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KUMISION I TĀNO' SAINA-TA
(Guahan Ancestral Lands Commission)



JOHN T. BURCH
Executive Director

November 18, 2021

Honorable Therese M. Terlaje
Speaker and Chairwoman
Committee on Health, Land, Justice and Culture
I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagatna, Guam 96910

Re: Oversight Hearing - GALC

Håfa Adai Speaker Terlaje:

Right after World War II, the United States military implemented an aggressive policy of land grabbing. This left an estimated 1,350 families without access to real property and water resources that had been in their families for centuries. Many of these landowners received little or no compensation for land that was taken. And while it may “technically” be correct to state that many of the original landowners were compensated, most claim that the transactions were unfair and made under duress. That the United States federal government had dealt unfairly with the landowners and had obtained land under conditions and procedures which failed to protect their right to fair and just compensation.

Having been denied many basic human rights, CHamoru leaders spent years pushing for greater autonomy resulting in the passage of the Organic Act in 1950. Drafted without input from the people of Guam, the Act established Guam as an organized unincorporated territory of the United States and granted United States citizenship to its peoples who were previously United States nationals. The Organic Act retained plenary power to amend or enact legislation for Guam to the United States Congress and provided the Department of the Interior with direct control over the affairs of the local government. This allowed the United States to retain thousands of acres of land that it had confiscated and specifically excluded claims for these properties from the War Claims Act of 1948.

The War Claims Act of 1948 provided compensation for “civilian American citizens” captured on Guam or any other territory or possession of the United States attacked or invaded by Japan. It did not, however, provide compensation for the residents of Guam, who were United States nationals, but not “American citizens,” prior to 1950. Congress amended the War Claims Act in 1962 to extend compensation to United States nationals for property loss, but specifically excluded claims for property located on the island of Guam.



In 1976, Attorney John A. Bohn filed suit on behalf of Guam to recover land he charged had been taken by the United States Navy with only minimal compensation. This resulted with the United States federal government agreeing to a \$39.5 million settlement to land claimants. Payment to be made at the value of the land at the time it was condemned. While many landowners accepted payment, several did not. Some wanted their property returned and rejected the land settlement. Some viewed the payment as a lease and not a purchase. And some were off-island and were unaware that they were eligible to file a claim.

In 1996, the unclaimed balance of more than \$4 million of the land claims money was deposited to the United States Treasury, with future payments to be made only by petitioning the court. Our research indicates that of the twelve lots located in the area of Eagles Field, three did not file for additional compensation from the John Bohn land claims settlement.

In 1994, the "Guam Excess Lands Act", U.S. Public Law 103-339 specifically identified parcels deemed "excess" by the United States federal government to be returned to the Government of Guam with restrictive covenants that required the properties be used for "public benefit". The Act also required the Government of Guam to prepare a land use plan for the properties as a condition for their release.

In 1996, the Guam Legislature created a land use plan that defined the return of land to original landowners as an "economic benefit" that met the requirements of "public benefit" use with the passage of Public Law 22-145.

In 1999, the Guam Legislature created the Guam Ancestral Lands Commission and tasked it to distribute the excess lands to the original landowners or to their heirs. Except in circumstances when the land is clearly under existing public use or are non-ancestral lands.

In 2000, U.S. Public Law 106-504 established new rules for the transfer of properties deemed excess by the United States federal government for return to the Government of Guam. Of concern is subsection (b) Conditions of Transfer which states. "Any transfer of excess real property to the Government of Guam may be only for public purpose and shall be without further consideration", and (2)(D) "the property is used only for a public purpose and cannot be converted to any other use." And lastly, subsection (c) (5) where, The term "public purpose" means those public benefit purposes for which the United States may dispose of property pursuant to section 203 of the Property Act, as implemented by the Federal Property Management Regulations (41 CFR 101-47) or the specific "public benefit" uses set forth in section 3(c) of the Guam Excess Lands Act, ...except that such definition shall not include the transfer of land to an individual or entity for private use other than on a nondiscriminatory basis."

2019, in a legal brief to the **Guam Economic Development Authority**, Attorney Terrence Brooks advises, "Public Law 106-504 more fully defines "economic development." It does so by stating that "such definition shall not include the transfer of land to an individual or entity for private use other than on a nondiscriminatory basis." As noted earlier, this means that if the property is given to "individuals or entities" it must be done in a way that is fair and equitable to all people. This is at odds with Guam law that requires excess lands

returned by the Federal government to be given only to original land owners. In essence, the term "economic development" has different meaning under each law."

We are concerned that while it has been the general consensus since the passage of Public Law 22-145 in 1996 that the United States federal government will not retake lands returned to the original landowners, it appears that U.S. Public Law 106-504 makes the federal government's position stronger should it decide to enforce the restrictive covenants contained in its deeds to the Government of Guam. Should the Government of Guam transfer property to the Guam Ancestral Lands Commission it could be viewed as a violation of U.S. Public Law 106-504. It appears the language used in U.S. Public Law 106-504 nullifies the intent of Public Law 22-145. It should be noted that several parcels in the Department of Navy Net Negative Inventory inclusive of the twelve lots located in the area of Eagles Field fall within the transfer authority of U.S. Public Law 106-504.

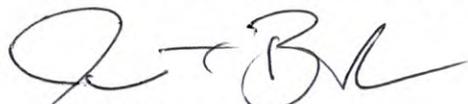
The Guam Ancestral Lands Act, Public Law 25-45, established public policy to return ancestral lands declared excess by the federal government to the original landowners. We strongly support this policy. We humbly ask for your support and guidance so that any return of properties to the original landowners or their heirs will not lead to inverse condemnation. We are concerned of the effect that this degree of uncertainty will have within the legal and title company communities. As of today, the Commission's aggregate amount of land returned is 2,643.12 acres.

As to your request regarding the status of notification to landowners of potential returns, we provided your office with our contact log of individuals who have contacted us regarding potential returns. Guam Ancestral Lands Commission will normally contact ostensible landowners when we are notified by the Department of Land Management that property has been declared excess as required by Public Law 25-45 Section 80104 (d). Then we will publish a notice and return the land back to the original landowners or heirs. Should the Government of Guam decide to keep the property for continued public benefit then the original landowners will become beneficiaries of the Land Bank Trust. Finally, we forwarded a list of ostensible owners of properties that have been listed as transfers in progress to your office today.

Attached for your review is a copy of GALC Draft Resolution 2021-010 that was passed by the Guam Ancestral Lands Board of Commissioners at their regular meeting yesterday, November 17, 2021, affirming their support for the return of ancestral lands to the original landowners.

On behalf of the Commission, we look forward to working with the 36th Guam Legislature to resolve this issue.

Dangkolo na Si Yu'os Ma'åse',



JOHN T. BURCH
Executive Director, GALC



GUAM ANCESTRAL LANDS COMMISSION RESOLUTION NO. 2021-010

MISSION STATEMENT

WHEREAS, the Guam Ancestral Lands Commission was created by Public Law 25-45 on the 9th of June, 1999; and

WHEREAS, Public Law 25-45, intended “to pursue just remedies to redress the harm done to landowners as individuals and to Guam as a whole, resulting from the taking of ancestral lands by the United States federal government and the government of Guam on or after January 1, 1930; and

WHEREAS, Title 21, Guam Code Annotated, Chapter 80 and Public Law 25-45, specifically describes original land as land which was confiscated or condemned by the United States of America or the government of Guam on or after January 1, 1930 and to which a prior private ownership interest was held by a resident of Guam on January 1, 1930; and

WHEREAS, Public Law 25-45 created the “**Land Bank Trust**”, transferring former Spanish crown lands and other non-ancestral lands to the Guam Ancestral Lands Commission; and

WHEREAS, the Guam Ancestral Lands Commission, in accordance with Title 21, Guam Code Annotated, Chapter 80 and Public Law 25-45, has the responsibility for the return of excess government lands to its original land owners except in circumstances when land is clearly under existing public use or lands were Spanish Crown Land; and

WHEREAS, the Guam Ancestral Lands Commission Board of Commissioners, in accordance with Title 21, Guam Code Annotated, Chapter 80 and Public Law 25-45, is composed of seven members who are residents of Guam and descendants or heirs of ancestral land owners and whose mission is to facilitate and expeditiously return all excess U.S. federal and government of Guam lands back to its original land owners; and

WHEREAS, it is the desire of the Guam Ancestral Lands Commission Board of Commissioners to be notified immediately and to be allowed to participate in the process of the return of excess U.S. federal and government of Guam lands to the original landowners; and

WHEREAS, on November 17, 2021, the Guam Ancestral Lands Commission Board of Commissioners met at a regular meeting, via Zoom teleconference, to discuss the desire of Guam ancestral land claimants to lay meritorious claim to “**Just Compensation**” as defined in Section 80101 of Public Law 25-45; and

WHEREAS, on November 17, 2021, the Guam Ancestral Lands Commission Board of Commissioners at their regular meeting, via Zoom teleconference, by unanimous vote, passed a motion to reaffirm its mission statement.

NOW THEREFORE BE IT RESOLVED, The Guam Ancestral Lands Commission Board of Commissioners attest to the reaffirmation of its **Mission Statement** pursuant to Title 21, Guam Code Annotated, Chapter 80 and Public Law 25-45, which defines the Guam Ancestral Lands Commission as “**Land Claims Facilitator**”; mandates the establishment of a “**Land Bank Trust**”; and compels “**Just Compensation**” as return of ancestral Lands and/or monetary compensation, by:

1. Facilitating the return of excess U.S. federal and government of Guam lands to their original owners; and
2. Pursuing and advocating for the rights of original land owners and their heirs, and the return of excess U.S. federal and government of Guam lands to their original owners; and

3. Maintaining a “Land Bank Trust” for those disposed original land owners who will never realize the return of their ancestral lands.

***SO SAYETH THE GUAM ANCESTRAL LANDS COMMISSION AND ITS CHAIRMAN,
SECRETARY / TREASURER AND EXECUTIVE DIRECTOR THIS 17TH DAY OF
NOVEMBER IN THE YEAR OF OUR LORD, 2021.***

RONALD F. ECLAVEA, Chairperson

Date: _____

MARIA G. CRUZ, Secretary/Treasurer

JOHN T. BURCH, Executive Director