

NOV 12 2015

The Honorable Judith T. Won Pat, Ed.D.  
Speaker  
I Mina' Trentai Tres Na Liheslaturan Guåhan  
155 Hesler Place  
Hagåtña, Guam 96910

VIA: The Honorable Rory J. Respicio  
Chairperson, Committee on Rules

RE: Committee Report on Bill No. 185-33 (COR), as substituted by the Author

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill No. 185-33 (COR), as substituted by the Author - "An Act to amend § 11311.1 of Title 7 and add new Chapter 16 to Title 21, both of Guam Code Annotated, relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; to amend subsection (a) of § 2101, and add a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, relative to providing for the creation of a Judicial Land Division Court expeditiously review and affirm, if appropriate, the settlement between the government and landowner; to amend § 22421 of Article 4, Chapter 22, Title 5, Guam Code Annotated, relative to the Land Claims Compensation Fund."

Committee votes are as follows:

- 4   TO DO PASS
- TO NOT PASS
- 5   TO REPORT OUT ONLY
- TO ABSTAIN
- TO PLACE IN INACTIVE FILE

Respectfully,

**SENATOR FRANK B. AGUON, JR.**

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
I Mina' Trentai Tres Na Liheslaturan Guåhan | 33<sup>rd</sup> Guam Legislature

2015 NOV 13 AM 9:38

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D.  
Ex-Officio



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Senator  
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Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreddie  
Member

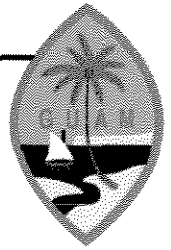
Speaker  
Dr. Judith T. Won Pat, Ed.D.  
Ex-Officio

# COMMITTEE REPORT ON

*AS SUBSTITUTED BY THE AUTHOR*

## **BILL NO. 185-33 (COR)**

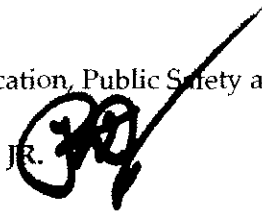
*“An Act to amend § 11311.1 of Title 7 and add new Chapter 16 to Title 21, both of Guam Code Annotated, relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; to amend subsection (a) of § 2101, and add a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, relative to providing for the creation of a Judicial Land Division Court expeditiously review and affirm, if appropriate, the settlement between the government and landowner; to amend § 22421 of Article 4, Chapter 22, Title 5, Guam Code Annotated, relative to the Land Claims Compensation Fund.”*



November 09, 2015

**MEMORANDUM**

**To:** All Members  
Committee on U.S. Military Relocation, Public Safety and Judiciary

**From:** SENATOR FRANK B. AGUON, JR.   
Committee Chairperson

**Subject:** Committee Report on *as substituted by the Author* Bill No. 185-33 (COR)

Transmitted herewith for your consideration is the Committee Report on *as substituted by the Author* Bill No. 185-33 (COR) – “An Act to amend § 11311.1 of Title 7 and add new Chapter 16 to Title 21, both of Guam Code Annotated, relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; to amend subsection (a) of § 2101, and add a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, relative to providing for the creation of a Judicial Land Division Court expeditiously review and affirm, if appropriate, the settlement between the government and landowner; to amend § 22421 of Article 4, Chapter 22, Title 5, Guam Code Annotated, relative to the Land Claims Compensation Fund.”

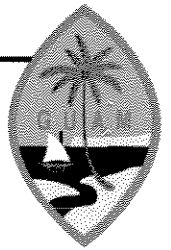
This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Copy of Bill No. 185-33 (COR)
- Copy of *as Substituted by the Author* Bill No. 185-33 (COR)
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony & Supporting Documents
- Copy of COR Referral of Bill No. 185-33(COR)
- Notices of Public Hearing
- Copy of the Public Hearing Agenda
- Related News Reports

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

*Si Yu'os ma'åse'!*

- Senator  
FRANK B. AGUON, JR.  
Chairman
- Senator  
Thomas C. Ada  
Vice Chairman
- Vice-Speaker  
Benjamin J.F. Cruz  
Member
- Senator  
Rory J. Respicio  
Member
- Senator  
Dennis G. Rodriguez, Jr.  
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- Senator  
Dr. Nerissa B. Underwood, Ph.D.  
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- Senator  
V. Anthony Ada  
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- Senator  
Frank F. Blas Jr.  
Member
- Senator  
James V. Espaldon  
Member
- Senator  
Brant T. McCreadie  
Member
- Speaker  
Dr. Judith T. Won Pat. Ed.D  
Ex-Officio



COMMITTEE VOTING SHEET

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
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Senator  
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Senator  
Frank F. Blas Jr.  
Member

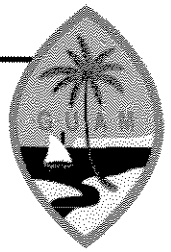
Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreddie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D.  
Ex-Officio

Bill No. 185-33 (COR) – as substituted by the Author– “An Act to amend § 11311.1 of Title 7 and add new Chapter 16 to Title 21, both of Guam Code Annotated, relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; to amend subsection (a) of § 2101, and add a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, relative to providing for the creation of a Judicial Land Division Court expeditiously review and affirm, if appropriate, the settlement between the government and landowner; to amend § 22421 of Article 4, Chapter 22, Title 5, Guam Code Annotated, relative to the Land Claims Compensation Fund.” (Sponsors: D.G. Rodriguez, Jr. / T.R. Muña Barnes / F.B. Aguon, Jr. / R.J. Respicio / T. Morrison / V.A. Ada / B.T. McCreddie)

COMMITTEE MEMBERS	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
AGUON, FRANK B. JR. Committee <i>11/9/15</i>						
ADA, THOMAS C. Committee Vice Chairperson				✓		
VICE-SPEAKER CRUZ, BENJAMIN J.F. Committee Member				✓ <i>11/10</i>		
RESPICIO, RORY J. Committee Member		<i>11-10-15</i>				
RODRIGUEZ, DENNIS G. JR. Committee Member		✓ <i>11/9/15</i>				
UNDERWOOD, NERISSA B. PH.D Committee Member				✓		
ADA, V. ANTHONY Committee Member		✓				
BLAS, FRANK F. JR. Committee Member				✓		
ESPALDON, JAMES V. Committee Member				✓		
MCCREADIE, BRANT T. Committee Member						
SPEAKER WON PAT, JUDITH T. Ed.D. Ex-Officio						



**COMMITTEE REPORT DIGEST**

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
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Brant T. McCreadie  
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Dr. Judith T. Won Pat, Ed.D  
Ex-Officio

I. **OVERVIEW**

Bill No. 185-33 (COR) was introduced on September 25, 2015, by Senator Dennis G. Rodriguez, Senator T.R. Muña Barnes, Senator Frank B. Aguon, Jr, Senator R.J. Respicio, Senator Tommy Morrison, Senator V. Anthony Ada, and Senator Brant T. McCreadie, and was subsequently referred by the Committee on Rules to the Committee on Guam US Military Relocation, Public Safety and Judiciary on September 28, 2015.

The Committee on Guam US Military Relocation, Public Safety and Judiciary convened a public hearing on Bill No. 185-33 (COR) on a Thursday, October, 8 2015 at 5:00PM in I *Liheslatura's* Public Hearing Room.

**Public Notice Requirements**

Public Hearing notices were disseminated via e-mail to all senators and all main media broadcasting outlets on Thursday, October 1, 2015 (5-Day Notice), and again on Tuesday, October 6, 2015 (48-Hour Notice). Notices were also published in the Guam Pacific Daily News Thursday, October 01, 2015 and Tuesday, October 06, 2015.

**Senators Present**

Senator Frank B. Aguon, Jr., Chairperson  
Vice-Speaker Benjamin J.F. Cruz, Committee Member  
Senator Dennis G. Rodriguez, Committee Member  
Senator James V. Espaldon, Committee Member  
Senator Nerissa B. Underwood, Ph.D., Committee Member  
Senator Tommy Morrison

The public hearing was Called-to-Order at 5:00 PM.

II. **SUMMARY OF TESTIMONY & DISCUSSION**

**Chairman Aguon:**

This public hearing sponsored by the Committee on the Guam U.S. Military Relocation, Public Safety, and Judiciary is hereby convened. On the agenda is Bill No. 185-33 which is relative to establishing an expedited an administrative process to identify land takings by agencies, to address claims, and determine appropriate settlements relative to property expropriated for public purposes by the Government of Guam without just compensation, and we do have the sponsor of the legislation who has joined us this evening, and I will give him an opportunity to be able to provide his brief opening comments.

**Chairman Aguon:**

In compliance with the open government law, for the information of the community, the initial notice for this particular public hearing was sent out to the stakeholders on the 1<sup>st</sup> of October, and also printed in the Pacific Daily News on the 1<sup>st</sup> of October with the second notice being released by the committee on the 6<sup>th</sup> of October and likewise the 2<sup>nd</sup> print in the Pacific Daily News on the 6<sup>th</sup> of October. I'd like to welcome and thank my colleagues for joining us this evening. To my immediate left is Senator Espaldon. Thank you very much Senator for joining us. To his immediate left is Senator Nerissa Underwood. Thank you again Senator, and to her immediate left is Senator Dennis Rodriguez, who is the sponsor of Bill No. 185. As I invite the sponsor of the legislature to provide comments, I would like to please invite the following individuals to grab a seat in the front. We have Mr. Ken Leon Guerrero, Mr. John Illao, Pastor Cliff Shoemaker, and Ms. Helen Gumataotao. Once again if I can invite the following individuals to join us up front have Mr. Ken Leon Guerrero, Mr. John Illao, Pastor Cliff Shoemaker, and Ms. Helen Gumataotao, and as we allow you all to take your seats, I would like to invite the sponsor of the legislation, Senator Rodriguez to provide his opening comments.

**Senator Dennis Rodriguez:**

Hafa Adai, and thank you very much Mr. Chairman and thank you very much everyone for being here this afternoon. Just briefly, Bill 185, the specific intent and focus of this legislation is to remedy the past unresolved land takings initiated by our government directly pursuant to which the public has already collectively benefited. There is really six components of this legislation that I would like to be able to just highlight so that its absolutely clear on what the intents are of this piece of legislation. The first is to mandate that all industries and all instrumentalities that the Government of Guam determined that any land in its inventory, possession, or what its being utilized for public purposes have been properly acquired due process and compensation has been provided. This would remove or greatly alleviate a great portion of owners burden of perfecting a claim from being solely born by the land owners. The second is to move forward the date for the filing of the claim for compensation for five years from the date of enactment of this act or until 2021. Whichever is later. With numerous outstanding claims for land taking will be precluded, and to mandate that agencies pay the cost for investigating and confirming such claims. This has been otherwise unduly, orneriest, and expensive burden to re perform by land owners by seeking compensation inaction initiated by the government. The third component is that with the validation or confirmation of an inverse condemnation taking, the land owner would then be notified by the agency by his or her right to institute an action for inverse condemnation. The land owner and government can then readily move forward with the process of determining true market value, and appropriate compensation. This process would place a reasonable portion of the burden of validating and confirming a claim upon compensation. The fourth component provides for the administrative adjudication of the claim by an agency to which a validated claim has been filed, and sets performance, timelines by which the agency to which the claim was filed shall respond to the claim and determine fair market value and the compensation due to landowner inclusive of interest. The fifth component, it establishes a fifth division in the Superior Court of Guam for land division, a court of record intended to expedite judicial process intended for claims for government taking in condemnation with the Superior Court of Guam. The fifth component of this legislation, the act recognizes that each land taking case is different and the mandate is provided by the act to preclude a broad class action suit without land owner consent thereby assuring there is individual consideration of the unique parcels affected unless otherwise deemed appropriate by the court. So this piece of legislation Bill No. 185-33 is really a piece of legislation resurrected from a previous term, when I introduced Bill No. 239-32. We worked as much as we could with all the stakeholders involved with the Attorney General's Office as well, and I believe at this point in time, we are ready to move forward in addressing this very important issue.

**Senator Dennis Rodriguez:**

For decades this has been an unresolved matter and I know that this issue will certainly have a large cost involved, but just like any public debt, this is an issue that must be resolved and this piece of legislation will extend equity to our land owners whose properties were taken and really making recognition of the government must now look on what it has done to the land owners and taking out their properties. So I look forward to this hearing, I look forward to pursuing this legislative process and finally resolving this long standing issue. Si Yuus Maase Mr. Chairman.

**Chairman Aguon:**

Thank you very much Senator Rodriguez. I would also like to welcome Vice-Speaker Cruz and Senator Morrison. Thank you very much Senators for joining us this evening. Mr. Leon Guerrero, if I can ask you to pull the mic and identify yourself for the record and we will proceed.

**Mr. Ken Leon Guerrero:**

My name is Ken Leon Guerrero.

**[Written Testimony Attached]**

and I believe that this bill will put a course in place that ordinary people can follow and hopefully get their claims resolved as fast as those of the Layon land owners. Thank you.

**Chairman Aguon:**

Thank you very much Mr. Leon Guerrero.

**Senator Dennis Rodriguez:**

Mr. Chairman, if I may. I'm sorry to interject. I saw Vice-Speaker Ted Nelson here; I would like to recognize him. He was really the champion of this piece of initiative back in the 22<sup>nd</sup> Guam Legislature and him being here, I appreciate it, and sir we are here today to ensure what you have started, will be complete and finally try to resolve. So thank you very much Mr. Chairman.

**Chairman Aguon:**

Thank you very much Senator Rodriguez, and thank and welcome Mr. Vice-Speaker Nelson. Mr. Illao.

**Mr. John Illao:**

Good Evening Mr. Chairman and Senators. My name is John Illao, I'm the Vice President of JMI Edison and Im here to testify in favor of Bill 185-33. Like Mr. Leon Guerrero is a victim, however us at JMI Edison, our basic human rights are being taken away. Mr. Chairman, can I call my assistant to assist.

**Chairman Aguon:**

Yes. Please proceed.

**Mr. John Illao:**

I'm just going to show 8 pictures. I'm not going to do a death by power point presentation. So just bear with me. The road is the Ton Vicente Leon Guerrero road and as you can see our road is being blocked by those two big blocks. On the left side, you will see the New Covenant Church, on the right side is our building, and if you can see the two story building or the three story building on the right, the is the Baba Corp, and those two signs in front of them are for sale signs. So go ahead please.

**Mr. John Illao:**

On the left side, that is where we are currently entering our property. Baba Corp is allowing us access through their land and I believe that the church too and that's how they are accessing and the residence. That's the name of the street, Tun Vicente Leon Guerrero with the stop sign. I think the road has been in existence for approximately 50 years now, and there's a bigger picture of the block which nobody can move I think. That's the back side. Go ahead please. See there's a resident there, a house, go ahead, and some tin house and also the apartments. So we are a small community. There is two businesses in that area and the church, and a couple of residence, and some are tin houses too, and that's it for the pictures. As I was saying, our residents, as I say they were in the back. I have also met some of them at the New Covenant Church meeting are old already. So on a daily basis, our basic rights as a human being are being taken away. Our right to work, our right to worship, our right to operate a business, which Gov. Guam gave us a business license, our right to emergency services, our right to live. I mean what if there is a fire, and just today those new defibrillators that the Guam Fire Department have so, what use are those defibrillators if they cant even get to the patient. I really like what Mayor Gogue said in the newspaper today. Gov. Guam needs to stop dragging its feet because it has been. So in conclusion, in your October 19<sup>th</sup> Session, we are asking you to vote yes on this Bill 185-33 and also give us our rights back, but also please talk to the landowners of that street. Thank you.

**Chairman Aguon:**

Thank you very much Mr. Illao for that presentation and also for the support hat you have brought to explain your situation. Pastor Shoemaker.

**Pastor Shoemaker:**

Good evening. I would like to just keep this short for you guys. We got two congregations of about 500 people that have to access our property on a weekly basis many times biweekly. We have completely, and if you remember the picture we have completely destroyed the Baba Corporation, that whole lot. We appreciate their hospitality in letting us use their property temporarily, but when that property is sold, we have no insurance that can continue. When we leased the property more than 15 years ago, we leased it based on the fact that we have access to that road. I mean we have access to the property through that road. Since then, that road has been blocked for nearly two years. We have had several encounters with everybody from the mayor's office all the way up to higher up, and no one seems they want to do anything. I would just like to say that I support this bill within any way to help us get that road open. I am in full support and so is our congregation.

**Chairman Aguon:**

Thank you very much Pastor Shoemaker. Ms. Gumataotao.

**Ms. Helen Gumataotao:**

Good evening Senators, Mr. Chairman. My name is Helen Gumataotao and I work for JMI Edison. I'm a mother of four kids, and working for JMI in that area as you can see that road is blocked. For now, we are allowed access through the Baba corporation site, but if Baba sells their property, what happens to the next tenant that comes in and doesn't allow us access to their property to our work? What are we going to do then? Currently the road is blocked like Mr. Shoemaker said. Pastor Shoemaker said for about two years, approximately two years and nothing has been done.



**Ms. Helen Gumataotao:**

I am here to support Bill 185-33 hoping that something can be done to at least compensate the property owner for the use of the property currently. That's it.

**Chairman Aguon:**

Thank you very much Ms. Gumataotao for providing your testimony. If there is anyone else who has questions or comments for members of the panel. Senator Rodriguez. Thank you very much for your testimony this evening. Yes Pastor Shoemaker. You have a follow on comment?

**Pastor Shoemaker:**

One short comment. This whole ordeal is over a ten-foot strip of land. I mean it is very small and yet it holds up commerce. Thank you.

**Chairman Aguon:**

Thank you again for your testimony folks. If I can invite the following individuals Nelson Rodriguez, Mr. Rodriguez, you just wanted to sign in. Ms. Dana Gutierrez. Mayor June Blas. If she is in the audience, I do know that she provided testimony. Vice-Speaker Ted Nelson malagu ya pa paramaotomao. Hagu lamun. This is your idea and this is. Okay, Attorney Karl Espaldon. Kristelle Sanchez, and Ms. Geneveive Illao. We have Joaquin Perez. Going to provide testimony? Okay, and Laurent Duenas. Just for the information of everyone in the audience and who is watching this particular public hearing, the committee has received testimony from Department of Land Management, so we do have that on the record. If you would like to have copies, please proceed to the table on your left, and request copies of that particular testimony. Ms. Dana Gutierrez please.

**Ms. Dana Gutierrez:**

Hi. Thank you Chairman Aguon and fellow Senators. We also submitted written testimony Senator for the record. My name is Dana Gutierrez and I am the Director of Policy, Planning and Community Relations for the Judiciary of Guam.

[Written Testimony Attached]

**Chairman Aguon:**

Thank you very much Ms. Gutierrez for your testimony this evening. Mr. Espaldon.

**Deputy Attorney General Karl Espaldon:**

Good afternoon Chairman Aguon and members of the Committee. I am deputy Attorney General Karl Espaldon appearing on behalf of the Office of the Attorney General on Bill 185-33.

[Written Testimony Attached]

**Chairman Aguon:**

Thank you Mr. Deputy Attorney General Espaldon. I appreciate your testimony and your suggestion for a follow on round table. Ms. Duenas. I'm sure Mr. Perez is going to yield to you.

**Ms. Laurent Duenas:**

[Written Testimony Attached]

**Chairman Aguon:**

Thank you very much Ms. Duenas for your testimony this evening. Mr. Perez.

**Mr. Joaquin Perez:**

[Written Testimony Attached]

**Chairman Aguon:**

Thank you very much Mr. Perez for your testimony this evening. Any questions from the senators or from the members of the panel. If not thank you again for your testimony this evening. If I can invite the following individuals, please. Vice-Speaker Ted Nelson, Mr. Ed Illao, and Ms. Laura Soudor. If I can invite the three of you to please join us up front. Once again, Vice-Speaker Ted Nelson, Mr. Ed Illao, and Ms. Laura Soudor. Thank you very much Vice-Speaker Ted Nelson and Ms. Souldor. Ms. Souldor, if you can proceed with your testimony please.

**Ms. Laura Soudor:**

My testimony is simple. I am highly in favor of the bill that you have proposed for several reasons. I believe like what Kin shared in prospective with his family that this is so critical here on Guam because many many families are caught not knowing what happened to their lands. I can share with you that this is my experience as well. There's a property that my mom and dad owned and subdivided and there was a remnant to that property that my mother in her probate after her death was given to our family. We've continued to pay tax on it. I've been paying tax on this piece of property for at least 25 years and yet, no one has been able to help guide me to find the property. The property, I've been paying tax on it. I've gone to revenue and taxation and asked them to provide me with evidence that the property exists because I have had surveys done and you know all kinds of things done and all kinds of measures to find the property. I've worked with land management. They say the property is in the books. They've found a map, but the government has taken this part of the property for a road. This part of the property for water access and so on and so forth, and yet I continue to receive real property tax statements, and I'm told my mother is in arrears even though she's passed away for 13 years, and I want to preserve my mother's honor and name so I continue to pay the tax until my lawyer of course said stop paying the tax until revenue and tax can show you that the property exists. So this is just a small example of how helpless I am and I'm not an easily intimidated person. I've spent a lot of money trying to find the property. My mother insists that the property is there. The people who have bought the plots you know from the subdivision have told me Loling you know the government has taken the portion that had belonged to your mother because they needed to put a road in, they needed to put this and that in, and I just don't know how to resolve the issue. So when I heard about Bill 185 and when I heard of the intent of the bill, I was thrilled because it is exactly the kind of thing that folks need to resolve some of these very cloudy issues about land, and who has access to the land, who owns the land. I still haven't been able to resolve this. I was at revenue and tax last week trying to get at the bottom of this because again I received a bill two weeks ago that my mother was in arrears and has been in arrears for several years ago since I stopped paying the tax bill.

**Ms. Laura Soulder:**

So I commend all of you who have originated this bill and I commend this committee and I urge you to please pass this bill so that these kinds of issues can be resolved not at the expense of the tax payer because you know in my case, I put in a lot of money to resolve this issue and I haven't been able to get it resolved. I just don't think that's fair. I don't think the role of government is to. The role of government is to protect its citizens and to protect the property of its citizens, not to obscure the rights there off. So I think that my position is clearly in support of the bill and I laud you for introducing it. Thank you.

**Chairman Aguon:**

Thank you very much Dr. Soulder for your presentation. Mr. Vice-Speaker before I can recognize you, can I invite Tony and Mary Ann Ada. If you would like to join us up front. Vice-Speaker Nelson, you have the floor.

**Former Vice-Speaker Ted Nelson:**

Mr. Chairman. Let me yield to my nephew. I've been going through this for 21 years and having a trauma. I yield to him.

**Chairman Aguon:**

Alright Mr. Vice-Speaker. Tony, MaryAnn.

**Mr. Tony Ada:**

Hi I'm Tony Ada. This is my wife Mary Ann and we all know each other. We heard about this hearing this afternoon on the radio. Senator Rodriguez and so I called Mary Ann right away. There's going to be a hearing to do with this land situation where original land owners were compensated right. Like the young lady earlier, it's the same way. We didn't know that. It's actually her mom. We didn't know that she was continuing to pay taxes on the piece of property that is route 4. You know route 4 goes from Chief Quipuha all the way down to Malessa, and our family's piece of property goes from the Ylig bridge all the way up to where the entrance to the Seminarian is. It's how do you say, when we looked at it. When her mom died and we were subdividing the properties for the families, the surveyor had to carve out what was taken. It amounts to 11,000 plus square meters. We looked at her estate and in her estate, she continued to pay taxes on that property. We tried to find out what kind of compensation was issued and to the extent I was able to find information, there was some of an action taken for the condemnation of land and what I saw there was a written expression that monies for the taking of the land will be deposited in the U.S. District Court. From there it was empty. I don't know how to go into the U.S. District Court, but from there, there was no indication that the money was deposited. The paper expressed that there was going to be deposit for the land taking. So the amount was in the hundreds if I recall. We have the documents, I mean we just heard about it this afternoon so we can always bring the documents in later right, but if you are looking at 11,000 square meters of land taken, and it's going to be in the hundreds, I'm not sure if that's possible no a days or even back then when it was supposedly taken. So I called Mary Ann that I heard on the radio that you folks are going to listen to try and address this situation. I know you have to go through, and we have to put our paper work together. Make sure that the situation is what we are expressing so I guess we are here to support the effort. That's it.

**Chairman Aguon:**

Thank you very much Mr. and Ms. Ada for your testimony. Ms. Ada did you want too. Thank you again for your testimony this evening. Vice-Speaker Nelson

**Former Vice-Speaker Ted Nelson:**

Thank you Mr. Chairman. Of course, Senator Rodriguez. Senator Underwood. My cousin, Senator Espaldon. Senator Morrison, and of course Vice-Speaker. Thank you for the opportunity. I strongly believe, according to the U.S. Constitution that no private property shall be taken without just compensation. That's in the Constitution of the United States, and somehow people for the last 20 some years have completely ignored these rights. Not only the Constitution, but also the public law that was passed back during my time Mr. Chairman and this public law, 22-93 has everything. It has the history and I don't want to read it and I just want to ask you Senators, to go through with that and read why I introduced it. Read what the Inspector General said then back 31 years ago and read the recommendation of obligation for the Government of Guam. I know that the Governor vetoed my bill, but it was overridden. It is important, and somehow I feel. Just a kind of feeling for 21 years questioning myself why. Why did it take this long towards pay compensate Chamorro landowners. Route 1 Marine Drive, Route 16 and Route 15 were paid by the Federal Government. I remember Route 15 because our land was dissected by in back road, and I remember seeing a figure of 5 dollars per coconut tree, but only those who were compensated were paid by the Federal Government. When the federal Government turned over their jurisdiction of this situation. At the time. I don't want to repeat the Inspector General. At the time. What did you put in there monster? Let me try again. At the time, the Inspector General estimated that 73 million dollars that had to be compensated. If you're going to do it today, be ready to pay more. 150 to 200 millions dollars. You all are aware that there is a class action suit by the District Court, and there will be a hearing on the same issue. How it will turn out? I'm pretty sure the District Court will look at the violation of the constitutional rights of the Chamorro people. How long it will take? Im not really sure, but that is going on. We got two legislation to introduce this issue. Perhaps Mr. Chairman. There might be further deliberation with a round table discussion to include the administration and everybody else in trying to resolve the issue. We don't want any political battle, any further delay. This total injustice. Why? Why? Why have our leaders be sitting around not paying attention to this issues where Chamorros are being denied and being abused as far a private property rights and I ask you dear people to please read public law the one that I introduced 21 years ago and discuss it with the intent of Senator Rodriguez's bill and any other bill resolution and of course at the same time you need to check on the status of the class action suit. The class action suit, if he wins the case, Attorney Curdio Anaval will be applied to every landowners on Guam whose property has been taken without compensation for roads, schools, Water Works, GPA, route 4, and all the other roads by that legislation. I mean that court action. Sometimes we got to sit back gachong fan and try to figure out all these injustice against the Chamorros. Finagaga gachong. Huma chule tano private property us by this government, mantinapapa si poyi manipapa siha tax sigi hao na tax. Bula guini abuse gaching. Disaburuta. Nafamalogue lawyer to fight for this, when we have this government, when we have senators, we have governors for the last 20 years have completely ignored this issue. Im glad, and im very happy that people are beginning to take interest and I hope that many of our parents that have died and I ask the younger generation, the younger generation to get involved with this issue.

**Former Vice-Speaker Ted Nelson:**

Go to public works. Read the bills. See your Senators and fight for your land. Don't just sit back please. We should have the younger generation taking over now. We got to do it. Do it before election time because there you have been able to expose now people out there who are watching television and taking and all those that testify. They have big properties that have been taken by government. They are going to start talking about the value of land. They are going to start talking about the injustice. The young people. The youth. Those are the Universities everywhere should be interested to take this problem and fight for your land. Please, do it for the sake of your parents, grandparents, and great grandparents because if you really are to go back to the history of the injustice of the Chamorro Land, other abuse. I think we should be ashamed of what we have done to our own Chamorros. All im asking is that let us try to restore pride Let us try to restore this injustice, let us make the younger generation, the new people who are willing to tackle this problem, and resolve it and have them recognize that they own this rock, island. They own land. Land gachong is our culture. Bear in mind, some of our people are begging at Chamorro Land Trust. They can't even get it now. This is an issue that you as Senators, Im not talking about election, but between now and election that this situation of this problem of land, must be taken seriously and addressed accordingly. I know that there are a lot of people that don't want to do this, either they are afraid or have vested interest. There are other individuals out there who like to grab lands. There are a lot of our lands that are taken illegally. So many injustice that have been done to this island so its time gachong that we restore the Chamorro pride. We restore the Chamorro culture by giving them by compensating every Chamorro for every square meter taken into public use by this government after transferring from the Naval Government. That thing is working. Anyway Mr. Chairman, I have a group that's been waiting for me and Im pretty sure they want me to cut short but please take care of this. Take care of our agriculture. Buy local products, buy local produce that's again my legislation 20 years ago. Compensate our farmers, pay their products, buy their products and again this is for the welfare of our Chamorros, and yet somehow they, some of our leaders completely up to this point. Listen to the radio about our land, about our agriculture products and all these other stuff. So lets show our people that we are concerned about the welfare and that we are going to do something about it and that we are going to make this island proud and we are going to make the Chamorro proud. Restore their pride. Restore their integrity. Make them feel that they are a part of this island and that this government will take care of them and I feel that it starts with you Senators. Si Yuus Maase. Thank you Mr. Chairman for listening, Vice-Speaker, Senator Morrison, Mr. Chariman, Senator Espaldon, Senator Underwood, Senator Rodriguez. Thank you thank you sir for this opportunity. Si Yuus Maase.

**Chairman Aguon:**

Si Yuus Maase Vice-Speaker Nelson, and everyone who provided testimony this evening and who showed up. I want to extend our appreciation and our thanks for participating in this process. The committee will continue to received testimony for the subsequent 10 days from today. I apologize; I did not give the sponsor the opportunity to ask questions. If you would like. You're good. Any other Senators. If not, this concludes this public hearing, but the committee will continue to receive written testimony for the subsequent ten days. We will base on the suggestion either proceed with a markup session on tis particular legislation or roundtable discussion so that in fact that the primary sponsor can have maximum involvement.

**Chairman Aguon:**

I would like to also recognize that the Director of Department of Land Management is in the audience, and I want to thank you Mr. Borja for submitting written testimony and also for being here and listening to some the statements that have been presented in this public hearing. Also Mayor Jesse Gogue from Chalan Pago- Ordot. Thank you very much Mayor for assisting us in getting the word out to our Mayors Island wide and ensuring that testimony is provided. Yes Senator Espaldon.

**Senator Espaldon:**

I just want to make sure that those interested in submitting written testimony. There has been some misinterpretation of what the ten days is and I would just like to make that clear, and I would like to ask you Mr.Chair. Are we talking ten working days or are we talking ten calendar days.

**Chairman Aguon:**

On behalf of the committee we are speaking ten working days.

**Senator Espaldon:**

So two weeks in essence, and the reason why I bring that up because I myself was faced with the same dilemma where there was a public hearing during the triple a process and I was told ten days, and I was told ten working days and I was told it was ten calendar days. So the question was, was my testimony allowed at that time. Of course I fought for my testimony to be entered so I just want to make that clear for everybody that now everybody is on the same page. It will be ten working days.

**Chairman Aguon:**

Thank you very much for bringing that up. I shared with everyone that we will proceed with a markup meeting or a round table discussion. If we do have a roundtable discussion, then it will be televised so that in fact the public can also directly listen to some of the testimony and any proposed amendments that will be provided in this measure. So this concludes this hearing and I thank you all again for joining us.

The public hearing was Adjourned at 6:09 PM.

## II. WRITTEN TESTIMONY

The following individuals submitted written testimonies to the Committee on Guam U.S Military Relocation, Public Safety, and Judiciary before or after the schedule public hearing on Thursday, October 8 2015 at 5:00PM in *I Liheslatura's* Public Hearing Room.

1. Ken Leon Guerrero, Land Condemnation Victim, Resident of Santa Rita
2. June Blas, Mayor of Barrigada, Office of the Mayor and Vice Mayor of Barrigada
3. Dana A. Gutierrez, Director of Policy, Planning, and Community Relations, Judiciary of Guam
4. Karl P. Espaldon, Deputy Attorney General, Office of the Attorney General of Guam
5. Laurent C.F. Duenas, resident of Yigo
6. Joaquin P. Perez, resident of Santa Rita
7. Michael J.B. Borja, Director, Department of Land Management

## IV. FINDINGS & RECOMMENDATIONS

**FINDINGS:** At the request of the Author, Bill No. 185-33 (COR) was *substituted* to include the following:

**Section 7.** § 22421 of Article 4, Chapter 22, Title 5, Guam Code Annotated, is hereby amended, to read:

“§ 22421. Transfer of Autonomous Agency Revenues to Land Claims Compensation Fund Autonomous Agency Collections Fund.”

**Section 8.** Deposit of Payments in Lieu of Taxes owing pursuant to 5 GCA § 22421 of Funds into Land Claims Compensation Fund.

Note: For a review of the full amendments, please refer to the “as substituted by the Author” version of Bill No. 185-33 (COR) found in the Committee Report.

**RECOMMENDATIONS:** The Committee on Guam U.S Military Relocation, Public Safety, and Judiciary hereby reports out *As Substituted by the Author* Bill No. 185-33(COR) with the recommendation to

**TO REPORT OUT**

*I MINA' TRENTAI TRES NA LIHESLATURAN GUÅHAN*  
2015 (FIRST) Regular Session

Bill No. 165 -33 (COR)

Introduced by:

Dennis G. Rodriguez, Jr.  
Tina Rose Muna-Barnes  
Frank B. Aguon, Jr.  
Rory J. Respicio  
Thomas A. Morrison  
V. Anthony Ada  
Brant McCreadie

AN ACT TO *AMEND* § 11311.1 OF TITLE 7 AND *ENACT* A NEW CHAPTER 16 TO TITLE 21, BOTH OF GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING AN EXPEDITED ADMINISTRATIVE PROCESS TO IDENTIFY LAND TAKINGS BY AGENCIES, ADDRESS CLAIMS, AND DETERMINE APPROPRIATE SETTLEMENTS RELATIVE TO PROPERTY EXPROPRIATED FOR PUBLIC PURPOSES BY THE GOVERNMENT OF GUAM WITHOUT JUST COMPENSATION; AND, TO *AMEND* SUBSECTION (a) OF § 2101, AND *ADD* A NEW ARTICLE 5 TO CHAPTER 4, DIVISION 1, BOTH OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR THE CREATION OF A JUDICIAL LAND DIVISION COURT TO EXPEDITIOUSLY REVIEW AND AFFIRM, IF APPROPRIATE, THE SETTLEMENT BETWEEN THE GOVERNMENT AND LANDOWNER.

2015 SEP 05 PM 4:31

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Short Title.** This Act *shall* be cited as the “Government Land  
3 Takings Compensation Act of 2015.”

4 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
5 that the manner and method of taking land for public easements must be in



1 accordance with the Organic Act of Guam and the laws of Guam. However, when  
2 establishing easements, government agencies and instrumentalities have placed  
3 utility infrastructure on private property without the proper exercise of eminent  
4 domain or negotiated transfer. These encroachments have placed an unfair burden  
5 upon citizens seeking redress, and only those who can afford attorney's fees and  
6 professional surveying services have the capacity to confirm that these  
7 encroachments have violated the law.

8 It is the intent of *I Liheslaturan Guåhan* to place the burden of proof on the  
9 government entity alleged to have established the easement or placed the utility  
10 infrastructure on the private property in question. If it is found that government  
11 encroachment is proven, claimants should be allowed just compensation from the  
12 time of the encroachment determination. Market value should be calculated from  
13 time of the taking pro-rated to the value at the time period, and claimant *shall* be  
14 entitled to receive interest on the fair market amount due accruing from time of  
15 taking. *I Liheslaturan Guåhan* recognizes that each land taking case is different,  
16 and the intent of the mandate provided by this act *shall* preclude a broad class  
17 action without landowner consent, thereby assuring there is individual  
18 consideration of the unique parcels affected unless otherwise deemed appropriate  
19 by the Court.

20 It is therefore the intent of *I Liheslaturan Guåhan* to establish an expedited  
21 judicial process within the courts to address such matters and make determinations  
22 as to claims and determine adequate compensation.

23 **Section 3.** Section 11311.1 of Article 3 of Chapter 11, Title 7, Guam Code  
24 Annotated, is *amended*, to read:

25 “§ 11311.1. **Inverse Condemnation.** (a) (1) Any person whose land  
26 was expropriated for public purposes by the government of Guam between  
27 August 1, 1950, and July 1, 1994, and who has not been compensated by the

1 government of Guam for such taking, may institute an action for inverse  
2 condemnation. In any taking by the government of Guam after July 1, 1994,  
3 in which the government fails to follow the eminent domain provisions of  
4 Title 21, Guam Code Annotated, the person whose land is taken *shall* have  
5 five (5) ~~four (4)~~ years from the time of such taking to institute an action for  
6 inverse condemnation pursuant to 21 GCA Chapter 16. It is further  
7 provided, that for any taking from July 1, 1994 to the date of enactment of  
8 this Chapter, the owner whose land was taken *shall* continue to have five (5)  
9 years to institute an action for inverse condemnation, commencing  
10 henceforth from the date of enactment, or by December 31, 2021, whichever  
11 is later.

12 (2) For purposes of this Section, only the current owner of the land  
13 subject to the claim may seek compensation dating back to the time of the  
14 taking. An action *shall* lie for the taking of a person's fee or for lesser  
15 compensable interest in the property which has been expropriated by the  
16 government of Guam without according the person due process. In any  
17 action for inverse condemnation in which an award is made to a person for a  
18 taking, the court *shall* also award interest and reasonable attorney's fees and  
19 costs.

20 (b) (1) The lands taken pursuant to inverse condemnation by the  
21 government *shall not* be deemed to be subject to a class action *unless* the  
22 members knowingly and explicitly elect to be so included in the class, and  
23 the court finds that for the consenting members of the prospective class and  
24 their respective properties, that the reasons for class certification fully satisfy  
25 the commonality, typicality, adequacy, and all other prerequisites of Guam  
26 Rules of Civil Procedure, Rule 23.

1           (2) This Subsection shall be interpreted with deference to the  
2           circumstance that there is 1) no common issue of law or fact on behalf of all  
3           landowners subject to inverse condemnations due to the unique nature of  
4           each parcel of land, and, 2) the damages are not typical to each and every  
5           landowner and must be calculated on a separate basis.”

6           **Section 4.** A new Chapter 16 is hereby *added* to Division 1 of Title 21,  
7 Guam Code Annotated, to read:

8   “Chapter 16

9   Claims for Government Land Taking and Condemnation Actions

10          § 16101. Policy. (a) All agencies, departments, authorities and  
11 instrumentalities of the government of Guam (collectively, “the agency”), shall  
12 determine whether or not any land in its inventory, possession, or which is being  
13 utilized by it for public purposes, has been properly acquired from a private  
14 landowner by due process, and that just compensation has been provided and  
15 accepted.

16          (b) An agency shall initiate and complete the process, at its sole expense, of  
17 identifying which lands, if any, were acquired through inverse condemnation and  
18 from whom, and for which no administrative or judicial proceeding was conducted  
19 whereby due process and just compensation was accorded the landowner, as of the  
20 date of enactment of this Chapter.

21          (c) (1) The agency shall provide written notice to the landowner, or heir of  
22 interest, whose land was expropriated by the government of Guam, and for which  
23 the landowner has not been compensated by the government of Guam.

24   (2) The agency shall also be required to publish in a newspaper of  
25 general circulation, the name of the landowner of record as recorded with the

1 Department of Land Management, location, recorded lot description, and  
2 size of area taken through inverse condemnation.

3 (c) The landowner shall be notified, in writing, of the right to file an action  
4 for inverse condemnation and just compensation by the government pursuant to  
5 this Chapter.

6 **§ 16102. Filing a Claim.** Any person whose land was expropriated by the  
7 government of Guam who has not been compensated by the government of Guam  
8 for such taking may file a claim for inverse condemnation with the agency that  
9 expropriated such land. In any taking by the government of Guam after July 1,  
10 1994, in which the government failed to follow the eminent domain provisions of  
11 21 GCA, a claim may be filed for inverse condemnation within five (5) years from  
12 the date of enactment of this Chapter to institute an action for inverse  
13 condemnation, commencing from the date of enactment, or by December 31, 2021,  
14 whichever is later. Such claim shall precede the filing of any action pursuant to  
15 §11311.1 of 7 GCA. All claims shall include documentation that the claimant has  
16 real interest in the property.

17 **§ 16103. Administrative Adjudication by Agency.**

18 (a) Upon receipt of a claim, the head of any agency to which a claim was  
19 filed shall have one hundred eighty (180) days to act, and shall make a written  
20 finding as to whether or not a taking has occurred due to a public benefit  
21 requirement for utilization of the land initiated or caused by the agency.

22 (b) The agency head shall transmit the written finding to the agency's  
23 governing board, if any, and who shall then provide a copy to I Maga'lahaen  
24 Guåhan and the Speaker of I Liheslaturan Guåhan. If the written finding  
25 concludes that the claim is valid, the agency has ninety (90) days to determine just  
26 compensation based on the fair market value of the property at the time of the

1 taking. If, however, the written finding concludes the claim is not valid, the  
2 agency must provide written notice to the claimant. Such notice shall advise the  
3 claimant of the right to file an action for inverse condemnation and just  
4 compensation by the government pursuant to § 11311.1 of Article 3 of Chapter 11,  
5 Title 7 GCA.

6 (c) Cost of Investigation, Confirmation, and Appraisal. The agency alleged  
7 to have taken land without just compensation pursuant to this Chapter shall pay for  
8 the cost of investigating and confirming a claim, and appraising the subject  
9 property. In the event that a claim is determined to be frivolous and/or fraudulent,  
10 the claimant shall be held liable for any amounts expended to investigate or  
11 confirm the claim, and appraise the subject property.

12 (d) The Department of Land Management shall provide assistance to any  
13 agency requesting information in the investigation of a claim, or in the  
14 determination of whether or not any land in its possession, or which is being  
15 utilized by it for public purposes, has been properly acquired from a private  
16 landowner through the conduct of a negotiated settlement or judicial process.

17 (e) All information obtained through the research and investigation of the  
18 status of lands taken shall be deemed public information, and shall be made readily  
19 available to the landowner and the general public.

20 (f) This Chapter shall not be applicable to claims that have been  
21 extinguished by negotiated settlement or judicial process.

22 (g) This Chapter shall not be applicable to any land that has been the subject  
23 of a voluntary subdivision pursuant to 21 GCA, Chapter 62 – Subdivision Law,  
24 and whereby a government of Guam agency had not initiated nor was a party to the  
25 action, except to the extent of ensuring compliance with applicable law, rule or  
26 regulation relative to the subdivision of property.

1        **§ 16104. Land Claims Compensation Fund.** There is hereby established a  
2 special fund to be known as the Land Claims Compensation Fund (“the Fund”) to  
3 be maintained by the Department of Administration. The Fund shall be established  
4 and maintained in a bank account apart and separate from the General Fund or any  
5 other bank account(s) of the government of Guam, and shall not be co-mingled  
6 with, or a part of, the General Fund. The Fund shall be solely utilized to pay  
7 settlements, in whole or in part, to landowners who have had their property taken  
8 by the government of Guam for public purposes. I Maga’lahen Guåhan shall  
9 provide for in the annual Fiscal Year Executive Branch budget request, beginning  
10 Fiscal Year 2017, a request for an appropriation for a minimum Sum of Five  
11 Hundred Thousand Dollars (\$500,000.00), which shall be deposited in the Fund.  
12 The Department of Administration shall be authorized to assess a two percent (2%)  
13 account management service fee for the administration of the Land Claims  
14 Compensation Fund.”

15        **Section 5.** Subsection (a) of § 2101 of Chapter 2, Title 7, Guam Code  
16 Annotated, is hereby *amended*, to read:

17        “(a) The Courts of justice of Guam shall consist of the Supreme Court of  
18 Guam and the Superior Court of Guam. The Supreme Court of Guam shall be the  
19 highest Court of Guam and shall have supervisory, but not administrative authority  
20 over the Superior Court of Guam and all other local courts in Guam in accordance  
21 with rules and regulations promulgated by the Supreme Court Judicial Council.  
22 The Supreme Court may, by rules of court, create such divisions of the Supreme  
23 and Superior Courts as may be desirable, and may designate which of the divisions  
24 of the Superior Court are to be courts of record and which shall be courts not of  
25 record; provided, however, that ~~four (4)~~ five (5) such divisions of the Superior  
26 Court shall continue, one being the Traffic Division, not a court of record; one  
27 being the Small Claims Division, not a court of record; a third being the Family

1 Division, a court of record; ~~and~~ the fourth being the Drug Court, a court of record;  
2 and the fifth, being the Land Division, a court of Record. The Supreme Court of  
3 Guam and the Superior Court of Guam, except for the Traffic and Small Claims  
4 Divisions of the Superior Court, are courts of record.”

5 **Section 6.** A new Article 5 is hereby *added* to Chapter 4, Division 1, Title  
6 7, Guam Code Annotated, to read:

7 **“Article 5**

8 **Land Court**

9 **§ 4501. Creation of Land Division Court.** There is hereby created for the  
10 territory of Guam a division of the Superior Court which shall be called the Land  
11 Division of the Superior Court, and is established for the purposes of judicial  
12 review and determination of civil actions or matters pertaining but not limited to,  
13 land taking by inverse condemnation or eminent domain by the government of  
14 Guam, real property boundary disputes, and land registration proceedings. This  
15 Division of the Superior Court shall be a court of record, having a seal, and the  
16 judge, clerk, hearing officers and referees thereof shall be personnel of the  
17 Superior Court.

18 **§ 4502. Expedited Judicial Process for Claims for Government Land**  
19 **Taking and Condemnation.** The Judiciary of Guam *shall* establish an expedited  
20 judicial process within the Superior Court of Guam to address claims for  
21 government land taking and condemnation actions, which shall be a court of record  
22 administered by a Superior Court Judge or Magistrate Judge (“Land Division  
23 judicial officer”). Such matters shall be filed as Government Takings Proceedings.

24 **§ 4503. Purpose.** The purpose of this expedited process is to provide a  
25 speedy and efficient legal process for government land takings and inverse  
26 condemnation cases that will assist the Superior Court judges in adjudicating such.

1           **§ 4504. Functions and Duties of Land Division Judicial Officers.** The

2 Land Division judicial officer shall have the following duties in relation to  
3 government land takings and inverse condemnation matters only:

4           (a) To take testimony and receive evidence for the record;

5           (b) To hear and decide motions and matters, unless the same are appealed  
6 by any party, including but not limited to the following matters:

7                   (1) Orders to show cause for contempt;

8                   (2) Motions of joinder;

9                   (3) Motions to amend pleadings or to dismiss;

10                   (4) Pretrial settlement conferences;

11                   (5) Motions to withdraw;

12                   (6) Mediation to compel discovery;

13                   (7) To conduct informal office conferences with the parties to discuss and  
14 resolve problems or questions about any matters relating to claims of  
15 government land takings or inverse condemnation;

16                   (8) To refer appropriate cases to mediation; and

17                   (9) To adjudicate the claim.

18           (c) Subpoena powers. A Land Division judicial officer or the clerk of  
19 court may issue subpoenas and subpoenas *duces tecum* at the request of any party  
20 in accordance with the provisions of § 7201, et seq., of Title 6, Guam Code  
21 Annotated.

22           **§ 4505. Decisions Final Unless Timely Appealed.** All decisions of the

23 Land Division judicial officer shall be final unless, within thirty (30) days of the  
24 filing of the decision adjudicating the claim, the claimant or the government  
25 notifies the judicial officer of the intent to appeal the decision to the Supreme  
26 Court of Guam.



1            **§ 4506. Rule of Construction.** *This Article shall be construed liberally to*  
2 *fully effectuate its purposes and intent.*

3            **§ 4507. Severability.** *If any provision of this Article or its application to*  
4 *any person or circumstance is found to be invalid or contrary to law, such*  
5 *invalidity shall not affect other provisions or applications of this Article that can be*  
6 *given effect without the invalid provisions or application, and to this end the*  
7 *provisions of this Article are severable.”*

8            **Section 7. Severability.** *If any provision of this Act or its application to*  
9 *any person or circumstance is found to be invalid or contrary to law, such*  
10 *invalidity shall not affect other provisions or applications of this Act that can be*  
11 *given effect without the invalid provisions or application, and to this end the*  
12 *provisions of this Act are severable.*

*I MINA' TRENTAI TRES NA LIHESLATURAN GUÅHAN*  
2015 (FIRST) Regular Session

**Bill No. 185-33 (COR)**  
as substituted by the Author

Introduced by:

Dennis G. Rodriguez, Jr.  
Tina Rose Muna-Barnes  
FRANK B. AGUON, JR.  
Rory J. Respicio  
Thomas A. Morrison  
V. Anthony Ada  
Brant McCreadie

**AN ACT TO *AMEND* § 11311.1 OF TITLE 7 AND *ADD* A NEW CHAPTER 16 TO TITLE 21, BOTH OF GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING AN EXPEDITED ADMINISTRATIVE PROCESS TO IDENTIFY LAND TAKINGS BY AGENCIES, ADDRESS CLAIMS, AND DETERMINE APPROPRIATE SETTLEMENTS RELATIVE TO PROPERTY EXPROPRIATED FOR PUBLIC PURPOSES BY THE GOVERNMENT OF GUAM WITHOUT JUST COMPENSATION; TO *AMEND* SUBSECTION (a) OF § 2101, AND *ADD* A NEW ARTICLE 5 TO CHAPTER 4, DIVISION 1, BOTH OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR THE CREATION OF A JUDICIAL LAND DIVISION COURT TO EXPEDITIOUSLY REVIEW AND AFFIRM, IF APPROPRIATE, THE SETTLEMENT BETWEEN THE GOVERNMENT AND LANDOWNER; TO *AMEND* § 22421 OF ARTICLE 4, CHAPTER 22, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE LAND CLAIMS COMPENSATION FUND.**

1       **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2       **Section 1. Short Title.** This Act *shall* be cited as the “Government Land  
3 Takings Compensation Act of 2015.”

1           **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
2 that the manner and method of taking land for public easements must be in  
3 accordance with the Organic Act of Guam and the laws of Guam. However, when  
4 establishing easements, government agencies and instrumentalities have placed  
5 utility infrastructure on private property without the proper exercise of eminent  
6 domain or negotiated transfer. These encroachments have placed an unfair burden  
7 upon citizens seeking redress, and only those who can afford attorney’s fees and  
8 professional surveying services have the capacity to confirm that these  
9 encroachments have violated the law.

10           It is the intent of *I Liheslaturan Guåhan* to place the burden of proof on the  
11 government entity alleged to have established the easement or placed the utility  
12 infrastructure on the private property in question. If it is found that government  
13 encroachment is proven, claimants should be allowed just compensation from the  
14 time of the encroachment determination. Market value should be calculated from  
15 time of the taking pro-rated to the value at the time period, and claimant *shall* be  
16 entitled to receive interest on the fair market amount due accruing from time of  
17 taking. *I Liheslaturan Guåhan* recognizes that each land taking case is different,  
18 and the intent of the mandate provided by this Act *shall* preclude a broad class  
19 action without landowner consent, thereby assuring there is individual  
20 consideration of the unique parcels affected unless otherwise deemed appropriate  
21 by the Court.

22           It is therefore the intent of *I Liheslaturan Guåhan* to establish an expedited  
23 judicial process within the courts to address such matters, make determinations as  
24 to claims, and determine adequate compensation.

25           **Section 3.** Section 11311.1 of Article 3 of Chapter 11, Title 7, Guam Code  
26 Annotated, is *amended*, to read:

1           “§ 11311.1. Inverse Condemnation. (a)(1) Any person whose land  
2 was expropriated for public purposes by the government of Guam between  
3 August 1, 1950, and July 1, 1994, and who has not been compensated by the  
4 government of Guam for such taking, may institute an action for inverse  
5 condemnation. In any taking by the government of Guam after July 1, 1994,  
6 in which the government fails to follow the eminent domain provisions of  
7 Title 21, Guam Code Annotated, the person whose land is taken *shall* have  
8 five (5) ~~four~~ (4) years from the time of such taking to institute an action for  
9 inverse condemnation pursuant to 21 GCA Chapter 16. It is further  
10 provided, that for any taking from July 1, 1994 to the date of enactment of  
11 this Chapter, the owner whose land was taken *shall* have five (5) years from  
12 the date of taking to institute an action for inverse condemnation, or until  
13 December 31, 2021, whichever is later.

14           (2) For purposes of this Section, only the current owner of the land  
15 subject to the claim may seek compensation dating back to the time of the  
16 taking. An action shall lie for the taking of a person’s fee or for lesser  
17 compensable interest in the property which has been expropriated by the  
18 government of Guam without according the person due process. In any  
19 action for inverse condemnation in which an award is made to a person for a  
20 taking, the court *shall* also award interest and reasonable attorney’s fees and  
21 costs.

22           (b) (1) The lands taken pursuant to inverse condemnation by the  
23 government *shall not* be deemed to be subject to a class action *unless the*  
24 members knowingly and explicitly elect to be so included in the class, and  
25 the court finds that for the consenting members of the prospective class and  
26 their respective properties, that the reasons for class certification fully satisfy

1 the commonality, typicality, adequacy, and all other prerequisites of Guam  
2 Rules of Civil Procedure, Rule 23.

3 (2) This Subsection shall be interpreted with deference to the  
4 circumstance that there is 1) no common issue of law or fact on behalf of all  
5 landowners subject to inverse condemnations due to the unique nature of  
6 each parcel of land, and, 2) the damages are not typical to each and every  
7 landowner and must be calculated on a separate basis.”

8 **Section 4.** A new Chapter 16 is hereby *added* to Division 1 of Title 21,  
9 Guam Code Annotated, to read:

10 **“Chapter 16**

11 **Claims for Government Land Taking and Condemnation Actions**

12 **§ 16101. Agencies to Determine Land Inventory/Possession Acquisition.**

13 (a) All agencies, departments, authorities and instrumentalities of the government  
14 of Guam (collectively, “the agency”), shall determine whether or not any land in  
15 its inventory, possession, or which is being utilized by it for public purposes, has  
16 been properly acquired from a private landowner by due process, and that just  
17 compensation has been provided and accepted.

18 (b) An agency shall initiate and complete the process, at its sole expense, of  
19 identifying which lands, if any, were acquired through inverse condemnation and  
20 from whom, and for which no administrative or judicial proceeding was conducted  
21 whereby due process and just compensation was accorded the landowner, as of the  
22 date of enactment of this Chapter.

23 (c) (1) The agency shall provide written notice to the landowner, or heir of  
24 interest, whose land was expropriated by the government of Guam, and for which  
25 the landowner has not been compensated by the government of Guam.

1           (2) The agency shall also be required to publish in a newspaper of  
2           general circulation, for five (5) days, the name of the landowner of record as  
3           recorded with the Department of Land Management, location, recorded lot  
4           description, and size of area taken through inverse condemnation.

5           (d) The landowner shall be notified, in writing, of the right to file an action  
6           for inverse condemnation and just compensation by the government pursuant to  
7           this Chapter.

8           **§ 16102. Filing a Claim.** Any person whose land was expropriated by the  
9           government of Guam who has not been compensated by the government of Guam  
10           for such taking may file a claim for inverse condemnation with the agency that  
11           expropriated such land. In any taking by the government of Guam after July 1,  
12           1994, in which the government failed to follow the eminent domain provisions of  
13           21 GCA, a claim may be filed for inverse condemnation within five (5) years from  
14           the date of enactment of this Chapter to institute an action for inverse  
15           condemnation, commencing from the date of enactment, or by December 31, 2021,  
16           whichever is later. Such claim shall precede the filing of any action pursuant to §  
17           7 GCA § 11311.1. All claims shall include documentation that the claimant has  
18           real interest in the property.

19           **§ 16103. Administrative Adjudication by Agency.**

20           (a) Upon receipt of a claim, the head of any agency to which a claim was  
21           filed shall have one hundred eighty (180) days to investigate the claim, and shall  
22           make a written finding as to whether or not a taking has occurred due to a public  
23           benefit requirement for utilization of the land initiated or caused by the agency.

24           (b) The agency head shall transmit the written finding to the agency's  
25           governing board, if any, and who shall then provide a copy to I Maga'lahaen  
26           Guåhan and the Speaker of I Liheslaturan Guåhan for informational purposes. If  
27           the written finding concludes that the claim is valid, the agency has ninety (90)

1 days to determine just compensation based on the fair market value of the property  
2 at the time of the taking. If, however, the written finding concludes the claim is  
3 not valid, the agency must provide written notice to the claimant. Such notice  
4 shall advise the claimant of the right to file an action for inverse condemnation and  
5 just compensation by the government pursuant to 7 GCA § 11311.1.

6 (c) Cost of Investigation, Confirmation, and Appraisal. The agency alleged  
7 to have taken land without just compensation pursuant to this Chapter shall pay for  
8 the cost of investigating and confirming a claim, and appraising the subject  
9 property. In the event that a claim is determined to be frivolous and/or fraudulent,  
10 the claimant shall be held liable for any amounts expended to investigate or  
11 confirm the claim, and appraise the subject property.

12 (d) The Department of Land Management shall provide assistance to any  
13 agency requesting information in the investigation of a claim, or in the  
14 determination of whether or not any land in its possession, or which is being  
15 utilized by it for public purposes, has been properly acquired from a private  
16 landowner through the conduct of a negotiated settlement or judicial process.

17 (e) All information obtained through the research and investigation of the  
18 status of lands taken shall be deemed public information, and shall be made readily  
19 available to the landowner and the general public.

20 (f) This Chapter shall not be applicable to claims that have been  
21 extinguished by negotiated settlement or judicial process.

22 (g) This Chapter shall not be applicable to any land that has been the subject  
23 of a voluntary subdivision pursuant to 21 GCA, Chapter 62 – Subdivision Law,  
24 and whereby a government of Guam agency had not initiated nor was a party to the  
25 action, except to the extent of ensuring compliance with applicable law, rule or  
26 regulation relative to the subdivision of property.

1 |       **§ 16104. Appeal.** A decision under this Section may be appealed by the  
2 landowner to the Land Division Court within fifteen (15) days after receipt by the  
3 landowner of the notice of decision.

4       **§ 16105. Land Claims Compensation Fund.** There is hereby established a  
5 special fund to be known as the Land Claims Compensation Fund (“the Fund”) to  
6 be maintained by the Department of Administration. The Fund *shall* be established  
7 and maintained in a bank account apart and separate from the General Fund or any  
8 other bank account(s) of the government of Guam, and *shall not* be co-mingled  
9 with, or a part of, the General Fund. The Fund *shall* be solely utilized to pay  
10 settlements, in whole or in part, to landowners who have had their property taken  
11 by the government of Guam for public purposes. *I Maga’lahen Guåhan shall*  
12 *provide for in the annual Fiscal Year Executive Branch budget request, beginning*  
13 *Fiscal Year 2017, a request for an appropriation for a minimum sum of Five*  
14 *Hundred Thousand Dollars (\$500,000.00), which shall be deposited in the Fund.*  
15 *The Department of Administration shall be authorized to assess a two percent (2%)*  
16 *account management service fee for the administration of the Land Claims*  
17 *Compensation Fund.”*

18       **Section 5.** Subsection (a) of § 2101 of Chapter 2, Title 7, Guam Code  
19 Annotated, is hereby *amended*, to read:

20       “(a) The Courts of justice of Guam shall consist of the Supreme Court of  
21 Guam and the Superior Court of Guam. The Supreme Court of Guam shall be the  
22 highest Court of Guam and shall have supervisory, but not administrative authority  
23 over the Superior Court of Guam and all other local courts in Guam in accordance  
24 with rules and regulations promulgated by the Supreme Court Judicial Council.  
25 The Supreme Court may, by rules of court, create such divisions of the Supreme  
26 and Superior Courts as may be desirable, and may designate which of the divisions  
27 of the Superior Court are to be courts of record and which shall be courts not of



1 record; provided, however, that ~~four (4)~~five (5) such divisions of the Superior  
2 Court shall continue, one being the Traffic Division, not a court of record; one  
3 being the Small Claims Division, not a court of record; a third being the Family  
4 Division, a court of record;~~and the fourth being the Drug Court, a court of record;~~  
5 and the fifth, being the Land Division, a court of record. The Supreme Court of  
6 Guam and the Superior Court of Guam, except for the Traffic and Small Claims  
7 Divisions of the Superior Court, are courts of record.”

8 **Section 6.** A new Article 5 is hereby *added* to Chapter 4, Division 1, Title  
9 7, Guam Code Annotated, to read:

10 **“Article 5**  
11 **Land Court**

12 **§ 4501. Creation of Land Division Court.** There is hereby created for the  
13 territory of Guam a division of the Superior Court which shall be called the Land  
14 Division of the Superior Court, and is established for the purposes of judicial  
15 review and determination of civil actions or matters pertaining but not limited to,  
16 land taking by inverse condemnation or eminent domain by the government of  
17 Guam, real property boundary disputes, and land registration proceedings. This  
18 Division of the Superior Court shall be a court of record, having a seal, and the  
19 judge, clerk, hearing officers and referees thereof shall be personnel of the  
20 Superior Court.

21 **§ 4502. Expedited Judicial Process for Claims for Government Land**  
22 **Taking and Condemnation.** The Judiciary of Guam *shall* establish an expedited  
23 judicial process within the Superior Court of Guam to address appeals of  
24 government land taking and condemnation actions, which shall be reviewed by a  
25 court of record administered by a Superior Court Judge or Magistrate Judge (“Land  
26 Division judicial officer”). Such matters shall be filed as Government Takings  
27 Proceedings.

1           § 4503. Purpose. The purpose of this expedited process is to provide a  
2 speedy and efficient legal process for government land takings and inverse  
3 condemnation cases appealed from agency decisions pursuant to 21 GCA Chapter  
4 16 that will assist the Superior Court judges in adjudicating such.

5           § 4504. Functions and Duties of Land Division Judicial Officers. The  
6 Land Division judicial officer shall have the following duties in relation to  
7 government land takings and inverse condemnation matters only:

8           (a) To take testimony and receive evidence for the record;

9           (b) To hear and decide motions and matters, unless the same are appealed  
10 by any party, including but not limited to the following matters:

11                   (1) Orders to show cause for contempt;

12                   (2) Motions of joinder;

13                   (3) Motions to amend pleadings or to dismiss;

14                   (4) Pretrial settlement conferences;

15                   (5) Motions to withdraw;

16                   (6) Mediation to compel discovery;

17                   (7) To conduct informal office conferences with the parties to discuss and  
18 resolve problems or questions about any matters relating to claims of  
19 government land takings or inverse condemnation;

20                   (8) To refer appropriate cases to mediation; and

21                   (9) To adjudicate the claim.

22           (c) Subpoena powers. A Land Division judicial officer or the clerk of  
23 court may issue subpoenas and subpoenas *ducestecum* at the request of any party in  
24 accordance with the provisions of § 7201, et seq., of Title 6, Guam Code  
25 Annotated.

1           § 4505. Decisions Final Unless Timely Appealed. All decisions of the  
2 Land Division judicial officer shall be final unless, within thirty (30) days of the  
3 filing of the decision adjudicating the claim, the claimant or the government  
4 notifies the judicial officer of the intent to appeal the decision to the Supreme  
5 Court of Guam.

6           § 4506. Rule of Construction. This Article *shall* be construed liberally to  
7 fully effectuate its purposes and intent.

8           § 4507. Severability. *If* any provision of this Article or its application to  
9 any person or circumstance is found to be invalid or contrary to law, such  
10 invalidity shall not affect other provisions or applications of this Article that can be  
11 given effect without the invalid provisions or application, and to this end the  
12 provisions of this Article are severable.”

13           **Section 7.** § 22421 of Article 4, Chapter 22, Title 5, Guam Code Annotated,  
14 is hereby *amended*, to read:

15           **“§ 22421. Transfer of Autonomous Agency Revenues to Land Claims**  
16 **Compensation Fund ~~Autonomous Agency Collections Fund.~~**

17           (a) It is *I Liheslatura’s* (the Legislature’s) findings that for the impact  
18 realized risk assumed by Guam’s landowners through inverse condemnation by the  
19 government of Guam taxpayers in operating or developing the roads, utility  
20 easements for power, water, sewer, and air and sea port operations, and  
21 government facilities, a fund transfer policy *shall* be instituted for the as-a Land  
22 Claims Compensation Fund pursuant to §16105 of Chapter 16, Division 1 of Title  
23 21, Guam Code Annotated ~~General Fund reimbursement.~~ It is furthermore found  
24 that these non-tax paying utilities and agencies benefit from services provided by  
25 the General Fund, such as police and fire protection, road systems and other

1 governmental facilities utilizing lands taken through inverse condemnation. In  
2 ~~many cases, several of the services require additional General Fund expenditures.~~  
3 Further, rather than assess the actual levy of real estate taxes, as if they were of a  
4 private venture which is commonly called payment-in-lieu-of-taxes, a transfer  
5 policy would be more equitable and fair in providing compensation to landowners.

6 (b) Notwithstanding any other provision of law, *I Maga'lahi* (the Governor)  
7 and the Boards of Directors of the Jose D. Leon Guerrero Commercial Port of  
8 Guam, the Guam Power Authority, and the A. B. Won Pat International Airport  
9 Authority Guam shall transfer in the aggregate the sum of Three Million Five  
10 Hundred Thousand Dollars (\$3,500,000.00) from operating surpluses generated by  
11 these agencies to the Land Claims Compensation Fund ~~General Fund of the~~  
12 ~~government of Guam~~ by the end of each fiscal year. The funds transferred are  
13 hereby appropriated, and shall continue to be deemed appropriated, and shall be  
14 expended for the determination and settlement of inverse condemnation claims  
15 pursuant to Chapter 16 of Division 1 of Title 21, Guam Code Annotated. The  
16 proportionate contribution of each of the above agencies which will in the  
17 aggregate make up the Three Million Five Hundred Thousand Dollars  
18 (\$3,500,000.00) transferred shall be determined by a formula decided upon by *I*  
19 *Maga'lahi* (the Governor) in consultation with the Boards of Directors of the  
20 above agencies. In no event shall the formula decided upon or the transfer of sums  
21 from the agencies to the Land Claims Compensation Fund ~~General Fund~~ violate  
22 the terms and conditions of any bond covenant of any of the above agencies that is  
23 in effect on the effective date of this Section.”

24 **Section 8. Deposit of Payments in Lieu of Taxes owing pursuant to 5**  
25 **GCA § 22421 of Funds into Land Claims Compensation Fund.**  
26 Notwithstanding any other provision of law, rule or regulation, any outstanding

1 Payments in Lieu of Taxes due and owing pursuant to 5 GCA § 22421, as the date  
2 of enactment of this Act and pursuant to the stipulations of a settlement agreement  
3 outlined in the Guam Public Utilities Commission GPA Docket 11-08, *shall* be  
4 deposited into the Land Claims Compensation Fund as provided pursuant to  
5 §16105 of Chapter 16, Division 1 of Title 21, Guam Code Annotated.

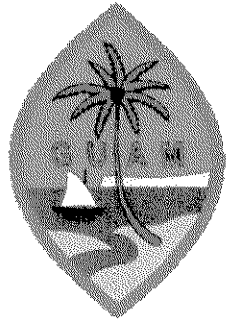
6       **Section 9. Severability.** *If* any provision of this Act or its application to any  
7 person or circumstance is found to be invalid or contrary to law, such invalidity  
8 *shall not* affect other provisions or applications of this Act that can be given effect  
9 without the invalid provisions or application, and to this end the provisions of this  
10 Act are severable.

# COMMITTEE ON GUAM U.S. MILITARY RELOCATION, PUBLIC SAFETY & JUDICIARY

*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*



## SENATOR FRANK B. AGUON, JR. CHAIRMAN



**Bill No. 185-33 (COR):** - An act to amend § 11311.1 of Title 7 and enact a new Chapter 16 to Title 21, Both of Guam Code Annotated relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; and, to amend subsection (a) of § 2101, and add a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, Relative to providing for the creation of a Judicial Land Division Court to expeditiously review and affirm, if appropriate, the settlement between the Government and Landowner. Sponsored by: D.G. Rodriguez, Jr., T.R. Muña Barnes, F.B. Aguon, Jr., R.J. Respicio, T. Morrison, V.A. Ada, B.T. McCreadie

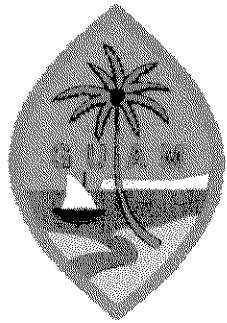
Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
Ken Lee Gervelo	Salvatore's	689-3000	✓	✓	✓	
John Ilao	JMI-Edison	929-8980	✓		✓	
Pastor Cliff Shoemaker	New Covenant	688-3455	✓			
Helen Guimatac	JMI-Edison	688-7214	✓			
NELSON RODRIGUEZ	JMI-Edison	300-9468				
DANA BUTIERREZ	Judiciary of Guam	300-9282	✓	✓	Limited	

COMMITTEE ON GUAM U.S. MILITARY RELOCATION, PUBLIC SAFETY & JUDICIARY

*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*



**SENATOR FRANK B. AGUON, JR.**  
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Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
<i>TEBWA</i>	<i>self</i>	<i>727-0353</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Karl Espaldon</i>	<i>DA</i>	<i>484-8804</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Kristelle Sanchez</i>		<i>489-7246</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>GENEVEVE ILAO</i>		<i>688-7602</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Joanui P. Puyf</i>	<i>self</i>	<i>727-1482</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Laurent Duenas</i>	<i>Retired</i>	<i>653-2013</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>











**October 8, 2015**

**Testimony Supporting Bill 185-33**

I am here today as a victim of a government that has taken land from my family to widen San Vitores road. We have not received any compensation.

I am here today as a victim of a government that has taken land from my family for the construction of Southern High School. We have not received any compensation.

I know many other people, who have also had land taken from their families by the government. And like my family; they too have been waiting decades for fair compensation.

We feel discriminated against when we look at the actions of the government taking the land for the landfill. Not only did the government pay those landowners promptly. Paying them ahead of all of us who have been waiting decades for compensation for the loss of our lands; but the government gave those land owners an excessive valuation.

A land valuation that went unchallenged by the government. A land valuation that we, those still waiting for compensation for our lost lands, have to pay through our taxes.

It is a good thing this legislature is attempting to level the playing field by the creation of a system by which ordinary citizens will be able to apply for compensation for their lands. We have been waiting a long time for compensation for the loss of our lands, and the potential economic benefits that use of the land, or use of the compensation could have had for our families.

All we ask is that our claims be handled as expeditiously and as generously as those of the Landfill landowners.



Ken Leon-Guerrero, Land Condemnation Victim & Santa Rita Resident  
689-3000

# BARRIGADA

Office of the Mayor & Vice Mayor  
124 Luayao Lane, Barrigada, Guam 96913

October 8, 2015

Honorable Frank Blas Aguon, Jr.  
Chairman, Committee on the Guam U.S. Military  
Relocation, Public Safety, and Judiciary  
*I Mina'trentai tres na Liheslaturan Guåham*  
Hagåtña, Guam 96910

Re: Bill No. 185-33 (COR) - An act to *amend* §11311.1 of Title 7 and *enact* a new Chapter 16 to Title 21, Both of Guam Code Annotated relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; and to *amend* subsection (a) of §2101, and *add* a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, Relative to providing for the creation of a Judicial Land Division Court to Expediently review and affirm, if appropriate, the settlement between the Government and Landowner.

Chairman Aguon and Members of the Committee on the Guam U.S. Military Relocation, Public Safety, and Judiciary, *Buenas yan Saludu para todos hamyu!* Vice Mayor Jessie P. Bautista and I, together with members of the Barrigada Municipal Planning Council support Bill No. 185-33 (COR).

During the 22<sup>nd</sup> Guam legislature, then Senator Ted S. Nelson authored legislation, Bill No. 318 (COR), "AN ACT TO REQUIRE THE GOVERNMENT OF GUAM TO PROPERLY COMPENSATE LANDOWNERS WHOSE PROPERTY HAS BEEN TAKEN FOR PUBLIC USE AND TO MAKE AN APPROPRIATION TO THE GOVERNOR'S OFFICE IN CONNECTION THEREWITH." After being publicly heard, it was amended by the Committee on General Governmental Operations and Micronesian Affairs and further substituted by the Committee on Rules, and enacted into law by a vote of: 17 ayes, 3 nays and 1 not voting. (PL 22-73)

This public law, proposed that a thorough study of such landtakings. More importantly, it recommend that in addition to the issue of landtakings, the expropriation of private property without compensation should be expressly prohibited.

Mr. Chairman, Members of the Committee when a private individual expropriates public land, he or she is called a thief and prosecuted for criminal misconduct.

But when government officials without notice or permission pave a road through private property, no penalties are imposed. As landowners, we emphatically state that private land(s) should not be used for public purposes without any effort to provide fair compensation. Our government should stop taking advantage of the fact that many landowners are unable to afford the high costs of pursuing compensation rights or challenging land takings in court against our government which has a bloated staff of attorneys willing at any costs.

What needs to happen is for the government to establish an expedited judicial process within our court system to address such matters and to make determinations as to the claims.

In some ways the Department of Land Management's policies and practices are discriminatory. For example, when a large resort requiring extensive variances or a rezoning is proposed, the local government conditions its approval of the project on the provision of public access to the beach, which usually consists of a mere 6' wide "path" and a tiny parking lot. When a local resident applies to subdivide his land for his children under the parental subdivision law, a 50' wide strip of land for a public road is demanded without any compensation or reciprocal benefits being offered.

Large developers are given all sorts of benefits including tax relief, height and density variances, conditional use permits and parking waivers. In two recent cases, resort developers were even given free access through public land. Small landowners are not offered any equivalent compensation or benefits. They are simply informed that unless they agree to dedicate public access without compensation, they will not be allowed to subdivide their property.

To cite another example of disregard for landowner rights, the Legislature authorized condemnation of many valuable Agana lots for the new Judicial Center. Public Law 19-06, Section 3, specifically required DLM to obtain three (3) private appraisals and negotiate with each landowner before commencing any litigation. If, and only if, negotiations failed was the government authorized to take possession of the property and commence eminent domain proceedings.

This legislative mandate was simply ignored. Only one very low appraisal was obtained. Landowners were forced to relocate and given grossly inadequate compensation. Nearly all of them contested the government's unconscionable valuation. At that time, Attorneys F. Philip Carbullido, and Oliver Bordallo obtained a writ of mandate compelling Governor Ada to comply with the statute requiring three appraisals and negotiations. We hope that one day soon your Committee will investigate the status of the Judicial Condemnation Cases. It is but one example of the gross irresponsibility this legislation seeks to correct.

Thank you for your time and attention and we look forward to your Committee's favorable reporting of Bill No. 185-33 (COR).

*Sincerely,*

  
**JUNE U. BLAS**  
Mayor

  
**JESSIE P. BAUTISTA**  
Vice Mayor

Attachments:



# Judiciary of Guam

Guam Judicial Center • 120 West OBrien Dr • Hagatna Gu 96910  
Tel: (671) 300-9282 • Fax: (671) 477-3184



ROBERT J. TORRES  
Chief Justice

ALBERTO C. LAMORENA, III  
Presiding Judge

JOSHUA F. TENORIO  
Administrator of the Courts

DANA A. GUTIERREZ, Esq.  
Director of Policy, Planning  
and Community Relations

October 8, 2015

The Honorable Frank B. Aguon, Jr.  
Chairman  
Committee on Guam U.S. Military Relocation, Public Safety & Judiciary  
Suite 503 DNA Bldg.  
238 Archbishop Flores St.  
Hagatna, Guam 96910

**Re: Testimony on Bill No. 185-33 (COR), Government Land Takings Compensation Act of 2015**

Dear Chairman Aguon:

On behalf of the Judiciary of Guam (the "Judiciary"), thank you for providing me with the opportunity to submit testimony regarding Bill No. 185-33, the *Government Land Takings Compensation Act of 2015*, which was sponsored by you, Senator Dennis G. Rodriguez, Jr. and Senator Tina Rose Muna-Barnes.

The Judiciary's testimony on Bill No. 185-33 is limited to the provisions of the Bill creating a Judicial Land Division Court. However, the Judiciary notes that it worked proactively with Senator Rodriguez's staff to address due process concerns regarding the Land Division Court, and also acknowledges that it is commendable that an expedited process is being proposed in the hopes of settling decades of property disputes between the government of Guam and private landowners.

Recently, the Guam Legislature approved legislation and provided funding for an additional judicial officer, or magistrate judge, at the Judiciary. Because of the additional resources provided by the Guam Legislature, the Judiciary is prepared to implement the procedures necessary to establish an expedited judicial process to address claims for government land takings and condemnation actions. The funds provided will allow the Judiciary to provide the speedy and efficient legal process for government land takings and inverse condemnation cases contemplated by the Bill.

Thank you again for the opportunity to provide testimony on Bill No. 185-33.

If the Judiciary can provide further information concerning the above testimony, please do not hesitate to contact me.

*Senseramente,*

DANA A. GUTIERREZ  
Director of Policy, Planning &  
Community Relations



# Office of the Attorney General of Guam



October 12, 2015

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ext. 5030

The Honorable Frank B. Aguon, Jr.  
Chairman  
Committee on Guam U.S. Military Relocation,  
Public Safety & Judiciary  
***I Mina'trentai Tres Na Liheslaturan Guahan***  
Suite 503 DNA Building  
238 Archbishop Flores St.  
Hagatna, Guam 96910

**Re: OAG Testimony on Bill 185-33**

Dear Chairman Aguon:

Enclosed is a written copy of the testimony on Bill 185-33 that I presented orally to your Committee on October 8, 2015, on behalf of the Office of the Attorney General.

If you have any questions, please feel free to contact me at 475-3324, ext. 3097.

Sincerely,

**Karl P. Espaldon**  
Deputy Attorney General

Attachment



DEC 15  
Espaldon 10/12/15





# Office of the Attorney General of Guam

590 S. Marine Corps Dr., ITC Bldg., Ste. 706, Tamuning, Guam 96913



**Testimony of  
Karl P. Espaldon, Deputy Attorney General  
before the  
Committee on Guam U.S. Military Relocation, Public Safety &  
Judiciary  
October 8, 2015**

Good morning, Chairman Aguon and Members of the Committee. I am Deputy Attorney General Karl Espaldon appearing on behalf of the Office of the Attorney General to provide testimony on Bill 185-33.

The Office of the Attorney General understands and appreciates the government's obligation to fairly compensate property owners for land taken for public purposes, and we agree with the intent of Bill 185-33 to address past wrongs and ensure persons whose land was taken be afforded opportunity to seek proper redress. However, while we agree with some provisions of the bill, we do have concerns that we would like to share with the Committee today.

Bill 185-33 seeks: (1) to extend the statute of limitations for certain inverse condemnation claims from 4 years to 5 years; (2) prevent inverse condemnation claims from being filed as class actions; (3) shift the burden of proof from the property owner to the Government; (4) require the government, at its expense, to determine whether or not lands were acquired through inverse condemnation without due process and just compensation; (5) create an agency level administrative process for filing an inverse condemnation claim; (6) shift the costs of the appraisal and survey from the property owner to the Government; (7) establish a Land Claims Compensation Fund; and (8) add an expedited judicial process for land claims by creating a Land Division Court within the Judiciary of Guam.

With respect to these efforts, we have the following comment:

First, we support the creation of a Land Claims Compensation Fund that will be used to pay settlements to landowners whose land was taken by the Government for public purposes through inverse condemnation.

It is our experience that delays often occur because cases cannot be settled, or an award paid, without an appropriation by the Legislature or an allotment of funds by BBMR as required by law. The creation and adequate funding of a Land Claims Compensation Fund would hasten the settlement process because funds would be budgeted and appropriated to pay inverse condemnation claims.

Second, although we appreciate the bill's qualified preclusion of class actions in inverse condemnation cases, we would recommend instead an unqualified prohibition on class actions in these cases. The current language of the bill would still allow class actions in certain situations where members must elect to be included in a class.

Our recommendation for an outright prohibition on class actions is consistent with the general rule that courts do not usually consider inverse condemnation suits as appropriate for class action. The bill itself acknowledges some of the main reasoning for this proposition in proposed section 11311.1(b)(2) of Title 7 GCA where it mandates deference to the dual notions that (1) "there is no common issue of law or fact on behalf of all landowners subject to inverse condemnations due to the unique nature of each parcel of land" and (2) that "the damages [in inverse condemnation cases] are not typical to each and every landowner and must be calculated on a separate basis." In sum, it is our position that land cases are unique and should be considered on a case by case basis.

On the issue of extending the time to file claims for inverse condemnations on takings after July 1, 1994, we have no objection to increasing the time period for filing from four years to five years from the time of taking. However, the bill appears also to reopen the time period - for an additional five years - for

claims that have already been extinguished by the existing statute of limitations, a move that our Office does not support.

We do not support shifting the burden of proof from the property owner to the government in determining whether an uncompensated taking occurred and the amount of just compensation that may be owed. This is a departure from the basic principle of eminent domain law that has been recognized by the Guam Supreme Court in *Cepeda v. Government of Guam*, 2005 Guam 11. The principle behind the law as it stands is that no one is in a better position to know whether land was taken by the government for no compensation than the property owners themselves.

Shifting the burden creates an anomaly in the law that is both unfair to the government and violates a basic principle under which our justice system has always operated when it comes to seeking redress for an injury.

Another concern we have with the legislation is the addition of an agency level administrative process for filing an inverse condemnation claim, as it may have the exact opposite results of the intent of the legislation which is to facilitate and streamline the process of bringing and resolving inverse condemnation claims. In addition to being yet another layer in the adjudication process, it may also contribute to evidentiary issues should the administrative decision be appealed to the Superior Court.

There are other issues in the bill that may be problematic. One provision requires the government to identify all government lands that may have been taken for public purposes by inverse condemnation and without just compensation. Another provision would require the government to shoulder the costs of investigating and confirming an inverse condemnation claim, including appraisals for the subject properties. These matters are more appropriately addressed in full by the Administration as it significantly implicates governmental capacity and financial resources.

However, having noted our deference to the Administration on these matters, to contribute to the discussion of both topics, we relay the following experiences in recent court cases in which we have been involved.

First, with respect to requiring the government to identify all lands taken by inverse condemnation, the Superior Court, in an inverse condemnation case, examined whether the government had fulfilled a requirement to produce an inventory under P.L. 22-73 that is very similar to the one contemplated in Section 4 of Bill 185.

In that case, after receiving testimony from the then-Director of Land Management, the court found that the records required to create a list that gives rise to entitlement of just compensation “do not exist.” The court specifically referenced the DLM Director’s representation that “even if funding and human resources were available to perform a comprehensive title exam of the entire island, the information required in P.L. 22-73 could not be determined.” The court went on to state an oft-quoted maxim that under Guam law, “the law never requires impossibilities.”

On the subject of the government shouldering the costs of investigating inverse condemnation claims, including costs for appraisals, we note that in a pending inverse condemnation case, the government agency recently received a quote of \$20K-\$30K for a just compensation appraisal from an on-island appraiser. Again, while matters of government expenditures are within the purview of the Legislature and the Executive Administration, we provide this information to illustrate potential costs in actual cases in which we have been involved.

In closing, Mr. Chair, the Office of the Attorney General reiterates its appreciation and support for the intent of the bill and for certain provisions that we believe will facilitate redress of past government takings of private property without just compensation.



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## **Testimony of Laurent C.F. Duenas on Bill No. 185-33**

**October 8, 2015**

Mr. Chairman, and Honorable Senators of I Mina Trentai Tres na Liheslaturan Guahan, Buenas yan Hafa Adai,

I am Laurent Calvo Flores Duenas, a resident of Yigo since birth. My family is the owner of Lot No. 7023-1 consisting of several parcels of land, with over 500 feet of Marine Drive frontage. These parcels were given to me and my sister Dorothy Flores Cruz by our parents: Joaquin Garcia Flores and Maria Acosta Calvo Flores; and were originally owned by our grandfather, Ignacio Guerrero Flores (familian Cabesa).

I support and encourage the passage of Bill No. 185-33, legislation to effectively and efficiently redress injustices by the federal government and, later, compounded and perpetrated by the Government of Guam. Though I only cite the injustice perpetrated on my family, I am sure you will hear of the same plight of many whose lands were unjustly taken by these two governments in the name of national defense and public necessity. Everyone who suffered these injustices have a right to redress of their grievances. Whether it be tax refunds or real estate improperly seized and held by the government, all who have been unjustly denied their rights should be afforded the opportunity to seek justice. Bill No. 185-33 will provide that mechanism.

The road we now know as Marine Drive, prior to World War II, was used primarily by the local farming community and those who harvested copra from the coconut groves of the north, especially, the Jinapsan and Tarague areas. Atkins-Kroll, a British owned entity, exists today because of the initial success of its copra exports.

Marine Drive, after July 21, 1944, suddenly became very important as the US military built the Northwest Field runway from where General Doolittle's raiders took off to bomb and soften Japan; a prelude to the flight of the Enola Gay over Hiroshima. After that war, through the Korean War and into the Viet Nam Conflict, and the development of Andersen Air Force Base as a Strategic Air Command installation, Marine Drive became even more important.

The military decided that Marine Drive could be classified as a Defense Access Road – thus using the national defense rationale – to justify condemning a right of way 100 feet in width from Andersen to Orote Peninsula – to accommodate a right of way and utility easements for power, water and wastewater lines. Property along that route was condemned and the original owners compensated a dollar each. I remember seeing a document, that was filed on October 13, 1948, which stated that my grandfather was compensated a whole dollar for his land. What

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A Certified CDC SMDP Train-the-Trainer/Trainer in Management in International Public Health

seems even stranger is that the property taken was only on our side of Marine Drive – for what reason – who knows.

Marine Drive's importance, during the Viet Nam Conflict, escalated as Andersen became host to squadrons of B-52s which carried every bomb dropped on Viet Nam. Tractor trailer caravans traversed over 25 miles – from Naval Magazine to Andersen, transporting thousands of bombs to be dropped on Viet Nam. The memory and impact of these caravans is felt even today. The federal government, after the Viet Nam Conflict, turned over Marine Drive to the Government of Guam. By accepting the transfer, the Government of Guam perpetuated the injustices of the federal government and should now accept the attendant liabilities and moral and legal obligations.

The Government of Guam, not too long after the takeover, expanded Marine Drive from a two lane secondary road, to a five lane highway. I do not remember any public hearings in Yigo to determine whether the people of the village favored such an expansion. Travel lanes were increased and utility poles are now dangerously close to speeding vehicles. In many areas there are no shoulders for disabled vehicles to safely park outside the travel lanes. In reality the government's efforts to provide for more efficient flow of vehicular traffic has turned some roads on this island into dangerous and nightmarish speedways. With all this modernization, the injustices and denial of property rights since 1944 were never considered and equal protection of the laws was denied to the original landowners.

I was asked by GWA, after the expansion, to permit a wastewater line to be extended across my property to service adjacent lot owners. I flatly refused noting that the issues, attendant to the past taking of my family's property had not been resolved. Since the government of Guam has assumed ownership and control of Marine Drive, I consider the resolution of those past issues a responsibility and moral obligation of this government. Undoubtedly, permitting that wastewater line to traverse my property would have saved the government considerable expense and the work could have been done more quickly. But until the government owns up to its responsibilities and legal and moral obligations, I believe that land owners should stand their ground and jealously guard their property rights.

In closing, I urge this legislature to pass this legislation as soon as possible. So much attention has been given to the protection of the rights of taxpayers to their refunds, and to very expensive unfunded federal mandates. Perhaps now it is time to give some attention to righting the injustices committed by the federal government that are now being perpetuated by Government of Guam.

Thank you for this opportunity to address you on an issue that was of great importance to my parents, and continues to be a sore spot for me, my sister and our children. I would really like to

see this issue resolved in my lifetime – so that my children and grandchildren will not suffer the same frustration of the injustices created by the federal and local government.

Respectfully yours,



Laurent Calvo Flores Duenas, MPH, BSN, RN



## COMMITTEE ON RULES

*I Mina'trentai Tres na Liheslaturan Guåhan* • The 33rd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)

E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator

Rory J. Respicio

CHAIRPERSON  
MAJORITY LEADER

Senator

Thomas C. Ada

VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

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Judith T.P. Won Pat, Ed.D.

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Dennis G. Rodriguez, Jr.

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Frank Blas Aguon, Jr.

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Michael F.Q. San Nicolas

Member

Senator

Nerissa Bretania Underwood

Member

V. Anthony Ada

MINORITY LEADER

Mary C. Torres

MINORITY MEMBER

September 30, 2015

**VIA E-MAIL**

[joey.calvo@bbmr.guam.gov](mailto:joey.calvo@bbmr.guam.gov)

**Jose S. Calvo**

**Director**

**Bureau of Budget & Management Research**

**P.O. Box 2950**

**Hagåtña, Guam 96910**

**RE: Request for Fiscal Notes – Bill Nos. 185-33(COR) and 186-33(COR)**

*Hafa Adai* Mr. Calvo:

Transmitted herewith is a listing of *I Mina'trentai Tres Na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

*Si Yu'os ma'åse'* for your attention to this matter.

Very Truly Yours,

**Senator Rory J. Respicio**

*Chairperson of the Committee on Rules*

Attachment (1)

Cc: Clerk of the Legislature



Bill Nos.	Sponsor	Title
185-33 (COR)	Dennis G. Rodriguez, Jr. T. R. Muña Barnes FRANK B. AGUON, JR. R. J. Respicio Tommy Morrison V. Anthony Ada Brant T. McCreadie	AN ACT TO AMEND § 11311.1 OF TITLE 7 AND ENACT A NEW CHAPTER 16 TO TITLE 21, BOTH OF GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING AN EXPEDITED ADMINISTRATIVE PROCESS TO IDENTIFY LAND TAKINGS BY AGENCIES, ADDRESS CLAIMS, AND DETERMINE APPROPRIATE SETTLEMENTS RELATIVE TO PROPERTY EXPROPRIATED FOR PUBLIC PURPOSES BY THE GOVERNMENT OF GUAM WITHOUT JUST COMPENSATION; AND, TO AMEND SUBSECTION (a) OF § 2101, AND ADD A NEW ARTICLE 5 TO CHAPTER 4, DIVISION 1, BOTH OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR THE CREATION OF A JUDICIAL LAND DIVISION COURT TO EXPEDITIOUSLY REVIEW AND AFFIRM, IF APPROPRIATE, THE SETTLEMENT BETWEEN THE GOVERNMENT AND LANDOWNER.
186-33 (COR)	T. R. Muña Barnes Frank F. Blas Jr.	AN ACT TO APPROPRIATE FUNDS FROM THE FISCAL YEAR2014 HOTEL OCCUPANCY TAX (HOT) SURPLUS FUND TO THE GUAM VISITOR'S BUREAU FOR A PILOT PROGRAM TO SUPPORT THE NEEDS OF THE GROWING KOREAN VISITOR MARKET.



## COMMITTEE ON RULES

*I Mina'trentai Tres na Liheslaturan Guåhan* • The 33rd Guam Legislature  
155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)  
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Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

September 28, 2015

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

### MEMORANDUM

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

**To: Rennae Meno**  
*Clerk of the Legislature*

Vice-Speaker  
Benjamin J.F. Cruz  
Member

**Attorney Therese M. Terlaje**  
*Legislative Legal Counsel*

Legislative Secretary  
Tina Rose Muna Barnes  
Member

**From: Senator Rory J. Respicio**  
*Chairperson, Committee on Rules*

Senator  
Dennis G. Rodriguez, Jr.  
Member

**Subject: Referral of Bill No. 185-33(COR)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 185-33(COR)**.

Senator  
Frank Blas Aguon, Jr.  
Member

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Tres Na Liheslaturan Guåhan*.

Senator  
Michael F.Q. San Nicolas  
Member

Should you have any questions, please feel free to contact our office at 472-7679.

Senator  
Nerissa Bretania Underwood  
Member

*Si Yu'os Ma'åse!*

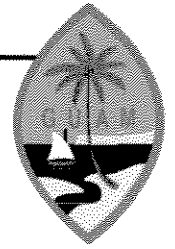
V. Anthony Ada  
MINORITY LEADER

Attachment

Mary C. Torres  
MINORITY MEMBER

*I Mina'Trentai Tres Na Liheslaturan Received*  
**Bill Log Sheet**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
185-33 (COR)	Dennis G. Rodriguez, Jr. T. R. Muña Barnes FRANK B. AGUON, JR. R. J. Respicio Tommy Morrison V. Anthony Ada Brant T. McCreddie	AN ACT TO AMEND § 11311.1 OF TITLE 7 AND ENACT A NEW CHAPTER 16 TO TITLE 21, BOTH OF GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING AN EXPEDITED ADMINISTRATIVE PROCESS TO IDENTIFY LAND TAKINGS BY AGENCIES, ADDRESS CLAIMS, AND DETERMINE APPROPRIATE SETTLEMENTS RELATIVE TO PROPERTY EXPROPRIATED FOR PUBLIC PURPOSES BY THE GOVERNMENT OF GUAM WITHOUT JUST COMPENSATION; AND, TO AMEND SUBSECTION (a) OF § 2101, AND ADD A NEW ARTICLE 5 TO CHAPTER 4, DIVISION 1, BOTH OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR THE CREATION OF A JUDICIAL LAND DIVISION COURT TO EXPEDITIOUSLY REVIEW AND AFFIRM, IF APPROPRIATE, THE SETTLEMENT BETWEEN THE GOVERNMENT AND LANDOWNER.	09/25/15 4:31 p.m.	09/28/15	Committee on the Guam U.S. Military Relocation, Public Safety and Judiciary			

Notified Stakeholders

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Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Roy J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood,  
Ph.D.  
Member

Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
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Speaker  
Dr. Judith T. Won Pat. Ed.D  
Ex-Officio

- All Senators / Stakeholders / Media
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- Lieutenant Governor Ray Tenorio
- Congresswoman Madeleine Z. Bordallo
- Chief Justice Robert J. Torres
  - Joshua Tenorio, Administrator of the Courts
- Special Assistant to the Governor on Military Buildup & Infrastructure
  - Mark Calvo
- Guam Customs & Quarantine Agency
  - Pedro Leon Guerrero, Director
  - Rafalle J. M. Sgambellure, Chief
  - Philip Tajeron, Assistant Chief
- Guam Police Department
  - Fred Bordallo, Chief
  - Maurice Sayama, Colonel
- Antonio Won Pat International Airport
  - Charles Ada, General Manager
  - Edward Untalan, Chairman of the Board
- Guam Airport Police
  - Bob Camacho, Chief
- Guam Port Authority Police
  - Doris Aguero, Chief
- Guam Fire Department
  - Joey San Nicolas, Chief
- Department of Corrections
  - Jose A. San Agustin
  - Carla Borja
- Guam Department of Parks and Recreation
  - Raymond Blas, Director
  - Mike Cura, Parks Administrator
- Office of the Attorney General
  - Attorney Elizabeth Barrett-Anderson
- Public Defender Service Corporation
  - Eric D. Miller
- Department of Land Management
  - Michael JB Borja, Director
  - David V. Camacho, Deputy Director
  - Marvin Q. Aguilar, Chief Planner
- Mayors Council of Guam
  - The Honorable Mayors and Vice Mayors

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Office of Senator Frank B. Aguon, Jr. &lt;admin@frankaguonjr.com&gt;

## 1st Notice – Public Hearing on Thursday, October 08, 2015 at 5:00 PM

Office of Senator Frank Aguon, Jr. Admin &lt;admin@frankaguonjr.com&gt;

Thu, Oct 1, 2015 at 8:08 AM

To: "Office of Senator Frank B. Aguon, Jr." &lt;admin@frankaguonjr.com&gt;

Cc: "Senator Frank B. Aguon Jr." &lt;aguon4guam@gmail.com&gt;, Committee &lt;committee@frankaguonjr.com&gt;, Ivan Palacios &lt;communications@frankaguonjr.com&gt;, Lourdes Eclavea &lt;staff@frankaguonjr.com&gt;, Senator Aguon's Assistant &lt;officeassistant@frankaguonjr.com&gt;, Tricia Benavente &lt;media@frankaguonjr.com&gt;

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October 01, 2015

## MEMORANDUM

**To:** All Senators, Media, and Stakeholders

**Fr:** SENATOR FRANK B. AGUON, JR.

**Subject:** 1<sup>st</sup> Notice – Public Hearing on Thursday, October 08, 2015 at 5:00 PM

In accordance with the *Open Government Law of Guam*, relative to notice for public meetings, please be advised that the *Committee on Guam U.S. Military Relocation, Public Safety & Judiciary*, will convene an **Public Hearing on Thursday, October 08, 2015 at 5:00 PM.** Included on the agenda are the following bill(s):

- **Bill No. 185-33(COR)**- An act to amend § 11311.1 of Title 7 and enact a new Chapter 16 to Title 21, Both of Guam Code Annotated relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; and. to amend subsection (a) of § 2101, and add a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, Relative to providing for the creation of a Judicial Land Division Court to Expeditiously review and affirm, if appropriate, the settlement between the Government and

Landowner. (Sponsors: D.G. Rodriguez, Jr. / T.R. Muña Barnes / F.B. AGUON, JR. / R.J. Respicio / T. Morrison / V.A. Ada / B.T. McCreadie)

The Hearing will broadcast on local television, *GTA Channel 21 and Docomo Channel 117* or streamed online at: [www.guamlegislature.com](http://www.guamlegislature.com).

The Committee requests that, if written testimonies are to be presented at the Public Hearing, copies be submitted one day prior to the public hearing date, to the Office of Senator Frank B. Aguon, Jr. at Suite 503 DNA Bldg. 238 Archbishop Flores St. Hagatna, Guam, or via fax to 475-GUM3(4863), or via email to: [aguon4guam@gmail.com](mailto:aguon4guam@gmail.com). Copies of the aforementioned Bill(s) may be obtained at *I Liheslaturan Guahån*'s website at: [www.guamlegislature.com](http://www.guamlegislature.com). Individuals requiring special accommodations, auxiliary aids, or services should contact our office at 475-4861/62. Please feel free to contact my office should you have any questions or concerns.

*Un Dangkolo Na Si Yu'os Ma'ase!*

—

**Thanks!**

**Office of Senator Frank B. Aguon, Jr.**

Committee on Guam US Military Relocation, Public Safety, and Judiciary

SUITE 503, DNA BLDG. 238 ARCHBISHOP FLORES STREET HAGÁTÑA, GUAM 96910

Tel: (671) 475-GUM1/2 (4861/2)

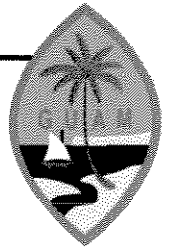
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October 01, 2015

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*Un Dagkoto Na Si Yu'os Ma'ase!*

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature

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Senator  
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Member

Speaker  
Dr. Judith T. Won Pat. Ed.D  
Ex-Officio





Mina' Trentai Tres Na Liheslaturan Guahan  
33rd Guam Legislature  
**OFFICE OF SENATOR FRANK B. AGUON, JR.**  
Chairman, Committee on Guam US Military Relocation,  
Public Safety and Judiciary

**Public Hearing**  
**THURSDAY, October 8, 2015 | 5:00PM**

#### AGENDA

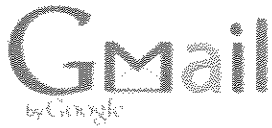
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**The Public hearing will be broadcasted on Docomo Pacific TV Channel 117 or GUDTV Channel 21 or streamed online at: [www.guamlegislature.com](http://www.guamlegislature.com).**

The Committee encourages our local veterans who have experienced access barriers adversely affecting their quality of primary and specialty care and/or experiences of mismanagement with the services at the Guam CBOC and the Guam Vet Center, to provide oral and/or written testimony at the public hearing or submit written testimonies one day prior to the public hearing date, to the Office of Senator Frank B. Aguon, Jr. at Suite 501 DNA Bldg. 238 Archbishop Flores St. Hagatña, Guam, or via fax to 475-GUM3(4863), or via email to : [aguon4guam@gmail.com](mailto:aguon4guam@gmail.com).

**If you** require any special accommodations, please contact the Office of Senator **Frank B. Aguon, Jr.** at 475-GUM1/2 (4861/2) or e-mail: [committee@frankaguonjr.com](mailto:committee@frankaguonjr.com).

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Office of Senator Frank B. Aguon, Jr. &lt;admin@frankaguonjr.com&gt;

## 2nd Notice – Public Hearing on Thursday, October 08, 2015 at 5:00 PM

Office of Senator Frank Aguon, Jr. Admin &lt;admin@frankaguonjr.com&gt;

Tue, Oct 6, 2015 at 7:41 AM

To: "Office of Senator Frank B. Aguon, Jr." &lt;admin@frankaguonjr.com&gt;

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October 06, 2015

## MEMORANDUM

**To:** All Senators, Media, and Stakeholders

**Fr:** SENATOR FRANK B, AGUON, JR.

**Subject:** 2nd Notice – Public Hearing on Thursday, October 08, 2015 at 5:00 PM

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Morrison / V.A. Ada / B.T. McCreadie)

The Hearing will broadcast on local television, *GTA Channel 21 and Docomo Channel 117* or streamed online at: [www.guamlegislature.com](http://www.guamlegislature.com).

The Committee requests that, if written testimonies are to be presented at the Public Hearing, copies be submitted one day prior to the public hearing date, to the Office of Senator Frank B. Aguon, Jr. at Suite 503 DNA Bldg. 238 Archbishop Flores St. Hagatna, Guam, or via fax to 475-GUM3(4863), or via email to: [aguon4guam@gmail.com](mailto:aguon4guam@gmail.com). Copies of the aforementioned Bill(s) may be obtained at *I Liheslaturan Guahån* 's website at: [www.guamlegislature.com](http://www.guamlegislature.com). Individuals requiring special accommodations, auxiliary aids, or services should contact our office at 475-4861/62. Please feel free to contact my office should you have any questions or concerns.

*Un Dangkolo Na Si Yu'os Ma'ase!*

—

**Thanks!**

**Office of Senator Frank B. Aguon, Jr.**

Committee on Guam US Military Relocation, Public Safety, and Judiciary

SUITE 503, DNA BLDG. 238 ARCHBISHOP FLORES STREET HAGATÑA, GUAM 96910

Tel: (671) 475-GUM1/2 (4861/2)

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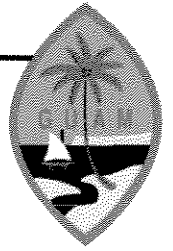
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October 06, 2015

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*Un Dangko! Na Si Yu'os Ma'ase!*

**SENATOR FRANK B. AGUON, JR.**

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary

*I Mina' Trentaj Tres Na Liheslaturan Guahan* | 33rd Guam Legislature

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Mina' Trentai Tres Na Liheslaturan Guahan  
33rd Guam Legislature

**OFFICE OF SENATOR FRANK B. AGUON, JR.**  
Chairman, Committee on Guam US Military Relocation,  
Public Safety and Judiciary

**Public Hearing**  
**THURSDAY, October 8, 2015 | 5:00PM**

#### AGENDA

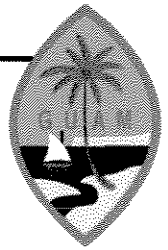
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The Public hearing will be broadcasted on Docomo Pacific TV Channel 117 or GUDTV Channel 21 or streamed online at:  
[www.guamlegislature.com](http://www.guamlegislature.com).

The Committee encourages our local veterans who have experienced access barriers adversely affecting their quality of primary and specialty care and/or experiences of mismanagement with the services at the Guam CBOC and the Guam Vet Center, to provide oral and/or written testimony at the public hearing or submit written testimonies one day prior to the public hearing date, to the Office of Senator Frank B. Aguon, Jr. at Suite 501 DNA Bldg. 238 Archbishop Flores St. Hagatña, Guam, or via fax to 475-GUM3(4863), or via email to: [aguon4guam@gmail.com](mailto:aguon4guam@gmail.com).

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October 01, 2015

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The Honorable Edward J. Calvo  
Governor of Guam

513 West Marine Corps Drive  
Ricardo J. Bordallo Complex  
Hagåtña, Guam 96910

Sent via email to: [governor@guam.gov](mailto:governor@guam.gov)

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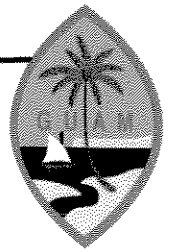
*Un Dangkolo Na Ji Yu'na Mhase!*

  
SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*

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Ricardo J. Bordallo Complex  
Hagåtña, Guam 96910  
Sent via email to: [ray.tenorio@guam.gov](mailto:ray.tenorio@guam.gov)

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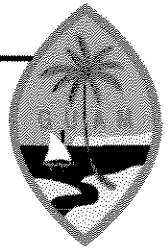
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The Honorable Madeleine Z. Bordallo  
U.S. House of Representatives  
120 Father Duenas Avenue, Suite 107  
Hagåtña, Guam 96910  
Sent via email to: [madeleine.bordallo@mail.house.gov](mailto:madeleine.bordallo@mail.house.gov)

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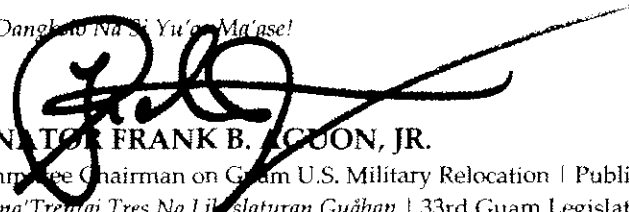
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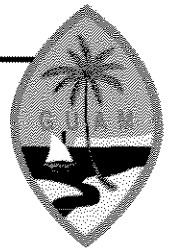
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*Un Dangho Na Si Yu'a, Ma'ase!*

  
SENATOR FRANK B. AGUON, JR.  
Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature



October 01, 2015

The Honorable Robert J. Torres, Jr.

Chief Justice of Guam

Suite 300, Guam Judicial Center 120 West O'Brien Drive

Hagåtña, Guam 96910

Sent via email to: [rjtorres@guamsupremecourt.com](mailto:rjtorres@guamsupremecourt.com)

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*Un Dangkol Na Si Yu' / Ma'ase!*

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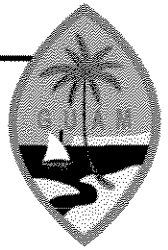
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Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat. Ed.D  
Ex-Officio



October 01, 2015

The Honorable Judge Alberto C. Lamorena III

Presiding Judge,

Superior Court of Guam

Guam Judicial Center

120 West O'Brien Drive

Hagåtña, Guam 96910

Sent Hand Delivery and email to: [alamorenaiiii@guamcourts.org](mailto:alamorenaiiii@guamcourts.org)

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*Un Dang kolo Na Si Y... Ma'ase!*

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary

*I Mina' Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature

SUITE 503, DNA BLDG. 238 ARCHBISHOP FLORES STREET HAGATNA, GUAM 96910

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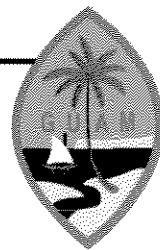
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Mr. Joshua Tenorio  
Administrator of Courts  
Judiciary of Guam  
Suite 300, Guam Judicial Center 120 West O'Brien Drive  
Hagåtña, Guam 96910  
Sent via email to: [jtenorio@guamcourts.org](mailto:jtenorio@guamcourts.org)

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*Un Dangkol Na Si Yu'os Ma'ase!*

  
SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature

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Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat. Ed.D  
Ex-Officio

Mr. Michael J. B. Borja  
Director  
Department of Land Management (DLM)  
ITC Building Suite 733  
590 S. MARINE CORPS DRIVE  
Tamuning, Guam 96913  
Sent Hand Delivery and email to: [michael.borja@land.guam.gov](mailto:michael.borja@land.guam.gov)

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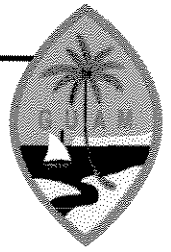
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[WWW.FRANKAGUONJR.COM](http://WWW.FRANKAGUONJR.COM)



October 01, 2015

**The Mayors Council of Guam**

215A Chalan Santo Papa, Suites 110F & 111F

Commerical Center, Hagatna, Guam 96932

Sent via email to: [mcogadmin@teleguam.net](mailto:mcogadmin@teleguam.net)

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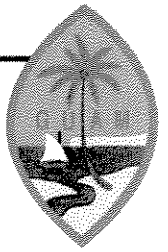
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Member

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio



October 01, 2015

**FILE COPY**

Senator  
FRANK B. AGUON, JR.  
Chairman

The Honorable Johnny A. Quinata, Mayor  
Municipality of Umatac  
Sent via Hand Delivery

Senator  
Thomas C. Ada  
Vice Chairman

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Vice-Speaker  
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Member

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Member

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Senator  
Dr. Nerissa B. Underwood, Ph.D.  
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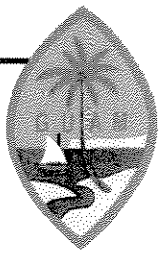
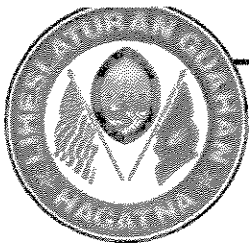
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Member

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio

**RECEIVED**

*Frank B. Aguon, Admin Asst.*  
10-1-15



October 01, 2015

The Honorable Ernest T. Chargualaf, Mayor  
Municipality of Merizo  
Sent via Hand Delivery

**FILE COPY  
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Member

Senator  
V. Anthony Ada  
Member

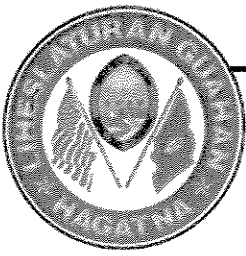
Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

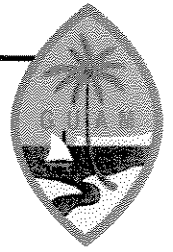
Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio





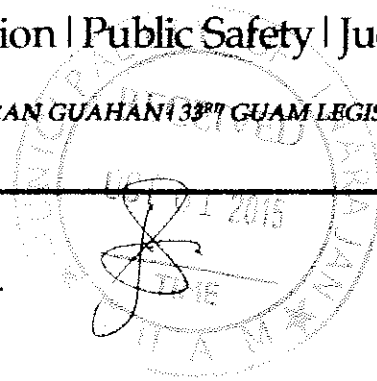
Guam U.S Military Relocation | Public Safety | Judiciary

I MINA' TRENTAI TRES NA LIHESLATURAN GUAHAN | 33<sup>RD</sup> GUAM LEGISLATURE



October 01, 2015

The Honorable Doris F. Lujan, Mayor  
Municipality of Inarajan  
Sent via Hand Delivery



**FILE COPY**

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreddie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio

RE: INVITATION - Public Hearing on Thursday, October 08, 2015 at 5:00 PM

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- **Bill No. 185-33(COR)-** An act to amend § 11311.1 of Title 7 and enact a new Chapter 16 to Title 21, Both of Guam Code Annotated relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; and. to amend subsection (a) of § 2101, and add a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, Relative to providing for the creation of a Judicial Land Division Court to Expediently review and affirm, if appropriate, the settlement between the Government and Landowner. (Sponsors: D.G. Rodriguez, Jr. / T.R. Muña Barnes / F.B. AGUON, JR. / R.J. Respicio / T. Morrison / V.A. Ada / B.T. McCreddie)

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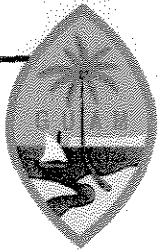
*Un Dangal na Si Yon Ma'ase!*

**SENATOR FRANK B. AGUON, JR.**

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*



Guam U.S Military Relocation | Public Safety | Judiciary



I MINA' TRENTAI TRES NA LIHESLATURAN GUAHAN | 33<sup>RD</sup> GUAM LEGISLATURE

October 01, 2015

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio

The Honorable Vicente S. Taitague, Mayor  
Municipality of Talofofo  
Sent via Hand Delivery

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K. Salas  
10-01-15  
FILE COPY

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*Un Dangkolo Ni Si Yapas Ma'ase!*

SENATOR FRANK B. AGUON, JR.

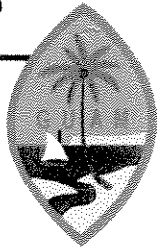
Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*



YHD Rg 10/01/2015

COMMITTEE ON

Guam U.S Military Relocation | Public Safety | Judiciary



I MINA' TRENTAI TRES NA LIHESLATURAN GUAHAN | 33<sup>RD</sup> GUAM LEGISLATURE

October 01, 2015

**FILE COPY**

Senator  
FRANK B. AGUON, JR.  
Chairman

The Honorable Ken Joe Ada, Mayor  
Municipality of Yona  
Sent via Hand Delivery

Senator  
Thomas C. Ada  
Vice Chairman

RE: INVITATION - Public Hearing on Thursday, October 08, 2015 at 5:00 PM

Vice-Speaker  
Benjamin J.F. Cruz  
Member

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Rory J. Respicio  
Member

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Senator  
Dennis G. Rodriguez, Jr.  
Member

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Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

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Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreddie  
Member

Speaker  
Dr. Judith T. Won Pat Ed.D  
Ex-Officio

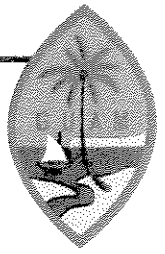
*Un Dangko Na ni Yon Ma'ase!*

**SENATOR FRANK B. AGUON, JR.**

Committee Chairman of Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*



Guam U.S Military Relocation | Public Safety | Judiciary



I MINA' TRENTAI TRES NA LIHESLATURAN GUAHAN | 33<sup>RD</sup> GUAM LEGISLATURE

October 01, 2015

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SEP 30 2015

Senator  
FRANK B. AGUON, JR.  
Chairman

The Honorable Paul M. McDonald  
Mayor,  
Municipality of Agana Heights

Sent via Hand Delivery Agana Heights Mayor's Office

Senator  
Thomas C. Ada  
Vice Chairman

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Vice-Speaker  
Benjamin J.F. Cruz  
Member

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Member

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Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

Senator  
V. Anthony Ada  
Member

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Senator  
Frank F. Blas Jr.  
Member

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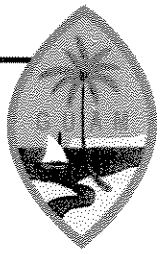
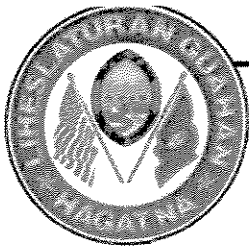
Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio

*Un Dangkolo Na Sa Yona Ma'ase!*

SENATOR FRANK B. AGUON, JR.  
Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*



October 01, 2015

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio

The Honorable Louise C. Rivera, Mayor  
The Honorable Kenneth C. Santos, Vice Mayor  
Municipality of Tamuning  
Sent via Hand Delivery

**FILE COPY**  
L/R  
09/30/15

RE: INVITATION - Public Hearing on Thursday, October 08, 2015 at 5:00 PM

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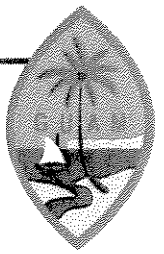
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*Un Dangko! Na Si Yu'os Mause!*

  
SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature



October 01, 2015

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DATE: 9/30/15

*M. Cruz*

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D.  
Ex-Officio

The Honorable Melissa B. Savares, Mayor  
The Honorable Andrew "Peter Daigo" A. Benavente, Vice Mayor  
Municipality of Dededo  
Sent via Hand Delivery

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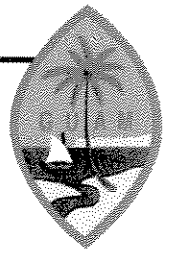
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*Un De'gkolo Na Si Yu'os Me'ase!*

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*



October 01, 2015

**FILE COPY**

Senator  
FRANK B. AGUON, JR.  
Chairman

The Honorable Rudy M. Matanane, Mayor  
The Honorable Anthony "Tony" P. Sanchez, Vice Mayor  
Municipality of Yigo  
Sent via Hand Delivery

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

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Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

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Senator  
V. Anthony Ada  
Member

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Senator  
James V. Espaldon  
Member

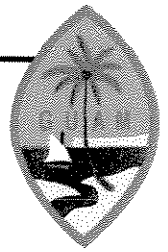
Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D.  
Ex-Officio

*Un Dangal na Si Y... Ma'ase!*

**SENATOR FRANK B. AGUON, JR.**  
Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*





October 01, 2015

**FILE COPY**

The Honorable Robert RDC Hofmann, Mayor  
The Honorable Rudy D. Iriarte, Vice Mayor  
Municipality of Sinajaña

Sent via Hand Delivery

RE: INVITATION - Public Hearing on Thursday, October 08, 2015 at 5:00 PM

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*Un De'gkolo Na Si Yu'os Ma'ase!*

**SENATOR FRANK B. AGUON, JR.**

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Minna' Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

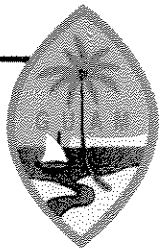
Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D.  
Ex-Officio

RECEIVED  
SEP 30 2015  
Sinajaña Mayor's Office





October 01, 2015

The Honorable Nonito "Nito" C. Blas, Mayor  
The Honorable Allan "Al" R.G. Ungacta, Vice Mayor  
Municipality of Mangilao  
Sent via Hand Delivery

**FILE COPY**

*[Handwritten signature and date: 09.30.15]*

RE: INVITATION - Public Hearing on Thursday, October 08, 2015 at 5:00 PM

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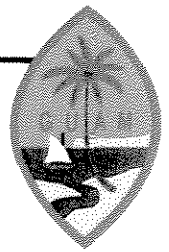
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*Un Dangohi Na Si Yuta Mase!*

**SENATOR FRANK B. AGUON, JR.**

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*

- Senator  
FRANK B. AGUON, JR.  
Chairman
- Senator  
Thomas C. Ada  
Vice Chairman
- Vice-Speaker  
Benjamin J.F. Cruz  
Member
- Senator  
Rory J. Respicio  
Member
- Senator  
Dennis G. Rodriguez, Jr.  
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- Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member
- Senator  
V. Anthony Ada  
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- Senator  
Frank F. Blas Jr.  
Member
- Senator  
James V. Espaldon  
Member
- Senator  
Brant T. McCreadie  
Member
- Speaker  
Dr. Judith T. Won Pat Ed.D  
Ex-Officio



October 01, 2015

The Honorable Andrew "Andy" C. Villagomez, Mayor  
Municipality of Mongmong-Toto-Maite  
Sent via Hand Delivery

**FILE COPY**

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*Un Danglo... Si Ya'os Ma'asel*

**SENATOR FRANK B. AGUON, JR.**  
Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature*

RECEIVED

SEP 30 2015

MAYOR'S OFFICE

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

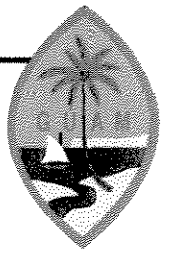
Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio



October 01, 2015

**FILE COPY**

Senator  
FRANK B. AGUON, JR.  
Chairman

The Honorable John A. Cruz, Mayor  
Municipality of Hagåtña  
Sent via Hand Delivery

Senator  
Thomas C. Ada  
Vice Chairman

RE: INVITATION - Public Hearing on Thursday, October 08, 2015 at 5:00 PM

Vice-Speaker  
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Member

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Rory J. Respicio  
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Senator  
Dennis G. Rodriguez, Jr.  
Member

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Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

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Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

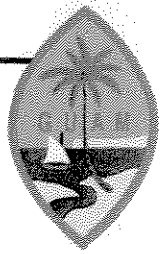
Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio

*Un Dangkoñ Na Si Yáos Ma'ase!*

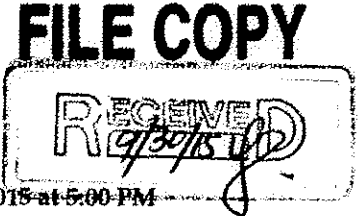
SENATOR FRANK B. AGUON, JR.  
Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature

received  
9/30/15



October 01, 2015

The Honorable Jessy C. Gogue, Mayor  
Municipality of Chalan Pago-Ordot  
Sent via Hand Delivery



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*Un Danskoto Ni'ni Yu'os Ma'ase!*

**SENATOR FRANK B. AGUON, JR.**

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature

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Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

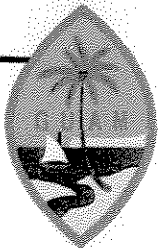
Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio



October 01, 2015

**FILE COPY**

Senator  
FRANK B. AGUON, JR.  
Chairman

The Honorable June U. Blas, Mayor  
The Honorable Jessie P. Bautista, Vice Mayor  
Municipality of Barrigada

Senator  
Thomas C. Ada  
Vice Chairman

Sent via Hand Delivery

Vice-Speaker  
Benjamin J.F. Cruz  
Member

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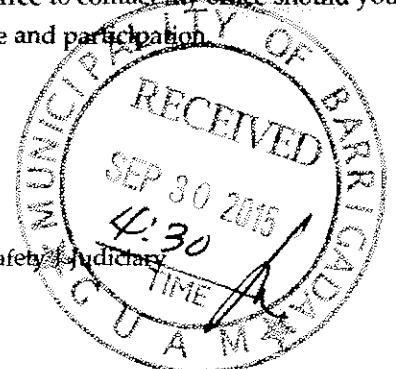
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Senator  
V. Anthony Ada  
Member

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Frank F. Blas Jr.  
Member



Senator  
James V. Espaldon  
Member

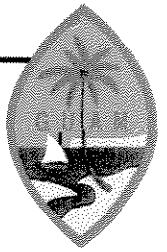
*Un Daangkoto Na Ni Yutes Ma'ase!*

Senator  
Brant T. McCreadie  
Member

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature

Speaker  
Dr. Judith T. Won Pat, Ed.D  
Ex-Officio



October 01, 2015

The Honorable Joana Margaret C. Blas, Mayor  
Municipality of Asan-Maina  
Sent via Hand Delivery

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*Un Dangholo Na Si Yu'os Ma'asel*

SENATOR FRANK B. AGUON, JR.  
Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature

**RECEIVED**  
DATE: 10-01-2015

Senator  
FRANK B. AGUON, JR.  
Chairman

Senator  
Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

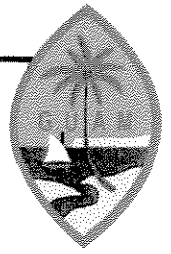
Senator  
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Member

Senator  
Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D.  
Ex-Officio



October 01, 2015

**FILE COPY**

Senator  
FRANK B. AGUON, JR.  
Chairman

The Honorable Vicente "Ben" D. Gumataotao, Mayor  
Municipality of Piti  
Sent via Hand Delivery

Senator  
Thomas C. Ada  
Vice Chairman

RE: INVITATION - Public Hearing on Thursday, October 08, 2015 at 5:00 PM

Vice-Speaker  
Benjamin J.F. Cruz  
Member

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Senator  
Dennis G. Rodriguez, Jr.  
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Senator  
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Senator  
V. Anthony Ada  
Member

*Un Dagkoto Na Sa Yate Ma'ase!*

Senator  
Frank F. Blas Jr.  
Member

**SENATOR FRANK B. AGUON, JR.**

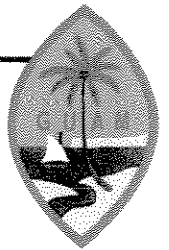
Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreadie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D.  
Ex-Officio

RECEIVED  
DATE: 10/01/15



October 01, 2015

The Honorable Dale E. Alvarez, Mayor  
Municipality of Santa Rita  
Sent via Hand Delivery

**FILE COPY**

RE: INVITATION - Public Hearing on Thursday, October 08, 2015 at 5:00 PM

In accordance with the *Open Government Law of Guam*, relative to notice for public meetings, please be advised that the *Committee on Guam U.S. Military Relocation, Public Safety & Judiciary*, will convene an **Public Hearing on Thursday, October 08, 2015 at 5:00 PM.** Included on the agenda are the following bill(s):

- **Bill No. 185-33(COR)-** An act to amend § 11311.1 of Title 7 and enact a new Chapter 16 to Title 21, Both of Guam Code Annotated relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; and. to amend subsection (a) of § 2101, and add a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, Relative to providing for the creation of a Judicial Land Division Court to Expediently review and affirm, if appropriate, the settlement between the Government and Landowner. (Sponsors: D.G. Rodriguez, Jr. / T.R. Muña Barnes / F.B. AGUON, JR. / R.J. Respicio / T. Morrison / V.A. Ada / B.T. McCreddie)

The Hearing will broadcast on local television, *GTA Channel 21 and Docomo Channel 117* or streamed online at: [www.guamlegislature.com](http://www.guamlegislature.com).

The Committee requests that, if written testimonies are to be presented at the Public Hearing, copies be submitted one day prior to the public hearing date, to the Office of Senator Frank B. Aguon, Jr. at Suite 503 DNA Bldg. 238 Archbishop Flores St. Hagatna, Guam, or via fax to 475-GUM3(4863), or via email to: [aguon4guam@gmail.com](mailto:aguon4guam@gmail.com). Copies of the aforementioned Bill(s) may be obtained at *I Liheslaturan Guahan*'s website at: [www.guamlegislature.com](http://www.guamlegislature.com). Individuals requiring special accommodations, auxiliary aids, or services should contact our office at 475-4861/62. Please feel free to contact my office should you have any questions or concerns. We look forward to your attendance and participation.

*Un Daangkato Na Si Yu'os Ma'ase!*

**SENATOR FRANK B. AGUON, JR.**

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guahan* | 33rd Guam Legislature

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Chairman

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Thomas C. Ada  
Vice Chairman

Vice-Speaker  
Benjamin J.F. Cruz  
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Senator  
Rory J. Respicio  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

Senator  
V. Anthony Ada  
Member

Senator  
Frank F. Blas Jr.  
Member

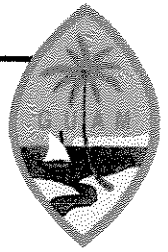
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October 01, 2015

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Chairman

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Municipality of Agat

Senator  
Thomas C. Ada  
Vice Chairman

Sent via Hand Delivery

Vice-Speaker  
Benjamin J.F. Cruz  
Member

RE: INVITATION - Public Hearing on Thursday, October 08, 2015 at 5:00 PM

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Rory J. Respicio  
Member

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Member

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Senator  
Dr. Nerissa B. Underwood, Ph.D.  
Member

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Senator  
V. Anthony Ada  
Member

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Frank F. Blas Jr.  
Member

Senator  
James V. Espaldon  
Member

Senator  
Brant T. McCreddie  
Member

Speaker  
Dr. Judith T. Won Pat, Ed.D.  
Ex-Officio

*Un Dagkolo Na Si Yu'os Ma'ase!*

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary  
*I Mina' Trentai Tres Na Liheslaturan Guåhan* | 33rd Guam Legislature

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Updated: October 1, 2015

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Updated: October 1, 2015

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**PUBLIC HEARING AGENDA**

**Thursday, October 08, 2015 at 5:00PM**

*I Liheslaturan Guahan's Public Hearing Room, Hagåtña*

**AGENDA**

- Senator  
FRANK B. AGUON, JR.  
Chairman
- Senator  
Thomas C. Ada  
Vice Chairman
- Vice-Speaker  
Benjamin J.F. Cruz  
Member
- Senator  
Rory J. Respicio  
Member
- Senator  
Dennis G. Rodriguez, Jr.  
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Dr. Nerissa B. Underwood, Ph.D.  
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Member
- Senator  
James V. Espaldon  
Member
- Senator  
Brant T. McCreadie  
Member
- Speaker  
Dr. Judith T. Won Pat. Ed.D  
Ex-Officio

- I. Call to Order at 5:00PM
- II. Opening remarks/Announcements
  - **Bill No. 185-33 (COR)** - An act to amend § 11311.1 of Title 7 and enact a new Chapter 16 to Title 21, Both of Guam Code Annotated relative to establishing an expedited administrative process to identify land takings by agencies, address claims, and determine appropriate settlements relative to property expropriated for public purposes by the government of Guam without just compensation; and. to amend subsection (a) of § 2101, and add a new Article 5 to Chapter 4, Division 1, both of Title 7, Guam Code Annotated, Relative to providing for the creation of a Judicial Land Division Court to Expediently review and affirm, if appropriate, the settlement between the Government and Landowner. (*Sponsors: D.G. Rodriguez, Jr. / T.R. Muña Barnes / F.B. AGUON, JR. / R.J. Respicio / T. Morrison / V.A. Ada / B.T. McCreadie*)
- III. Closing Remarks
- IV. Adjournment

# Bill would require compensation for land

Shawn Raymundo, sraymundo@guampdo.com 10:13 p.m. ChST October 2, 2015



(Photo: Rick Cruz/PDN)

While the government of Guam currently is the defendant in a class-action federal lawsuit over private property taken without compensation for public use, recently introduced legislation could streamline the judicial process to prevent similar condemnation cases.

Sen. Dennis Rodriguez Jr., D-Dededo, introduced Bill 185-33 to include additional provisions to a 1994 law that requires the government to compensate those who weren't paid when their land was used or taken for public roads, easements and utilities.

"We're bringing this issue to the forefront," Rodriguez said. "The government hasn't done its part."

The land compensation issue is another public debt the government should be taking care of, like tax refunds and vendor payments, Rodriguez said.

"I think it's very important that we treat public debts," he said, adding: "This is one of those things we need to take the bull by the horns and address as well."

Whenever landowners filed claims to get compensated from the government, Rodriguez said, it was up to the private citizen to foot the costs associated with proving the land was taken without just payment.

"If you look at what has really been dragging, landowners who have a claim would have to bear the cost of confirming that claim, hiring a surveyor, and other costs to make that determination," he said.

Rodriguez's bill is meant to put the burden of costs on the government agencies that used the land.

"It requires the government now to do that process of confirming that private land was taken for public use," Rodriguez explained.

Public Law 22-73 currently requires the Department of Revenue and Taxation to remove such parcels of land from the real-estate tax rolls and refrain from collecting property taxes on such land, according to the law.

Governors were also supposed to compile a list of all the unpaid landowners and repay them either through direct compensation at fair market value, a value-for-value land exchange or credit toward territorial income taxes.

The law also notes that since 1945, it has "been the practice of the government to take property without any compensation or compensatory exchange."

## Funding

Another provision of the law authorized the use of money in the Territorial Highway Fund to compensate the property owners.

Rodriguez said the Highway Fund is already overextended and can barely provide the necessary funding to maintain the island's roadways, let alone compensate landowners.

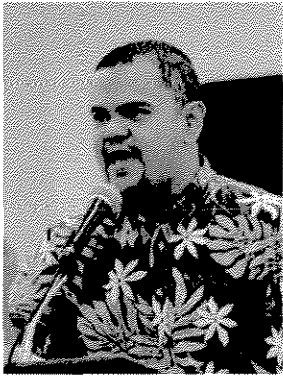
The senator included a provision in his bill to set up a Land Claims Compensation Fund, which would be solely used to pay the landowners' settlements. It would also require the governor of Guam in the annual budget request to appropriate \$500,000 to the fund, beginning with the fiscal 2017 budget act.

If Bill 185 is enacted, an agency is given 180 days to conduct the necessary research from the time a property owner files a claim asserting that the agency took private land. The agency also must submit the findings to its respective governing board during that period.

The board would then be required to submit the report to the governor and the speaker of the Legislature.

"If the written finding concludes that the claim is valid, the agency has 90 days to determine just compensation based on the fair market value of the property at the time of the taking," the bill states.

However, if the agency didn't find the claim to be valid, the landowner could file an inverse condemnation lawsuit.



Rodriguez (Photo: PDN file)

## Lawsuit

A class-action lawsuit, which is currently before the U.S. District Court of Guam, calls on Gov. Eddie Calvo and Rev and Tax to begin complying with the current law.

The estate of Rita Aquino Salas, the plaintiff, owns interest in a pair of lots in Mangilao, according to court documents.

The estate alleges the government continued to assess and collect real property taxes on the land, despite a portion of the property being used by the government around the time Maimai Road was constructed, attorney Curtis Van De Veld, who represents the Salas estate, said.

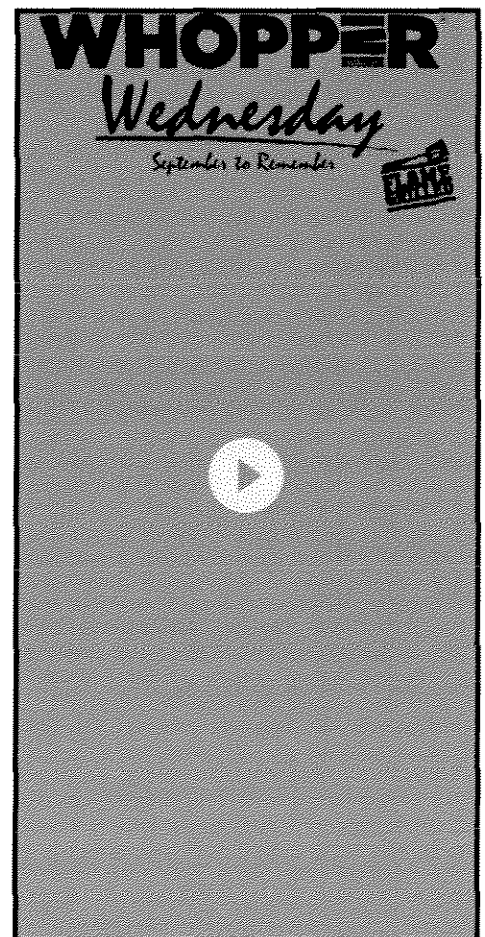
The Salas estate is seeking a writ of mandamus, which would direct the government to refund the territorial real estate taxes the estate paid, give the estate "just compensation" and begin complying with the 1994 law, meaning it should begin paying back all other landowners in similar situations.

The 1994 statute cites a 1992 audit report from the Office of Inspector General of the U.S. Department of the Interior that stated: "Guam may pay an additional \$73.3 million in excess costs to properly acquire title to the rights-of-way."

Van De Veld said that after adjusting the \$73.3 million into current dollars, GovGuam could pay more than \$100 million to compensate the landowners and refund them the territorial real estate taxes such individuals may have paid.

Attorneys for both parties appeared before the court in late July for a scheduling conference. The case will continue early next year, with a bench trial set for May 2016.

Read or Share this story: <http://www.guampdn.com/story/news/2015/10/02/bill-would-require-compensation-land/73131024/>



# Land Bill supported

Shawn Raymundo, sraymundo@guampdn.com 11:10 p.m. ChST October 9, 2015



(Photo: Shawn Raymundo)

As he fought through his emotional testimony, former Vice Speaker Ted Nelson said the words many in the room had already believed.

"Fight for your land," he said.

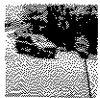
Nelson was one of a handful of individuals who appeared before lawmakers Thursday at the Guam Legislature in Hagåtña to testify on Bill 185-33, legislation meant to streamline a process that would compensate landowners who had their land taken for public use.

For decades, the government has neglected to compensate numerous landowners for taking all or portions of certain property for public use, such as the construction of roads, easements and utilities.

"I ask the young generation to get involved with this issue," Nelson said. "Go to the public law, read the bills, see the senators and fight for your land."

In 1994, Nelson and other lawmakers, part of the 22nd Legislature, believed they had tackled the inverse condemnation issues by passing his measure that required governors to track down such property owners and compensate them.

Nelson's legislation also mandated the Department of Revenue and Taxation remove the parcels from real estate tax rolls and refrain from collecting taxes on those properties.



PACIFIC DAILY NEWS

GovGuam should compensate owners of taken land

(<http://www.guampdn.com/story/opinion/editorials/2015/10/08/govguam-should-compensate-owners-of-taken-land-100973567020/>)

After more than 20 years, many landowners are still waiting for compensation.

"Everyone who suffered these injustices have a right to redress of their grievances," said Laurent Duenas, whose parents left her and her sister several parcels of land that contain more than 500 feet of Marine Corps Drive frontage.

Bill 185-33 is meant to streamline the adjudication process of inverse condemnation claims by requiring the agencies that took the private property to pay for any costs associated with proving the claims instead of the landowner doing so.

"With all this modernization, the injustices and denial of property rights since 1944 were never considered and equal protection of the laws was denied to the original landowners," Duenas said.

Her claim stretches back to the end of World War II when the U.S. military used Marine Corps Drive through the end of the Vietnam War. After the war, the federal government turned the road over to the government of Guam.

"By accepting the transfer, the government of Guam perpetuated the injustices of the federal government and should now accept the attendant liabilities and moral and legal obligations," she said.



PACIFIC DAILY NEWS

Mayors back land-compensation bill

(<http://www.guampdn.com/story/news/2015/10/07/mayors-back-land-compensation-bill73499180/>)

Similarly, Joaquin Pangelinan Perez of Santa Rita told lawmakers that the U.S. Navy took his family's land in Apla and Sumay without any redress.

"Our family sees the mechanism envisioned by Bill 185-33, as a path by which families whose properties were expropriated, can be justly compensated without the need to go through the tortuous government bureaucracy," he said.

Sen. Dennis Rodriguez Jr., D-Dededo, authored the bill to give government agencies 180 days from the time a claim is filed to conduct the necessary research of the land and determine the validity of the claim. Within that time period, the agency must also submit the findings to its governing board.

The board would then be required to submit the report to the governor and speaker of the Legislature.

If the property owner's claim is valid, the agency would have "90 days to determine just compensation based on the fair market value of the property at the time of the taking," the bill states.

However, if the agency didn't find the claim to be valid, the landowner could file an inverse condemnation lawsuit.

The measure goes on to also create a division at the Superior Court of Guam called the Land Division. The new division would review inverse condemnation cases as well as real property boundary disputes and land registration proceedings.

Rodriguez also included a provision in his bill to set up the Land Claims Compensation Fund, which would be solely used to pay the landowners' settlements. It would also require that, beginning fiscal 2017, a \$500,000 appropriation to the Fund be included in the governor's annual budget request.

While most who came to weigh in on the measure expressed support, the Office of the Attorney General had concerns with a few provisions in the bill.

Deputy Attorney General Karl Espaldon had concerns with the burden of proof being shifted from the landowner to the government, stating it conflicts with the eminent domain law.

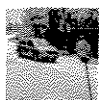
"No one is in a position to know whether land was taken by the government for no compensation than the property owners themselves," he noted. "Shifting the burden creates an anomaly in the law that is both unfair to the government and violates a basic principle under which our justice system has always operated when it comes to seeing redress for an injury."

Department of Land Management Director Michael Borja raised similar concerns in his written testimony to the Legislature.

Posing the scenario of a landowner filing a "frivolous" claim, he asked who would then be responsible for paying the costs of the investigation.

"The concern is who will determine whether a claim is frivolous and what authority is there to make this claimant pay for unnecessary services, especially if the claimant does not possess the means of payment," he wrote.

Borja also contended the 180-day timeline for agencies to comply with, calling it "grossly insufficient especially when the claims against the agencies could be overwhelming."



PACIFIC DAILY NEWS

Bill would require compensation for land

(<http://www.guampdn.com/story/news/2015/10/02/bill-would-require-compensation-land/73131024/>)

"Perhaps in the normal course of an event, 180 days may be sufficient to complete the findings on a claim when there isn't an onslaught of claims," he said. "Additionally, just the period of time to process the procurement requests to conduct appraisals for a fair market value determination may eat up all the time allotted determining compensation."

Diana Gutierrez, the Judiciary of Guam's director of Policy, Planning and Community Relations, said the Judiciary is ready to implement the Land Division, as the Legislature recently provided additional resources to hire a judicial officer or magistrate judge.

Cited in the 1994 law was a report from the Office of the Inspector General of the U.S. Department of the Interior, which estimated the government's cost to compensate the landowners could be roughly \$73 million.

After Vice Speaker Nelson's bill initially passed, the measure was met with opposition from then Gov. Joseph Ada, who vetoed the bill, describing it as "a raid on the treasury and recipe for bankruptcy."

The legislative body overrode the veto, passing it in a 17-3 vote, as a two-thirds majority is needed to override a gubernatorial veto.

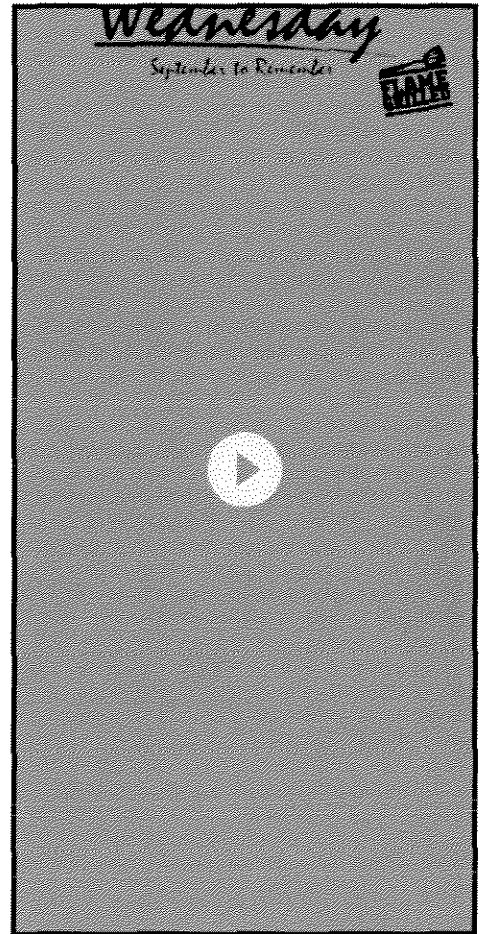


Former Sen. Antonio Unpingco opposed the measure along with then-Sen. Felix Camacho, who would later become governor, and former Sen. Joseph George Bamba, who served as Camacho's chief of staff during his administration.

"Why have our leaders been sitting around not paying attention to this issue where Chamorros are being denied and being abused as far as property rights," Nelson said. "I ask you people to please read public law, the one that I introduced 21 years ago and discuss it."

Committee on Judiciary Chairman Sen. Frank Aguon Jr. said he would either have a markup meeting on the bill with fellow lawmakers or hold a subsequent roundtable hearing with stakeholders so they could maximize input on the measure.

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**Testimony of Joaquin P. Perez on Bill No. 185-33  
October 8, 2015**

Mr. Chairman and Honorable Senators of the 33<sup>rd</sup> Guam Legislature, Buenas yan Hafa Adai.

My name is Joaquin Pangelinan Perez, a resident of Santa Rita. I come before you representing the family of the late Pedro Borja Pangelinan and Cristina Sablan Pangelinan, our grandparents, and their children, grandchildren and great grandchildren. Our family supports the purpose and intent of Bill No 185-33 and urges its expeditious passage. We believe that Bill No. 185-33, when enacted, will provide a legal mechanism by which long standing injustices and inequities can be adjudicated and finally resolved.

The passage and enactment of this legislation acknowledges that the Government of Guam has, in fact, expropriated private property, without equal protection of the laws, without due process and without just compensation. It is also my opinion that the taking and condemnation of land by the Naval Government, prior to and immediately after the passage of the Organic Act, supposedly for national defense purposes, then assumed by our local government, ostensibly for public necessity, rendered the Government of Guam just as culpable as the Naval Government.

Our grandparents, and their children, originally from the village of Sumay and Apla, owned tracts of land in Sumay, Apla and Hagat. We understand that, at this point in time, we do not have any recourse for redress of the injustices perpetrated on the people of Sumay and Apla, so this is not the time to discuss those issues. But, with the passage and enactment of this legislation, when that time comes – the mechanism for redress will be there – the people’s recourse to justice will be well established and potential politicization can be avoided,

The specific parcel of property, condemned and taken by the Naval Government, beginning as early as 1948, which our family will seek resolution for is that area of Hagat previously designated as Lot 164. In today’s terms, a more timely description of the property can be given as - beginning with the Hagat Community Center parcel, south to the Mt. Carmel Cemetery and from Route 2 to the shoreline; this all encompasses the Agat Community Center, the Sagan Bisita, the Ga’an Point War in the Pacific Park, and the Agat Waste Water Treatment Plant.

Immediately after August 15, 1944, the Naval Government began identifying property, in what they referred to as the Apra Harbor Reservation, for the establishment of what we is now Naval Base Guam. Parcels in Hagat were identified for the development of housing areas for federal and military personnel and families. The infrastructure in that area was developed with underground waste water systems (which included the construction of the Agat sewer outfall); service alley’s running behind lots designated for individual family residences (to avoid overhead electrical lines along the streets), and for the regular collection of trash. Portions of this development still exist and are being utilized. Ultimately, rather than in Hagat, the Naval Government decided to build the housing facilities called Apra Hts, in the area previously known as Base 18, and separate housing facilities for military personnel attached to the Naval Magazine, the plans to develop Agat were abandoned and the area eventually turned over to the government of Guam.

The Federal District Court, in its decision and ruling, ordered that if the Naval Government did not use the area condemned, the properties would be returned to the original land owners. When the Navy dropped plans for a New Agat housing area, the parcels were turned over to the government of Guam, not the original land owners, as the Navy did not then have a mechanism for the return of parcels to

private individuals. That situation still exists today – thus – Naval Air Station was turned over to GovGuam for development of an International Air Terminal, for the development of the Tiyan Parkway and development of an economic and industrial trade zone. Through the Ancestral Lands Commission, the parcels which encompassed the military family quarters (along the Tiyan and Jalaguac cliffline), the Bachelor Officers Quarters, the Bachelor Enlisted Men's Quarters, El Gecko Enlisted Men's Club, the Bowling Alley, the Dispensary, and others were all returned to the families who held title prior to 1950. (the Good Shepard Chapel was turned over to the Homeless Coalition, to comply with a provision of the BRACC laws).

With the passage of Bill No. 185-33, my family will be able to pursue, through legal channels, the return of my grandparent's properties, or just compensation or an exchange with other government properties so that the War in the Pacific Park, the Sagan Bisita, the Community Center and the Agat Sewer Treatment Plant – can continue to exist and operate for the benefit of the Hagat community.

In closing, we note that this government has been very willing to borrow unbelievable amounts of money to pay tax refunds which include millions in unfunded federal mandates. I believe that the payment of tax refunds is a good thing – but I also think that exacerbation of this government's fiscal ailments with the payment of unfunded federal mandates – is senseless, irresponsible and injudicious. If this government is willing to assume unbelievable debt to pay tax refunds, which admittedly belongs to the taxpayers, together with unfunded federal mandates, then, to ensure equal protection of the laws for all, it should be willing to do the same thing, provide for due process, and be prepared to make reparations for the expropriation of privately owned property.

In the final analysis, our family sees the mechanism envisioned by Bill 185-33, as a path by which families, whose properties were expropriated, can be justly compensated without the need to go through the tortuous government bureaucracy. Likewise, we see the mechanism provided by this legislation as providing a legal pathway which overcomes the temptation to politicize an issue which really belongs in the courts.

Dangkulo na Si Yu'os Ma'ase for this opportunity to present my families views on this important legislation. I congratulate the sponsors of the measure for seeking a methodology by which resolution of long standing injustices and denial of rights can be efficiently and effectively resolved.



**DIPATTAMENTON MINANEHAN TANO'**  
(Department of Land Management)  
**GUBETNAMENTON GUAHAN**  
(Government of Guam)



Street Address:  
590 S. Marine Corps Drive  
Suite 733 ITC Building  
Tamuning, GU 96913

EDDIE BAZA CALVO  
Governor

MICHAEL J.B. BORJA  
Director

RAY TENORIO  
Lieutenant Governor

DAVID V. CAMACHO  
Deputy Director

October 7, 2015

Senator Frank Aguon, Jr.  
33<sup>rd</sup> Guam Legislature  
Chairman, Committee on U.S. Military Relocation,  
Public Safety, Judiciary  
238 Archbishop Flores Street, Ste 503  
Hagatna, Guam 96910

*[Handwritten Signature]*  
**RECEIVED**  
10-7-15

Mailing Address:  
P.O. Box 2950  
Hagatna, GU 96932

Website:  
<http://dlm.guam.gov>

**SUBJECT: Bill No. 185-33 – AN ACT TO AMEND §11311.1 OF TITLE 7 AND ENACT A NEW CHAPTER 16 TO TITLE 21, BOTH OF GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING AN EXPEDITED ADMINISTRATIVE PROCESS TO IDENTIFY LAND TAKINGS BY AGENCIES, ADDRESS CLAIMS, AND DETERMINE APPROPRIATE SETTLEMENTS RELATIVE TO PROPERTY EXPROPRIATED FOR PUBLIC PURPOSES BY THE GOVERNMENT OF GUAM WITHOUT JUST COMPENSATION; AND, TO AMEND SUBSECTION (a) OF §2101, AND ADD A NEW ARTICLE 5 TO CHAPTER 4, DIVISION 1, BOTH OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR THE CREATION OF A JUDICIAL LAND DIVISION COURT TO EXPEDITIOUSLY REVIEW AND AFFIRM, IF APPROPRIATE, THE SETTLEMENT BETWEEN THE GOVERNMENT AND LANDOWNER.**

E-mail Address:  
[dlmdir@land.guam.gov](mailto:dlmdir@land.guam.gov)

Buenas yan Hafa Adai!

Telephone:  
671-649-LAND (5263)

In regards to Bill No. 185-33, the Department of Land Management has the following comments:

Facsimile:  
671-649-5383


- a. Section 3 of the bill regarding §11311.1(a)(2), the definition of the current owner needs to be further defined because if the current owner is not the original land owner when the alleged taking of property occurred, how is this person eligible to make a claim?
- b. Section 4 of the bill regarding §16101(b), the burden of an agency to determine the validity of claims is set to be at that agency's sole expense. However, that expense can be immense considering the needs to survey properties, conduct multiple appraisals to determine fair market value, the title research necessary to validate property ownership, the multiple publications required, and the legal fees for each case. These costs should not simply be consigned as a "sole expense" of an agency.
- c. Section 4 of the bill regarding §16103(a) and (b), the periods of time required for an agency to complete a finding on a claim and to determine the fair market

value are grossly insufficient especially when the claims against the agencies could be overwhelming. Perhaps in the normal course of an event, 180 days may be sufficient to complete the finding on a claim when there isn't an onslaught of claims. Additionally, just the period of time to process the procurement requests to conduct appraisals for a fair market value determination may eat up all the time allotted for determining compensation.

- d. Section 4 of the bill regarding §16103(c), the concern is who will determine whether a claim is frivolous and what authority is there to make this claimant pay for the unnecessary services, especially if the claimant does not possess the means of payment.
- e. Section 4 of the bill regarding §16103(d), the assistance Department of Land Management should provide is assistance with its land records resources. The Department of Land Management should not be assumed to be the agency to conduct the research for the affected agencies. Each of the affected agencies have land agents or personnel who are responsible for their agency's acquisition and disposition of properties, and, therefore, they should bear the full responsibility of investigating claims against their respective agencies.
- f. Section 4 of the bill regarding §16104, establishes a compensation fund with a generous authorization for the Department of Administration to assess a service fee for itself. While this is quite generous for a menial task of maintaining an account, it is contrary to other provisions of this bill which provides absolutely no funding to affected agencies who will be slammed with extremely costly burdens of investigating antiquated claims. While this provision provides the only mention of a fund, no other section speaks of a funding source for all the potential claims and associated costs.
- g. While the general assumption is that agencies who may have been involved in the alleged taking of land are government of Guam agencies, that assumption is not valid. One agency responsible for telecommunications and buried most of its communication lines is now a private entity. How does this law treat this situation?

Thank you for allowing me to submit this testimony.

*Senseramente,*

  
**MICHAEL J.B. BORJA**  
Director



U.S. Department of the Interior  
Office of Inspector General

## AUDIT REPORT

**SELECTION, PROCUREMENT,  
AND ADMINISTRATION  
OF ROAD CONSTRUCTION PROJECTS,  
DEPARTMENT OF PUBLIC WORKS,  
GOVERNMENT OF GUAM**

**REPORT NO. 93-I-226  
NOVEMBER 1992**

This report may not be disclosed to anyone other than the auditee except by the Assistant Inspector General for Administration, Office of Inspector General, U.S. Department of the Interior, Washington, D.C. 20240



**U.S. Department of the Interior  
Office of Inspector General**

## **AUDIT REPORT**

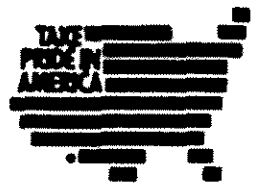
**SELECTION, PROCUREMENT,  
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# United States Department of the Interior



## OFFICE OF INSPECTOR GENERAL

Headquarters Audits  
1550 Wilson Boulevard  
Suite 401

Arlington, VA 22209

November 30, 1992

The Honorable Joseph F. Ada  
Governor of Guam  
Office of the Governor  
Agana, Guam 96910

Dear Governor Ada:

**Subject: Final Audit Report on the Selection, Procurement, and Administration of Road Construction Projects, Department of Public Works, Government of Guam (No. 93-I-226)**

This report presents the results of our review of the Department of Public Works selection, procurement, and administration of road construction projects. The audit objective was to determine whether road construction projects were (1) selected according to established priorities and coordinated with agencies affected and (2) planned, designed, procured, and administered to ensure efficient and effective use of available resources. During fiscal years 1989 through 1991, Public Works expended about \$56 million on 197 road projects.

Our audit disclosed that although Guam made considerable improvements to existing roads and bridges through widening and repaving, Public Works (1) did not adequately plan, design, or control in-house road construction projects and (2) failed to construct 30 major road projects that had priority ranking while constructing other road projects that had a lower priority. These conditions occurred because Public Works (1) had not developed annual workplans showing how the priorities for the master transportation plan for major road projects would be implemented on a year-to-year basis; (2) reallocated funds to nonpriority road projects solely on the basis of requests by elected officials, even though some requests lacked adequate justification; and (3) lacked procedures to ensure adequate management oversight of in-house road construction projects. As a result, Public Works spent about \$3.5 million on road projects that were designed inadequately, were wasteful, or were of little value to Guam residents.

Our audit further disclosed that the Government of Guam took or reserved for its own use private property without legal due process and without landowner compensation. These actions were contrary to the Organic Act of Guam and the U.S. Constitution. This occurred because Public Works (1) took no action to resolve this matter on a timely basis because of the complex nature of the issue involved and (2) lacked procedures for the timely identification of land needed for roads in order to either acquire or release private land for development. As a result, Guam residents may have, in certain circumstances, been deprived of their property rights. Also, Guam and the Federal Government paid \$1.1 million and Guam may have to pay an added \$73.3 million in excess costs for acquisition of rights-of-way.



In addition, Public Works procured goods and services without competition or authority. This condition occurred because Public Works lacked procedures to ensure compliance with the provisions of Guam procurement law. As a result, Public Works (1) lacked assurance that full value was received for over \$1.6 million expended for procurements and (2) improperly procured about \$640,000 of goods and services.

To correct the conditions noted, we recommended that the Governor instruct the Director of Public Works to (1) develop annual workplans showing how the major road project priorities established in the master transportation plans will be implemented on an annual basis, (2) develop procedures to provide management oversight for in-house road projects, (3) develop procedures to document deviation from established road project priorities, and (4) develop procedures to ensure compliance with Guam's procurement law. We also recommended that the Governor, in consultation with the Director of Public Works and the Guam Attorney General, establish a policy as to whether Guam will compensate landowners for land taken in the past for public roads. In concert with that policy, we recommended that the Governor direct the identification and acquisition of land which is to be acquired either for existing roads or for roads to be constructed or already under way.

In addition, we recommended that the Governor instruct Guam's Attorney General (1) to take legal action to acquire title to land identified by Public Works that has to be acquired and (2) to review Public Works unauthorized procurement actions and initiate appropriate action. We also recommended that the Governor submit legislation to fund the acquisition of the land identified by Public Works as having to be acquired and to remove use restrictions from the land Public Works identifies as not needed for roads.

The October 13, 1992, response (Appendix 4) to the draft report from the Government of Guam took exception to the draft report for not acknowledging the highway and bridge reconstruction and expansion accomplished by the current administration. The response agreed with three recommendations (Nos. A.2, C.2, and C.3), disagreed with three recommendations (Nos. A.1, A.3, and C.1), and did not comment on the remaining eight recommendations (B.1 through B.8). We requested that the Government provide additional information for the three recommendations with which agreement was indicated, reconsider the three recommendations for which disagreement was indicated, and provide specific responses to the remaining eight recommendations. The information needed for the recommendations is in Appendix 5.

The Inspector General Act, Public Law 95-452, Section 5(a)(3), as amended, requires semiannual reporting to the Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement recommendations, and identification of each significant recommendation on which corrective action has not been taken.

In view of the above, please provide a response, as required by Public Law 97-357, to this report by January 29, 1993. The response should provide the information requested in Appendix 5. A copy of your response should also be provided to our North Pacific Region, 238 Archbishop F.C. Flores Street, Suite 807; Pacific News Building; Agana, Guam 96910.

Sincerely,



Harold Bloom  
Assistant Inspector General  
for Audits

cc: Director, Department of Public Works,  
Government of Guam

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# INTRODUCTION

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## BACKGROUND

The Department of Public Works was established by Title 5, Section 3106, of the Guam Code Annotated. The Director of Public Works is appointed by the Governor of Guam and confirmed by the Guam Legislature. Public Works has the responsibility for all public roads on Guam, and its stated policy is to build and maintain a safe, efficient, and modern highway system responsive to the transportation needs of the territory.

During fiscal years 1989 through 1991, Public Works expended \$56 million for road project planning, design, construction, administration, and maintenance. During each of the same fiscal years, Public Works was authorized 153 personnel positions for management and construction of its road projects. The Chief of Engineering, Public Works Highway Division, was responsible for management of approximately 197 road projects valued at \$86.4 million. These projects consisted of 122 projects with specific appropriations and 75 projects with planned costs of over \$25,000 each that will be constructed in-house by the Highway Maintenance and Construction Section. Public Works personnel performed project procurement and oversight and maintained unofficial accounting records. The official accounting records were maintained by Guam's Department of Administration.

Two documents provide guidance for major road projects undertaken by Public Works: Guam: Comprehensive Transportation Plan (dated April 1975) and Master Plan of the Territory of Guam (dated January 1966). The Transportation Plan established three 5-year programs for the reconstruction of 11 bridges and 29 roads plus the construction of 6 new roads. The Master Plan contained four specific road projects and identified at least 6.5 million square meters<sup>1</sup> of land as existing or potential rights-of-way. At the time of our review, Public Works was drafting a revised master transportation plan entitled "2010 Highway Master Plan for Guam" (intended to serve through the year 2010). Target date for completion of the Plan is September 20, 1992.

## OBJECTIVE AND SCOPE

The objective of the review was to determine whether road construction projects were (1) selected according to established priorities and coordinated with agencies affected and (2) planned, designed, procured, and administered to ensure efficient and effective use of available resources in accordance with applicable laws and regulations. This performance audit, conducted from September 1991 through April 1992, covered \$86.4 million of Federal and Government of Guam funds appropriated for 197 road projects active during fiscal years 1989 through 1991. Audit work was performed at the Departments of Public

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<sup>1</sup>In Guam, land is measured and sold by the square meter, which equals about 1.2 square yards.

Works, Land Management, and Administration and at the Bureau of Budget and Management Research.

Our review was made, as applicable, in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances.

As part of our audit, we evaluated the system of internal controls related to Public Works road projects to the extent that we considered necessary to accomplish the audit objective. The significant internal controls identified were those of selecting, planning, designing, procuring, and administering road projects. Our evaluation of these controls disclosed weaknesses in all the areas identified. These weaknesses are discussed in the Findings and Recommendations section of this report. Our recommendations, if implemented, should improve the internal controls in these areas.

## **PRIOR AUDIT COVERAGE**

During the preceding 5 years, neither the General Accounting Office nor the Office of Inspector General issued an audit report that specifically evaluated Public Works overall road construction project selection, procurement, and administration process. However, on October 20, 1987, the Office of Inspector General issued the audit report entitled "Audit of Construction Materials Removed From the San Vitores Road Project." The report stated that although the Government of Guam's cost of the San Vitores road project was reduced as the result of an exchange of marketable sand for construction services, the costs charged to a Federal grant were not similarly reduced. The report's four recommendations were resolved and implemented.

On June 21, 1991, Guam's Office of Internal Audit, Bureau of Budget and Management Research, issued Report IA-90-13, "Audit of the General Services Agency Delegation of Procurement Authority to Department of Public Works, August 1, 1989, to December 31, 1989." The report stated that Public Works had not complied with Guam's procurement law and regulations by (1) not competitively procuring supplies and services, (2) issuing purchase orders after goods and services had been invoiced, and (3) not adequately documenting procurement actions taken. Based on this report, on April 24, 1991, the Director of Administration and the Chief Procurement Officer notified the Public Works Director that the delegation of procurement authority to Public Works would not be renewed until (1) Public Works personnel received formal training in procurement and (2) Administration determined, by a followup review of Public Works procurement, that future procurements would be done in accordance with the regulations (see report section "Procurement Authority").

# FINDINGS AND RECOMMENDATIONS

---

## A. PROJECT SELECTION AND PLANNING

The Government of Guam made considerable improvements to existing roads and bridges through widening and repaving projects; however, the Department of Public Works (1) did not complete major road projects in accordance with approved road development plans and (2) did not adequately plan, design, or control the construction of in-house road projects. The Government of Guam's strategy for its highway system is contained in the 1966 Territorial Master Plan and the 1975 Comprehensive Transportation Plan. Major projects were not built because Public Works engineers had not developed annual workplans for implementing major road projects on a priority basis. In addition, according to the Director of Public Works, (1) sufficient funds were not available, (2) certain elected officials requested that road projects not in the plans and of little value to Guam residents be built, and (3) Public Works management did not provide adequate oversight of in-house road construction projects. As a result, (1) 30 major road projects were not completed as planned, leading to increased traffic congestion; (2) \$1.3 million was spent on unneeded road enhancements; and (3) \$2.2 million was allocated for use on inadequately planned, designed, and managed in-house road projects.

### Major Road Projects

Public Works did not construct 30 of the 50 major bridge and road projects assigned a priority status in the 1966 Territorial Master Plan and the 1975 Comprehensive Transportation Plan. Instead, Public Works concentrated on less difficult, nonpriority, short-term projects, as well as on unnecessary road enhancements. According to Public Works officials, an undetermined number of the 30 major projects were not constructed because Public Works revised priorities and reallocated funding to comply with requests from Guam elected officials, governors, senators, and village mayors. Many of these requests were not justified in writing, and revisions made to project priority rankings were never formally evaluated and adopted. Overall, the process for selection and priority ranking of Guam's road projects did not appear to include in-depth planning and traffic analysis. For example, the Chief of Engineering was unable to provide written listings of road project priorities for fiscal years 1989, 1990, and 1991. Also, while project priorities were established in the 1966 and 1975 master plans, Public Works had never converted these overall plans into annual work project priorities. Further, the Public Works Traffic Engineer stated that the Traffic Engineering Section had not been effectively involved in the road-planning process. Consequently, the Federal Highway Administration Engineer responsible for overseeing the use of Federal Highway funds provided to Guam observed that Public Works had concentrated on easier, shorter term projects such as road widening to the detriment of projects intended to resolve major traffic congestion bottlenecks.

## Road Enhancements

Public Works constructed at least three major road projects that included unnecessary road enhancements. According to the Public Works Director, the projects were built at the request of a former governor with no written justification to support these projects. As a result, Federal grant funds that could have been used for other road projects were spent unnecessarily. According to Public Works records and project engineers, an estimated \$1.3 million was spent unnecessarily on the three projects as follows: (1) four towers on the Umatac bridge that, according to the Project Engineer, were not needed for structural support cost \$621,158 (Figure 1); (2) a traffic circle on San Vitores road that was unsafe<sup>2</sup> cost \$345,150 more than a safer, more standardized intersection (Figure 2); and (3) two seldom used picnic pavilions adjoining the Pago River bridge cost \$376,430 (funding for and placement of park facilities are the responsibility of the Department of Parks and Recreation).



**Figure 1.** Four towers on the Umatac bridge that, according to the Project Engineer, were not needed for structural support. (Office of Inspector General photograph - September 21, 1991)

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<sup>2</sup>Two Public Works traffic engineers said the circle was unsafe, and a third said that the concept of a circle for intersecting traffic was outmoded.



**Figure 2.** The San Vitores road traffic circle, which the Traffic Engineer considers a safety hazard. (Inspector General photograph - September 21, 1991)

### **In-House Road Projects**

During fiscal years 1989, 1990, and 1991, Public Works management did not provide adequate oversight and control of in-house road projects assigned to the Highway Maintenance and Construction Section. Guam's official accounting records maintained by the Department of Administration indicated that Public Works expended \$16.5 million for in-house road projects during the 3 fiscal years. However, Public Works was unable to provide the number, cost, or status of specific projects undertaken. Based on our review of records maintained by Public Works, we determined, and Public Works officials agreed, that at least 75 in-house projects (each exceeding \$25,000) had been completed at a recorded cost of about \$4.9 million. However, Public Works could not provide sufficient information on the number or the cost of projects costing less than \$25,000 or the specifics of the entire \$16.5 million charged to in-house projects. We reviewed the files for 23 projects (each exceeding \$25,000 in cost) that cost a total of \$2.2 million and determined that none of the files contained evidence of project planning, management approval, technical review, or cost accountability.

Public Works management agreed that (1) project priorities were not formally established and added that project assignments, time frames, and scope were provided orally (primarily by telephone) by the Public Works Director, the Deputy Director, or the Chief of Engineering; (2) project technical work (planning, design, and engineering) was not adequately documented, reviewed, or approved by the Chief of Engineering; and (3) project



planning and financial data, such as project start date, completion date, estimated cost, and actual cost, were not prepared or maintained. Public Works Highway Division Chief Engineer stated that management oversight and control of in-house road projects were necessary but that these factors were not given priority. As a result, we estimated that at least \$2.2 million was expended on 23 in-house projects that were inadequately planned, designed, constructed, and accounted for and, in some cases, were unsafe.

For example, the Cold Storage road project (recorded costs of \$47,000 versus actual costs of at least \$167,000) was designed and constructed based on a "middle of the road line of sight" analysis of an existing site (a dirt road on a utility easement). Road drainage was not included in the project, and after heavy rains, pools of water remained on the road until they evaporated. The completed Cold Storage road provides a shortcut between two of Guam's most heavily traveled roads. However, the Public Works Traffic Engineer stated that the two intersections with the main roads were not planned adequately and that they created "serious" safety hazards. Specifically, (1) the offset intersection of Cold Storage/Route 16 (Figure 3) forces vehicles to make a U-turn and pass through two lanes of traffic to cross the intersection, which if properly designed would have required no turns, and (2) the intersection of Cold Storage/Route 1 (Figure 4) limits drivers' line of sight, requires an uphill approach, and necessitates crossing three lanes of traffic without the benefit of a signal light. Further, safety hazards resulted from cracks in the asphalt and the sharp drop-off of the road shoulder.



Figure 3. The intersection of Cold Storage road and Harmon Loop road with Route 16. (Office of Inspector General photograph - December 6, 1991)



**Figure 4.** The intersection of Cold Storage road and Route 1. (Office of Inspector General photograph - December 6, 1991)

In addition, both intersections were constructed partially on private property, and in December 1991, the land owner at one intersection reclaimed land under one lane and started construction of a supermarket at the site (Figure 5). As a result of these problems, much of the road may have to be rebuilt and/or relocated. Public Works officials were unable to provide an estimate of the cost to rebuild the road.



**Figure 5.** Cold Storage road looking south from Route 16 shows the right lane closed and construction in process in the roadway. (Office of Inspector General photograph - December 19, 1991)

## **Highway Commission**

In an apparent effort to formalize road project planning, the Guam Legislature created the Highway Commission in 1971 with the enactment of Title 5, Section 54101, of the Guam Code Annotated. The Commission was responsible for the review of proposed short- and long-range public highway programs. Commission membership included the Director of Public Works and four members appointed by the Governor and confirmed by the Legislature. According to the Director of Public Works, the Commission became inactive in 1985 because of the lack of work, apparently because the major road projects of that period were selected by the Legislature as part of the Highway Revenue Bond. The Director stated that the Commission should be reestablished to help ensure that road project priorities are based on formal evaluations and that revisions to highway plans are fully justified.

## **Conclusions**

Although a new master transportation plan is being developed, in our opinion, Public Works must begin immediately to prepare annual major road project workplans to convert both existing and future master plan priorities into workable segments. Then the reactivated Highway Commission should review and approve the annual plans and require justifications for any changes to them, including changes requested by elected officials. Further, future in-house road construction should be considered in conjunction with the major project plan, and projects should be fully justified and adequately designed.

## **Recommendations**

We recommend that the Governor of Guam:

1. Instruct the Director of the Department of Public Works to develop annual workplans detailing how the priority road projects identified in the master plans will be undertaken and to develop and implement written procedures for documented justification, review, and approval of these annual plans and any revisions to them.
2. Instruct the Director of the Department of Public Works to develop and implement written procedures for approving and reporting the status of in-house projects, including (a) certification as to the adequacy of project planning and design before the start of construction and (b) preparation of periodic financial and construction status reports.
3. Reactivate the Highway Commission to review and approve annual road project workplans and any proposed revisions of the priorities established in the plans.

## **Government of Guam Response**

The October 13, 1992, response (Appendix 4) from the Government of Guam took exception to the draft report for not acknowledging the highway and bridge reconstruction and expansion accomplished by the current administration. In taking exception, the response objected to the Cold Storage Road example used in the report. After discussing problems with the pre-existing roadway and site location, the response concluded:

The Department of Public Works provided a smooth roadway connecting Routes 16 and 1 and provided residents and establishments in the area with much needed relief . . . . In fact the residents of the area and the through traffic are now able to freely pass within the area without encountering the major safety hazards that previously existed there.

The response expressed disagreement with Recommendations 1 and 3 and agreement with Recommendation 2.

**Recommendation 1.** The response stated that Government of Guam line agencies do not develop annual work plans and that annual work plans are not appropriate for Guam because they cannot easily be changed and may "stymie rapid implementation of projects . . . for years." The response also stated that the Guam 2010 Highway Master Plan (which "should be completed by mid-1993") will provide for highway development over the next 20 years and that the improvements on the "short-term list" in the new master plan will be implemented.

**Recommendation 2.** The response agreed that in-house road projects need project planning, adequate design, and complete documentation before implementation.

**Recommendation 3.** The response stated that a Highway Commission is "unnecessary" because (1) the Highway Master Plan and existing projects will use available funding and (2) the Department of Public Works "needs to stay flexible" to ensure that all Federal Highway Funds are expended.

## **Office of Inspector General Comments**

The Government of Guam has improved the quality and capacity of Guam's existing roads. However, despite these improvements, road capacity has not kept pace with the island's growth. Traffic counts and other data indicate that traffic congestion has increased significantly during the last 4 years. Both the Territorial Master Plan and the Comprehensive Transportation Plan anticipated this increased traffic and identified the need for improving existing roads and building new roads. However, despite the plans and the increased congestion, Public Works concentrated solely on existing roads and has not built a major new road for at least 15 years.

The statements that Cold Storage Road provides access that is "smooth" and that residents are able "to freely pass . . . without encountering the major safety hazards that previously existed" are simply not an accurate assessment of the situation. After the draft report was issued, the situation at Cold Storage Road deteriorated. The construction of the supermarket at the eastern end of the Road effectively closed the road to westbound traffic. For several weeks after the supermarket land owners closed the westbound lane of the Road, traffic gained access through the parking lot of an adjacent fast food restaurant until the restaurant closed the driveway to Cold Storage Road. Thus there is no roadway connection from Route 16 to Route 1 via Cold Storage Road. In addition, all traffic exiting Cold Storage Road must turn right (south) onto Route 16. Traffic intending to continue east or go north must turn left or make a U-turn at the next intersection. This intersection is 185 feet from Cold Storage Road, so east and north bound traffic must cross two lanes of southbound traffic to access the left U-turn lane onto Route 16. As a result of these changes in traffic pattern, as well as the situation as presented in the body of the report, Cold Storage Road does not provide smooth, safe, or free access to either local or through traffic.

Based on the Government's response, additional information is needed for Recommendation 2, and Recommendations 1 and 3 are unresolved. The status of the recommendations and the information needed for the recommendations are in Appendix 5.

We question the Government's assertion that the improvements listed in Guam's new master plan will be implemented because of the lack of implementation of the projects contained in the Territorial Master/Comprehensive Transportation Plans. The preparation and the adoption of a new master plan by itself will not ensure implementation of the projects unless a formal mechanism, such as annual work plans, is in place to assist in ensuring that the projects are implemented. Annual plans can set priorities for both major and in-house road projects. Also, annual plans can be used to explain and justify funding requests for road projects and assist in adequately managing all of Public Works road projects. Further, an annual plan would not need to be rigid because the Highway Commission could, upon request, review and approve necessary changes in project priorities, thus helping Public Works officials avoid complying with requests from elected officials to make arbitrary and ill-advised changes in road project priorities. In addition, a Highway Commission would help open the road selection process to the public scrutiny and provide public input into the selection of road projects and the setting of project priorities.

In our opinion, the lack of annual work plans has severely hindered the implementation of the 1966 and 1975 plans. Establishment of an annual planning process and reestablishment of the Highway Commission should result in better project management and more efficient and effective use of the taxpayers' money. Therefore, we request that the Government of Guam reconsider its response to Recommendations 1 and 3.

## B. RIGHTS-OF-WAY

The Government of Guam took or reserved for its own use private property without due process of law and without compensating applicable land owners. Specifically, Public Works used about 416,000 square meters (or about 498,000 square yards) of private property for public roads without providing compensation to its owners, and Guam unjustly prohibited development on another 839,000 square meters (1 million square yards) of private property. Both the Organic Act (Sections 5e and 5f) and the U.S. Constitution state that no person is to be deprived of property without due process of law and that private property is not to be taken for public use without just compensation. These conditions occurred because Public Works (1) historically neglected to try to resolve the issue because of its complex nature and (2) lacked procedures for the timely identification of land needed for road rights-of-way in order to either acquire the land or release the land for private development. As a result, some Guam residents have been unduly deprived of their property rights. Moreover, Guam and the Federal Government have already paid \$1.1 million to two property owners, and Guam may have to pay an additional estimated \$73.3 million for road rights-of-way than would have been necessary if the property had been acquired in a timely manner (total excess acquisition costs of \$74.4 million).

### Land Use

Public Works did not compensate land owners and did not acquire in a timely manner private property taken for existing and potential rights-of-way on approximately (1) 375,000 square meters of land taken approximately 40 years ago, (2) 12,603 square meters of land taken since 1988, and (3) 28,705 square meters of land used by means of temporary rights of entry.<sup>3</sup> Public Works was able to obtain land improperly for roads because property owners, over the years, rarely challenged the land takings. Consequently, Public Works continued its questionable practice of expropriating land. Another factor for obtaining land improperly was the lack of procedures to ensure the identification and timely acquisition of rights-of-way for current projects. As a result, some residents of Guam have been deprived of the use of their property, and the Government of Guam paid about \$109,000 of Federal grant funds in extra costs for a right-of-way not acquired timely. In addition, the Government of Guam may have to pay an additional estimated \$39.7 million in extra costs for unacquired rights-of-way.

**Long-Standing Encroachment.** According to records at the U.S. District Court of Guam, between 1946 and 1950 the Naval Government of Guam leased private land for Routes 4 (south of the village of Yona) and 4a. Effective August 1, 1950, in compliance with the Organic Act, the Route 4 and 4a lease interests were transferred to the Government of Guam. However, Guam neither renewed the leases with the landowners

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<sup>3</sup>A temporary right of entry is a means used by Public Works by which it obtains permission to enter private property for the purpose of performing road construction-related activities.

nor took any other action to acquire the land except for small portions obtained primarily as a result of actions initiated by the owners. As a result, Guam took about 375,000 square meters of private land for Guam Routes 4/4a but, as of January 1992, had not complied with due-process requirements for land acquisition and had not compensated the landowners.

Public Works was notified at least twice that Guam did not own rights-of-way on 20.2 miles of Routes 4/4a. The January 1966 Master Plan stated that 20.2 miles of Routes 4/4a were privately owned or that ownership was unknown. In May 1981, the same issue was raised when the Office of Inspector General's predecessor office (the U.S. Government Comptroller for Guam) issued Audit Report RG81-5, "Department of Land Management Operations Concerning Government Owned Land." The report stated that Guam had not obtained interest in approximately 17.9 miles of Route 4 and recommended that action be initiated to acquire title to the property. Although Guam's Attorney General concurred with the recommendation, no action was taken.

Public Works management stated that no action had been taken to identify and acquire land encroached upon in prior years because of the size of the problem and the lack of available funding. Further, the Public Works Rights-of-Way Section Supervisor stated that Guam did not know how much land had been taken, the legal description of the land taken, or the identity of the owners. The Supervisor also stated that he believed that Public Works should assert that the doctrine of prescriptive rights<sup>4</sup> applies to all Route 4 and 4a rights-of-way and that the property owners would not be entitled to compensation. The Director of Public Works stated that he was opposed to taking land without compensation, even when the doctrine of prescriptive rights may apply. However, the availability of funds to compensate property owners has not been identified, so the doctrine of prescriptive rights may have to be invoked where applicable.

We identified three instances in which Public Works paid or agreed to pay current fair market value for private land used as public roads that was taken over 20 years ago and was therefore subject to prescriptive rights. For example, a 1991 right-of-way case involved land taken in the Adelup area for the intersection of Routes 1 and 6. In this case, Public Works agreed to purchase the entire property from a relative of a former Public Works Director at current fair market value. According to the Rights-of-Way Section Supervisor, the price will be established by appraisal, but he estimated that it will exceed \$500,000. In addition, the May 1981 U.S. Government Comptroller's audit report identified two land takings along Route 8 where current fair market value was paid for the property, even though the land was expropriated over 20 years earlier. In two of these three instances, the

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<sup>4</sup>Generally, the doctrine of prescriptive rights means that a party who has continually used another's property without payment may eventually be granted free use of the property. Specifically, Section 1007 of the Guam Civil Code provides that a 20-year occupancy of property is sufficient to bar the owner from recovery of the property. Further, Section 749 provides a 5-year statute of limitations on legal action for adverse possession of private property.

landowners filed suit, and the third landowner, in correspondence to Public Works, threatened to file suit. However, Public Works officials said that Public Works had settled out of court so that the issue would not be widely publicized.

We estimate that if the approximately 375,000 square meters of privately owned land currently encroached upon by Routes 4 and 4a had to be purchased at current fair market value, the total cost would exceed \$54.5 million (Appendix 2). However, if action had been taken to acquire the same property prior to 1988, Guam could have saved an estimated \$37.1 million (Appendix 3).

**Recent Encroachment.** Public Works constructed roads and road-related structures on at least 12,603 square meters of private land without compensating the landowners and without obtaining the landowners' consent. According to the Rights-of-Way Section Supervisor, these conditions occurred because Public Works lacked procedures to ensure that the Rights-of-Way Section was aware of all parcels of land needed for road construction projects. In addition, the Rights-of-Way Section lacked procedures to ensure that rights-of-way actions were initiated and completed in a timely manner. As a result of the delays in acquiring these rights-of-way, Guam will have to pay an estimated \$1.7 million in additional acquisition costs (Appendix 3).

In four instances of encroachment, Public Works did not act to compensate the owners until the owners had acted to protect their property rights. For example, on a Federally funded road project, Route 1 (from Route 4 to Asan), Public Works did not identify and timely acquire an estimated 1,613 meters of rights-of-way prior to the start of construction. Yet on September 25, 1990, Public Works certified to the Federal Government that all project rights-of-way were in Guam's possession. However, prior to start of construction on the widening of the Route 1/Route 6 intersection, the property owner refused to allow Public Works access and demanded payment for the property. Public Works subsequently determined that 1,613 square meters under the Route 6 intersection had never been legally acquired by Guam (Figure 6). Based on the Rights-of-Way Section Supervisor's estimate of the 1991 fair market value of the property, Public Works could have saved an estimated \$579,000 (acquisition price is still being negotiated) if the land had been acquired prior to 1988.





**Figure 6.** The Route 1/Route 6 intersection. (Office of Inspector General photograph - January 26, 1992)

An example of Public Works need of procedures for timely rights-of-way acquisition is the Phase II reconstruction of Route 1. As part of the reconstruction, 25 parcels of private land totaling 6,802 square meters were identified as being within the new right-of-way. In response to an inquiry by Public Works, the Guam Attorney General on June 9, 1986, told Public Works that they "had to acquire" the 25 parcels. However, as of January 1992, Public Works had not acquired the property. The Supervisor of the Rights-of-Way Section said that the acquisition process was "put aside" after a problem arose with the appraisals of the parcels. We estimate that during the acquisition delay, the property value had increased by \$146,000.

**Rights-of-Entry Agreements.** Public Works did not timely acquire title to 28,705 square meters of private land after it had obtained access to the properties for road construction by entering into right-of-entry agreements with the owners. Public Works right-of-entry agreements with property owners require that property needed for road projects be purchased before project completion. However, Public Works procedures do not provide specific time frames for action. The Supervisor of the Rights-of-Way Section said that the delays occurred because Public Works expended time trying to (1) oblige landowner concerns and (2) obtain acceptable appraisals. Although Public Works must follow due process in acquiring rights-of-way, the process should proceed expeditiously so that property is acquired before construction begins. However, in these cases, 5 or more years elapsed before acquisition occurred. As a result of delays in purchasing properties accessed by right-of-entry permits, Public Works paid \$109,000 and will have to pay an additional estimated \$825,000 in excess costs on five road projects (Appendix 3).

For example, on one Federally funded road project, Public Works entered into a right-of-entry agreement on June 26, 1986, to begin work for the construction of a road drainage ponding basin on 3,844 square meters of the private land. The property was privately sold for \$16 per square meter on December 24, 1986. Public Works delayed acquisition of the property for 5 years, at which time it agreed to pay the June 22, 1991, appraisal price of \$80 per square meter. The Rights-of-Way Section Supervisor said the delay was a result of negotiating the basin's site with the new landowner. As a result of the 5-year delay, the property cost Public Works an additional \$246,000 (\$80 less \$16 times 3,844 square meters).

## **Land Restriction**

Without providing compensation or due process, Guam has prohibited some landowners from developing their private property for over 18 years. This condition occurred because Public Works failed to expeditiously identify and obtain land that would be needed for road rights-of-way. According to Public Works officials, Guam did not formally condemn the land restricted for future roads because of a lack of adequate funds to make the necessary land acquisitions. Also, the Public Works Planning Section Supervisor stated that no action was taken or is planned to identify the amount of restricted lands or the cost of acquisition because it would be too time consuming. As a result, Guam has paid about \$987,000 in excess land costs, will pay an additional \$33.6 million in excess land costs, and has a potential additional and currently undeterminable liability to landowners whose land use has been restricted.

The 1966 Master Plan identified at least 6.5 million square meters of land as existing or potential rights-of-way, of which at least 839,000 square meters of private land (with an estimated value of \$124.4 million) were identified as possibly needed for future roads. In January 1974, Guam enacted Title 21, Section 62103, of the Guam Code Annotated, which restricted the use of land identified in the Master Plan. Specifically, Section 62103 provided that irrespective of ownership, construction contrary to the use specified in the Master Plan was not authorized. Thus the owners of the 839,000 square meters of private land identified in the Master Plan have been prohibited from developing their land since 1974.

According to the Chief of Engineering, at least 339,000 of the 839,000 square meters of lands restricted for road rights-of-way will have to be acquired at an estimated cost of \$49.4 million (Appendix 2). Also, in one identified instance, the owner of restricted land initiated legal action and forced Guam to purchase the land for about \$1.4 million (Appendix 2), which included excess land costs of about \$987,000 (Appendix 3). Because of Public Works delay in identifying restricted property for either purchase or release, Guam (1) incurred excess land costs of \$986,684, (2) will incur additional excess land costs of \$33.6 million (Appendix 3), and (3) has a currently undeterminable and additional contingent liability to uncompensated owners of restricted land.

## Management Actions

In fiscal year 1972, the Government of Guam took action to remedy long-standing encroachment on private property with the enactment of Public Law 11-100. This public law (effective November 12, 1971) stated that the Director of Public Works was authorized to acquire title to private land containing primary/secondary roads that existed as of January 1, 1971. The public law provided that the acquisition program was to commence with fiscal year 1972 and end at the close of fiscal year 1976. According to the Public Works Right-of-way Supervisor, all of the \$500,000 appropriated for the program had been expended by the end of fiscal year 1976. Nevertheless, although not all private lands containing roads had been acquired, no action was taken to have the program extended or to request additional funds.

## Conclusions

The Government of Guam has been aware for over 25 years that it has used private property for public purposes. In addition, the Government has been aware that it has restricted the use of some private property since 1974. Both of these actions occurred without the Government's providing compensation to the affected landowners. We have estimated that the Government may have to pay \$73.3 million to acquire rights-of-way. Of this amount, \$37.1 million relates to long-standing encroachment on which the Government could assert the doctrine of prescriptive rights. However, the Government has compromised its position on prescriptive rights by two actions. First, the Government settled at fair market value with a few landowners for land that had been taken for public roads over 20 years earlier. Second, the Guam Legislature enacted Public Law 11-100, which authorized acquisition of private land containing roads. Accordingly, we believe that the Government must develop a set policy regarding the long-standing encroachment to acquire either all of the land or none of it (and to be prepared to defend the latter position in court).

On the recent encroachment and restricted land, we believe that the doctrine of prescriptive rights does not apply and that the Government should acquire land taken for public roads (\$2.6 million) and either acquire or release the land restricted for future roads (\$33.6 million).

The estimate of rights-of-way acquisition cost was based solely on the increase in land values since 1987. We selected 1987 because since that date the Government has provided residents with about \$60 million of income tax rebates and increased Government employees' salaries by about \$60 million per year. Based on these figures, it appears that the Government could have paid landowners if it had chosen to do so.

## **Recommendations**

We recommend that the Governor of Guam:

1. Establish, in consultation with the Director of Public Works and the Guam Attorney General, a policy concerning land taken previously for public roads as to whether the Government will acquire the land (and at what value) or assert Government ownership based on the doctrines of prescriptive rights or adverse possession.

2. Instruct the Director of Public Works, based on the policy set in response to Recommendation 1, to develop and implement a program to identify all rights-of-way that are to be acquired and provide cost estimates and an acquisition time schedule for requesting an appropriation for funds to acquire the property.

3. Instruct the Director of Public Works to develop and implement a plan to identify all land restricted by Title 21, Section 62103, of the Guam Code Annotated and determine which lands need to be acquired for rights-of-way and which lands may be released as not needed.

4. Instruct the Director of Public Works to develop and implement written procedures to ensure the timely identification and acquisition of rights-of-way for road projects.

5. Instruct the Director of Public Works to develop and implement written procedures to monitor the use of right-of-entry agreements to include specific time frames for property acquisition.

6. Submit legislation requesting funds for the acquisition of property identified by the Department of Public Works as being used for or needed for rights-of-way.

7. Instruct the Attorney General to take appropriate action to acquire title to all property identified by the Department of Public Works that is to be acquired.

8. Submit legislation to remove the property restriction imposed by Title 21, Section 62103, of the Guam Code Annotated on property identified by the Department of Public Works as not needed for rights-of-way.

## **Government of Guam Response**

The October 13, 1992, response (Appendix 4) from the Government of Guam stated that the eight recommendations "will eventually have to be accomplished" and added that

"identification of rights-of-way is necessary and must be accomplished." However, the response also stated (1) that the Department of Public Works "is not prepared" to perform the work required, (2) that efforts to identify rights-of-way would be "massive" and "at a tremendous cost," (3) that funding is limited and qualified appraisers are not available for the rights-of-way work, and (4) that prescriptive rights is an "emotional" issue that will have "far-reaching effects" and will "eventually" be determined in court. The response concluded that for these reasons, it would be "fruitless" for the Government to comment on the eight recommendations.

### **Office of Inspector General Comments**

Based on the response, all eight recommendations are unresolved. The status of the recommendations and the information needed for the recommendations are in Appendix 5.

The response is correct in stating that rectification of the rights-of-way problems will be costly and take substantial effort. However, the Government of Guam should be acting to resolve the problem rather than disregarding the issue and waiting for the courts to rule, because rights-of-way acquisition costs will continue to escalate. Further, the Government of Guam has vigorously prosecuted individuals who have attempted to take Government land for their own use, as evidenced by the Government's obtaining three convictions since November 1990 on the charges of attempted theft of Government land. Therefore, we are requesting that the Government of Guam reconsider the eight recommendations.

## **C. PROCUREMENT**

The Department of Public Works procured goods and services without adequate competition and without procurement authority during fiscal years 1990 and 1991. Specifically, Public Works (1) arbitrarily split purchase orders to avoid formal competition requirements, (2) noncompetitively issued purchase orders subject to competitive bidding requirements, and (3) issued purchase orders without procurement authority. These deficiencies occurred because Public Works officials did not adequately enforce the requirements of the Guam procurement law and did not develop procedures to ensure (1) that competitive prices were obtained and were properly documented and (2) that supply and fiscal personnel received adequate procurement training. In addition, the Director of Administration and the Chief Procurement Officer did not enforce their denial of Public Works request for delegation of procurement authority. As a result, Public Works lacked assurance that full value was received for over \$1.6 million expended for goods and services, and it improperly procured goods and services totaling \$640,000.

Title 5, Chapter V, of the Guam Code Annotated (Guam's procurement law) established the Procurement Policy Office, which consists of five members: the Directors of Public Works and Administration and three officers or employees of the Government appointed by the Governor. Concurrently established within Administration was the General Services Agency, headed by the Chief Procurement Officer. Further, Chapter V designated the Chief Procurement Officer as the central procurement officer for supplies and services and the Public Works Director as the central procurement officer for construction. However, both the Chief Procurement Officer and the Public Works Director were authorized to delegate their procurement authority.

Title 5, Section 5625, of the Guam Code Annotated provides that public employees are required to ensure fair competitive access to Government procurement. Section 5213 states that procurement requirements are not to be artificially divided so as to constitute a small purchase (that is, under \$5,000 for supplies and services). Section 5249 requires the maintenance of a complete record of each procurement. Section 5210 requires the use of competitive sealed bids with only specifically stated exceptions such as small purchases.

### **Blanket Purchase Orders**

Public Works issued 409 blanket purchase orders for amounts between \$4,000 and \$5,000 each (totaling over \$2 million) in which the formal competitive bidding requirements of the Procurement Act appear to have been circumvented. We tested 45 of the 409 blanket purchase orders, which were for equipment rental, equipment repair, and asphalt supply, and determined that 38 (84 percent) of the 45 had no evidence of competition. In addition, of the 38 purchase orders, 27 (totaling \$129,641) were issued after the goods and services had been received. Public Works management did not provide written policies, procedures, and guidance to ensure that goods and services procured with blanket purchase

orders were obtained competitively. The Chief of Engineering stated that the purchase orders were split to avoid formal competitive bidding because the required procurement process was too time consuming. Both the Chief Engineer and the Administrator of the Supply Section agreed that larger blanket purchase orders should be competitively bid at the beginning of the fiscal year rather than waiting until the goods and services were needed. As a result of not obtaining competition for goods and services, Public Works had no assurance that full value was received for at least \$1.2 million (84 percent of the \$1.4 million expended).

Expenditures of the Highway Maintenance and Construction Section could have been reduced by obtaining competition and by issuing, at the beginning of each fiscal year, blanket purchase orders to meet anticipated needs for the year. For example:

- During February and March 1991, Highway Maintenance and Construction received, from a vendor that was selected noncompetitively, 242 tons of asphalt that was used for road projects. This asphalt cost a total of \$16,606, or \$68.62 per ton. On June 27, 1991, the Director signed four blanket purchase orders with amounts from \$4,013 to \$4,281 to pay for the asphalt. On April 8, 1991, a blanket purchase order for 2,083 tons of asphalt was issued competitively to another vendor at a cost of \$57 per ton. If these procurements had been combined or if the initial asphalt order had been obtained competitively, Public Works would have saved \$2,812 (242 tons times \$68.62 less \$57).

- During fiscal year 1991, Public Works issued blanket purchase orders for equipment rentals to 17 different vendors. According to vendor billings and job tickets, the cost of equipment rentals varied in four categories of equipment by up to \$20 per hour. Although we could not estimate what overall savings might result from competitive procurement, we did identify one vendor that had increased the rental rate for a D-7 bulldozer from \$75 per hour to \$85 per hour during fiscal year 1991. Issuance of a year-long blanket purchase order might have delayed this increase until the following fiscal year, with a resultant savings to Public Works.

## Formal Competition

Based on a review of 27 purchase orders, each over \$5,000, issued by Public Works, we determined that 15 purchase orders totaling \$328,904 were issued without documentation as to why the required formal competition was not obtained. Public Works Supply Section officials stated that 6 of the 15 purchase orders were emergency procurements and that 1 purchase order was issued in accordance with bid requirements; however, the officials could not provide documentation to support their contention. Another four purchase orders were issued noncompetitively at management's direction, and the Supply Section officials stated that the remaining four purchase orders were unjustified, unauthorized sole source procurements made by the Highway Maintenance and Construction Division. We reviewed the purchase orders issued noncompetitively and found that overall, (1) there was no

guarantee that full value was received for the \$296,972 of purchases and (2) at least \$598 was spent unnecessarily and another \$10,821 may be spent unnecessarily.

During fiscal year 1991, the Highway Maintenance and Construction account was charged for 30 automobiles and pickup trucks. In at least two instances, the lack of competition resulted in excessive costs as follows:

- On August 26, 1991, Public Works purchased a pickup truck for \$10,462 without any evidence of formal competition. On August 13, 1991, the Department of Administration obtained bids from various vendors and purchased the same model pickup from the same vendor as Public Works for \$598 less. A Public Works Supply Section official stated that the vendor had agreed to accept a bid price from an earlier bid, so Public Works did not attempt to solicit a new bid or coordinate with other agencies to obtain a lower price.

- During March and June 1991, Public Works, with three purchase orders, leased for 1 year, with two annual renewals, three "luxury" vehicles at the direction of senior-level management and for their use. By specifying luxury vehicles, Public Works management overrode existing Public Works vehicle specification guidelines. Also, during the 3-year life of the leases, Public Works will expend an estimated \$10,821 (\$3,607 per vehicle) more than would have been expended if it had leased the less expensive standard vehicles.

### **Procurement Authority**

Between April 1 and September 30, 1991, Public Works issued, without authority, 357 purchase orders totaling \$2.2 million for supplies and services. On April 24, 1991, the Department of Administration Director and the Chief Procurement Officer notified Public Works that its delegation of authority to purchase supplies and services would not be renewed until (1) all supply and fiscal office personnel had taken formal procurement training and (2) a followup review of Public Works procurement operations determined that compliance with the Procurement Act was satisfactory. Administration's Director stated that this was necessary to help ensure that there was no recurrence of procurement deficiencies identified by a Guam Bureau of Budget and Management Research audit of Public Works 1989 procurement actions. As of January 30, 1992, Public Works personnel had not received the required training, and the delegation of procurement authority had not been renewed. As a result, Guam lacked assurance that full value was received for the \$639,972 expended during fiscal year 1991 on the 357 purchase orders.

### **Recommendations**

We recommend that the Governor of Guam:

1. Instruct Guam's Attorney General to investigate the apparent violations of the Guam Code Annotated regarding the artificial division of procurement needs, the lack of



formal competition for Government procurements, and the delegation of authority to conduct procurement. If warranted, appropriate disciplinary action should be taken against the individuals responsible for the violations.

2. Instruct the Director of the Department of Public Works to develop and implement written procedures to ensure that the Department complies with the requirements of Title 5, Chapter V, of the Guam Code Annotated concerning obtaining competition, prohibiting artificial division of procurement needs, and obtaining delegation of authority to conduct procurements.

3. Instruct the Director of the Department of Public Works to immediately implement the recommendations contained in the audit report issued by the Office of Internal Audit, Bureau of Budget and Management Research, on June 21, 1991.

### **Government of Guam Response**

The October 13, 1992, response (Appendix 4) from the Government of Guam concurred with Recommendations 2 and 3 and disagreed with Recommendation 1.

**Recommendation 1.** The response stated the Government's nonconcurrence with the recommendation as follows:

- Funds are released monthly and blanket purchase orders for over \$5,000 issued competitively would "tie up" funds.
- Some vendors have limited equipment.
- Management has the "prerogative to specify what is desired" and "reserves the right to upgrade . . . whenever desired."

**Recommendation 2.** The response concurred with the recommendation and stated that the Department of Public Works would provide written procedures.

**Recommendation 3.** The response concurred and stated that the recommendation will be considered in fiscal year 1993.

### **Office of Inspector General Comments**

Based on the Government's response, Recommendation 1 is unresolved, and additional information is needed to resolve Recommendations 2 and 3. The status of the recommendations and the information needed for the recommendations are in Appendix 5.

**ILLEGAL OR WASTEFUL ACTIVITIES  
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**Comments on Inspector General's  
Draft Audit Report dated August 1992**

**Selection, Procurement, and Administration  
of Road Construction Projects,  
Department of Public Works  
Government of Guam**

**Project Selection and Planning**

*Recommendation No. 1:* Instruct the Director of the Department of Public Works to develop annual workplans detailing how the priority road projects identified in the master plans will be undertaken and to develop and implement written procedures for documented justification, review, and approval of these annual plans and any revisions to them.

*Comments:* The Government of Guam line agencies generally do not develop annual work plans. The funding for the projects come from a variety of sources, and much of the local appropriations are directed by law. The Federally funded projects are normally reserved for reconstruction and widening of the major highways, and for safety treatments at high accident location or hazardous locations islandwide. The 1975 Comprehensive Transportation Plan laid out a 15-year program for highway widening and reconstruction. The highways of Guam were built over 40 years ago and were greatly deteriorated prior to the massive reconstruction efforts over the last 20 years. Contrary to your report, the *main thrust* of the 1975 plan was reconstruction and widening to provide safe, efficient highways capable of carrying the traffic load. Please note that these were not "small" projects but were major highway reconstruction and widening projects intended to resolve the major traffic congestion on the narrow, deteriorated highways. Your report does not acknowledge the tremendous improvements that have been made on the major highways, despite the increasingly high construction costs. Most of the unsafe bridges in Southern and Central Guam have been replaced with new concrete structures, and the major highway loops consisting of Routes 1, 10, 8 and 4 have been rebuilt and widened to meet the rapid growth. This highway reconstruction and widening is still ongoing today, but the pace has slowed drastically because of the increasing cost of construction as each year passes. The Highway Revenue Bond in 1985 was intended to accelerate the implementation of these projects, and basically succeeded in continuing the widening and reconstruction of Marine Drive. The Refinancing of the Highway Bond in 1992 is again intended to continue the much-needed expansion for the next several years.

The Guam 2010 Highway Master Plan is now in its final stages and is intended to identify those short and long term improvements required to meet the projected growth by 1995 and 2010. This plan will provide the blueprint for the next 20 years, but it needs to be a dynamic plan that can be amended to accommodate development as it occurs.

Comments on Inspector General's Draft Audit Report  
Page 2

We believe your report should be balanced and show the multitude of improvements that have been made as well as areas that need improvement. Annual Work Plans are required by many federal agencies. However, we feel they are not appropriate for Guam. Such plans become too rigid and cannot be easily changed to meet the funding that may become available. They may actually stymie rapid implementation of projects, and delay needed improvements for years. The Federal Highway Administration used to require submission of an annual program of projects prior to approval of individual projects, but has since dropped this requirement. The major highways on Guam all carry extremely high volumes of traffic with Marine Drive showing the highest numbers. The main priority is to complete the reconstruction and widening of Marine Drive from Yigo to Naval Station, to widen Route 16 to provide a safer roadway with higher capacity, and to implement improvements as recommended in the short-term list developed in the Guam 2010 Highway Master Plan. We have to execute major projects that are ready to go and can be tailored to fit the amount of funding available.

*Recommendation No. 2:* Instruct the Director of the Department of Public Works to develop and implement written procedures for approving and reporting the status of in-house projects, including (a) certification as to the adequacy of project planning and design before the start of construction and (b) preparation of periodic financial and construction status reports.

*Comments:* We agree that in-house projects need to be treated in the same manner as major highway projects performed by contractors. These projects do need project planning, adequate design, and complete documentation before implementation. The days of road openings appear to be rapidly coming to a halt.

However, we do object to the Cold Storage Road example used in the report. The Cold Storage road was not a formal roadway, but was heavily used as a bypass to Marine Drive and as primary access to commercial and residential developments in the Harmon area. This so-called roadway was full of ruts, potholes and a multitude of obstacles. Something needed to be done to ease the passage of vehicles, even if it was not a long-term solution. The long-term plan is to connect that road to Harmon Loop as a 4-legged intersection, and land acquisition procedures are now underway to make that happen. In the meantime, at relatively low cost, the Department of Public Works provided a smooth roadway connecting Routes 16 and 1 and provided the residents and establishments in the area with much-needed relief. To attempt to solve the drainage problems of the flat Harmon area in constructing the roadway would have killed the project. We do not feel these efforts were wasted. In fact, the residents of the area and the through traffic are now able to freely pass within the area without encountering the major safety hazards that previously existed there. This again, we feel, is a good example of your report pointing out the negative aspects of the project while overlooking the tremendous benefits that were derived from the paving work. It is sometimes preferable to take immediate action for speedy relief, instead of studying the problem, designing expensive solutions, and then taking no action at all.

The Highway Maintenance and Construction Section of the Department of Public Works is not staffed properly to comply with this recommendation. Much of the work performed is through

funding provided for supplies, materials and labor in the annual budget. The Design and Analysis Section is fully loaded with over 300 projects, both major and minor and cannot assist regularly in design of in-house projects. The Construction Quality Control Section is likewise fully engaged in construction management of numerous projects and cannot perform inspection on the inhouse projects. The Department has tried to build this capability within the Highway Maintenance Section, but had not been able to add new positions to perform this work. This capability will eventually be developed, but it will not happen overnight. The Department will build this staff during FY 1993 and establish the planning, design and construction controls during FY 1994.

*Recommendation No. 3:* Reactivate the Highway Commission to review and approve annual road project workplans and any proposed revisions of the priorities established in the plans.

*Comments:* The Highway Commission was never active because in the past funds were so limited and the priorities for highway reconstruction were evident. There was not much for the Commission to do. In addition, it adds another layer to the bureaucracy making it harder to implement projects and translate plans into action. We still feel a Highway Commission is unnecessary. The Highway Master Plan has already provided a list of short-term improvements, and these improvements will be gradually implemented together with the remaining highway reconstruction using the limited funding available over the next few years. The Department of Public Works needs to stay flexible to ensure full obligation of Federal Highway Funds that will be provided each year for the next five years. To add the Highway Commission at this point would remove that flexibility and make timely obligation of funds more difficult than it has to be.

## Rights-of-Way

*General Discussion:* While the eight recommendations in this segment of the report will eventually have to be accomplished, the discussion leading to those recommendations does not recognize the reality of the rights-of-way situation as it has evolved over the years. The U.S. Navy turned over whatever rights-of-way it had to the Government of Guam in the early 1970's. Some of the major roadways were not acquired, and in some cases the roads did not connect. The entire Southern area from the Route 17 intersection with Route 4 to Agat was never acquired, and the only legal easements along that stretch are those that were purchased for bridge replacement together with bullcart trails of varying widths. The Department of Public Works is not prepared to undertake any massive research project requiring literally thousands of maps to determine the actual legal rights-of-way within the major highways islandwide. This research has been done on a project by project basis with available project funding. Acquisition has been on that basis. The Rights-of-Way section is composed of a few land agents that are overloaded with the current workload.

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## Page 4

In addition, the acquisition process is lengthy with very few local appraisers able to perform the appraisals to current standards. The Department has had to persuade these appraisers to accept the work, and in some cases, the reports have had to be redone to meet the requirements. These appraisers also do other work and the Department has to compete with these other projects for their time. Furthermore, the Federal Highway Administration now requires two appraisals of property prior to acquisition further exacerbating the problem.

The recommendations require massive effort at tremendous cost. The discussion leading to the recommendations does not recognize the fact that until the late 1980's, the Government of Guam's financial condition has been based on austerity to avoid payless paydays while meeting essential obligations. There has been very little funds to spare for highway improvements, much less for massive land acquisitions. We agree that identification of rights-of-way is necessary and must be accomplished. The ongoing design projects for the highway system from Yona to Umatac address this problem by including rights-of-way research in addition to the design requirements for the highway system. The Department cannot accurately determine the rights-of-way needs for a highway without performing the design work on the highway. Only then can the slope easements be identified and reduced if cost is prohibitive. The normal requirement is a 100-foot wide highway rights-of-way as a minimum for a major roadway. However, slope easements could swell this width by up to an additional 100 feet depending upon the surrounding topography.

We therefore feel that while the recommendations sound good, they are not practical and will not achieve the desired results, given the limited funding, the non-availability of qualified and receptive appraisers, and the extremely small staff in the Rights-of-Way Section within the Department. The Department may initiate all kinds of written procedures and set timetables, but they will not be able to meet them given the current conditions and the many other priorities within the Government of Guam. Actual design of the roadways will determine the actual rights-of-way required beyond the minimum widths specified. Only then can severance maps be prepared which will allow realistic cost estimates to be provided for land acquisition.

The issue of prescriptive rights primarily applies to the roadways in Southern Guam. The designs and severance maps that will result from these designs will influence decisions on prescriptive rights. Once these maps are prepared showing the existing roadways and the additional requirements, the issue of prescriptive rights can then be raised. We anticipate that a court case or cases will eventually determine the Government's rights to the existing roadways. Since the issue is sure to be an emotional one and will have far-reaching effects, it will be faced when all the research has been performed and the severance maps have been prepared indicating what is reasonably part of the existing roadway and what has to be acquired in addition to that.

We therefore feel it is fruitless to comment on the specific recommendations. Given the circumstances, it would not be possible for the Department to undertake massive research without disrupting ongoing and projected highway projects. If it is to be done at all, it should be done by consultant contract with appropriate funding for the initial research to determine current legal

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easements, then superimpose acquisition needs as the detailed project designs take shape. Only then can accurate funding requirements be determined to acquire the land necessary to adequately place the desired highway cross-section within the rights-of-way.

## Procurement

*Recommendation No. 1:* Instruct Guam's Attorney General to investigate the apparent violations of the Guam Code Annotated regarding the artificial division of procurement needs, the lack of formal competition for Guam procurements, and delegation of authority to conduct procurement. If warranted, appropriate disciplinary action should be taken against the individuals responsible for the violations.

*Comments:* We do not concur with this recommendation. While it would be much more preferable to issue blanket purchase orders for amounts larger than \$5,000, there are several obstacles that must be overcome before this could happen:

- Funds are released in limited amounts on a monthly basis. To execute large blanket purchase orders with a variety of vendors would require large budgetary releases early in the Fiscal Year. In addition, this would tie up the contractual funds of the Highway Maintenance and Construction Section and would not allow expenditure elsewhere as long as the blankets are obligated.

- Some vendors offer limited equipment, and some do not have the equipment readily available when needed. That is the reason the Department has issued smaller blanket purchase orders to a wide variety of vendors to ensure that the Division of Highways and other Divisions can have access to equipment when they need them. When one vendor does not have the equipment, or is already renting it out, the Department has the option of approaching other vendors for that equipment. Graders, cranes, backhoes, and bulldozers are just a few of the equipment that are always in short supply and are not always readily available from vendors holding blanket purchase orders. It is often preferable to have blanket purchase orders with many vendors as opposed to blanket purchase orders with only a few vendors who may not be able to provide the equipment, or are unable to provide it in quantity when urgently needed.

We feel the Supply Management Section and the Highway Maintenance and Construction Section have done a good job of meeting equipment needs while co-existing with the currently procurement laws. Blanket purchase orders have been issued to a wide variety of vendors and these vendors have all been tapped for their available equipment. This equipment has often been needed to supplement the limited and aging inhouse equipment fleet. There is equal opportunity for all, and the driving force has been availability of equipment among the vendors. It is useless to have a large blanket purchase order with a vendor who is unable to meet the equipment needs of the Department. We do foresee an easing of the need for rental equipment since the

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Department of Public Works has been acquiring heavy equipment over the past two years with capital outlay funding provided through the General Fund and Highway Revenue Bond Budgets.

In addition, management has the prerogative to specify what is desired, and supplement minimum specifications whenever deemed necessary. The "luxury" vehicles mentioned in page 32 of the draft report are Subaru Legacies, which are not luxury vehicles by any stretch of the imagination. Cressidas, Mercedes Benz's, BMW's, and Lexus' are examples of "luxury" cars. Minimum specifications are just that—minimum specifications. Management reserves the right to upgrade those specifications whenever desired, as long as the costs are reasonable and are not deemed exorbitant for the intended use.

Furthermore, we feel the comments on procurement of asphalt are not valid. There are only two vendors on island that can provide asphalt to the Department of Public Works. The larger the quantity, the cheaper we expect the price to be. It is worthwhile to bid out large quantity needs, but again, this has to be balanced with funding releases and the desire to keep the funds available without tying them up on yearlong contracts.

*Recommendation No. 2:* Instruct the Director of the Department of Public Works to develop and implement written procedures to ensure that the Department complies with the requirements of Title 5, Chapter V, of the Guam Code Annotated concerning obtaining competition, prohibiting artificial division of procurement needs, and obtaining delegation of authority to conduct procurements.

We feel it would be realistic and would support a recommendation to bid out contracts for equipment rental with a certain funding ceiling as a maximum. However, only partial purchase orders would be cut periodically based on funding releases and only those executed PO's would be encumbered. To ensure wide participation and hence ensure availability of equipment when needed, vendors with comparable price ranges or with certain types of scarce equipment would be issued initial purchase orders with supplemental amounts as the fiscal year progresses not to exceed the ceiling. The Department would be prepared to initiate this method of procurement and provide written procedures to ensure compliance with the law. This procurement method could be devised by the end of November, 1992 and procurement of bids could proceed immediately afterwards.

*Recommendation No. 3:* Instruct the Director of the Department of Public Works to immediately implement the recommendations contained in the audit report issued by the Office of Internal Audit, Bureau of Budget and Management Research, on June 21, 1991.

We concur with this recommendation. The above-mentioned recommendations will be addressed in Fiscal Year 1993.



**STATUS OF AUDIT REPORT RECOMMENDATIONS**

<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
A.1	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for developing (1) annual road project priority workplans and (2) written procedures for documenting action taken on these plans.
A.2	Management concurs; additional information needed.	Provide a target date and title of the official responsible for developing and implementing written procedures for approving and reporting the status of in-house projects.
A.3	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for overseeing reactivation of the Highway Commission.
B.1	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for establishing a government policy regarding land previously taken for public roads.

<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
B.2	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for developing and implementing a program to identify rights-of-way to be acquired and provide cost estimates and property acquisition time schedules.
B.3	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for developing and implementing a plan to identify restricted land which needs to be acquired and restricted land which may be released.
B.4	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for developing and implementing procedures to ensure timely identification and acquisition of road rights-of-way.

<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
B.5	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for developing and implementing procedures to monitor use of right-of-entry agreements.
B.6	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for submitting legislation requesting funds to acquire existing or needed rights-of-way.
B.7	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for initiating action to acquire title to all property identified by the Department of Public Works.

<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
B.8	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for submitting legislation to remove property restrictions on property unneeded for rights-of-way.
C.1.	Unresolved.	Reconsider the recommendation, and provide a response indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the official responsible for investigating the apparent violations of Guam's procurement law.
C.2	Management concurs; additional information needed.	Provide a target date and title of the official responsible for developing and implementing procedures to ensure compliance with the procurement requirements of the Guam Code.
C.3	Management concurs; additional information needed.	Provide a target date and title of the official responsible for implementing the recommendations in the June 21, 1991, report issued by the Government of Guam's Office of Internal Audit.

IN THE SUPERIOR COURT OF GUAM

TERRITORY OF GUAM

JOHN S.S. WOO and SU HWA )	CIVIL CASE NO. CV0290-92
LIN WOO, )	
)	
Plaintiffs, )	
)	
vs. )	RESPONSE TO REQUEST
)	TO PRODUCE
GUAM AB INC., et al., )	
)	
Defendants. )	

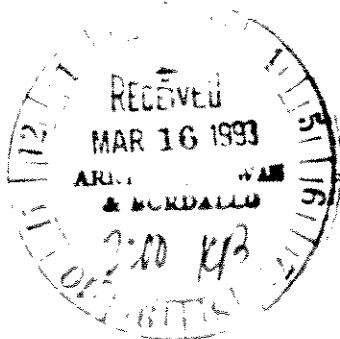
The Government of Guam objects to the request of Plaintiff Woo that the Government produce the 1992 Audit report of the Inspector General as privileged information. The Document may only be released by the Assistant Inspector General for Administration, Office of the Inspector General, U.S. Department of Interior, Washington D.C., 20240.

Dated this 16th day of March, 1993.

ELIZABETH BARRETT-ANDERSON  
Attorney General

By: *Maria G. Fitzpatrick*  
MARIA G. FITZPATRICK  
Assistant Attorney General

29077a.901



OFFICE OF THE ATTORNEY GENERAL  
Territory of Guam  
Suite 2-200E, Judicial Center Building  
120 West O'Brien Drive  
Agana, Guam 96910  
TEL. 475-3324

ORDER TO SHOW CAUSE

IT IS HEREBY ORDERED AND REQUIRED that plaintiff Government of Guam and the Honorable Joseph F. Ada, Governor of Guam, appear before me at the courtroom of the Superior Court of Guam, Judicial Center, Agana, Guam, on August 1, 1991, 1991 at 9:50 A.M. of said day, and on such further dates as shall name, and show cause why they should not be held in contempt of Court and punished for willfully violating an express order of the Court.

Dated AUG 01 1991, 1991.

Original Signed  
Hon. Janet Healy Weeks

JANET HEALY WEEKS, JUDGE  
SUPERIOR COURT OF GUAM

ARRIOLA & COWAN, AGANA GUAM 96910

D#3295J



*CWS  
2:35 AM*

IN THE SUPERIOR COURT OF GUAM  
TERRITORY OF GUAM

JOHN S.S. WOO, et al.,

Plaintiffs,

vs.

GUAM AB INC., et al.,

Defendants.

CIVIL CASE NO. CV0290-92

REQUEST FOR PRODUCTION OF  
INSPECTOR GENERAL'S AUDIT  
REPORT

ARRIOLA, COWAN & BORDALLO, AGANA, GUAM 96910

TO: GOVERNMENT OF GUAM THROUGH ITS COUNSEL OF RECORD,  
OFFICE OF THE ATTORNEY GENERAL

Pursuant to Rule 34 of the Guam Rules of Civil Procedure, you are hereby requested to produce and make available for inspection and copying as soon as possible, or in any event on March 15, 1993, at the hour of 10:00 A.M., at the law offices of Arriola, Cowan & Bordallo, counsel for Plaintiffs, Suite 201, C & A Professional Building, 259 Martyr Street, Agana, Guam the following described document:

1. The audit report by Office of the Inspector General, United States Department of the Interior, concerning the Department of Public Works' use and expropriation of private land for public access without compensation, reported in the February

4, 1993 issue of the Pacific Daily News and referenced in Exhibit "A" attached hereto.

In lieu of the original, Plaintiffs will accept production of a clear and complete photocopy of said report provided the cost of photocopying charged to Plaintiffs does not exceed 10¢ per copy page.

Dated this 11th day of February, 1993.

ARRIOLA, COWAN & BORDALLO  
P. O. BOX X, AGANA, GUAM 96910  
TELEPHONE: (671) 477-9731-33  
TELECOPIER: (671) 477-9734

BY: 

OLIVER W. BORDALLO  
Counsel for Plaintiffs

ARRIOLA, COWAN & BORDALLO, AGANA, GUAM 96910

D#1893U



FILED

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CLERK  
OF GUAM

IN THE SUPERIOR COURT OF GUAM  
TERRITORY OF GUAM

GOVERNMENT OF GUAM,  
Plaintiff,

vs.

15,460.54 SQUARE METERS OF  
LAND, MORE OR LESS, IN THE  
MUNICIPALITY OF AGANA, AND  
ELIZA R. LUJAN, ET.AL., AND  
UNKNOWN OTHERS,

Defendants.

CIVIL CASE NO. CV995-87

MOTION, POINTS AND  
AUTHORITIES, AND AFFIDAVIT  
FOR ORDER TO SHOW CAUSE  
AND ORDER

ARRIOLA & COWAN, AGANA GUAM 96910

MOTION

COMES NOW Louise B. Chase, Administratrix for the Estate of Antonia B. Chase, deceased, a defendant herein, through counsel Arriola, Cowan and Bordallo, and moves that the Honorable Joseph F. Ada, Governor of Guam, be ordered to appear before the Honorable Janet Healy Weeks, Judge, Superior Court of Guam, and show cause why he should not be held in contempt of court for failure to abide by the Court's Order herein filed June 4, 1990.

Dated this 30th day of July, 1991.

ARRIOLA, COWAN & BORDALLO  
P.O. Box X, Agana, Guam 96910  
Attorneys for Defendant  
Louise B. Chase, Administratrix  
of the Estate of Antonia B. Chase

CARBULLIDO & PIPES

Date: August 7, 1991

Time: 3:20

By: Brenda

BY:   
OLIVER W. BORDALLO, ESQ.

POINTS AND AUTHORITIES

Section 1209(a)(5) of the Code of Civil Procedure, as amended, states that disobedience of any lawful order of the court is contempt of the authority of the court.

Section 1211(b) provides that a contempt shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for preparation of the defense and shall state the essential facts constituting the contempt charges. The notice shall be given in an order to show cause or an order of arrest.

Section 1219 provides that if contempt is an omission to perform any act, the person may be imprisoned until performance.

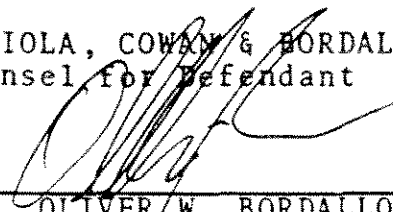
The affidavit of Oliver W. Bordallo states essential facts that constitute contempt by the Honorable Governor Joseph F. Ada of the authority of the Court.

Dated this 30th day of July, 1991.

Respectfully submitted,

ARRIOLA, COWAN & BORDALLO  
Counsel for Defendant

BY:

  
\_\_\_\_\_  
OLIVER W. BORDALLO, ESQ.

ARRIOLA & COWAN, AGANA GUAM 96910

///  
//

AFFIDAVIT

TERRITORY OF GUAM,        )  
                                  ) ss:  
CITY OF AGANA.            )

Oliver W. Bordallo, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice in the Territory, a member of the law firm of Arriola, Cowan & Bordallo counsel for Louise B. Chase, administratrix of the Estate of Antonia Blas Chase, defendant in the above action;

2. On June 4, 1990, Judge Janet Healy Weeks signed an Order granting the severance of defendants Triumph Finance International Corporation and Estate of Antonia B. Chase from other defendants in this case; said Order is on file herein and by reference made a part hereof;

3. Said Order mandated and directed the Honorable Joseph F. Ada to comply with Public Law 19-06, by appointing three disinterested private land appraisers within 10 days of the service of said Order on the Governor, who shall appraise and submit reports concerning the value of parcels 7 and 17;

4. Said Order further mandated that the reports and appraisals be filed with the Court, counsel for the Government, and counsel for defendants Triumph International and Estate of Antonia B. Chase, within 60 days of appointment by the Governor;

5. An Affidavit of Service filed herein on June 14, 1990 states that the Governor of Guam was served with the Court's Order on June 11, 1990;

6. On or about November 27, 1990, more than five (5) months after the Order was served, Acting Governor of Guam Frank

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F. Blas appointed J.C. Concepcion and Associates, D.G. Hodgso and Company, and Victor's Appraisals as the three disintereste private land appraisers;

7. However, as of the date of this affidavit, counse for the Estate of Antonia B. Chase has not received a singl appraisal or report;

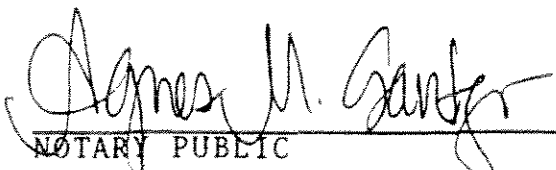
8. Plaintiff Government of Guam and Governor Joseph F Ada have failed to comply with the terms of the Court's Order o June 4, 1990 in that (1) the appraisals have not been completed (2) if any are completed, they have not been served on counse for the Estate of Antonia B. Chase, and (3) over one year has elapsed since the Court ordered compliance with Public Law 19-06

9. This affidavit is offered in support of Defendant's motion for an order to show cause why Governor Joseph F. Ada should not be held in contempt of Court for willfully violating an Order of the Court requiring his compliance with Public Law 19-06.

Dated this 30th day of July , 1991.

  
\_\_\_\_\_  
OLIVER W. BORDALLO

SUBSCRIBED AND SWORN to before me this 30th day of July, 1991.

  
\_\_\_\_\_  
NOTARY PUBLIC  
AGNES M. SANTIAGO  
NOTARY PUBLIC  
In and for the Territory of Guam  
My Commission Expires: Apr. 26, 1995

## **Nollan v. California Coastal Commission – Case Brief**

*Nollan v. California Coastal Comm'n*,  
483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987).

**Facts:** Nollan (P) applied for a permit to build a residence on a parcel of beachfront property located between two public beaches. Nollan originally leased the property with an option to buy conditioned on his promise to demolish a small bungalow on the property. To build on the lot the Nollans had to submit a plan to the California Coastal Commission (D) in order to obtain a coastal development permit. The plan called for the removal of the bungalow and the construction of a three-bedroom house conforming to other homes in the neighborhood. The Commission conditioned approval for Nollan's permit upon his allowing an easement for public passage across the property in order to make it easier for the public to pass between the two public beaches to the north and south of Nollan's property.

Nollan sued, claiming that the Commission deprived them of their property rights without due process. Nollan contends that the condition could not be imposed absent evidence that their proposed development would have an impact on public access to the beach. The trial court ruled for Nollan, the court of appeals reversed, and the U.S. Supreme Court granted cert.

**Issues:** **1)** Must the conditioning of a grant of a land use permit upon the landowner's grant of a permanent easement be substantially related to a legitimate government interest in order to avoid violating the Takings Clause? **2)** Will the lack of a nexus between the condition and the original purpose for requiring the building restriction alter that purpose and cause the condition to constitute a taking?

### **Holding and Rule (Scalia):**

**1)** Yes. The conditioning of a grant of a land use permit upon the landowner's grant of a permanent easement must be substantially related to a legitimate government interest in order to avoid violating the Takings Clause.

**2)** Yes. The lack of a nexus between the condition and the original purpose for requiring the building restriction alters that purpose and causes the condition to constitute a taking.

If the California Coastal Commission had simply required Nollan to make an easement available on a permanent basis in order to increase public access to the beach we have no doubt that there would have been a taking. We have repeatedly held that as to property reserved by its owners for private use, the right to exclude others is among the most important sticks in the bundle of rights commonly characterized as property. Where there is a permanent physical occupation, our cases have found a taking without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner. A permanent physical occupation has occurred when individuals are granted a permanent and continuous right to pass so that the property may continuously be traversed even though no particular individual is permitted to station himself permanently upon the premises.

The only question that needs to be determined is requiring the easement as a condition for issuing a land use permit alters this basic outcome. Land use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land. A broad range of governmental purposes and regulations satisfies these requirements.

This constitutionality disappears if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the prohibition. When this nexus is eliminated the situation becomes untenable. The lack of nexus between the condition and the original purpose of the building restriction converts that purpose to something other than what it was. The purpose would then become the obtaining of an easement without payment of compensation. Unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but an out and out plan of extortion.

A state cannot condition a property use permit on an act that does not address the problem caused by the permitted use. A land use regulation is not a taking if it substantially advances state interests and does not deny an owner economically viable use of the land. In this case the California Coastal Commission substituted a condition for outright prohibition that failed to further any of the legitimate government interests that were advanced as justification. The easement for public access **did** nothing to help the public's view of the beach. If the Commission wants an easement across Nollan's property it must pay for it.

**Disposition:** Reversed.

**Dissent (Brennan, Marshall, Blackman, Stevens):** This decision has imposed an unwarranted and discredited standard of precision upon a State's exercise of police power. The police power of the State grants it the authority to impose conditions on private development. This power is to be judged according to what the State could have rationally decided. Under these facts, the California Coastal Commission has conditioned development upon preservation of public access to the ocean and tidelands by requesting an easement. The Court finds fault because it regards the condition as insufficiently tailored to address the precise type of reduction in access produced by the new development. Such a narrow conception of rationality has long been discredited as judicial arrogation of legislative authority.

The Takings Clause has never been read to require the states or the courts to calculate whether a specific individual has suffered burdens in excess of the benefits received. The demand for this heightened precise fit is based on the assumption that private landowners possess a reasonable expectation regarding the use of their land and the public has attempted to disrupt it. Here the situation is reversed; it is Nollan who is the interloper. The public's expectation of access considerably antedates any private development of the coast.

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# COMMITTEE ON RULES

*I Mina'trentai Tres na Liheslaturan Guåhan* • The 33rd Guam Legislature

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## Certification of Waiver of Fiscal Note Requirement

This is to certify that the Committee on Rules submitted to the Bureau of Budget and Management Research (BBMR) a request for a fiscal note, or applicable waiver, on **Bill No. 185-33 (COR) – Dennis G. Rodriguez, Jr., T. R. Muña Barnes, FRANK B. AGUON, JR., R. J. Respicio, Tommy Morrison, V. Anthony Ada, Brant T. McCreadie, "AN ACT TO AMEND § 11311.1 OF TITLE 7 AND ENACT A NEW CHAPTER 16 TO TITLE 21, BOTH OF GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING AN EXPEDITED ADMINISTRATIVE PROCESS TO IDENTIFY LAND TAKINGS BY AGENCIES, ADDRESS CLAIMS, AND DETERMINE APPROPRIATE SETTLEMENTS RELATIVE TO PROPERTY EXPROPRIATED FOR PUBLIC PURPOSES BY THE GOVERNMENT OF GUAM WITHOUT JUST COMPENSATION; AND, TO AMEND SUBSECTION (a) OF § 2101, AND ADD A NEW ARTICLE 5 TO CHAPTER 4, DIVISION 1, BOTH OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR THE CREATION OF A JUDICIAL LAND DIVISION COURT TO EXPEDITIOUSLY REVIEW AND AFFIRM, IF APPROPRIATE, THE SETTLEMENT BETWEEN THE GOVERNMENT AND LANDOWNER."** – on September 30, 2015. COR hereby certifies that BBMR confirmed receipt of this request October 1, 2015 at 8:13 A.M.

COR further certifies that a response to this request was not received. **Therefore, pursuant to 2 GCA §9105, the requirement for a fiscal note, or waiver thereof, on Bill 185-33 (COR) to be included in the committee report on said bill, is hereby waived.**

Certified by:

Senator Rory J. Respicio

*Chairperson, Committee on Rules*

November 12, 2015

Date