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CHAPTER 74
LANDOWNERS' RECOVERY FUND

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§ 74101. Legislative Purposes.

The Legislature hereby finds and determines that loans made pursuant to 12 GCA, Chapter 72 (P.L. 16-111, Chapter II, Section 21) are not adequate to address the need of landowners to pursue appropriate remedies to redress the harm done to landowners as individuals and to Guam as a whole when a very substantial percentage of the land on Guam was taken by the Naval Government of Guam or the government of the United States through proceedings in eminent domain, or under threat of eminent domain, following World War II. Additional powers not necessarily set out in 12 GCA §2103 or other sections of this title are

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granted to the Authority to accomplish the Legislative purposes set out in this Section. The legislature recognizes that the land takings have adversely affected nearly every family on Guam, that the land takings completely changed the lifestyle and economy on Guam from a self-sustaining agricultural way of life to an economy where the populace must obtain cash to provide for a livelihood, and that the prices paid for the land during the time of the takings is believed by the landowners to be much too low and therefore unfair. The legislature finds also that the public well-being has suffered severely and continuously from the loss of use of the land taken by the Naval Government of Guam or the United States government in that the development of the economy and future of Guam has been curtailed, particularly when adequate compensation to offset this loss, which could have been used for education, business ventures and other endeavors by the populace, has not been forthcoming. The Legislature further finds that recovery of land and adequate compensation for land takings by landowners will greatly benefit the Territory of Guam by increasing the tax base for future property tax assessments and by increasing receipts due the territory assessed on interest earned on recoveries by landowners according to the provisions of the Territorial Income tax. The purpose of this Chapter is to further and supplement the aims established under 12 GCA, Chapter 72 (P.L. 16-111, Chapter II, Section 21) by declaring the following:

(a) That it is in the public interest to seek, from the Government of the United States, creation of an adequate program of remedies to the people of Guam in general and to their Government for the adverse public impact on Guam and its citizens of the land takings during and after World War II;

(b) That it is in the public interest to investigate and pursue, on behalf of all of the landowners, the taking of such initiatives as may be reasonably necessary to secure to the private landowners restoration of title, and where possible consistent with U.S. security requirements, possession of land improperly taken by the Naval Government of Guam or the United States government during and after World War II, and where possession cannot be restored due to U.S. security or other interests, to secure making of leasehold arrangements at present fair market values, to compensate such landowners for ongoing use and occupancy of their land by U.S. military authorities;

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(c) That it is in the public interest to secure to all landowners proper and just compensation for use of lands from time of taking until time of actual return of land or of making of proper leasehold arrangements;

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

§ 74102. Definitions. As used in this Chapter:

(a) *Landowner* means the government of Guam and any person who has or whose predecessors in interest had beneficial ownership of any land interest on Guam which interest was adversely affected by taking of the Naval Government of Guam or the United States Government between July 21, 1944 and November 15, 1990, or the executor or administrator of the estate of such person;

(b) *Authority* means the Guam Economic Development Authority.

(c) *Facilitator* means the Guam Ancestral Lands Commission.

SOURCE: Subsection (a) amended by P.L. 20-222:3. Subsection (c) added by P.L. 25-45:4(b).

§ 74103. Landowner's Recovery Fund Created.

There is created the *Landowner's Recovery Fund* to further the purposes of 21 GCA Chapter 80, to grant loans, or guarantees of loans or grants-in-aid to landowners, or to defer costs or fees of professional services required by those landowners or class of landowners whose land, rights in land or interest in land were taken by the Naval Government of Guam or the United States Government on or after January 1, 1930, in order to assist such landowners with pursuit of adequate remedies for such taking, such remedies to include just compensation or return of the land or access to landlocked lots or other adequate redress of an adverse impact of the land takings, all to be on a reimbursable basis, according to standards and conditions set out in § 72108 of this Article. The Fund shall be utilized to make funds available for landowners to contract with attorneys and necessary non-attorney consultants and for the Facilitator, on behalf of a class of landowners, to likewise contract for such professional services as are required to further

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the aims of this Article. The Fund shall be utilized to make funds available as necessary for real property research, survey, pre-trial discovery, pre-litigation settlement negotiation or litigation in the circumstances where all non-litigation remedies have been attempted without satisfactory result.

§ 74104. Appropriation.

The sum of Two Hundred Twenty Thousand Dollars (\$220,000) is appropriated from the General Fund to the Landowner's Recovery Fund for the uses specified in this Chapter. Additionally, there is authorized to be appropriated by legislative enactment Four Hundred Ninety-Five Thousand Dollars (\$495,000) from the General Fund to the Landowner's Recovery Fund for the uses specified in this Chapter.

SOURCE: Amended as §2927 (former section) by P.L. 25-45:4(c).

§ 74105. Administering Authority.

The Board of Directors of the Guam Economic Development Authority shall be the administering authority of the Landowner's Recovery Fund and shall administer the Fund and make loans therefrom. The Board shall promulgate all rules and regulations necessary for the operation of the fund in accordance with this Chapter. Interest charged on loans shall not exceed six percent (6%) per annum.

§ 74106. Classes of Loan.

There shall only be one (1) class of loan which may only be used by the attorneys for a land owner for necessary fees, costs and expenses, including expenses of expert witnesses and other consultants, in connection with prosecution of claims for redress of damages or restoration of property.

§ 74107. Eligibility Requirements for Loans.

To be eligible for loans under this Chapter an applicant shall be a landowner as defined in § 74106(a) of this Chapter.

§ 74108. Loan Standards and Conditions.

All loans extended under this Chapter shall comply with the following standards and conditions:

- (a) Application for Assistance. Any landowner may apply for a loan of funds by setting forth on an application form authorized by the Authority a statement showing:

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- (i) name of the landowner,
 - (ii) description of the land interests which are the subject of the claim,
 - (iii) written description of the plan of the landholder to seek compensation, return of land or redress of harms suffered,
 - (iv) a copy of a written fee agreement between the landowner and attorney who represents the landowner in pursuit of the claim,
 - (v) if the applicant has an outstanding debt to an appraiser, an assignment of not less than ten percent (10%) of the loan proceeds to the appraiser to be applied against the debt, and
 - (vi) a proposed budget for the expenditure of all loan proceeds;
- (b) **Limitation on Amount.** No single loan under this Chapter shall exceed Two Hundred Twenty Thousand Dollars (\$220,000).
- (c) **Promissory Note and Assignment.** Any recipient of a loan shall, at the time the loan is granted, execute a promissory note to Guam Economic Development Authority, payable to the Authority on demand after the recipient receives court awarded attorney's fees or expenses in connection with the litigation. Any such recipient shall also execute, at the time the loan is granted, an assignment to Guam Economic Development Authority of proceeds ultimately obtained by such recipient in an award of court awarded fees or expenses in connection with litigation. As a condition of receiving the proceeds of the loan, the attorney of the recipient (except for the Public Defenders Service Corporation), shall personally guarantee payment of said note to the extent of proceeds ultimately obtained by such recipient in an award of court awarded fees or expenses in connection with litigation.
- (d) **Notices Filed in Court File.** The Authority shall cause notices to be filed in the Court File of pending litigation setting forth the fact of the making of such assignments and the interests of the Authority under such assignments and setting forth the interest of the Authority and Government of Guam in respect to funds previously provided by P.L. 14-98 and P.L. 16-111.

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(e) Accounting for Funds Under this Chapter. The use of all funds loaned under this Chapter shall be accounted for on a monthly basis in a detailed accounting submitted to the Authority by the applicant which shall indicate the date, type of expenditures made and copies of billings received by the landowner for services rendered to the landowner in preparation and pursuit of claims under this Chapter.

(f) Accounting and Auditing of Funds Provided for Prosecution of Claims. The Authority shall employ independent outside certified public accounts for the purpose of regularly auditing the books and records of the Authority and of each applicant and the attorney of each applicant with respect to the administration of funds for the purpose of prosecution of claims hereunder and such auditor shall conduct such audits and make such reports no less frequently than quarterly during the first year after enactment of this Legislation and no less frequently than semi-annually thereafter. The reports shall be forwarded by the Authority to the Legislature immediately after their preparation.

(g) Open Records. As a condition of receiving any loan, all applications by applicants hereunder, all records with respect to administration of funds by attorneys and all reports of audit shall be public records regularly available for inspection or photocopying by the members of the general public or the news media.

§ 74109. Transfer of Funds.

Any money remaining in the Land Claims Loan Revolving Fund established under 12 GCA Chapter 72 (P.L. 16-111, Chapter II, Section 21) shall be transferred to the Landowner's Recovery Fund established by this Chapter.

§ 74110. Source of Funds.

The revenues obtained by the government pursuant to the license fee imposed by 11 GCA § 22202 shall be a source of funding for the appropriation made in § 74108 of this Chapter.

§ 74111. Land Claimants List.

Any appraiser who is owed money by land claimants shall file a list of such land claimants and the amount of the debt with the Authority. Such statements shall be confidential except that the Authority may

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inform a land claimant who makes application under this Chapter of the amount claimed from such applicant by the Appraiser.

§ 74112. Legislative purpose for §§ 74116 through 74122 of this Chapter.

The purpose of the enactment of § 74116 through § 74122 of this Chapter is to supplement and further the aims established under Chapter 72 of this Division. The Legislature finds and declares:

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

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

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

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

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

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

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SOURCE: Added by P.L. 20-222:2. Amended by P.L. 22-111:2 (4/11/94).

§ 74113. Appropriations.

(a) Two Hundred Twenty Thousand Dollars (\$220,000) are appropriated from the General Fund to the Landowner's Recovery Fund for the uses specified in this Chapter.

(b) Two Hundred Fifty Thousand Dollars (\$250,000) are appropriated from the General Fund to the general operating fund of the Authority for the uses specified in this Chapter.

(c) Notwithstanding any other provision of law, the Authority is authorized and directed to utilize additional funds as are required and which are derived from the Authority's operations, commercial or industrial park lot rentals, or reimbursements, if any, to the Landowners Recovery Fund from the conclusion of 'Option 3' land claims litigation for the uses specified in this Chapter.

SOURCE: Added by P.L. 20-222:4.

§ 74114. Authorization for Appropriations.

(a) Four Hundred Ninety-Five Thousand Dollars (\$495,000) are hereby authorized to be appropriated from the General Fund to the Landowners Recovery Fund for the uses specified in this Chapter.

(b) Seven Hundred Fifty Thousand Dollars (\$750,000) are hereby authorized to be appropriated from the General Fund to the general operating fund of the Authority for the uses specified in this Chapter.

SOURCE: Added by P.L. 20-222:5.

§ 74115. Easements and Rights-Of-Way.

The Authority is authorized to grant to private landowners or otherwise create such easements and rights-of-way across Lot No. P04.1, Machanao, as in its discretion are required to increase the use and enjoyment and facilitate the development of private property adjacent to Lot No. P04.1, Machanao.

SOURCE: Added by P.L. 20-222:6.

§ 74116. Environmental Impact Study.

The Guam Environmental Protection Agency is hereby directed to carefully study, determine and then report to the Legislature the full scope of the adverse environmental impact of unclean, unsafe military hazardous waste dump sites following a study to be performed under

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funds to be provided by agreement with the Authority. The Authority is authorized to use funds appropriated in this Chapter or earned by the Authority from industrial parkland rentals or other operations for this purpose.

SOURCE: Added by P.L. 20-222:7.

§ 74117. Appraisal Study.

The Authority is directed to produce an economic impact appraisal study to appraise the impact of undue military restriction upon peaceful civilian access to the development of public and private landlocked parcels in Northwest Guam. The Authority is authorized to use funds appropriated in this Chapter or earned by the Authority from industrial parkland rentals or other operations for this purpose.

SOURCE: Added by P.L. 20-222:8.

§ 74118. Authorization for Use of Proceeds Resulting From the Authority's Receipt of Damage Claims Awards.

Upon determination of the adverse economic impact and damage done private landowners and the government of Guam resulting from long term loss of use due to unduly restricted access and the maintenance of unsafe land polluting dumps, the Authority is authorized and directed to seek recovery of land, public rights in land, and all costs due private landowners and the government of Guam. The money proceeds of this recovery attributable to damage or loss of use of land belonging to the government of Guam, if any, are earmarked for the Authority's development of parkland, beach and public amenities at Lot No. P04.1.

SOURCE: Added by P.L. 20-222:9.

§ 74119. Professional Services.

(a) Mandate to obtain services. The Authority shall represent the government of Guam as the real party in interest to maintain any appropriate cause of action for claims for return of public rights-of-way, for damages or injunctive relief or any other cause of action or appropriate relief in connection with military dump sites, and for challenging the designation of critical habitat and the establishment of a wildlife refuge in Guam, and is directed to retain special legal counsel and appraisal, economic evaluation, land survey, engineering and environmental consultants, if and as required, to accomplish the purposes of this Chapter. The Attorney General of Guam, the Director of Land

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Management and the Administrator of the Guam Environmental Protection Agency shall provide the Authority their full cooperation in the implementation of the provisions of § 74116 through § 74122 of this Chapter.

(b) Mandate to take action within thirty days. Within thirty (30) days of the effective date of the amendment adding this subsection (b) to this section, the Authority shall obtain survey services and accomplish the survey and mapping of public rights-of-way in northern Guam known as Bahadan Gutos, Bahadan Uruno, Bahadan Sagua, Bahadan Talisai, Bahadan Cotiez, Bahadan Ritidian, and any other areas determined to be public rights-of-way. Additionally, within thirty (30) days of the effective date of such amendment, the Authority shall file a complaint on behalf of the people of Guam and as the real party in interest for land registration of the public rights-of-way set out in this subsection.

SOURCE: Added by P.L. 20-222:10. Amended by P.L. 22-111:3 (4/11/94).

§ 74120. Title.

Sections 74112 through 73120 of this Chapter shall be known and may be cited as *The Northwest Territory of Guam Act*.

SOURCE: Added by P.L. 20-222:11.

§ 74121. Special Litigator.

The Authority shall hire or retain an attorney or law firm specifically to prosecute legal action on behalf of the people of Guam as specified in § 74119 of this Chapter. The attorney or law firm retained by the Authority may hire, within the level of appropriation made available for the Office of Special Litigator, an additional attorney, attorneys, or a law firm, to assist in the furtherance of the legal action authorized by §§ 74118 and 74119 of this Chapter. The Special Litigator shall be hired or retained by the Board of Directors of the Authority within thirty (30) days of the enactment of this section. Funds held within the Landowners Recovery Fund, as well as appropriations made to the Authority pursuant to §§ 74113 and 74114 of this Chapter, are to be used for the purposes of §§ 74118 and 74119 of this Chapter. The Authority shall enter, on behalf of the people of Guam, the ongoing litigation initiated by private landowners to challenge the designation of land in Guam as critical habitat or a wildlife refuge and is authorized to make grants for this purpose. In the event such private landowners receive monetary damages or any recovery of legal costs in the course of such litigation, they shall

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reimburse the Landowners Recovery Fund their pro rata share of such damages and costs that the Court determines in such action represents the value of the services to such landowners rendered by the Special Litigator.

SOURCE: Added by P.L. 22-111:4 (4/11/94).

§ 74122. Guam Ancestral Lands Commission Authorized to Facilitate Land Claims.

The Guam Ancestral Lands Commission is hereby authorized to use funds from the Landowner's Recovery Fund to facilitate land claims and to further the purposes of the provisions of 21 GCA Chapter 80, and 12 GCA Chapters 72 and 74, as follows:

1. to assist in determining the validity of prospective land claims and perform such research, survey or other studies deemed necessary to perfect such claims;
2. to assist in examining all petitions from claimants for assistance under the provisions of Chapter 80 of Title 21 of the Guam Code Annotated, and Chapter 72 of Title 12 of the Guam Code Annotated;
3. to procure litigation work product of attorneys and non-attorney professionals at cost where a finding has been made that litigation work product is documentary evidence which is required in support of a claim;
4. to commission special appraisals to be performed where claims involve water or mineral rights; *and*
5. to investigate all government of Guam property for the purposes of determining the existence of original landowners.

SOURCE: Added by P.L. 25-45:4(d) as 12 GCA §2947.
