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3 **Office of the Attorney General**
4 **John M. Weisenberger**
5 Attorney General of Guam
6 **Civil Division**
7 287 West O'Brien Drive
8 Hagåtña, Guam 96910 • USA
9 (671) 475-3324 • (671) 472-2493 (Fax)
10 www.guamattorneygeneral.com
11 Attorneys for the Government of Guam

8 **IN THE DISTRICT COURT OF GUAM**

10 UNITED STATES OF AMERICA) CIVIL CASE NO. 02-00022
11)
12 Plaintiff,)
13 vs.) **GOVERNMENT OF GUAM'S**
14) **STATUS REPORT**
15 GOVERNMENT OF GUAM,)
16 Defendant.) Chief Judge Tydingco-Gatewood
17)
18)

17 The Government of Guam (“GovGuam”), through the Office of the Attorney General,
18 hereby files its status report for the December 9, 2010 status hearing in accordance with its
19 obligation to advise the Court of the status of the condemnation case filed in the Superior Court
20 - *Government of Guam v. 1,348,474 Square Meters etc.*, Superior Court of Guam Case No.
21 CV0084-08 (the “Condemnation Case”). The Condemnation Case involves GovGuam’s
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25 Page 1
USA v Government
Government of Guam’s
Status Report
District Court of Guam Case No. CV02-00022

1 acquisition, by eminent domain, of land in Dandan, Inarajan, Guam (the "Property")¹ for the
2 new landfill. The Condemnation case was initiated in accordance with this Court's Order dated
3 December 14, 2007 (Doc. No. 177-2 at 3). The only issue to be adjudicated in the
4 Condemnation Case is the determination of "just compensation" to be paid to the "Property
5 Owners" (as hereinafter defined) for the acquisition of the Property by GovGuam;
6 compensation which is just both to the "Property Owners" (as hereinafter defined) and to
7 GovGuam.

8 Simultaneously herewith, GovGuam has filed in this Court the Declaration of Kathy
9 A. Fokas ("Fokas Declaration"). Attached to the Fokas Declaration are a number of documents
10 filed in the Condemnation Case. GovGuam also incorporates herein by reference the
11 Declaration of Patrick Mason ("Mason Declaration") and attachments thereto², previously filed
12 with this Court (*see* Doc. No. 276) .

13 BACKGROUND

14 GovGuam had been ordered by this Court to initiate eminent domain proceedings to
15 acquire the Property by January 24, 2008 (*See* Doc. No. 177-2 at 3). Under Guam's eminent
16 domain law, GovGuam obtained title to the Property upon filing the declaration of taking and
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20 ¹ This Court refers to the property condemned for the new landfill as "Layon." In the Condemnation Case filed in
21 the Superior Court, the condemned property is referred to as property located in Dandan, Inarajan, Guam or the
"Property." To be consistent with the documents filed in the Condemnation Case and submitted with this Status
Report, the condemned property is referred to as the "Property."

22 ² The Mason Declaration includes *inter alia* the following attachments which have been filed in the Condemnation
23 Case: Attachment 1, Complaint to Acquire Property through Eminent Domain filed January 24, 2008; Attachment
24 2, Declaration of Taking filed January 24, 2008; Attachment 3, Clerk's Receipt of Deposit filed January 24, 2008;
and Attachment 4, Supplemental Clerk's Receipt of Deposit filed June 24, 2008.

1 depositing estimated compensation for the Property with the court.³ On January 24, 2008,
2 GovGuam filed a Complaint to Acquire Property through Eminent Domain and a Declaration of
3 Taking in the Condemnation Case⁴ which was amended on April 1, 2010 to include additional
4 slope easements necessary for the access road. The total area of the Property acquired is
5 1,382,428 sq. meters (or 341.604 acres).⁵ GovGuam deposited \$3,410,000.00 as the estimated
6 compensation for the taking⁶. By operation of law, fee simple title to the Property vested in
7 GovGuam on January 24, 2008.

8 The estimated compensation of \$3,410,000.00 has been released to the "Property
9 Owners" who are identified in documents filed in the Condemnation Case as being:

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12 ³Federal eminent domain law, like Guam law, provides that on filing a declaration of taking and deposit in the
13 court of the amount of estimated compensation, title to the estate vests in the Government. 40 U.S.C.A. §
14 3114(b)(1). Upon the filing of the declaration of taking, title passes to the Government. *United States v. Hayes*,
15 172 F.2d 677, *679 (9th Cir. 1949); *United States v. Santos*, 878 F.Supp 1359, *1361 (Dist. Ct. Guam 1993).
16 When the statute authorizing condemnation so provides, title to property vests in the government upon the filing of
17 the petition and the declaration of taking and upon deposit in court of the estimated compensation. *See, City of*
18 *Oakland v. United States*, 124 F.2d 959, *963 (9th Cir. 1942). "The purpose of laws such as the [condemnation
19 law] under discussion is to permit the Government in its sovereign capacity to proceed with necessary public
20 works without being hampered by delays which might occasion great and irreparable injury." *Id.* at *964.

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22 Guam law provides that the Government of Guam shall have the power to acquire property by the exercise of
23 eminent domain. 21 GCA § 15101. Upon the filing of a declaration of taking of private property for public use and
24 the deposit in court of the amount of estimated compensation for the taking of the land, "title to the said lands in fee
25 simple absolute, or such estate or interest therein as is specified in said declaration, shall vest in the government of
Guam, and said lands shall be deemed to be condemned and taken for the use of the government of Guam and the
right to just compensation for the same shall vest in persons entitled thereto." 21 GCA § 15107. Hence, Guam's
eminent domain law provides that the Government obtains title to private land upon filing a declaration of taking
and depositing estimated compensation for the land with the court.

26 ⁴ See Mason Declaration, Attachments 1 and 2, referenced at Footnote 2, *supra*.

27 ⁵ See Mason Declaration, Attachments 1 and 2, referenced at Footnote 2, *supra*.

28 ⁶ See Mason Declaration, Attachments 3 and 4, referenced at Footnote 2, *supra*.

1 Oxford Properties and Finance Co. Ltd.
2 Calvo's Insurance Underwriters, Inc.
3 Joaquin C. Arriola
4 Jones & Guerrero Company, Inc.
5 Alfred C. and Diana Z. Ysrael
6 Lee M. and Joan S. Holmes
7 Henry Sy
8 Valencia Investments Corporation
9 Douglas F. Cushnie
10 Young Chull Kim
11 Unknown Owners⁷

12 **STATUS OF CONDEMNATION CASE**

13 By agreement, the September 27, 2010 trial date was moved to November 3, 2010.⁸
14 Due to the unavailability of a material witness, GovGuam filed a Motion to Continue Trial⁹
15 which was allowed by the Superior Court. **Trial has been set for February 14, 2011.**

16 Discovery in the Condemnation Case is complete. The parties have propounded and/or
17 responded to discovery by way of interrogatories, requests for production of documents and
18 Rule 26(a)(1) disclosures. Eighteen (18) depositions have been taken¹⁰ and Thirty-Eight (38)
19 potential trial witnesses have been listed.¹¹

20 During depositions of the property owners, Mr. Joaquin C. Arriola and former Governor
21 Paul M. Calvo testified that in their opinions, GovGuam should pay the Property Owners

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23 ⁷ See Mason Declaration, Attachments 1 and 2, referenced at Footnote 2, *supra*.

24 ⁸ See Fokas Declaration, Attachments 1, 2, and 3.

25 ⁹ See Fokas Declaration, Attachments 1, 2, and 3.

¹⁰ See Fokas Declaration, Attachments 1, 2, and 3.

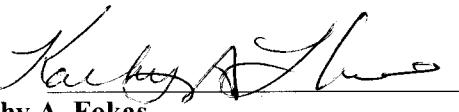
¹¹ See Fokas Declaration, Attachment 4.

1 \$300 million as just compensation for its acquisition of the Property in Inarajan.¹² Mr. Leonard
2 Calvo testified that in his opinion, just compensation is \$161 million.¹³

3 Both sides have retained real estate appraisers as expert witnesses. The Property
4 Owners' off-island real estate appraiser has testified at deposition that the value for just
5 compensation is \$30,577,547.00.¹⁴ GovGuam's two independent real estate appraisers from
6 Guam, have testified at deposition to opinions of value of \$3,494,000.00 and \$5,900,000.00,
7 respectively.¹⁵ During trial, the factfinder will be presented with the justifications for the
8 foregoing values and will decide the amount of just compensation to be paid to the Property
9 Owners. To the extent that the amount awarded shall be greater than the estimated amount of
10 \$3,410,000.00 already released to the Property Owners, the difference, if any, will be payable
11 to the Property Owners by GovGuam.

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13 Respectfully submitted this 6thth day of December, 2010

14 OFFICE OF THE ATTORNEY GENERAL
15 **John M. Weisenberger, Attorney General**

16 By: 
17 **Kathy A. Fokas**
18 Assistant Attorney General

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20 ¹² See Fokas Declaration, Attachments 1, 2, and 3.

21 ¹³ See Fokas Declaration, Attachment 1, 2, and 3.

22 ¹⁴ See Fokas Declaration, Attachments 1, 2, and 3.

23 ¹⁵ See Fokas Declaration, Attachment 1, 2 and 3.