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GOVERNMENT OF FIJI

LAND USE DECREE 2010
 (DECREE NO. 36 OF 2010)

IN exercise of the powers vested in me as the President of the Republic of Fiji and the Commander in Chief of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Decree may be cited as the Land Use Decree 2010.
 (2) This Decree comes into force on the date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In this Decree, unless the context otherwise requires—
 “Director of Lands” means the person holding all State Lands on behalf of the State under section 4(1) of State Lands Act [Cap. 132];
 “Land” means crown land as defined in the State Lands Act [Cap. 132] and native land as defined in the Native Lands Act [Cap. 133];
 “lessee” means a natural person or a legal entity to whom a lease has been issued by the Director of Lands under this Decree;
 ‘Minister’ means the Minister who has the responsibility for the administration of this Decree; and the Ministry means the Ministry of Lands and Mineral Resources;

Object of the Decree

- 3.—(1) The objects of this Decree are—
 (a) to utilise designated native land in a manner that is in the best interest of native land owners; and
 (b) to utilise designated crown land with a view to achieving optimal return to the State.
 (2) The Decree achieves these objects by—
 (a) providing for the establishment of a Land Use Unit within the Ministry;
 (b) providing longer tenure of leases for a sustainable and progressive development of the agricultural and commercial sector; and
 (c) providing that all land available are leased with the purpose of providing a livelihood for all parties concerned.

PART 2—DESIGNATION OF LAND TO THE LAND USE UNIT

Land designated to be free of all encumbrances

4. All land designated under the Decree shall be free of all encumbrances, and shall not be the subject of any dispute in any court, tribunal, commission or before any other person or body exercising a judicial function.

Non-extinguishment of title for land designated

5. The ownership of all land designated under the Decree shall remain with the Crown or native land owners until the expiration of the lease or until such time the land is no longer required under the Decree.

Prime Minister to designate land

6.—(1) All land designated for utilisation under this Decree will be referred to the Prime Minister.

(2) The Prime Minister shall then use his discretion to designate land for utilisation under this Decree.

Establishment of Land Use Bank

7. There shall be a register known as the Land Use Bank keeping a record of all land utilised under the Decree.

PART 3—ESTABLISHMENT OF THE LAND USE UNIT

Establishment and responsibility of the Land Use Unit

8. This section establishes a Land Use Unit within the Ministry responsible for—

- (a) the valuation of the land;
- (b) issuance and renewal of lease;
- (c) collection of rental; and
- (d) any other matter that may arise from time to time for land designated under this Decree by the Prime Minister.

PART 4—APPLICATION OF THE DECREE

Application to other Laws

9.—(1) This Decree has effect notwithstanding any provision of the Native Land Trust Act [Cap. 134], Agricultural Landlord and Tenant Act [Cap. 270], Agricultural Landlord and Tenant Ordinance 1966 and any other law and accordingly, to the extent that there is any inconsistency between this Decree and the Native Land Trust Acts, Agricultural Landlord and Tenant Act [Cap. 270], Agricultural Landlord and Tenant Ordinance 1966 or any other law, this Decree prevails.

(2) Any direction given by the Land Use Unit under this Decree to any agency of Government or any other institution to release information pertaining to land shall release such information.

PART 5—LEASES

Tenure of lease

10. All leases issued under this Decree shall be for a period of not more than ninety nine years (99) and shall be in the prescribed form.

Best interest of the native land owners

11. All leases issued or renewed under this Decree shall take into consideration at all times the best interest of the land owners and the overall wellbeing of the economy.

Protected lease

12.—(1) All leases issued under this Decree are protected lease. Therefore it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.

(2) Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.

(3) Any consent required by this section may be given in writing by any officer or officers, either solely or jointly, authorised on behalf of the Director of Lands within thirty (30) days of the request. The lessee shall be given ninety (90) days thereafter to act on the consent, failure to do so, the consent shall lapse.

Premium for fresh lease

13.—(1) Subject to the valuation of the Director of Lands a premium shall be paid by the lessee prior to the issuance of a fresh lease.

(2) Notwithstanding subsection (1) the Director of Lands may use his or her discretion to allow for part payments of premium on individual case basis.

PART 6—REGULATIONS

Regulations by Minister

14.—(1) The Minister may make regulations under this Decree with respect to all leases which may be issued by the Land Use Unit in the prescribed form.

(2) The Minister may make regulations under this Decree with respect to any provisions or matters relating there under.

PART 7—MISCELLANEOUS

Certain decisions not to be challenged

15.—(1) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any proceeding, claim, challenge or dispute by any person or body which seeks or purports to challenge or question—

- (a) the validity, legality or propriety of this Decree;
- (b) any decision of any Minister or any State official or body, made under this Decree;
- (c) the terms and condition of lease issued by the Director of Land under this Decree; or
- (d) the validity of the cancellation of any leases, licenses or other instruments.

(2) Any proceeding, claim, challenge or dispute of any nature whatsoever in any court, tribunal, commission or before any other person or body exercising a judicial function, in respect of any of the subject matters in subsection (1) that had been instituted before the commencement date of this Decree but had not been determined at that date or is pending on appeal, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall be wholly vacated, and a certificate to that effect shall be issued by the Chief Registrar.

(3) Where any proceeding, claim, challenge, application or dispute of any form whatsoever, is brought before any court, tribunal, commission or any other adjudicating body, in respect of any of the subject matters in subsection (1), then the presiding judicial officer, without hearing or in any way determining the proceedings or the application, shall immediately transfer the proceeding or the application to the Chief Registrar, for termination of the proceeding or the application for the issuance of a Certificate under subsection (2).

(4) A certificate under subsection (2) is, for the purposes of any proceeding in a court, tribunal, commission or any other person exercising a judicial function, conclusive of the matters stated in the certificate.

(5) A decision of the Chief Registrar to issue a certificate under subsection (2) is not subject to challenge in any court, tribunal, commission or any other adjudicating body.

GIVEN under my hand this 1st day of July 2010.

EPELI NAILATIKAU
President of the Republic of Fiji