navy to the United States Fish and Wildlife Service until the requisite environmental impact statement is prepared and NEPA is fully complied with.

Plaintiffs, through counsel, allege as follows:

II. JURISDICTION AND VENUE

1. The Court has original jurisdiction over this action by virtue of 28 U.S.C. § 1331, which applies to actions arising under the laws of the United States.

2. Plaintiffs' claims arise under 42 U.S.C. § 4321 et seq., the National Environmental Policy Act, 5 U.S.C. §§ 701-706, the Administrative Procedure Act ("APA"), and 28 U.S.C. §§ 2201 and 2202.

3. Venue lies in this judicial district pursuant to

1 28 U.S.C. § 1391, as some of the defendants reside within this
2 district.

3 III. PARTIES

4 4. Plaintiff Gregorio L.G. Castro is a resident of
5 the Territory of Guam and a private land owner on Guam. His real
6 property is located within the area proposed to be designated as
7 critical habitat and is immediately adjacent to the proposed Guam
8 National Wildlife Refuge in the Jinapsan area of northern Guam.

9 5. Plaintiff Engracio Castro Perez is a resident of
10 the Territory of Guam and a private land owner on Guam. Her real
11 property is located within the area proposed to be designated as
12 critical habitat and is immediately adjacent to the proposed Guam
13 National Wildlife Refuge in the Jinapsan area of northern Guam.

14 6. Plaintiff Francisco T. Aguero is a resident of the
15 Territory of Guam and a private land owner on Guam. His real
16 property is located within the area proposed to be designated as
17 critical habitat and is immediately adjacent to the proposed Guam
18 National Wildlife Refuge in the Ritidian Point area of northern
19 Guam.

20 7. Plaintiffs and their representatives have
21 participated in meetings with, testified at hearings before, and
22 submitted statements and other written comments to defendants,
23 placing defendants on notice that the environmental assessment
24 for the Guam National Wildlife Refuge was inadequate.

25 8. Defendant Bruce Babbitt is the Secretary of the
26 United States Department of Interior. As such, he has
27 responsibility for the establishment of, and decisions
28 concerning, the Guam National Wildlife Refuge and the designation

1 of critical habitat under the Endangered Species Act, 16 U.S.C.
2 §§ 1531 et seq. ("ESA"). Secretary Babbitt is sued in his
3 official capacity.

4 9. Defendant Leslie Turner is the Assistant Secretary
5 of the United States Department of Interior for Territorial and
6 International Affairs. As such, she is responsible for the
7 administration of Department of Interior activities on Guam, and
8 has responsibility for decisions on Guam, including those
9 regarding the proposed Guam National Wildlife Refuge and the
10 designation of critical habitat on Guam. Assistant Secretary
11 Turner is sued in her official capacity.

12 10. Defendant Mollie Beattie is the Director of the
13 United States Fish and Wildlife Service ("USFWS"), the project
14 proponent as defined under NEPA, and as such she has
15 responsibility for decisions regarding, and the management, of
16 the proposed Guam National Wildlife Refuge and the designation of
17 critical habitat under the ESA. Ms. Beattie is sued in her
18 official capacity.

19 11. Defendant Marvin L. Plenert is the Regional
20 Director of the United States Fish and Wildlife Service, Region
21 I, Portland, Oregon and as such he is the immediate decision
22 maker for the Final Environmental Assessment for the Guam
23 National Wildlife Refuge. Mr. Plenert is sued in his official
24 capacity.

25 12. Defendant Roger W. Johnson is the Administrator of
26 the United States General Services Administration ("GSA") and as
27 such he is responsible for the transfer of lands on Guam declared
28 excess by the United States Navy at Ritidian Point, Territory of

1 Guam, to the United States Fish and Wildlife Service for purposes
2 of establishing a headquarters for the proposed Guam National
3 Wildlife Refuge. Mr. Johnson is sued in his official capacity.

4 13. Defendant Aki Nakoa is the Regional Administrator
5 of the United States General Services Administration, Region IX,
6 San Francisco, California, and as such she is responsible for
7 decisions regarding the transfer of lands managed by the United
8 States Navy to the USFWS for purposes of establishing a
9 headquarters for the Guam National Wildlife Refuge. Ms. Nakoa is
10 sued in her official capacity.

11 14. Defendant Clark Van Epps is the Director of the
12 Office of Real Estate Sales in the General Services
13 Administration - Region 9. As such, he is the immediate decision
14 maker for transfer of lands managed by the United States Navy to
15 USFWS for purposes of establishing a headquarters for the Guam
16 National Wildlife Refuge. Mr. Van Epps is sued in his official
17 capacity.

18 IV. FIRST CLAIM FOR RELIEF

19 15. NEPA requires the preparation of an environmental
20 impact statement ("EIS") for every major federal action which may
21 affect the quality of the human environment.

22 16. The establishment of a National Wildlife Refuge on
23 Guam by the USFWS is a major federal action which may
24 significantly affect the quality of the human environment. Among
25 other things, establishment of the Guam Wildlife Refuge would
26 involve the permanent acquisition and management of 28,389 acres
27 of fast land on Guam and 3,265 acres of submerged lands
28 surrounding Guam. The lands in question would be acquired

1 through cooperative agreements, transfers of real property
2 through the United States General Services Administration
3 ("GSA"), and other agreements. Lands within the Guam Wildlife
4 Refuge are currently under the control of or owned by the United
5 States Department of Defense and the Government of Guam. A
6 portion of the former military lands at Ritidian Point (371
7 acres) on northern Guam have already been transferred by the GSA
8 from the U.S. Navy to the USFWS for purposes of establishing a
9 headquarters for the Guam National Wildlife Refuge (Exhibit "A").

10 17. Lands within the area of the proposed Guam
11 National Wildlife Refuge contain numerous hazardous and toxic
12 dump sites. These sites have released and are releasing
13 hazardous substances and waste into the environment, including
14 the air, the soil, and the groundwater.

15 (a) The hazardous substances and waste include,
16 inter alia, explosives and other munitions, tires,
17 aircraft parts, incendiaries, trichloroethylene
18 ("TCE"), oil, sulfuric acid, ethylene glycol, chromic
19 acid, paint slops, jet engine fuels (JP-4), toluene,
20 detergents, paint thinner, ferro-cyanide, hydrogen
21 cyanide, cadmium, diesel fuel, battery acid,
22 chlorofluorocarbons ("CFC"), asbestos, and paint
23 strippers.

24 (b) A large portion of the proposed Wildlife
25 Refuge is within the confines of the Anderson Air Force
26 Base, which Base has been designated by the United
27 States Environmental Protection Agency as a site on the
28 National Priorities List ("NPL") under the

1 Comprehensive Environmental Response, Compensation and
2 Liability Act ("CERCLA" or "Superfund") 42 U.S.C. §
3 9601 et seq.. Approximately 11,960 acres of the refuge
4 are located in northern Guam, an area which contains
5 the main source of drinking water for a large majority
6 of the population of Guam and an area which would be
7 the source of water for species within the refuge.

8 (c) Although the northern Guam area is
9 being studied under Superfund, it is plaintiffs'
10 understanding, based on information and belief, that
11 none of the contaminated sites within the refuge have
12 been remedied and may not be in the reasonably
13 foreseeable future.

14 18. In order for plaintiffs to gain access to their
15 lands adjoining the proposed refuge, they must cross over the
16 lands proposed to be included in the refuge. Plaintiffs' lands
17 are totally landlocked by the facilities controlled by the
18 Department of Defense ("DoD") and access can be gained only by
19 entering upon the military lands and crossing over the area of
20 the now proposed refuge.

21 19. Since 1962, plaintiffs and their families have
22 been denied reasonable access by the military to their lands and
23 this denial has been the subject of continuous negotiations and
24 discussions with the military. Access to the plaintiffs' lands
25 will require additional approvals from the USFWS if the wildlife
26 refuge is established or critical habitat designated.

27 20. The proposal to convert 28,389 acres of fast land
28 on Guam to a wildlife refuge, if adopted, will have a significant

1 impact on the land use planning decisions and other environmental
2 and management decisions on Guam and on the physical environment
3 of Guam. The original proposal to convert over 40,000 acres of
4 fast land would have affected almost 30 percent of the land-mass
5 of Guam and for this and other reasons constitutes a major
6 federal action. The selected alternative for the Guam Wildlife
7 Refuge would affect over 21 percent of the land mass. With the
8 limited amount of land on the Island of Guam (135,000 acres), the
9 conversion of over 21 percent of the land mass to a single use
10 may have a significant effect on the quality of the human
11 environment.

12 21. Under current land use plans, the areas under
13 consideration are designated as military lands hotel/resort and
14 conservation lands with existing land uses in northern Guam,
15 including lands immediately adjacent to the proposed wildlife
16 refuge.

17 22. On June 14, 1991, defendant USFWS proposed to
18 designate 16,893 acres in Northern Guam and 7,669 acres in
19 southern Guam as critical habitat for six Guam species under the
20 ESA. These species had previously been listed as endangered
21 species under the ESA. Specifically, the species are: the Guam
22 Micronesian kingfisher (Halcyon cinnamomina cinnamomina), the
23 Guam broadbill (Myiagra freycineti), the Mariana crow (Corvus
24 kubaryi), the Guam bridled white-eye (Zosterops conspicillatus
25 conspicillatus), the little Mariana fruit bat (Pteropus tokudas),
26 and the Mariana fruit bat (Pteropus mariannus mariannus)
27 (hereafter "Guam endangered species"). A copy of the proposed
28 listing is attached as Exhibit "B." Not all of the land proposed

1 for designation is federally owned. Approximately 5,338 acres
2 are owned by the Government of Guam while other land is privately
3 owned and includes land owned by plaintiffs herein.

4 23. The USFWS has determined that it may designate
5 these areas as critical habitat for the Guam endangered species
6 without preparing an environmental impact statement under NEPA.

7 24. The area of critical habitat designation for
8 northern Guam alone represents over 12.5 percent of the land mass
9 of Guam. The total land designated for critical habitat
10 represents over 18 percent of the fast land on Guam. The
11 permanent designation of such a substantial portion of the land
12 mass of Guam may have a significant impact on the quality of the
13 human environment.

14 25. The designation of critical habitat for the Guam
15 endangered species includes the real property in northern Guam
16 belonging to plaintiffs. The plaintiffs use this property
17 currently for recreation, family gatherings, gardening, and
18 fishing. Plaintiffs wish to use this property in the future,
19 once reasonable access is granted by the United States, for
20 residential purposes. The critical habitat designation will have
21 an adverse effect on the quality of life the plaintiffs enjoy on
22 their property due to the restrictions the critical habitat
23 designation may impose on the use of their property. These
24 impacts are unknown at this time because the defendants have
25 failed to prepare any environmental analysis under NEPA of the
26 proposed critical habitat.

27 26 NEPA requires that, for proposed federal actions,
28 an Environmental Assessment ("EA") may be prepared prior to a

1 determination by the agency as to whether the proposed action
2 might have a significant effect on the quality of the human
3 environment, in which case an EIS must be prepared, or whether
4 the project will have any significant effect on the environment,
5 in which case a finding of no significant impact ("FONSI") will
6 be prepared.

7 27. USFWS is the lead agency for the proposed Guam
8 National Wildlife Refuge and critical habitat designation.

9 28. In July 1993, USFWS prepared and published the
10 Final Environmental Assessment for the Proposed Guam National
11 Wildlife Refuge. On July 9, 1993, defendant Marvin L. Plenert,
12 issued a FONSI for the Guam National Wildlife Refuge, finding and
13 determining therein that the refuge was not a major federal
14 action significantly affecting the quality of the human
15 environment, and that an EIS would not be prepared. A copy of
16 this FONSI is attached as Exhibit "C."

17 29. The proposed Guam National Wildlife Refuge is both
18 a major federal action and an action which may significantly
19 affect the quality of the human environment. The site of the
20 proposed refuge may significantly affect the health and safety of
21 refuge workers, visitors, adjacent property owners, and the
22 species within the refuge. The existence of multiple hazardous
23 waste and hazardous substance disposal and dump sites within the
24 proposed refuge may cause a significant effect on the health and
25 safety of people working in, visiting, and transiting the refuge
26 and may affect the health and potential existence of the species
27 within the refuge. The EA does not address the potential impacts
28 of these sites on the refuge, humans, or the wildlife.

1 30. The refuge will significantly affect the quality
 2 of the human environment by severely altering the carefully
 3 considered land use plans for Guam. The permanent preservation
 4 of over 21 percent of the fast land of Guam for a National
 5 Wildlife Refuge, will remove from other productive uses a vast
 6 area of land. With the limited amount of land available on Guam
 7 for housing, recreation, farming, industrial and other commercial
 8 uses, the decision to establish the refuge will alter the
 9 relationship between the short term uses of the environment and
 10 the maintenance and enhancement of long term productivity.

11 31. The refuge may also significantly affect the
 12 quality of the human environment by adversely impacting the
 13 quality of life now enjoyed or intended in the future for
 14 plaintiffs on their real property that adjoins the refuge. The
 15 plaintiffs are not permitted now to access their land under
 16 reasonable conditions. The imposition of additional access
 17 requirements due to the establishment of the refuge may add
 18 approvals and conditions to the plaintiffs' already severely
 19 burdened access rights.

20 32. The use and enjoyment of plaintiffs' property may
 21 also be adversely affected by the establishment of the refuge
 22 because the current recreational, farming, family gathering and
 23 other uses may be burdened by additional restrictions and
 24 requirements based on the establishment of the refuge. Refuge
 25 management activities of the United States and the various
 26 defendants, their agents and employees, within and adjacent to
 27 the refuge may have impacts both within and without the area of
 28 the refuge, including, but not limited to, the disturbance of

1 existing contamination, causing it to spread and be distributed
2 within and without the confines of the refuge, the diversion of
3 water from existing uses to refuge uses, alteration of existing
4 and ongoing agricultural practices, and the like.

5 33. There are other activities which will take place
6 within the refuge which may have a cumulative significant effect
7 on the quality of the human environment. The Government of Guam,
8 for example, is proposing to establish a 50 acre recreational
9 area at Ritidian Point. Ritidian Point is in northern Guam and
10 within the proposed refuge. The United States Navy and United
11 States Air Force will continue to manage some of the real
12 property within the refuge and, based upon information and
13 belief, plaintiffs' understand, will continue to conduct military
14 activities within these areas. In addition, based on the
15 provisions of law governing wildlife refuges and based on
16 information and belief, plaintiffs understand and expect that
17 there will be use of the refuge by visitors, including but not
18 limited to tourists and what have been called "ecotourists" who
19 might not otherwise come to Guam or, if they come to Guam, might
20 not otherwise come to this area of Guam on which the proposed
21 refuge will be located. There may be a cumulative effect on the
22 refuge from the proposed Guam recreational area, increased
23 tourist and ecotourist traffic, and any military activities,
24 especially from the amount of traffic, noise and human
25 disturbance caused by such activities.

26 34. NEPA requires that an EIS be prepared when
27 "substantial questions" are raised as to whether a proposed
28 federal action may significantly affect the quality of the human

1 environment.

2 (a) In addition to the above-listed potential
 3 impacts, there are other potentially significant
 4 adverse impacts, both direct and indirect on the human
 5 environment on Guam from the proposed actions.

6 (b) Reducing the available land mass on Guam by
 7 approximately 21 percent will decrease the supply and
 8 increase the cost of land needed for housing and
 9 therefore the availability of adequate and affordable
 10 housing, will reduce investor's return on investment,
 11 cause a decline in the rate of economic development,
 12 and have a broad and pervasive impact on the quality of
 13 life on Guam, and will reduce the ability of the people
 14 and government of Guam to prevent further environmental
 15 decay or to remedy existing environmental problems,
 16 whether traceable to the proposed projects or to other
 17 factors.

18 35. In light of the foregoing impacts and the
 19 potential for other as yet unconsidered and unrevealed impacts,
 20 defendants' determination that the project would not have a
 21 significant impact on the quality of the human environment was
 22 unreasonable, arbitrary and capricious, in error of law, and in
 23 violation of NEPA.

24 SECOND CLAIM FOR RELIEF

25 (Inadequacy of Environmental Assessment)

26 36. Plaintiffs incorporates herein the allegations set
 27 forth in paragraphs 1 through 34.

28 37. For the reasons set forth in paragraphs 15 through

1 34 above, the EA fails to adequately assess the impact of the
2 proposed action on the environment.

3 38. The EA fails to adequately consider reasonable
4 alternatives to the proposed refuge. For example, it fails to
5 consider adequately the alternative of establishing the refuge on
6 other islands; it fails to consider designating the areas as
7 critical habitat; it fails to consider other compatible uses for
8 the land which may allow for protection of the species yet not
9 set aside the 21 percent of the land mass in perpetuity; it fails
10 to consider, pursuant to 16 U.S.C. § 666g, whether the land is
11 best used for agricultural, residential, industrial or other
12 related purposes; it fails to consider alternatives to predation
13 control, including control of the brown tree snake; and it fails
14 to consider transfer of land versus a refuge overlay. Finally,
15 the EA fails to consider allowing the area to be managed by the
16 Government of Guam under the authority of 16 U.S.C. § 667b.

17 39. The EA fails to adequately describe the affected
18 environment. For example, the EA fails to describe the effects
19 of an earthquake of approximately 8.2 on the richter scale on or
20 about August 8, 1993 on the habitat or on the potential migration
21 of contaminants from the hazardous dump areas within the proposed
22 refuge to other areas of the refuge and adjoining land. The
23 earthquakes could have significantly altered the habitats making
24 certain areas unsuitable for designation as a refuge. The
25 earthquakes could also have affected the migration routes of
26 contaminants from the hazardous release sites and there may be
27 new and unassessed routes of exposure to species and humans who
28 will use or transit the refuge.

1 40. The EA fails to adequately describe the required
2 habitat of the species the refuge is intended to protect and
3 whether the area within the proposed refuge is compatible with
4 the behavior patterns of the species. For example, the main area
5 of the refuge, 11,960 acres, is located in northern Guam; yet,
6 the only species which appears to use that part of the refuge is
7 the Mariana crow. It is not clear from the EA whether the entire
8 area of northern Guam is compatible with the crow or only a small
9 part since the exact habitat needs of the crow are not adequately
10 described.

11 41. Further, the EA fails to consider whether other
12 factors in the habitat, including, but not limited to, the
13 presence of the brown tree snake, deer and wild boars known to
14 inhabit the areas in which the wildlife refuge and critical
15 habitat designations are proposed in large numbers, which are
16 known to prey on or otherwise adversely impact the species for
17 whose use and benefit the designations and proposals are made,
18 may present an unacceptable hazard to the species. Still
19 further, the EA fails to consider whether activities necessary to
20 control or eradicate the threats or potential threats to the
21 listed species, including but not limited to the predator species
22 named herein and the hazardous substances and conditions known to
23 be located on site, will themselves pose physical and other
24 threats to the human environment within the meaning of NEPA.

25 WHEREFORE, plaintiffs pray for relief as follows:

26 A. That the Court declare that the action of
27 defendants in failing to prepare an EIS constitutes a violation
28 of 42 U.S.C. § 4332(2)(C).

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B. That the Court declare the EA to be inadequate.

C. That the Court grant an injunction: (1) setting aside the FONSI; (2) preventing defendants from establishing the Guam National Wildlife Refuge or designating critical habitat for the Guam endangered species; (3) setting aside the transfer by the U.S. General Services Administration of 371 acres of land at Ritidian Point from the U.S. Navy to the USFWS unless and until NEPA and other provisions of law are complied with; and,

(4) prohibiting defendants from transferring any more land from one federal agency to any other federal agency for purposes of establishing a wildlife refuge or for critical habitat designation unless and until NEPA and other provisions of law are complied with.

D. That the Court grant an injunction prohibiting Defendants from expending any funds for any of the activities listed in c (1) - (4) above.

D. That the Court grant plaintiffs its costs of suit including reasonable expert witness and attorney fees.

E. That the court grant such further and other relief as the Court deems just and proper.

Dated: February 25, 1994 at San Francisco, California

KECK, MAHIN & CATE



Mark L. Pollot
Michael J. Van Zandt

PETER R. SGRO, JR., P.C.
Peter R. Sgro, Jr.

Attorneys for Plaintiffs

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 years, and not a party to this action; my business address is One Maritime Plaza, 23rd Floor, San Francisco, California 94111.

On February 25, 1994, I served the documents described as:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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

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
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Mr. Roger W. Johnson
Administrator
General Services Administration
General Services Building
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Washington, D.C. 20405

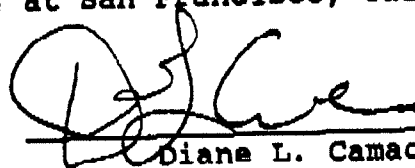
Ms. Aki Nakao
Acting Regional Administrator
General Services Administration
Region 9
525 Market Street, 28th Floor
San Francisco, CA 94105

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

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service, Registered Mail, Return Receipt Requested on that same day with first class postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 25, 1994 at San Francisco, California.



Diane L. Camacho



DEPARTMENT OF

REVENUE & TAXATION

GOVERNMENT OF GUAM

JOSEPH F. ADA
Governor

FRANK F. BLAS
Lieutenant Governor

JOAQUIN G. BLAZ, Director • V.M. CONCEPCION, Deputy Director

FEB 25 1994

The Honorable Carl T.C. Gutierrez
Chairman
Committee on Ways & Means for all Members
Twenty-Second Guam Legislature
155 Hesler Street, Pacific Arcade
Agana, Guam 96910

Dear Senator Gutierrez and Committee Members:

Thank you for your letter of February 18, 1994, inviting my testimony 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.

I share your long standing concern for relief from the land locking condition which inhibits access into 86+(-) acres of government land at Falcona and coincidentally landlocks over 480+(-) acres of privately owned land at Urunao, (zoned "H" for Hotel use), 380+(-) acres of public land at Ritidian, and 500+(-) acres of land at Jinapsan, into which Government of Guam desires to direct the next generation of Guam visitor industry development as well as residential and related tax base development.

As author of Guam Public Law 20-222, better known as the Northwest Territory Act, you are intimately aware of the plain fact that GEDA was directed to initiate " ...any appropriate cause of action for claims for return of public rights-of-way..." in the Northwest Territory as defined to include the place of Falcona. GEDA was not only directed, that is mandated to act; GEDA was also authorized to proceed with special litigation if need be and given a handsome appropriation, plus authorization to use those funds GEDA already holds in the Guam Landowners Recovery Fund, to fund this worthy purpose. Something in excess of \$700,000 is now held by GEDA in this fund. Bill No. 845 reiterates this mandate from the Twentieth Guam Legislature and in effect would tell GEDA twice to do the same thing it has yet to do, notwithstanding the passage of similar special legislation several years ago.

The Northwest Territory Act intended that Government of Guam, in its own interest, would take the initiative to resolve this access problem. The Government of Guam's failure to take action set the stage for private land owners to take matters into their own hands. As a result one private self help action resulted in a costly civil suit filed in the Guam District Court. I have been told two additional suits are about to be filed arising from this same access problem. The denial of access into these lands effectively holds their value, use and

development potential hostage while artificially constraining growth of the tax base and visitor service industry's economic base. Besides this tax and economic consequence is the injustice afflicting both the tax paying private property owners who cannot access their land and GovGuam which cannot tax more than the grossly depreciated value of this property. As for Falcona the people of Guam cannot go there and thus this beautiful recreation area is removed from public use.

However, the mere fact that nothing has been done is not justification for special litigation; I believe litigation should be reserved for that time when all else fails and I do not feel our administrative remedies have been exhausted yet. To my mind this matter represents an opportunity for effective diplomacy, that is negotiation and arbitration followed by simple civil land registration proceedings. Our options have not been fully-explored - the fact is the entire matter has been neglected, except for the rhetoric.

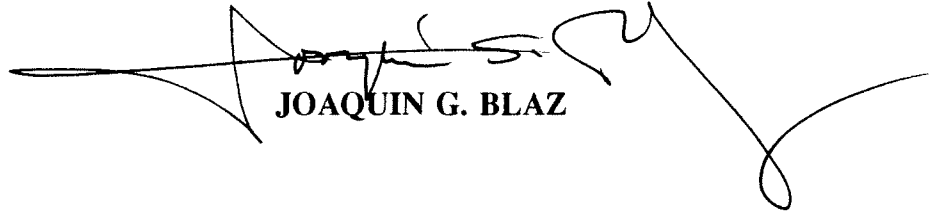
Rather than Bill No. 845 I believe the legislature should adopt a strongly worded resolution reaffirming its intent when enacting P.L. 20-222. Additionally, I suggest the Legislative set up a special sub-committee empowered to act if P.L. 20-222 is not immediately implemented as written. P.L. 20-222 should not be ignored: the intent of Bill No. 845 can be accomplished if P.L. 20-222 is implemented as intended. In the event GEDA ultimately proves itself either unwilling or incapable of this project then its authority and funding for the purpose should be reassigned. The Department of Revenue and Taxation would be happy to take control if this legislature should see fit.

I would like to close by making one simple but grossly neglected important point: the Government of Guam already holds undeveloped access rights throughout this entire area of Guam! To solve everyone's problems here all GovGuam needs to do is to assert and develop these rights.

When the United States Army condemned land at Ritidian Guam (see Civil Case No. 29-62, Guam District Court attached) all existing public rights-of-way were reserved from the taking (Civil Case No. 29-62 did not create these property rights it preserved them). In addition conditional private easements to severed lots were created. This means GovGuam and private lot owners hold private property rights-of-way by federal district court order. All GovGuam needs to do is assert its property rights by surveying, registering and developing the rights-of-way it already owns. This is what GEDA was to have done under P.L. 20-222 and that is why I say we could solve this problem without resort to either great expense or special litigation. Let me repeat for emphasis: GovGuam already owns the rights-of-way people want and need and it could and should perfect and develop them for the public's use. If GovGuam were to take the initiative this contentious problem would be resolved. Rather than funding special litigation we need to build a road over those rights-of-way in Northwest Guam we already own.

I do not mean to depreciate your efforts - I share in your frustration which prompts bill No. 845. However, Bill No. 845 is not the answer - your Public Law 20-222 is the answer and it should and can be carried out with little fuss or expense if only it will be taken seriously by those entrusted to its care.

Sincerely,



JOAQUIN G. BLAZ

**Attachments: 1) Exhibit A
2) Exhibit B**

**Northwest Territory
Roadway Names**

**Bahadan Gutos
Bahadan Uruno
Bahadan Sagua
Bahadan Talisai
Bahadan Cotiez
Bahadan Ritidian (aka: Chalan Tony Sablan)**

Source: Tun Gregorio ^{castro} Flores
Former Owner Lot 9992-1/2
Ritidian (Machannao) Guam

EXHIBIT "A"

IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

MAR 13 1963

EDWARD L. B. AGUON
Clerk

UNITED STATES OF AMERICA,
PLAINTIFF,

COPY

vs.

602,321 square meters of land,
more or less, situate in the
Municipality of Machanao,
Island of Guam, Juan San
Nicolas Aguero, et al.,

CIVIL CASE NO. 29-62

Defendants.

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JUDGMENT

The above-entitled case coming on regularly for trial to the Court and jury on March 11, 1963, notice having been given according to law, Plaintiff and Defendants appearing by counsel; and

Plaintiff and Defendants having presented their evidence, and the court and jury having heard and considered the same, the jury returned its verdict and by its verdict found and determined that the sums stated after the tract and lot numbers are the just compensation payable by the United States for the taking of an estate in fee simple subject to existing easements for public roads and highways, public utilities, railroads, and pipelines, and reserving to the owners, respectively, of Parcel No. 8 and No. 9, their heirs, executors, administrators, successors, and assigns, a right of ingress and egress over and across said Parcel No. 8 and No. 9, subject to such rules and regulations as the commanding officer, United States Naval Communication Station, Barrigada, may prescribe, to-wit:

Parcel No. 1, Lot No. 9986, Machanao	-----	\$14,110.74.
Parcel No. 2, Lot No. 9987, Machanao	-----	24,339.49
Parcel No. 4, Lot No. 9988, Machanao	-----	19,668.24.
Parcel No. 5, Lot No. 9990, Machanao	-----	11,518.54
Parcel No. 6, Lot No. 9991, Machanao	-----	13,891.90
Parcel No. 7, Lot No. 9990-1, Machanao	-----	20,280.99
Parcel No. 8, Lot No. 9992-2, Machanao	-----	13,287.12
Parcel No. 9, Lot No. 10081-2, Machanao	-----	33,866.00

all as described in the complaint and declaration of taking herein, which sums cover all claims of any kind whatsoever for the taking of an estate

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EXHIBIT "B"

in simple in said lands; and

It further appearing that the persons entitled to the said compensation are as hereinafter stated; and

It further appearing that the following sums were heretofore on June 15, 1962, deposited by the United States of America in the registry of this court as estimated compensation for the taking of the respective parcels of real property, to-wit:

- Parcel No. 1, Lot No. 9986, Machanao - - - - \$ 6,435.00
- Parcel No. 2, Lot No. 9987, Machanao - - - - 12,144.00
- Parcel No. 4, Lot No. 9989, Machanao - - - - 7,705.00
- Parcel No. 5, Lot No. 9990, Machanao - - - - 5,235.00
- Parcel No. 6, Lot No. 9991, Machanao - - - - 6,315.00
- Parcel No. 7, Lot No. 9990-1, Machanao - - - - 7,350.00
- Parcel No. 8, Lot No. 9992-2, Machanao - - - - 6,040.00
- Parcel No. 9, Lot No. 10081-2, Machanao - - - 14,498.00

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

judgment be entered against the United States of America as follows:

*Check # 9248-8/27/63
8,078.72*

→ For Parcel No. 1, Lot No. 9986, Machanao, the sum of Fourteen Thousand One Hundred Ten and 74/100 Dollars (\$14,110.74) with interest on the sum of \$7675.74 at the rate of six per cent (6%) per annum from June 15, 1962, until paid, which is awarded to Juan San Nicolas Agüero. The sum of \$6435.00 heretofore paid as above stated is credited against this judgment.

*Check # 9250
8/27/63 - \$12,195.49*

For Parcel No. 2, Lot No. 9987, Machanao, the sum of Twenty-Four Thousand Three Hundred Thirty-Nine and 49/100 Dollars (\$24,339.49) with interest on the sum of \$12,195.49 at the rate of six per cent (6%) per annum from June 15, 1962, until paid, which is awarded to Dolores Martinez Flores and Benigno Leon Guerrero Flores, The sum \$12,144.00 heretofore paid as above stated is credited against this judgment.

*Check # 9218
8/27/63 - \$7,705.00*

For Parcel No. 4, Lot No. 9989, Machanao, the sum of Nineteen Thousand Six Hundred Sixty-Eight and 24/100 Dollars (\$19,668.24) with interest on the sum of \$11,963.24 at the rate of six per cent (6%) per annum from June 15, 1962, until paid, which is awarded to Juan Mendiola Castro. The sum of \$7,705.00 heretofore paid as above stated is credited

again this judgment.

Check
9251
8/27/63
\$ 6,613.43

→ For Parcel No. 5, Lot No. 9990, Machanao, the sum of Eleven Thousand Five Hundred Eighteen and 54/100 Dollars (\$11,518.54) with interest on the sum of \$6,283.54 at the rate of six per cent (6%) per annum from June 15, 1962, until paid, which is awarded to the Estate of Juan Rivera Castro, Jesus Duenas Castro, Administrator. The sum of \$5235.00 heretofore paid as above stated is credited against this judgment.

Check
9252
8/27/63
\$ 7,974.69

→ For Parcel No. 6, Lot No. 9991, Machanao, the sum of Thirteen Thousand Eight Hundred Ninety-One and 90/100 Dollars (\$13,891.90), with interest on the sum of \$7576.90 at the rate of six per cent (6%) per annum from June 15, 1962, until paid, which is awarded to the Estate of Juan Rivera Castro, Jesus Duenas Castro, Administrator. The sum of \$6315.00 heretofore paid as above stated is credited against this judgment.

Check
9253
8/27/63
\$ 13,609.87

→ For Parcel No. 7, Lot No. 9990-1 Machanao, the sum of Twenty Thousand Two Hundred Eighty and 99/100 Dollars (\$20,280.99), with interest on the sum of \$12,930.99 at the rate of six per cent (6%) per annum from June 15, 1962, until paid, which is awarded to Ana Matanane Pangelinan. The sum of \$7350.00 heretofore paid as above stated is credited against this judgment.

Check
9254
8/27/63
\$ 7,627.59

→ For Parcel No. 8, Lot No. 9992-2, Machanao, the sum of Thirteen Thousand Two Hundred Eighty-Seven and 12/100 Dollars (\$13,287.12), with interest on the sum of \$7247.12 at the rate of six per cent (6%) per annum from June 15, 1962, until paid, which is awarded to Engracia Castro Perez, Tomas Leon Guerrero Castro, Gregorio Leon Guerrero Castro, Maria Castro Ada, Margarita Castro Camacho, Julia Castro Stephens, Francisco Leon Guerrero Castro, Concepcion Castro Camacho, and Santiago Leon Guerrero Castro, to whom there is reserved, together with their heirs, executors, administrators, successors and assigns, a right of ingress and egress over and across the said Parcel No. 8, Lot No. 9992-2, Machanao, subject to such rules and regulations as the Commanding Officer, United States Naval Communication Station, Barrigada, may prescribe. The sum of \$6040.00 heretofore paid as above stated is credited against this judgment.

check # 9249
8/27/63
28,812.11
20,384.97

For Parcel No. 9, Lot No. 10081-2, Machanao, the sum of Thirty-

Three Thousand Eight Hundred Sixty-Six Dollars (\$33,866.00), with

interest on the sum of \$19,368.00 at the rate of six per cent (6%) per annum from June 15, 1962, until paid, which is awarded to Maria Taitano

Aguero and Juan San Nicolas Aguero to whom there is reserved, together with their heirs, executors, administrators, successors and assigns,

a right of ingress and egress over and across the said Parcel No. 9,

Lot No. 10081-2, Machanao, subject to such rules and regulations as the


Commanding Officer, United States Naval Communication Station, Barrigada,

may prescribe. The sum of \$14,498.00 heretofore paid as above stated

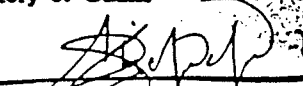
is credited against this judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the clerk of this court shall pay to said Defendants any balances of the sums hereinabove adjudged and awarded as promptly as possible after receipt thereof from the United States of America; and when all of said sums have been paid, the clerk shall note upon the docket that this judgment has been paid in full.

Dated this 12 day of March, 1963.


PAUL D. SHRIVER
Judge of the District Court of Guam

I hereby certify, that the annexed instrument is a true copy of the original on file in my office:
ATTEST: CLERK OF COURT
District Court of Guam
Territory of Guam

By: 
Deputy Clerk

OCT 22 1993

TESTIMONY BEFORE THE COMMITTEE ON WAYS AND MEANS
PRESENTED BY LOU HERNANDEZ
MEMBER OF RITIDIAN POINT FAMILIES

FEBRUARY 28, 1994

I would like to extend my appreciation to Senator Gutierrez and the Committee on Ways and Means for allowing me the opportunity to present my views on bill 845.

After reading through the bill and analyzing its title, I wasn't quite sure what the true intent of this bill is and how it affects our families' current struggle to reclaim title to our properties at Ritidian Point. I'm hopeful though, that it would assist us in getting some financial help to fund the current litigation that we are in, one that indeed affects this whole community.

The reason I am here today is because I wanted to assert my families' frustration in dealing with the current law, The Northwest Territories Act as well as our frustration in dealing with the agency that's holding the funds, the Guam Economic Development Authority.

As you probably are aware, we have reached the stage of litigation in the District Court of Northern California wherein we are challenging the Fish and Wildlife division of the U.S. Interior Department with respect to the National Environmental Policy Act also known as NEPA. This coming week, we will be filing the Takings Complaint in the Court of Claims in Washington, D.C. relative to the access issue.

Prior to this point we have worked very closely and diligently for the last six months with our attorney Peter R. Sgro Jr. in compiling the much needed data and supporting documents leading to this litigation. We have dug deep into our pockets to come up with the necessary funds to pay for this litigation thus far and it hasn't been easy for alot of us. Fortunately, Attorney Sgro has been very considerate with us and has helped us in cutting many of our costs as he realizes that we do not have a deep pocket of readily available cash. But this is what the Federal government wants to see: Families like ours, who do not have the ready cash and who will be stumped in the middle of the process because of unavailable personal funds. But I will say this, that we have come this far and we will find a way, as they say, by hook or by crook, to get the needed funds to fight our cause to the very end because somehow, we feel it in our hearts that justice will be served and our families will prevail.

Sometimes we ask ourselves though, why us? Why are our families spending our own personal funds to fight these territorial issues like the hazardous waste issue, the access issue, the NEPA act issue

relative to the proposed wildlife refuge and other issues that will come up in the process? Where is our Government and their funds? This is where the frustration sets in. Here we have appealed to the Governor for help; we have appealed to GEDA for help in getting the much needed funds and all we get in return is a brick wall. The Governor himself already decided before we even had a chance to get on the agenda of the GEDA board of directors meeting that we had a losing case. He stated that he wasn't going to release one penny of taxpayers' money to help us out! Yet, it's okay to spend millions of dollars on the Maritime case, which I understand is a losing godd ground, and you senators appropriated funds for that case. In our families' case, we're not even asking for a million dollars.

We weren't even given a chance! Do you think then, that the GEDA board, whose boss is the Governor, would even listen to us? Of course not, because they have been influenced by the Governor himself. So this law is tangled in politics and that's the frustrating thing about it.

Could there be a way perhaps that the funds appropriated for this act can stay within the legislature itself and it can then be appropriated when the need arises? Our experience with GEDA is that we have to state what our chances are of winning this case and we have to provide all this information to them. We don't have a problem with that, however some of the information they need is information that is being withheld by our counsel in order to build the case to its proper strength. So it would be inappropriate to provide some of the information they are asking for. Plus there's alot of "red tape" involved and probably by the time we ever get help from them, the case would have been over and done with. But don't you think that by this time, after all that we've been through the last few months, that they should be convinced that we do indeed have a strong case? We have been participating in public hearings, we have provided them with some correspondences highlighting various issues of this case but I guess it will never be enough.

I really don't know what its going to take to realize the usefulness of the Northwest Territories Act because the way it stands today, that act is useless! Not to mention that the real intent of that law was to help families like ours, and others in this present struggle. We are probably at this point the best candidate for this Act, but again, we are at the mercy of the GEDA board who takes commands from the governor, and if the governor doesn't like the way you look, you better look elsewhere for help.

So we are looking to you for help, dear Senators. You need to some how arrest control of the funds from GEDA and put them probably directly into your hands, if that's possible. If not, find a way where we don't have to play political football, especially when time is of the essence and we are badly in need of these appropriations. I can assure you that if this case is won, it will change the course of history in Guam, and pave the way for justice to be served to other families; and, we will rest content that the taxpayers' monies would have been well spent. Please, let this Northwest Territories

Act and this bill # 845. work for us.

I thank you for your time.

*Sincerely,
Jon Hernandez*

PETER R. SGRO, JR.

ATTORNEY AT LAW

A PROFESSIONAL CORPORATION

SUITE 201, FIRST SAVINGS AND LOAN BUILDING
655 S. MARINE DRIVE, TAMUNING, GUAM 96911
TEL: (671) 649-0804 • FAX: (671) 649-0810

**JOINT TESTIMONY OF NORTHERN
GUAM LANDOWNERS AND
LANDCLAIMANTS
SUPPORTING BILL NO. 845**

**PRESENTED BY
ATTORNEY PETER R. SGRO, JR.**

**BEFORE THE COMMITTEE
ON WAYS AND MEANS**

FEBRUARY 28, 1994

On behalf of five generations of families I represent and the Chicago-based law firm of Keck, Mahin & Cate represent, I would like to extend their gratitude to Committee Chairman Senator Gutierrez and other members of the Committee on Ways and Means relative to Bill No. 845. This testimony is submitted in support of Bill No. 845. There is no doubt that the responsibility of protecting and restoring property rights on Guam is the responsibility of the Government of Guam. It is most unfortunate that despite the clear intent and legislative history of the Northwest Territory of Guam Act, the families I represent must utilize their personal resources to challenge public policy issues. I will not focus on the clear mandate, intent and legislative history of Public Law 20-222. Many of you are aware the Act was unanimously voted by all members of the 20th Guam Legislature and was approved by the Governor without any hesitation on December 18, 1990. The intent of the Act's particulars are well grounded to support immediate legal actions to address extremely pressing land use, environmental law, constitutional law, civil rights issues and property rights issues arising from a major Federal

action by the United States Fish & Wildlife Service. Through direct dialogue and consultation with the Act's drafter and Senators that voted to support the Act, the intent of this Legislature and the Act's mandates have not been seriously considered. The Guam Economic Development Authority ("GEDA") has not undertaken any meaningful measures in connection with the legislative intent and purpose of Public Law 20-222. I am introducing into the record along with this testimony true copies of the Complaint for Declaratory and Injunctive Relief I filed in San Francisco on February 25, 1994 along with Attorneys Mark Pollot and Michael Van Zandt with the United States District Court Northern District of California for the families we mutually represent. We will be filing on Monday, February 28, 1994 (California time), a motion and memorandum of points and authorities in support of the issuance of a preliminary injunction. A simple reading of the Complaint clearly indicates the issues before this particular court are issues that should have been addressed under Public Law No. 20-221 years ago when critical habitat and a Guam National Wildlife Refuge designation was in its early stages. Now we are in a very precarious position since the refuge designation and continued threat of a critical habitat designation, will result in rendering over 21% of Guam's land area of no economic benefit to the government, its people and the landowners and land claimants I represent. Based on Guam's population of approximately 135,000 people there is available for productive use approximately one acre per person. If the refuge is established, the density of the population from one person per acre will increase to 1.2 persons per acre. It is ludicrous that the United States Fish & Wildlife Service would make findings of no significant impacts under the circumstances surrounding this particular case.

Bill No. 845 is one that is justified in light of hazardous waste issues, land takings issues, environmental law issues, private property rights issues, civil rights issues, economic issues, social issues, inadequate environmental studies by the U.S. Fish & Wildlife Service and many other issues, including issues of status which have been left for the families I represent to resolve.

It is unfair that families, and not GEDA, had to take steps to preserve and restore property rights in northern Guam. It is even more unfair that families and not our government, must use their personal resources to resolve a major Federal adverse impact to our community, an action which was initially requested by the Executive Branch of the Government of Guam. In 1988, Governor Ada submitted various documents to the Federal government for the designation of lands as critical habitat. These documents were submitted with no intention of protecting any environment, including the human environment. It was submitted for the purpose of preventing the construction of the over-the-horizon radar system. The papers were soon thereafter withdrawn when it was learned the impacts would create consequences that should have been evaluated beforehand. Severe consequences this Territory and my clients are now paying for. My clients do not reserve distaste for the Governor's past actions, but are focused on their future and the future needs of their children. We must put egos aside, not point fingers and work as a community to stop the ball from rolling. The Government of Guam first threw the ball into a field to play a game with the Federal government, called the game off, but already set a serious competitive game in motion for the control of land. Unfortunately, the only players now seeking to win a game they never wanted are families, each and every one of them

residents of the Territory of Guam. I will never understand how individuals mandated by law to protect and restore property rights in northern Guam can stand idly by when there is a threat of over 21% of the land area on Guam being conditioned to the point of having no value at all.

As I will discuss in more detail later and cite specific Federal laws, the establishment of a refuge creates significant legal, economic, political and social impacts. With all of this previous adverse impacts GEDA was mandated to oversee, the need for a special litigator with expertise in environmental law, hazardous waste issues, constitutional law and property rights issues is needed immediately. I suggest that Paragraph 5 on page 3 be amended to read "within thirty (30) days of the enactment of this Section.". In light of Federal activity rapidly increasing to control substantial land areas, I would also suggest that GEDA have the authority to hire a special litigator under emergency procurement standards.

The expansion of Guam's tax base alone by recovery of denied private access rights and return of the Ritidian Point properties to its lawful owners is significant. Under Guam's current real property tax calculation method which are relatively conservative, approximately \$400,000.00 of additional annual revenue would be generated considering the property in an unimproved state. GEDA is also mandated by law to oversee the issuance of bonds to fund capital improvement projects for the Government. The return of Ritidian Point lands to the families I represent will not only increase tax revenues but increase the borrowing ability of the government to approximately \$250,000,000.00. We are not opposed to conservation but the facts, law, biology, other sciences and the

PPOL 93

threat on the human environment requires the Federal government to look at alternatives other than alternatives of how large the refuge area will be as stated in Fish & Wildlife's Final Environmental Impact Assessment. Under a major Federal action category, the U.S. Fish & Wildlife Service should have prepared a detailed Environmental Impact Statement outlining the impacts to the human environment, including land takings implications, federalism implications, cultural implications and economic implications. This standard of review never even reached any form of a standard to justify Federal control of approximately 21% of Guam's land area in purpaturity.

I. STATUS ISSUES AND RESOURCE UTILIZATION ISSUES

At a time in our government's history when we are seeking self-determination, we are simultaneously giving up significant control of our government and its people to make their own decisions relative to land use policies on Guam. Under applicable sections of the United States Code, the Secretary of Interior shall have the sole discretion to decide how land is used within and adjacent to a Guam National Wildlife Refuge. The Secretary has the authority to even charge my clients a fee to access their own property. The Secretary of Interior has the sole discretion to charge the Government of Guam a fee for the use of a public right-of-way across or adjacent to the refuge. Our water supply would also be a resource the Secretary of Interior can likewise control. The Secretary, and not the Government of Guam, will have the sole discretion to allocate a percentage of water to the refuge and a percentage of water for public use. I do not think that turning over such authority after years of seeking a

change of status with the United States is consistent. Similarly, the manner in which Federal officials desire the use of land in northern Guam is inconsistent with current local land use laws, inconsistent with hazardous landfills in northern Guam and inconsistent with the operation of a high-intensity use military facility immediately adjacent to the proposed refuge, a refuge intended for extremely low-intensity uses. It is important to note that the U.S. Fish & Wildlife Service only prepared an Environmental Impact Statement, instead of an Environmental Impact Assessment, to support the transfer of 370.9 acres from the Navy to U.S. Fish & Wildlife Service and to support the control of over 21% of Guam's land area. How could they logically conclude there were no Findings of No Significant Impacts on land takings implications, federalism issues, economic issues, cultural issues and many other matters the National Environmental Policy Act requires to be reviewed. This activity is a major Federal action and should have never been considered as a minor process during the Service's rule-making process.

II. HAZARDOUS WASTE AND DEPARTMENT OF DEFENSE AUTHORITY ON LAND USE POLICIES

During the time period from or about 1975 to 1982, the Department of the Air Force disposed in landfills in northern Guam unexploded ammunition, liquid in drums, batteries, asbestos, pesticides, oils, engine fuel, sulfuric acid, detergent, hydrogen cyanide and many other hazardous waste which continue to be present as I speak today. On February 23, 1994, I attempted to get time tables or schedules associated with remedying the hazardous waste problem from the U.S. EPA Region 9 office in San Francisco. However, the U.S. EPA Region 9 office refused to provide us the documents unless requested in writing under 5

U.S.C. Section 552. My clients are concerned about the contamination on Andersen Air Force Base and its potential effects to their property including soil and water contamination. Moreover, they are concerned that a time table or schedule for remedial measures has not been adhered to by the Air Force and that public hearings have not been held after issuing the first time table for remedial measures. I hardly call depositing literally hundreds of pages of hazardous waste studies in a public library on or about December 15, 1993 to be public notice. I maintain serious concerns of whether the Comprehensive Environmental Response, Reclamation, and Recovery Act of 1980, the Emergency Planning and Community Right-to-Know Act of 1986 and other applicable Federal environmental laws have been complied with. The time frame from the period the hazardous wastes were dumped to date, without any remedial measures, is enough reason for concern. This is especially the case based on the Volcanic Aquifer existing in northern Guam. Unlike granular aquifers, hazardous waste is more likely to seep into the water supply with volcanic bedrock. I cannot ignore the fact that seismic activity occurs on our island, most recently the August 8, 1993 earthquake and the many aftershocks we are experiencing. Earthquakes are only one of many factors that can cause vertical and lateral seepage of contaminants into our water supply. Why do families have to pay the cost to ensure their land, themselves as human beings and the public in general are safe from potentially contaminated water. It is clear there are 30 hazardous landfills in northern Guam and 9 in the Harmon Annex and Marbo Annex area. In 1987, members of Congress released two GAO reports indicating contamination of our water supply with unacceptable high levels of TCE. This is even more reason why a special litigator

is needed. The military real estate rolls indicate no intention to excess any further land than the 370.9 acres transferred to U.S. Fish & Wildlife. However, based on an overlay refuge concept, the Department of Defense at its sole discretion can immediately revert the use of land as a refuge back to uses for military purposes under applicable Federal laws. The change of land use from a refuge to a use for national security reasons can occur overnight.

When land is limited in availability, society must weigh carefully the social and economic impacts of setting aside approximately 21% of the land mass for preservationist purposes. The proposal to designate 28,000 acres of fast land in Guam as part of the National Wildlife Refuge System or as critical habitat under the Endangered Species Act must be given careful consideration of its long term societal impacts. Once this land is removed for preservationist purposes, the People of Guam will lose totally any control they might have exercised over it. Even if circumstances occur which cry out for more land to be used for the good of the People, there will be little if any chance to unring the Preservationist's bell. Only in the rare situation of a national defense emergency can the land be used again for a "productive purpose," and then only by the U.S. Military.

The law recognizes that you cannot have uncontrolled development of property even if it is private property. This does not grant a license for government to control the use of land when it infringes on the rights of landowners in an unconstitutional takings sense. By this I mean attempting to curtail the use of land for a public purpose such as a wildlife refuge or a critical habitat when such curtailments have the practical effect of taking from the private property owner a property right.

Hard choices must be made by government when there is limited land space. In a way, the Constitution's property rights protective provisions assist us in making those choices by bringing to the fore the costs of property regulation, allowing us to determine whether it makes economic sense to choose one use over another. Stated differently, so long as we as people know that taking a particular property to fulfill some public goal will cost a specific amount, we can measure whether the resource involved is better used for the proposed purpose for some other purpose. So long as we pretend, and are allowed to pretend because property rights protections are not observed, that there is no cost to property regulation, we will not make informed, intelligent decisions. The competing uses of land, whether industrial, agricultural, residential, commercial, or governmental must be measured constantly against the constitutional protections our system of government affords it and against the costs incurred by our choices.

The Supreme Court has embarked on the proper path in taking steps necessary to protect these rights though its journey is not complete. We cannot and should not wait however, for the courts to stop the excesses of governmental agencies who continue to invent creative ways to interfere with private property through more and more intrusive regulation and by playing a labelling game. It is now up to the legislative and executive branches of government to carry out the law within the constitutional framework to reconcile competing interests and provide the constitutional protections these two branches are also sworn to protect.