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October 23, 2017

The Honorable Eddie Baza Calvo  
Governor of Guam

The Honorable Benjamin J.F. Cruz  
Speaker, *I Mina 'Trentai Kuåtto Na*  
*Liheslaturan Guåhan*

Dear Governor Calvo and Speaker Cruz,

I write concerning the lawsuit brought by the U.S. Department of Justice (DOJ) against GovGuam, in particular the Chamorro Land Trust Commission, alleging violations of the federal Fair Housing Act in carrying out the Chamorro Land Trust Act.<sup>1</sup> I share the deep concerns in our community about this lawsuit. I am committed to working with you—and our GovGuam colleagues—to resolve the legal challenges facing the Chamorro Land Trust.

As Guam's sole representative in the United States Congress, I will pursue legislation that has consensus support on Guam and meets the Chamorro Land Trust's needs in administering Chamorro homelands for the benefit of native Chamorros. Outlined below are potential legislative options to address the DOJ's legal challenge brought against the Chamorro Land Trust. I hope the Administration and Legislature will find consensus on the best option for our community so that I can introduce legislation in Congress that has unified support among our local leaders:

- 1. New Federal Law Modeled on the Hawaiian Homes Commission Act:** The Hawaiian Homes Commission Act of 1921 is an arcane federal law later adopted as part of Hawaii's state constitution in 1959. Under this law, the state's Department of Hawaiian Home Lands provides long-term leases at nominal cost to Native Hawaiians for homesteading. In addition, the state provides financial assistance under this law to Native Hawaiian landowners including direct loans, loan guarantees, and technical assistance. An act of Congress could recognize federally the Chamorro Land Trust as a distinct legal entity responsible for administering land on Guam for the benefit of Chamorros similar to Hawaii's Department of Hawaiian Home Lands. However, numerous legal cases have challenged Hawaii's implementation of the Hawaiian Homes Commission Act, notably the U.S. Supreme Court's 2000 decision in *Rice v. Cayetano* regarding the state's Office of Hawaiian Affairs. This option alone may not fully address the DOJ's legal challenge for alleged Fair Housing Act violations.
- 2. Federalize the Chamorro Land Trust Act:** An act of Congress could simply codify Guam's 1975 Chamorro Land Trust Act. Like the previous option, this would afford the Chamorro Land Trust Commission status under federal law analogous to Hawaii's state

<sup>1</sup> <https://www.justice.gov/opa/press-release/file/999936/download>

Department of Hawaiian Home Lands, which administers the Hawaiian Homes Commission Act. However, this alone may not be sufficient to remove the legal basis for the DOJ's current lawsuit alleging violations of the Fair Housing Act or prevent future legal challenges against the Chamorro Land Trust on constitutional grounds. In addition, any proposal to codify the Chamorro Land Trust Act as federal law must make clear that Chamorro homelands should remain owned by the people of Guam, not the federal government.

- 3. Remodel Chamorro Land Trust after the Alaska Native Claims Settlement Act:** In 1971, the Alaska Native Claims Settlement Act established Alaska Native corporations to own and manage land for the exclusive benefit of their shareholders: Alaska's indigenous peoples. Alaska Native corporations operate as privately owned, for-profit corporations incorporated under state law, but separate from the federal government or Alaska's state government. By law, shares of Alaska Native corporations may be inherited by blood relatives but not sold or traded. All proceeds generated by Alaska Native corporations are reinvested or dispersed to their Alaska Native shareholders. Alaska Native regional corporations have become very significant players in Alaska's economy and are among the largest landowners, employers, and business enterprises in the state. A similar approach for Guam would require GovGuam to reconstitute the Chamorro Land Trust as a nongovernmental entity, transfer Chamorro homelands to the newly established land trust corporation, and distribute shares to native Chamorros on Guam. As such, the newly established land trust corporation would continue to own and manage Chamorro homelands for the exclusive benefit of native Chamorros and their descendants. This would also allow the land trust corporation to continue offering exclusive privileges for its shareholders (native Chamorros), such as leasing land at nominal rates. An act of Congress may be required to formalize this change, including allowing the land trust to continue to receive federal land transferred to GovGuam.
- 4. Federal Tribal Recognition for Guam's Chamorro People:** Seeking recognition for Guam's indigenous Chamorro people as a federally recognized American Indian tribe would almost certainly require an act of Congress. To address the DOJ's outstanding legal challenge under such a proposal, the Chamorro Land Trust would need to be re-designated as a tribal entity separate of GovGuam. The Chamorro homelands would then need to be transferred to the new tribal entity to be administered as tribal lands for the benefit of the newly recognized Chamorro tribe. Such action would effectively remove Chamorro homelands from GovGuam ownership and control. To date, there is no legal precedent for recognizing a tribe outside the mainland United States or designating tribal lands in a U.S. territory. Note that Native Hawaiians are not a federally recognized tribe. There are federally recognized tribal entities in Alaska, but not *all* Alaska Natives are tribal members or automatically eligible to receive tribal benefits from the federal Bureau of Indian Affairs.
- 5. Fair Housing Act Exemption:** Alleged violations of the federal Fair Housing Act of 1968 by the Chamorro Land Trust form the basis for the DOJ's lawsuit. The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. It is important to note that the Fair Housing Act also protects

Guam residents from discrimination by landlords, realtors, mortgage lenders, and other housing entities including the government itself. As such, any legislation seeking to exempt the Chamorro Land Trust—including the preferential leasing of Chamorro homelands at nominal rates—from the Fair Housing Act must be carefully crafted and purposefully limited. Addressing alleged Fair Housing Act violations is also likely the most immediate way to resolve the DOJ’s lawsuit against the Chamorro Land Trust; however, it may not prevent future legal challenges against the Chamorro Land Trust on constitutional grounds.

While not an exhaustive list, I hope that these potential remedies prove useful as you work to reach a GovGuam consensus on legislation that I may then introduce in Congress. I will champion any legislation that maintains the original intent of the Chamorro Land Trust and provides a sound legal basis for its continued operation. However, it is imperative that we present a unified, “One Guam” position for any legislation I introduce. Each of the above legislative options would be referred to the House Committee on Natural Resources, of which I am a senior member.

In the meantime, I support any effort by GovGuam to defend the Chamorro Land Trust Act in federal court. Thank you for your consideration. I look forward to reviewing your response and continuing to work together to advance Guam’s interests before the federal government.

Sincerely,



MADELEINE Z. BORDALLO  
Member of Congress

CC: All Senators, *I Mina Trentai Kuattro Na Liheslaturan Guåhan*  
Chamorro Land Trust Commission  
The Honorable Elizabeth Barrett-Anderson, Attorney General of Guam