

I MINA'TRENTA NA LIHESLATURAN GUÅHAN  
THIRTIETH GUAM LEGISLATURE  
2009 (SECOND) REGULAR SESSION

2009 FEB - 5 AM 9:40  
J

BILL NO. 324-20(COR)

Introduced by:

E.J.B. Calvo *EC*  
Frank F. Blas, Jr. *F*  
T. Muña-Barnes *T*

AN ACT TO AUTHORIZE *I MAGA'LAHEN GUAHÁN* TO EXCHANGE GOVERNMENT PROPERTY IN BARRIGADA FOR PRIVATELY OWNED PROPERTY LOCATED IN BARRIGADA TO BE USED FOR THE GUAM FLOOD MITIGATION PLAN.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. **Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
3 that for the past twenty-four (24) years, Mrs. Frances H. Cepeda, owner of Lot  
4 Number 2264-1-R3, has been trying to effectuate a land exchange with the  
5 government of Guam. In 1985, shortly after the Property was purchased, the  
6 Mayor of Barrigada requested the owners not to develop the property because it  
7 will aggravate the flooding problem in that area. Negotiations for a land  
8 exchange were underway but ended without an agreement on the land  
9 exchange. In 1989, then Governor of Guam, Joseph F. Ada transmitted a request  
10 to the Twentieth Guam Legislature requesting legislative action on a proposed  
11 land exchange between the Owners of Lot 2264-1-R3 and the government of  
12 Guam. No action resulted from this request.

1           In 1992, Mrs. Cepeda approached *I Liheslatura* for a land exchange. *I*  
2 *Liheslatura* did not act on her request for a land exchange. In 1996, Mrs. Cepeda  
3 filed a complaint of inverse condemnation against the government of Guam.  
4 Excerpts of the Guam Supreme Court’s Opinion on the *Cepeda v. Government of*  
5 *Guam* are made part of *I Liheslatura’s* findings. After the Superior Court released  
6 its Decision and Order, “The government then filed three motions: for  
7 Reconsideration of the May 16, 2001 Decision and Order; for partial summary  
8 judgment; and a motion in limine. The trial court denied the motions for  
9 reconsideration and partial summary judgment, and granted the motion in  
10 limine.” In February 23, 2003 “the trial court issued its Decision and Order  
11 holding that the government’s placement of the culvert and the prohibition  
12 against development denied Cepeda economically viable use of her Property,  
13 and ordered that the land exchange be granted”.

14           The government of Guam appealed the decision to the Guam Supreme  
15 Court claiming that only the owner of land at the time of the taking is entitled to  
16 compensation for inverse condemnation; there was no taking of the Property and  
17 the court erred in finding that the Property and the Barrigada Heights land  
18 exchange property were equivalent in value, and in ordering the land exchange  
19 without legislative approval.

20           In August 16, 2005 the Guam Supreme Court issued its Opinion on the  
21 *Cepeda v. Government of Guam*, they “hold first that Public Law 22-73 section 9,  
22 codified at 7 GCA Section 11311.1, allows a subsequent landowner, who did not  
23 own the property at the time of the taking, to file an inverse condemnation  
24 claim”. The Guam Supreme Court also “hold that the trial court erred in finding  
25 that Cepeda was entitled to compensation for the taking of the Property. The  
26 trial court did not address the ripeness of Cepeda’s takings claim’ had it done so;  
27 it would have reached the conclusion that the case was not ripe”.

1           The Guam Supreme Court also stated “Because we hold that the trial  
2 court erred regarding the takings claim, it is not necessary to discuss the  
3 remaining arguments raised on appeal. We will therefore not address whether  
4 the remedy upon inverse condemnation is an executive function for the  
5 Governor-not the court-to determine. We will also not examine the dispute  
6 regarding the valuation of the Property and the Barrigada Heights property, the  
7 right of Cepeda to recover the rental value of the property or the award of  
8 attorney’s fees pursuant to Public Law 22-73 Section 8, codified at 21 GCA  
9 Section 15112 (West, WESTLAW through Guam Pub.L.28-037 (Apr. 22, 2005),  
10 except to state that reversal of the February 24, 2003 Decision and Order  
11 implicitly reverses the award of attorney’s fees”.

12           *I Liheslatura* further finds that Public Law 28-005 was enacted in March 3,  
13 2005 to establish a Guam Flood Survey and Mitigation Plan. It mandates the  
14 Director of the Department of Public Works to conduct a comprehensive, island-  
15 wide survey of all areas that are prone to flooding. A Federal Emergency  
16 Management Administration (FEMA) Hazard Mitigation Grant Program Project  
17 28 for the Village of Barrigada dated June 6, 2005 Phase II identifies the Cepeda  
18 property as being the site for the ponding basin where storm water collected  
19 from Captain Reyes Way will flow to.

20           Mrs. Frances H. Cepeda has approached *I Liheslatura* in 2006 and 2007  
21 requesting their assistance. Bills were drafted, introduced and publicly heard  
22 but never made it to the session floor for action. Mrs. Cepeda hopes that after  
23 twenty-four (24) years of trying, the inclusion of her property as an integral part  
24 of the Flood Mitigation Projects being funded by FEMA will convince *I*  
25 *Liheslatura* that a land exchange is in the best interest of the government of Guam  
26 and the community of Barrigada.

1 Mrs. Frances Cepeda has established to the satisfaction of *I Liheslatura* that  
2 the FEMA Hazard Mitigation Project #28 as applied to her property located in  
3 the village of Barrigada constitutes a regulatory taking.

4 It is further intended to transfer the Barrigada Heights property from the  
5 inventory of the Chamorro Land Trust Commission to the inventory of the  
6 Department of Land Management to effectuate the transfer. The value  
7 determined by the appraisal done in 1988 shall be used to determine the value of  
8 this transaction.

9 **Section 2. Barrigada Parcel Transferred from the Chamorro Land Trust**  
10 **Commission Inventory.** Pursuant to Public Law 22-73, which requires the  
11 government of Guam to properly compensate landowners whose property have  
12 been expropriated for public purposes, *I Liheslaturan Guåhan* does hereby  
13 transfer from the inventory of the Chamorro Land Trust Commission to the  
14 Department of Land Management the following government of Guam property  
15 more particularly described as:

16 **Lot Number 15, Block E, Tract 9, Municipality of Barrigada,**  
17 **containing ±9,949.94 square meters, under the ownership**  
18 **of the government of Guam.**

19 **Section 3. Authorization for Land Exchange. (a) Land Exchange**  
20 **Authorized.** As fair compensation for privately owned land expropriated by the  
21 government of Guam for public use as a ponding basin, *I Maga'lahaen Guåhan* is  
22 hereby authorized to exchange Lot Number 15 owned by the government of  
23 Guam as described within Section 2 with:

24 **Lot Number 2264-1-R3, Municipality of Barrigada, Guam Estate**  
25 **No. 58813, containing an area of ±11,322.54 square meters, as**  
26 **marked and designated on Map Drawing No 828T63B, prepared by**  
27 **Juan T. Untalan, RLS No. 6, dated October 1, 1963, and described**

1 on Document No. 467272, recorded at the Department of Land  
2 Management, government of Guam.

3 **Certificate of Title Number 91059.**

4 **(b) Basis of Land Exchange.** Notwithstanding any provision of law,  
5 the fair market value for the land to be exchange shall be based on  
6 the appraisals first performed on both properties when the land  
7 exchanged was initially proposed in 1988. in accordance with  
8 Public Law 22-73. Furthermore, the land exchange also is fair  
9 compensation as an area for area exchange in accordance with  
10 Public Law 22-73 and Public Law 22-80.

11 **(c) Survey Mapping and Registration.** The Director of the  
12 Department of Land Management shall perform the necessary  
13 survey, mapping and registration of the properties to be exchanged  
14 and is authorized to expend up to Six Thousand dollars (\$6,000)  
15 from the Land Survey Revolving Fund to pay for the necessary  
16 survey, mapping and registration.

17 **(d)** All fees that may be assessed by the Department of Land  
18 Management necessary to facilitate this Act is Waived.

19 **Section 4. Effective Date.** This act shall become effective upon signing.