

LAND TENURE ON GUAM

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We are living in the most dynamic age mankind has known. Events are happening so rapidly, and situations changing so quickly, that it is difficult to maintain a realistic perspective. Land, the basic asset of the territory, is vitally effected by these events and situations. The wisest land use to minimize the realization of valid human needs must be our goal.

Land Tenure

Land tenure is the way in which people in an area obtain, use and distribute rights to land--the right to plant, to harvest, to build, to walk across, to give, lend, will or sell or to draw tribute from.

A person does not own land, he owns some rights in it, but not all rights.

Land tenure systems are man made. They exist to serve the needs of the citizenry. Our land tenure system is adapted to our particular physical environment and to our way of life. This pattern is not constant. It has changed considerably over the last thousand years.

Guam's tenure system serves economic, social, and political ends--a framework for distribution of the territory's land resources. It lays down rights and obligations of Guam's citizenry to one another in respect of these resources.

A land tenure system designed to give a maximum standard of living should combine the following features: (1) It must be clear who holds what rights in land; (2) Tenure must be secure; (3) Improvements must be protected; (4) There should be no unproductive

right holders; (5) Agricultural land should go to those best able to farm it; (6) The soil must be protected and used; (7) Holdings should be of suitable size, shape and location; and (8) Speculation should be discouraged.

History of Guam Land Tenure

Guam's tenure system originated many years ago. As the system has been transmitted from generation to generation, it has been modified, sometimes a little, sometimes a lot, to meet changes in environment, population, economy and political organization. It has changed from a system based on a subsistence economy to one necessary to meet today's standard of living. These changes can be most readily analyzed by reviewing distinct periods in our history from the ancient Chamorros, through the Spanish era, through prewar naval government, through postwar naval government and through civil government to date.

The U.S. Congress in 1945, provided for payment of property claims to be administered by the Land Claims Commission. Five thousand nine hundred thirty-five property claims totaling \$10,427,404 were processed by 1950. They further authorized the transfer of U.S. land to the Naval Government for sale to Guam residents for their rehabilitation and settlement. Private land was condemned by the U.S. for this purpose and some 1668 village lots were sold in Agana (113 lots), Asan (103), Barrigada (273), Dededo (188), Piti (60), Santa Rita (148), Sinajana (439), Talofofo (150), and Yona (194). In addition, over 1000 government-owned houses and 432 lots were sold in the above villages plus Agat and Toto, and sometime later in Dededo. The 1,625,692 square meters included were valued at \$538,241.00.

Government of Guam Land

The government of Guam has acquired land through transfer under the Organic Act, by purchase, as a gift, through tax forfeiture, by exchange and negotiation. U.S. Public Law 86-664, transferred the Paseo de Susana and the Agana Boat Basin to the government of Guam in 1960. U.S. Public Law 88-183 authorized the transfer of submerged lands to the government of Guam in 1964, subject to disposition approval by the Secretary of the Interior.

Prior to the passage of the Organic Act of Guam, government land was under the jurisdiction of the Naval Government of Guam. Much of this land was acquired through the Treaty of Paris, which turned over to the United States of America on December 7, 1898 all public lands under the control of Spain. Eventually, a larger amount of land was acquired by purchase and condemnation for military purposes. Other lands were acquired to serve administrative functions of the territory under the Naval Government of Guam.

Following the Organic Act, public lands were not transferred entirely to the civil government. Section 28 of the Organic Act provided for the disposition of these lands as follows:

(a) The title of all property, real and personal, owned by the United States in Guam and employed by the Naval Government of Guam in the administration of the civil affairs of the inhabitants of Guam... shall be transferred to the government of Guam within 90 days after the date of enactment of this Act;

(b) All property owned by the United States in Guam not reserved by the President within 90 days after the enactment of this Act is hereby placed under the control of the government of Guam;

(c) All property owned by the United States in Guam, the title to which is not transferred to the government of Guam by Subsection (a)... and (b) hereof, is transferred to the administrative supervision of the department or agency designated by the President...provided that the agency head shall be authorized to lease or to sell, on such terms as he may deem in the public interest, any property, real and personal, of the United States under his administrative supervision in Guam not needed for public purposes.

At the conclusion of the prescribed 90 days in Section 28 (b), the President of the United States issued Executive Order 10178, dated October 30, 1950. In this order, three types of property were reserved for the use of the United States of America. They included:

- (1) Property required for military use;
- (2) Property remaining available to military and other U.S. agencies, and
- (3) Property selected by the Secretary of the Navy for transfer or sale to persons in replacement of lands acquired for military use. This property was transferred to the Department of the Interior.

In addition, all personal property of the United States in Guam was to be retained by the agency having custody of such property. These acts left the government of Guam with the following property:

- (1) Property used in civil administration;
- (2) Property acquired by the Naval Government of Guam as part of the administrative functions, including property previously

used for administration, and property acquired through tax forfeiture, and

(3) Lands ceded to the United States by Spain and other U.S.A. lands not designated as replacement lands.

On February 26, 1952, the Secretary of the Interior released to the government of Guam, by a fee simple determinable title, lands designated in Executive Order 19178 as replacement lands for those acquired by military requirements.

By the authority given to the department or agency supervising United States property in Guam under Section 28 (c) of the Organic Act of Guam^{WJ}, the Secretary of the Interior stated that ...

"The Government of Guam may, without the approval of the Secretary of the Interior, sell, lease or otherwise dispose of any of these lands for rehabilitation and resettlement purposes in accordance with Section 40 of the Public Law 33 of the First Guam Congress, and (2) for homestead purposes in accordance with Article 8 of Public Law 33.

The conveyance also made these lands available for designation by the government of Guam for conservation, recreational and other public purposes. Under the terms of the conveyance, however, the sale, lease or disposal of the lands for other than homestead or rehabilitation and resettlement purposes would automatically cause a reversion to the United States of title to any parcel or parcels so disposed of unless prior approval of the Secretary had been obtained."

Several interpretations have been made concerning the extent of land transferred to the Department of the Interior under the Organic

Act of Guam and subsequently Executive Order 10178, as provided in the Organic Act of Guam. The interpretation that all U.S.A. property not used in the civil administrative functions of the Naval Government of Guam and property not used for military or Federal agency purposes was transferred to the Department of the Interior is invalid, because (1) Section 28 (b) would be superfluous and would apply to the Department of the Interior rather than the government of Guam, and (2) Executive Order 10178 designated the extent of public land retained by various agencies of the Federal Government with "Interior Lands" being controlled by Section (c). The Department of Interior, Office of Territories, letter dated October 29, 1965, substantiates the error of this interpretation.

An additional aspect of the transference of public lands is the extent of replacement lands indicated by a non-existent list prepared by the Department of the Navy and given to the Department of the Interior. The Department of the Navy had no such list and description adequate to identify the transferred lands with accuracy. These lands were not clearly defined and existed only in reference to a grid system whereby any public land included within a particular unit or units were designated as replacement land.

Executive Order 10178, in reality, reserved land only for military use and did not make available at the time of its issuance replacement land, in that all unreserved U.S. land had passed in fee simple title to the government of Guam by the Organic Act, Section 28 (b), previously. After October 30, 1950, all U.S. lands reserved under Section 28 (b) above, when excess to U.S. or military needs were available for transfer to the government of Guam under conditions prescribed by Executive Order 10178. Only such property transferred after

October 30, 1950 would require sales approval by the Department of the Interior, and only on such sold property would title revert to the United States, should such approval not have been requested or granted.

The exchange of government land for private land, when in the government interest, on a value for value or area for area basis, does not require the approval of the Secretary of the Interior, although such land was procured under the provisions of Executive Order 10178.

The above interpretation was not agreed upon until February 1966, which accounted for considerable confusion on the status of lands transferred for 15 years after their transfer. There were no exact figures as to the area of the public domain land acquired under the Treaty of Paris, although it was estimated to total 36,000 acres. Approximately 27,250 acres were transferred to the government of Guam under the Organic Act. The exact amount will not be known until surveys are completed and claims to private ownership adjudicated and registered. Since World War II there has been a decrease in their area due to claims of ownership based on use and occupancy. Many of these claims have been validated and title to the land registered in the name of private owners.

Between 1945 and June 30, 1963, the government of Guam sold 2595 tracts of land, a total of 972 acres. During the same period the territorial government purchased 218.7 acres of private property valued at \$640,982.00. From June 30, 1963 to June 30, 1967 the government of Guam exchanged 85.95 acres of land it owned for land it needed valued at \$69,219.00.

Of the 7,438 acres utilized by individuals under land use permits at the time of Typhoon Karen, 1/5 were used for grazing, the balance for farming and some 119 residences.

In fiscal year 1965, its most active year, the government of Guam issued 943 land use permits covering 4,409 acres for a rental of \$36,800.00, and in fiscal 1967 issued 760 permits for 3,675 acres, at a rental of \$35,457.00

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