



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OFFICE OF THE SPEAKER	
Date:	6/21/95
Time:	2:49 PM
Received By:	<i>Justin Gorman</i>
Print Name:	JUSTIN GORMAN

JUN 21 1995

The Honorable Don Parkinson
Speaker
Twenty-Third Guam Legislature
424 West O'Brien Drive
Julale Center - Suite 222
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By:	<i>[Signature]</i>
Time:	8:40
Date:	6/22/95

Dear Speaker Parkinson:

Enclosed please find copy of Substitute Bill No. 72 (LS), "AN ACT TO ADD A NEW §68951 TO TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM, AND TO DEMANDING THAT THE DEPARTMENT OF DEFENSE RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN BY FORCE, DECEIT, AND OUTRIGHT THEFT", which was overridden by the Twenty-Third Guam Legislature notwithstanding my objections on June 5, 1995

Substitute Bill No. 72 (LS) is now Public Law 23-25.

Very truly yours,

[Signature]
CARL T. C. GUTIERREZ

Attachment

230513

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

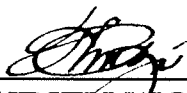
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 72 (LS), "AN ACT TO ADD A NEW §68951 TO TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM, AND TO DEMANDING THAT THE DEPARTMENT OF DEFENSE RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN BY FORCE, DECEIT, AND OUTRIGHT THEFT," returned to the Legislature without approval of the Governor, was reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 5th day of June, 1995, agree to pass said bill notwithstanding the objection of the Governor by a vote of two-thirds or more of all the members thereof, to wit: by a vote of twenty (20) members.



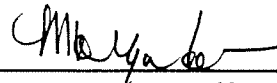
DON PARKINSON
Speaker

Attested:



JUDITH WON PAT-BORJA
Senator and Legislative Secretary

This Act was received by the Governor this 16 day of June,
1995, at 10:30 o'clock A.M.



Assistant Staff Officer
Governor's Office

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) REGULAR SESSION

Bill No. 72 (LS)

As substituted by the Committee
on Federal & Foreign Affairs

Introduced By:

D. Parkinson
H. A. Cristobal
T. S. Nelson

A. C. Blaz
A. L. G. Santos
T. C. Ada
J. P. Aguon
E. Barrett-Anderson
J. S. Brown
F. P. Camacho
M. C. Charfauros
M. Forbes
A. C. Lamorena
C. Leon Guerrero
L. Leon Guerrero
S. L. Orsini
V. C. Pangelinan
J. T. San Agustin
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

AN ACT TO ADD A NEW §68951 TO TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM, AND TO DEMANDING THAT THE DEPARTMENT OF DEFENSE RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN BY FORCE, DECEIT, AND OUTRIGHT THEFT.

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

3 WHEREAS, after World War II, the Department of Defense took the
4 lands communally known as "Ritidian Point" from the rightful owners
5 claiming need for national defense, under what can be best described as
6 dubious circumstances, with serious questions as to whether the Navy in
7 fact properly took title to the property; and

8 WHEREAS, the lands have been declared excess for national defense
9 needs; and

10 WHEREAS, the Department of Defense has transferred control of the
11 former Naval Communications Facility at Ritidian Point to the Department
12 of Interior's Fish and Wildlife Service to be used as a "Critical Wildlife
13 Habitat" or "Wildlife Refuge"; and

14 WHEREAS, the Department of Defense continues to blatantly ignore
15 the rights of the people of Guam whose lands were taken in the name of
16 national defense, and is deliberately preventing lands declared excess for
17 national defense needs from being returned to the original and rightful
18 owners, by transferring such land to other federal government agencies for
19 uses which will forever preclude local development; and

20 WHEREAS, this deliberate act of transferring excess lands that were,
21 in many cases, taken under unscrupulous and deceitful means and in
22 violation of constitutional mandates, to other agencies within the federal
23 government without considering the rights of needs of the original land
24 owners or the needs of the Territory of Guam, is unconscionable; and

25 WHEREAS, it is obvious that the clear policy of the federal
26 government is that such lands now held by the federal government will
27 never be returned to the people of Guam, but instead will forever remain in

1 the control of the federal government as vacant lands, whether
2 denominated as necessary for national defense, parks, wildlife refuges, or
3 other similar uses; and

4 WHEREAS, because land resources on Guam are very limited, and
5 because usable land on Guam is even more limited, the Federal
6 Government's designation of twenty-five percent of the vacant land on
7 Guam as a wildlife refuge precludes all meaningful use and development
8 of these lands, unrealistic, is irresponsible, and is unresponsive to the needs
9 of the people of Guam; and

10 WHEREAS, while bird sanctuaries, wildlife refuges, and the like are
11 worthwhile uses for the land, extensive designation of such areas on Guam
12 does not make sense because of limited land resources; and

13 WHEREAS, the United States government's refusal to return lands to
14 the rightful owners and the federal restrictions on the use and development
15 of lands on Guam not only hurts the rightful owners, but all people living
16 on Guam, since Guam can never enjoy its full economic potential while the
17 federal government continues its policies; and

18 WHEREAS, the current action of the United States government is a
19 continuation of a long standing policy of the federal government to:

- 20 a. deprive the landowners of the use of their property;
- 21 b.. retain a large portion of the island under federal control in
22 case the land is ever needed by the United States government;
- 23 c. control the economy of the government of Guam through
24 restrictions on land use and development, as well as other restrictive
25 policies of the United States government; and
- 26 d. insure that the island of Guam and the people living here are
27 forever second class citizens thanks to numerous bureaucratic

1 controls and ploys by various agencies and departments of the
2 United States, include, most notably, the Department of Defense and
3 administration by the Department of Interior in a manner reminiscent
4 of the Office of Indian Affairs; and

5 WHEREAS, the sovereign right of the people of Guam to control
6 what happens to them and their lands continues to be ignored, rejected and
7 trampled upon by the federal government and its agencies who are now
8 attempting to prevent excess lands from reverting to the original and
9 rightful owners through dirty tricks and underhanded methods; and

10 WHEREAS, such actions by the federal government perpetuate the
11 colonialist attitude the federal government has toward the people of Guam
12 by preventing them from asserting their sovereignty and the right of self-
13 determination; and

14 WHEREAS, every recent action of the federal government has had
15 the effect of pushing the people of Guam in the direction of independence;
16 now therefore

17 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF**
18 **GUAM:**

19 **Section 1.** A new §68951 is added to Title 21, Guam Code
20 Annotated, to read:

21 "§68951. As an act of self-determination and as an act of
22 autonomy, the lands of the former Naval Facility at Ritidian Point are
23 hereby designated as the lands of the Government of Guam, to be
24 held in trust by the Government of Guam for the benefit of the
25 original owners, and to be held in trust for the shortest time possible
26 until the land can be returned to the original owners or their heirs.
27 The purported transfer of the land from the control of the

1 Department of Defense to the United States Fish and Wildlife Service
2 and the designation of the land as a critical habitat are hereby
3 repudiated and canceled, as is the original taking by the United States
4 government, which taking the Legislature finds to be theft from the
5 original owners."

Original done 6/15/95
23-25



OFFICE OF THE GOVERNOR
TERRITORY OF GUAM

OFFICE OF THE SPEAKER

Date: 5/25/95
Time: 4:15
Received By: [Signature]
Print Name: HANS TORIATE

MAY 25 1995

The Honorable Don Parkinson
Speaker
23rd Guam Legislature
Agana, Guam

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT
Received By: [Signature]
Time: 11:25
Date: 5/26/95

Dear Mr. Speaker,

Returned herewith is BILL NO. 72 (LS), "AN ACT TO ADD A NEW §68951 TO TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO DESIGNATING THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM, AND TO DEMANDING THAT THE DEPARTMENT OF DEFENSE RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN BY FORCE, DECEIT AND OUTRIGHT THEFT, which I have **vetoed** for the following reasons:

1. The legal sufficiency of Section 1, (p4, line 27; p5, lines 1-5) is not supportable. As far as can be determined, the Government of Guam does not have the authority nor the legal standing to repudiate and/or cancel an agreement between two federal government agencies. The language in Bill No. 72 attempts to repudiate and cancel an agreement between the Department of Defense and the U.S. Fish and Wildlife Service. However, the legislation does not contain nor specify what grants the Government of Guam such authority, if, in fact, any such authority exists. If the cancellation cannot be enforced and if the Department of Defense and the U.S. Fish and Wildlife Service cannot be forced to recognize and comply with the mandate than an even greater injustice is brought upon the people of Guam.
2. The question of whether the original land takings by the federal government were legally sufficient, or were, in fact, acts of deception and theft are serious

allegations which should not be the subject of mandates from either the Guam Legislature or the Office of the Governor. The people of Guam need and deserve justice, however, justice will not be served by passing and enacting laws which cannot be enforced. If, in fact, there was deception and/or theft, and it can be substantiated, then it should not be difficult to prove such and have those takings overturned by a court of law. This Administration will always support efforts to attain justice for the original landowners. However, the means by which we pursue this justice must be sufficient and supportable by everyone, especially the legal systems, federal and local alike,

3. This Administration will support the establishment of a trust to provide the mechanism by which the original landowners can finally realize the justice they deserve. However, the language contained in Section 1 of Bill No. 72 does not provide either the structure nor the guidelines by which the government can assure, the original landowners and itself, that justice is attained for the original landowners as a class or as individuals.
4. Finally, simply stating that Bill No. 72 is an act of self determination or an act of autonomy does not accomplish these noble objectives unless the operative provisions of the legislation are enforceable or attainable.

Additionally, previous laws, Public Law 22-111 and Public Law 22-63, have stated Guam's intent regarding the land at Ritidian Point. It is unfortunate that the federal government, under the guise of conservation, continues to hold land that has been declared excess and is ready for return to our people. It is also unfortunate that federal laws are being applied to the disposition of these lands that do not take into account the unique circumstances under which the land was taken and retained by the federal government.


In order to rectify this situation, more needs to be done than enacting a mere empty statement of ownership. The proposed §68951 to Title 21, Guam Code Annotated, contained in Substitute Bill No. 72, does not achieve any change in status of the ownership of the land.

We are committed to achieving **real** return of land from the federal government, and to this end we are working with Congressman Underwood in the federal arena,

and with the Guam Economic Development Authority in implementing the provisions of Public Law 22-111.

In closing, no purpose is more noble than that for which Bill No. 72 is intended. However, the nobility of any effort must be tempered by sufficiency and attainability. Research has indicated that Bill No. 72 is neither enforceable nor are its noble goals attainable.

Very truly yours,


Madeleine Z. Bordallo
Acting Governor of Guam

Attachment

230466

TWENTY-THIRD GUAM LEGISLATURE

1995 (FIRST) Regular Session

Date: 5/13/95

VOTING SHEET

Bill No. 72

Resolution No. _____

Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓		:	
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R.	✓			
WONPAT-BORJA, Judith	✓			

TOTAL

21



Senator Hope Alvarez Cristobal

Committee on Federal and Foreign Affairs
23RD GUAM LEGISLATURE

May 05, 1995

Speaker Don Parkinson
Twenty-Third Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker,

The Committee on Federal & Foreign Affairs which was referred Bill 72:

AN ACT TO DESIGNATE THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM ; AND INDICATING TO THE DEPARTMENT OF DEFENSE, THE GOVERNMENT OF GUAM'S POSITION TO RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN IN VIOLATION OF THE UNITED STATES CONSTITUTION, OTHER APPLICABLE LAWS AND UNDER CONDITIONS WHEREBY AN ARTIFICIAL ECONOMY WAS CREATED BY SECURITY CLEARANCES.

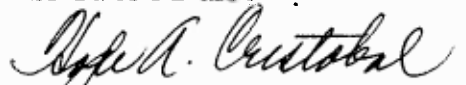
submits its Committee Report to the Legislature with the recommendation TO PASS.

The voting record is as follows:

To Pass	11
Not To Pass	00
To Abstain	00
To place in Inactive File	00

Your immediate attention to this matter is greatly appreciated.

Si Yu'os Ma'ase'


HOPE ALVAREZ CRISTOBAL
Senator

attachments/clq

*Please note: one member is off-island and not available for signature.**



Senator Hope Alvarez Cristobal

Committee on Federal and Foreign Affairs
23RD GUAM LEGISLATURE

May 01, 1995

MEMORANDUM

To: All Members
Fr: Senator Hope A. Cristobal, Chair
Re: Committee Report on Bill No. 72.

In reference to the Public Hearing conducted on March 27, 1995, the attached voting sheet is accompanied by the following supplements:

- 1) a digest of testimonies submitted to the Committee,
- 2) Committee members' dialogue,
- 3) the Committee Report (Overview, Findings & Recommendations), and
- 4) Bill #72, as amended by the Committee on Federal & Foreign Affairs.

Please contact my office if you should have any additional comments or concerns.

Si Yu'os ma'ase,


HOPE ALVAREZ CRISTOBAL
Senator

attachments/clq

COMMITTEE ON FEDERAL & FOREIGN AFFAIRS

VOTING SHEET

BILL 72: AN ACT TO DESIGNATE THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM; AND INDICATING TO THE DEPARTMENT OF DEFENSE, THE GOVERNMENT OF GUAM'S POSITION TO RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FORM WHICH THE LANDS WERE ORIGINALLY TAKEN IN VIOLATION OF THE UNITED STATES CONSTITUTION, OTHER APPLICABLE LAWS AND UNDER CONDITIONS WHEREBY AN ARTIFICIAL ECONOMY WAS CREATED BY SECURITY CLEARANCES.

Committee Members	TO PASS	NOT to PASS	TO ABSTAIN	TO PLACE IN INACTIVE FILE	SIGNATURE
Sen. Hope A. CRISTOBAL Chairperson	✓				<i>Hope Cristobal</i>
Sen. Angel SANTOS Vice-Chairperson	✓				<i>Angel Santos</i>
Sen. Tom ADA					
Sen. J. WON-PAT BORJA	✓				<i>J. Won-Pat Borja</i>
Sen. M. CHARFAUROS	✓				<i>Mark C. Charfauros</i>
Sen. L. LEON GUERRERO	✓				<i>Leon Guerrero</i>
Sen. V. PANGELINAN	✓				<i>V. Pangelinan</i>
Sen. Francis SANTOS	✓				<i>Francis Santos</i>
Sen. E. BARRETT-ANDERSON	✓				<i>E. Barrett-Anderson</i>
Sen. Anthony BLAZ	✓				<i>Anthony Blaz</i>
Sen. Mark FORBES	✓				<i>Mark Forbes</i>
Sen. C. LEON GUERRERO	✓				<i>Carlota Leon</i>

Committee on Federal & Foreign Affairs

Committee Report on Bill 72

OVERVIEW

The Committee on Federal & Foreign Affairs having purview over federal land(s) issues conducted a public hearing on Bill 72 on February 24, 1995.

Present at the hearing were Chairwoman Hope Cristobal and Committee members; Senator A. Santos, Senator T. Ada, Senator J. Won Pat-Borja, Senator M. Charfauros, Senator L. Leon Guerrero, Vice Speaker T. Nelson, Speaker D. Parkinson, Senator V. Pangelinan, Senator E. Barrett-Anderson, Senator A. Blaz, and Senator M. Forbes.

Bill 72 was introduced by Speaker Parkinson and co-sponsored by Senator J. Aguon and Senator J. San Agustin.

Citizens presenting testimony before the Committee were: Attorney Peter Sgro, Jr., Marianne Rios, James Castro, Mrs. Olympia Cruz, Jose Ulloa Garrido, Franklin Leon Guerrero, Tony Artero, Juan M. Flores, Alfonso Pangelinan, Ron Teehan, Lou Castro, and Mae Castro Aguigui.

The intent of Bill 72, with its passage, is to send a clear message to the United States Government from both the Guam Legislature and the Governor of Guam that it is the desire of the Government of Guam to extinguish any and all "cooperative agreements" that establishes or governs the establishment of a Wildlife Refuge, and to ensure that the return of the declared excess lands at Ritidian Point are properly returned to their rightful owners.

FINDINGS & RECOMMENDATIONS

The Committee on Federal & Foreign Affairs finds that it is necessary for the Government of Guam to be assertive and assist its people in their quest for the rightful return of their lands. Therefore,

THE COMMITTEE ON FEDERAL & FOREIGN AFFAIRS SUBMITS THE ATTACHED BILL NO. 72 (AS AMENDED BY CFFA) AND STRONGLY SUPPORT ITS PASSAGE.

APPENDIX A

TWENTY THIRD GUAM LEGISLATURE 1995 (FIRST) Regular Session

Bill No. 72

Substituted by the Committee on Federal and Foreign Affairs

Introduced by:

D. Parkinson
J. T. San Agustin
F. E. Santos

AN ACT TO DESIGNATE THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM; TO AUTHORIZE THE GOVERNOR OF GUAM TO EXERCISE HIS POWERS OF EMINENT DOMAIN TO CONDEMN THESE PROPERTIES; TO INDICATE TO THE DEPARTMENT OF DEFENSE THE GOVERNMENT'S POSITION TO RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN BY FORCE, DECEIT, OUTRIGHT THEFT, AND VIOLATION OF THEIR CONSTITUTIONAL RIGHTS, AND OTHER APPLICABLE FEDERAL LAWS, RULES AND REGULATIONS AND UNDER CONDITIONS WHEREBY AN ARTIFICIAL ECONOMY WAS CREATED BY SECURITY CLEARANCES; TO EXPEDITE THE PROCESS, IMPLEMENTATION AND THE GRANTING OF PERMANENT UNFETTERED ACCESS TO THE OWNERS OF URUNAO, RITIDIAN AND JINAPSAN; AND TO CITE THE ACT AS THE TERRITORIAL DECLARATION ON THE RETURN OF EXCESS FEDERAL LANDS IN NORTHERN GUAM TO THEIR RIGHTFUL OWNERS ACT OF 1995.

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

3 Section 1. Legislative Findings and Statement. The Legislature finds
4 that after World War II, the Federal government took lands in Guam and
5 prior to the lifting of the security clearance in 1962, the Federal

1 government, again through the Department of Defense, took lands in and
2 around northern Guam commonly known as Ritidian Point from the fee
3 simple owners said lands being Lots Nos. 9986, 9987, 9988, 9990, 9991,
4 9990-1, 9992-2 and 10081-2, Machanao, claiming need for national security
5 and defense, under what can best be described as dubious circumstances,
6 with serious questions as to whether the Federal government in fact
7 properly took title to the property.

8 The Legislature further finds that the properties are no longer
9 needed for national security and defense and have been declared excess to
10 the needs of the Federal government. However, under the guise of and
11 protection of endangered species, the Federal government has transferred
12 the administration and control of the property to the Department of
13 Interior's Fish and Wildlife Service to be used as a wildlife refuge.

14 The Legislature further finds that the Federal government continues
15 to blatantly ignore the rights of the people of Guam whose lands were
16 taken in the name of national security and defense, and is deliberately
17 preventing these lands which have already been declared excess to the
18 needs of the Department of Defense from being returned to the original
19 and rightful owners, by transferring the administration and control of such
20 lands to another Federal agency for uses which will forever preclude local
21 development.

22 The Legislature opines that this deliberate act of transferring excess
23 lands that were, in many cases taken under unscrupulous and deceitful
24 means, to other Federal agencies without considering the rights or needs
25 of the original landowners or the needs of the Territory of Guam is
26 unconscionable. Furthermore, it is obvious that the clear policy of the
27 Federal government is that such lands now held by the Federal
28 government will never be returned to the people of Guam, but will forever
29 remain in the control of the Federal government as vacant lands, whether
30 denominated as necessary for national security and defense, as parks, as
31 wildlife refuges, or for other such uses.

32 The Legislature is also cognizant that because the land resources on
33 Guam are very limited, and because developable lands are even more
34 limited, the Federal government's plans to designate virtually all vacant
35 lands on Guam as wildlife refuges and parks, preclude all meaningful use
36 and development of these lands, and are therefore unrealistic,
37 irresponsible and unresponsive to the needs of the people of Guam.

1 Furthermore, the Legislature finds that the Federal government's
2 refusal to return lands to the rightful owners and the federal restrictions
3 placed on the use and development on Guam only serves to further deny
4 the rightful landowners and the people of Guam enjoyment of its full
5 economic potential.

6 Therefore, the Legislature hereby states that the record of the
7 Federal government's longstanding territorial policy is to:

- 8 a. Deprive the landowners optimum use and development of
9 their property.
- 10 b. Retain a large portion of the island under federal control in
11 case these lands are again needed by the Federal government.
- 12 c. Control the economy of the government of Guam through
13 restrictions on land use and development, as well as other
14 restrictive polices, rules and regulations of the Federal
15 government.
- 16 d. Insure that the island and the people of Guam forever remain
17 second class citizens thanks to numerous bureaucratic controls
18 and ploys by various departments and agencies of the Federal
19 government, including most notably the Department of
20 Defense and administration by Department of Interior in a
21 manner reminiscent of the Office of Indian Affairs.

22 The Legislature hereby states that the proposal to declare the shores
23 of Guam from Puntan Dos Amantes to Campanaya Point as critical
24 habitat in order to save endangered animals is senseless and totally absent
25 of any reasonable rationale, and reflective of gross misunderstanding and
26 disregard of the needs of the people of Guam by bureaucrats who have
27 chosen to declare themselves saviors of the Marianas Fruit Bats, the
28 Marianas Crow, the Kingfisher and whatever other species of animals, or
29 other inanimate objects, they have, and will choose to add to the list of
30 reasons why the people of Guam cannot enjoy their human and civil rights
31 to the full benefits of their private property.

32 Furthermore, the proposal is unjust in that it will officially deny
33 citizens of the United States the full use and benefit of their private
34 property. This injustice flies in the face of the U.S. Constitution and the
35 fundamental principles of democracy, free enterprise and private property
36 upon which the great American nation was founded. The Pilgrims came to
37 America not only to escape religious tyranny but to escape tyrannical

1 governments which had no respect, nor concept, of an individual's God
2 given right to the full use of his private property.

3 Moreso, the Legislature opines that this proposal (wildlife refuge) is
4 unjust in that it only seeks to supplant the unnatural and grants the
5 Federal government responsibility over thousands upon thousands of
6 acres of prime real estate and miles upon miles of pristine beaches and
7 shoreline with a policy that vainly hopes to justify itself by drawing
8 parallels between the fate of the Marianas Fruit Bat with the prehistoric
9 pterodactyl.

10 The people of Guam suspect that the United States government does
11 not want to release property, which has been declared excess by its own
12 officials, simply because it wants to retain these acreages as a buffer zone
13 between military reservations and the civilian community.

14 When the U.S. Navy first elected to pursue the condemnation of all
15 private property in northern Guam, it identified all shoreline property
16 between Puntan Dos Amantes and Fadian Point. However, it quickly
17 learned that U.S. laws required the Department of Defense to show that a
18 compelling national security interest, or compelling public good would be
19 served by the taking of private property by the government.

20 When the matter of the Northwest and Ritidian properties were
21 taken to the Federal District Court for Guam, the Federal government
22 could not justify to the satisfaction of the Court, its need to acquire
23 ownership of all of northern Guam through condemnation.

24 Most importantly, the Legislature takes note that not only did the
25 court permit these properties to remain in private ownership, the court
26 mandated that the families shall be granted ingress and egress rights. To
27 this date the Federal government has not abided by nor fulfilled the
28 decision and orders of its own courts. The Federal government would
29 have people believe otherwise by stating that the Ritidian, Jinapsan and
30 Urunao property owners are granted permits which allow them to enter
31 military reservations for the purpose of "visiting" their property.

32 The Legislature further opines that this method of pacifying the
33 property owners cannot, must not and will not be construed as rights of
34 ingress and egress. It is noted that the practice of issuing I.D. cards to the
35 property owners was and is an effective way of preventing the
36 development and utilization of the Urunao, Ritidian and Jinapsan
37 properties for anything.

1 The Legislature further states that by strictly controlling ingress and
2 egress to the land, the owners were prevented from even building suitable
3 homes on the property. By making it literally impossible to extend basic
4 utility requirements to the land, any dream of any form of home in Urunao,
5 Ritidian and Jinapsan remained just that - a dream - wishful thinking.

6 It is difficult for the people of Guam to understand why the United
7 States of America, the country which preaches and promotes human and
8 civil rights, as well as, rights of private property the world over, would be
9 so negative towards preaching and promoting those same principles on an
10 island over which flies the American Flag?

11 Now, the U.S. Fish and Wildlife Service proposes to do what the
12 Federal government could not do because they (Federal government)
13 could not prove that its desire and need to condemn the northern shores of
14 Guam vital to national security. Now the U.S. Fish and Wildlife Service
15 proposes to accomplish this feat in the name of the Marianas Fruit Bat and
16 other endangered species of birds.

17 Now, the Legislature's main question is when will the United States
18 government begin treating the families of Ritidian, Urunao and Jinapsan
19 and the people of Guam, as human beings and American citizens.

20 The Legislature in its efforts to resolve this issue, now calls to the
21 attention of the Federal government the injustices that would be
22 perpetrated and perpetuated should the Ritidian properties not be
23 returned to their rightful owners, and that the designation of critical
24 habitat not be further studied and evaluated by the Federal government
25 until the 1973 Endangered Species Act has been thoroughly reviewed and
26 rewritten by Congress.

27 Furthermore, the Legislature hereby states and declares that the
28 sovereign right of the people of Guam to control the destiny and
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32 Such actions by the Federal government only perpetuates the colonialistic
33 attitude the Federal government has toward the people of Guam by
34 preventing them from asserting their sovereignty and rights of self-
35 determination.

36 The Legislature hereby states that every action the Federal
37 government has made, regarding the return of excess lands to their

1 rightful owners, only serves to lead the people of Guam in the direction of
2 independence.

3 Section 2. A new Chapter 79 is hereby added to Title 21, Guam Code
4 Annotated, to read as follows:

5 "Chapter 79

6 Article 1

7 Territorial Declaration on the Return of Excess

8 Federal Lands in Northern Guam to their Rightful Owners

9 §79101. Designation and Control of Excess Federal
10 Properties. (a) As an act of self-determination and as an act of
11 autonomy and as matter of law, the lands at the former Naval
12 Facility at Ritidian Point are hereby designated as lands of the
13 Government of Guam, to be held in trust by the Government of
14 Guam for the benefit of the original landowners, to be so held in
15 trust for a period not to exceed 90 days from the date of designation
16 until the land can be returned to original owners or their heirs.

17 (b) The purported transfer of the land from the control of the
18 Department of Defense to the U.S. Fish and Wildlife Service and the
19 designation of the land as a wildlife refuge are hereby repudiated
20 and cancelled.

21 (c) The properties taken by the Federal government in 1962
22 situated in northern Guam and identified at the time of taking as
23 follows:

24 (i) Lot No 9986, containing an area of 38,443 ±
25 square meters, and at the time of forced taking belonging
26 to Juan San Nicolas Aguero;

27 (ii) Lot No. 9987, containing an area of 68,582 ±
28 square meters, and at the time of forced taking belonging
29 to Dolores Martinez Flores and Benigno Leon Guerrero
30 Flores;

31 (iii) Lot No. 9988, containing an area 41,837 ±
32 square meters, and at the time of forced taking belonging
33 to Jesus Castro Castro, Estate, Jesus Blas Castro,
34 Administrator;

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36 square meters, and at the time of forced taking belonging
37 to Juan Mendiola Castro;

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2 of 115,502 ± square meters, and at the time of forced
3 taking belonging to Juan Rivera Castro, Jesus Duenas
4 Castro, Administrator;

5 (vi) Lot No. 9990-1, containing an area of 73,484 ±
6 square meters, and at the time of forced taking belonging
7 to Vicente S. Pangelinan, Estate, Ana Matanane
8 Pangelinan Administratrix; and

9 (vii) Lot No. 9992-2, containing an area of 60,396 ±
10 square meters, and at the time of forced taking belonging
11 to Engracia Castro Perez, Tomas L.G. Castro, Gregorio
12 L.G. Castro, Maria Castro Ada, Margarita L.G.
13 Camacho, Julia Castro Rojas, Francisco L.G. Castro,
14 Concepcion Castro Camacho, and Santiago L.G. Castro;
15 and

16 (viii) Lot No. 10081-2, containing an area of 7,920 ±
17 square meters, and at the time of forced taking belonging
18 to Maria Taitano Agüero, and Juan S.N. Agüero;

19 are hereby repudiated and cancelled based on the Legislature's
20 findings that these properties were acquired by outright theft from
21 the original landowners."

22 §79102. Interest in the Real Properties. The original
23 landowners, and if they are no longer living, their heirs shall
24 maintain a future interest in the real properties described above,
25 consistent the terms defined in §1221 of Title 21, Guam Code
26 Annotated.

27 §79103. Wildlife Refuge Declaration Null and Void. Any
28 and all agreements, permits or similar documents by and between
29 the government of Guam and any of its agencies and the Federal
30 government and any of its agencies for purposes of establishing the
31 Wildlife Refuge are hereby declared null and void.

32 §79104. Vestiture of Reversionary Property Rights. The
33 original landowner or heirs of the original landowners of Lots Nos.
34 9986, 9987, 9988, 9989, 9990, 9991, 9990-1, 9992-2 and 10081-2,
35 Machanao, shall maintain a contingent reversionary interest to the
36 lands mentioned herein and the government of Guam shall take any

1 and all legal remedies necessary to insure that the reversionary
2 property rights are properly vested."

3 Section 3. Declaration and Condemnation of Federal Excess Lands
4 in Northern Guam. (a) Declaration. The Legislature opines that while
5 the development of real property may be regulated to a certain extent, it
6 also recognizes that if regulations go too far it constitutes as a taking. The
7 second situation in which the government and the people of Guam finds
8 themselves in is the fact that numerous federal laws, rules and regulations
9 have effectively denied all economically beneficial uses of prime lands in
10 Guam. Furthermore, it is the position of the Legislature as stated on
11 numerous occasions that the Fifth Amendment rights of the landowners in
12 northern Guam have effectively been violated especially when federal
13 land use rules and regulations does not substantially advance legitimate
14 state interests or denies landowners economically viable use of their lands.

15 (b) Condemnation. The Governor of Guam is hereby authorized
16 to exercise his power of eminent domain to condemn and declare federal
17 excess lands situated in and around Ritidian Point, described as follows:

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10 in and for the benefit of the original landowners, and if they are are no
11 longer living, their heirs.

12 Section 4. Permanent Access. (a) Grant of Easement. The Governor
13 of Guam is hereby authorized to expedite the implementation and
14 granting of unfettered access to the landowners and their heirs whose
15 properties are situated in and around the Urunao, Ritidian and Jinapsan
16 areas.

17 (b) Reporting. The Governor shall report to the Legislature and
18 the affected landowners the status of the granting of unfettered access no
19 later than ninety (90) days after the enactment of this Act.

The Castro Family

P.O. Box 20731, GMF, Guam 96921
(671) 734-3120

February 24, 1995

Honorable Hope A. Cristobal
Chairperson, Committee on Federal and Foreign Affairs
Twenty-Third Guam Legislature
155 Hesler Street
Agana, Guam 96910

Re: Review and Rewrite of Bill No. 72

Dear Senator Cristobal:

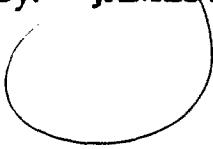
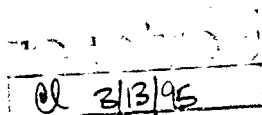
Enclosed, you will find a copy of the Castro Family's review and rewrite of Bill No. 72. The title of Bill No. 72 as substituted is as follows, "An act to designate the former Naval Facility lands at Ritidian Point as property of the government of Guam; to authorize the Governor of Guam to exercise his powers of eminent domain to condemn these properties; to indicate to the Department of Defense the Government's position to return these excess lands to the rightful owners from which the lands were originally taken by force, deceit, outright theft, and violation of their constitutional rights, and other applicable Federal laws, rules and regulations and under conditions whereby an artificial economy was created by security clearances; to expedite the process, implementation and the granting of permanent unfettered access to the owners of Urunao, Ritidian and Jinapsan; and to cite the Act as "The Territorial Declaration on the Return of Excess Federal Lands in Northern Guam to their Rightful owners Act of 1995."

Thank you, and Si Yu'us Ma'ase for allowing us to comment on the legislation.

FOR THE CASTRO FAMILY:


By: JAMES P. CASTRO

Enclosure:

The Castro Family

P.O. Box 20731, GMF, Guam 96921
(671) 734-3120

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Honorable Don Parkinson
Speaker
Twenty-Third Guam Legislature
155 Hesler Street
Agana, Guam 96910

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Thank you, and Si Yu'us Ma'ase for sponsoring Bill No. 72.

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By: JAMES P. CASTRO

Enclosure:

TWENTY THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 72

Substituted by the Committee on Federal and Foreign Affairs

Introduced by:

D. Parkinson
J. T. San Agustin
F. E. Santos

AN ACT TO DESIGNATE THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM; TO AUTHORIZE THE GOVERNOR OF GUAM TO EXERCISE HIS POWERS OF EMINENT DOMAIN TO CONDEMN THESE PROPERTIES; TO INDICATE TO THE DEPARTMENT OF DEFENSE THE GOVERNMENT'S POSITION TO RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN BY FORCE, DECEIT, OUTRIGHT THEFT, AND VIOLATION OF THEIR CONSTITUTIONAL RIGHTS, AND OTHER APPLICABLE FEDERAL LAWS, RULES AND REGULATIONS AND UNDER CONDITIONS WHEREBY AN ARTIFICIAL ECONOMY WAS CREATED BY SECURITY CLEARANCES; TO EXPEDITE THE PROCESS, IMPLEMENTATION AND THE GRANTING OF PERMANENT UNFETTERED ACCESS TO THE OWNERS OF URUNAO, RITIDIAN AND JINAPSAN; AND TO CITE THE ACT AS THE TERRITORIAL DECLARATION ON THE RETURN OF EXCESS FEDERAL LANDS IN NORTHERN GUAM TO THEIR RIGHTFUL OWNERS ACT OF 1995.

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

3 Section 1. Legislative Findings and Statement. The Legislature finds
4 that after World War II, the Federal government took lands in Guam and
5 prior to the lifting of the security clearance in 1962, the Federal

1 government, again through the Department of Defense, took lands in and
2 around northern Guam commonly known as Ritidian Point from the fee
3 simple owners said lands being Lots Nos. 9986, 9987, 9988, 9990, 9991,
4 9990-1, 9992-2 and 10081-2, Machanao, claiming need for national security
5 and defense, under what can best be described as dubious circumstances,
6 with serious questions as to whether the Federal government in fact
7 properly took title to the property.

8 The Legislature further finds that the properties are no longer
9 needed for national security and defense and have been declared excess to
10 the needs of the Federal government. However, under the guise of and
11 protection of endangered species, the Federal government has transferred
12 the administration and control of the property to the Department of
13 Interior's Fish and Wildlife Service to be used as a wildlife refuge.

14 The Legislature further finds that the Federal government continues
15 to blatantly ignore the rights of the people of Guam whose lands were
16 taken in the name of national security and defense, and is deliberately
17 preventing these lands which have already been declared excess to the
18 needs of the Department of Defense from being returned to the original
19 and rightful owners, by transferring the administration and control of such
20 lands to another Federal agency for uses which will forever preclude local
21 development.

22 The Legislature opines that this deliberate act of transferring excess
23 lands that were, in many cases taken under unscrupulous and deceitful
24 means, to other Federal agencies without considering the rights or needs
25 of the original landowners or the needs of the Territory of Guam is
26 unconscionable. Furthermore, it is obvious that the clear policy of the
27 Federal government is that such lands now held by the Federal
28 government will never be returned to the people of Guam, but will forever
29 remain in the control of the Federal government as vacant lands, whether
30 denominated as necessary for national security and defense, as parks, as
31 wildlife refuges, or for other such uses.

32 The Legislature is also cognizant that because the land resources on
33 Guam are very limited, and because developable lands are even more
34 limited, the Federal government's plans to designate virtually all vacant
35 lands on Guam as wildlife refuges and parks, preclude all meaningful use
36 and development of these lands, and are therefore unrealistic,
37 irresponsible and unresponsive to the needs of the people of Guam.

1 Furthermore, the Legislature finds that the Federal government's
2 refusal to return lands to the rightful owners and the federal restrictions
3 placed on the use and development on Guam only serves to further deny
4 the rightful landowners and the people of Guam enjoyment of its full
5 economic potential.

6 Therefore, the Legislature hereby states that the record of the
7 Federal government's longstanding territorial policy is to:

- 8 a. Deprive the landowners optimum use and development of
9 their property.
- 10 b. Retain a large portion of the island under federal control in
11 case these lands are again needed by the Federal government.
- 12 c. Control the economy of the government of Guam through
13 restrictions on land use and development, as well as other
14 restrictive polices, rules and regulations of the Federal
15 government.
- 16 d. Insure that the island and the people of Guam forever remain
17 second class citizens thanks to numerous bureaucratic controls
18 and ploys by various departments and agencies of the Federal
19 government, including most notably the Department of
20 Defense and administration by Department of Interior in a
21 manner reminiscent of the Office of Indian Affairs.

22 The Legislature hereby states that the proposal to declare the shores
23 of Guam from Puntan Dos Amantes to Campanaya Point as critical
24 habitat in order to save endangered animals is senseless and totally absent
25 of any reasonable rationale, and reflective of gross misunderstanding and
26 disregard of the needs of the people of Guam by bureaucrats who have
27 chosen to declare themselves saviors of the Marianas Fruit Bats, the
28 Marianas Crow, the Kingfisher and whatever other species of animals, or
29 other inanimate objects, they have, and will choose to add to the list of
30 reasons why the people of Guam cannot enjoy their human and civil rights
31 to the full benefits of their private property.

32 Furthermore, the proposal is unjust in that it will officially deny
33 citizens of the United States the full use and benefit of their private
34 property. This injustice flies in the face of the U.S. Constitution and the
35 fundamental principles of democracy, free enterprise and private property
36 upon which the great American nation was founded. The Pilgrims came to
37 America not only to escape religious tyranny but to escape tyrannical

1 governments which had no respect, nor concept, of an individual's God
2 given right to the full use of his private property.

3 Moreso, the Legislature opines that this proposal (wildlife refuge) is
4 unjust in that it only seeks to supplant the unnatural and grants the
5 Federal government responsibility over thousands upon thousands of
6 acres of prime real estate and miles upon miles of pristine beaches and
7 shoreline with a policy that vainly hopes to justify itself by drawing
8 parallels between the fate of the Marianas Fruit Bat with the prehistoric
9 pterodactyl.

10 The people of Guam suspect that the United States government does
11 not want to release property, which has been declared excess by its own
12 officials, simply because it wants to retain these acreages as a buffer zone
13 between military reservations and the civilian community.

14 When the U.S. Navy first elected to pursue the condemnation of all
15 private property in northern Guam, it identified all shoreline property
16 between Puntan Dos Amantes and Fadian Point. However, it quickly
17 learned that U.S. laws required the Department of Defense to show that a
18 compelling national security interest, or compelling public good would be
19 served by the taking of private property by the government.

20 When the matter of the Northwest and Ritidian properties were
21 taken to the Federal District Court for Guam, the Federal government
22 could not justify to the satisfaction of the Court, its need to acquire
23 ownership of all of northern Guam through condemnation.

24 Most importantly, the Legislature takes note that not only did the
25 court permit these properties to remain in private ownership, the court
26 mandated that the families shall be granted ingress and egress rights. To
27 this date the Federal government has not abided by nor fulfilled the
28 decision and orders of its own courts. The Federal government would
29 have people believe otherwise by stating that the Ritidian, Jinapsan and
30 Urunao property owners are granted permits which allow them to enter
31 military reservations for the purpose of "visiting" their property.

32 The Legislature further opines that this method of pacifying the
33 property owners cannot, must not and will not be construed as rights of
34 ingress and egress. It is noted that the practice of issuing I.D. cards to the
35 property owners was and is an effective way of preventing the
36 development and utilization of the Urunao, Ritidian and Jinapsan
37 properties for anything.

1 The Legislature further states that by strictly controlling ingress and
2 egress to the land, the owners were prevented from even building suitable
3 homes on the property. By making it literally impossible to extend basic
4 utility requirements to the land, any dream of any form of home in Urunao,
5 Ritidian and Jinapsan remained just that - a dream - wishful thinking.

6 It is difficult for the people of Guam to understand why the United
7 States of America, the country which preaches and promotes human and
8 civil rights, as well as, rights of private property the world over, would be
9 so negative towards preaching and promoting those same principles on an
10 island over which flies the American Flag?

11 Now, the U.S. Fish and Wildlife Service proposes to do what the
12 Federal government could not do because they (Federal government)
13 could not prove that its desire and need to condemn the northern shores of
14 Guam vital to national security. Now the U.S. Fish and Wildlife Service
15 proposes to accomplish this feat in the name of the Marianas Fruit Bat and
16 other endangered species of birds.

17 Now, the Legislature's main question is when will the United States
18 government begin treating the families of Ritidian, Urunao and Jinapsan
19 and the people of Guam, as human beings and American citizens.

20 The Legislature in its efforts to resolve this issue, now calls to the
21 attention of the Federal government the injustices that would be
22 perpetrated and perpetuated should the Ritidian properties not be
23 returned to their rightful owners, and that the designation of critical
24 habitat not be further studied and evaluated by the Federal government
25 until the 1973 Endangered Species Act has been thoroughly reviewed and
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16 areas.

17 (b) Reporting. The Governor shall report to the Legislature and
18 the affected landowners the status of the granting of unfettered access no
19 later than ninety (90) days after the enactment of this Act.

Mr Chairman, The original landowners of Pithichia Pt. have always felt that the establishment of a wildlife refuge is purely & simply a DISGUISE TAKING of land, a plot by the military to continue their dominance over our lands. This to me, is absolutely disgusting, frustrating & emotionally draining.

The creation of a wildlife refuge is regulated by the Endangered Species Act. I do not know the act in its entirety but what I do know from our past research is that a real wildlife refuge should be established on property that is untouched, undeveloped, uncharted, undisturbed. More importantly the habitat should be conducive to the survival of these the introduced species. There are vast amounts of traps at Pithichia Pt ^{not to mention the hazardous waste sites that exist up there. Furthermore} and the land is far from being untouched, undeveloped, etc. Even today, the land is being further damaged by the encroachment of many strangers who come in & trash the place & home not with regard for its pristine beauty.

It's been over a year now since the creation of the WP and I would like to know what endangered species are presently in captivity & what are the plans to ensure the survival of these species in this particular habitat. Also, what is the Budget of the F&W to maintain & successfully carry out this WP? I am pretty sure that there is not one species involved & there is no money for this refuge! Again, this brings us back to thinking that indeed this is a disguise taking.

Presently there are supposedly gatekeepers stationed by the F&W who mainly are volunteers. The Kelly Wolcott, the F&W designated representative mentioned in the paper that he observed several people picking up trash & at Pithichia Pt. & he was impressed w/ that & so they earned the right to hold a key to the gate

at RP. That means that we, the other one basically at the mercy
of these people holding the key & they are only there at that
convenience. I think this is ridiculous. One Sunday as our family
attempted to exit the gate after spending the day there, we were
all locked in, about 50 or more of us including little children
we could not contact anyone & the children were all frightened.
We eventually got out through the other exit which was a steep
hill w/ deep ruts which damaged some of our cars. We were all
upset over that incident.

In essence, I am angry at what is going on down there. People
are coming down & throwing trash in the jungle, on the road, anywhere.
We've found papers, broken bottles, beer cans & soda cans every
time we walk the paths.

Further, I would just like to say that the venturing a formal
museum is a bunch of baloney. It's just another attempt
of the Fed. Gov't to justify holding over 300 acres of our
land. The museum itself would take or occupy probably an acre of
land. What happens to the rest?

JOSE ULLA GARRIDO

2-4-95

We live under laws of the United States
we live on the promise that we honor the
constitution of ^{United States} ~~our Nation~~ — the laws by which
we, the Chamorro, have long been loyal to and
held as sacred, something our Federal Government have
~~long~~ forgotten.

We have been suffering ~~longer~~ longer than
the history of ~~the~~ ^{this} great nation the U.S.A.
and we are still suffering, as individuals,
as Chamorro, as a people, as a NATION,

Our land was taken and our people
became lost ^{in the way} ~~on~~ our culture, our tradition, our
way of life. Our homeland became homes of
others while we became homeless and landless

for once in our lifetime, as the last Chamorro
Generation, must, before we die as ^{great}
ancestors did, ~~find~~ ^{find our way back} ~~the~~ way to ~~our~~ ^{our} lost road
to our homeland, our birth land, we must
give the land back to our people, we must
give Ritidian — Lelckyan back to ~~our~~ ^{our} people

~~the~~ ^{our} ~~Indians~~ ^{our families} have their trail of Tears,
we have our Island of Tears. — SI YUKS MA'ASI

February 24, 1995

Testimony for Senator Hope Cristobal's Bill 72, by Marianne Rios, Spokesperson for Guahan Landowners United.

Good morning, honorable Senators, and thank you for providing Guahan Landowners United the opportunity to give testimony in favor of this bill which provides the return of ancestral lands to the Ritidian Point families. The subject of landclaims is an old one on Guam, the subject is a critical one and the subject is an important one and without its final eminent settlement, no other decisive events that could touch the future political and economic lives of the Chamorro people significantly, can be even considered to be successful until the subject of landclaims has been confronted by our own Government and each taking, such as you are doing today, is being re-addressed "individually and timely". We, at Guahan Landowners, say "individually", because, as this particular bill again proves, each taking was a particular separate taking with many different circumstances attached to each taking. And we say "timely", because the Chamorro people, as is well known, do not call the shots on the time of return of excess lands. So, therefore, we must act immediately, as any of these lands are either declared excess by the Federal Government or as we identify lands not being used by the Federal Government, pushing for their release. Through our own local Government's initiative and dealings with the Federal Government through proper channels, combined with organized grassroot activism of the Chamorro people, which will continue to focus attention to the 50 year old problem, we must press forward together for the release of these unused lands, so they can ~~be~~ once again placed in the hands of their rightful owners, and made productive by placing them again on the taxrolls, thereby benefitting the economy of the entire island.

There are various opinions on how these lands that are coming back now, should be used or to whom they should be returned. We are aware of the fact that an initial return from Federal Government to Government of Guam is necessary because this is the only way the Federal Government can wash its hands from further liabilities, especially those that are connected with hazardous clean-up of the properties. This mode of transfer is acceptable to most former landowners. However, it is not acceptable to landowners, when the local Government proceeds to claim these lands for themselves under the guise to use them for the good of all the people of Guam. "All the people of Guam's lands" were not condemned. This is not the way to solve land returns. Valid private property claims are attached to these lands, as is the case with the Ritidian families. They were not communal lands when they were condemned. Not even all Chamorros lost land after the war through condemnation. Not everyone therefore can benefit from one instance of return or another. To think of these lands in a communal way is a gross violation of the private property rights the Chamorros had before the war, rights that continue to this day to be preserved in a free society such as ours under a governmental system such as ours. Anything that emphasises the idea of "return of the lands to the

people of Guam" with the idea of Governmental use for the benefit of all the people of Guam smacks of the application of communistic ideas, widely condemned by the rest of the world. The local Government must bite into the sour apple, that the Federal Government did not want to consume, namely to establish a more fair compensation or tax release for those former landowners who got pittance for just compensation and who can never see their lands back. We say, "can never", because there are many definite cases where land cannot be returned. This, for instance, does not include in our estimation lands at Naval Station (Sumay) or Andersen, since who knows whether and when these lands will finally be returned, or even will be gainfully leased to the Federal Government some day in case of a future political status change? We already know, that the Federal Government will not make the determinations on how this land is to be used, once it is back with the Government Guam. Those decisions, as to title and claim to property, are to be determined by the local Government and determined they must be! Lack of Governmental funds for governmental office rents, adequate education, hunger, poverty and homelessness are all social problems that must be fought together with all taxpayers by all people of the island. They cannot be relegated to be subsidized by one selected segment of society, may it be the landclaimants or may it be the Government¹ Guam Retirement fund.

When we read this bill, we were again encouraged that there are still some Senators who work toward the wrong once committed to be made right again. This bill is a very good beginning to entice other senators to join into the legislative chorus of "Lands back to the original landowners and just compensation or other relief for those claimants whose lands cannot be returned." It is a song we all need to learn to sing after we compose it. We wish our members, the Ritidian Point Families, God's speed in their endeavor to fight for their land and we commend our leaders in taking the attitude they are taking in this bill.

On a more specific note, we would like to suggest that a specific time and/or event will be prescribed in the bill as to how long the Government of Guam will hold on to the Ritidian point lands after they have been returned.

Thank you,
Marianne Rios
respectfully submitted by

Marianne Rios, Spokesperson
Guahan Landowners United, Inc.

Ritidian Families United

**P.O. Box 8079
Tamuning, Guam 96931
(671) 649-5008
Fax: (671) 649-5008**

FAX TRANSMISSION COVER SHEET

Date: *February 24, 1995*
To: *Lou B. Hernandez*
Fax: *(671) 477-3403*
Re: *Legislature Meeting with Land Owners*
Sender *Steven T. McCollum*

**YOU SHOULD RECEIVE 3 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT
RECEIVE ALL THE PAGES, PLEASE CALL (671) 649-5008.**

Dear Ruth:

Please pass this information to Mrs. Lou Hernandez, granddaughter of
Mr. Benigno L. G. Flores.

CATHERINE FLORES MCCOLLUM**February 24, 1995**

My name is Catherine Flores McCollum. My father is Jose Martinez Flores, son of Benigno L. G. Flores. My grandfather is the only living original landowner to an area at Ritidian. I would like to submit written testimony because, unfortunately, I cannot be present at this hearing.

For years the remaining families of Ritidian watched their fathers and mothers suffer the pains and emotions of knowing they would not see the return of Ritidian in their lifetime. After numerous meetings with the Federal Government to get access to Ritidian, they transferred control to the Department of Fish and Wildlife.

My family and I met with Fish and Wildlife to further discuss and express our feelings concerning access to the area of Ritidian where I spent many of my childhood years. We were told that the Ritidian area is open to the general public.

My grandfather Benigno L. G. Flores will soon pass on to another life, he also feels the way the other original land owners felt. He would like to be able to again, walk on the land that he once lived and raised his children. To be able to sit on his land and watch his grandchildren play and share some of the experiences of their parents.

As part of the general public, our family visited the area of Ritidian that once belonged to my grandfather. We were totally devastated when we saw the condition of the land. There were debris of all kinds everywhere, old tin, old lumber, soda cans, plastic bags, the list goes on and on.

The family decided to visit as frequently as allowable by Fish and Wildlife. After several visits we had cleaned the area and removed all the debris. The family did not visit Ritidian for one week. When we returned we could not believe the condition of the area which the family had cleaned and maintained during our frequent visits (about three or four times a week) for several weeks.

Someone had totally destroyed a wooden table, baby pampers were all over, Palm trees had been cut down, large amounts of sand had been removed, plants up-rooted, and bleach poured on the coral. To this date, the Fish and Wildlife Service so-called maintenance, and patrol of the area is minimal and apparently, not been able to control trespassers, poachers and vandals that have somehow taken over the area.

Time and time again, my family has had to clean the area. It has come to the conclusion that the "general public" has no respect for the preservation, beauty and the serenity that Ritidian brings, or any area on our Island for that matter. It would be a "travesty of justice" to continue to allow the Ritidian area be opened to the general public.

I ask you to please consider allowing the original families to adopt the area and a sign displayed indicating "this area is adopted and maintained by" until the return of Ritidian to the original landowners and their heirs. We are best suited to take care of this land.



STANDARD FORM 118
 DECEMBER 1953
 PREPARED BY GENERAL
 SERVICES ADMINISTRATION
 FPMR (41 CFR) 101-11.702

REPORT OF EXCESS REAL PROPERTY

1. HOLDING AGENCY NO 146	DATE RECEIVED (GSA use only)
2. DATE OF REPORT Sept. 23, 1992	GSA CONTROL NO (GSA use only)

3. TO (Furnish address of GSA regional offices) General Services Administration Region 9, 525 Market Street San Francisco, Calif. 94105	4. FROM (Name and address of holding agency) Pacific Division, Naval Facilities Engineering Command Pearl Harbor, Hawaii 96860-7300
--	--

5. NAME AND ADDRESS OF REPRESENTATIVE TO BE CONTACTED Mr. J. M. Kilian, Pacific Division, Naval Facilities Engineering Command Pearl Harbor, Hawaii 96860-7300	6. NAME AND ADDRESS OF CUSTODIAN LT C. J. Griffith, Undersea Surveillance, U.S. Pacific Fleet, Box 1390, Pearl Harbor, Hawaii 96860-7550
---	---

7. PROPERTY IDENTIFICATION Former U.S. Naval Facility, Guam located on the northern tip of Guam containing 370.6 acres of land with improvements.	8. PROPERTY ADDRESS (Give full location) Northwest Field Area of Northern Guam. Currently there is no mailing address for the property.
--	--

9. SPACE DATA						10. LAND	
USE	NUMBER OF BUILDINGS (1)	FLOOR AREA (Sq. ft.) (2)	NUMBER OF FLOORS (3)	FLOOR LOAD CAPACITY (4)	CLEAR HEADROOM (5)	(From SF 118b)	ACRE OR SQUARE FEET
A. OFFICE	10	21,504				A. FEE	370.6
B. STORAGE						B. LEASED	
C. OTHER (See 9 F)						C. OTHER	
D. TOTAL (From SF 118a)						D. TOTAL	370.6
E. GOV'T INTEREST:			F. SPECIFY "OTHER" USE ENTERED IN C ABOVE				
(1) OWNER	X						
(2) TENANT							

11. COST TO GOVERNMENT			12. LEASEHOLD(S) DATA (Use separate sheet if necessary)	
ITEM	SCHEDULE	COST	A. TOTAL ANNUAL RENTAL	\$
A. BUILDINGS, STRUCTURES, UTILITIES, AND MISCELLANEOUS FACILITIES	A (Col. d)	\$2,948,341	B. ANNUAL RENT PER SQ. FT. OR ACRE	\$
B. LAND	B (Col. f)	89,400	C. DATE LEASE EXPIRES	
C. RELATED PERSONAL PROPERTY	C (Col. h)		D. NOTICE REQUIRED FOR RENEWAL	
D. TOTAL (Sum of 11A, 11B, and 11C)		\$3,037,741	E. TERMINAL DATE OF RENEWAL RIGHTS	
E. ANNUAL PROTECTION AND MAINTENANCE COST (Government-owned or leased)		\$300,000	F. ANNUAL RENEWAL RENT PER SQ. FT. OR ACRE	\$
			G. TERMINATION RIGHTS (in days)	
			LESSOR	GOVERNMENT

13. DISPOSITION OF PROCEEDS Military housing not involved.	14. TYPE OF CONSTRUCTION Permanent.
---	--

15. HOLDING AGENCY USE Military operations.	16. RANGE OF POSSIBLE USES Office/administrative facility, recreation, wildlife refuge.
--	---

17. NAMES AND ADDRESSES OF INTERESTED FEDERAL AGENCIES AND OTHER INTERESTED PARTIES
 U.S. Department of the Interior, Fish and Wildlife Service, 911 N.E. 11th Avenue,
 Portland, Oregon 97232-4181
 Government of Guam, Agana, Guam 96910

18. REMARKS

19. REPORT AUTHORIZED BY	SIGNATURE
NAME J. M. KILIAN	
TITLE Director, Real Estate Division, PACNAVFACENGCOM	

SUPPLEMENTARY DATA FOR REPORT OF EXCESS FOR FORMER NAVFAC GUAM PROPERTY
RITIDIAN POINT, TERRITORY OF GUAM

The following supplementary information is provided as it related to Reports of Excess submitted for the former NAVFAC Guam property at Ritidian Point, Guam:

a. Legal descriptions and drawings for the property are attached as enclosures (1) and (2).

b. Acquisition documents for the fast land portion of the excess property are attached as enclosures (3) through (6) and the acquisition document for the submerged portion is enclosure (6). The island of Guam and its territorial waters were ceded to the United States under Article 2 of the Treaty of Peace dated December 10, 1898 (enclosure (6)) and proclaimed April 11, 1899 between the United States and the Kingdom of Spain. Under Section (a) of Public Law 93-435 of October 5, 1974 (88 Stat. 1210; H.R. 11559, 93rd Congress), subject to certain exemptions, title to the submerged lands adjacent to Guam and seaward to a line three geographical miles, was conveyed from the United States to the Government of Guam. Section (b) of the statute exceted from the conveyance, "all submerged lands adjacent to property owned by the United States ..." as well as other items. Because the subject lands were adjacent to fast lands comprising the former NAVFAC Guam installation, they were not conveyed to the Government of Guam under the above mentioned statute.

c. The only outgrant for the property is License No. N5704391RP00006 to the U.S. Fish and Wildlife Service to use Buildings numbered 803 and 830. A copy of the license is attached as enclosure (7).

✓ (d.) The PCB report for this property is attached as enclosure (8).

e. There are two historical sites on the excess property according to the Guam Historic Preservation Plan. They are Ritidian Point and Pajon sites as shown on enclosure (9). Both sites are prehistoric (pre-521) Chamorro settlements. They are classified as reserve, which means they are good sites with extensive midden, but without restorable surface structures. Neither site is on the National Register of Historic Places, although both are on the Guam Register. These historic assets are eligible for inclusion on the National Register. If the proposed transfer of the excess property to the U.S. Fish and Wildlife Service is implemented, the Service would have the same responsibilities for preserving the sites as the Navy has at the present time; therefore, the proposed transfer should not have any effect on these sites.

✓ (f.) The property has the following areas which have been impacted by contaminants at levels potentially threatening to human health and the environment: Facility Hazardous Waste Storage Area; Fuel Tanks; Oil/Water Separator; East Hazardous Waste Storage Area; Flammable Materials Storage Shed; Stained Soil; Dump Sites; Septic Systems and additional areas which could be identified as our studies proceed. In general, these areas are in the central portion of the property near Building No. 800 and 801. These sites are being investigated by the Pacific Division, Naval Facilities Engineering Command and plans are being developed to clean the sites under the Installation Restoration program, which will take a number of years to complete. Additionally, there are lead submarine cables on the property. If

the property is transferred to the U.S. Fish and Wildlife Service, subject to the availability of resources, the Navy would agree to retain responsibility to clean up these sites as was proposed by the Service in their letter of April 17, 1992. Additional detailed information on this matter may be obtained from the Pacific Division, Naval Facilities Engineering Command.

g. The fastland portion of the property does not contain any fresh-water wetlands while the ocean shoreline areas are marine wetlands. Flat portions of the property near the ocean are in Flood Plain Zone A, while the remainder of the property is not in a flood plain.

h. The excess property has concurrent jurisdiction.

Enclosures:

- (1) Legal Descriptions for fast lands
(five copies)
- (2) Legal Descriptions for submerged lands
(five copies)
- (3) Declaration of Taking for Civil Case No. 16-50
- (4) Declaration of Taking for Civil Case No. 29-62
- (5) Transfer of Land to the United States of
America dated 7/31/1950
- (6) Treaty of Peace dated 12/10/1898
- (7) License No. N5704391RP00006
- (8) PCB Report
- (9) Drawing of Historic Sites

OPTIONAL FORM NO. 10 (7-90)

FAX TRANSMITTAL		Number of Pages 2
To ANN SCHOEN	From D. PACHT	
Dept Agency NAVFAC	Phone # 471-3217	
Fax # (703) 325-2839	Fax #	
NSN 7440 01-317-1300	5000-101	GENERAL SERVICES ADMINISTRATION

11011

Ser 2412/ 6894

12 NOV 1992

Mr. Clark Van Epps
 Director, Office of Real Estate Sales
 Property Management and Disposal Service
 General Services Administration, Region 9
 525 Market Street
 San Francisco, CA 94105

Dear Mr. Van Epps:

This responds to your letter of October 27, 1992 in which you requested additional information with regard to the two reports of excess we submitted for the former NAVFAC Guam facility--GSA Control No. 9-N-GU-437.

To provide more specific information with regard to known contaminants at the site, we are enclosing a "Preliminary Assessment" which was prepared as part of the Navy's Installation Restoration (IR) Program. It indicates that the site may have been impacted by contaminants at potentially threatening levels. The presence of asbestos is discussed on page 5-6 and Appendix H of the assessment.

The assessment concludes that further inspection is needed to determine if any remediation is required. This work is known as a Site Investigation under the Navy's IR Program. A "Work Outline Plan" for the investigation is also enclosed. The project, however, remains in an unfunded state. Currently, only sites on the National Priorities List are being funded for further study and remediation work. Also, as the property will no longer be used for military purposes, it is possible that further cleanup work at the site will be undertaken by the Army Corps of Engineers under its Formerly Used Defense Sites (FUDS) program rather than under the Navy's IR Program.

We have not contacted the Guam Historic Preservation Officer concerning the proposed transfer of the site. We are enclosing, however, a narrative description of the cultural resources of the property for your information.

Finally, the estimated \$300,000 annual protection and maintenance cost for the site is comprised of two elements. The first is approximately \$75,000 per year for maintenance items, including grounds maintenance, emergency repairs, etc. The second is approximately \$225,000 for security to help prevent an incidental take of an endangered species in the area. Page 7 of the enclosed letter of October 4, 1991, from the Pacific Islands Office, Fish and Wildlife Service (USFWS), provides additional information as to the need for this security. However due to the scarcity of resources, it is understood that additional security services have not been procured and the security required by USFWS is being provided by existing military patrol groups in northern Guam.

92-1923

C:\DATA\WP51\VANKEPPS.W51

We believe this fully responds to your October 27 letter. If any additional information is needed, please contact Mr. Ken Alexanderson of our Real Estate Division, at (808) 474-5926.

Sincerely,

J. M. KILIAN
Director, Real Estate Division

Encls:

- (1) Preliminary Assessment
- (2) Site Investigation Outline
Work Plan
- (3) NAVFAC Guam Cultural Resources
- (4) USFWS ltr of 4 Oct 91

Blind copy to: (w/o encls)
COMNAVMARIANAS (N4)
NAVUNDERSEASURVPAC

23
18

OCT 22 1992

The Honorable Stella G. Guerra
Assistant Secretary for
Territorial and
International Affairs
Department of the Interior
Washington, DC 20240

Dear Ms. Guerra:

The Department of the Navy (Navy) recently reported to the General Services Administration (GSA) as excess to Department of Defense needs approximately 370 acres of fast land and 15,561 acres of submerged land at the former Naval Facility, Ritidian, Guam.

The Navy indicated in its report that both the U.S. Fish and Wildlife Service (FWS) and the Government of Guam (GOVGUAM) wish to acquire the property for wildlife conservation and park use, respectively. We are enclosing copies of the FWS and GOVGUAM letters to the Navy outlining their interests. We have already furnished copies to Mr. Frank Quimby of your staff. The Navy has also advised us that FWS and GOVGUAM may enter into a cooperative use agreement for the property, although we are not aware of the status of the agreement.

We have not accepted the Navy property into GSA's inventory of excess and surplus Federal real property because additional information is required including a certification from the Navy as to the extent of contamination on the property. Given GOVGUAM's interest, this information is necessary since GSA is not authorized to convey contaminated property outside the Federal Government.

} Hazardous
Waste

In the interim, consistent with our past practice of coordinating with your office on Guam disposal matters, we are deferring further action on this property pending receipt of your review and comments.

Please do not hesitate to call me on 501-0210 if I can be of further assistance.

Sincerely,

EARL E. JONES
Commissioner

EARL E. JONES
Commissioner

Enclosures

cc: Official File - DROW
Reading File - DD, D, DR, DRO, DRP, DRS, 9DR, 9A, DROW
Richard Stinson - DROW

DROW:RStinson:cp:501-0067:10-21-92

Concurrences: DRO _____ DR _____
DD _____

[rws/"Ritidian"]

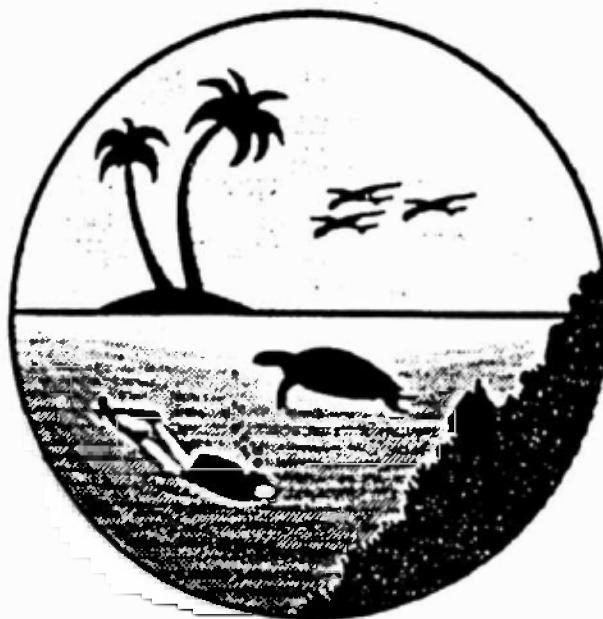


ANDERSEN AIR FORCE BASE, GUAM

COMMUNITY RELATIONS PLAN

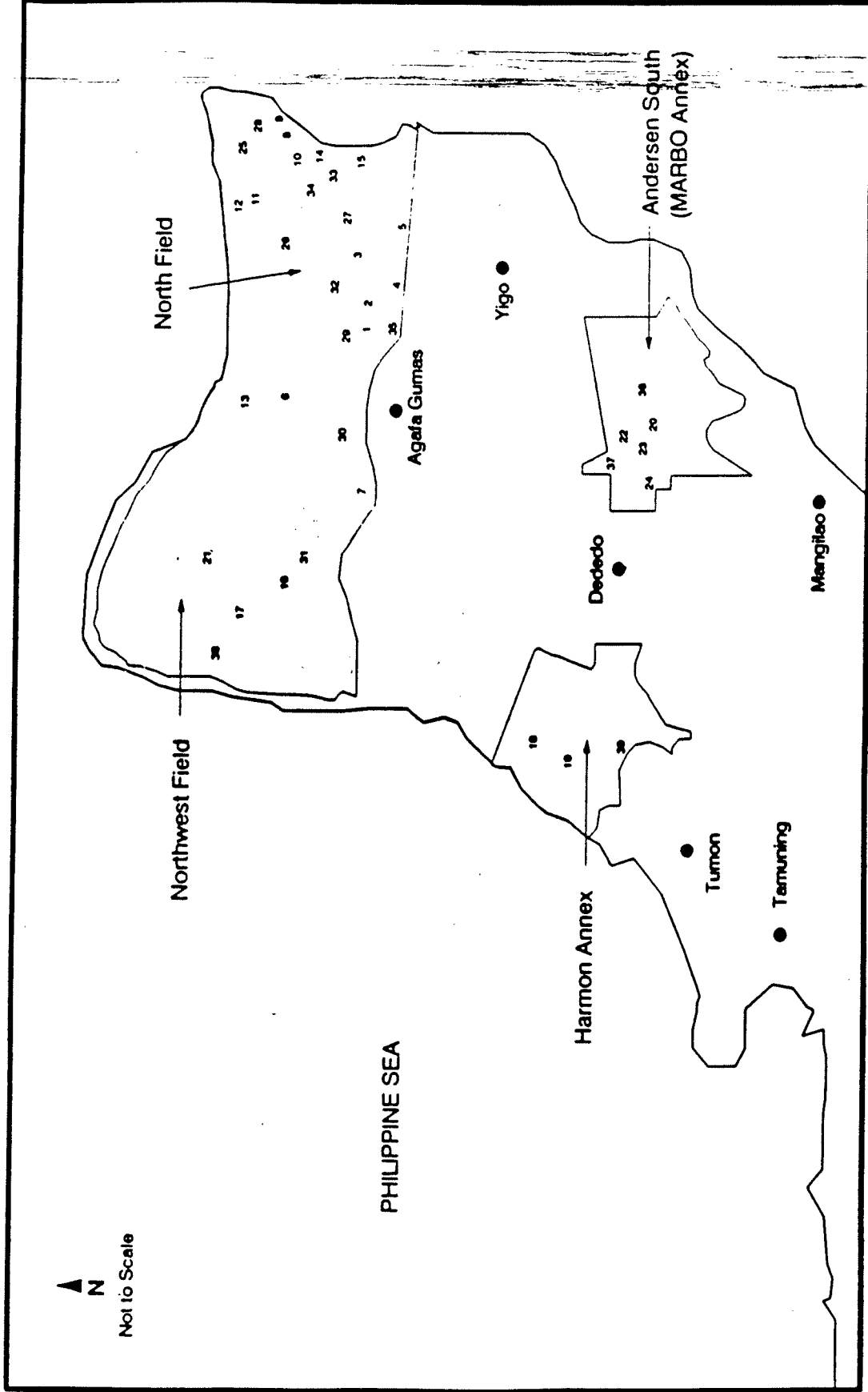
FOR THE

INSTALLATION RESTORATION PROGRAM



NOVEMBER 1993

Figure IV-A: Location of 39 Sites¹



¹ The numbered locations of the sites correspond to the Site Reference Numbers in Table 1.

Table 1

Sites to be Investigated

Site Reference Number	Name of Site	Size and Location	Materials Used or Disposed
1	Landfill 1 (currently active)	20 acres in North Field	household and office waste, oils, solvents, pesticides, metal, construction debris
2	Landfill 2 Landfill 4 Landfill 5	40 acres in North Field	household and office waste, oils, solvents, pesticides, metal, construction debris
3	Waste Pile 3	8 acres in North Field	household and office waste, solvents, oils, metals, chemicals, pesticides
4	Landfill 6	2 acres in North Field	household and office waste
5	Landfill 7	3 acres in North Field	household and office waste
6	Landfill 8	14 acres in North Field	asphalt, liquids
7	Landfill 9	8 acres between North and Northwest Fields	household and office waste, concrete
8	Landfill 10 Landfill 11 Landfill 12	2 acres in North Field 1.5 acres in North Field 1 acre in North Field	household and office waste, asphalt, construction debris, oils, solvents
9	Landfill 13	2 acres in North Field	household and office waste, equipment, oils, metal, chemicals
10	Landfill 14	1 acre in North Field	construction debris, concrete
11	Landfill 15 Landfill 16	Both landfills are less than 1 acre in North Field	household and office waste, solvents, paint, hazardous chemicals
12	Landfill 17 Pati Point Dump	2.5 acres in North Field	household and office waste, truck and airplane parts, batteries, unexploded ammunition, solvent storage drums
13	Landfill 18	Less than 1 acre in North Field	asphalt, liquid in drums

Site Reference Number	Site Name	Size and Location	Materials Used and Disposed
14	Landfill 19	1 acre in North Field	asphalt
15	Landfill 20	1 acre in North Field	household and office waste
16	Landfill 21	1 acre in Northwest Field	household and office waste
17	Landfill 22	1 acre in Northwest Field	household and office waste, unexploded ammunition
18	Landfill 23	Less than 1 acre in Harmon Annex	household and office waste
19	Landfill 24	8 acres in Harmon Annex	household and office waste
20	Waste Pile 7	12 acres in Andersen South	motor pool waste, hospital waste, dry-cleaning waste, household and office waste, solvents, vehicles and equipment, dry cleaning fluids, construction debris, solvents
21	Landfill 26	2 acres in Northwest Field	household and office waste, construction debris
22	Waste Pile 6	4 acres in Andersen South	unknown storage drums, construction debris
23	Waste Pile 5	2 acres in Andersen South	unknown drums, automobiles, construction debris
24	Landfill 29	4 or 5 acres in Andersen South	household debris, tires
25	Firefighter Training Area 1	2 acres in North Field	engine fuel, diesel, oils, solvents
26	Firefighter Training Area 2	2 acres in North Field	engine fuel, diesel, oils, solvents
27	Hazardous Waste Storage Area 1	1 acre in North Field	oils, solvents, hazardous waste
28	Chemical Storage Area 1	North Field (exact size not known yet)	oils, solvents
29	Waste Pile 2	1/2-acre in North Field	asphalt
30	Waste Pile 4	Northwest Field (exact size not known yet)	unexploded ammunition
31	Chemical Storage Area 4	4 or 5 acres in Northwest Field	oils, solvents

Site Reference Number	Site Name	Size and Location	Materials Used and Disposed
32	Drum Storage Area 1	20,000 square feet in North Field	pesticides, asphalt, solvents, chemicals
33	Drum Storage Area 2	1/3 acre in North Field	asphalt, oils, tar, paint
34	Electrical Transformer Storage Area	Concrete pad in North Field	transformers, transformer oil
35	Waste Pile 1	3 acres in North Field	asphalt
36	Waste Pile Ritidian	West of Northwest Field (exact size not known yet)	storage drums, trash, metal debris, equipment
37	War Dog Area	5.5 acres in Andersen South	no information available yet
38	Marbo (Andersen South) Laundry Facility	3 acres in Andersen South	no information available yet
39	Harmon Substation	Small area in Harmon Annex	no information available yet

Table 2

**Contaminants of Concern Detected In
Soil and Groundwater During Previous Studies**

Andersen AFB detected a variety of chemicals in the soil and groundwater at some of the sites during the preliminary investigation. Not all the chemicals were detected at every site, but low levels of metals were detected in soils at several sites, and low levels of volatile organic compounds were detected in wells at the Marbo Annex area and in the vicinity of the landfill complex. The chemicals listed below are those that Andersen AFB and the environmental agencies are most concerned about at this stage of the investigation. Future investigative activities may reveal other chemicals of concern, or may reveal that the chemicals below do not present a risk to public health and the environment.

✓ **Trichloroethylene (TCE)**

Trichloroethylene is a chemical used as a dry-cleaning agent and used to be used to wash aircraft. Short-term exposure to high levels of trichloroethylene can irritate the eyes, nose, and throat; cause sleepiness; and damage the liver and kidney. Animals exposed to high levels of this compound in laboratory studies have developed cancer.

✓ **Tetrachloroethylene (PCE)**

Tetrachloroethylene is used as a solvent and is found in metal cleaners, paint remover, and weed killers. Long-term exposure to this compound can damage digestive organs in humans and has caused cancer in laboratory animals.

✓ **Trichloroethane (TCA)**

Trichloroethane is used as a dry-cleaning agent and to dissolve oils, paints and varnishes. Exposure to high levels of trichloroethane may cause sleepiness, headaches, and liver and kidney damage. Animals exposed to high levels of this compound have developed cancer.

Cadmium

✓ Cadmium may occur naturally in the soil and groundwater at Andersen AFB. Industrially, this metal is used in the electroplating process and in the manufacturing of batteries, fire protection systems, and power transmission wires. Inhaling cadmium over a long period of time can cause kidney damage, high blood pressure, anemia, and lung, kidney, and prostate cancer.

Chromium

Industrially, this metal is used in electroplating and photography processes and contained in paint pigments. Chromium exists in two forms: trivalent and hexavalent. Trivalent chromium is found naturally in the environment and is relatively harmless. Hexavalent chromium is a man-made material that can cause lung cancer, ulcers, and dermatitis in people exposed to it over a long period of time. The chromium present in the soil and groundwater at Andersen AFB may occur there naturally.

21 GCA - Real Property
Div. 1 - Ownership of Real or Immovable Property

§1219. Interests, as to time. In respect to time of enjoyment, an interest in property is either:

1. Present or future; and,
2. Perpetual or limited.

SOURCE: CC §688.

§1220. What is a Present Interest. A present interest entitled the owner to the immediate possession of the property.

SOURCE: CC §689.

§1221. What is a Future Interest. A future interest entitled the owner to the possession of the property only at a future period.

SOURCE: CC §690.

§1222. What is a Perpetual Interest. A perpetual interest has a duration equal to that of the property.

SOURCE: CC §691.

§1223. What is a Limited Interest. A limited interest has a duration less than that of the property.

SOURCE: CC §692.

§1224. Kinds of Future Interests. A Future Interest is either:

1. Vested; or,
2. Contingent.

SOURCE: CC §693.

§1225. Vested Interests. A future interest is vested when there is a person in being who

21 GCA - Real Property

Div. 1 - Ownership of Real or Immovable Property

§3107. Future Estates. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time.

SOURCE: §767 CC.

§3108. Reversions. A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

SOURCE: §768 CC.

§3109. Remainders. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

SOURCE: §769 CC.

§3110. Suspended Ownership. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

SOURCE: §770 CC.

§3111. Suspension by Trust. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation, within the meaning of §715 of the Civil Code.

SOURCE: §771 CC.

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**TESTIMONY OF NORTHERN GUAM
LANDOWNERS AND LANDCLAIMANTS
SUPPORTING BILL NO. 72**

PRESENTED BY:

ATTY. PETER R. SGRO, JR.

This office represents original landowners or their heirs of parcels of real property on Guam condemned in 1962, said properties being LOT NOS. 9986, 9987, 9988, 9990, 9991, 9990-1, 9992-2 and 10081-2, Machanao. I would like to extend their gratitude to committee Chairperson Senator Hope Alvarez Cristobal and other members of the committee on Federal and Foreign Affairs relative to Bill No. 72. This testimony is submitted in support of Bill No. 72, with suggested amendments. The following sets forth suggested amendments to the bill:

- 1) We suggest changing the title of the bill to read "AN ACT TO DESIGNATE THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM, AND INDICATING TO THE DEPARTMENT OF DEFENSE, THE GOVERNMENT OF GUAM'S POSITION TO RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN IN VIOLATION OF THE UNITED STATES CONSTITUTION, OTHER APPLICABLE LAWS AND UNDER CONDITIONS WHEREBY AN ARTIFICIAL ECONOMY WAS CREATED BY SECURITY CLEARANCES".
- 2) All references to "Critical Wildlife Habitat" should be change to read "Wildlife Refuge" and all references to "bird sanctuaries" should be deleted.
- 3) Paragraphs 1 through 4 should be amended to read as follows: "WHEREAS, in 1962, the United States took lands at and around that area in Northern Guam commonly known as Ritidian Point from the fee simple owners, said lands being LOT NOS. 9986, 9987, 9988, 9990, 9991, 9990-1, 9992-2 and 10081-2, Machanao".
- 4) Paragraph 5 should be modified to read "WHEREAS, the lands have been declared excess for national defense purposes".
- 5) Paragraph 15 should be modified to read "taken in violation of constitutional mandates..."

Testimony of Northern Guam Landowners
and Landclaimants Supporting Bill 72
Page 2

6) Paragraph 24 through 26 should be modified to read "land on Guam is even more limited, the Federal Government's designation of 25% of the vacant land on Guam as a wildlife refuge precludes all meaningful use and development of these lands; is unrealistic, irresponsible and unresponsive to the needs of the people of Guam."

7) Paragraph 30 delete the word "and" and add "the establishment of the wildlife refuge on Guam increased the density of population from approximately 1 person per acre for 2 persons per acre."

8) Delete paragraphs 46 through 50 and 59 through 60.

9) Paragraph 66 add the following after the word "autonomy" and as matter of law.

10) Paragraph 69, delete "the shortest time possible" and insert the following "a period of time not to exceed ninety (90) days from the date of designation".

11) Add a section 2 to read as follows:

"Section _____. The original landowners, and if they are no longer living, their heirs shall maintain a future interest in the real properties described in above, as the term is defined in 21 GCA section 1221."

12) Add a section 3 to read as follows:

"Section _____. Any and all agreements, permits or similar documents by and between the Government of Guam and any of its agencies and the Federal Government and any of its agencies, for purposes of establishing the Wildlife Refuge are hereby declared null and void."

13) Add a section 4 to read as follows:

"Section _____. The original landowners or heirs of the original landowners of those lands subject to this bill, maintain a contingent reversionary interest to said lands and the Government of Guam will take any and all legal steps necessary to insure the reversionary property rights are properly vested."

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Incorporated herein by reference is a February 28, 1994 testimony addressing the legal, economic, social and political impacts the establishment of a wildlife refuge has on the people of Guam. The February 28, 1994 testimony is attached hereto as Exhibit A and specifically made a part of this particular testimony.

Incorporated herein by reference and marked as Exhibit B, are true copies of a November 1993, Air Force report depicting the locations of the hazardous waste landfills, the sizes of each landfill, the contents of the landfills and a table listing various chemicals. The landfills are located within the refuge. Over 100 acres of hazardous waste in the same area the Federal Government claims as good habitat for the recovery of endangered species. It makes no sense to create a wildlife refuge in the middle of property listed on the National Priorities List, as one of the most contaminated sites in the United States.

Thank you very much for allowing me this opportunity to address these issues on behalf of my clients.

PETER R. SGRO, JR. P.C.
Guam Counsel to the
Ritidian Point Families and
Certain Jinapsan Area Families



by: Peter R. Sgro, Jr.

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**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

EXHIBIT "A"

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

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 perpetuity.

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.

I want to turn now to the legal, economic, and social impacts of the Wildlife Refuge or critical habitat designation.

III. LEGAL, ECONOMIC, AND SOCIAL IMPACTS OF PRESERVATION

A. Legal Impacts

In this portion of the presentation I would like to explore some of the legal authorities given to the U.S. Fish and Wildlife Service when it exercises its authority under the Fish and Wildlife Coordination Act (16 U.S.C. §661 et seq.), the Wildlife Restoration Act (16 U.S.C. §669 et seq.), and the Refuge Recreation Act (16 U.S.C. 460k-460k4). First, I will address how the Department of Interior is able to exercise control over these lands in the first place.

As you know, the public lands of Guam consisted mostly of Crown Lands obtained from Spain in the Treaty of Paris. Up until 1950, when Guam's Organic Act was passed, the U.S. Navy had been the Federal agency tasked with administering the island. Once the Crown lands were transferred to the Government of Guam, questions arose between the military and the new government as to which lands transferred and which did not. Some lands were reserved by the President and some lands appeared to be transferred by lack of any action by the United States.

When the right of quasi-self government was granted to Guam in the 1960's, there still remained significant questions concerning the status of certain lands. There is apparently to this day a question about which government controls the submerged lands. These unresolved questions will continue to have a profound

impact on the relationship of Guam to the United States and is an area which is ripe for a legislative solution.

All through this turmoil, one group of federal agencies has maintained a strong hold on large parts of Guam's land -- the United States Military. During and after World War II large tracts of land were gobbled up for military purposes, first to support the war effort in the Pacific and later to secure America's military power. The People of Guam, through their fervent patriotic spirit, supported and endured the buildup by the American military. The U.S. Congress sought to restore land to the People of Guam when the Congress passed Public Law 225 in November of 1945. This act, though not always cogently worded in expressing its purpose, gave authority to the naval government of Guam to resettle and restore property to landowners who had their land taken for military purposes. The expectation at the time was that property owners on Guam would have their land returned to them or other land exchanged of equal value if the military had no further use for it. That expectation, quite frankly, continues to this day. I believe that the authorities given to the Secretary of the Navy in Public Law 225 still exist, though the purpose for which the law was enacted has not yet been fulfilled. I also believe Public Law 225 created a property right with a future property interest for the benefit of landowners whose lands were taken by condemnation for military purposes.

In the 1960's there was another large buildup by the military as portions of Northwest Guam were condemned for military purposes. The families I represent own or have claims to land in this portion of Guam. With the downsizing of the military on the island, the military has decided it no longer needs these lands for

military purposes. Yet there has been no consideration to return the land to those unfortunate owners who were forced to give up their property. Instead, entering the picture is the U.S. Fish and Wildlife Service, which now claims this land for "critical habitat" and a wildlife refuge because of an accident of history.

How is it the Fish and Wildlife Service can do this? The answer lies in the Federal Property and Administrative Services Act of 1949. That act gives authority to the General Services Administration (GSA) to transfer or sell certain lands which are excess to the needs of federal agencies. In the case of Northwest Guam, the military has declared this land excess and GSA now has control of it. The act states that if no other federal agency needs the land to carry out its mission, then the land is first offered to state or local government, which would include the Government of Guam and then offered to private parties. In the case of Northwest Guam, the first step was never passed.

The accident of history I referred to is the occupation by the military of large tracts of land which turned out to be good habitat for Guam's purportedly threatened and endangered species. The lack of intensive human activity in these areas has created a haven in which these species have thrived over the years. The introduction of the brown tree snake has contributed to this accident by forcing more of the species to seek refuge on the military lands as the snake was pressured out of other areas of Guam. This has provided the justification the Fish and Wildlife Service needed to claim these lands for wildlife protection purposes. I want to examine the authority of the Fish and Wildlife Service and its potential impacts on the use of these lands.

The first thing the Secretary of the Interior is required to do when it administers public land is to classify land by the most beneficial use that may be made of that land. Section 666g of Title 16, United States Code, requires the Secretary to conduct such a review in cooperation with the States and public and private agencies and organizations, including in this case the Government of Guam. I question whether there has been any such classification of lands associated with the excess actions by the military. I also question whether any of these actions have been taken in cooperation with the Government of Guam, given the opposition voiced by the leaders of Guam to some of the proposals by the Secretary, opposition which has gone unheeded. The Secretary is, in fact, required to review lands to determine if they are best used for development of wildlife conservation, agricultural, recreational, residential or industrial or related purposes. If the lands are chiefly valuable for industrial purposes then the Secretary shall lease them and share the revenues from such a lease with the Government of Guam.

Of course the Secretary cannot exercise jurisdiction over lands under military control until the military no longer needs them. Even if the military declares them excess, the Secretary of Interior may administer such lands but only under such terms and conditions as are dictated by the Secretary of Defense to assure their continued availability for war production and other military purposes. It is clear from these laws that the U.S. military will continue to play a significant role in the use of any lands which have been excessed on Guam.

There is an interesting provision in the Fish and Wildlife Coordination Act. This provision is so interesting and relevant, that one must wonder why it has

impacts on private landowners due to the existence in proximity of their lands of such a refuge.

First, all lands, waters and interests administered by the Secretary of Interior for conservation of fish and wildlife are in the National Wildlife Refuge System. This includes National Parks, Wilderness Areas, and Wildlife Refuges. Under the authority of federal law, no person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the U.S. including natural growth within the refuge system. This means there can be no fishing, no raising of livestock, no agriculture, no family barbecues, no coconut husking or construction of affordable homes. This also means the death of a beautiful and unique culture.

The Secretary may permit use of the area within the system for any purpose including fishing, hunting, public recreation, public accommodation, and access but only when such uses are compatible with the purposes of the refuge. This means that only the Secretary can permit uses and it is solely within the Secretary's discretion as to whether a use is compatible. The Government and People of Guam will, if the refuge is established, have no voice in determining the destiny of the 28,000 acres in the wildlife refuge.

Moreover, access or easements across such refuge lands may not be granted unless the grantee pays to the Secretary, in lump sum, the fair market value of such easement or annually, in advance, the fair market rental value of the easement. The Secretary may elect to receive such compensation by other means agreeable to the Secretary by land swaps, personnel or equipment. In other words, if the Government of Guam or a private individual, such as a

landowner, wishes to gain access to its or his or her own land across the refuge, it, or he or she, must pay the Secretary for such a right. I know, for instance, that the Federal government is now taking the position that private landowners, in order to gain access across Federal land to the private property of such owners, must pay fair market value for such right of access, or provide concessions in the use of their land in lieu of such compensation. And this is for the right to cross to land where the right of access was reserved to the landowners in the original condemnation action. I question the fairness and certainly the legality of such demands.

The question then arises concerning the access of the People of Guam across the refuge area to the public recreation area which has been proposed by the Governor of Guam. The Secretary has the authority under the Refuge Recreation Act, Section 460k of Title 16, United States Code, to provide recreational opportunities in the Refuge System. This authority can only be exercised to the extent practicable and cannot be inconsistent with other previously authorized Federal operations or with the primary objectives of the Refuge. The Secretary has the authority to curtail public use when necessary and there can be no use which interferes with the primary purpose of the Refuge. In addition, funds must be available for the development, operation and maintenance of the recreation areas before the Secretary may allow such a use. The Secretary may even charge reasonable fees and issue permits for such uses. Does this mean that the Government of Guam and its People must pay the Secretary for the use of the recreational areas at Ritidian? Does it mean the Government of Guam must pay for the right to cross the refuge to get to the

recreation area or perhaps provide other Government of Guam land to the Secretary in return for the right of the People of Guam to get to the recreation areas? How much recreational use will the Secretary allow if the primary purpose of the Refuge is to protect endangered species from disturbing human activity? These are all questions which must be asked before the Secretary is authorized to create the wildlife refuge. The People of Guam deserve answers to these questions and others; they should not have to negotiate their rights after the refuge is created.

What happens to the uses of the land in and adjacent to the wildlife refuge? That is an open question but it is clear from past litigation in this area that there is a significant list of impacts which can occur. Let us look at some of these impacts.

The Secretary has the right to control the diversion and use of water in the refuge area. I understand that large water bearing reservoirs are located in Northwest Guam. How will the Secretary allow the use of that water for people when the primary purpose of the refuge area is to protect the endangered species? Does this mean that private landowners who use or divert water on their lands will be prosecuted by the Secretary because their activities interfere with water in the refuge area? Past history tells us the Secretary is quite capable of taking such an action.

What if private landowners wish to use their land for agricultural purposes? Can the Secretary control the use of pesticides and herbicides necessary for the cultivation of crops? Again history tells us that the Secretary will exercise his

authority to halt the use of such products where he feels the refuge area is threatened.

What about the reconciliation of water laws with the purpose of the refuge? Will the Government of Guam still have some rights over water? What about the private landowners, will they have the right to use their own water unfettered by interference by the Secretary? The question has arisen in the past with significant questions of how much water is reserved for wildlife and plant recovery and how much can be used by the landowners.

In the area of recreation, we have already seen the Secretary can curtail the use of land for recreation. What other impacts will the refuge area have? With the submerged lands in the refuge area, can the Secretary limit the horsepower of boat motors to protect the refuge? In one case, an environmental group sued the Secretary to force him to do this and won in Federal court.

What about the rights of environmental groups to exercise control over certain operations within the refuge area. Because the primary purpose of the refuge is established by law, the environmental groups will have the right to sue in Federal court every time they do not agree with a use the Secretary approves, even if the use benefits the People of Guam. Is this the destiny of these lands to be manipulated in and held hostage to squabbles between the Secretary and the Preservationists?

What about the rights of the Government of Guam to engage in activities which might affect the refuge area? There is authority which says that local officials are subject to enforcement provisions of the law if their actions interfere or threaten the refuge area. Such enforcement provisions apply to private

landowners adjacent to the refuge area and to ordinary citizens who cross the area and disturb a plant. Enforcement provisions are not limited to activities only within the refuge. The punishment in the act is listed as imprisonment for up to one year. This does not even take into account the punishments under the Endangered Species act which are \$25,000 for each violation and the potential of criminal sanctions of \$50,000 and imprisonment for up to one year for each violation.

I am sure there are many other impacts which have not been explored yet. The significant loss of local control which occurs when the wildlife refuge is established is too important an issue to leave for resolution after the area is established. The severe curtailments and economic deprivations of the refuge area on private landowners must be explored now before private landowners are subjected to the enforcement provisions of the law.

B. Economic Effects

In proposals to set aside and regulate large tracts of land for a limited purpose such as a wildlife refuge, there are clearly some short and long term economic effects which will occur. The loss of productive lands such as these potentially means the Island of Guam must become more dependent than it already is on offshore imports. This translates into higher costs for goods.

The loss of productive land means that development will be curtailed, taking away the ability of the island's economy to grow and provide new jobs and new economic activity and to derive tax revenues from those lands. The preservation of the area also translates into the loss of water resources which

might be needed to support the population and commercial enterprises, now forced to go elsewhere because they lack the basic resources to make a profit on the island.

If there is a need for expanded agricultural production, then these areas will not be available. This means potentially higher production costs on existing lands or the necessity of increasing food imports, which equates to greater costs at the grocery store.

Finally, as noted briefly already, there will be a significant effect on the tax revenues generated on the island because this land will not contribute to the tax base. The shrinking of the tax base as the need for governmental and social services increases can have a severe and debilitating effect on the ability of the government to function, particularly since the federal government constantly imposes mandatory programs on state and territorial governments for which it provides no funding. This loss of revenue will have an effect on the entire economy but will mostly affect schools, hospitals, transportation and other important governmental services. Few communities can afford to give up such areas when tax dollars and what they buy continue to contract.

In return, the Wildlife Refuge Revenue Sharing Act (16 U.S.C. §715s) provides that some of the monies generated from the refuge will go back to the local economy. The act provides, however, that only a small percentage of such monies will be returned to offset the loss of the tax base. This could mean that as little as 75 cents per acre or some \$24,000.00 per fiscal year would be returned to the Government of Guam. Surely 28,000 acres of land would provide much more than this in tax revenues and other productive uses such as agricultural and

commercial enterprises. The loss of one job per year would not even equal the \$24,000.00 gained from the Wildlife Refuge Revenue Sharing Act. Worse, assuming that Guam and its citizens would be allowed to actually set foot in the refuge for any purpose, the minuscule revenues derived from the federal government would be paid right back to that government in access and use fees.

Clearly, the establishment of the wildlife refuge will have significant impacts on Guam's economy. These impacts, however, are not analyzed fully or properly in the Fish and Wildlife Environmental Assessment on the Refuge.

C. Social Effects

I do not purport to be an expert on the social effects of an establishment of a wildlife refuge on an island with substantially less land area compared to mainland states and a population base of approximately 140,000 people. Nonetheless, my colleagues Attorney Pollot and Attorney Van's experience of litigating over the regulation of land uses by the Federal Government on the mainland, such issues arise because they were not studied properly under the environmental impact study process. It seems obvious that such social effects will occur, however, when fully one fifth of the land mass of an island is set aside for preservation in perpetuity, for a single purpose such as a wildlife refuge. The identity of the land is with its people. There has been a considerable amount of study on the "green effect" or the need for humans to experience open green spaces, such as forests and meadows. There has also been much analysis of the need for biodiversity on the planet for plants and wildlife. But does that mean that Guam can afford to limit 21 percent of its land to a refuge area? And there

has been no study by the United States on the effects of wresting land from the people in a place where the people identify so closely with their land as they do here in Guam.

The People of Guam and the private landowners affected by this decision deserve to have all the alternatives explored. I must ask what are the long term social consequences of the wildlife refuge. One might predict there will be an increase in exports from the island to the mainland. But in this case the export will be of Guam's most precious resource, its people. Already there is considerable emigration from Guam to the mainland because of lack of certain opportunities here. The lack of available land to own and live on can only contribute to an increase in this emigration. Young, bright, productive people will be forced to leave this island because of the shortage of available land used to make a living. The exclusive control of so much land will no doubt have an impact on job creation, reduced opportunities for commercial enterprise, crowded conditions in the villages, friction among families forced to live in small compounds, and the possible deterioration of what we recognize as polite society.

In other areas of the world where land is limited, such a situation can cause or contribute to unsettling social effects, such as school problems, the disintegration of families, increased crime, poverty and health issues. You only have to look at the Island of Ebeye in the Republic of the Marshall Islands to learn the potential consequences of the lack of available land on the people.

IV. CONCLUSIONS AND RECOMMENDATIONS

We can agree that Guam needs to conserve its land resources and needs to reasonably control growth and development. We can agree that, to the extent reasonably possible, Guam should try to protect and to preserve its native species. This is not an issue of goals, however, but of means and degree. The central question is at what cost these goals should be achieved -- economic and social blight, loss of jobs and brain drain, loss of human dignity? I think not.

The native species of Guam are now protected under the Endangered Species Act. The difference between the current protections and the wildlife refuge or critical habitat is the current listing protects the species where they currently exist. The proposal is to set aside large tracts of land to provide for protection of species in places where the species have never before existed. In order to preserve a potential habitat, these lands will be excluded from society's productive uses. This means that there will be no development in the area even if it means preserving the area for a species which exists only in captivity, and whose reintroduction into the wild is highly questionable given the predatory nature of the brown tree snake, the disturbance of the habitat by wild boars and deer and the existence of hazardous waste landfills in northern Guam.

There should be no hurry to establish the wildlife refuge. As the Fish and Wildlife Service has pointed out, protections for the species already exist under the Endangered Species Act. There is no immediate threat to the species for which the act does not already provide a protection.

The plans developed by the Government of Guam should establish a "multiple use sustained yield" policy for the use of these lands which will neither

inhibit productive use nor infringe upon the rights of private property owners to use their land, as is their right under the U.S. Constitution. The plans should also provide for the return of the excess land to private property owners who had their land taken by the military. The land is rightfully theirs and the Government of Guam should support them in their efforts to regain title to their ancestral lands both because it is to the benefit of Guam and because there is a moral and legal obligation on the Government of Guam to do so. GEDA should provide the necessary funding for litigating at a minimum the litigation seeking an injunction to designate lands as a refuge and critical habitat and for the next litigation involving land takings of access rights.

Thank you for allowing me this opportunity to address these issues on behalf of my clients.

PETER R. SGRO, JR. P.C.
Guam Counsel to the
Ritidian Point Families and
Certain Jinapsan Area Families



b. Peter R. Sgro, Jr.



ANDERSEN AIR FORCE BASE, GUAM

COMMUNITY RELATIONS PLAN

FOR THE

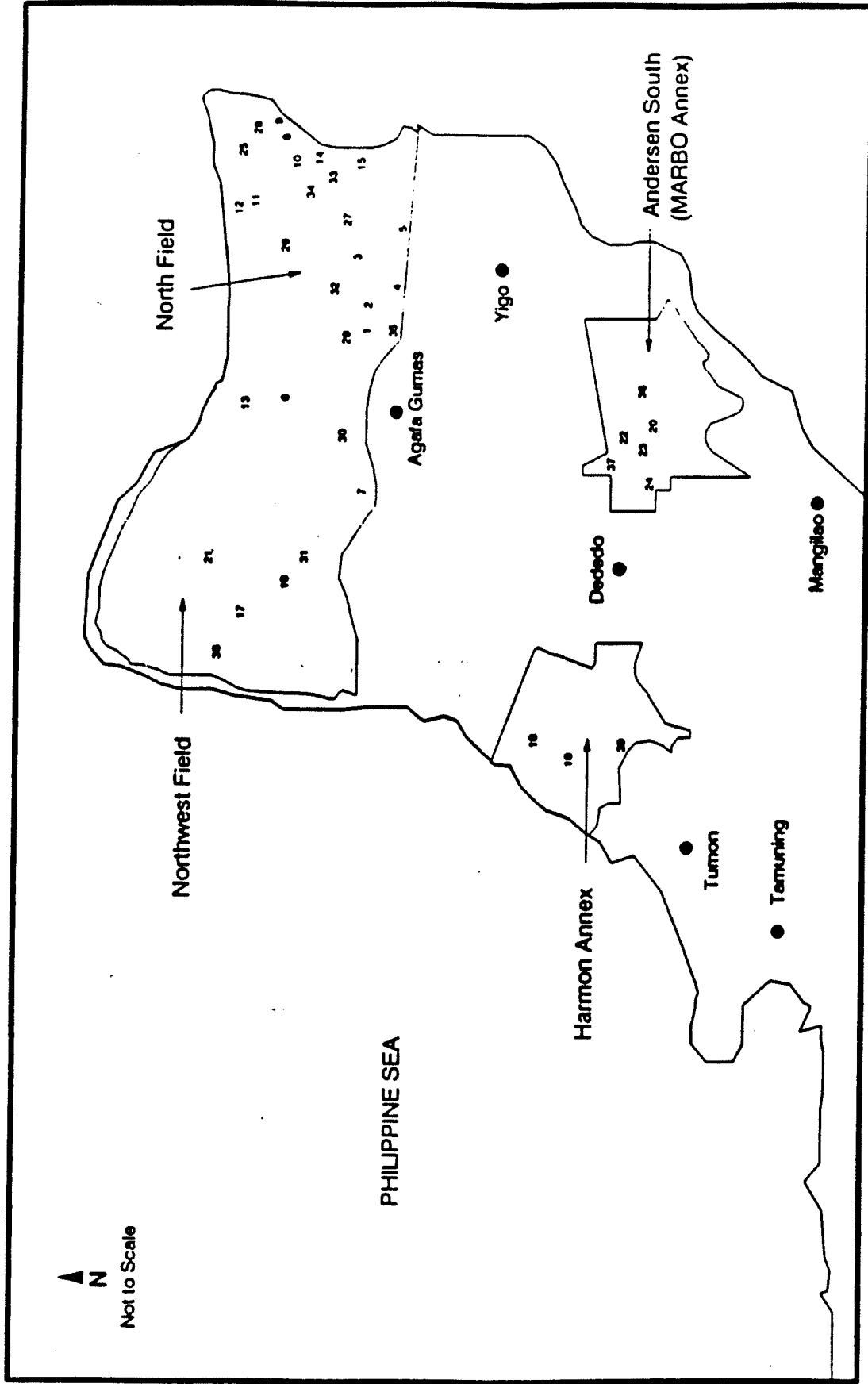
INSTALLATION RESTORATION PROGRAM



EXHIBIT "B"

NOVEMBER 1993

Figure IV-A: Location of 39 Sites¹



¹ The numbered locations of the sites correspond to the Site Reference Numbers in Table 1.

Table 1

Sites to be Investigated

Site Reference Number	Name of Site	Size and Location	Materials Used or Disposed
1	Landfill 1 (currently active)	20 acres in North Field	household and office waste, oils, solvents, pesticides, metal, construction debris
2	Landfill 2 Landfill 4 Landfill 5	40 acres in North Field	household and office waste, oils, solvents, pesticides, metal, construction debris
3	Waste Pile 3	8 acres in North Field	household and office waste, solvents, oils, metals, chemicals, pesticides
4	Landfill 6	2 acres in North Field	household and office waste
5	Landfill 7	3 acres in North Field	household and office waste
6	Landfill 8	14 acres in North Field	asphalt, liquids
7	Landfill 9	8 acres between North and Northwest Fields	household and office waste, concrete
8	Landfill 10 Landfill 11 Landfill 12	2 acres in North Field 1.5 acres in North Field 1 acre in North Field	household and office waste, asphalt, construction debris, oils, solvents
9	Landfill 13	2 acres in North Field	household and office waste, equipment, oils, metal, chemicals
10	Landfill 14	1 acre in North Field	construction debris, concrete
11	Landfill 15 Landfill 16	Both landfills are less than 1 acre in North Field	household and office waste, solvents, paint, hazardous chemicals
12	Landfill 17 Pati Point Dump	2.5 acres in North Field	household and office waste, truck and airplane parts, batteries, unexploded ammunition, solvent storage drums
13	Landfill 18	Less than 1 acre in North Field	asphalt, liquid in drums

Site Reference Number	Site Name	Size and Location	Materials Used and Disposed
14	Landfill 19	1 acre in North Field	asphalt
15	Landfill 20	1 acre in North Field	household and office waste
16	Landfill 21	1 acre in Northwest Field	household and office waste
17	Landfill 22	1 acre in Northwest Field	household and office waste, unexploded ammunition
18	Landfill 23	Less than 1 acre in Harmon Annex	household and office waste
19	Landfill 24	8 acres in Harmon Annex	household and office waste
20	Waste Pile 7	12 acres in Andersen South	motor pool waste, hospital waste, dry-cleaning waste, household and office waste, solvents, vehicles and equipment, dry cleaning fluids, construction debris, solvents
21	Landfill 26	2 acres in Northwest Field	household and office waste, construction debris
22	Waste Pile 6	4 acres in Andersen South	unknown storage drums, construction debris
23	Waste Pile 5	2 acres in Andersen South	unknown drums, automobiles, construction debris
24	Landfill 29	4 or 5 acres in Andersen South	household debris, tires
25	Firefighter Training Area 1	2 acres in North Field	engine fuel, diesel, oils, solvents
26	Firefighter Training Area 2	2 acres in North Field	engine fuel, diesel, oils, solvents
27	Hazardous Waste Storage Area 1	1 acre in North Field	oils, solvents, hazardous waste
28	Chemical Storage Area 1	North Field (exact size not known yet)	oils, solvents
29	Waste Pile 2	1/2-acre in North Field	asphalt
30	Waste Pile 4	Northwest Field (exact size not known yet)	unexploded ammunition
31	Chemical Storage Area 4	4 or 5 acres in Northwest Field	oils, solvents

Site Reference Number	Site Name	Size and Location	Materials Used and Disposed
32	Drum Storage Area 1	20,000 square feet in North Field	pesticides, asphalt, solvents, chemicals
33	Drum Storage Area 2	1/3 acre in North Field	asphalt, oils, tar, paint
34	Electrical Transformer Storage Area	Concrete pad in North Field	transformers, transformer oil
35	Waste Pile 1	3 acres in North Field	asphalt
36	Waste Pile Ritidian	West of Northwest Field (exact size not known yet)	storage drums, trash, metal debris, equipment
37	War Dog Area	5.5 acres in Andersen South	no information available yet
38	Marbo (Andersen South) Laundry Facility	3 acres in Andersen South	no information available yet
39	Harmon Substation	Small area in Harmon Annex	no information available yet

Table 2

**Contaminants of Concern Detected In
Soil and Groundwater During Previous Studies**

Andersen AFB detected a variety of chemicals in the soil and groundwater at some of the sites during the preliminary investigation. Not all the chemicals were detected at every site, but low levels of metals were detected in soils at several sites, and low levels of volatile organic compounds were detected in wells at the Marbo Annex area and in the vicinity of the landfill complex. The chemicals listed below are those that Andersen AFB and the environmental agencies are most concerned about at this stage of the investigation. Future investigative activities may reveal other chemicals of concern, or may reveal that the chemicals below do not present a risk to public health and the environment.

- ✓ **Trichloroethylene (TCE)**
Trichloroethylene is a chemical used as a dry-cleaning agent and used to be used to wash aircraft. Short-term exposure to high levels of trichloroethylene can irritate the eyes, nose, and throat; cause sleepiness; and damage the liver and kidney. Animals exposed to high levels of this compound in laboratory studies have developed cancer.
- ✓ **Tetrachloroethylene (PCE)**
Tetrachloroethylene is used as a solvent and is found in metal cleaners, paint remover, and weed killers. Long-term exposure to this compound can damage digestive organs in humans and has caused cancer in laboratory animals.
- ✓ **Trichloroethane (TCA)**
Trichloroethane is used as a dry-cleaning agent and to dissolve oils, paints and varnishes. Exposure to high levels of trichloroethane may cause sleepiness, headaches, and liver and kidney damage. Animals exposed to high levels of this compound have developed cancer.

Cadmium

- ✓ Cadmium may occur naturally in the soil and groundwater at Andersen AFB. Industrially, this metal is used in the electroplating process and in the manufacturing of batteries, fire protection systems, and power transmission wires. Inhaling cadmium over a long period of time can cause kidney damage, high blood pressure, anemia, and lung, kidney, and prostate cancer.

Chromium

Industrially, this metal is used in electroplating and photography processes and contained in paint pigments. Chromium exists in two forms: trivalent and hexavalent. Trivalent chromium is found naturally in the environment and is relatively harmless. Hexavalent chromium is a man-made material that can cause lung cancer, ulcers, and dermatitis in people exposed to it over a long period of time. The chromium present in the soil and groundwater at Andersen AFB may occur there naturally.

PUBLIC HEARING
FEBRUARY 24, 1995

DIGEST OF ORAL TESTIMONIES ON BILL #72

Marianne Rios
(written testimony provided)
Supportive

1. Release of excess federal lands is an important issue.
2. Government of Guam should not claim returned lands, to be used for the good of all people of Guam. It's not right! It is a violation of property rights.
3. The idea of Governmental use for the benefit of all people on Guam is a communistic idea.
4. Land should be returned back to the original landowners and those who can never get their land back should be justly compensated.

James P. Castro
(written testimony provided)
Supportive

Prefaced written testimony with suggestions to the Committee "to better pursue the enactment of this legislation":

- 1) recommends that the Committee work closely with Congressman's (Underwood) office to participate in the Congressional review & rewrite of the 1973 Endangered Species Act.

Notes:

Appointment of Richard Pombo, a California republican, who has made the '73 ESA his central focus in past two years at the House. He has chosen to rewrite the law in the 104th Congress. Praised by environmentalists as one of the most important tools; however, many private property owners and business interest regard the Act as "confiscatory power" of the federal gov't.

THIS IS VERY EVIDENT IN GUAM.

Also, Congressman Don Young (Alaska), Chairman of the House Public Lands & Natural Resources Committee opted not to assign this to a subcommittee; therefore, this move is reflective of the Congress' long-standing opposition to the ESA. Young also prefers that the rewrite be handled directly by the full committee thereby speeding the pace for presentation to the full membership.

- 2) Suggestion: The committee adopt a resolution expressing the concerns of the people of Guam and the desires to have those hearings conducted on Guam.

"So that they can once and for all take a look at the size

of the island in comparison to the mainland and make a determination that 112 square miles certainly is not comparable to what is in Oregon or California or in Washington state."

Also, recently President Clinton has acted on relaxing the spotted owl regulations in Oregon and Washington state areas.

3) Point: This is an opportunity for this Committee and this Legislature and this new administration to be a part in rewriting the ESA, as well as relaxing the laws...

"...so that we can once and for all get a position in returning excess lands that rightfully belong to the people of Guam."

Announces the submission of the Castro family's 27-page position paper -forthcoming.

Attorney Peter Sgro
(Written testimony submitted)
Supportive

Represents various residents of Guam that are still original landowners or heirs of landowners of parcels of property that were condemned in 1962.

Recommended suggestions:

13 items provided in written testimony.

ITEM #3

Paragraph 1: First, "WHEREAS",

a) The pleadings in this case during the condemnation was not actually condemn for the benefit of the Dept. of the Navy but for the benefit of the Dept. of the Army.

b) And in condemnation proceedings, regardless of what agency of the United States is to utilize the property, the plaintiff in the matter of a condemnation case is always the "United States".

Suggested language:

"WHEREAS, in 1962, the United States took lands at and around Ritidian Point from the rightful owners claiming need for national defense said lands including lot numbers...."

ITEM #5

Paragraph 15: Suggested amendment: "taken in violation of constitutional mandates...to other agencies within the federal..."

ADDITIONAL ITEM

Paragraph 32: After the word "development", insert "of lands".

ITEM #11

Add a section 4: "The original landowners, if not living, then to their heirs, shall maintain a future interest in property as declared and described in 21 GCA, Section 1221.

Note:

Over three years of research on this issue. Represented the families in federal district court in the State of California and have ongoing litigation in the U.S. Court of Claims in Washington D.C.

Before one analyzes a refuge, ...under the refuge system and under applicable federal authorities, you have to look at "compatibility of land uses".

One of the things that we would like to point out to this Committee is that the families have substantial concerns that for many years known to the Dept. of the Air Force, is in fact, there are thirty landfills that are located in northern Guam -that are within the refuge.

Now, I pose this common sense question, does it make sense that their own study which you must rely on under what is referred to as, not only "CRKLA" but amendments to "CRKLA", under the Community Right To Know Act with documents of over 8,000 pages that we are finding in libraries.

One public hearing has been held. And we were pleased to know that everything we have been saying thus far is, in fact, true.

That finally there was an admission at that public hearing that in fact there are contaminants in the aquifer in northern Guam. Their studies also show that soil contamination, as well as, water contamination in northern Guam.

It makes absolutely no sense to...establish a refuge in an area that has been listed in the National Priorities List. And just for definitional purposes, as far as AAFB is concerned are research has shown that this is one of the most toxic sites in the United States.

So, as an analogy, it makes no sense even assuming the Endangered Species Act is constitutional, that for the survival of species, you would want to place them in a place that is full of waste.

Those are some of the compatibility of land use issues that I would explore.

Another document that I would provide to you and I will introduce for the purposes of the record, is what we received under the

request of the Freedom of Information Act request which is a report of excess real property.

This particular document does involve the properties in question with respect to the transfer of the 370.6 acres to the U.S. Fish & Wildlife Service.

...I would venture to guess that if you were to value this properties, these properties would have a value of a minimum of at least \$800 to \$900 per square meter. However, the federal gov't in their own evaluation, ...if you break it down...have valued these properties at \$16.55 per square meter. And these are beachfront properties which we think is highly significant.

Note: The one building on the property is valued at \$2.9 million but yet, all the real property in question was valued at only \$89,400.

If I could analogize that to what the former admiral said about NAS, I think he said, \$1,000 per square foot.

I think that this should be enlightening to not only the Committee, but also, shows that not only are we dealing with what happened at this particular time in history back in 1962 as far as creating an artificial economy through what is called a security clearance doctrine, but also that they still have their land values wrong even to date.

I would also show that in this particular report of excess real property, you'll see attachments and exhibits that contaminants do occur and appear...at these properties but yet nobody seems to want to know what to do with it. I think the bottom line with respect to the cleanup of hazzardous waste in this area, ...is I've only brought a number just to show you how much studying has already been done.

And I would like to suggest to this Committee that the GEPA which once entered into an agreement with the Air Force to continue studying this thing *infite item*. That we looked at and found "null and void" because in fact, legally it is not a binding agreement.

That contract was not signed by the Director or the administrative Director of GEPA, it was signed by a staff person and under applicable laws that agreement to extend the study time period cannot be signed by a staffer.

Therefore, that agreement with the federal gov't. to continue studying the hazzardous waste problems in northern Guam is a violation of applicable local law.

Our experts, both scientists and doctors, that have looked at these studies have estimated the total amount of acres of all

landfills to be approximately 110 acres.
That is 110 acres of contaminants and hazzardous materials.

Raises concerns about the generic descriptions of the types of contaminants listed and how they are notified to the public; "waste" -what kind of waste?, "metals" -what kind of metals?, "oil" -what kind of oils?, "unexploded ammunition",... you also see certain sections that "no information available", yet except they have had the opportunity and they have been studying this for over ten years.

Questions "fair-play" in compliance with federal facilities compliance regulations.

The expansion of Guam's tax-base alone by recovery of denied property 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 concervative compared to the mainland U.S., approximately \$400,000 of additional annual revenue would be generated considering the property in an unimproved state. GEDA mandated by law to oversee the issuance of bonds to fund capital improvement projects are for the gov't.

The return of the Ritidian lands will not only increase tax revenues but will increase the borrowing ability of the gov't. to approximately \$250 million.

STATUS ISSUES

At a time in our government's history when we are seeking self-determination, we are simultaneously giving up significant control of our gov't. and its people to make their own decisions relative to land use policies on Guam.

Under applicable sections of the U.S. Code, the Secretary of Interior shall have this whole discretion to decide how land is used within -and this is very important- and adjacent to the refuge.

Very important to note, that the Secretary of Interior can actually dictate to the Gov't. of Guam and charge GovGuam a fee for your own vehicles to pass through the refuge.

And that is in the federal statutes.

Families that still maintain ownership interests into the title of the properties, the Secretary has the sole discretion as well to charge them a fee to get to their own properties.

All these fees will be used for purposes of managing the refuge.

Water Supply- the Secretary has the sole discretion to take a percentage of the water supply in northern Guam for purposes of nourishing this so-called refuge that is full of hazzardous

waste.

And take away a portion of that for consumption by the community in various ways that the community will need that.

There is a statute referred to as the "Refuge-revenue Sharing Act". By creation of this refuge, GovGuam has nothing more to gain since there is a statute and calculations basis of what they are going to gain from the federal gov't. and by releasing all these lands and do absolutely nothing about it is going to make GovGuam lose alot of control of what they can do but they are only going to realize no more than \$21,000 in revenue from this refuge.

REQUEST:

The Committee take to the legislature's body and find that this refuge is found "null and void".

Mrs. Olympia P. Cruz
(oral)
Supportive

Centers on impact of bill #72. My father, Vicente Pangelinan is a property owner. Practically raised on this land. A short preview of how the long history of injustices by the federal gov't with this land has affected me as an individual.

My father sacrificed his inherited Yigo property in order to buy this piece of land called "Ritidian".

Describes how her family lived off the land and its abundant resources.

As our property became needed for defense, it is to the understanding from our parents that it should be returned to the property owner, -we never did sell the land, -when it is no longer needed.

After the war, Ritidian families got together through long laborious hours of self-construction, expended thousands of dollars (which was never compensated), with permission with GovGuam, and built a road.

The road wasn't paved but it is easier access, and then what happened? -We can't come in. It was taken over from...

I plea for your assistance (and the help of the Lord) that someday, hopefully before I die and the rest of the family.

We can be able to get back this land and try to live in it.

Jose Ulloa Garrido
(written testimony provided)

1. We, the Chamorro's, have lost our way.
2. Our homeland has become home to outsiders.
3. We have become homeless and landless.
4. Land must be given back to the people.

Franklin Leon Guerrero
(oral testimony)
Supportive

...I am married into the Castro family. I consider myself a Castro family member. I am here today, as are many of the Castro family are behind me, to present testimony on behalf of the patriarch of this Castro family, Juan Rivera Castro who was an original landowner in the Ritidian area.

...facing the issues of the landtakings on this island,...

...during the war, the Chamoru people were extremely grateful for the liberation from the occupation forces. So just as unsophisticated as we may have been in the worldly doings of business, the Chamoru people have always been known for their generosity, and when Uncle Sam asked for property for the defense of the United States, he got the property. Sometimes the property may have been given; sometimes the property may have been taken.

But always, what I would consider to be the grateful Chamoru people felt in our insophisticated manner, that he needs it now but he will give it back when he no longer needs it.

I have had an opportunity to review the Environmental Impact Assessment (EIA) that was done by the federal government, Department of Defense, on some of that lands that have been designated as wildlife or refuge,...

...for your summary, I would like to present some of the main points of DoD's EIA. As I reviewed it I understood that the land was going to be given over to the wildlife for a refuge but the Dod retains certain rights. DoD retain the rights for "live-ammunition exercises". I don't know if you are aware of this... I question the logic of retaining the right to blow up munitions in an area that they have designated as a needed wildlife area.

If you look at that assessment, it states that some of the shores in apra harbor are breeding grounds or nesting grounds for an endangered "green-bill" turtle...it goes on to say, we are waivering that area not to include it as a refuge or habitat area.

Now, why was that if the refuge or habitat or the maintenance of the fauna or the wildlife on Guam is the primary purpose for the creation of this refuge.

...if it is convenient for uncle sam to designate a wildlife refuge in a certain area then maybe, he will do that. But if it's an inconvenient or is an inconvenience...or as an inconvenience in any way to uncle sam in the event that navy ships may be somehow hindered by their accessing of the harbor, even though they recognize it as a habitat area for the endangered species,

they waiver that area to be considered part of the refuge.

By their own admission statements in the EIA, they've stated that there are cleanup sites that have to be addressed.

The point that that I want to make is that I am in favor of the intent of the bill to give the land back to the original landowners.

In the EIA, they say the purpose of the refuge was to allow the natural animals and plants of Guam to rejuvenate themselves.

And in their EIA, they say that there is a very good example of an area that they wish to create and it is in the "Anapsan" area.

During the condemnation of the lands, for whatever reasons, uncle sam forgot to condemn a portion of the land between Ritidian and Tarague. It's called "Anapsan" which is private property and the Castro family and their heirs still live there as caretakers of the land.

In the EIA it states that the "Anapsan" area is a good example of the plants and animals which they want to propagate that they wish to preserve.

I submit to the Committee that if this was private land and the private owners, the Castro family and their heirs, was able to take such good care of their property to be sited in the EIA as something to be modeled, ...the private landowners are better caretakers of the property. I don't believe that you will find any toxic, hazzardous dumpsites on the Anapsan property. I don't believe that you'll find it listed in the "Who's who" of hazzardous dumpsites in the U.S.

I submit to you that DoD or uncle sam could spend less money if the land was to be returned to the original landowners, I'm sure the original landowners would be agreeable to be trained on how to re-establish some of the birds that are becoming extinct or the flowers, ...who better takes care of property than the person who it originally belongs to.

Tony Artero
(oral testimony)
Supportive

I am testifying in favor of bill #72 as a private citizen, as the principal broker of Artero Realty, and the President of the Guam Landowners United Incorporated.

The reason I feel comfortable wearing three hats before this Committee without any concern to conflict of interest is because the real estate vindustry and private property rights are one of a kind.

Private property rights...is the law of the land. Any regulation used in any manner to erode private property rights without proper justification and without just compensation is only an excuse.

These excuses allow the people in positions of authority and power to capitalize on the disorder and the poor and weak.

That action is not only counter-productive, but a serious threat to democracy. And it acts as a fuel to incite riots, disorder and total chaos.

I will end my testimony right there. We need to right the "wrong". And the wrong is the blatant violation of private property rights on Guam, throughout the island.

The dawning of history has educated us that the federal gov't has left a track of toxic waste everywhere. But unfortunately, at the same time, our local gov't is following the federal's footsteps and leaving dilapidated buildings and chaotic conditions in various elements of our community that need to be addressed as well.

But first and foremost, private property rights has to be restored and respected. Then having done that, we will address the cleanup of the the toxic waste.

...We need to do a genuine comprehensive and holistic land-use plan for our little island. God knows, that we all know that expanding an airport in the middle of this island is hazzardous to everyone.

Everytime we've addressed a wrong on Guam, it has been on a piecemeal, patch-up solution.

...it would save millions of dollars if (governments) would do it right the first time and it would liast for hundreds of years to come.

Juan M. Flores
(oral testimony)
Supportive

(translated from Chamorro)

Mr. Flores spoke passionately regarding their family property and their experiences prior to, during and after WWII.

Denial os access to their property exacted a heavy toll not just economically but emotionally as well.

He asked that justice be restored and indicated that Bill No.72 is a way towards doingg so.

Mr. Flores expressed confidence in the members of the 23rd Guam Legislature and based this confidence in the fact that long time activists/advocates are part of this Legislature.

...The members of the GLU has come up with a new definition of NAS, Agana. NAS, Agana is defined as (an) "heir" strip.

Private property rights...is the law of the land. Any regulation used in any manner to erode private property rights without proper justification and without just compensation is only an excuse.

These excuses allow the people in positions of authority and power to capitalize on the disorder and the poor and weak.

That action is not only counter-productive, but a serious threat to democracy. And it acts as a fuel to incite riots, disorder and total chaos.

I will end my testimony right there. We need to right the "wrong". And the wrong is the blatant violation of private property rights on Guam, throughout the island.

The dawning of history has educated us that the federal gov't has left a track of toxic waste everywhere. But unfortunately, at the same time, our local gov't is following the federal's footsteps and leaving dilapidated buildings and chaotic conditions in various elements of our community that need to be addressed as well.

But first and foremost, private property rights has to be restored and respected. Then having done that, we will address the cleanup of the the toxic waste.

...We need to do a genuine comprehensive and holistic land-use plan for our little island. God knows, that we all know that expanding an airport in the middle of this island is hazzardous to everyone.

Everytime we've addressed a wrong on Guam, it has been on a piecemeal, patch-up solution.

...it would save millions of dollars if (governments) would do it right the first time and it would liast for hundreds of years to come.

Juan M. Flores
(oral testimony)
Supportive

(translated from Chamorro)

I am the son of Benigno L.G. Flores and Dolores Martinez Flores.

Alfonso Pangelinan
(oral testimony)
Supportive

The oldest surviving family member of the original landowners of the Ritidian property.

Now that the property has been declared excess, it should be returned to the original landowners.

The only two properties that the family owned were condemned. (An Agana piece where the Chamorro village is now located and the Ritidian property.)

We were moved to Sinajana. Later on the government made big mistake when they sold the village Sinajana to those people living in Sinajana.

We found out that those lots in Sinajana were sub-standad(not large enough). Residents could not even borrow money from the bank to build home.

So, fortunately, the Urban Renewal Program came in with the help of our very able governor, the late Governor Bordallo. He was the one that helped Yona and Sinajana to be urbanized. Speaks of abundance of wildlife (i.e. birds & fanihi) during the time prior to condemnation. The only thing he comes across now are snakes.

He understands that toxic sites exists right in the middle of this wildlife refuge. Why is that?
We need the land ...for our families.

...I am retired now and would like to be able to go to Ritidian and -raise chickens,...

{describes the federal gov't's. failure to maintain the deteriorating buildings/facilities at Ritidian}...

"So what are they doing up there? They should move out! Give us back our lands back!"

Ron Teehan
(oral testimony)
Supportive

I am concerned with the passage of (bill 72), with the recent passage of bill 1231 into PL 22-145, we leave the question, "what about the other landowners."

...As we consider this bill, this body must additionally consider the formulation of a Territory-wide landuse plan that direct recognizes the existence of a Territory-wide liability that GovGuam has assumed and must now address.

We are saying that we recognize the rights of the landowners of Ritidian,...we recognize the rights of the landowners who are subject to the 3,200 acre release,...we have the ongoing NAS

release, we have other releases coming,...

we have lands within GovGuam that were taken by the federal gov't., later returned to GovGuam and are now being used for public benefit.

Recognizing that the public benefit needs must be satisfied, we must also recognize the public burden which must be accepted by the Territory if we are to use these properties for the benefit of the entire island.

It cannot continue to be the policy of this Gov't. that we are going to address some, but leave others out of this process by saying that "it was the federal gov't who stole your property - we're just using it".

Lou Castro
(oral testimony)

...the original landowners of the property at Ritidian Point have always felt that the establishment of a wildlife refuge is purely and simply a disguised taking of land. A plot by the military to continue their dominance over our lands. This to me is absolutely disgusting, frustrating and emotionally draining.

The creation of a wildlife refuge under the Endangered Species Act, ...from past research, I know that a real and true wildlife refuge should be developed on property that is undeveloped, untouched, undisturbed, unearthed. More importantly, the habitat should be conducive to the survival of the introduced species.

There are vast amounts of snakes at Ritidian Point and the already mentioned hazardous toxic sites.

Furthermore, the land is far from being undeveloped, ...even today the land is being further trashed by the encroachment of strangers...

It has been over a year now since the creation of a wildlife refuge and I want to know what species are presently in captivity? And what are the plans to ensure survival of this species in this particular habitat? Also, what is the budget of F&W to maintain and successfully carry out this refuge.

I am pretty sure that there is more not one species involved and no money for this refuge.

Presently, volunteers of F&W are the gatekeepers..."we are at the mercy of these gatekeepers who are basically volunteers.

Cites an incident when the family on a visit to the property, were locked inside the gate.

...I do support this particular bill. And I do hope that you will consider all the suggestions that our attorney has brought forth to you.

And I look forward to hopefully getting our land back someday.

Mae Castro Aguigui
(written testimony submitted)

Supportive

1. Lands were taken for defense purposes but are now excess.
2. Land owners were not justly compensated.
3. Before the war the land was used for farming.
4. The land should not be used for a wildlife refuge.
5. They need their land back for their children.

Committee Members Dialogue
Bill 72

Senator Won Pat-Borja

Senator Charfauros

1. Draft a letter to GEPA's new administrator demanding that the agreement between the federal government (U.S. Air Force) and GEPA (to extend the study time period for studying the hazzardous waste problems in northern Guam) be rescinded.

Attorney Sgro testified that the contract should be considered "null and void" on the basis that it violates applicable laws which requires that the agreement be signed by the Director of GEPA or the administrative Director of GEPA, -NOT a staffer, as was in this particular case.

Senator Pangelinan

2. Requests for Governor Gutierrez to continue to direct GEDA to release the monies that was specifically appropriated for the purpose of assisting the families involved.

Referenced: Gutierrez's bill (northwest territory act) which directs that the monies returned to the Guam Economic Authority for the land claims issue.

Senator Nelson

Urges a concerted effort on the part of the administration and the Legislature to present a unified desire on behalf of and for the original landowners for expedient returns of their property.

Senator L. Leon Guerrero

Commented that in addition to the demand for return of these lands should be the demand that proper and thorough clean-up of all hazzardous toxic sites be addressed.

(Atty. Sgro: responded by saying that environmental clean-up is inclusive in the process of land returns.

Cites federal studies which shows that contaminants are evident in the northern aquifer which services 75,000 residents and warns of the symptoms and health hazzards (i.e. cancer, similar symptoms to lytico-botig) that are caused by ingestion of such contaminants over a period of years.

References to a report from two independent statisticians on information provided by Public Health indicate that two years after the waste was dumped on Guam the birth defect rate on Guam rose to 102%.)

Inquires, where are we on the legal battle?

(Sgro: ...with respect to the family's failed attempt to file an injunction, attributes to;

-lack of support from the administration(Ada)
-lack of support from GEDA

-lack of GEDA complying with the Northwest Territories Act and its amendments.

...with respect to setting aside the refuge, this is not a family issue, it is a government issue.

explains that the reasons for voluntarily dismissing this case are:

1. non-support anticipated from GEDA

2. failed to get the (government) Governor to intervene as a party-plaintiff

{explains that the families did not have the jurisdiction to bring up issues such as the economy, or issues about the impact on the health of the people.}

Urges the Committee to draft letters to GEDA and GEPA and the Governor calling their attention to these neglected issues.

Makes comparison of an "over-lay" refuge and a refuge. The former, as in Guam's case, according to a section in U.S. Codes, the Secretary of Defense can take every single one of those lands back for military/defense purposes only.)

Senator Ada

Senator Barrett-Anderson

My position is that we should not have a critical habitat!

I think the issue was clearly a mistake by the prior administration!

I think the battle is not in the hands of the family, but in the hands of the administration to send a clear message and send a strong letter to Washington that -"We do not want a critical habitat here on Guam!" explain the reasons why and then, fight to have the land back.

Why should Guam share the one full burden of bringing back one, two, three species that are common to the entire species.

Why is it just in northern Guam that Fish & Wildlife has chosen to save six birds. Why not choose some small island north of Rota to establish a wildlife refuge.

If the Governor (Gutierrez) of this island sign this bill(#72) into law, it will send a strong message that the prior position(of the Ada administration) of wanting a critical habitat is now changed.

Only and until the Governor (Gutierrez) of this Territory changes his position on the critical habitat...do we have a case.

If it remains the same, we DO NOT have a case.

Speaker Parkinson

The Ritidian Point problem is one part of a major problem. There are two problems that are intertwined. Irreconcilable-separated are the problems of political status and the land issues.

The issue will be resolved by the government's full-support, united approach for the families and on these issues.

It will take a concentrated effort of all of these things (events & occurrences) -coordinated and working together,...

This bill is a strong "political statement".

It is just one nail in the coffin of colonialization.

If we each go at it alone, then, we are all going to lose!

This is just one skirmish in the battle and not the battle itself.

Senator Blaz

References having introduced a Resolution (in the 21st Legislature) protesting the establishment of the refuge.

It is a question of what is right and what is just.

Clearly we have been mistreated!

The pursuit of the defense of the U.S. has oppressed many of our people and has violated many of our rights as U.S. citizens.

This should be a government responsibility.

And I know that since Governor Gutierrez is the main sponser of the Northwest Territories Act, he is a true believer, as well as our Chair, Senator Cristobal...

What about Fish & Wildlife's finding of "No Significant Impact"?...

Did they find that there was no significant impact? Or did they find that there were no indigenous population living here? Or did they forget that there were even U.S. citizens living on Guam?...when they came to their conclusion of no significant impact.

(Sgro: Under the National Environmental Policy Act, you have to make initial rulings.

Under the initial rulings of findings of impacts, you have to state if there was a "significant impact" or findings of "no significant impact".

Logically, if you were to take 21% of the land mass out of the island (Guam) for no productive use, I don't think there is anybody that would say that that was not a significant impact.

They found no significant impact on the land-takings of Guam.

At a time in our history when we are negotiating Commonwealth with status change, they also found no significant impact on federalism issues. Nor on economic issues. Nor cultural issues.

...The committee refused to provide the information and sources in conducting the studies which arrived at the findings of no significant impact.)

Mark Forbes

Calls for recognition that: There is no desire on the part of the federal government to give land back. They will not do so willingly. They NEVER do so willingly!

Even when land is declared excess for federal needs by the federal gov't. itself.

The only time that the federal gov't. is willing to give lands back willingly is when there are restrictions that are so clearly beneficial to the federal gov't. That for all intensive purposes, it really isn't giving the land back.

The navy has enjoyed on third of the island and will do everything in their power to continue to enjoy one third of the island, for fear that if they start giving things up, they might not get it back in the future.

Understanding that...we are automatically in an adversarial relationship with the military whenever we talk about land. We're not friends sitting across the table trying to work something out to our mutual benefit. We are adversarial. Our interest is returning land, their interest is keeping it. The record speaks clearing, lands generally don't come back.

Every step along the way the closure of NAS was fought...argument was that they critically and desparately needed the base (NAS) until BRAC decided to close NAS. Then all of a sudden it was no longer needed and critical to national defense/security.

What we need to do is act as if we are engaged in an adversarial relationship and stake our claims on that premise. We need to commit ourselves to this process (approach).

Senator Cristobal

I state for the record, that I will continue to make some strong statements to Washington, and take course of actions to get our lands back.

Senator A. Santos

It is this generation of the Twenty-Third Legislature with the members on this Committee on Federal & Foreign Affairs with the Chairwoman, Senator Hope Cristobal that will fight for the rights of our people to survive in our own homeland using the american political system to pursue not the "American dream" but the "Chamorro dream".

Committee on Federal & Foreign Affairs

FINDINGS AND RECOMMENDATIONS

The oral and written testimonies were unanimously in support of the intent of Bill No. 72 and in consideration, my staff submits the following to the Committee for consideration:

I. Recommendations made by Attorney Peter R. Sgro, Jr. to amend the following:

1. The title of the bill amended to read,

"AN ACT TO DESIGNATE THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM, AND INDICATING TO THE DEPARTMENT OF DEFENSE, THE GOVERNMENT OF GUAM'S POSITION TO RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN IN VIOLATION OF THE UNITED STATES CONSTITUTION, OTHER APPLICABLE LAWS AND UNDER CONDITIONS WHEREBY AN ARTIFICIAL ECONOMY WAS CREATED BY SECURITY CLEARANCES"

2. All references to "Critical Wildlife Refuge" to be substituted with "Wildlife Refuge".

3. All references to bird sanctuary be deleted.

4. Paragraph 1 through 4 amended to read,

"WHEREAS, in 1962, the United States took the lands at and around the area in Northern Guam commonly known as Ritidian Point from the fee simple owners, said lands being LOT NOS. 9986, 9987, 9988, 9990, 9991, 9990-1, 9992-1, and 10081-2, Machanao".

5. Paragraph 5 amended to read,

"WHEREAS, the lands have been declared for national defense purposes".

6. Paragraph 15 amended to read,

"taken in violation of constitutional mandates..."

7. Paragraph 24 through 26 amend to read,

"Land on Guam is even more limited, the Federal Government's designation of 25% of the vacant land on Guam as a wildlife refuge precludes all meaningful use and development of these lands; is unrealistic, irresponsible and unresponsive to the needs of the people of Guam".

8. Paragraph 30 delete "and" and amend to read,

"the establishment of the wildlife refuge on Guam increased the density of population from approximately one person per acre to two persons per acre".

9. To delete paragraphs 46 through 50, and 59 through 60.

10. Paragraph 66 add after the word "autonomy,

"and as a matter of law".

11. Paragraph 69, delete "the shortest time possible", and substitute,

"a period of time not to exceed ninety (90) days from the date of designation.

12. Add a section 2 to read,

"Section _____. The original landowners, and if they are no longer living, their heirs shall maintain a future interest in the real properties described in above, as the term is defined in 21 GCA section 1221".

13. Add a section 3 to read,

"Section _____. Any and all agreements, permits or similar documents by and between the Federal Government and any of its agencies, for purposes of establishing the Wildlife Refuge are hereby declared null and void".

14. Add a section 4 to read,

"Section _____. The original landowners or heirs of the original landowners of those lands subject to this bill, maintain a contingent reversionary interest to said lands and the government of Guam will take any and all legal steps necessary to insure the reversionary property rights are properly vested."

II. Recommendations made by James Castro Flores for a substitute bill:

See Appendix A.

III. Issues/items for discussion:

1. Discuss "no significant impact" findings on :

- a. Federalism issues
- b. Economic issues
- c. Cultural issues
- d. Land issues

2. Report of excess real property.
(Distributed at the hearing)

3. Recommendation that the Committee work closely with the Congressman's Office in the Congressional review and rewrite of the 1973 Endangered Species Act.

4. Suggestion that the Committee adopt a resolution expressing the concerns of the people of Guam and the desires to have those hearings (item #3) conducted on Guam.

5. GEPA's contract with the Federal Government extending the study period contract for assessment of the hazardous waste problems in northern Guam.

6. Recommendations to draft:

- a.) a letter to the Governor
- b.) a letter to GEDA

calling their attention to these neglected issues.



Ufisinan I TaoTao Tano'
Senator Angel L.G. Santos

Chairman, Committee on Community,
Housing, and Cultural Affairs
23rd Guam Legislature

February 17, 1995

U.S. Fish and Wildlife Service
(attn: Peter Jerome)
1849 C Street NW
MS 670 ARLSQ,
Washington, DC 20240

Dear Mr. Jerome:

The notice of availability of an outline of management plans for all units of the National Wildlife System was published in the Pacific Daily News (copy attached) on Tuesday, February 14, 1995. As the notice stated that comments on the plan would be received at the above address through Friday, the impossibility of acquiring the plan by mail and returning comments, all within a four (4) day period, I find most disturbing.

As a senator, the committee I chair has deep involvement and interest in all land issues in this U.S. Territory. Guam has a limited land mass of some 200 square miles and one-third of our land has been under military use and control since the close of World War II. That vast amounts of it has been designated as a wildlife refuge, and most of that acreage is inappropriate for that purpose because it is contaminated, any management plans are important for our analysis and comments.

While the outline plan may or may not include Guam, I have no way of knowing without having the plan in hand. However, the notice did state the plan effects all units, so I would have good cause to believe local land is in the plan.



Commonwealth Pa'go!

Land is very precious for all the indigenous residents of our island; our land is limited, every square meter has meaning to the future development and well-being of our community--and the people within the community.

It is additionally a source of grave irritation that decisions on management of local land are made without the advice and consent of island residents and officials alike. Therefore, please kindly provide me with an explanation of the absurdly short notice provided.

We contacted Guam's local office of U.S. Fish and Wildlife in an effort to clarify the origin of the notice and the reason for the short notice. Mr. Kelly Wolcott stated that their office had no knowledge of the notice and he suggested that it came to our local newspaper via the wire services. He also mentioned the frustration of needing notices published in the Federal Register prior to public notice. He will be contacting you, but in the interim, please forward a copy of the plan to me along with your office's response to the concerns I have expressed in this letter.


My formal position in the U.S. Fish and Wildlife Department's plans to set aside over 20,000 acres of our Chamoru homelands in the establishment of a Guam National Wildlife Refuge Overlay is not in the best interests of the people of Guam. Our people's survival depends on the protection and preservation of our ancestral lands, and only we should have the power to determine how much land to set aside for the animals.

We are a people with a history of living in harmony with the animals and Mother Earth for the past 4,000 years. If U.S. Fish and Wildlife Department approves any legislation to set aside over 20,000 acres of our homelands for the animals, this will mark the beginning of the end of our people and we will become the endangered species on Guam. Again, I would like to state for the record that I strongly oppose your plans to establish a Guam National Wildlife Refuge Overlay.

The people of Guam should make that determination on how much lands to set aside for the animals, and not the federal government.

Thank you for your attention.

Sincerely,



Angel L.G. Santos

Attachment: News clip

cc: Governor Carl T.C. Gutierrez
Lt. Governor Madeline Z. Bordallo
Robert Underwood, Guam Delegate to U.S. Congress
Commander U.S. Naval Forces Marianas, Rear Admiral David Brewer III
U.S. Fish & Wildlife Kelly Wolcott
All Senators
Local Media

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LOCAL BRIEFS

DAILY NEWS, Tuesday, February 14, 1995

Army Corps cancels port meeting

The Army Corps of Engineers has canceled a public meeting scheduled for today to discuss proposed improvement for shoreline protection along Route 11-B fronting the Commercial Port on Cabras Island.

For more information about the project, write to Honolulu District Engineer, attention Planning Division, Building 230, Fort Shafter, Hawaii 96858-5440.

Crop assistance available for 1994

The Consolidated Farm Services Agency, formerly known as the Agriculture Stabilization and Conservation Services, will administer the 1994 Crops Disaster Program and the Tree Assistance Program to compensate eligible producers for crop loss caused by drought, flood and other natural disasters that occurred in 1994.

For more details, call the Guam Department of Agriculture at 734-3946/47 or the Hawaii consolidated farm agency office at (808)541-2644.

Fish and Wildlife plan is ready

An outline of management plans for all units of the National Wildlife System is available for public review and comment.

Copies of the plan can be obtained by writing to the U.S. Fish and Wildlife Service (attn: Peter Jerome) 1849 C. Street NW, MS 670 ARLSQ, Washington, D.C., 20240; 703-358-2043. Comments will be received at this address through Friday.

- Daily News staff

The Castro Family

P.O. Box 20731, GMF, Guam 96921
(671) 734-3120

February 24, 1995

Honorable Hope A. Cristobal
Chairperson, Committee on Federal and Foreign Affairs
Twenty-Third Guam Legislature
155 Hesler Street
Agana, Guam 96910

Re: Testimony on Bill No. 72

Dear Senator Cristobal:

Enclosed, you will find a copy of the Castro Family's testimony supporting the passage and enactment of Bill No. 72, "An act to designate the former Naval Facility lands at Ritidian Point as property of the government of Guam; and demanding that the Department of Defense return these excess lands to the rightful owners from which the lands were originally taken by force, deceit, and outright theft."

Thank you, and Si Yu'us Ma'ase for allowing us the opportunity to present our views on this issue.

FOR THE CASTRO FAMILY:


By: **JAMES P. CASTRO**

February 24, 1995

THIS POSITION STATEMENT IS SUBMITTED TO THE TWENTY THIRD GUAM LEGISLATURE'S COMMITTEE ON FEDERAL AND FOREIGN AFFAIRS ON THE OCCASION OF THE COMMITTEE'S PUBLIC HEARING ON BILL NO. 72, "AN ACT TO DESIGNATE THE FORMER NAVAL FACILITY LANDS AT RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM; AND DEMANDING THAT THE DEPARTMENT OF DEFENSE RETURN THESE EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS WERE ORIGINALLY TAKEN BY FORCE, DECEIT, AND OUTRIGHT THEFT," AND ON THE CASTRO FAMILIES' QUEST FOR THE GRANTING OF PERMANENT UNFETTERED ACCESS TO JINAPSAN VIA RITIDIAN POINT.

TO ALL WHOSE PRESENCE THESE LETTERS SHALL COME ... a warm HAFA ADAI.

Introduction

For the record, I am James P. Castro, here to represent the Castro Family owners of Lots Nos. 9990 and 9991 Ritidian. We are here to voice our concerns, needs and desires on a subject and issue which has lingered and festered for all too many years. That of returning lands situated in and around Ritidian Point to its rightful owners and heirs.

We would like to preface our testimony by stating that while we wholeheartedly support the passage of Bill No. 72, we also recognize that its enactment does not return Ritidian to its rightful owners and heirs.

Most importantly, we understand that the enactment of Bill No. 72 by this Legislature delivers a strong statement to Washington technocrats, and bureaucrats, that the people of Guam are ready to assume total control of the island's resources. Furthermore, the Family suggests that amendments be made to reflect the true ownership of Ritidian. In this regards, we submit the following:

Lot No 9986, containing an area of 38,443 \pm square meters, and at the time of forced taking belonging to Juan San Nicolas Aguero;

Lot No. 9987, containing an area of 68,582 \pm square meters, and at the time of forced taking belonging to Dolores Martinez Flores and Benigno Leon Guerrero Flores;

Lot No. 9988, containing an area 41,837 \pm square meters, and at the time of forced taking belonging to Jesus Castro Castro, Estate, Jesus Blas Castro, Administrator;

Lot No. 9989, containing an area of 67,033 \pm square meters, and at the time of forced taking belonging to Juan Mendiola Castro;

Lots Nos. 9990 and 9991, containing an area of 115,502 \pm square meters, and at the time of forced taking belonging to Juan Rivera Castro, Jesus Duenas Castro, Administrator;

Lot No. 9990-1, containing an area of 73,484 \pm square meters, and at the time of forced taking belonging to Vicente S. Pangelinan, Estate, Ana Matanane Pangelinan Administratrix; and

Lot No. 9992-2, containing an area of 60,396 \pm square meters, and at the time of forced taking belonging to Engracia Castro Perez, Tomas L.G. Castro, Gregorio L.G. Castro, Maria Castro Ada, Margarita L.G. Camacho, Julia Castro Rojas, Francisco L.G. Castro,

Concepcion Castro Camacho, and Santiago L.G. Castro;
and

Lot No. 10081-2, containing an area of 7,920 ± square meters, and at the time of forced taking belonging to Maria Taitano Aguero, and Juan S.N. Aguero.

We are also aware that the Ritidian properties were at one point and time being considered as part of an exchange with the developers of Urunao Beach Resort. We have reiterated and expressed our concerns to Senator Daniel K. Inouye and Congressman Ben G. Blaz during the January 14, 1990 Guam Hearings on Excess Federal Lands, and most recently to Congressman Robert A. Underwood during the 1994 Guam Land Conference.

In short, our concerns are that these properties which were part of a forced taking, be returned to their rightful owners, heirs, administrators, executors, successors or assigns of the properties. The return of these properties to their rightful owners, in our opinion, would be a more equitable manner in resolving the issue of excess federal lands. Also, it would allow these people, once deprived of their rightful claim, to enjoy full use of their property. This to us would be the most equitable solution to the problem, rather than depriving these people of their properties, for a second time ... only this time through a land exchange program.

Madame Chair, our Family(s) are greatly appreciative of your efforts in trying resolving our longstanding issue of access. At this time, we again beg leave, to solicit your support to ensure that the Ritidian properties are returned to their rightful owners and heirs. As we have stated to Senator Daniel K. Inouye, Congressmen Blaz and Underwood during the Guam land hearings:

"The Ritidian and Jinapsan land owners do not wish nor do they desire to exchange their current property for any other excess federal lands on Guam. The reason is very simple the Ritidian and Jinapsan property has been in the family possession for many hundreds of years."

Furthermore, when the military offered to exchange Jinapsan with properties in and around the Harmon cliff line area the Castro Family rejected the offer simply because we felt that it is wrong to accept an exchange of properties which were forcefully taken from another Chamorro for national defense purposes.

We hold the position that if the military determines the Harmon cliff line area as excess to their needs then the Federal government should return the lands to the original owners' and not exchange it with Jinapsan or any other area. We feel the same about Ritidian. It is for this reason that we strongly opposed the exchange of our forefathers properties with the developers or for that matter the owners of Urunao.

As the owners and heirs to Lots Nos. 9990 and 9991, Ritidian, we desire that the properties be returned to our family for our use and benefit.

Critical Habitat: The Impact

Madame Chair, on the issue of critical habitat, the Castro Family understands that the proposal to declare the shores of Guam from Puntan Dos Amantes to Campanaya Point as critical habitat in order to save endangered animals is admirable.

However, at the same time it is senseless, and totally absent of any reasonable rationale, and reflective of gross misunderstanding and disregard of the needs of the people of Guam by bureaucrats who have chosen to declare themselves saviors of the Marianas Fruit Bats, the Marianas Crow, the Kingfisher and whatever other species of animals, or other inanimate objects, they have, and will choose to add to the list of reasons why our family and the people of Guam cannot enjoy their human and civil rights to the full benefits of their private property.

The proposal is unjust in that it officially denies the owners and heirs, citizens of the United States, the full use and benefit of their private property. This injustice flies in the face of the U.S. Constitution and the fundamental principles of democracy, free enterprise and private property upon which the great American nation was founded. The Pilgrims came to America not only to escape religious tyranny but to escape tyrannical

governments which had no respect, nor concept, of an individual's God given right to the full use of his private property.

Furthermore, the proposal is unjust in that it only seeks to supplant the unnatural and unjust hold of the U.S. Navy and other Federal agencies over thousands upon thousands of acres of prime private real estate and miles upon miles of pristine beaches and shoreline with a policy that vainly hopes to justify itself by drawing parallels between the fate of the Marianas Fruit Bat with the prehistoric pterodactyl.

Congressional Review and Rewrite of 1973 Endangered Species Act

We suspect that the United States government does not want to release property, which has been declared excess by its own officials, simply because it wants to retain these acreages as a buffer zone between military reservations and the civilian community.

At this time we suggest that this Committee take the lead and work with the Governor and Congressman Underwood in developing a position statement reflective of our true needs during the Congressional Review and Rewrite of 1973 Endangered Species Act. For the information of the Committee, Congressman Richard Pombo, a California Republican who has made opposition to the Endangered Species Act his central focus during his 2 years in the House of Representative, has been chosen to be the GOP point man to rewrite the law in the 104th Congress.

As you well know, the Endangered Species Act first passed in 1973 has been praised by environmentalist as one of the most important tools, however many private property owners and business interests regard the Act as a confiscatory power of the Federal government. This is true today especially as we deal with the return of excess lands from the federal government. The Chairman of the House Public Lands and Natural Resources Committee, Congressman Don Young (Alaska), opted not to assign the Congressional Review and Rewrite of 1973 Endangered Species Act to a subcommittee.

This move is reflective of Congressman Young's longstanding opposition to the Endangered Species Act. For the Committee's

information, Congressman Young prefers that the rewrite be handled directly by the full committee, thereby speeding the pace for presentation to the full membership. Congressman Pombo will chair the committee when it conducts planned field hearings across the nation early this year.

As one of the few Families on island that has had to battle the strict requirements of the Endangered Species Act, we praise the selection of Congressman Pombo as positive development in the years to come. We have been informed that the Congressman (Pombo) is now in the process of scheduling meetings to hear groups for and against the existing law and its impact on their state or territory. The Castro Family at this reiterates our concern that the Committee on Federal and Foreign Affairs take an active role in the review and rewrite process of the 1973 Act.

Together, we should submit our position statements to Congressman Underwood so that he can present our case to Congress. With regards to the Castro Family, we ask that the Court Judgement issued in 1962 be included in the Act's rewrite under a "grandfather clause" provision. This would insure that the Act and its provisions do not apply to the granting of access to Ritidian and most importantly, the development of Jinapsan and Ritidian.

Property Owner I.D. Cards

It is not difficult to see or presume this simply by reviewing the case of the Ritidian, Jinapsan and Urunao families. When the U.S. Navy first elected to pursue the condemnation of all private property in northern Guam, it identified all shoreline property between Puntan Dos Amantes and Fadian Point. However, it quickly learned that U.S. laws required the Department of Defense to show a compelling national security interest, or that a compelling public good would be served by the taking of private property by the government. When the matter of the Ritidian, Jinapsan and Urunao properties were taken to the Federal District Court of Guam, the Department of Defense could not justify, to the satisfaction of the District Court, its need to acquire total ownership through condemnation, of Northern Guam.

Not only did the court permit these properties to remain in private ownership, the court mandated that the families shall be granted ingress

and egress rights. To this date the Federal government has not abided by nor fulfilled the decision and orders of its own courts. The Federal government would have people believe otherwise by stating that the Ritidian, Jinapsan and Urunao property owners are granted permits which allow them to enter military reservations for the purpose of "visiting" their property.

This method of pacifying the property owners cannot, must not and will not be construed as just compensation or for that matter the granting of ingress and egress. However, the practice of issuing I.D. cards to the property owners was and is an effective way of preventing the development and utilization of the Ritidian, Jinapsan and Urunao properties for anything. By strictly controlling access to the land, the owners were prevented from even building suitable homes on the property. By making it literally impossible to extend basic utility requirements to the land, any dream of any form of home in Ritidian, Jinapsan and Urunao remained just that - a dream - wishful thinking.

Permanent and Unfettered Access

It would be foolish to even think of building a home on the property knowing that we would not have permanent and unfettered access. When it appeared that Federal authorities were prepared to seriously discuss granting easement to the Jinapsan and Urunao properties, the issue of critical habitat surfaced.

With the proposal to designate the entire northern coastline of Guam as critical habitat, even the Federal government's willingness to sit down at the negotiating tables become questionable because the restrictions and prohibitions that would be placed on the family would be even greater than those offered by the Navy in its first proposed MOU.

Private Property Rights

It is difficult for us to understand why the United States of America - the country which preaches and promotes human and civil rights, as well as, rights of private property, the world over would be so negative towards preaching and promoting those same principles on an island over which flies the American Flag?

Condemnation: Fish and Wildlife

Now the U.S. Fish and Wildlife Service proposes to do what the Navy could not do because the Navy could not prove that its desire and need to condemn the northern shores of Guam is vital to national security. Now the U.S. Fish and Wildlife Service proposes to accomplish this feat in the name of the Marianas Fruit Bat and other endangered species of birds. Madame Chairperson, Members of the Committee, when will the United States government begin treating the families of Ritidian, Jinapsan and Urunao as human beings and American citizens.

The U.S. Fish and Wildlife Service, at the urging of the Marianas Audubon Society, a group consisting of individuals who are not even indigenous to Guam, is proposing to create a situation where our families will again be denied the full benefits of their inheritance. In their efforts to save the endangered species by mandating that over 17,000 acres of land be dedicated to jungle, the U.S. Fish and Wildlife Service has created a new endangered species - the owners, families and children of Ritidian, Jinapsan and Urunao.

We ask that this not be permitted. We, however, do not want to be labelled inconsiderate of the fate of the fruit bats and endangered birds. Let the record show that as the families of Ritidian, Jinapsan and Urunao are very seriously concerned that these natural wonders on our properties are disappearing. We know that the brown tree snake is a serious problem and would like to work with all concerned at their eradication, especially from the Ritidian, Jinapsan and Urunao areas.

We know that poachers are also a problem and will work with conservation officers to eliminate these two legged predators. However, we also suspect that the fruit bats and birds are being adversely affected by the jet engine noises generated on Andersen and we look to the Air Force and the U.S. Fish and Wildlife Service to address this situation in the best way possible. We only wish to now call the attention of this panel to the injustices that would be perpetrated and perpetuated should this designation of critical habitat not be further studied and evaluated in a joint effort between the U.S. Department of Defense, the government of

Guam, the owners of the Ritidian, Jinapsan and Urunao properties, the Fish and Wildlife Services and the Audubon Society.

Critical Habitat: To Stop ROTHF Project

On the issue of critical habitat, it must be understood by all concerned that the move for the critical habitat designation was triggered by a letter from the government of Guam. The letter was intended to stop the construction of the "Relocatable Over the Horizon Radar (ROTHR) in northern Guam, where nearly 3,000 acres of federal excess lands have been identified for return to Guam. When public hearings, on the ROTHF plans were scheduled, the notification was short and a shocking surprise. Government officials were unprepared to address the matter.

At that point in time, many in the Executive Branch thought that a critical habitat designation would encompass only those areas planned for the radar site and would provide the delay and time needed to mount a more effective fight against the military construction plans. At no time was the government of Guam aware that critical habitat designation would encompass 24,000 acres and the entire northern coastline.

The primary motive for the designation, was to prevent any delay in the release of federal excess lands already identified and the future release of other properties which may become excess to the needs of the Federal government.

Had there been any forewarning that a critical habitat designation would endanger the release of excess lands, now and in the future, it is doubtful that that letter would or would a legislative resolution of the same intent have been adopted. It should be pointed out that the support of the Guam Legislature given the governor was primarily to prevent the construction of the Navy's ROTHF Project.

Holistic Values and Culture

The problem of critical habitat designation is not the desirability of saving the "Fanihi", or other endangered species. There isn't a man, woman, or child who doesn't want to see the Fanihi population protected and replenished. No people are more aware of the cultural ties between

the "Fanihi" and the Chamorros than the Chamorros. Many of our children have never seen the "totot" or the "Fanihi".

When people begin to think that the endangered species are more important than the children, we must step back and reassess our priorities. No doubt, the destruction of the natural habitat of these birds are the primary reasons for the decline in their numbers. However, to conclude that designate the entire northern coastline of Guam as critical habitat will bring these birds back to the numbers once known may be drawing conclusions to quickly.

To simply declare the area from Puntan Dos Amantes to Marbo Cave as critical habitat will not solve the problem of protecting these species ... to simply state that by designating 36,000 acres of Guam's 130,000 total acreage would result in the replenishment of Guam's species is presumptuous ... to remove 25% of Guam's land mass from uses beneficial to the people of Guam is an injustice to the future generations who call Guam their home. As much as we respect the objectives of the Audubon Society and the environmentalists, we also have a responsibility to our children and the people of this Island.

Despite the positions taken by the Marianas Audubon Society, the National Audubon Society, the Sierra Club and other environmentalists, relative to the protection of endangered species in the continental United States, we would like to remind these groups that their comparisons can be likened to comparing apples to oranges.

Spotted Owl and Alaskan Ox

The proposal to declare the Olympic Mountain Range as critical habitat for the endangered spotted owl is very admirable. But the Olympic Mountain Range does not amount to 25% of the land mass of Oregon or Washington state.

Likewise, efforts to declare large parts of Alaska as critical habitat for the musk, ox, the polar bear, the brown bear and other endangered wildlife does not propose to deny the people of Alaska real estate that is critically needed for homes and schools.

Return of Federal Lands

For the record, we state that we support the return of excess federal lands to the government of Guam knowing full well that several members of the Legislature have already introduced legislation to receive these lands, and that upon verification return said lands to its owners and or heirs. Anything else would be not be supported by the government of Guam and thereby effectively ruining its return to the people of Guam.

Denial of Private Property Rights

That the United States government through its military machinery and bureaucracy would deny the most beneficial uses by the rightful owners of their private property is contrary to the tenants and principles of American Democracy.

The American Revolution was fought on the premise that a man's rights to full use of his private property is sacred. American Democracy today survives because of the unwavering belief of the American people that private property rights are sacred and inviolate. That the military establishment has unjustly denied these very foundations of American Democracy is incomprehensible and unconscionable -- no different than the denial of private property rights practiced by the totalitarian governments of the Communist bloc countries.

Denial of our Heritage

Since 1962, the Federal government has deprived Tatan family the full benefits of not only the Ritidian properties but also the right to unfettered use of prime beachfront property, or prime shore waters, and of prime hinterland to these shores. We have been denied the full potential of our inheritance and heritage.

On June 15, 1962, the United States filed a Complaint in Condemnation in the United States District Court of Guam. This action was brought by the Secretary of the Army exercising the power of eminent domain in order to take the Ritidian property knowing full well that the property would not be utilized, then as it is now, for any vital national security function.

Paragraph 4 of the Complaint states:

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

This same clause was also contained in the "Declaration of Taking" filed on June 15, 1962, by Elvis J. Stahr, Jr., Secretary of the Army. More importantly, when the "Judgement" was filed, District Court Judge Paul Shriver reiterated that "there is reserved, to the owners, their heirs, executors, administrators, successors and assigns, a right of ingress and egress. . ."

Since 1962, the Federal government has deprived and denied to our family the full benefits of unfettered access to approximately 260,000 square meters of prime beach-front property. We have been unjustly and unnaturally denied the full potential of our inheritance and heritage.

The Compensation

The only compensation received by our (Castro) family was approximately Ten Cents (\$0.10) per square meters in order that the Federal government may lock in the property, restrict access and exercise general police powers over private property. This in direct contradiction to the provisions of that government's greatest founding principle, the right to private property, its own agreements and the mandate of the Federal District Court. Our property is ours in name but full use and full harvest of its potential is not under our control.

Value of Land

As islanders, the value of the land, the beach and its waters, as a holistic whole, each part, each facet critical and integral to the other and to the whole, to us as a family can never be understated.

Proposed Land Exchange

We have been approached by the Commander, Naval Forces Marianas in regards to the families willingness to exchange the Jinapsan Beach property with other Federal properties, which will be declared excess. A letter to that effect has already been issued. Without further qualifications the family must state such an exchange would not be acceptable because it is our opinion that there are no properties on Guam that can compare to the pristine and serene beauty of Jinapsan. Additionally, the property to be declared excess was owned by other families who have a right to the return to that property once it is declared excess.

For the Castro Family to accept such an exchange offer would be an insult to that other family and would subject them to the same injustice that have existed for so many years on Guam. Additionally, what would the Federal government want with additional beachfront property? This is totally out of character and out of sync with the statements of former Defense Secretaries Casper Weinberger and Frank Carlucci, who support the release of all excess military lands in Guam.

History of Ritidian and Jinapsan

Relative to the initial purpose of this hearing ... that of returning properties situated within Ritidian Point to its rightful owners and heirs, let us focus in on the history of Ritidian. Prior to the American occupation of Guam, Jinapsan and Ritidian was used as a rest, restorage, and refueling harbor for mariners travelling past Guam. Casa Eriat, as the area was called, was a thriving community. It served as the beacon in the night sky to be followed by mariners sailing between Guam and Rota. There existed several Latte sites, a small boat harbor, and a rest and refueling area. Casa Eriat was accessible from both land and sea. By land, Casa Eriat was accessible from what we now call Potts Junction to the Ritidian Spur.

The Ritidian Spur leads from Potts Junction to the Ritidian light house and extends to the shorelines at Ritidian Point Beach below and over to Jinapsan. A review of the government of Guam's landownership

records, shows that the Ritidian Spur stretching for several miles and leads beyond Naval Communication Station and junctions into Route 9 going onto Andersen Air Force Base. The Ritidian Spur has always been a public right-of-way and remains so today! It was a public right-of-way during the Spanish administration ... it continued to be a public right-of-way during the American and Japanese occupation of Guam ... and even after the recapture of Guam, the Ritidian Spur continued to be a public right-of-way.

Change in International Posture

Furthermore, the shift and change in the international attitude and posture of the great powers -- from confrontational to peaceful accord -- indicates that these unjust policies of denial and exclusion are archaic and have no place in the modern world. The continued existence of such is hypocritical. Our families ask that the United States government practice what it preaches in other areas, and to other people of the world. We ask that what the U.S. preaches to the world be made just as applicable to the people and the land within its boundaries and under its control -- whether that control be colonialistic, anti-democratic and unnatural.

Request for Unfettered Access

We appear before this group of concerned officials to plead our case and request permanent access to our property. Over the years since World War II, we have been truly denied open access to our heritage. The access we are now given is restricted and restrictive. It does not permit the full use of the land and beach on which our forefathers toiled and which they protected for their progeny and is subjected to international political uncertainties of not only the Pacific region but the world. Simply stated, we are asking that the military and United States government honor its commitment to provide unfettered access, ingress and egress, to the property of the families and heirs of Ritidian, Jinapsan and Urunao. We appear at this meeting to resolve an injustice that has been a cancerous and festering sore for many years in the relationship between the military community and the families whose lands are adversely affected by overstated and over-exaggerated claims that the granting of access would compromise national security.

Access to Ritidian and Jinapsan

For this reason, we are here to resolve this longstanding issue, and once and for all secure the return of Ritidian as well as the establishment of a permanent and unfettered access to Jinapsan via Ritidian. For many years now, we have had access to our property only through Andersen Air Force Base.

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

This is not the intent of Paragraph 4 of the Complaint in Condemnation, nor is it the intent of the ruling and mandate of the Federal District Court. More seriously, we are not able to extend basic utilities such as water and power to our property and it is difficult to bring adequate quantities of building materials into the property to even build decent living quarters or for that matter picnic and barbeque facilities. All we are asking is permanent and unfettered access via Ritidian Point, which at one time belonged to the Castro Family.

Such a right-of-way would by-pass the Naval Facility at Ritidian thereby eliminating the need for ingress and egress through Andersen Air Force Base and its Tarague beach gate. Such a right-of-way would be permanent in nature and would be viable and totally satisfactory to the Castro Family as a means of ingress and egress. The Ritidian and Jinapsan property has pristine beauty unmatched by any other area on Guam. There are wide stretches of white sandy beaches and hinterland. The Castro Family with the permanent right-of-way through Ritidian Point, would be able to extend to our property the basic utilities with which we could build and better utilize the property. For many years we have had to carry even drinking water into the property. Building materials for the lean-to ranches and beach bungalows built for family use have had to be carted in on a piecemeal basis.

The Existing Bullcart Trail

As our suggestions for the access via Ritidian Point, we point to the existence of a bullcart trail which would facilitate the building of a more adequate access. This bullcart trail has been used by our family to gain access to Jinapsan from Northwest Field and Ritidian Point. This was the very same access that we are trying to reacquire and use as our permanent, unfettered access. However, this would not resolve the problems of the restrictions and restrictive orders under which the access to the property is granted to the family. In the name of justice, we are requesting your assistance to secure an unrestricted and unfettered permanent access to Jinapsan Beach through Ritidian Point. We ask this because we know that the military, and other Federal agencies, will be resistive to the granting of such access.

Military Road System

In the late 1940's, into the 1950's and 1960's, there was massive condemnation of private land holdings in northern Guam by the military. These properties were condemned for the specific purpose of constructing the Andersen Air Force Base, the Northwest Guam Airbase and Naval Communications, and the Army Signal Corp Communication Station (now known as Naval Facilities Guam).

The military designated a military road system for condemnation purposes and advanced numerous condemnation actions to condemn all rights and interests in roadways and in the lands beneath them. Route 3 up to Potts Junction was one such road that was condemned by a specific condemnation action. This Federal action was designed to extinguish private landownership and interests in the underlying areas.

However, no condemnation exists for the Ritidian Spur! After the passage of the Organic Act in 1950, those interests of the United States not reserved by the U.S. were transferred from the U.S. to the either the Department of Interior or to the government of Guam. The right-of-way beyond Potts Junction to Ritidian (the Ritidian Spur) is one of those interests in real property that was not reserved to the United States nor

was it condemned and therefore transferred to the jurisdiction of the government of Guam.

In the mid 1960's the military began to restrict access to private landowners. Access to private property and Military interference became an issue for the Eighth Guam Legislature. After a series of meetings with then Senator Kurt S. Moylan, the military admitted it had no jurisdiction over the public right-of-way, and apologies were made and so-called "restricted access" was restored. However, in 1974, the military asserted authority without any legal basis, established a sentry station and assigned permanent guards armed with rifles and other military police weapons, to restrict entry into the area. Since then, no free passage was allowed, except for recently when the military decided to remove the sentry station.

Ritidian and Jinapsan are not Virgin Territories

Contrary to what people have said, Ritidian and Jinapsan are not virgin territories. It was settled by our forefathers, and ever since has been our home away from home. Also, what should be looked at is the fact that Ritidian and Jinapsan is located on the northern fringe of the island. By virtue of its location, Ritidian and Jinapsan are highly susceptible to typhoons, rough seas, high winds, sand sifting, resulting in an ever changing topography.

Being on the northernmost fringe, Ritidian and Jinapsan does not have the high quality forest, which in our opinion, will furnish the most valuable habitat. For Federal officials to now say that the return of Ritidian and the access to Jinapsan cannot be granted nor can any part or portion of the remaining private land holdings in northern Guam be developed, because it would jeopardize endangered species and their habitat, robs our family of our inheritance and heritage.

Disregard for Species

At this time, we reiterate the fact that the United States government through its military machinery and bureaucracy has denied our family the most beneficial use of 113 acres. While the U.S. military owners of 15,360 acres have been allowed to clear, bulldoze and develop 4,620 of prime hinterland. This was done without regard for the species and protection of

their habitat. As we have stated earlier, the continued denial to return Ritidian and to grant access to Jinapsan is contrary to the tenants and principles of American Democracy; "that a man's right to full use of his private property is sacred."

All we ask is that our sacred right to full use of our property be respected. More importantly, notwithstanding any Federal law, rule or regulation, we ask that the 1962 Federal Court Judgement be implemented to provide permanent and unfettered access to our Family. The denial of our request to reclaim real property can be summed up with these words:

"TAO TAO TANO ... ENDANGERED SPECIES!"

Critical Habitat

The move for the critical habitat designation was triggered by a letter from the government of Guam. The letter was intended to stop the construction of the relocatable over the horizon radar in northern Guam, where nearly 3,000 acres of federal excess lands have been identified for return to Guam. When public hearings, on the radar plans were scheduled, the notification was short and a shocking surprise. Government officials were unprepared to address the matter. At that point in time, many in the Executive Branch thought that a critical habitat designation would encompass only those areas planned for the radar site and would provide the delay and time needed to mount a more effective fight against the military construction plans.

At no time was the government of Guam aware that critical habitat designation would encompass 24,000 acres and the entire northern coastline. The primary motive for the designation, was to prevent any delay in the release of federal excess lands already identified and the future release of other properties which may become excess to the needs of the Federal government. Had there been any forewarning that a critical habitat designation would endanger the release of excess lands, now and in the future, it is doubtful that that letter would or would a legislative resolution of the same intent have been adopted.

It should be pointed out that the support of the Guam Legislature given the governor was primarily to prevent the construction of the

Navy's Relocatable Over the Horizon Radar. The problem of critical habitat designation is not the desirability of saving the "Fanihi", or other endangered species. There isn't a man, woman, or child who doesn't want to see the Fanihi population protected and replenished. No people are more aware of the cultural ties between the "Fanihi" and the Chamorros than the Chamorros. Many of our children have never seen the "totot" or the "Fanihi".

When people begin to think that the endangered species are more important than the children, we must step back and reassess our priorities. No doubt, the destruction of the natural habitat of these birds are the primary reasons for the decline in their numbers. However, to conclude that designate the entire northern coastline of Guam as critical habitat will bring these birds back to the numbers once known may be drawing conclusions too quickly.

To simply declare the area from Puntan Dos Amantes to Marbo Cave as critical habitat will not solve the problem of protecting these species ... to simply state that by designating 36,000 acres of Guam's 130,000 total acreage would result in the replenishment of Guam's species is presumptuous ... to remove 25% of Guam's land mass from uses beneficial to the people of Guam is an injustice to the future generations who call Guam their home.

As much as we respect the objectives of the Audubon Society and the environmentalists, we also have a responsibility to our children and the people of this Island. Despite the positions taken by the Marianas Audubon Society, the National Audubon Society, the Sierra Club and other environmentalists, relative to the protection of endangered species in the continental United States, we would like to remind these groups that their comparisons can be likened to comparing apples to oranges.

The proposal to declare the Olympic Mountain Range as critical habitat for the endangered spotted owl is very admirable. But the Olympic Mountain Range does not amount to 25% of the land mass of Oregon or Washington state. Likewise, efforts to declare large parts of Alaska as critical habitat for the musk, ox, the polar bear, the brown bear and other endangered wildlife does not propose to deny the people of Alaska real estate that is critically needed for homes and schools.

Dedicating 25,000 out of 1,000,000 acres for the spotted owl is not the same as denying 25,000 out 130,000 acres to the people of Guam.

In this stead, we ask all concern to support Bill No. 72 while at the same time reassessing the true requirements of our people. We sincerely feel that the only way we will save the Fanihi, the totot, i sinisa yan i chichirica, is to eradicate the brown tree snake.

Thank you, and Si Yu'us Ma'ase for your attention and consideration.

FOR THE CASTRO FAMILY:


By: JAMES P. CASTRO

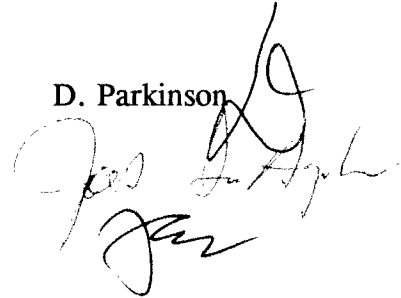
Introduced

MAR 13 1995

**TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) REGULAR SESSION**

Bill No. 72 (LG)
Introduced By:

D. Parkinson



**AN ACT TO DESIGNATE THE FORMER NAVAL FACILITY LANDS AT
RITIDIAN POINT AS PROPERTY OF THE GOVERNMENT OF GUAM; AND
DEMANDING THAT THE DEPARTMENT OF DEFENSE RETURN THESE
EXCESS LANDS TO THE RIGHTFUL OWNERS FROM WHICH THE LANDS
WERE ORIGINALLY TAKEN BY FORCE, DECEIT, AND OUTRIGHT
THEFT.**

1 **WHEREAS**, after World War II, the Department of Defense took the land
2 commonly known as Ritidian Point from the rightful owners claiming need for national
3 defense, under what can at best be described as dubious circumstances, with serious questions
4 as to whether the Navy in fact properly took title to the property;

5 **WHEREAS**, the property is no longer needed for national defense; and

6 **WHEREAS**, the Department of Defense has transferred control of the former Naval
7 Communications Facility at Ritidian Point to the Department of Interior's Fish and Wildlife
8 Service to be used as a "Critical Wildlife Habitat", and

9 **WHEREAS**, the Department of Defense continues to blatantly ignore the rights of the
10 People of Guam whose lands were taken in the name of National Defense, and is deliberately
11 preventing lands declared excess for National Defense needs from being returned to the
12 original and rightful owners, by transferring such land to other Federal Government agencies
13 for uses which will forever preclude local development, and

14 **WHEREAS**, this deliberate act of transferring excess lands that were, in many cases
15 taken under unscrupulous and deceitful means, to other agencies within the Federal
16 Government without considering the rights or needs of the original land owners or the needs of
17 the Territory of Guam is unconscionable, and

18 **WHEREAS**, it is obvious that the clear policy of the Federal Government is that such
19 lands now held by the Federal Government will never be returned to the People of Guam, but
20 will forever remain in the control of the Federal Government as vacant lands, whether
21 denominated as necessary for national defense, as parks, as wildlife refuges, or for other such
22 uses; and

23 **WHEREAS**, because the land resources on Guam are very limited, and because usable
24 land on Guam is even more limited, the plans of the Federal Government to designate virtually
25 all of the vacant land on Guam as wildlife refuges, bird sanctuaries, parks, etc. and thereby
26 precluding all meaningful use and development of these lands; is unrealistic irresponsible and
27 unresponsive to the needs of the people of Guam and

28 **WHEREAS**, while bird sanctuaries, wildlife refuges and the like are worthwhile uses
29 for land, extensive designation of such areas on Guam doesn't make sense because of limited
30 land resources; and

31 **WHEREAS**, the US Government's refusal to return lands to the rightful owners and
32 the Federal restrictions on the use and development on Guam not only hurts the rightful
33 owners but all the people living on Guam, since Guam can never enjoy its full economic
34 potential while the Federal Government continues its policies; and

35 **WHEREAS**, the current actions of the US Government is a continuation of a long-
36 standing policy of the Federal Government to:

37

38 a. Deprive the landowners of the use of their property, and

39

40 b. Retain a large portion of the island under Federal control in case the land is
41 ever needed by the US Government; and

42 c. Control the economy of the Government of Guam through restrictions on
43 land use and development, as well as other restrictive policies of the US Government;
44 and
45

46 d. Insuring that the island of Guam and the people living here are forever
47 second class citizens thanks to numerous beauracratc controls and ploys by various
48 agencies and departments of the United States, including most notably Department of
49 Defense and administration by Department of Interior in a manner reminiscent of the
50 Office of Indian Affair, and
51

52 **WHEREAS**, the sovereign right of the people of Guam to control what happens to
53 them or their lands continue to be ignored, rejected and trampled upon by the Federal
54 Government and its agencies who are now attempting to prevent excess lands from reverting to
55 the original and rightful owners through dirty tricks and underhanded methods, and

56 **WHEREAS**, such actions by the Federal Government perpetuates the colonialist
57 attitude the Federal Government has toward the people of Guam by preventing them from
58 asserting their sovereignty and rights of self determination, and

59 **WHEREAS** , every recent action of the Federal Government has had the effect of
60 pushing the people of Guam in the direction of independence; now therefore

61 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**
62
63

64 **Section 1.** A new Section ____ is added to title ____ of Guam Code Annotated, to read
65 as follows:

66 "Section _____. As an act of self determination and as an act of autonomy, the lands
67 of the former Naval Facility at Ritidian Point are hereby designated as lands of the
68 Government of Guam, to be held in trust by the Government of Guam for the benefit of the
69 original owners, to be so held in trust for the shortest time possible until the land can be

70 returned to the original owners or their heirs. The purported transfer of the land from the
71 control of the Department of Defense to the US Fish and Wildlife Service and the designation
72 of the land as a critical habitat are hereby repudiated and cancelled, as is the original taking by
73 the U.S. Government, which taking the Legislature finds to be theft from the original owners.

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