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—  
JOAQUIN C. ARRIOLA, JR.

March 26, 1993

VIA HAND-DELIVERY

Senator Theodore S. Nelson  
Chairperson  
Committee on General  
Governmental Operations  
and Micronesian Affairs  
Twenty-Second Guam Legislature  
155 Hessler St.  
Agana, Guam 96910

Re: Bill No. 318.

Dear Senator Nelson:

Thank you for the opportunity to comment on the above-referenced measure concerning uncompensated land takings by the Government of Guam. I fully support this proposed legislation. As the U.S. Department of the Interior, Office of Inspector General recently reported (see attachments), the Government of Guam has engaged in a consistent pattern of expropriating land for public roads without compensation. In the Inspector General's estimate, the total liability for these takings probably exceeds \$73 million.

Bill 318 proposes a thorough study of the history of such takings. I recommend that in addition to this research, the expropriation of private property without compensation should be expressly prohibited. To enforce the statutory bar, various penalties can be imposed including trebling of damages and daily interest charges.

Private land should not be used for public purposes without any effort to provide fair compensation. Local government officials 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 a government which has a bloated staff of attorneys willing to litigate at any cost.

Senator Theodore S. Nelson  
Re: Bill No. 318  
March 26, 1993

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.

Probably the most common method used to take private land without compensation is in connection with the approval of survey maps. The Department of Land Management ("DLM") often demands that large portions of private land be dedicated for public access and utilities. If its demands are refused, the landowner's survey map is rejected. The Subdivision Law of Guam does require dedication of public streets and utilities in most subdivisions. But DLM has arbitrarily extended this requirement to any and all subdivision surveys, including small lot parcellings and parental subdivisions. Rather than merely require easements for access to all lots within a subdivision, the local government forces private landowners to provide access through their land to other public or even private property. This practice was condemned by the U.S. Supreme Court, but continues to this date in Guam. See, Nollan v. California Coastal Commission, 483 U.S. 825 (1987).

In some ways DLM'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 six years ago 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

Senator Theodore S. Nelson  
Re: Bill No. 318  
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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. F. Philip Carbullido, Esq. and the undersigned obtained a writ of mandate compelling Governor Ada to comply with the statute requiring three appraisals and negotiations. But even after the writ issued it was necessary to obtain a contempt order, which was in fact issued (copy enclosed), ordering the Governor of Guam to show cause why he should not be held in contempt for failing to comply with the Superior Court's writ of mandate. Before the second and third appraisals were even commissioned, five years had passed, the entire area had been razed to the ground and the Judicial Center had been fully constructed. At this date, most compensation claims still have not been paid. For some reason, government officials seem to think they can callously ignore private property rights even when they are protected by special legislation. I hope one day soon your Committee will investigate the status of the Judicial Condemnation Cases. It is but one example of the gross irresponsibility your legislation seeks to correct.

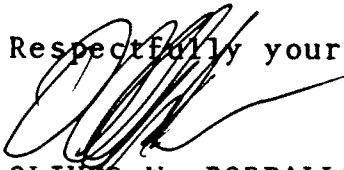
Another example is the GHURA condemnation cases, which were filed in the late 1960's but still haven't been resolved. Last year, a visiting federal judge gave the Attorney General of Guam an ultimatum to settle the cases or face dire consequences, expressing shock and outrage at the government's totally unjustified, two decades of foot dragging. The callous attitude of local officials -- that if private landowners want compensation they can hire a lawyer to sue the government -- was condemned by the federal court and should be prohibited by appropriate, enforceable legislation.

If I may recommend one revision to Bill 318, an agency other than the Public Defender should conduct the proposed study. The Public Defender has its hands full and is not equipped to conduct the necessary research or to draft remedial legislation. The Suruhano's office, if given the necessary legal staffing, is one alternative. Another would be for the legislature to establish an equivalent of the General Accounting Office which regularly conducts audits and investigations for Congress.

Finally, I strongly recommend that your Committee request the immediate release of the Inspector General's Comprehensive report on uncompensated land takings in Guam. I have requested, but the

Senator Theodore S. Nelson  
Re: Bill No. 318  
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Attorney General refused to release, the report without DOI's consent. According to DOI's representative, Tony Palomo, the audit report might be released upon formal request of the Guam Legislature or if the Department of Public Works consents to its release. Since DPW appears unwilling to consent, legislative action to obtain this very informative report seems imperative. Much of the information your legislation seeks to compile may already be documented in the audit report. Since it apparently was released to the Pacific Daily News, it should be made available to those in a position to remedy the problems addressed by the Department of the Interior which has expressed the same concerns noted in Bill 318.

Respectfully yours,  
  
OLIVER W. BORDALLO

OWB/dms

Encls.

D#1973U

# DPW may cost GovGuam \$73.3M

By MARSHALL SANTOS  
Daily News Staff

The Department of Public Works took or reserved for its own use private property without legal due process and without landowner compensation, according to an inspector general's audit.

As a result, the government of Guam might have to pay \$73.3 million in excess costs for past acquisitions of rights-of-way.

The audit was conducted from September 1991 through April 1992, and covered \$88.4 million of federal and Gov-Guam funds appropriated for 197 road projects active during fiscal years 1988 through 1991.

According to the audit, since 1950 the department used about 416,000 square meters of private property for public roads without providing compensation for property owners. Additionally, the government unjustly prohibited development on another 838,000 square meters of private property.

Both the Organic Act 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.

"Public Works was able to obtain land improperly for roads, because property owners, over the years, rarely challenged the land takings," the audit said. "Consequently, Public Works continued its questionable practice of expropriating land."

Because the department lacks specific time frames for entering into right-of-entry agreements with landowners, the department paid out \$108,000 and will have to pay an additional estimated \$425,000 in excess costs on five road projects.

The audit stated that delays — often up to five years — in obtaining the property were from obligating landowners' concerns and obtaining acceptable appraisals.

The department also was criticized for spending an estimated \$1.3 billion on at least three major road projects that included unnecessary road enhancements. The three projects were:

- The four towers on the Umatac bridge that, according to the project engineer, were not needed for structural support, cost \$421,158.
- An unsafe traffic circle on San Victor Road cost \$345,150 more than a safer, more standardized intersection.
- Two seldom-used picnic pavilions adjoining the Pago River bridge cost \$378,430, and should have been the responsibility of the Department of Parks and Recreation.

# Our Lady home safe



Tita Souder, Guadalupe Torres Pangelinan, Sister Gertrude and Archbishop Anthony Apua with the Lady of Kamein yesterday after the statue was found in Agaña.

# Archbishop: The thieves are for

By FLOYD WHALEY  
Daily News Staff

As mysteriously as she disappeared, Santa Marian Kamalin was found yesterday morning by a government worker who says the sacred statue waved to him.

Parks and Recreation worker Juan C. Perez said he was cutting bushes at about 9:45 a.m. near the Serena station, beside the stone bridge in

Agaña, when he noticed something nearby.

"I suddenly stopped because someone was waving at me," said the 60-year-old Dedado resident. "The Santa Marian Kamalin was giving me a signal, like she was waving."

The statue was stolen from the Dulce Nombre de Maria Cathedral-Basilica, in Agaña, on Dec. 28. The sacred statue is believed to be more

than 300 years old and creating miracles.

"She's our blessed mother Gertrude. We have another statue. We have another statue (but) we have our Mother."

The 49-pound statue is in good condition.

See OUR LA

# GHURA deal may leave residents ho

By GERI AMPARO  
Daily News Staff

Emotions ran high in Asan last night as residents voiced their concerns over the findings of a recent Department of Housing and Urban Development audit.

The Asan municipal council had requested the meeting with the Guam Housing and Urban Renewal Authority to clarify the audit results.

According to Pilar Cruz, GHURA ex-

ecutive director, the audit said GHURA sold land to people who did not meet the low- to moderate-income requirement.

According to the original agreement between GHURA and the Asan community, the residents sold their land on the condition that they would be able to buy it back at an affordable rate after redevelopment. However, with the audit's conclusions, they may have to pay the fair market value of \$50,000 to \$75,000 per lot.

"What's going on the runaround?" said "I think we're going to get Elmer Lozano, a union for Cruz. "We people of Asan to do we hope?"

Horanaga Salas, on the issue. "See that's us," he said to Cruz. "We failed, but

PHOTO A



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

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

ARRIOLA, COWAN & BORDALLO, AGANA, GUAM 96910

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

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.

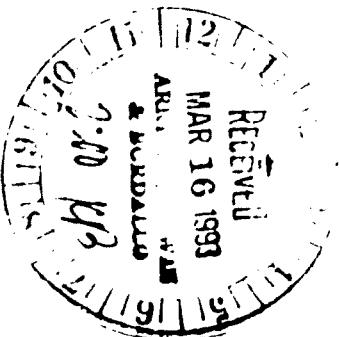
ELIZABETH BARRETT-ANDERSON  
Attorney General

By: *Maria G. Fitzpatrick*

MARIA G. FITZPATRICK  
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL  
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TEL: 475-3324

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**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

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                     , 1991, at 9:00 A.M. of said day, and on such further dates as I 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

FILED

AUG 3 12 59 PM '91

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.

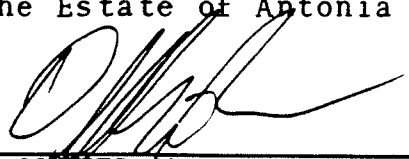
ARRIOLA, COWAN & BORDALLO  
P.O. Box X, Agana, Guam 96910  
Attorneys for Defendant  
Louise B. Chase, Administratrix  
of the Estate of Antonia B. Chase

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.

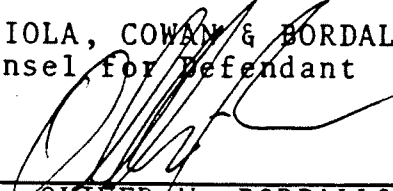
Section 1219 provides that if contempt is an omission to perform any act, the person may be imprisoned until performance.

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 that five (5) months after the Order was served, Acting Governor of Guam Frank

ARRIOLA & COWAN, AGANA GUAM 96910


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

7. However, as of the date of this affidavit, counsel for the Estate of Antonia B. Chase has not received a single 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 of June 4, 1990 in that (1) the appraisals have not been completed, (2) if any are completed, they have not been served on counsel 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.

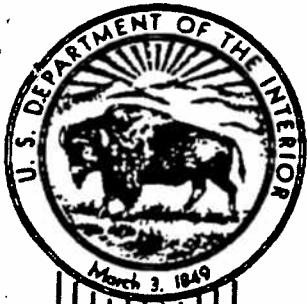
Dated this 30th day of July , 1991.

  
\_\_\_\_\_  
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



**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**



# 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

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### A. PROJECT SELECTION AND PLANNING

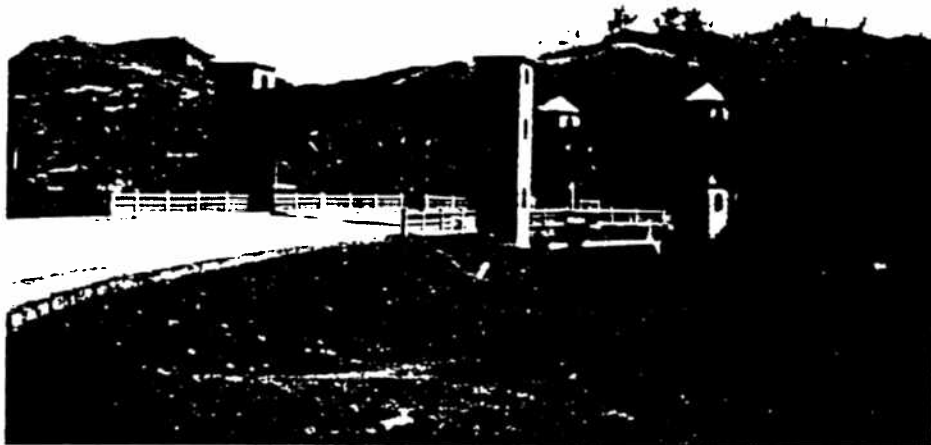
The Government of Guam made considerable improvements to existing roads and bridges through widening and repaving projects; however, the Department of Public Works (1) did not complete major road projects in accordance with approved road development plans and (2) did not adequately plan, design, or control 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

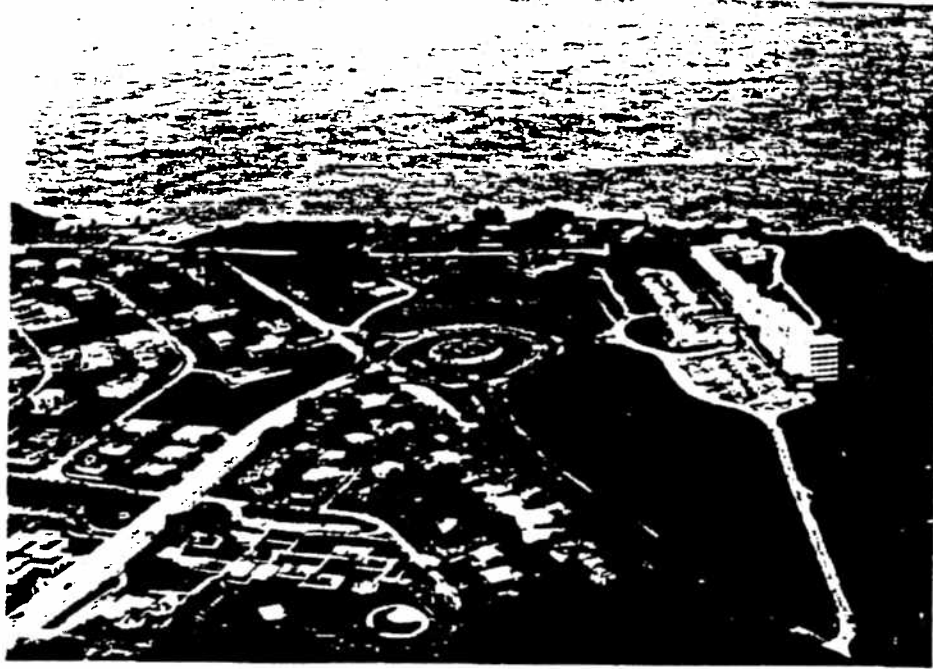
Public Works constructed at least three major road projects that included unnecessary road enhancements. According to the Public Works Director, the projects were built at the request of a former governor with no written justification to support these projects. As a result, Federal grant funds that could 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.