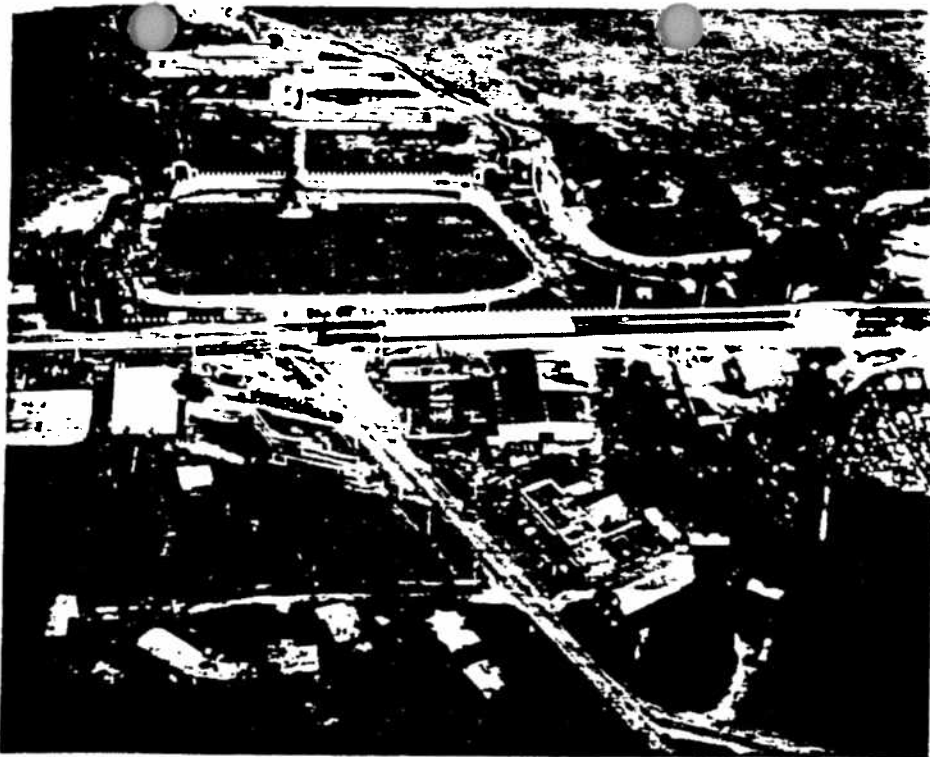


landowners filed suit, and the third landowner, in correspondence to Public Works, threatened to file suit. However, Public Works officials said that Public Works had settled out of court so that the issue would not be widely publicized.

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.

Rather than providing specific reasons for nonconcurrence with Recommendation 1, the response provided excuses for the apparent violations of the Guam Code Annotated. In performing the audit, we did not make a legal determination as to the adequacy of the explanations and/or justifications for the activities reported. Such a determination requires a legal interpretation of Guam law, which is under the purview of the Guam Attorney General. Therefore, we request that the Government of Guam reconsider its response to this recommendation.

## CLASSIFICATION OF MONETARY AMOUNTS \*

| <u>Findings</u>                          | <u>Funds To Be<br/>Put To Better Use</u> |
|--|--|
| <b>A. Project Selection and Planning</b> |  |
| In-House Road Projects                   | 2,160,599                                |
| Major Road Projects                      | 1,342,738 **                             |
| <b>B. Rights-of-Way</b>                  |  |
| Historic Encroachment                    | \$37,131,490                             |
| Recent Encroachment                      | 1,702,403                                |
| Rights-of-Way Entry Permits              | 933,724 ***                              |
| Restricted Lands                         | 34,581,849                               |
| <b>C. Procurement</b>                    |  |
| Blanket Purchase Orders                  | 1,267,200                                |
| Formal Competition                       | 308,391                                  |
| Procurement Authority                    | <u>352,082</u> ****                      |
| <b>Total</b>                             | <b><u>\$79,780,476</u></b>               |

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\* Funds represent Government of Guam funds unless otherwise stated.

\*\* Amount represents Federal funds.

\*\*\* Includes \$263,360 of Federal funds.

\*\*\*\* Excludes \$287,890 of expenditures included in the Blanket Purchase Orders and Formal Competition totals in order to avoid double counting.

**ESTIMATED COSTS FOR  
ACQUISITION OF UNACQUIRED RIGHTS-OF-WAY \***

| <u>Right-of-Way<br/>Projects</u>         | <u>Area of<br/>Rights-<br/>of-Way</u> | <u>Estimated Land Acquisition Costs</u> |                            |                             |
|--|---------------------------------------|---|----------------------------|-----------------------------|
|  |                                       | <u>Encroachments</u>                    | <u>Rights<br/>of Entry</u> | <u>Restricted<br/>Lands</u> |
| <u>Active</u>                            |                                       |   |                            |                             |
| San Vitores                              | 4,725                                 | \$1,379,829                             | \$201,697                  | NA                          |
| Route 1                                  |                                       |   |                            |                             |
| Phase II                                 | 7,848                                 | 214,466                                 | 39,288                     | NA                          |
| Phase III                                | 3,844                                 | NA                                      | 308,000                    | NA                          |
| Rt 4 to Asan                             | 1,613                                 | 700,000                                 | NA                         | NA                          |
| Route 2                                  | 22,168                                | NA                                      | 532,652                    | NA                          |
| Pago Bridge                              | <u>1,110</u>                          | <u>NA</u>                               | <u>26,260</u>              | <u>NA</u>                   |
| Subtotal                                 | <u>41,308</u>                         | <u>\$2,294,295</u>                      | <u>\$1,107,897</u>         | <u>\$ 0</u>                 |
| <u>Inactive</u>                          |                                       |   |                            |                             |
| Route 4                                  | 671,286                               | \$52,863,790                            | NA                         | \$47,829,144                |
| Route 4a                                 | 43,183                                | 1,700,325                               | NA                         | 1,538,400                   |
| Harmon Loop                              | <u>9,180</u>                          | <u>NA</u>                               | <u>NA</u>                  | <u>1,380,000</u>            |
| Subtotal                                 | <u>723,649</u>                        | <u>\$54,564,115</u>                     | <u>\$ 0</u>                | <u>\$50,747,544</u>         |
| Total                                    | <u>764,957</u>                        | <u>\$56,858,410</u>                     | <u>\$1,107,897</u>         | <u>\$50,747,544</u>         |
| Estimated cost to purchase all property: |                                       |   |                            | <u>\$108,713,851</u>        |

NA - signifies not applicable based on available records.

\*Estimate of acquisition costs was based on the premise that all identified rights-of-way will have to be acquired at fair market value at date of acquisition. Based on a statistical sample in the Office of Inspector General audit report "Assessment and Collection of Property Taxes, Department of Revenue and Taxation, Government of Guam" (No. 90-72), issued on June 4, 1990, Guam property values increased 313 percent from 1987 to 1989. Since 1989, land prices either have remained the same or have increased depending on location.

**ESTIMATED INCREASED COSTS  
ATTRIBUTABLE TO DELAYED RIGHTS-OF-WAY ACQUISITION\***

| <u>Right-of-Way<br/>Projects</u>               | <u>Area of<br/>Rights-<br/>of Way</u> | <u>Estimated Increase In Acquisition Costs</u> |                            |                             |
|--|---------------------------------------|--|----------------------------|-----------------------------|
|  |                                       | <u>Encroachments</u>                           | <u>Rights<br/>of Entry</u> | <u>Restricted<br/>Lands</u> |
| <u>Active</u>                                  |                                       |  |                            |                             |
| San Vitores                                    | 4,725                                 | \$977,432                                      | \$144,506                  | NA                          |
| Route 1  |                                       |  |                            |                             |
| Phase II                                       | 7,848                                 | 145,946  | 26,736                     | NA                          |
| Phase III                                      | 3,844                                 | NA   | 246,496                    | NA                          |
| Rt 4 to Asan                                   | 1,613                                 | 579,025  | NA                         | NA                          |
| Route 2  | 22,168                                | NA   | 499,121                    | NA                          |
| Pago Bridge                                    | <u>1,110</u>                          | <u>NA</u>                                      | <u>16,864</u>              | <u>NA</u>                   |
| Subtotal                                       | <u>41,308</u>                         | <u>\$ 1,702,403</u>                            | <u>\$933,723</u>           | <u>\$ 0</u>                 |
| <u>Inactive</u>                                |                                       |  |                            |                             |
| Route 4  | 671,286                               | \$35,974,400                                   | NA                         | \$32,548,267                |
| Route 4a                                       | 43,183                                | 1,157,090                                      | NA                         | 1,046,898                   |
| Harmon Loop                                    | <u>9,180</u>                          | <u>NA</u>                                      | <u>NA</u>                  | <u>986,684</u>              |
| Subtotal                                       | <u>723,649</u>                        | <u>\$37,131,490</u>                            | <u>\$ 0</u>                | <u>\$34,581,849</u>         |
| Total  | <u>764,957</u>                        | <u>\$38,833,893</u>                            | <u>\$933,723</u>           | <u>\$34,581,849</u>         |
| Total Increased Cost To Purchase All Property: |                                       |  |                            | <u>\$74,349,465</u>         |

NA - signifies not applicable based on available records.

\*The computation of the estimated increased acquisition costs was the difference between the estimated fair market value in 1987 and the estimated fair market value in 1992. Where possible, actual sale prices and appraisals were used. In those cases without actual sales or appraisals, the 1987 fair market value was based on the 1987 Guam property tax appraisal values, and the 1992 fair market value used the values computed for Appendix 2.



*Territory of Guam*  
*Territorio de Guam*

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OCT 13 1992

Mr. Harold Bloom  
Assistant Inspector General for Audits  
Office of the Inspector General  
Headquarters Audits  
1550 Wilson Blvd., Suite 401  
Arlington, VA 22209

Subject: *Comments on Draft Audit Report on the Selection, Procurement, and Administration of Road Construction Projects, Department of Public Works, Government of Guam (Assignment No. N-IN-GUA-024-91)*

Dear Mr. Bloom:

Thank you for the copy of the Draft Audit Report specified above and for the opportunity to comment on the report.

I find that I must take serious exception to the negative tone of the audit report. The report is neither balanced nor complete. The Government of Guam has worked hard during this Administration to overcome prior difficulties and improve its operations, and we believe we have succeeded in this effort; however, the report gives no credit to the many positive things we have accomplished.

There have been tremendous improvements over the years in the area of highway reconstruction and expansion; however, your report does not acknowledge the very real and substantive improvements that have been made to Guam's major highways, bridges, and other highway infrastructure; nor does it acknowledge that we have accomplished this despite limited funding and incomplete highway takings inherited from the United States Navy in the early 1970's.

Had you taken the time to ask anybody about the state of Guam's roads in years past and compare them to today, you would have, I believe, gained a better idea of the vast inroads our government has made. Certainly, the residents of Yigo, Agat and Umatac, and others would be able to tell you just how much better our highways are today than yesterday. I am mystified by your failure to do so, and by your failure to obtain a more balanced overview of the work that has been done to date. I can only conclude that a balanced overview was never your intention; that your intent from the beginning was to lambaste our efforts and downplay our accomplishments to suit either your aims or the aims of the Department.

You will find attached the response of the Government of Guam to the Draft Audit Report and to the recommendations contained therein. By way of introduction to the Government of Guam response, however, please let me note the following:



Mr. Harold Bloom  
Page Two

As you know, the highways in Guam were built immediately following the devastation of World War II and had greatly deteriorated over the years, particularly during the massive construction efforts of the past 20 years which have enabled Guam to reach a position of economic stability and leadership in the western Pacific. It is this growth which has enabled Guam to provide more and better services to our people and to reduce our dependence upon the federal government.

Specifically, the issuance of the Highway Revenue Bond in 1985 and the Refinancing of this bond in 1992 demonstrates not only the commitment but the ability of the Government of Guam to provide safe and efficient highways capable of carrying not only current but future traffic loads. The 1975 Comprehensive Transportation Plan has provided guidance for the Government of Guam in this area for the past 15 years, and that plan did call for reconstruction and expansion of the highway network as a primary objective. Now, the Government is preparing the Guam 2010 Highway Master Plan - which should be ready by mid-1993 - which will provide the blueprint for further highway development over the next 20 years.

Please also note that the original land acquisition as performed by the United States Navy was minimal at best and was performed with no thought as to future needs, whether real or anticipated; thus, when the land was turned over to the Government of Guam by the Navy many years ago, the Government of Guam was left with what was already an inadequate and unacceptable situation, a situation which - exacerbated by rising land values and other costs - continues to this day.

I should also like to point out that despite the position the Government of Guam was placed in following the turnover, we have made our commitment to improvement. We made this commitment despite the fact that the Government of Guam has not had the funds necessary to address the massive land acquisition needed to ensure future expansion of the highways; further, in certain areas of expansion such as Route 4, land acquisition has been slowed by the necessity of dealing with claims by those whose land is acquired on a case-by-case basis. This is for two reasons: first, because while some landowners have made claims, most have not; and second, because some landowners' claims ask for land exchange, others prefer a cash settlement.

Finally, as the attached will detail, the exact land acquisition needs cannot be determined until detailed designs have been performed identifying slope easements required along the major roadways. The rights-of-way research and severance map preparation are best performed in conjunction with geometric design of the highways; this is being addressed in the entire highway system in central and southern Guam and in other major highways islandwide. The issue of prescriptive rights will be addressed after identification of the highway needs in southern Guam. This Administration has set aside funding for land acquisition, as opposed to past practice. With all this in mind, we believe the Draft Report's recommendations in the area of land acquisition are unrealistic and short-sighted.

The procurement analysis centered on only \$2,000,000 of equipment rentals and purchases. Yet, the report covered in excess of \$80,000,000 of highway projects. Many of the questioned purchases involved emergency responses. In this area of procurements, please let me state that the problems can be resolved. Training of personnel was accomplished through both the Department of Law and the General Services Agency. Recommendations of your field auditors were accepted and implemented. Delegation of procurement authority was restored.



Mr. Harold Bloom  
Page Three

The bottom line, sir, is that a great number of projects have been completed and successfully so, due to our commitment to service that has always been - and will always be - the hallmark of our administration. Indeed, it is a source of great consternation to us that highlighted examples contained in the report of such projects as the San Vitores Circle, the Umatac Bridge, and Chalan Pago parks are projects which were the brainchild of a previous administration.

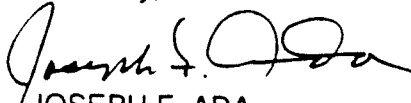
If your lengthy criticism of "in house" projects would lead one to believe that they were the only component of road construction. In reality, the DPW projects are repair and resurfacing of secondary village roads, such as filling potholes.

Guam is not the same place it was many years ago, sir. We have changed and we are continuing to change. And as part of that change, we continue to aggressively plan for the future and stand by our commitment to meet present and future transportation needs. For the Draft Report to ignore this very real progress and focus on negatives is indicative, to us, of the Department's unwillingness to accept the fact that Guam continues to grow and prosper and continues to move towards greater independence from the federal government.

Thank you for the opportunity to comment on the Draft Audit report. Although this response was not prompt - due to the strike of Super typhoon Omar and the recovery effort that followed - it is nevertheless thorough and specific in addressing your concerns. I hope that the comments contained in the Government of Guam response will be given full consideration in the preparation of the final audit report.

If you have any questions or comments, please feel free to contact me at your convenience. Thank you again and si Yu'os Ma'ase.

Sincerely,



JOSEPH F. ADA  
Governor of Guam

**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.

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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

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Page 3

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<br/>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.   |

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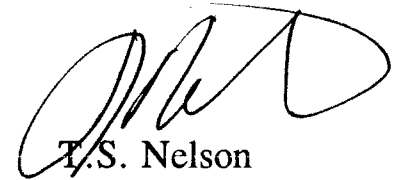
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MAR 15 '93

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 318(COR)

Introduced by:



T.S. Nelson

AN ACT TO REQUIRE GOVERNMENT OF GUAM  
TO PROPERLY COMPENSATE LAND OWNERS  
WHOSE PRIVATE PROPERTY HAS BEEN TAKEN  
BY THE GOVERNMENT FOR PUBLIC USE.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF  
2 GUAM:

3 Section 1. It has long been the practice of the government of Guam  
4 to exchange the private property of individuals for an equal value of  
5 government land when the government needed the private land for public  
6 use. This practice has generally been fair and equitable. However, since  
7 1945, it has also been the practice of this government to take private  
8 property without any compensation or compensatory exchange when that  
9 land has been needed for such purposes as public roads, access to  
10 property or easements for public utilities. This latter practice must cease  
11 immediately because it is contrary to the principals of eminent domain,  
12 justice, and constitutional guarantees of property rights.

13 Section 2. The Public Defenders Service Corporation is authorized

1 to immediately research and compile an exhaustive list of private property  
2 which has been taken by the government since 1945 and for which no  
3 compensation has been made, either financial or land exchange. This  
4 taking shall include but not be limited to eminent domain, condemnation,  
5 outright taking, all government easements, etc. This list shall include the  
6 legal name of the property owner, the location of the land, any  
7 compensation offered, if below fair market value, the amount of land  
8 taken, the date taken, current value of land taken, and all other pertinent  
9 information needed to ensure that justice is done. In the process of  
10 compiling this list, the records of the Department of Land Management,  
11 Department of Public Works, Guam Power Authority, Public Utility  
12 Agency of Guam, Guam Telephone Authority, and other agencies who  
13 usually are involved in land taking or acquisition of easements, shall be  
14 thoroughly researched and examined. This report shall be transmitted to  
15 the Chairman, Legislative Committee on General Governmental  
16 Operations no later than one hundred twenty (120) days after enactment  
17 of this Bill into law.

18 Section 3. The sum of One Hundred Thousand Dollars (\$100,000)  
19 is hereby authorized to be appropriated to the Public Defenders Service

1 Corporation for the purpose of covering the administrative costs of  
2 initiating and carrying out the research and implementation of this Act.

3 Section 4. Within the limits of any existing or future requirements  
4 of Guam's Federal Highway Fund, the compensation to the private  
5 property owners who have had their land taken shall be paid out of the  
6 Highway Fund. Those private property owners whose land has been  
7 taken for utility easements shall have compensation paid from the funds  
8 of the agency who acquired the property rights.

9 Section 5. All compensation paid for private property taken by the  
10 government shall be paid at current fair market value. If payment is  
11 made by an exchange of land, fair market value of both pieces of property  
12 shall be taken into consideration. The Public Defenders Service  
13 Corporation is authorized to negotiate with the private property owner  
14 whose land has been taken, if there is any dispute over the value  
15 involved. In each case of land taking by the government, the Public  
16 Defender is authorized to offer any one of the following alternatives: (a)  
17 direct compensation at fair market value, as explained above, or (b) an  
18 exchange of land, value for value, or (c) credit toward payment of Guam  
19 Income Tax.