

Land Tenure in the Pacific

Acknowledgements

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Guam

LAND TENURE IN A FORTRESS

PAUL B. SOUDER

THE PRE-CONTACT ERA

Land rights were important in distinguishing the three social classes of ancient Chamorro society (Garcia 1683:36). The highest-ranking chiefs (*chamorri*) were regarded as the hereditary proprietors of the soil, and were members of the upper class, the *matua*, who directly controlled the most desired land (Carano and Sanchez 1964:20-1). The middle class (*atchaot*) were the younger branches of the nobility. The *manachang* or lowest class were not permitted to farm independently, but worked as serfs on the estates of the nobility, their lives governed by restrictions and tabus (Thompson 1945:10). The highest-ranking nobles lived in fifty-three houses on the most desirable sites in Agana. The 150 huts on the outskirts of town were occupied by *manachang*. The rest of the island's population lived in 180 villages, the larger ones on the coasts and the smaller ones in the hills. The villages were clustered into districts, each headed by a local chief who exercised certain controls over the district lands, including hunting, collecting and fishing rights. Only members of his local group could enter the district without permission (Dugan 1956:22, 63; Thompson 1947:30).

The nobles were organized into matrilineal clans, with inheritance to nephews rather than sons. Whoever came into possession of the land changed his name to that of the founder or chief ancestor of the family (Garcia 1683:36). The precise rights of high-ranking persons are not known. Freycinet indicated that if a woman needed a piece of land or certain produce from a man of her family, he would give it if she presented him with a piece of shell 'money', and if she left her husband because of his disloyalty, she took all his property (Arago 1823:365; Garcia 1683:

16). A commoner could not dispose of any property except chattels made by himself or land reclaimed by him from the jungle.

THE SPANISH ERA: 1521-1898

Magellan discovered Guam in 1521 and Legaspi took possession for Spain in 1565, but there was no permanent Spanish settlement until 1668. Thereafter, until 1898, its destiny was directly or indirectly determined by the Laws of the Indies under which all lands belonged, nominally at least, to the Spanish Crown (Carano and Sanchez 1964:53). The Chamorros were granted legal equality with other Spanish subjects in 1681 (Thompson 1947:58).

By 1700 Spanish control was firmly established and ranches totalling 3,600 hectares, or five per cent of the territory, were established under Spanish supervision for the benefit of the governor (Arago 1823:420). These ranches were initially established under the system of *encomiendas*, through which the governor entrusted large tracts to leaders who had given him outstanding service. The traditional hierarchy of land rights remained under the newly-imposed top stratum. The *encomendero* derived income from the produce of the land, in return for which he was obliged to protect the inhabitants, promote civilization and Christianity among them, and maintain military control on behalf of the Spanish Crown. By 1800 the *encomiendas* system had changed to one of outright grants by the Crown, though subject to confiscation if the grantee did not please the incumbent governor.

Guam's aboriginal population, estimated by Garcia to have been 50,000 at the time of contact, declined thereafter until, by 1783, it was only 1,500. In 1771 Governor Tobias made land for agricultural purposes available to persons who had none, and in 1772, every family was described as having its land, which was divided into gardens, orchards and ploughed or spade-worked fields. Tobias also developed 'royal estates' as farms and cattle ranches, which were cultivated by his soldiers (Rachon 1891:92-3).

Although most of the land of Guam remained in the hands of the Chamorros, much became concentrated in the hands of about a dozen wealthy and powerful extended families, mainly descendants of the Chamorro nobility who married Spaniards (Thompson 1947:54-6).

In the 1860s Queen Isabella of Spain promulgated laws for the recording of land titles, and property records indicate their use

by the 1880s. Most of these laws pertained to recorded property, but they provided for individuals to acquire title by adverse possession to land which they were using, and barred the Crown from making further claims to such lands. Such titles are recognized today provided the lands concerned are adequately described.

THE AMERICAN OCCUPATION

When the United States seized Guam in 1898 the Spanish Crown lands, consisting of 14,581 hectares, or about one-quarter of the island, became the property of the American government. These were generally the poorer lands, the best being privately owned small holdings.

One of the first acts of the new administration was to forbid the sale or other transfer of land ownership without the consent of the Governor. Nevertheless, Japanese merchants acquired some of the choicest garden lands during the American régime until 1909, when aliens were prohibited from acquiring any further interests in private land for periods exceeding five years, and United States citizens could acquire only leases for up to fifty years (renewable for a further fifty). All agreements required government approval.

Although the law prevented people from freely disposing of their land, it did not prevent them from losing it. The ineffective Spanish land tax (which did not apply to persons of Chamorro ancestry) was abolished and a new tax, varying with the type of land and its location in relation to the capital of Agana, was imposed on all land regardless of improvements. The tax was so heavy that some of the largest landowners turned their land over to the government or sold portions of their holdings. The poorest families, lacking the resources or ingenuity to pay the land tax, gradually lost their land to more industrious relatives or to the government in default of tax. Few Guamanians accumulated land as it was likely to be a liability unless effectively used.

A Board of Appraisal determined the value of all land for tax purposes and, although tax rates were changed in 1903, 1910 and 1925, they did not keep pace with market value or income. Thus the government continued to acquire land through tax delinquency, particularly when copra prices fell. Even in 1938, when copra sold in the Agana market for sixty cents per hundred-weight, the land tax on copra plantations absorbed about one-third of the income. The administration made some attempts to keep the land in the family if the owner could not pay the taxes.

Relatives were solicited for tax loans, or an effort was made to transfer the land to a relative rather than allow foreclosure. Properties delinquent one year from due date were subject to sale at public auction, and attempts were made to interest relatives of the former owner in the sale. Every year five to six titles, usually to poor land, reverted to the naval government. Properties which were not sold were vested in the government, but in rare cases former owners were permitted to buy them back at a compromise price based on taxes due and administrative costs.

By 1937 the Naval Government of Guam owned approximately 2,924 hectares of land, acquired mainly through non-payment of taxes, but also by purchase. In addition, the United States federal government owned 16,507 hectares, mostly taken from the Spanish Crown but including 1,926 hectares purchased for \$US22,669 (U.S. Navy 1948:29). The United States acquired very little land by eminent domain.

In 1939 300 hectares of naval government land and 6,000 hectares of federal government land were leased, mainly to Guamanians for agriculture and grazing (Thompson 1947:118). An additional 7,000 hectares of federal government land were available for leasing, but most was unsuited for agriculture. Except in special cases, agricultural leases were limited to eight hectares for single persons or sixteen hectares for married persons and pastoral leases to fifty hectares per person.

American inheritance laws required that the land of a man who died without a will was divided equally among his heirs. As few Guamanians wrote wills this would soon have led to a breaking up of the larger holdings, but in practice deceased estates were usually registered in the joint names of the heirs, who decided among themselves who was to work the land, pay the taxes and receive the produce. Hence, despite the American law which emphasized individual holdings, a pattern in some ways similar to the traditional one still prevailed at least until the Second World War. In Agana, however, where the small family was tending more and more to become an independent economic unit, a landless class developed, the members of which either leased government land for subsistence or depended on wages for a living.

POST-WAR NAVAL GOVERNMENT

Occupied by the Japanese in 1941 and reoccupied by United States forces in July 1944, Guam became a major military base and fifty-eight per cent of the island was taken over for military

purposes, subject to future compensation. Except in the south, the land use pattern changed radically. Farm lands became air-fields and supply dumps, land taxes were suspended, and residents of land acquired by the military, or whose homes were demolished by American bombardment, were moved into temporary camps. Due to the destruction of records during the Japanese occupation, and the fact that the local people seldom recorded land conveyances or encumbrances, it was difficult to determine whose land the military had taken. Records were incomplete particularly for lands of deceased owners due to informal division among heirs instead of probate proceedings. Difficulty in ascertaining valid titles delayed payment of compensation (which was made either in cash or with other land) though this has now been completed.

By 1950 some 5,935 property claims totalling \$10,427,404 had been processed by the Land and Claims Commission. The federal government also transferred land to the naval government for sale to residents of Guam for their rehabilitation and settlement. Private land was also acquired by the government for this purpose and some 1,668 village lots and over 1,000 government-owned houses and 432 lots were sold, usually at less than market value.

A policy concerning land for military use on Guam, promulgated in November 1945, provided for (1) the purchase of lands for military purposes, (2) the lease, with option to purchase, of land then having military use but which might be relinquished later, and (3) purchase of perpetual easement for highways, water supply, power lines and other communication and distribution systems.

Not only title records, but many landmarks were destroyed in the fighting, and old property boundaries were disregarded during reconstruction. As a consequence, the land-title situation on Guam was in extraordinary confusion. New tracts frequently contained portions of several old tracts held by various persons. A land court (the Superior Court) was established to hear and adjudicate these claims, most of which have been settled during the last fifteen years.

CIVIL GOVERNMENT

The transfer of civil administration from the Navy to the Department of the Interior in August 1950 led to a new approach to land administration, the problems of which multiplied out of all proportion to the area involved. The government had to deal

with land administration at all levels—city, country, state and federal. The land use structure was greatly affected by the war. The land laws had been designed for an entirely different economy and way of life and were ill adapted to the commercial era Guam had entered. There was an urgent need for new land laws, regulations and procedures in keeping with civilian concepts of land administration, but reconstruction of land administration lagged far behind other changes and the accumulation of pending land matters—of law, registration, taxation, survey, mapping and zoning—continues.

United States Federal lands used by the naval government were transferred to the Government of Guam (unless required for military purposes or as replacements for lands required for military use) which could dispose of them for homestead and certain other purposes. A major difficulty of the transfer of public lands was that the Department of the Navy had no list of replacement lands adequate to identify accurately the transferred property. Thus for practical purposes replacement lands were not available at that time. Agreement on how to interpret the replacement provisions was not reached until February 1966, which delay accounted for considerable confusion on the status of lands transferred for fifteen years after their transfer. Of the estimated 14,569 hectares acquired from Spain, approximately 11,028 hectares were transferred by the United States government to the government of Guam in 1950. The decrease in area was partly due to claims of ownership based on use and occupancy, many of which have been validated and registered in the name of private owners.

All leases on government land were cancelled in 1946 in anticipation of the use of such lands for resettlement of persons displaced by military activity. Since 1952 such lands have been again available for agriculture and other purposes under revocable land use permits, usually on a yearly, renewable basis. Under these permits no person was permitted more than fifty hectares for grazing or more than ten hectares for agricultural purposes. Very little agriculture has been undertaken on such land since the Second World War. The maximum lease period for such land for urban or industrial use was first set at fifty years (but later extended to ninety-nine years) and for all other purposes twenty-five years. Until 1962 only three leases had been made for grazing lands. Of the 3,010 hectares held by individuals under land use permits at that time, twenty per cent were used for grazing, the rest for 119 residences and for meagre farming.

LAND AND SURVEY RECORDING

The Spanish 'Possessory Title' was annulled by law in Spain before 1890, but this was not recognized by the Spanish governors of Guam or by their American successors until 1925. In Guam in the Spanish era there were no methods of locating property lines except by reference to adjacent owners or natural boundaries. The Spanish made only isolated surveys. Preliminary surveys were made by the United States in 1902 but the first survey control points were not established until 1910. When land taxation was imposed in 1900 the entering of possessory titles was made mandatory, but even a minimal triangulation control system was not installed until 1913. Thereafter, a map was required to establish or convey title. If a map was not filed, the recording was made but suspended, giving the action no legal recognition but merely recording the intent of the parties.

Complications from that era remain as a source of confusion today. As only naval government surveyors were authorized to survey land, no new titles could be established, or conveyances legalized until the 'official' survey, which sometimes took years. Basic 1913 surveys were inadequate to meet the needs of 'working level' controls, and the triangulation system was expanded by open traversing, causing the overlapping and confusion which persist today. Consolidated cadastral maps made by naval government surveyors contained many errors and frequently failed to honor previous individual surveys and descriptions.

Compounding these problems was boundary delineation. Many 'legal' descriptions of property lines include coconut trees, rock piles or intermittent streams, as markers. Some use only the names of adjacent property owners. Metes and bounds descriptions using the metric system are prevalent in built-up areas, although there are discrepancies in the location of triangulation points. The grid system gives only approximate identification, as boundaries seldom coincide with the grid. In the absence of the grid system, place names (which often change each generation) were used to identify the general location. Additional problems resulted from the Japanese invasion in 1941, when many records, boundary marks and several monumented control points were destroyed.

Establishment of title was augmented by a system of guaranteed claims, and later a system of land registration which continues today, using a modified Torrens system. By 1941 only about one-quarter of the lands with recorded titles had been surveyed. Records lost during the Japanese occupation have

been replaced and title registration reinstated, but no guaranteed claims have been issued since the Second World War. The present Land Registration Act (Civil Code, Section 1157) provides for registration of title and for recording registered property. Unregistered property is recorded under the pre-war Cadastral Survey and Land Registration Act.

The intensive construction programme after the liberation of Guam lacked adequate survey control. Available records left uncertainties as to the exact method employed in establishing the land co-ordinate system and it was decided to re-triangulate the island and establish a plane rectangular co-ordinate system.

The cadastral maps prepared in 1945 from old land descriptions and old property plots which survived the occupation have not been kept current. The survey control system was revised in 1963 by United States Coast and Geodetic Survey personnel but the new triangulation net will not, of itself, resolve problems of land description and title. A major survey programme will be required to tie existing surveys to the new system and to survey the private and government land which is as yet unsurveyed. This programme was accelerated in 1968 by aerial photogrammetry.

Government policy is to require all private land to be tied in to the established triangulation nets before it can be registered. Little is being done to tie in government lands except those with marked potential for development.

The need for accurate land descriptions leading to insurable and marketable titles has been stressed since 1950. An acceptable survey is required to obtain a certificate of title, the only document upon which title insurance can be drawn, or mortgages obtained from local banks. Land by which ownership is so evidenced is termed 'registered land', and all other land is unregistered land. About eighty-five per cent of Agana is now registered, but the percentage is lower in outlying areas. A certificate of title is obtained by court action and negates further litigation by other claimants. Property deeds which date back before the Second World War are not considered sufficient proof of ownership. By 1980 there were 29,019 recorded tracts of privately-owned land, valued at \$1,483,798,000 (compared with 5,279 tracts valued at \$610,985 in 1941).

LAND USE

In November 1962 the military held thirty-five per cent of the land area (19,154 hectares), the Government of Guam twenty-three per cent (12,586 hectares) and private owners forty-two per cent

(22,661 hectares). The military proposes to release 12 per cent of the Federal acreage, of which a small portion has been released to the Government of Guam for recreation and port expansion. Over half (fifty-five per cent) of all private parcels are less than 9.9 hectares, twenty-five per cent 10 to 19.9 hectares, eight per cent 20 to 29.9 hectares, six per cent 30 to 49.9 hectares, four per cent 50 to 99.9 hectares and one per cent 500 to 1,000 hectares. The largest estates used to belong to descendants of the Spanish-Chamorro nobility, but now alien companies which controlled 1 per cent of Guam's land in 1967 (worth \$5 million), controlled about 24 per cent by 1974 (worth over \$100 million): see Table 1. Alien ownership decreased slightly in 1981 as housing developments were sold off. Most of the smallest parcels are along the south coast of the island and in Agana where fragmentation is extensive.

Almost half (forty-seven per cent) of the privately-owned rural land on Guam is covered with unused mixed wood and brush. Open land or pasture, much underexploited, covers forty-one per cent, coconut groves (none of which are producing because much higher incomes are available from working for the military or for commerce) cover eleven per cent. Only about one per cent (700 hectares) is cultivated, mostly for vegetables. Cultivation practices vary. Few farmers irrigate and none use cover crops. The only crop rotation is through short fallow. No contour ploughing, erosion control or drainage is practised and little pest control is carried out.

URBAN LANDS

The most characteristic feature of urban land use is strip development along the main roads. The fragmented and haphazard pattern of residential and commercial development reflects a past lack of zoning, although in the Agana area it is due largely to land fragmentation. Elsewhere on Guam, the pattern is one of concentration of single-family dwellings in fairly compact villages, usually around the church.

The pre-war naval government established the village of Talofoto as an 'Agricultural Community'. The post-war military government constructed temporary communities in 1944 and 1945 to house displaced persons and from 1945 to 1949 sold lots to individuals in need. Government efforts to provide subdivision tracts since 1950 have not been very successful. In 1955 600 lots each 100 feet square in Dededo were sold for \$400 to \$700, including power, water and paved streets. The terms were twenty per cent down with remainder payable in six years at six

per cent interest. The sixty lots in Piti subdivision, completed in 1963, cost \$3,600 per lot including roads, power, water, sewerage and other developments, but were sold for \$1,500. Development costs for similar lots in the government subdivision in Umatac in 1967 totalled \$8,500 per lot not including the raw land.

In 1964 the government of Guam made available 100 hectares of land in Dededo to the Kaiser Hawaii-Kai Corporation for development as a residential subdivision. Land was sold at \$1 per acre, and development costs were borne by Kaiser. Purchasers of houses paid for house and lot development costs, but no raw land cost. Some 2,000 homes were sold.

The city of Agana had a population of approximately 12,000 until the Second World War when it was almost completely destroyed. In November 1944 a petition from fifty-six per cent of the recognized owners, representing sixty per cent of the private property in Agana, requested the military government to lay out the city anew along modern lines. As many of the existing lots were too small, irregularly shaped and had no access, the Island Commander decided to purchase all land in Agana for resale in economic lots, to former residents, excluding land required for public purposes, and in January 1947 the Governor proposed to use \$500,000 as a revolving fund for this purpose. But several lot owners said they did not sign the petition and did not consider themselves bound by it, and wanted to keep their former lots. The 1944 petition was then set aside.

The Guam Congress in March 1947 adopted a new town plan which the owners of the lots in Old Agana were required to accept. Minimum lot sizes were prescribed, and the government was to acquire at market value all lands needed for new streets, parks and public buildings. The reconstruction of Agana began and continued until July 1949.

One further attempt was made to obtain the approval of all landowners to the New Agana plan. Seventy-five per cent of them (being all but 0.04 per cent of the landowners contacted) signed the petition requesting that Agana be rebuilt in accordance with the new plan but, in 1948, The Attorney-General ruled that all owners' signatures were required to accomplish the complete subdivision plan. Although not all signatures were obtained the work continued within the funds available.

A City of Agana Planning Commission was created in 1950 to settle title to those lots of Agana still in multiple ownership. The Commission requested owners to reach a voluntary settlement, but with little success. By 1963 some fragmented lots had been

Table 1
GUAM PRIVATE LAND OWNERSHIP PATTERN AS OF APRIL 1974,
BY NATIONALITY
(Area in Hectares)

Cadastral Village	Off-Island		Japanese		Other Alien		Subtotal		Guamanian	
	Area	Percent Area	Area	Percent Area	Area	Percent Area	Area	Percent Area	Area	Percent
Umatac	18	9	25	13	0	0	43	22	157	78
Merizo	19	4	34	7	37	7	90	18	410	82
Talafofo	18	1	47	2	856	28	921	31	2,080	69
Inajaran	38	1.5	38	1.5	1,404	46	1,480	49	1,520	51
Yona	94	2	754	14	135	3	943	19	4,057	81
Sinajana	35	2	4	0	71	4	110	6	1,890	94
Piti	0	0	40	8	59	12	99	20	400	80
Asan	0	0	7	1	197	25	204	26	596	74
Agat	6	1	45	4	249	25	300	30	700	70
Yigo	62	4	51	6	266	18	419	28	1,081	72
Barrigada	122	6	56	3	142	7	320	16	1,680	84
Dededo	203	14	154	11	203	14	560	39	940	61
Agana	1	1	3	3	3	3	7	7	93	93
Machanao	0	0	134	67	2	1	136	68	64	32
Total	616	2.9%	1,392	6.5%	3,624	17.0%	5,632	26.4%	15,668	73.6%

voluntarily consolidated and the government provided money to purchase others. The most saleable properties were procured first on a block basis, consolidated and sold, the income being used for further consolidation. As far as possible, the government purchased the fragmented lots by negotiation, or by exchange with other government property of equal market value.

Where such fragmented land is not in productive use, where no permanent buildings are located, where no estates are involved, and no undistributed interests appear, and where all owners are known and are present on Guam, a forty-five day negotiation period permits multiple owners to resolve title in one individual or firm. If resolution is not accomplished or if estates or undistributed interests appear, or if owners are unknown or unavailable, purchase is accomplished by proceedings of eminent domain. The new lots consolidated by purchase by the government of Guam were sold. About half of Agana lots remain fragmented and unused.

TRENDS

A skyrocketing of land values in Guam occurred from 1971 to 1974 primarily as a result of the growth in tourism. The increase in value is indicated in Table 2. Exorbitant land values are proving a serious obstacle to housing and economic development. Land values in Agana influence those elsewhere on the island. Very high land values lead to maximum exploitation of land in the high-value areas. Thus where thinning out is needed, overcrowding and traffic congestion increase further. Adequate roads, community facilities and parking areas have suffered in areas of high land values.

Several approaches to these problems are possible. Implementation of the Comprehensive Development Plan is important as is further extension of the urban renewal programme. Compulsory consolidation of small, irregular plots without public access is essential. Plots are pooled, the whole area redesigned and returned to the owners in proportion to their respective original share less lands for common use such as roads, playgrounds etc.

Extremely high and relatively low densities co-exist on Guam. A more even distribution would lead to more compact development, make utilities available at lower cost, reduce traffic congestion and give easier access to places of employment, shopping areas and recreational facilities.

Taxation can help resolve these and other problems. A tax on unearned increases in land values, deterrent taxation on vacant

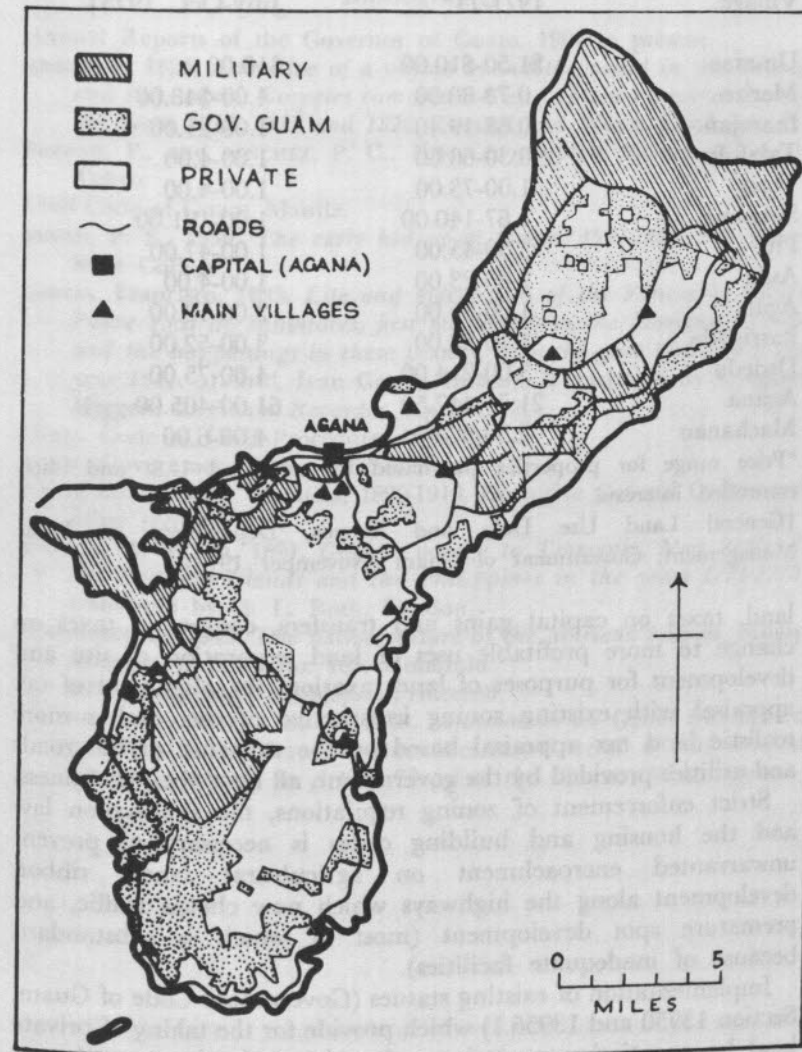


Fig. 4 Land ownership on Guam

Table 2
LAND PRICES IN GUAM
(Dollars per Square Meter)

Cadastral Village	Price Range 1971-74*	Typical Prices July-Oct. 1973†
Umatac	\$1.50-\$10.00	\$10.00
Merizo	0.78-80.00	4.00-\$48.00
Inarajan	0.68-19.40	1.00-21.00
Talafofo	0.30-60.00	1.00-4.00
Yona	1.00-75.00	1.00-4.00
Sinajana	1.67-140.00	1.00-191.00
Piti	3.50-45.00	1.00-47.00
Asan	2.80-23.00	1.00-4.00
Agat	1.00-35.00	2.00-12.00
Barrigada	1.10-88.00	3.00-52.00
Dededo	3.00-214.00	4.00-75.00
Agana	21.75-447.50	61.00-405.00
Machanao	2.50-5.20	4.00-6.00

*Price range for properties purchased by off-Island U.S. and alien controlled interests.

†General Land Use Data and Trends, Department of Land Management, Government of Guam (November 1973).

land, taxes on capital gains and transfers, conversion taxes on change to more profitable uses of land, separation of site and development for purposes of land taxation, the alignment of tax appraisal with existing zoning irrespective of use, and a more realistic land tax appraisal based on the existence of the roads and utilities provided by the government, all have their usefulness.

Strict enforcement of zoning regulations, the subdivision law and the housing and building codes is necessary to prevent unwarranted encroachment on agricultural lands, ribbon development along the highways which now chokes traffic, and premature spot development (most of which is substandard because of inadequate facilities).

Implementation of existing statutes (Government Code of Guam, Section 13950 and 13956.1) which provide for the taking of private land by negotiation or eminent domain, and sale at market or less than market value to private developers for sale to private individuals, can accelerate the availability of adequate housing and planned development of the island community. Such a programme would cost the government relatively little, and would