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**DIPĀTTAMENTON MINANEHAN TĀNO'**  
(Department of Land Management)

**KUMISION I TĀNO' SAINA-TA**  
(Guahan Ancestral Lands Commission)



MICHAEL J.B. BORJA  
Director

DAVID V. CAMACHO  
Deputy Director

**REGULAR BOARD MEETING AGENDA**

Department of Land Management Conference Room  
3<sup>rd</sup> Floor, ITC Building, Tamuning  
Wednesday February 22, 2017; 2:00 PM

**Public Notice: The *Guam Daily Post* on  
Wednesday, February 15, 2017 and Monday, February 20 2017.**

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF MINUTES  
January 25, 2017
- IV. NEW BUSINESS  
A. Pending Court Cases
- V. REPORTS  
A. Director
- VI. ADJOURNMENT





GUAM DAILY POST • MONDAY, FEBRUARY 20, 2017

# NASA shifts plan for Jupiter probe

## Change in response to engine difficulties

By Amina Khan  
Los Angeles Times

The team behind NASA's Juno spacecraft has made a key change to its operating plan. For the rest of its primary planned mission, the satellite will continue to circle Jupiter in its long 53-day orbits instead of transitioning to shorter 14-day cycles.

The decision, made in response to technical difficulties with the plumbing for the spacecraft's main engine, cuts down the number of science orbits Juno can make from about 32 to 12. But in many ways the change might allow for better science, mission team members said.

"Sometimes you make lemonade when you have lemons - or when you appear to have lemons," said Rick

Nybakken, Juno's project manager at the Jet Propulsion Laboratory.

Juno entered Jupiter's orbit last year after a five-year journey. The mission's goal is to probe the many mysteries of the solar system's most massive planet, like the composition of its core and the behavior of its powerful magnetosphere.

The answers to such questions could offer new insight into the composition and evolution of the early solar system.

The spacecraft began circling Jupiter in long, 53-day orbits, and was set to push itself into shorter two-week orbits soon after. That would have allowed it to fly close over the surface (about 2,600 miles) more frequently during the mission, originally set to end in February 2018.

But two helium check valves for the main engine had started to respond too slowly. This meant that if the team tried to push the spacecraft into the two-week orbit, they could risk sending it off-course.

After reviewing their options, Nybakken said, the team decided

“Sometimes you make lemonade when you have lemons - or when you appear to have lemons.”

- Rick Nybakken,  
Juno project manager

that attempting the maneuver wasn't worth the risk to the mission overall.

The longer orbits won't hurt the science, said Scott Bolton, Juno's principal investigator from Southwest Research Institute. There might be added benefits. With the longer orbits, the spacecraft will now be

able to study the more distant parts of Jupiter's magnetosphere in a way that it could not have before. And because of eventual changes in its relative orientation to Earth over time, the spacecraft should be able to

get more precise measurements of Jupiter's gravitational field - which should help them better map out the planet's core (if it does have one).

"You have everything that you had in the original mission, and you have all these additional things that you didn't have before," Bolton said. "So that's just a bit of luck." As a bonus, the longer orbits cause less radiation damage to the spacecraft than short two-week orbits would have. That means Juno doesn't necessarily have to be crashed into Jupiter by early 2018, as originally planned - a move that was designed to keep the satellite from falling into and contaminating potentially life-friendly worlds such as the icy moon Europa.

Juno's current plan allows it to operate through July 2018 - which would allow for only 12 science orbits instead of the more than 30 in the original plan. However, with less fear of radiation damage, it's possible that the spacecraft could end up making many more orbits around the gas giant.

But that decision is up to NASA, Nybakken said, and at a later date. For now, the team is looking forward to Juno's next close pass above the gas giant, on March 27.

### Mission goal

Juno entered Jupiter's orbit last year after a five-year journey. The mission's goal is to probe the many mysteries of the solar system's most massive planet, like the composition of its core and the behavior of its powerful magnetosphere.



**GUAHAN ANCESTRAL LANDS COMMISSION**  
Kumision i Tano' Saina-Ta



**NOTICE OF PUBLIC MEETING**

The GUAHAN ANCESTRAL LANDS COMMISSION (GALC) Board Meeting will be held on Wednesday, February 22, 2017 at 2:00pm, Department of Land Management conference room, 3rd Fl. of the ITC Building, 590 S. Marine Corps Drive, Tamuning. Individuals requiring special accommodations, auxiliary aids or services, may contact 649-5263 x432.

This ad paid for by Government funds.



**Department of Parks and Recreation**  
Government of Guam



490 Chalan Palasyo, Agaña Heights, Guam 96910  
Director's Office: (671) 475-6296/17 • Facsimile: (671) 477-0997  
Parks Division: (671) 475-6288/9  
Guam Historic Resources Division: (671) 475-6294/5  
Facsimile: (671) 477-2822

**PUBLIC NOTICE**  
**REQUEST FOR PROPOSALS**

RFP NO.: DPR-17-001 RFP Project No. 66-1B-012  
**Historic Preservation Fund Grant P16AF0040**  
**REVIEW AND COMPLIANCE PROGRAM AREA REVIEW**

The Department of Parks and Recreation (DPR) receives Historic Preservation Fund (HPF) grants every fiscal year from National Park Service, U.S. Dept. of the Interior, to implement projects that implement Guam's planned goals for historic preservation. DPR is requesting proposals from interested, qualified, and experienced Offerors to conduct a Program Review of Guam's Review and Compliance Program. This project is funded under HPF Grant P16AF0040.

**AVAILABILITY:** RFP packets will be made available beginning WEDNESDAY, FEBRUARY 22, 2017, through FRIDAY, APRIL 28, 2017, at the Department of Parks and Recreation, Guam Historic Resource Division, 490 Chalan Palasyo, Agaña Heights, Guam, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except on holidays.

**DEADLINE:** Proposals must be submitted by FRIDAY, APRIL 28, 2017, no later than 4:00 p.m., to Guam Historic Resources Division, Department of Parks and Recreation, 490 Chalan Palasyo, Agaña Heights, Guam, located across Naval Hospital. For additional information regarding this advertisement, call 671-475-6294 / 6355.

*The Department of Parks and Recreation does not discriminate based on race, color, national origin, political affiliation, creed, sex, religion, age, familial status, and disability status. This advertisement paid by National Park Service Historic Preservation Fund Grant P16AF00201.*

/s/ ROBERT S. LIZAMA  
Director



**GUAM DEPARTMENT OF EDUCATION**  
OFFICE OF SUPPLY MANAGEMENT



500 Marine Avenue, Suite A-13 Barrigada, Guam 96913-1400  
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Website: [www.gdoe.net/procurement](http://www.gdoe.net/procurement)

**MULTI-STEP**  
**INVITATION FOR BID**

**GDOE IFB 010-2017**  
**E-RATE INTERNAL CONNECTIONS SERVICE - WIRELESS LOCAL AREA NETWORK (WLAN) INSTALLATION**

**MANDATORY PRE-BID SITE VISITS:** Monday, February 27, 2017 to Friday, March 3, 2017  
**SUBMISSION DATE:** Tuesday, March 28, 2017 at 9:00 a.m. ChST

**Note:** It is solely the Bidder's responsibility to review the website on a daily basis for the issuance of Addendums/Clarifications for any possible changes to the IFB.

INTERESTED BIDDERS MAY DOWNLOAD THE IFB PACKAGE AT  
<http://www.gdoe.net/procurement>

IFB packages are available for download on the GDOE website and can be reviewed at the GDOE Office of Supply Management.

**A non-refundable fee of \$10.00 (cash only) is required upon pick-up or submission.**

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/s/ CARMEN T. CHARFAUROS  
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ADMINISTRATOR  
For: JOSEPH L.M. SANCHEZ  
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## Indian farmers spice up market for organic Himalayan crops

GANGTOK, India (Thomson Reuters Foundation) — Decades after farmers on India's plains flocked to the "Green Revolution," reliant on chemical fertilizers to drive agricultural growth, the northeast Himalayan state of Sikkim is trying its luck with organic farming — a pull for young, green-minded entrepreneurs who could help get the produce to market.

Last year Sikkim was declared 100 percent organic by the Indian government, while across the country, organic farming is growing rapidly.

India has the world's highest number of organic producers at 650,000, or over a quarter of the global total, according to the Europe-based Research Institute of Organic Agriculture.

Abhinandan Dhakal, 28, who lives in Sikkim's state capital Gangtok, has invested 3.4 million rupees (\$50,959) over four years, as well as his time and energy in laying the foundations for an organic business growing and selling Peruvian ground apple, or yacon, a crisp, sweet-tasting tuber.

"I have always been passionate about rural livelihoods," said Dhakal, who joined an organization helping farmers in Tanzania after finishing his studies in environmental economics. Two years later, he returned to Sikkim with the ambition of becoming an agricultural entrepreneur.

To capitalize on Sikkim's organic status and stand out from the field,



ORGANIC: A farmer tends to his organic vegetable plot in the Himalayan state of Sikkim, India. Thomson Reuters Foundation

he decided to focus on yacon, a high-value product that is often eaten raw or consumed for its health benefits in the form of syrup and powder.

He has taught other farmers in east Sikkim how to cultivate and sell the tuber.

"Ground apple grows only in hills

and has a great demand in the market, especially outside India," Dhakal said, noting its popularity in the Middle East, Europe, Singapore and Australia.

## Australian bushfires threaten properties, close roads



**MISTING FAN:** An attendee cools down in front of a misting fan during the Australian Open in Melbourne Park, Melbourne, Australia, Jan. 23. Reuters

SYDNEY (Reuters) — Australian authorities ordered the evacuation of some sparsely populated rural areas of New South Wales on Sunday as bushfires, fanned by extreme heat and strong winds, raged across the state, threatening homes and closing roads.

A heat wave on Australia's east coast saw temperatures hit records in some parts of the state, creating conditions that officials said were worse than those preceding Victoria's 2009 "Black Saturday" fires, Australia's worst bush fire event that killed 173 people.

"This is the worst day we have seen in the history of New South Wales when it comes to fire danger ratings and fire conditions," Shane Fitzsimmons, the

state's rural fire chief, told reporters.

The areas hit by fires are hundreds of kilometers from Sydney, the state capital.

Fitzsimmons said there were unconfirmed reports of homes, farm sheds and machinery being destroyed by fast-moving fires breaking containment lines.

There were no reports of injuries, but some firefighters were suffering from heat-related issues.

Temperatures climbed above 45 degrees Celsius (113 degrees Fahrenheit) in some parts. Dry and hot northwesterly winds coming from Australia's desert centre, some up to 75 kilometers an hour (about 46 miles per hour), were fanning the bushfires.



**GUAHAN ANCESTRAL LANDS COMMISSION**  
Kumision I Tano' Saina-Ta



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**PUBLIC NOTICE**  
**Guam Education Board**  
**SPECIAL MEETING**  
**Friday, February 17, 2017**  
**9 am**  
**Superintendent's Conference Room, Tiyán**

**AGENDA**

I. Meeting Call to Order	IV. New Business
II. Roll Call of Members	1) Reconsider Board's action taken on October 3, 2016
III. Executive Session	V. Announcements & Adjournment

Individuals requiring special accommodations or information may contact Lolani Cruz, Administrative Officer at 300-1627 or by email: [lmacruz@gdoe.net](mailto:lmacruz@gdoe.net).  
This advertisement was paid by GDOE local funds.

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**EDDIE BAZA CALVO**  
Governor

**RAY TENORIO**  
Lieutenant Governor

**DIPÀTTAMENTON MINANEHAN TÀNO'**  
(Department of Land Management)

**KUMISION I TÀNO' SAINA-TA**  
(Guahan Ancestral Lands Commission)



**MICHAEL J.B. BORJA**  
Director

**DAVID V. CAMACHO**  
Deputy Director

**GALC COMMISSION MEETING MINUTES**  
Department of Land Management Conference Room  
3<sup>rd</sup> Floor, ITC Building, Tamuning  
Wednesday January 25, 2017 | 2:05pm to 5:35pm

**I. CALL TO ORDER**

Meeting was called to order at 2:07pm by Chairman Anthony Ada

**Chairman Anthony Ada:** In Compliance with public law 24-109, Guam Ancestral Lands Commission published the public meeting announcement on Wednesday, January 18, 2017 and Monday, January 23, 2017 in the Guam Daily Post.

**II. Roll Call**

Present were Chairman Anthony Ada, Vice-Chairman Ronald T. Laguana-absent, Secretary Maria Cruz, Commissioner Ronald Eclavea, Commissioner Anita F. Orlino, Commissioner Antonio Sablan, Commissioner Louisa M. Wessling, Director Michael Borja, Deputy Director David Camacho, Land Administrator Margarita Borja, Karen Charfauros, Land Agent, Kristan Finney, Attorney-absent.

**Chairman Anthony Ada:** This meeting is called to order. We move to the approval of the minutes.

**III. Approval of Minutes**

**A. November 30, 2016**

**Commissioner Antonio Sablan:** I move to approve the minutes.

**Commissioner Ronald Eclavea:** I second the motion.

**Chairman Anthony Ada:** There is a motion to approve the minutes and seconded, all approve say "aye"

**All Commissioners:** "aye".

**Chairman Anthony Ada:** Minutes are approved. Moving to old business there is an item not placed on the agenda, we have attorney, Sandra Miller, from the Governor's office, and she wants to make a presentation or discussion.



**Attorney Sandra Cruz Miller:** Thank you Mr. Chairman my name is Sandra Cruz Miller, I am the legal counsel from the office of the Governor, I am her to report to the commission some things they may have known or not known about the on-going litigation regarding the Torres Estate. There are three separate lawsuits, I think, I am here specifically here for civil case 1235-12 that is the lawsuit where the Attorney General's Office was disqualified and as a result the commission and the government of Guam has no legal counsel or representation in that case so on behalf of the commission and the order of Judge Anita Sukola the Office of the Governor put out an RFP to try and seek a lawyer to prosecute civil case 1235-12 and we got no response. We advertised that RFP twice you may have seen it, we reported back to the Judge that no one responded voluntarily but the Judge has the inherent authority to appoint a lawyer to represent the Government of Guam. The Estate has vehemently objected and has instead moved the Court to dismiss 1235 in its entirety if 1235 is dismissed that means the Commission has failed to prosecute its case because as the plaintiff the Government of Guam has the burden of pushing its case along and if it is not doing that then it is subject to dismissal under the rules of the Court and under the law. So there is a hearing tomorrow before Judge Sukola at 10 am and at that hearing she will hear argument for and against dismissing civil case 1235-12 and/or or using her power to appoint an unwilling volunteer from the local Guam Bar. I don't know what the Judge is going to do, I do not represent the Commission I only represent the Governor and his interest, the only reason I was showing up because I was ordered too by the Judge because without the Attorney General Guam law has no mechanism in place as to what to do when she is out. So it just fell to the Governor as the head of the executive branch to step in, I am going to recommend to the Judge that instead of dismissing that lawsuit to give the parties a chance to talk it out and see if they can come up with a mutual solution. My concern from my initial review the government has some good arguments and it would not be in the best interest of the territory to have these pulled out from underneath us, when I say "us" I mean the Government of Guam and the Territory of Guam as a whole. So that is what is happening in that case. The AG should be reporting this but because they are disqualified they are unable to participate in that I think the AG is involved in the two other lawsuits that are on-going but all of them are inter-related. just so you know the AG has appealed her disqualification to the Guam Supreme Court, the Guam Supreme Court has accepted that appeal but it is going to be at least another year before you see a decision out of that, they may uphold the AG's disqualification or they may not but you are looking at a couple more years of litigation of civil case 1235-12 and you throw in the other two into the mix and you see how they are all inter-related I wouldn't be surprised if the whole thing continued for a while. I just wanted to report this since the Attorney General is unable to do that.

**Commissioner Antonio Sablan:** Can you give me a synopsis of what 1235 is?

**Attorney Sandra Cruz Miller:** 1235, again I am just pulled in from the side, it is the money.....

**Commissioner Antonio Sablan:** Releasing the fund to the Estate

**Attorney Sandra Cruz Miller:** Yeah! There were two lots at Micronesia Mall, there was supposed to be a sale of them I was told the property was a significant piece of property and it was given over to the estate by the commission and there was some kind of an error in the payment so in other words the Government of Guam has sued the Estate for the return of those lands in return of payment because I think what happened is the Estate sold those lands to a third party before the Government made its request for return, I wish I knew a little bit more about it.

**Commissioner Antonio Sablan:** That is it for that particular case or does it involve the other property.

**Attorney Sandra Cruz Miller:** I believe sir that they are all related, this is all one big related type of deal, each one stands alone they are all separate.

**Commissioner Antonio Sablan:** The Attorney General is taking this to the Supreme Court and we are trying to make a decision down here pending the Supreme Court appeal will Sukola make a ruling pending the Supreme Court appeal?

**Attorney Sandra Cruz Miller:** Yeah. She will because in order for her to not make any decision pending the decision of the Supreme Court there has to be a stay, meaning you have to stay the lower court pending the higher court decision and there is no stay. In the meantime the Superior Court continues, I heard from the AG's office that their appeal will be heard but I think the next session is not until October and then they take some time to make a decision I am sorry the next session will be around April and you won't see a decision until August at the earliest or September that is just my estimate of the time then you hear back on the AG's disqualification once we hit that point once the decision comes out either you are back in business or we are still out of it.

**Commissioner Antonio Sablan:** What media did the Governor's office publish this RFP?

**Attorney Sandra Cruz Miller:** We advertised it twice in *The Post, the Varieties of the Guam Post*. That is where all Governor's RFP's are placed.

**Chairman Anthony Ada:** Just for the record what days were those advertised?

**Attorney Sandra Cruz Miller:** I have them sir, I can email them to the Commission. I believe one was November 14 or something the other was November 28 and then we went back to court in December and I reported this. She kind of got upset and said she couldn't believe that nobody would answer and that lead to briefings and motions whether to dismiss the case or should she appoint someone herself that hearing is tomorrow.

**Chairman Anthony Ada:** When you refer to the AG's office who are you communicating with?

**Attorney Sandra Cruz Miller:** The Attorney representing the government of Guam is David Highsmith. He is also the same one who has filed the appeal, the appeal was accepted but it will be a while before you get a decision.

**Chairman Anthony Ada:** I don't think any of us were given copies of the proceedings, the decision to disqualify the AG's Office can we get that too?

**Attorney Sandra Cruz Miller:** Yeah! That decision came out almost a year ago that was in February or March 2016 is when the AG got disqualified that is why the Estate is saying this is going on long enough with Government of Guam not doing its part to resolve it or move it along, the burden is on the plaintiff who is the Government of Guam it is not the Estate to defend. So you need a copy? That should have been provided.

**Deputy Director David Camacho:** David Highsmith gave us a report on that.

**Chairman Anthony Ada:** That was a memo and he just put paragraphs on each .....

**Deputy Director David Camacho:** That was in his report.

**Attorney Sandra Cruz Miller:** I can re-send copies.

**Chairman Anthony Ada:** Is this the actual court decision?

**Director Michael Borja:** We will get you a copy sent to you but I know we did get copies and I thought it was provided.

**Commissioner Maria Cruz:** so 1235 is strictly about the distribution of funds?

**Attorney Sandra Cruz Miller:** You know ma'am, I believe so, I am not the Attorney of record in this case. This is a long and lengthy case, boxes are huge and I have not gone over them but I do believe this is about the distribution.

**Commissioner Ronald Eclavea:** Of the three cases you are not sure this is the one dealing with.....

**Attorney Sandra Cruz Miller:** I am 85% sure.

**Commissioner Ronald Eclavea:** We will verify.

**Commissioner Maria Cruz:** The hearing is tomorrow.

**Attorney Sandra Cruz Miller:** The hearing tomorrow is about can she appoint somebody to represent the Commission.

**Commissioner Ronald Eclavea:** On those cases that we are not disqualified from

**Attorney Sandra Cruz Miller:** Those other cases the AG still represents the Government.

**Chairman Anthony Ada:** You say these cases are related how could one be disqualified and the others are okay?

**Attorney Sandra Cruz Miller:** I am not sure this is what was told to me by Mr. Highsmith who has represented the Commission on all three.

**Chairman Anthony Ada:** When you first started you mentioned the Micronesia Mall that one has already been settled what I understand the settlement was half and half, the other case regarding distribution of funds that is at Tangissan.

**Attorney Sandra Cruz Miller:** Again Mr. Chairman I never seen the pleadings other than 1235 that is the only one I had access to and have seen and my job was to find a lawyer to represent you.

**Commissioner Ronald Eclavea:** Can we get verification on the civil case number dealing with that Tangissan property.

**Attorney Sandra Cruz Miller:** The lot numbers are there I will email them to Mr. Borja and he can distribute it to the members. Okay I just wanted to report what was happening because I know Mr. Highsmith was no longer involved.

**Chairman Anthony Ada:** Highsmith is no longer involved?

**Attorney Sandra Cruz Miller:** In 1235. You mean he is still involved in the other cases right? Is there anything else Mr. Chairman. There are a couple court decisions there is the DQ and the motion by the estate to dismiss the case.

**Commissioner Antonio Sablan:** And you will provide a copy of the decision.

**Attorney Sandra Cruz Miller:** I will have them emailed to Mr. Borja this afternoon.

**Commissioner Antonio Sablan:** Can you include the advertisement in *The Post*?

**Attorney Sandra Cruz Miller:** Yes. The advertisement for the RFP?

**Commissioner Antonio Sablan:** Yes.

**Attorney Sandra Cruz Miller:** The two notices, absolutely sir. Thank you.

#### **IV. Old Business**

##### **A. Tran Steel**

**Chairman Anthony Ada:** We continue with old business, Tran Steel. Anybody from Tran Steel here?

**Karen Charfauros:** No.

**Chairman Anthony Ada:** We have a statement for Tran Steel. The last discussion we had wanted Tran Steel to pay his account to current before we entertain an extension of his license based on this statement he paid \$3,000 on December 13 but it was not enough to bring his account current he has \$500 30 days past due, \$500 60 days past due, \$500 90 days past due and \$2,000 90 days past due. That is where we stand.

**Commissioner Ronald Eclavea:** Is he here?

**Chairman Anthony Ada:** No.

**Commissioner Ronald Eclavea:** Are we still going to entertain this right now?

**Chairman Anthony Ada:** We did set parameters for him to meet it is in the minutes page 3, John Pearson.

**Commissioner Antonio Sablan:** Mr. Chair I am uncomfortable with this situation, look at page 13 at the middle of the page where it says "Commissioner Antonio Sablan: He still owes us \$3,000" at the time of our discussion it was my understanding that he owes us \$3,000 in arrears plus another \$500 coming up for December. He came and paid that \$3,000 now we are finding out that he really owes us \$6,000 so I don't know if we are doing justice to him because I am ready to move that we just terminate the contract.

**Commissioner Maria Cruz:** How much does he really owe us at the time was it \$3,000 or \$6,000?

**Karen Charfauros:** There was a double posting on our part that is why it only reflected \$3,000. When Joey reconciled the account and saw the double posting he rectified it and came out with that current statement.

**Commissioner Antonio Sablan:** During the last meeting we kept bombarding him "pay up the \$3,000" so the question is do we give him an audience , or do we give him another 30 days to pay or do we terminate him.

**Commissioner Maria Cruz:** Is he aware that he owes that much?

**Karen Charfauros:** Yes he is.

**Commissioner Antonio Sablan:** According to Karen he does.

**Commissioner Ronald Eclavea:** But how much did he pay in December?

**Karen Charfauros:** He paid \$3,000 on the 13<sup>th</sup> of December, its on the statement.

**Commissioner Ronald Eclavea:** That's the total he had in our last meeting?

**Karen Charfauros:** He actually owed \$6,000 when you had your meeting in November but it was not reflected on the statement because of the double posting so it was after the reconciliation Joey noticed the double posting, corrected it and now you have a corrected version of the statement.

**Commissioner Ronald Eclavea:** So his balance is \$3,500.

**Chairman Anthony Ada:** When was the double posting?

**Karen Charfauros:** According to Joey I think in November.

**Chairman Anthony Ada:** I don't see it here in November.

**Karen Charfauros:** I can't speak for Joey and how he corrected the mistake.

**Chairman Anthony Ada:** It doesn't show in the statement at all.

**Commissioner Antonio Sablan:** For accounting purposes they need to show the reversal of the double posting and it doesn't show in this one.

**Chairman Anthony Ada:** Oh boy! We discussed the \$3,500 and we pressured him for that and then he came through with it I was under the impression he (inaudible).

**Commissioner Maria Cruz:** Which he was aware of which I understand.

**Chairman Anthony Ada:** Which Joey?

**Karen Charfauros:** Joey Cruz.

**Commissioner Maria Cruz:** Mr. Chair he was still in arrears because he paid \$3,000 but he still has a balance of \$500 as of December.

**Commissioner Antonio Sablan:** And now January is here. Mr. Chair I would like to move we give Tran Steel another 30 days to pay everything off otherwise we terminate the contract.

**Chairman Anthony Ada:** There is a motion.

**Commissioner Ronald Eclavea:** His whole discussion was him trying to catch up and make payments and he couldn't come up with a commitment to pay a minimum of \$500 when you look over the minutes he says he is going to try he was not basing it on his company picking up he never gave us a set date or amount he was just asking to give him until this year he never said he was going to be on time with payments.

**Chairman Anthony Ada:** He did make a payment on December 13 of \$3,000. And based on the statement that we were looking at back then he needed the \$3,000 to bring his account current but then a double posting is discovered.

**Director Michael Borja:** I have asked Joey to come down, we will wait for him.

**Commissioner Ronald Eclavea:** Mr. Pearson must have known about that he knew he has a balance of over three grand and not saying anything about it

**Commissioner Antonio Sablan:** The problem is we didn't establish that.

**Commissioner Ronald Eclavea:** Although he did state that he was going to catch up, he was probably implying that he would catch up.

**Deputy Director David Camacho:** When you go over the minutes he is asking the balance of \$3,000 be paid up in June and it was through Laguna's motion he came out with the motion to pay by December 10 of last year which he did on December 13 (inaudible).

**Karen Charfauros:** When you look at the posting for 10/31/2016, payment number 204, that was the payment double posted according to Joey Cruz.

**Chairman Anthony Ada:** Which one?

**Karen Charfauros:** 10/31/2016, payment number 204.

**Commissioner Antonio Sablan:** But on the statement it shows only one posting.

**Karen Charfauros:** I don't know how he corrected it.

**Commissioner Anita Orlino:** He is coming down right?

**Director Michael Borja:** Unfortunately he is at a medical appointment.

**Commissioner Antonio Sablan:** I then withdraw my motion.

**Chairman Anthony Ada:** Let's continue to discuss this. We laid out what we wanted and he had until December 10, 2016 and if you look at page 14 towards the bottom.

**Commissioner Ronald Eclavea:** What he is saying Mr. Chair : "**Commissioner Antonio Sablan:** So in June you will pay everything?**Mr. John Pearson:** Yes, It doesn't have to go ten months period I will pay the \$500 months and additional \$300 the balance by June of next year.  
**Mr. John Pearson:** That is why I will pay the \$800 a month.**Commissioner Ronald Eclavea:** If we commit to six months are we tying our hands that might be a legal matter, of course we can evict you. **Mr. John Pearson:** That's right, if I don't pay the \$800 every month I give up that area". (page 7 of November 30, 2016 minutes).

**Chairman Anthony Ada:** We already pass that discussion and it came to the point where we were giving him to the first week of December to get caught up and everybody was under the impression it was \$3,000. I am bringing your attention to the bottom of page 14 where Pearson says: *If I come up with \$3,000 by December everything will be okay right?* That's where he understood came up with the \$3,000 but based on the erroneous statement we were basing that on ultimatum on him.

**Director Michael Borja:** Was he told about the error?

**Karen Charfauros:** Yes. Joey told him as soon as he found out.

**Director Michael Borja:** Which was?

**Karen Charfauros:** I think in December.

**Director Michael Borja:** Before he came in to pay?

**Karen Charfauros:** Probably when he came to pay that is my guess.

**Chairman Anthony Ada:** We need to know for sure.

**Commissioner Ronald Eclavea:** But it is after our hearing that he was notified?

**Karen Charfauros:** Yes.

**Commissioner Maria Cruz:** Karen, he was made aware of the double posting?

**Karen Charfauros:** Joey informed him of the double posting.

**Commissioner Maria Cruz:** After he made a payment?

**Karen Charfauros:** I don't know. Joey said that Mr. Pearson said he was current, that he made a \$3,000 payment twice and Joey's responses was if you have that second receipt then bring it in and Joey will correct it. So he knows.

**Chairman Anthony Ada:** He knows sometime in December?

**Karen Charfauros:** Yes.

**Chairman Anthony Ada:** The double posting was for \$2,500 not \$3,000.

**Director Michael Borja:** He was invoiced a couple more \$500

**Commissioner Anita Orino:** Next time this statement is prepared place there "prepared by" so we know which Joey, a signature and his title and the date.

**Chairman Anthony Ada:** Did Mr. Pearson know he was on the agenda today?

**Karen Charfauros:** (inaudible) he also suggested he make payment before today's meeting so you could make a decision to extend or not.

**Chairman Anthony Ada:** Do you still want to withdraw your motion?

**Commissioner Antonio Sablan:** I will re-state it: I move we give him 30 days to be contacted and to come before us and hopefully make a payment, receive some sort of agreement to pay us he was supposed to pay us \$300 plus the \$500, if he does not follow through automatically terminate this agreement.

**Commissioner Maria Cruz:** Mr. Chair we have not renew the permit and he is there without a renewal agreement but I agree that in all fairness, although he may be aware for if he knows that he owes more than the \$3,500, in all fairness we should give him not 60 days but 30 days to pay up and 30 days to move out if he doesn't pay up.

**Commissioner Antonio Sablan:** Our problem is the 30 days is our next meeting I would like for him to be here to talk to us.

**Chairman Anthony Ada:** So the motion is to contact Mr. Pearson and have him appear at our next meeting due to our misunderstanding of what he owes, we hovered around him paying \$3,000 even though he has been advised he owes more I think we made a mistake. The motion is to give Mr. Pearson to come current.

**Commissioner Anita Orino:** In 30 days.

**Commissioner Ronald Eclavea:** And clarification as to what is going to happen next right? But his motion was to automatically terminate.

**Commissioner Antonio Sablan:** He be here at our next meeting to discuss it and we have to come up with an agreement if we don't we automatically terminate him.

**Commissioner Ronald Eclavea:** So automatic termination after. Has it been seconded?

**Commissioner Louisa Wessling:** No it hasn't.

**Commissioner Antonio Sablan:** Let me re-phrase my motion: That he be contacted, made fully aware, also that he appears at our next meeting and we discuss what the solution is and then we will go from there.

**Commissioner Ronald Eclavea:** I second it.

**Chairman Anthony Ada:** It has been moved and seconded. Additional discussion.

**Commissioner Maria Cruz:** First of all we can't be waiting to do this stuff we have a staff to go ahead and give a notice update his payment with 30 days, give him a clear time frame and if he does not do this we will give him another 30 days to move out if you want but if he wants to come in that same time frame to discuss it that notice is enforced unless something happens during the meetings to come up with an alternative but we really should not be waiting. We meet once a month hopefully we will meet twice a month.

**Commissioner Ronald Eclavea:** So you want him to amend his motion?

**Chairman Anthony Ada:** The motion is to have him appear in the next meeting in 30 days

**Commissioner Antonio Sablan:** Whenever our next meeting is.

**Commissioner Ronald Eclavea:** He amended his motion to clarify and have him appear

**Commissioner Antonio Sablan:** And to come up with a solution a bilateral conclusion.

**Chairman Anthony Ada:** In the discussion Mr. Pearson doesn't have to wait 30 days he can come up current.

**Commissioner Antonio Sablan:** We will pressure him to collect the money.

**Commissioner Louisa Wessling:** It should be noted to that effect that he is not current and right now his license is expired he is there on a month to month, is that what it is? Or actually it should be .....does the license say that if the license is expired it goes into month to month, does it say that?

**Director Michael Borja:** No.

**Commissioner Louisa Wessling:** No. then he is there illegally.

**Chairman Anthony Ada:** What kind of correspondence are we sending him that he is past due just the statement or do we give him an actual letter?

**Director Michael Borja:** I think we have been giving him the statements, pending this motion we will be giving him a formal letter.

**Commissioner Louisa Wessling:** I agree with Commissioner Sablan that there was an error made last month, I agree to give him another 30 days to come in and pay up the balance and if he doesn't he should come to the board with some kind of payment plan to pay off his balance and I don't think he should continue to be there and incur lease payments

**Commissioner Ronald Eclavea:** When he presented his case trying to get it until next year he wanted that to try and catch up excuse me but I can't find what our decision was but did we say get it current by the end of this year and then we will discuss if we are going to renew his contract because he was asking us to give him a renewal but he owes us didn't we say come in and bring this up to par and we will consider his renewal.

**Chairman Anthony Ada:** That is what we did but we told him \$3,000 and he reiterated it on page 14.

**Commissioner Ronald Eclavea:** So we never agree to it we said "no".

**Commissioner Louisa Wessling:** We said "no" but we wanted some kind of guarantee he was just proposing to make monthly payments but we said what guarantee did we have based on that we asked for a guarantor, somebody who will guarantee that those payments will come in or we told him also to get the money from someone else we didn't just want the promise to pay we wanted it to be backed up, we wanted financial statement from him and a guarantor for what he was proposing at the same time he was saying he would make the payments, he did make a payment and he thought that would bring him up to current based on what was presented to him the last meeting then he was later told about the double posting and he owed another \$3,000.

**Commissioner Antonio Sablan:** Real estate law says that if you are in a lease agreement at the end of that lease agreement it automatically triggers a month to month. So I think what we should do also is give him an advise on our intent to terminate this contract if he doesn't meet with the board to have an ultimate decision because I don't want to give him ten days and we are giving him another thirty days.

**Commissioner Louisa Wessling:** No we don't want that.

**Commissioner Antonio Sablan:** We give him the thirty days now.

**Commissioner Maria Cruz:** He needs to be reminded that his permit is not renewed and he is on a month to month just to make it clear.

**Commissioner Antonio Sablan:** We don't want to give him another thirty days to terminate his contract we want to start that clock of termination ticking based on your action between now and our next meeting.

**Commissioner Maria Cruz:** So you want to include the pay up deadline within the thirty day

**Commissioner Antonio Sablan:** Pay up or come to the board and meet and have an alternate decision remember .....

**Director Michael Borja:** We are not terminating him it is already over because in the act of terminating him there is an adjudication process that we have to go through which requires a hearing and all that stuff so in this case his license has already expired and we haven't chosen to renew yet so his conditions will be you gotta pay it off to express your desire to continue another license agreement based on your account and your ability to stay current if we do enter into another agreement it will be based on stipulations.

**Commissioner Louisa Wessling:** He is still occupying the premises so we need to give him the notification to move out.

**Commissioner Antonio Sablan:** Is he still occupying the place?

**Commissioner Antonio Sablan:** I passed by a couple weeks ago and he was there. I didn't know where his lot was and he came up to my car.

**Chairman Anthony Ada:** I think in the process of getting him out of there we need paper, more than just a statement more than just being mailed to him there has to be conversation that he is past due, something in writing.

**Director Michael Borja:** That is what we are going to do and it will be served to him so we have proof we delivered it to him and we do have process servers.

**Chairman Anthony Ada:** Can that letter include the last meeting of November 30<sup>th</sup> and the chain of events on a certain day and notify him of the double posting and ask him to clear his statement he doesn't have to wait for the next meeting and that way we will allow him to come to the next meeting and clear it then at the next meeting we can entertain giving him a new license.

**Commissioner Ronald Eclavea:** Especially since he doesn't have a permit now it is incumbent on him to come in and try and do his best to get another authorization to use the property, he doesn't have anything right now.

**Chairman Anthony Ada:** My concern is we have two examples of licenses issued that are in court now and Attorney Finney mentioned that whether you call it a license or a lease he can say that on the November 30<sup>th</sup> meeting you pay \$3,000, whether or not he knows he is \$3,000 behind, we asked him to pay \$3,000. We better get that paper work in order. I wish Attorney Finney were here. He can always get a lawyer and he will say you said pay the \$3,000 we know that can be pushed out looking at the two license cases. So it was moved by Commissioner Sablan and seconded by Commissioner Orlino.

**Commissioner Maria Cruz:** Can you repeat the motion?

**Commissioner Antonio Sablan:** Appraise him and document all the issue, the error that was posted, the fact that he owes \$3,000 and counting we will allow him to appear before the board to discuss a solution or an alternative in making that payment, otherwise I could like to include the statement made by the director, appraise him, fully document and inform him we don't have an existing contract and if he wants to renew that contract we will consider it at the next board meeting.

**Commissioner Maria Cruz:** And he has thirty days to update his payment and if he does not within that thirty days make a payment he does not have an existing permit.

**Commissioner Antonio Sablan:** That is what the director said he will write a letter with the details.

**Commissioner Ronald Eclavea:** It is expired right now.

**Commissioner Antonio Sablan:** I am not familiar with licenses versus lease contract.

**Commissioner Maria Cruz:** Is it necessary for us to let him know that he has to move out without us letting him know.

**Commissioner Louisa Wessling:** Yes it is.

**Commissioner Antonio Sablan:** The letter from the director will do that, does it need to be signed by the chair.

**Director Michael Borja:** We will both sign it.

**Commissioner Louisa Wessling:** Are we allowed to rephrase? I am getting a little confused and I just want to keep it simple just tell me if this is what you have in mind okay: "one, appraise him of the error in the posting, notify him of his balance that's due, these are formal notifications, serve notice of the outstanding balance that is due that it needs to be paid up in the next thirty days, the notice is to include that the license has expired and he is illegally occupying the premise and to vacate unless payment is made in full I think that is the actual (inaudible) at this point in time.....we could include that if paid in full if there is a desire to continue he could come to the board with a future proposal, he needs to make everything current otherwise he is there illegally and he needs to vacate and he has thirty days to do that.

**Commissioner Maria Cruz:** And you should highlight current, because he didn't pay December's rent, December, January, and February is going to be due.

**Commissioner Louisa Wessling:** I know and we want to stop that bleeding because that is what it is.

**Commissioner Maria Cruz:** So I think the letter should include how much he needs to pay to be current.

**Commissioner Louisa Wessling:** The notice will have that broken down what he needs to pay within the thirty days.

**Chairman Anthony Ada:** I am looking at this statement everybody look at April 13, invoice 168, he was invoice April 13, 2016 invoice number 168 made due August 3<sup>rd</sup> 2016 and it is for \$50 what is that?

**Director Michael Borja:** That is the NSF.

**Chairman Anthony Ada:** So we invoice him April 13, 2016 for \$50 and he doesn't have to pay until August? Look at the description.

**Director Michael Borja:** The payment 136 was invoiced for January 2016, when the payment was received at some point it was part of that \$1,000 most likely then it was found to be non-sufficient of funds that is when he made the reversal on the ledger and then charged him the \$50 on April 13 when the payment came back. See payment was made in April 6, that was for October and November, we were just applying those things but it was for number 136.

**Commissioner Louisa Wessling:** Maybe he meant October and November of 2015. That payment received in April was for October and November 2015 not 2016.

**Chairman Anthony Ada:** Looking at this, this statement still has a problem. Does quickbooks balance at the end of the day in the main computer?

**Director Michael Borja:** No. there is a separate ledger, there is another person that maintains a separate ledger account and they cross check. We didn't get the system stood up until late last year so he was backfilling all the information from the time it was opened up in 2014 and that is what is going on with this whole process this is something we have been doing on-going it is something he had to start up and transfer all the information and he has been cleaning it up to get it ready for the auditors and the audit was just completed.

**Chairman Anthony Ada:** It was moved and seconded and based on what Commissioner Wessling said are we clear? We put it to a vote, Commissioner Orlino?

**Commissioner Anita Orlino:** I approve.

**Chairman Anthony Ada:** Commissioner Sablan?

**Commissioner Antonio Sablan:** I approve

**Chairman Anthony Ada:** Commissioner Wessling?

**Commissioner Louisa Wessling:** I approve.

**Chairman Anthony Ada:** Commissioner Cruz?

**Commissioner Maria Cruz:** I approve.

**Chairman Anthony Ada:** Commissioner Eclavea?

**Commissioner Ronald Eclavea:** I approve.

**Chairman Anthony Ada:** And that letter will be drafted.

**Director Michael Borja:** I will send you a draft.

**Chairman Anthony Ada:** Okay.

#### **IV. Old Business**

##### **B. MOU GEDA**

**Chairman Anthony Ada:** Dong, you also have a report to give you want to do both?

**Mr. Dong Choe:** Yes Sir.

**Chairman Anthony Ada:** The MOU with GEDA is due in July and this was placed on the agenda to continue discussions does anyone have question about the GEDA MOU?

**Commissioner Maria Cruz:** I just want to remind everyone that although it expires in July we really should have an on-going discussion until the month of April.

**Chairman Anthony Ada:** Are there any questions about the GEDA MOU?

**Director Michael Borja:** The commissioners need to make an understanding that whatever kind talks we want to do with GEDA we need to be clear in fact even by resolution an MOU with GEDA and under the conditions that you want to agree with to include whatever services you want to provide the commission, commission payments and what you are willing to pay too will probably be the basis be the resolution will be the approval of the MOU. So the MOU and the resolution will be coming at you at the same time to approve and sign off on the documents leading up to that we need to know what services we want to pay for and what services we get back from them when they do something for the commission.

**Commissioner Maria Cruz:** Especially time frame of services

**Commissioner Antonio Sablan:** Where is the MOU with GEDA?

**Chairman Anthony Ada:** it is not here.

**Director Michael Borja:** You don't have a draft here, as you move into the next level with GEDA the commission need a concurrences as to what the commission wants to have, services from GEDA and what you expect from them and what you agree to pay for those services and that will both put down as an MOU and resolution concurring to enter into this MOU.

**Commissioner Antonio Sablan:** Could I have a copy of the existing agreement?

**Karen Charfauros:** I will send it.

**Commissioner Antonio Sablan:** I need to know what are we going to change.

**Chairman Anthony Ada:** Please review your existing MOU with GEDA and bring back your feedback and any revisions you want to make.

**Director Michael Borja:** My recommendation is to have a committee of commissioners to work on that in the technical format so we can get to that point of understanding of what we want to do and then we can start discussions and get it done ernst because April is really not that far away it is already February.

**Commissioner Maria Cruz:** Any volunteers?

**Commissioner Antonio Sablan:** I will

**Commissioner Louisa Wessling:** I will

**Commissioner Maria Cruz:** I will.

**Chairman Anthony Ada:** And I will too that makes four. We can communicate by email.

**Director Michael Borja:** We should have an initial meeting so we will coordinate that.

**Chairman Anthony Ada:** we can go into your report.

**Mr. Dong Choe:** Hafa adai my name is Dong Choe I have four items and when we get to N14 for Apra Harbor I will talk about the RFP. So Apra Harbor parcel 1 that is Kwik Space. Last year when we were reconciling the files along with department of land management it was discovered back in 2013 the annual 1% wasn't applied we recalculated everything with land management to come up with the remaining balances a notice of arrears in the amount of \$688.44 has been sent to Kwik Space so we can bring that account to zero. Currently the private sector DC's are at zero minus Kwik Space, Northern Market just started, and there are the arrear issues with the government of Guam.

**Chairman Anthony Ada:** They are the ones that are good about making their payments right?

**Mr. Dong Choe:** Yes. They are good about making their payments. In my view it was an administrative slip for sure they completely missed one year I believe it escalated until it was caught last year. The 1% is very small amount twenty dollars per month accumulated it came out to this amount but once they make this payment they will be completely zeroed out. If they make this month payment the remaining balance is \$688.44.

**Chairman Anthony Ada:** In other words they are still looking to validate what you notified them for otherwise they would have just paid it.

**Mr. Dong Choe:** I was looking at land management to make sure both our books are reconciled before I send them the NOA, notice of arrears, but I was given instruction by my bosses to get our first quarter calendar year to get all our accounts to zero this we are moving forward with.

**Chairman Anthony Ada:** When you say land management what do you mean?

**Mr. Dong Choe:** I work closely with Joey Cruz because we have different accounting systems we want to make sure our books reflect what Joey Cruz has showing.

**Chairman Anthony Ada:** So it was only in the year 2013?

**Mr. Dong Choe:** So what happen was in 2012 the 1% was applied in May in May they get a 1% increase in 2012 May it as applied in 2013 it wasn't applied in 2014 it was applied. Because it was missing for that one year it just escalated to that amount.

**Chairman Anthony Ada:** This is ground lease?

**Mr. Dong Choe:** Yes.

**Chairman Anthony Ada:** Those properties have a land management property number right? It is not in the books as Apra Harbor Parcel 1 is there a lot number we can reference?

**Mr. Dong Choe:** I can get that for you. But that might be because portion of portion of lot Apra Harbor reservation F-12, N14-1 Polaris Point is what the entire parcel is called. Any more questions for Apra Harbor number 1.

**Commissioner Louisa Wessling:** So it was only in 2013 that the annual increase was not applied?

**Mr. Dong Choe:** Yes.

**Commissioner Louisa Wessling:** 2014, 2015 was but because it wasn't applied in 2013 it skewed and messed up so the \$688.44 represents a complete correction of everything?

**Mr. Dong Choe:** Yes, and that is why it took so long to reconcile both books.

**Commissioner Louisa Wessling:** Thank you.

**Mr. Dong Choe:** Anymore questions? Moving on to Apra Harbor Reservation F-12 (Polaris Point) Matson Navigation Company, I spoke to Ms. Valencia a couple weeks ago on the cleanup efforts on the property, I will follow up again to see if there are any updates. A portion of Apra Harbor Reservation F-12 (Polaris Point) we need the commission's approval to move on with the RFP. what happened after January 5<sup>th</sup>, the commission approved to proceed forward with the determination of need. The determination of need has been advertised there was no public comment, so now it goes from the commission to the governor and then the governor transmit's it to the legislature, once the transmission happens then we can move forward with the request for proposal. What you have in front of you is the request for proposal once you approve this we will move forward with the bidding process.

**Director Michael Borja:** Who is preparing the documents to transmit to the governor? Us?

**Mr. Dong Choe:** The determination of need is already done it has been advertised it just needs a letter from the commission to the governor.

**Director Michael Borja:** So the commission needs to put together the transmittal letter?

**Mr. Dong Choe:** That is because of the way the law was written you are not an autonomous agency. Once the governor sends it to the legislature we can move forward with the RFP. The RFP is general we added a couple things in there for the environmental section because of what happened with Balli Steel and Brand INC we wanted to emphasize the importance of the environmental aspects of it, also in the lease section the rent section the offers and requirement we added that because if they lease the property as a whole there is cleanup that needs to be done in the Balli and Brand property we then leave it up to where if the commission, it is your ultimate decision, there is the possibility of cost sharing the cleanup offsetting the cost of the cleanup of the property, of course it is the commission's prerogative on how to move forward on that if they do lease out that section of the property cleanup will have to happen there is no way around it.

**Commissioner Ronald Eclavea:** Total of 13 acres.

**Mr. Dong Choe:** Yes, this is a broad RFP that is why we call it portions of N14 we left it so they can lease it as a whole or as a section because we are not sure about the discussions between Ancestral and the license with Balli Steel we just wanted to move forward with the RFP because we have been holding on this for a while we want to lease it out.

**Chairman Anthony Ada:** Do we any indication of the cost for cleanup?

**Mr. Dong Choe:** No sir we do not have an estimate for the cost for cleanup.

**Chairman Anthony Ada:** So you are saying we clean it up ourselves or we cost share with prospects.

**Mr. Dong Choe:** Within the RFP we are not saying that we are going to but we are emphasizing that there is a possibility that the landlord may cost share or use other methods like lease abatement for the cost of cleanup because it is going to be a large investment and at the end of the day if they do cleanup that property and passes the environmental phase two future leases will be much easier. You will find out from the tenant what the cost is from the environmental phase one.

**Chairman Anthony Ada:** When you say environmental phases EPA will go in there and inspect it?

**Mr. Dong Choe:** Yes. So what we do is require our tenants to do a phase one inspection at the beginning and when the lease ends do a phase two. So Knik did a phase one and then back in December they did a phase two when the lease ended. For us to lease the property we need to say this is an environmentally safe property so we require this.

**Chairman Anthony Ada:** And we have that in place now at least for the Knik property.

**Mr. Dong Choe:** Yes and for Northern Market also.

**Chairman Anthony Ada:** Do we have for the Balli Steel area?

**Mr. Dong Choe:** No. Balli and Brand is interesting they were terminated they closed shop and left. So there was no way for Ancestral or GEDA to enforce this. From my understand environmental phase one and two are required.

**Chairman Anthony Ada:** Is it in our MOU that you will do the phase 2?

**Mr. Dong Choe:** No that is not.

**Director Michael Borja:** You can put that a part of the security deposit whoever is going to become the lessee and they will be responsible of any activity.

**Commissioner Maria Cruz:** Is this the area we inspected?

**Commissioner Louisa Wessling:** Yes.

**Commissioner Maria Cruz:** I have a lot of pictures with big barrels. There is really dark water.

**Mr. Dong Choe:** That is something we try to do Ancestral doesn't pay up front for the leases like Kwik Space will be coming up for appraisal the way the lease is written is kind of skewed we did send them a letter stating this is their tenth year you are supposed to get an appraisal they might come back and say the appraisal is for after the tenth year, they renew every ten years for the fair market value but we always make sure it is incumbent on the tenant to pay for any additional expenses we try not to put any burden on the commission. If that portion of the property gets leased out will be borne by the tenant they have to do the environmental assessment.

**Commissioner Antonio Sablan:** So you are asking the board to move ahead on this?

**Mr. Dong Choe:** Yes. We want to send out this RFP as soon as possible because the process itself is very lengthy even though we rank this it still has to go to the legislature, there has to be a public hearing they have to approve it by law, it is not just the commission that approves the lease anymore they have to approve it by law or reject it by resolution.

**Director Michael Borja:** The top offer?

**Mr. Dong Choe:** We find the top offer, we go through the negotiation and before we sign the lease it then goes to the legislature and there is a ninety day period and by law they approve it. I gave the Chairman a copy of this flow chart.

**Chairman Anthony Ada:** I think there is language in the law that if the legislature doesn't act on it, it is considered approved.

**Mr. Dong Choe:** Yes but then the law is specific it is only approved by law; they have to approve it by law or reject it by resolution. 32-40 is very different from any of the leases we have done and if this goes through it will be the first one to go through this mechanism. There is no other lease in place that has gone through 32-40 so this is brand new for everyone. So we are taking a lot of precautions.

**Chairman Anthony Ada:** Could you find out what it will cost to clean the place up?

**Mr. Dong Choe:** We can try and ask for an estimate I will get back to you on that.

**Commissioner Antonio Sablan:** We are sitting on this property and Balli Steel owes us \$50,000.

**Chairman Anthony Ada:** What are the collection efforts for Balli Steel and Brand?

**Mr. Dong Choe:** Balli Steel we sent them certified letters and they were all returned. Brand Inc., and this is just by coincidence, someone in our office went to the Northern Islands, to Saipan for a funeral ran into someone that was working at Brand Inc. we got a contact number I have been calling and no one answers, we are trying. It is hard to collect when they don't have an office, they are not on island.

**Chairman Anthony Ada:** Is there a statute of limitation that says if we don't act we have no recourse.

**Mr. Dong Choe:** I am not sure if that applies to.....

**Commissioner Maria Cruz:** As long as you are making effort to collect but if you stop and two years go by kiss it good bye.

**Mr. Dong Choe:** We sent certified mail twice in 2012, 2013 and there is no way to get in contact with these people because they don't exist on island.

**Director Michael Borja:** They do exist.

**Commissioner Louisa Wessling:** Who are the representatives of Balli Steel?

**Commissioner Maria Cruz:** Joe Arceo.

**Commissioner Antonio Sablan:** Joe Sicat.

**Commissioner Louisa Wessling:** Joe is around.

**Mr. Dong Choe:** He is here?

**Commissioner Louisa Wessling:** Joe is on island sure.

**Mr. Dong Choe:** I will follow up with that because we have been reaching out.

**Commissioner Anita Orlino:** Are they still doing business?

**Commissioner Louisa Wessling:** I am not quite sure the lease was with the corporation but some of the representatives of the defunct corporation are still on island I think Benny Bello is here.

**Chairman Anthony Ada:** I have mentioned this before but the corner of route 16 and the Harmon loop road, the Bank of Guam there, on the second floor Balli Steel name is on that door

**Mr. Dong Choe:** Balli Steel?

**Chairman Anthony Ada:** Together with market research.

**Mr. Dong Choe:** Second floor? Back in 2015, 2016, we sent an inquiry to department of revenue and taxation on the status of their business license and whether these entities in business on Guam they told us in June and business license renewal is in May, if there was a business in existence they had to renew by May. So there was no new business licenses for these two businesses, I sent the letter to the Director and Deputy Director, rev/tax sent it to me.

**Commissioner Antonio Sablan:** I think we are spinning our wheels on this, the last discussion we already know they did not renew their license and the problem with corporations are they are a limited liability unless they try to screw you financially you can't go after the shareholders. A corporation is a living entity treated by law. Past discussion I have asked you to check department of public works because if they have heavy equipment it has to be registered with them, have you checked on that? You keep checking with rev and tax and you know you will not get any results.

**Mr. Dong Choe:** I haven't checked public works but I have checked rev and tax

**Commissioner Antonio Sablan:** We discussed checking public works.

**Mr. Dong Choe:** I believe we only discussed rev and tax.

**Commissioner Antonio Sablan:** We already know they are not filing anything with rev and tax so the next question is what assets do they have? Do they have land, properties in Guam, leasehold or anything else they might have that we could latch onto. We don't want to spend lawyer fees to get them but if they do, let us get them.

**Mr. Dong Choe:** I am just going to remind you that this is a lease that was terminated half a decade ago. Tomorrow I will go to Bank of Guam Harmon to see if they really exist and if they do I will contact rev and tax and ask why they told me these businesses don't exist because it doesn't make sense and then we will figure it out.

**Commissioner Antonio Sablan:** Can you check with public works what assets do they have?

**Mr. Dong Choe:** Yes.

**Commissioner Antonio Sablan:** Otherwise we are wasting our time and you are saying the land expired a half a decade ago and we are still sitting on it

**Mr. Dong Choe:** It is a company that doesn't exist according to rev and tax, it is like you said sir it is a corporation/LLC we can't go after shareholders unless we can prove there was negligence.

**Chairman Anthony Ada:** Negligence meaning?

**Mr. Dong Choe:** That they were purposefully negligent within the corporation but when I checked the history of this because this was way before my time, it was always GEDA's position to terminate this lease because they had a history of non-payment, the commission was very nice they allowed them to continue.

**Commissioner Antonio Sablan:** Are you going to check public works and other places?

**Mr. Dong Choe:** I can check with public works as long as you don't get mad at me if I find nothing I remember Commissioner Eclavea or Laguaña stating that the equipment was in decrepit condition.

**Commissioner Antonio Sablan:** Do something other than revenue and tax they may be operating illegally because they are not properly license my concern is do they have assets.

**Mr. Dong Choe:** I will get in contact with public works to see if they have assets in the two companies.

**Chairman Anthony Ada:** These two companies are taking up space. Do you have the breakdown of the actual rent and penalties of Balli Steel? Do you charge them interest?

**Mr. Dong Choe:** For the late fees we do, it stopped when we terminated the contract, so everything they owe plus late fees up until we terminated their contract.

**Chairman Anthony Ada:** Can you break that down?

**Mr. Dong Choe:** Yes.

**Chairman Anthony Ada:** Same thing for Brand Inc. you mention here that they are not locatable but you put here that your office was in contact with Roberto Cruz.

**Mr. Dong Choe:** That is the one I was talking about, someone in our office went to Saipan for a funeral ran into someone that was working at Brand Inc. I am not sure what this person was doing at brand Inc. we got a contact number I have been calling and it's not working.

**Chairman Anthony Ada:** But take a look at you narrative here Mr. Roberto Cruz is the person your co-worker, saw in Saipan?

**Mr. Dong Choe:** Yes, it was something no one expected.

**Chairman Anthony Ada:** And Roberto Cruz said he would make a payment by the end of this year?

**Mr. Dong Choe:** Yes, that is what he told my co-worker, there is nothing in writing just a conversation.

**Chairman Anthony Ada:** This year 2017?

**Mr. Dong Choe:** This year 2017 because it was just communication between two people that ran into each other.

**Chairman Anthony Ada:** Did you get an address?

**Mr. Dong Choe:** No but I have his phone number.

**Commissioner Antonio Sablan:** Are you talking about Roberto Cruz? He is right here in pick-a-nail street I don't know if he is operating under Brand Inc.

**Mr. Dong Choe:** I will definitely follow up and I did try to call him and I did hear of a Brand Inc operating here in Tamuning. It was in my past reports that I made a phone call there, they weren't answering, their number wasn't working it was in the phone book because I started looking back since 2015, that is when we went to rev and tax.

**Chairman Anthony Ada:** You say both these companies don't have an active business license.

**Mr. Dong Choe:** I have that in email from rev and tax.

**Chairman Anthony Ada:** Is that a requirement Commissioner Sablan that when they close the business they have to abandon the license?

**Commissioner Antonio Sablan:** It is supposed to be but how many actually do it, in any inactive corporations I takes fifty years for it to be gone. Most corporations when they lose money they just abandon it they are supposed to file a liquidation and terminate.

**Mr. Dong Choe:** But I will talk to DPW.

**Commissioner Antonio Sablan:** Have you checked if Balli Steel has anything in the CNMI?

**Mr. Dong Choe:** No. I have not checked regionally and it's beyond our restriction to. Where is Brand Inc.

**Chairman Anthony Ada:** Pick-a-nail street, as you go up Denny's and AK just go straight back to the micro school supplies on the right hand side.

**Commissioner Antonio Sablan:** It is a big lot with big tanks

**Chairman Anthony Ada:** It used to be Rhino Lining.

**Mr. Dong Choe:** Any more questions on Brand and Balli? I will do all the follow ups next week and I will send an email to DPW.

**Commissioner Antonio Sablan:** See if you can call Saipan.

**Mr. Dong Choe:** Rev and tax in Saipan?

**Commissioner Antonio Sablan:** Yes. They might be registered there.

**Chairman Anthony Ada:** The phrase at the top of the second page it says legal Counsel even if a law suit were pursued there would be nothing left to collect from a non-existing corporation with no assets

**Mr. Dong Choe:** That was from Attorney Finney.

**Chairman Anthony Ada:** You were in consultation with our legal counsel?

**Mr. Dong Choe:** I brought it up because I asked her how to proceed because they are a non-licensed corporation and that was her reply.

**Chairman Anthony Ada:** So maybe you need to draft a letter regarding these two companies recommending to us to take it off the books.

**Mr. Dong Choe:** I have been talking to Joey about that and I believe he did take it off the books because we are not able to collect from them it becomes a non-collectable.

**Chairman Anthony Ada:** As property managers can you write something in reference to these two.

**Commissioner Antonio Sablan:** And state all the efforts you made to find them.

**Mr. Dong Choe:** So in next month's commission meeting I will report on my efforts with DPW and CNMI and I will visit the two locations if I find them, they may exist under a different corporation or DBA but in the 2015 email from revenue and taxation I was told these companies do not have any licenses.

**Commissioner Antonio Sablan:** Licenses are renewable every year if they fail to renew it that does not mean they do not have properties and assets.

**Deputy Director David Camacho:** Bob Cruz is collecting parking fees at the old flea market I have been telling GEDA that for the longest time.

**Mr. Dong Choe:** At where?

**Deputy Director David Camacho:** Up in Dededo the old flea market where the old warehouse across GTA after you pass the soccer field the first building.

**Commissioner Antonio Sablan:** Bob is really working for Joe Perez, who is well off I think he owns Papa's among other properties in Guam.

**Chairman Anthony Ada:** Is Bob Cruz the only guy in the Brand Inc. corporation?

**Mr. Dong Choe:** We don't keep copies of their bi-laws only their lease.

**Director Michael Borja:** Check their annual report that they file with rev and tax.

**Commissioner Louisa Wessling: (inaudible)....**a resolution of allowing by the board of directors whoever is signing when they enter into the lease agreement

**Director Michael Borja:** The annual report list the corporate officers.

**Commissioner Antonio Sablan:** The articles of incorporation and the bi-laws will list all that those are available at rev and tax.

**Mr. Dong Choe:** Any other questions for Balli and Brand? WSTCO is still in litigation; Northern Market rental abatement ended on December 31, 2016 we invoiced them in January and we also received a cc request to get a new map to remove the portion that is in litigation.

**Director Michael Borja:** Who is working on that we are supposed to correct a map?

**Deputy Director David Camacho:** I spoke to Kristan on that (inaudible).....

**Director Michael Borja:** No. so we need to correct the map the only thing holding up the map is it included a description does not fit a part of the .....

**Mr. Dong Choe:** An according to Mr. Camacho's letter he said he would make a payment at the end of this month for the invoice. He is off island right now but we will keep an eye out for the difference and when the difference comes in I am not sure how the commission plans to offset the actual difference. If it is \$3,000 less we can abate it or some other way we can fix it but we will cross that bridge when it happens.

**Chairman Anthony Ada:** But you can calculate it now and be ready for that.

**Mr. Dong Choe:** We don't know the actual difference yet. The map has to come out with actual numbers that they are occupying because their rental is per square meter so we need to know the actual amount to invoice them. This was a recent request so it is going to take some time.

**Chairman Anthony Ada:** How much time?

**Mr. Dong Choe:** It is up land management.

**Deputy Director David Camacho:** We just received the request a couple days ago. Give us about ten days.

**IV Old Business**  
**C. WIC & GEPA MOU**

**Mr. Dong Choe:** Going into the two licenses we were notified that Ancestral will be handling it on their own I did add in the section that we will continue to manage the property for GALC until the new license has been signed unless the commission moves forward with it unless the invoice that goes out into the beginning of the month we are not sure Ancestral will submit the invoices.

**Chairman Anthony Ada:** We are looking at the MOU's.

**Commissioner Antonio Sablan:** Back to Balli Steel we are discussing efforts on collections what do we do with the land in the meantime it is just sitting there.

**Commissioner Ronald Eclavea:** That is the RFP right here.

**Mr. Dong Choe:** That is what I was going to ask the commission can we move forward with the RFP? All we need is the approval from the commission.

**Director Michael Borja:** The determination of need is 50 plus 49, the time period?

**Mr. Dong Choe:** Yes.

**Director Michael Borja:** That is a long time.

**Mr. Dong Choe:** It's up to 50 plus 49.

**Director Michael Borja:** It is up to fifty years plus forty nine option.

**Mr. Dong Choe:** And that was because when we presented the original leasing of the property PL 32-40 came into effect. I believe it was commissioner Eclavea said what if they don't want to lease it for more than five years.

**Director Michael Borja:** The determination of need specifically requested for the 50 plus 49?

**Mr. Dong Choe:** It is up to.

**Director Michael Borja:** Up to 50 plus an option for 49 more?

**Mr. Dong Choe:** Yes. The determination of need we just did that way in case they want to lease the land for 99 or 50, anything more than five.

**Commissioner Maria Cruz:** Is there a way you can put a max?

**Director Michael Borja:** You can do 25 plus 25.

**Commissioner Maria Cruz:** But the key to this is get it moving so that can be going while we look at other things.

**Mr. Dong Choe:** Yes ma'am. Because it is a large property they may want to lease four acres that Knik was on or lease the entire 15 acres so we emphasized "portions of N14".

**Commissioner Ronald Eclavea:** I move that we approve GEDA's RFP 17-002 Polaris Point.

**Commissioner Antonio Sablan:** I second it.

**Chairman Anthony Ada:** Anymore discussion?

No answer .

**Chairman Anthony Ada:** Let us vote.

**Commissioner Antonio Sablan:** How does GEDA get the fair market value?

**Mr. Dong Choe:** There is a defined methodology where they get two appraisals that is how they will determine the value.

**Commissioner Antonio Sablan:** Who will appraise it

**Mr. Dong Choe:** They will appraise it there is no dollar figure in the RFP,

**Commissioner Antonio Sablan:** The lessee?

**Mr. Dong Choe:** Yes, all that will happen in the process in finalizing the lease there is no dollar figure added to this bid that is not smart. The last tenant was paying a \$1,000 an acre which was more than what Matson was paying but because it was gradual that is something we will look at.

**Commissioner Antonio Sablan:** This is an M1 property I have a residential in Yigo and I am renting it out for \$600 for a half an acre.

**Mr. Dong Choe:** Do you have a house on it?

**Commissioner Antonio Sablan:** No.

**Mr. Dong Choe:** It is just the land? A leasehold property?

**Commissioner Antonio Sablan:** Yes. You can refer the appraiser to me.

**Mr. Dong Choe:** It will be an appraiser of our choice and the commission will be a part of that.

**Commissioner Antonio Sablan:** I have Toto land, Yigo land and I am making a lot more money than the commission.

**Mr. Dong Choe:** I think people are making more money than these government agencies.

**Commissioner Antonio Sablan:** Ironically, Joe Sicat has approached me about my property in Chalan Pago, M1.

**Mr. Dong Choe:** Again, GALC will ultimately decide on the lease amount not GEDA. We are in-between the negotiations, the negotiation is between the prospect and the land owner, Ancestral Lands Commission. So whatever amount was determined was determined by us is was determined by the two parties.

**Commissioner Maria Cruz:** With your recommendation.

**Mr. Dong Choe:** Our recommendation is leaning toward the commission the more you get paid the more we get paid.

**Commissioner Louisa Wessling:** It doesn't state in here in determining fair market value two appraisers will be obtained does the commission have the discretion who the appraisers are I understand the tenant will bare the cost.

**Mr. Dong Choe:** This is a similar format we went through with Northern Market and Knik, that all happens in the negotiation phase it goes into the lease we don't put it here this is just responsible bidder type.

**Commissioner Louisa Wessling:** It just makes sense that whoever owns the property hires the appraiser for their benefit.

**Mr. Dong Choe:** The way we do it at GEDA we will let you know about it like Knik, they have an appraisal coming up but there are laws how we go through professional services.

**Chairman Anthony Ada:** Any other questions? Are we ready to take a vote? It was moved by Commissioner Eclavea and seconded by Commissioner Sablan. Commissioner Orlino?

**Commissioner Anita Orlino:** To approve RFP 17-002 Polaris Point, I approve.

**Chairman Anthony Ada:** Commissioner Sablan?

**Commissioner Antonio Sablan:** I approve

**Chairman Anthony Ada:** Commissioner Eclavea?

**Commissioner Ronald Eclavea:** I approve.

**Chairman Anthony Ada:** Commissioner Wessling?

**Commissioner Louisa Wessling:** I approve.

**Chairman Anthony Ada:** Commissioner Cruz?

**Commissioner Maria Cruz:** I approve.

**Chairman Anthony Ada:** I also approve. One more thing the determination of need needs to be transmitted to the governor?

**Mr. Dong Choe:** Yes sir.

**Chairman Anthony Ada:** That letter will come from us, the board?

**Mr. Dong Choe:** Yes because you are not an autonomous agency like GEDA we can send it directly to the legislature but Guam Ancestral has to go through the Governor.

**Director Michael Borja:** I think what it is we transfer to the Governor and he transmit to the legislature.

**Mr. Dong Choe:** We will keep an eye on that because we can't start RFP until the governor submits that to the legislature, once he sends it we will start the RFP once he submits that we will coordinate with the front office about that. Just following up on GEPA is it the commission's intention to start managing the two licenses with GEPA and WIC until the MOU'S are signed would you like us to continue managing the two agencies?

**Chairman Anthony Ada:** There are a number of things you do for those buildings, WIC and GEPA right? There is more than just picking up a check right?

**Mr. Dong Choe:** For those two, in the MOU's and licenses the maintenance and repairs of the facility are incumbent on them, with WIC they submit a TIA once a year or every two years, outside of that for the government agencies it is more collection more than anything.

**Chairman Anthony Ada:** So the request is to transfer those things?

**Mr. Dong Choe:** It is not a request technically GEDA never handles those licenses but WIC and GEPA were the exceptions. We saw the new MOU's for the two agencies and we noticed we were not included and it was highlighted. We are able to send out an invoice and we are not sure if Ancestral will be sending their own invoice are we going to be your property manager until the MOU's are signed or are you ready to take over everything.

**Director Michael Borja:** My recommendation is you continue until it is signed and an effective date is recorded.

**Chairman Anthony Ada:** I wanted to clarify the responsibilities is because if we tell GEDA that is not your worry anymore and something goes wrong in the building who in land management can we send.

**Director Michael Borja:** They have to deal with the care and upkeep.

**Mr. Dong Choe:** With government agencies it is very important to mention repairs and maintenance because they have the tenant improvement allowance. The MOU's and licenses are very clear repair and maintenance is borne by the tenants.

**Chairman Anthony Ada:** Was that written in here?

**Director Michael Borja:** I don't recall.

**Mr. Dong Choe:** It was in the MOU that we prepared earlier.

**Chairman Anthony Ada:** Who gives them the TIA?

**Mr. Dong Choe:** The TIA is a request from them we analyze it and it's approve by the commission.

**Chairman Anthony Ada:** It offset toward the rent?

**Mr. Dong Choe:** The last one they submitted in 2016 I zeroed it out because they couldn't prove to me that it was beyond their term of tenancy so we didn't give them anything but in 2014.

**Chairman Anthony Ada:** Are we going to put that in here?

**Mr. Dong Choe:** That is by resolution by the commission.

**Director Michael Borja:** So it is not a part of the MOU.

**Chairman Anthony Ada:** So it is on a case by case basis?

**Commissioner Antonio Sablan:** In all these properties you are leasing out is there a property manager? I have a feeling that a building can go unfixed the place is being trashed if we don't tell them to clean it up it is not being done could we have an aggressive, proactive property manager on this.

**Director Michael Borja:** On this issue GEDA is not going to have control, Polaris that is a different matter.

**Mr. Dong Choe:** We do rounds of all our property once a month, all of ET Calvo, Harmon, United Warehouses, Polaris and Cabras. I talk to Ms. Valencia from Matson very often, I talk to her about (inaudible) cleanup, I talk to Mr. Camacho about rental stay. So yes, we do make our rounds for properties we are managing.

**Commissioner Antonio Sablan:** In light of that could you include that in your report, this is what you found, this is what we talked about, this is our concern so that we can be apprised of this look at Balli Steel, I do not know how that happened.

**Mr. Dong Choe:** I can't say what happened because I was not there.

**Commissioner Antonio Sablan:** Don't give me that answer I wasn't there I am talking to GEDA here and you are representing GEDA.

**Chairman Anthony Ada:** So with these two government agencies you are reading it to mean that once it is signed you don't have to worry about it if we were to come back to you and ask that as you do your rounds to also inspect these buildings will you have a fee for that?

**Mr. Dong Choe:** I can tell you that outside their ability to pay they are very good tenants, they keep up with the building very well, DPHSS-WIC they constantly upgrade their facility, GEPA uses the building for a laboratory so it is in very good condition because it has to meet certain criteria.

**Chairman Anthony Ada:** That is what I am leading to, you already have that function as your tenants right. I remember asking Joey if he could handle all the collection and he said he doesn't have the manpower to do that so that is something we have to prepare for.

**Mr. Dong Choe:** Like I said I work closely with Joey he always has questions.

**Chairman Anthony Ada:** But this question is leading into the July 2017 MOU.

**Mr. Dong Choe:** I am low in the totem pole and I cannot make promises for GEDA that is something the Director and Chairman would have to speak to our administrator about. Like today I could discuss existing MOU but the new one I cannot I have my superiors that make those decisions.

**Chairman Anthony Ada:** Any other questions for Dong? Thank you. Let's take a five minute break.

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## **V New Business**

### **B. Lot2249, Part of Radio Barrigada, 80-6, Barrigada, Guam**

**Chairman Anthony Ada:** There is a request to move to new business because the family is here. There is a letter in your packet from Berman, O'Connor and Mann.

**Director Michael Borja:** Read from the letter verbatim. (letter attached to this packet)

**Chairman Anthony Ada:** It is a request to reform the deed.

**Commissioner Louisa Wessling:** Was there a reason why it was deeded to her and her eleven children?

**Director Michael Borja:** Because that is the way it was listed in the taking.

**Mrs. Sylvia Iriarte Quenga:** My name is Sylvia Leon Guerrero Iriarte I am here on behalf of the Estate of Ana Duenas Iriarte regarding lot 2249 Radio, Barrigada. In 2004 I was granted the deed for the estate of Ana, my dad is the oldest of Ana's children, he was handling it then my brother Larry and then passed on to me. We went to court. We have meetings at my house with all the descendants of Ana Duenas Iriarte that are here in Guam and they all agreed that I will be the one to handle everything, we had a lawyer and he asked if they wanted Mrs. Quenga to handle everything they said yes. Now, because of the surveyor is asking for the map, when I checked on the map they said our lawyer made a mistake the court wants the papers to say Ana Iriarte, Sylvia Iriarte Quenga petitioner. Joey Leon Guerrero and Jimmy Camacho told me I have to go back to my lawyer to put Estate of Ana and everybody else, the eleven children, so I went back to the lawyer told him. Everyone was notified all 220 of us children, grandchildren and great grandchildren. A lady at probate court explained to me to make 12 probate instead of one. I advanced the lawyer \$10,000 and the surveyor \$4,000. The lady from the probate court said that we could ask GALC to amend the deed and it will be one probate. He said if we do 12 probate it is going to cost \$58,000 and he wants \$28,000 to begin probate but he said that if the GALC board amend the deed then it is no problem, he was trying to save me money. I am here asking you I am begging you if you can amend the deed. I am the oldest and taking care of this and I am going on eighty I am also handling Tiyan land, I just want to do this for the family of Ana Duenas Iriarte.

**Commissioner Ronald Eclavea:** When the military took the property they named Ana Duenas Iriarte and her eleven children?

**Mrs. Sylvia Iriarte Quenga:** Yes.

**Commissioner Ronald Eclavea:** Do we have any other case like that? Was that an oversight?

**Mrs. Sylvia Iriarte Quenga:** I don't know. I did not make the deed the government did.

**Commissioner Antonio Sablan:** The commission gave back to the family this estate in 2004 this records say these are the landowners when this property was given to the estate it is no longer our property, how can we amend the document when it is no longer ours. To remedy the situation all twelve would have to deed it back to the commission and then we can then give a deed to the estate of Ana Iriarte

**Mrs. Sylvia Iriarte Quenga:** The lawyer has exhibit "A" and it is a list of all the descendants of Ana Iriarte I don't know how you are going to do it. In 2004 I was told to see Joseph Borja at Tiyan and I did. He told me this whole property belonged to Ana but only a portion was released the others are still within the golf course so the area released outside the golf course you can survey and do as you please, the area within the golf course you can't do anything. So I am asking that you amend the deed to have only one probate but if you can't then it is already in court all the descendants.

**Commissioner Antonio Sablan** Let me give you an example: let us say that the home you are living was mine once upon a time. I sold you the land, then someone came and said add this name to the deed but I can't do it because it is not mine anymore.

**Mrs. Sylvia Iriarte Quenga:** I understand that.

**Commissioner Antonio Sablan:** This is the same case.

**Commissioner Maria Cruz:** All those names were listed in the taking?

**Commissioner Anita Orlino:** This is from the naval government.

**Director Michael Borja:** That is why we had to do it like this because there are no other legal documents that tell us otherwise. It will fall into realm "is it legal to from"? When deeds like this get amended there has to be a reason for the change, the commission would have to come up with a resolution with justifications because we don't alter these kind of documents. When the land was taken your grandmother probably said put everyone in because you don't know who is going to be left.

**Mrs. Sylvia Iriarte Quenga:** That could be.

**Director Michael Borja:** She did it in the interest of the children unfortunately today it does not because it is going to cost a lot of money.

**Mrs. Sylvia Iriarte Quenga:** What suggestion do you have?

**Director Michael Borja:** The commission could only transfer it to those names listed they could not alter any of the claims listed and your grandmother and everybody else was listed there is no alternatives the commission can have.

**Mrs. Sylvia Iriarte Quenga:** So you are saying stop the probate now?

**Commissioner Anita Orllino:** Continue but pay the amount the lawyer is asking for all of them, they only want you to amend this to save you 58 grand.

**Mrs. Sylvia Iriarte Quenga:** So in other words you cannot amend it.

**Commissioner Antonio Sablan:** No we cannot.

**Mrs. Sylvia Iriarte Quenga:** That is all I wanted to know now I can go back to the lawyer and tell him it cannot be amended and have a meeting with the family and explain it to them.

**Director Michael Borja:** In a title of land it is important that there is never a cloud or chain broken in it so that they chain is constant to include all the people when one person dies you gotta have notification to take that person off, she we do that it could place a cloud over the title and that may cause problems in disbursing the land, I am trying to think of another way to do this but everyone here listed has passed away right?

**Mrs. Sylvia Iriarte Quenga:** All of my father's brothers and sisters are gone. I am the oldest.

**Director Michael Borja:** If they were around they could deed of gift it to the mother then it becomes whole again but they have passed and they can't do it the only way to do that is to probate it.

**Mrs. Sylvia Iriarte Quenga:** That is why we hired a lawyer to go to probate.

**Director Michael Borja:** You could all deed it to the original estate for example that has to be done in the probate and then redistributed back out again.

**Mrs. Sylvia Iriarte Quenga:** To who?

**Director Michael Borja:** Your grandmother but you have to do that in probate it is complicated but in a group it is simpler. Each of your father's siblings had their own separate family, properties and issues and could have been probated separately it can become problematic.

**Commissioner Antonio Sablan:** I have two examples: there are fifty people that own one parcel of land if one objects to the portioning the whole portioning effort dies the court then can decide on the portioning. Another example is you have nine children and their children. One of those children can say he has rights to the title even if his father says he has no rights. It is not his yet so how can he give what is not his yet only when it goes to probate that it can be given back out. You could have a brother who has a child outside his marriage, that child may want to claim his share we cannot dismiss him only the court decides that. We are being sued right now for things we did in the past we don't want that now.

**Mrs. Sylvia Iriarte Quenga:** All of the descendants of Ana Duenas Iriarte were all informed by the lawyer that it was going to probate, no one objected, no one! I heard a rumor that someone was interested in lot 2249. I went to visit Madeline Bordallo but she left that morning. John Calvo called and asked what was the status of Radio Barrigada, he called me and said they is nothing happening with the area within the golf course but someone in the government of Guam said somebody wants that land.

**Commissioner Anita Orllino:** Who?

**Mrs. Sylvia Iriarte Quenga:** I don't know he said it is just a rumor but rumors can become reality. I don't care that there is a buyer, we can sell, as long as we solve the problem. Who is that somebody I don't know. I asked who but he said it could be just rumors.

**Commissioner Anita Orlino:** How much was returned? Correct me if I am wrong but you were given a portion within and the remaining is within the golf course.

**Mrs. Sylvia Iriarte Quenga:** They gave us seven acres and Joe Borja says we can do whatever we want with it. The golf course we can't touch until the Navy gives it up and then the government of Guam gives it back to us. Everybody in my family wants to sell it.

**Director Michael Borja:** But you can't.

**Mrs. Sylvia Iriarte Quenga:** that's right until the probate is done.

**Director Michael Borja:** I think you can probate the whole thing for the future even though you don't have it back yet because it is an interest.

**Margarita Borja:** Of the eleven children did any of them have probates?

**Mrs. Sylvia Iriarte Quenga:** No. Not to my knowledge.

**Margarita Borja:** Maybe they had other properties that went to probate. I have seen where they included properties being held by military and they already distributed it so I was thinking that the children of the original eleven children already took it to probate.

**Mrs. Sylvia Iriarte Quenga:** This was just two years ago that all my relatives know about this.

**Margarita Borja:** So the eleven children had no other property?

**Mrs. Sylvia Iriarte Quenga:** No.

**Margarita Borja:** Just this?

**Mrs. Sylvia Iriarte Quenga:** Yes. That's why it belongs to our grandmother, I got everyone involved they all came to my house. The realtor, the attorney was there and they explained things and no one brought up probates, to my knowledge.

**Chairman Anthony Ada:** What was transferred to you happened in 2004.

**Mrs. Sylvia Iriarte Quenga:** The whole thing.

**Director Michael Borja:** No.

**Mrs. Sylvia Iriarte Quenga:** But I only have access to the one outside the golf course.

**Chairman Anthony Ada:** I am referring to the letter, Attorney Berman says it was returned September 10, 2004 but anyway the Ancestral Lands cannot work on this.

**Mrs. Sylvia Iriarte Quenga:** So what can you do?

**Chairman Anthony Ada:** We learned a lesson and we deed back who was listed at the time of taking we don't know what is going on within the family I believe this is why the board deeded it back to what was listed.

**Mrs. Sylvia Iriarte Quenga:** The deed includes everything including the golf course.

**Chairman Anthony Ada:** The board at the time made the right decision based on our discussions we will honor that and we can't do anything.

**Mrs. Sylvia Iriarte Quenga:** You cannot amend it just say it.

**Chairman Anthony Ada:** We cannot amend it, it has been transferred it is out of our hands.

**Commissioner Anita Orlino:** We cannot change this document because all the names are here.

**Mrs. Sylvia Iriarte Quenga:** I will tell my lawyer.

**Director Michael Borja:** If you want we can provide a letter.

**Chairman Anthony Ada:** You paid him \$50.....

**Mrs. Sylvia Iriarte Quenga:** \$10,000. I divided that amount by eleven.

**Chairman Anthony Ada:** In probate law there is a certain percent they cannot charge over like 2%.

**Commissioner Anita Orlino:** She said he is asking \$28,000.

**Mrs. Sylvia Iriarte Quenga:** \$56,000 for twelve probates.

**Chairman Anthony Ada:** He earns a percent of the value of the property isn't it?

**Commissioner Louisa Wessling:** It's graduated, its tiered.

**Chairman Anthony Ada:** Can you reach \$28,000?

**Director Michael Borja:** Its \$56,000

**Commissioner Maria Cruz:** Is the lawyer asking you to open probate for each of the eleven children.

**Commissioner Louisa Wessling:** Yes, they have to do that.

**Mrs. Sylvia Iriarte Quenga:** Its \$56,000 and he want half up front \$26,000. The lady at probate court says for twelve probates one for Ana and her eleven children but I will not proceed with the probate unless I collect \$28,000, the lawyer put a stop on the probate because I couldn't get the map then this problem we will continue once I collect from the family.

**Director Michael Borja:** We will send a letter to your attorney based on the decision of the commissioners and the way the law allows and doesn't allows transfers of deeds why we are

unable to amend the deed of the ancestral lands commission, to do so by this body would make the land even worst of.

**Mrs. Sylvia Iriarte Quenga:** I don't even have land I gave it all to my children.

**Commissioner Maria Cruz:** Are you the administrator for all 12 probates?

**Mrs. Sylvia Iriarte Quenga:** Yes.

**Commissioner Maria Cruz:** They don't have an assigned administrator for their share?

**Mrs. Sylvia Iriarte Quenga:** No because that is what they want, everybody wants me to represent them.

**Commissioner Maria Cruz:** Bless your heart.

**Chairman Anthony Ada:** You don't have a legal document they just asked you to handle it you are not the administrator for each

**Mrs. Sylvia Iriarte Quenga:** I was appointed by the courts.

**Commissioner Louisa Wessling:** No, only for Ana Iriarte.

**Director Michael Borja:** You have court appointed papers showing you are the administrator for each of the twelve owners listed?

**Mrs. Sylvia Iriarte Quenga:** It is here in exhibit A, everybody's names and address, Ignacio, Jose, Francisco and so on everybodys name is listed 220 people. They said why don't we sell it. Seven acres divided by 11 children divided again by 13 in my family and so on you can't even have parking space. So they said why don't we sell it? I have four investors and they want to build homes, we have a realtor and already put out \$14,000 dollars. I want to thank you Mr. Chairman and board members.

## **V. New Business**

### **A. Hanom Property-Lots 7100, 7102, 7103, 7146**

**Chairman Anthony Ada:** We have a letter here from Senator Frank Aguon dated December 12<sup>th</sup> addressed to Michael Borja.

**Commissioner Maria Cruz:** This property was improperly transferred to ancestral lands, it did not go through the proper channels meaning it didn't go through the legislature. When the family came and asked us to transfer to them we had a problem because it said gov/guam so we told them to go to the legislature and seek their assistance. So if we have it then let us give it back to them or have the legislature give it to us to give it back to them.

**Director Michael Borja:** But the question is does the original land fall under the purview of the ancestral lands for it to be administered back out, does it meet the qualification to be put into this commission to be disbursed back to the original landowner.

**Commissioner Maria Cruz:** It is my understanding then that it should have been transferred to the Ancestral lands commission.

**Commissioner Antonio Sablan:** There was an attorney general opinion on this.

**Director Michael Borja:** The AG at the time said it did not meet the requirement and therefore any consideration by the commission is not appropriate. So the senator is asking can they do anything legislatively to require it to be released to them but if it doesn't meet the ancestral lands commission requirements the answer is no! if they want to legislatively give away government for nothing then they got to do it on their own without the ancestral lands commission but they have to justify giving someone land that is supposed to be the government of Guam without selling it or trading it or anything else.

**Commissioner Antonio Sablan:** When was this land taken from them?

**Margarita Borja:** It was never taken from them this belongs to the government of Guam the Taitano family just has claim to it. Let us say that it was transferred to ancestral lands it is going to be crown lands it cannot be returned to the Taitano family because it is government of Guam property they are just making claim to it.

**Commissioner Ronald Eclavea:** This is what I found out a long time ago the Taitano family did own all this property and the Navy came in to assess taxes to lessen taxes they said they only owned this, so the Navy said since you only own that then we will take the rest.

**Director Michael Borja:** This issue is being dealt with another way it is going through the land registration process, their quick claim deed the government will challenge it. The government will say the ancestral lands had no authority to release this property because it failed to meet the requirements already established to be released it has been government of Guam property since the 1930's. Government of Guam registration of this property will remove any other claim to this property.

**Commissioner Ronald Eclavea:** This should not have been transferred

**Deputy Director David Camacho:** There is a law that any other land returned by the federal government is considered crown land and there are documents saying this belongs to the United States government a 1938 document.

**Director Michael Borja:** They are going through the legislature, the governor everybody but us.

**Deputy Director David Camacho:** This was acquired from Spain.

**Commissioner Antonio Sablan:** Doesn't the law state that any land taken from 1930 on.

**Deputy Director David Camacho:** There was an abstract done in 1938 from the Naval government of Guam.

**Commissioner Ronald Eclavea:** It says cessation from Spain.

**Deputy Director David Camacho:** There was a letter Sent to the late Senator Pangelinan regarding this property .....

**Commissioner Anita Orlino:** He passed away.

**Commissioner Ronald Eclavea:** So this actually qualifies to be ancestral lands.

**Deputy Director David Camacho:** Yes but not subject to be released.

**Director Michael Borja:** It is crown lands

**Deputy Director David Camacho:** (inaudible).....The treaty of Paris or Peace.

**Commissioner Antonio Sablan:** It is Treaty of Peace, Paris.

**Chairman Anthony Ada:** Just the turn of the century 1900? When Spain lost the war to the United States, that was a long time ago.

**Commissioner Antonio Sablan:** 1898.

**Chairman Anthony Ada:** According to this letter dated December 2009 from the AG's office Department of land management took a position, first of all it was not eligible to be transferred to ancestral lands inventory and without legislative approval and is therefore invalid. Now it says here it is at superior court for land registration case.

**Director Michael Borja:** No it is not.

**Chairman Anthony Ada:** It says here in 1979.

**Director Michael Borja:** It is one of the many parcels we have but it is still pending we have an unsurveyed registration map already completed.

**Chairman Anthony Ada:** What is the delay from being finished?

**Director Michael Borja:** The land registration process. We didn't have an attorney to sit down and go through that whole process but we are doing that now.

**Chairman Anthony Ada:** Senator Aguon wanted a status by December 19, did we do that?

**Director Michael Borja:** No we did not. I can't respond on your behalf until we discuss this formally I will apologize for being late, he has sent another letter under the 34<sup>th</sup> legislature. Who gave this land to ancestral?

**Margarita Borja:** The government of Guam. You have to transfer it back to the government of Guam.

**Commissioner Maria Cruz:** I think we should return it.

**Director Michael Borja:** After the land registration process it will go to who?

**Margarita Borja:** The government of Guam. It was transferred to Chamorro Land Trust and then the governor transferred it to Guam Ancestral it was surplus government property just like the Micronesia mall property, it was surplus government property.

**Commissioner Louisa Wessling:** And I see that after they transferred it to the estate they turned around and sued the government of Guam.

**Commissioner Maria Cruz:** Should we make a motion?

**Director Michael Borja:** You should make the motion to release the quick claim deed for the ancestral land commission to transfer it back to the government of Guam. That will be a necessity so as it goes through the land registration process it will lift the cloud on the process, part of the reason there is a cloud is because things got switched around.

**Commissioner Maria Cruz:** Can you identify all the lots in this category so we can make a motion to transfer it back to the government of Guam.

**Director Michael Borja:** Are these the lots?

**Margarita Borja:** Some we have already deeded to the family.

**Director Michael Borja:** Your motion would be to pass it in resolution, it is a better document it would transfer the land.

**Commissioner Ronald Eclavea:** We need to address this the abstract is showing the Naval government Island Court of Guam showing lot 7100, 7102, 7103 Yigo that this came from cessation of Spain so it is actually crown lands.

**Karen Charfauros:** It was not federal excess returned.

**Commissioner Ronald Eclavea:** It doesn't have to be, any federal land that was Spanish lands gets transferred to crown lands.

**Karen Charfauros:** If it was federally condemned.

**Deputy Director David Camacho:** No it doesn't have to be condemned.

**Commissioner Antonio Sablan:** Any land returned by the federal government becomes crown land, now if it was condemned by private owners from 1930 on we give it to the original landowner.

**Commissioner Louisa Wessling:** This says it is from Spain.

**Commissioner Antonio Sablan:** I feel that it is ancestral lands crown lands.

**Director Michael Borja:** What is your reasoning Margarita?

**Margarita Borja:** I am basing myself on the AG's review and there were several documents recorded at land management in as far as the abstract and they came out with .....document number 807792 it was filed and it urges Ancestral Land Commission that

claimants are not entitled to this land but that such lands should remain with the government of Guam.

**Director Michael Borja:** Who submitted this?

**Margarita Borja:** It is out of ancestral lands, this is coming from the same body and now you are contradicting yourself.

**Commissioner Louisa Wessling:** Someone really needs to review these documents which looks like it was recorded.

**Director Michael Borja:** This was done by the attorney general of Guam on behalf of the ancestral lands commission.

**Commissioner Ronald Eclavea:** That was Bill Bischoff but I don't think.....

**Director Michael Borja:** This wasn't recorded.

**Margarita Borja:** I pulled it, there were other documents.

**Commissioner Maria Cruz:** At our next meeting we should have a resolution with the properties not supposed to be in our inventory.

**Deputy Director David Camacho:** It is crown land or government of Guam

**Chairman Anthony Ada:** The land registration case is still pending maybe we need to find out where that is.

**Director Michael Borja:** The land registration cannot be concluded until this gets sorted out and we move it out of your inventory and back into the government. Once the land is registered and at some point we all deem it is ancestral, then it comes back to ancestral, otherwise there is a cloud for the registration.

**Commissioner Ronald Eclavea:** That response from Bill Bischoff is in response to a previous effort to transfer land to the Taitano and that was his response to it. So the government of Guam issue is the determination that we can talk about because ancestral lands is the government of Guam, land management is government of Guam.

**Commissioner Antonio Sablan:** The attorney general's opinion, every lawyer will answer based on what your needs are.

**Director Michael Borja:** No, hopefully every lawyer is answering to the best of his knowledge to set you in the right direction.

**Commissioner Antonio Sablan:** But they also will go to court and fight for you in that issue.

**Director Michael Borja:** But they are your lawyer and if this is what they are saying and if you don't like it where are you going to. Just like attorney Miller today, she is not you lawyer she can't represent you, she represents the governor, she is only here because you have no lawyer and the judge order her to do this on your behalf. The attorney general is the government's lawyer

and that is what we have to base it on whether we like the opinion or not and can be fought out in court and unless it is fought out in court and if it is held up in land registration, we can base our action on the opinion given.

**Commissioner Antonio Sablan:** This land was not previously owned by the Taitano's so therefore you have no authority to transfer it back, we could also ask the legislature to transfer it and make it crown land.

**Chairman Anthony Ada:** It is in ancestral lands inventory right now. And it looks like department of land management is trying to register the land and it is pending because how could DLM register land that is with ancestral lands right now. So in order for DLM to register the land ancestral lands needs to give it back. This was transferred by executive order right Margarita?

**Margarita Borja:** Yes.

**Commissioner Louisa Wessling:** If any property was acquired by the United States government from Spain, are those crown lands supposed to go to ancestral lands.

**Director Michael Borja:** The Navy assigns it to the government of Guam and then the government of Guam reassigns it that is why it has to come back out of ancestral so we can register it and then get it reassigned back out. All the lands start with the Navy giving it to the government of Guam, the government of Guam determines do I need this for anything else necessary for its operations if the answer is yes then it stays in the government of Guam if no, it has to be determined what it is used for if it is not ancestral ownership it goes to Chamorro land trust.

**Commissioner Louisa Wessling:** So not all crown lands get transferred to ancestral lands.

**Chairman Anthony Ada:** There is a law and the time frame of taking we have to go and look at that.

**Director Michael Borja:** But it starts with the Navy to gov/guam, then gov/guam disburses it to wherever it needs to go

**Commissioner Louisa Wessling:** I understand that part, but these Hanom properties appear to be crown lands so what you are telling me is that gov/guam determines what entity it is going to, not all crown lands come to ancestral lands

**Chairman Anthony Ada:** The law says federal taking determines if it goes into ancestral lands.

**Director Michael Borja:** But it is not registered either it should be the government of Guam's until it gets registered.

**Commissioner Louisa Wessling:** So the crown lands that we have that are registered those are crown lands?

**Director Michael Borja:** You can't do anything unless it is registered but you don't have title to it either.

**Commissioner Louisa Wessling:** I just remember that from another meeting the lands were not registered, none were surveyed or registered.

**Director Michael Borja:** Even the Navy just gave parcels out under this title it is just apportion of something and it doesn't even have a name.

**Commissioner Ronald Eclavea:** The Pagat property at Finegayan those were not registered.

**Director Michael Borja:** It is not registered.

**Commissioner Ronald Eclavea:** We RFP the property did we have an arrangement with the bidders to survey and register it.

**Director Michael Borja:** So for example, this sale to Guam Water Works of a portion of the land called AJKD, AJKD is the square your land jets out and all unregistered. The survey has to be this entire humongous lot then registered then deeded out.

**Deputy Director David Camacho:** Crown land has to be registered under the land bank registry

**Director Michael Borja:** This whole law suit with the Torres' is all about that. It wasn't properly registered.

**Commissioner Maria Cruz:** If we decide to settle it is not our money return it back to gov/guam.

**Director Michael Borja:** In this case it has to go into the land bank.

**Commissioner Maria Cruz:** Personally I don't think so.

**Director Michael Borja:** In this case for Hanom we need to do a resolution, transfer it back to gov/Guam, clean it up but in response to Senator Aguon it was not the commissions proper role to make a distribution of this for a number of reasons and we will spell all that out.

**Commissioner Ronald Eclavea:** So the process of being transferred to us that was the flaw. Even if it should go to us it should have gone to us it wasn't done the right way.

#### **IV Old Business MOU WIC GEPA**

**Director Michael Borja:** Can I talk to you about the two MOU's between EPA and Public Health. There doesn't need to be a license between two government agencies and MOU is sufficient according to our legal counsel. I took what was done before and changed it so that it would be managed by land management on your behalf payment is the hardest part due to payment from federal sources. Please review it, it was formatted to be recorded and I put an attachment of the diagram, here is a case again where this property was not even surveyed. Also, Senator Ada is going to put in a bill to rezone south Tiyan to M1 which is inclusive of your property, unless you have an objection you need to state so.

**Commissioner Ronald Eclavea:** So we have ancestral property in that area?

**Director Michael Borja:** Where EPA and WIC are, they will be M1.

**Deputy Director David Camacho:** I thought they were going to make a decision on the MOU's.

**Director Michael Borja:** They are waiting to sign if they are not paying for anything right now because they don't have an active agreement. Now this will eliminate the 14.3% requirement to GEDA which is a huge savings and the money will go in bulk to ancestral land bank what I do ask is payment be made to land management for the fee services in invoices, collection and reporting, I am throwing a number of 2.5% a nominal amount I believe. There has to be a cost to that service, the logistics can be worked out later. The monies should be made payable to ancestral lands commission it goes into a preliminary checking account then percentage can be paid to land management and then the money can be transferred into the non-touchable.

**Commissioner Ronald Eclavea:** Are we going to need an MOU between land management and ancestral lands?

**Director Michael Borja:** I will do that as soon as we come up with an amount if you agree to the 2.5% or you want to be generous and give 7.5%. I will craft that up it should be very simple.

**Chairman Anthony Ada:** Because public health and WIC are behind in payment there is still administrative cost.

**Director Michael Borja:** Well it is only payable when the check comes in, I can't touch any money that is not in the account. We need to establish the account, do the resolution and all that stuff.

**Chairman Anthony Ada:** My question is, are you going to back charge us when payment comes in?

**Director Michael Borja:** I believe they are not paying because there is no active account.

**Commissioner Maria Cruz:** They are waiting for an agreement. But I have a question, what about termination for non-payment? I don't see that in the MOU.

**Chairman Anthony Ada:** This is a long time agreement and every year there is supposed to be a certification of funds but in recent years we haven't seen one.

**Director Michael Borja:** Right here on the signature page there is a requirement for certified funds to be available.

**Chairman Anthony Ada:** That question goes all the way back to when these two agencies were not paying.

**Commissioner Anita Orino:** They are federally funded but the receiver is DOA and they are the ones detaining this money, why? Can they send directly to ancestral or land management?

**Director Michael Borja:** There is a termination clause in here, we have to give them 90 days notice.

**Commissioner Anita Orino:** But it is not their fault because their money comes directly from the federal.

**Director Michael Borja:** I know but let say we give them 90 days, we are two years behind now. I want to give you full disclosure, EPA is having issues with regent 9 on the use of federal funds on the payment of rentals, they believe the monies they have been using for rentals is enough to build a building. It is an internal thing they have to figure out with regent 9 and how to source it.

**Deputy Director David Camacho:** At one time WIC was offering to buy.

**Commissioner Anita Orlino:** The land, they want ownership

(incoherent-multiple speakers).

**Chairman Anthony Ada:** With regard to the two MOU's we don't have to decide right now the cost that DLM will incur.

**Director Michael Borja:** There is no discussion regarding that.

**Commissioner Louisa Wessling:** There should be a default clause

**Commissioner Ronald Eclavea:** Yes there should be a default clause just as a back up.

**Commissioner Louisa Wessling:** The default would outline the reasons for termination.

**Commissioner Ronald Eclavea:** The one here is just prior to the termination date.

**Commissioner Louisa Wessling:** That's fine.

**Commissioner Maria Cruz:** Grounds for termination

**Director Michael Borja:** We had that on our previous licenses with the Torres.

**Chairman Anthony Ada:** But we are dealing with a government entity and that's different.

**Director Michael Borja:** Yeah

**Chairman Anthony Ada:** Those clauses are more enforceable it is non-government.

**Director Michael Borja:** Let me see if we can include that.

**Commissioner Ronald Eclavea:** I make a motion to approve the two MOU's pending the revision of the default clause.

**Chairman Anthony Ada:** Just that one item, the default clause? Everything else looks good. We have a motion on the floor.....

**Commissioner Ronald Eclavea:** .....to approve the MOU between Guam Ancestral Lands Commission and Guam Environmental Protection Services and Guam Ancestral Lands Commission and Public Health-WIC pending the default clause

**Commissioner Antonio Sablan:** Second the motion.

**Chairman Anthony Ada:** Seconded by Commissioner Sablan.

**Chairman Anthony Ada:** All in favor

**All Commissioners:** "aye".

**Chairman Anthony Ada:** Commissioner Sablan suggested we meet twice a month until we get caught up.

**Commissioner Maria Cruz:** May I suggest the 2<sup>nd</sup> and 4<sup>th</sup> Wednesday's of the month.

**Chairman Anthony Ada:** We have two more items on the agenda should we move it to the next meeting.

**Commissioner Anita Orino, Commissioner Louisa Wessling:** Yes.

**Deputy Director David Camacho:** We talked about Northern Market they need to revise the map.

**Commissioner Maria Cruz:** I have a comment. We should not expect Karen to have minutes prepared since we are having two meetings a month. We can always have her complete her minutes the following month.

**Director Michael Borja:** I have been researching and I ask all the board secretaries to look into any kind of software that can do dictation that can transcribe written recording to the written word. If any of you know an existing software please let me know I would like to purchase it. This is one of three commissions that DLM has and we would like this process to run more efficiently, otherwise we can have the audio recordings and we can do a summary of the minutes that way it is more concise, we get to the point, details and issues you can listen to the audio. You guys use to do just records of motions.

**Chairman Anthony Ada:** So the next meeting is the 2<sup>nd</sup> Wednesday of February.

**Commissioner Anita Orino:** February 8<sup>th</sup> and February 22<sup>nd</sup>.

**Commissioner Ronald Eclavea:** So two meetings until further notice

**Chairman Anthony Ada:** So the next meeting is the 2<sup>nd</sup> Wednesday, February 8<sup>th</sup> at 2pm. And think about the software. A couple weeks ago Karen sent us the Robert's Rule can we review that I think it will help with the dictation and pages of transcribing, it will help us become more discipline and hopefully get out on time.

**Commissioner Maria Cruz:** Well we will do the summary.

**Director Michael Borja:** Summary of items

## VII. Adjournment

**Commissioner Antonio Sablan:** I move to adjourn.

**Commissioner Ronald Eclavea:** I second the motion

**Chairman Anthony Ada:** All those in favor say "Aye".

**All Commissioners present:** "Aye".

**Chairman Anthony Ada:** All those not in favor say "nay".

**No answer**

**Meeting adjourned at 5:49pm**

Transcribed by: Karen N. Charfauros: Karen Charfauros

**Approved by Board motion in meeting of:** January 25, 2017

David V. Camacho, Deputy Director: David V. Camacho Date: 2/22/17

Anthony J.P. Ada, Chairperson: Anthony J.P. Ada 22 FSB  
2017

22/55  
Fios





to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket.” *RHI Refractories Liaoning Co., Ltd. v. United States*, 774 F. Supp. 2d 1280, 1284 ( Ct. Int’l Trade 2011) quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *see also, Clinton v. Jones*, 520 U.S. 681, 706 (1997) (“[c]ourt has broad discretion to stay proceedings as an incident to its power to control its own docket.

The decision when and how to stay a proceeding rests ‘within the sound discretion of the trial court.’” *RHI Refractories*, 744 F. Supp. 2d at 1284. “Absent a showing that there is at least a fair possibility that the stay will work damage to someone else, there is no requirement that [the movant] make a strong showing of necessity or establish a clear case of hardship or inequity to warrant the granting of the requested stay.” *Id.*

This court, like any other, has authority to stay its own proceedings and therefore can exercise its discretion to grant the instant motion to stay. In exercising its discretion whether to grant a stay pending appeal, a court considers four factors:

1. whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
2. whether the applicant will be irreparably injured absent a stay;
3. whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
4. where the public interest lies.

*Nken v. Holder*, 556 U.S. 418, 434 (2009).

According to the Ninth Circuit Court of Appeals, these four factors are not evenly weighted, but rather are balanced along a “sliding scale” approach so that a stronger showing of one element may offset a weaker showing of another. *Leiva-Perez v. Holder*, 640 F.3d 962, 964-44 (9th Cir. 2011). However, the first and



action, the other two appeals involve decisions to disqualify the Attorney General. Unlike this CV1235-12, however, only the Attorney General herself was disqualified; the rest of the attorneys in the OAG were not disqualified.

Thus although filed separately and issued by different judges,<sup>3</sup> the appeals arising from CV1124-09, CV0454-12, and now this CV1235-12 all involve the same parties and nearly identical facts. If the instant lower proceedings are permitted to continue on to trial while the three appeals are pending, there is no question that immediate and irreparable harm will be suffered because the outcome of the appeals will could very well change the course of this litigation.

“[T]he key inquiry is not simply whether the legal remedy of appeal [after trial] is available, but whether an appeal after final judgment is adequate to protect the interests involved... the adequacy of an appeal as a legal remedy turns on whether the invasion of a party's particular right,...would cause irreparable harm if the party was forced to wait to vindicate its right through an appeal. *Guam Police Department v. Superior Court of Guam*, 2011 Guam 8, ¶¶ 19-20.

Given the very real threat of irreparable injury stemming from complex land cases involving identical parties and facts which have given rise to three different, but inconsistent, orders issued by three different judges and which comprise three separate appeals, more than good cause exists to justify a stay.

2. **The public interest and balance of equities favor a stay.**

Another factor to be analyzed by the court includes whether the issuance of stay will “substantially injure the other parties” and where the public interest lies.” *Chafin v. Chafin*,

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<sup>3</sup> The judge in CV1124-09 is the Hon. Arthur Barinas, and the judge in CV0454-12 is the Hon. Alberto Lamorena III.

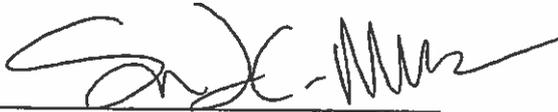


**III. CONCLUSION.**

For all of the forgoing reasons, the Governor of Guam on behalf of the Government of Guam respectfully requests that these proceedings be stayed pending resolution of the appeal in CVA 16-002.

Respectfully submitted this 10th day of February, 2017.

**OFFICE OF THE GOVERNOR OF GUAM**

By:   
\_\_\_\_\_  
**SANDRA CRUZ MILLER**





# Office of the Attorney General of Guam

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



February 16, 2017

## MEMORANDUM

To: Guam Ancestral Lands Commission  
From: David J. Highsmith, Assistant Attorney General  
Subject: **GALC LITIGATION**

I am providing another update of all pending litigation for the GALC's benefit. There has been some slow progress in our cases. GALC members may, of course, attend any of the court hearings mentioned below.

The Supreme Court has agreed to hear the appeal regarding the disqualification of the OAG in CV0454-12; CV1124-09; and CV1235-12.

1. **GovGuam v. O'Keefe; CV1379-10.** The Supreme Court will hear oral argument in this case on February 28, 2017 at 10:00 a.m. This case involves the license of GALC Trust land. [CVA 2016-0001].
2. **GovGuam v. WSTCO; CV1378-10.** This case went to trial in September 2016. Final arguments were filed on February 3, 2017. According to Superior Court rules, Judge Perez should issue his decision no later than May 4, 2017. The case involves the license of a parcel of ten acres near Radio Barrigada.
3. **GovGuam v. Gutierrez; CV1235-12.** We no longer represent the government in this case, although we do represent the government on the appeal. [CVA16-002]. Sandra Miller is attempting to hire another lawyer. I will file the first brief on March 1, 2017, but there is no date for oral argument.
4. **GovGuam v. Gutierrez; CV1124-09.** Lots No. AL002, AL002-1, and AL002-2. This case remains stayed because of the appeal to the Supreme Court. I may have to move to lift the stay soon because of recent developments in the probate case. See below. I will  
There is no date for oral argument.
5. **GovGuam v. Gutierrez; CV0454-12; CVA16-009.** Lots No. 5001, Dededo; 5002, Dededo; 5007, Dededo; 5007-1, Dededo; 5008, Dededo; 5008-1, Dededo. The parties

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agreed to stay this case pending the appeal to the Supreme Court. No date has been scheduled for oral argument.

6. **GovGuam v. Gutierrez; CV1093-06.** We are still trying to resolve our problem with GWA and Goodwin. The money, about \$250,000.00, remains in escrow and will be released soon, we hope. This case involves a small strip of land near Micronesian Mall.
7. **In re Torres; Probate cases; PR0220-50 and PR0914-08.** The Supreme Court has denied our request for a writ that would stay distribution of assets in this case in WRP16-001. I expect the Estates to petition soon to distribute the \$13.6 million they hold in trust. At that time, I will probably move for a restraining order in CV1124-09 to prevent distribution. The probate cases involve all the lots deeded by the GALC to the Estates.
8. **Crawford v. GIAA, et al. District Court; Tiyán and airport land.** The pending motions for summary judgment will be heard on March 24, 2017 at 10:30 a.m. This case is not scheduled for trial.

Please contact me if you have any questions about the cases currently pending in court.

Respectfully,



**DAVID J. HIGHSMITH**  
Assistant Attorney General, Litigation

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# GovGuam disputes land ownership with Torres estate

STEVE LIMTIACO  
SLIMTIACO@GUAMPDN.COM

The government of Guam believes the estate of Jose Martinez Torres improperly sold about 275 acres of ancestral land in Dededo without first proving it owned the property.

The estate only had a conditional deed to the former federal property because it failed to prove to the Ancestral Lands Commission's satisfaction that Torres was the land's original owner, court documents state.

Guam law states property declared excess by the federal government shall be returned by GovGuam to its

original owners or their heirs through the government's Ancestral Lands Commission.

The land dispute between the Torres estate and the Office of the Attorney General has been going on for years in the local courts, and now the Department of Revenue and Taxation is demanding millions of dollars in back taxes from the estate, after concluding that the estate profited from the \$26 million sale and under-reported the profits on its tax returns.

Rev and Tax sent the estate a tax notice in August 2016.

Former Guam first lady Geraldine "Geri" Gutierrez,

as administrator of her grandfather's estate, is disputing the bill for back taxes, arguing that Rev and Tax incorrectly assessed the amount owed, according to federal court documents.

One issue in the case is whether the government's return of the ancestral land to the estate is considered a gift, which could affect the amount of taxes owed.

According to the estate's tax lawsuit in federal court, Rev and Tax is asking the estate to pay an additional \$2.33 million in taxes and penalties for calendar years 2007 through 2010.

As an example, the estate reported \$4.2 million in cap-

ital gains during 2010, but Rev and Tax believes the estate had \$12.8 million in capital gains that year and owes taxes on the additional amount.

The estate also has argued that the land dispute with GovGuam must first be resolved before Rev and Tax can consider taxing the property. The land dispute currently is in the Supreme Court of Guam.

The Ancestral Lands Commission in September 2006 awarded the Dededo ancestral property to the Torres estate, on the condition that it prove its claim to the property in court, documents state.

The ownership was in question because the property is part of a larger, 953-acre, piece of ancestral land owned by several families before the military condemned it in 1950. Torres died the same year.

"If the court comes back and says that you have absolutely no claim to this property, this property comes right back to the inventory of the Ancestral Lands Commission and that we are not going to rehear this case again," the commission stated in 2006 when it granted the conditional lease, documents state.

But the estate never went to court as required, and sold the property, according to GovGuam, which has been challenging the transaction in court through the attorney general's office.

GovGuam wants the estate to prove in court that it owns the land, as required by the Ancestral Lands Commission.

According to the attorney general's office, the Ancestral Lands Commission agreed to allow the estate's attorneys write the deed for the property. But the deed they wrote did not include the restriction cited by the commission, documents state.

"Unbeknownst to the commission, the deed drafted by the estate's lawyers... did not accurately reflect its oral decision, in that the language of the deed did not include the condition that the estate bring its Ancestral Lands claim evidence before a court to have a court review the evidence and make a final decision on it," GovGuam's July 2009 complaint states. The estate's attorneys instead wrote that the estate needed to petition a probate court to approve the state's receiving of the property, documents state.

"The estate's lawyers steered the matter to a probate court, which would not have the jurisdiction to entertain whether the estate's evidence entitled it to the lots in question under the provisions of the Ancestral Lands Act," GovGuam stated.

According to court documents, Lot 5039, which is more than 1 million square meters, was sold by the estate in 2007 to Kil Koo Yoon for \$21,435,330.

# Orange: Never officially verified

Continued from Page 1

have personally sprayed thousands of gallons of Agent Orange at Andersen Air Force Base while stationed there in the '60s and '70s.

Bordallo is requesting that the briefing include details on the handling, "transportation, storage, or any other means of potential contact for Airmen and civilians on base." She also asked to be briefed on additional reports of the use of the chemical on Guam.

"This report is particularly concerning to me, and the personnel stationed at AAFB, their families, as well as the people of the U.S. territory of Guam deserve to understand fully the circumstances under which this proven dangerous carcinogen was handled."

A congressional investigation into the use of Agent Orange on Guam has been discussed before.

Speaker Benjamin Cruz said an Oct. 13, 2005 decision by the U.S. Court of Appeals for Veterans upheld an unidentified Air Force veteran's claim that Agent Orange exposure while stationed at Andersen Air Force Base from Dec. 1966 to Oct. 1968 caused him to develop diabetes mellitus.

This was one of the first rulings of its kind. While Vietnam veterans received a blanket acknowledgment of exposure to Agent Orange, those who claim expo-



This file photo shows a gate at Andersen Air Force Base. In a recent news report in Florida, an Air Force veteran said he regularly sprayed Agent Orange while working at Andersen Air Force Base in the 1960s-1970s.

sure while on Guam must provide proof of dates and locations of exposure.

However, Agent Orange's use on Guam has never been officially verified. Therefore, even if veterans can provide dates and locations, they still may be denied benefits on the basis that they cannot prove Agent Orange was present on Guam.

The decision, Cruz said, appears to set a precedent of acknowledgment. If one veteran could receive benefits

on the basis of exposure to Agent Orange on Guam, he believed the floodgates would open.

"I do remember receiving and reading the Sullivan decision, and thinking that would be it," Cruz said. "I thought that would be the precedent for everybody moving forward."

Cruz said that, after reading the decision, he wrote to Bordallo asking her to undertake a congressional investigation.

He said he lost track of

what happened with the request and believed it was being handled until reading about the latest development in the Pacific Daily News.

"I assumed that veterans who served on Guam were getting coverage," Cruz said. "It wasn't until I saw yesterday's article that I realized veterans were still being denied."

Bordallo's office did not immediately respond for comment on the status of previous requests for an investigation into Agent Orange use on Guam.



PDN FILE PHOTO



Anthony J.P. Ada <adaclan@gmail.com>

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## Attorney General's Draft Letter re: J.M. Torres Estate

1 message

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Anthony J.P. Ada <adaclan@gmail.com>

Wed, Dec 17, 2008 at 11:34 PM

To: "Anita F. Orlino" <danor50@yahoo.com>, Ronald Laguana <rlaguana@hotmail.com>, Ronald Laguana <rlaguana@gmail.com>, "Maria G. Cruz" <marcruzkt@msn.com>, "Lydia M. Tyner" <lydia\_tyner@yahoo.com>, James Matanane <jamesmatanane@hotmail.com>, "Ronald F. Eclavea" <reclavea@yahoo.com>, Anthony Ada <adaclan@guamcell.net>

Cc: ancestrallandsguam@yahoo.com

Dear Commissioners,

I have reviewed the draft letter submitted to each of us by the AG for review.

I obtained a copy of the case exhibits and the transcript of the GALC's recorded meeting pertaining to this case and prepared a memo which is attached.

Base on what I reviewed, the attorneys for the estate ignored the conditional instructions of the GALC commissioners and managed to get a deed signed in error.

The Commissioners were correct in instructing the attorneys for the Torres Estate to have their claim ratified by the Probate Court because there were too many unclear questions about true ownership of these properties. In fact, in the transcripts, one Commissioner continued to refer to this claim as the Duarte Estate.

I attempted to summarize my memo and stance on one page but definitely more can be found in the exhibits. And the more you read, the more you will be convinced that the attorneys took advantage of the GALC's trust that they would do what was required of them.

Instead, for some reason, the attorneys did not care to have the Probate Court determine ownership and even volunteered to draw up the deed which was used.

The Torres Estate attorneys disobeyed the instructions of the Commission and must be made to answer why.

If you want to see the exhibits or have questions on any part of my memo, please do not hesitate to call me.

Tony Ada  
20081217 at 23:20 CST  
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 20081217 Memo to Commissioners re JM Torres claim.pdf  
106K

December 17, 2008

**Subject:** Draft complaint from Office of the Attorney General for Reformation of Deed, and for Declaratory Judgment.

**Reference:** Estate of Jose Martinez Torres

**Related Reference:** The Estate's claim on Ancestral Lands knowns as Lots AL002, AL002-1 and AL002-2.

After reading the draft letter and reviewing the GALC recorded transcripts and documents related to this case, it appears that the lawyers for the Estate of JM Torres failed to comply with stipulations made by the Commissioners. There are numerous questions left unresolved which reach beyond the scope of the GALC.

In this connection, the GALC must enlist the AG to pursue the JM Torres estate to prove their claim as required by the Commissioners because:

- Referenced properties appear to belong to the Duarte estate (and not Torres) prior to being repossessed by the U.S. Naval Government.
  - Further question as to ownership is made by then Governor of Guam (Maxwell) to the Secretary of the Navy that,
    - "...Pedro M. Duarte never possessed a clear title to the property..."<sup>1</sup>
- It appears that Mr. J.M. Torres had available and exercised all due process for recovering subject property and did not win his appeal to the Governor.<sup>2</sup> Mr. Torres further pursued his case in the Island Court which upheld the actions of Governor Maxwell.<sup>3</sup>
- In the recording transcripts, Attorney Yanza states,
  - "...neither I myself, Mr. Mantanona and Mr. Razzano or Mrs. O'Keefe can declare that we hereby terminate all future claims to ancestral lands. But, as we saw fit best for the estate, we are willing to go before the probate court and the probate estate of Mr. Torres and request the court that they, the Court, approves the receipt of these ancestral lands and approve the final termination of future claims within the inventory of the commission."<sup>4</sup>
  - "This present motion on the floor, this would be a conditional transfer of the properties so long as the court approves it and once the court approves it - -"<sup>5</sup>
- In the recording transcripts, Commissioner Charfauros states,
  - "...that this be a conditional deed that you still have to go to the courts..."
  - "...and the court will make final judgment on the claim."<sup>6</sup>
  - "...the Duarte Estate." And, "...the Duarte claim."; indicating a question of ownership of this estate.<sup>7</sup>
  - "...if the Court sees fit that this claim is invalid, this property would come back to the inventory of Ancestral Lands Commission. But basically the Court is going to be the final say so."<sup>8</sup>
- Even though the GALC actions may be upstanding, this property was taken in the year 1915 by the U.S. Naval Government which is outside the review timeframe given to the GALC.<sup>9</sup>

<sup>1</sup> Exhibit 5 book, tab 18, letter dated April 23, 1915, reference no. 208-G-15.

<sup>2</sup> Exhibit 5 book, tab 10, his letter to the Governor of Guam dated March 26, 1915.

<sup>3</sup> Exhibit 5 book, tab 14, decree made by Judge Frank Protusach.

<sup>4</sup> Pages 26 and 27 of the transcribed recording of GALC meeting.

<sup>5</sup> Page 29 of the transcribed recording of GALC meeting.

<sup>6</sup> Page 26 of the transcribed recording of GALC meeting.

<sup>7</sup> Pages 26 and 28 of the transcribed recording of GALC meeting.

<sup>8</sup> Page 29 of the transcribed recording of GALC meeting.

<sup>9</sup> Public Law 25-178 gives GALC review of ancestral lands taken from 1931 and later.

Jose M. Torres and Don Pedro Duarte Estate History  
 Chronology of property transaction

01/25/1897	Dona Ana Millinchamp recorded her title of possession of 300 Hectares. She acquired this tract from Bruno del Rosario and Juan Benavente in 1896. Rosario and Benavente had no recorded title. No deed of sale was executed for the transfer of land to Millinchamp.
11/02/1897	Dona Ana Millinchamp recorded her title of ownership of a deed of sale executed before a Notary Public in Guam for 50 Hectares purchased from Jose Charsagua for the sum of 70 pesos.
07/15/1902	<p>Don Pedro Maria Duarte purchased the two above tracts from Ana Millinchamp for 370 pesos each according to the deed of sale executed before the Notary Public and recorded in the Registry on August 5, 1902. Duarte requested that the two tracts be joined and formed one estate; Estate 1540, Vol. IV of Agana, P. 44.</p> <p>The title of Don Pedro Maria Duarte to this land is good. But if the original title of the person who sold the land to Duarte (Millinchamp) is examined, it is not good.</p> <p>No recommendation was suggested by the Government because the land was under legal seizure and would be reverted to the U.S. Naval Government of Guam.</p>
01/14/1914	For the agreed price of 4,000 dollars, Jose Torres y Martinez purchased a rural in Dededo from Pedro M. Duarte. Pedro Duarte received 2,000 dollars. The remaining 2,000 was to be paid on January 14, 1915 (one year later).
09/30/1914	Duarte tried to sell this same property to J. H. Underwood, Pay Clerk, U.S. Navy and Postmaster.
01/14/1915	On January 14, 1915, an agreement was made and notarized that stated, "Jose Torres Martinez was bounded to pay to Pedro M Duarte on this date the amount of two thousand (\$2,000.00) U.S.C. as last instalment for the payment sold to said Jose Torres Martinez in "As-Dededo" by said Pedro M. Duarte; and wishing to have prorogated that term, both parties agreed to proroge the term of payment of the two thousand dollars above mentioned, to the fifteenth day of December one thousand nine hundred and fifteen."
02/27/1915	Pedro M. Duarte, former Postmaster and Chief Justice of the island of Guam, pleaded guilty to the charge of embezzlement of U.S. Postal Money Order Funds in the amount of \$40,944.20.
03/01/1915	Pedro M. Duarte was sentenced to ten years prison and ordered to pay a fine of \$40,944.20 plus court costs of \$50.00. He was sent to the Bilibid Prison in Manila, Philippines. Duarte's property was seized.

Jose M. Torres and Don Pedro Duarte Estate History  
Chronology of property transaction

3/26/1915	<p>Jose M. Torres writes a letter to the Governor of Guam explaining that he had purchased the property from Pedro Duarte and plead the validity of the sale despite him not getting approval nor having the transaction signed before a Notary. Torres offers the Governor two alternatives.</p> <ul style="list-style-type: none"> <li>▪ Torres makes an argument for the validity of the sale; that the requirements of the transaction being notarized was not an indispensable requisite and the sale was good.</li> <li>▪ In the alternative, Torres pleads for recovering the two thousand he had already put in Duarte's hands by having his refund be paid from the proceeds of the auction to be held.</li> </ul>
04/14/1915	Jose Torres sends a cablegram to the Secretary of the Navy. (see tab 19)
04/14/1915	The Secretary of the Navy (referred to as "Dept's") sends cablegram to Governor of Guam.
04/15/1915	The properties seized from Pedro Duarte were put up for auction including the land in Dededo. Nobody offered for the lot. There were however, eight persons who appeared as bidders. (see tab 16)
04/15/1915	The Governor of Guam sends cablegram to Dept at 11:00PM.
04/17/1915	Dept sends cablegram to Governor of Guam. Governor Maxwell answers the cablegram in his cablegram dated April 23, 1915. (see tab 18).
04/20/1915	A memo authored by Leon Flores, Registrar of Lands, stated that "The lack of bidders was due, as I have observed, to the facts that people having money are awaiting for a second auction with reduction of the appraised value of the property..."
04/23/1915	Governor Maxwell sends a cablegram to the Secretary of the Navy responding to their cablegram of April 17, 1915 (see tab18).
04/05/1915	Jose makes a declaration and files it in the Island Court on the same date regarding this property and case.

## GUAM AND ITS PEOPLE.<sup>a</sup>

By W. E. SAFFORD.

The Marianne Islands, or Ladrones, form a chain about 420 miles long in a north and south direction and lying about four days' run by steamer to the eastward of the Philippines. More definitely speaking, they extend from 13° 14' to 20° 30' north latitude and lie between 142° 31' and 143° 46' east longitude. They are of volcanic origin and are surrounded by coral reefs. In the northern islands there are a number of volcanoes in full activity, but in the south volcanic action had ceased long before their discovery.

Guam, the largest and most important member of the group, is the only island belonging to the United States, the remainder having been sold by Spain to Germany after the close of the late war. It is at the extreme south of the chain and at present has a population of 9,676.<sup>b</sup> The island is of irregular shape and is about 29 miles long from north-northeast to south-southwest. At its narrowest part, near the middle, it is less than 4 miles across; near the ends the breadth is from 7 to 9 miles.

The northern portion of the island consists of a mesa, or plateau, an ancient coral reef, elevated about 150 feet above the sea level, with one or two peaks of no great height extending through it. It is without streams or springs, owing to the porous nature of the coral, except in the immediate vicinity of the peaks referred to, where in the wet season there is for a time a supply of water. Near the middle of the island, in the immediate vicinity of Agaña, the capital, there is a large spring from which a copious supply of water issues. This, after slowly oozing through an extensive swamp—an ancient lagoon—finds its way into the sea by means of a river, the channel of which has been artificially lengthened and turned for a mile parallel to the coast for the convenience of the natives. The southern portion of the island is principally of volcanic formation, with several peaks which scarcely exceed a thousand feet in height. It contains a number of streams,

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<sup>a</sup> Reprinted by permission, after revision by the author, from the *American Anthropologist* (N. S.), vol. 4, October-December, 1902. See also "The Chamorro language of Guam," by the same author, in *American Anthropologist* (N. S.), vol. 5, pp. 259 ff.

<sup>b</sup> This number refers to the actual residents of the island and does not include visitors nor the United States forces stationed there. The figures are taken from the census of 1901, and were kindly communicated to me by Don Pedro Duarte, late captain in the Spanish army, now a resident of the island.



208-G-15.

NAVAL GOVERNMENT OF GUAM,  
GOVERNMENT HOUSE,  
GUAM.

April 23, 1915.

From: Governor of Guam.  
To: Secretary of the Navy.

Subject: Case of Jose Torres Martinez.

References: (a) Dept's cablegram of 4 p.m. Apr. 14, 1915.  
(b) My cablegram of 11 p.m. Apr. 15, 1915.  
(c) Dept's cablegram of Apr. 17, 1915.

Enclosures: Copies of all obtainable documents bearing on the case marked "A" to "M", inclusive.

1. In compliance with reference (c) the following detailed report, with copies of papers bearing thereon, is submitted concerning the case of Jose Torres Martinez who claims an equity in a portion of the property of Pedro M. Duarte.
2. On February 27, 1915, Pedro M. Duarte former Postmaster and Chief Justice of the Island of Guam, pleaded guilty in the Court of Appeals of Guam to the charge of embezzlement of U. S. Postal Money Order Funds in the amount of \$40,944.20. He was, on March 1st, 1915, sentenced to the following punishment (as mitigated by me) "imprisonment for ten years and to pay a fine of \$40,944.20" plus the costs of Court amounting to \$50.00. He is now confined in Bilibid Prison, Manila, serving that portion of his sentence which involves imprisonment.
3. In execution of that part of the sentence which involves the payment of the fine, Art. 17 and Arts. 119 to 125 inclusive of the Penal Code in force, I directed the property of Pedro M. Duarte to be seized and so much of it sold as was necessary to cover the payment of \$40,000.00 plus the costs of Court plus the cost of seizure and sale of the property. Copy of my order to the Commissioner of Agana covering this is enclosed marked "A".

4. Among the properties seized by the Commissioner in pursuance of my order was a tract of land situated in Dededo, which was shown by the records of Lands, Deeds and Titles to be owned by Pedro M. Duarte. This was duly advertised for sale by auction, copy, enclosure "B".
5. Following the action of the Commissioner in advertising the Dededo property, Jose Torres Martinez accompanied by Father Palomo, of the Roman Catholic Church at this place, appeared and requested an audience with me. Father Palomo stated that he desired to intercede in Torres' behalf on the ground that Torres had paid \$2000.00 down and was under obligation to pay an additional \$2000.00 to Duarte for the Dededo property. Father Palomo then made a proposition that the Government should in case of sale refund to Torres \$2000.00 before making restitution to the United States.
6. At this time I was aware that Duarte had tried to sell this property about the middle of January, 1915. I learned this through Post Office Inspector Smith to whom Duarte had confessed his guilt in embezzling over \$40,000.00 of U. S. Postal Money Order funds. I have since learned that Duarte had also tried to sell this same property in September, 1914, to J. H. Underwood, Pay Clerk, U.S.Navy, and now Postmaster at Guam.
7. The paper presented by Torres and Father Palomo was a deed of sale by private contract. As it involved real estate it was illegal because 1. It had not been executed before a Notary, 2. The record of the transfer of ownership was not registered in the books of the Registrar of Lands and 3. The authority to make the transfer, required by Executive General Order No.3 had not been obtained. I had the Examiner of Titles examine the paper and caused him to submit a written memorandum to me, copy of which is enclosed marked "C", and which I forwarded to Torres and directed the Examiner of Titles to show to Father Palomo.
8. Not content with this, on March 26, 1915, Torres addressed to me a letter containing his statement of the transaction with arguments in which he sought to convince me that I ought to withdraw the property from sale. Copy of his memorandum is enclosed marked "D". To this I replied through the Attorney General of the Island that the

Courts were open to him for the presentation of his case, copy enclosure marked "E".

9. Torres thereupon went before the Court with a petition requesting the Judge to exclude the Dededo property from the sale. The case came before Judge Luis Torres, who is an uncle of Jose Tomas Martinez. Without taking any testimony or allowing the attorneys for the Government to present their side of the case, this Judge decided in favor of Torres and issued an order to the Commissioner of Agana to exclude the Dededo property from the sale. (See pages 35 and 36 of enclosure "F", which is a copy of the whole Court record in this case).

10. The decision was plainly contrary to law and fact and in violation of Executive General Orders Nos. 3, 110 and 156, and of Arts. 2, 3, 23, and 389 of the MORTGAGE LAW FOR THE COLONIES also of Arts. 51 and 435 of the GENERAL REGULATIONS FOR THE EXECUTION OF THE MORTGAGE LAW, all as stated in my cablegram reference (b). I returned the order to the Judge through the Head of the Judiciary Department, stating that "the decree is hereby declared null, void and of no effect". (See page 37 of enclosure "F"). The order countermanded the decree of a higher Court and also the order of the Governor, for which action there was neither authority nor precedent.

11. This and other recent decisions of Judge Luis Torres convinced me of his total unsuitability for the office of Senior Judge, Island Court. This is believed to be caused largely by age and physical infirmity, which have rendered him unequal to the proper performance of his duties. I suspended him from duty and placed him on half pay.

12. As a result of this action and my verbal order to the Head of the Judiciary Department to take immediate steps to see that this case was properly handled, the case came before Judge Frank Portusach who on April 13, 1915, issued a decree in accordance with existing law. (See pages 41 to 44 inclusive of enclosure "F"). The appeal noted on page 44 of enclosure "F" has gone by default as no action was taken by the appellant within the legal time limit. The suit is therefore ended.

13. The Commissioner of Agana thereupon proceeded on

April 15, 1915, with the sale of the properties of Duarte, including the Dededo estate, acting under instructions from me, copy enclosure "G". There were no bids for any of the property listed (see copy of report of the Commissioner marked "H", and memorandum regarding action at this phase of the case marked "K"). The property was last assessed in 1914, and since then has improved in value by reason of the increased number and age of young non-bearing coconut trees. The failure to offer bids was with the bidders expectation that the property would again be offered for sale at a reduced valuation.

14. In accordance with law (see enclosure "L"), title will be secured to the property in the name of the U.S. Naval Government of Guam. It will require one year to perfect this title.

15. As a matter of fact, Pedro M. Duarte never possessed a clear title to the property in question as is seen from enclosure "M".

*H. J. Maxwell*



208-G-15.

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*H. J. Maxwell*



Island Court, Guam.

April 15, 1915.

DECREE:-

In the petition of Jose Torres Martinez about the elimination and exclusion from the sale at public auction of the real estate in Dedeo included in the attachment of the properties of Pedro M. Duarte, the Senior Judge of the Island Court, Hon. Luis Torres rendered a decree whose dispositive part is as follows:-

"Therefore and seen the Arts. 1125, 1127, 1261, 1290, 1291, 1300, 1445, 1447 and 1463 of the Civil Code and Sec. 285 and 287 of the Code of Procedure in Civil Actions and Special Proceedings above quoted, the Senior Judge of the Island Court, Guam, Luis Torres Diez, before me, the Clerk says: That he had declared and did declare that the deed of sale drawn on January 14, 1914 by Pedro M. Duarte in favor of Jose Torres Martinez of all the property which the former owned in the places known as "Dedeo" and "As-Ucudu" of the jurisdiction of Agana is legal beyond a reasonable doubt. And, it being the rural estate in Dedeo included in the attachment placed by the Commissioner of Agana upon the property of said Pedro M. Duarte in order to sell same at public auction on April 15, 1915 for the purpose of covering from the discharge of his Office of Postmaster, an order of this Court be issued to the Commissioner of Agana through the Governor of Guam to eliminate and exclude from the said seizure the rural estate situated in "Dedeo" as well as from the advertisement by notice of its sale at public auction; and that Jose Torres Martinez be ordered to deliver to the Executive Office the amount of two thousand dollars, a remaining part of the price of the sale on the fixed day-December 15, 1915, and for that end a certified copy of this decree be delivered to Jose Torres Martinez for his information."

The above decision of the Senior Judge, Hon. Luis Torres is contrary to the law and fact and it must be declared null, void and of no effect.

The deed of sale drawn on January 14, 1914, by Pedro M. Duarte in favor of Jose Torres Martinez is a private document and it is not recorded in the Registry of Lands, Deeds and

..... code torres, in spite of he having purchased the rural estate in Dedeco on January 14, 1914 as it is alleged in his application, failed to pay the real estate tax for the said rural estate.

The following authorities shall be applied to the present case:-

E.O.No. 3, provides:-

"For the protection of Government interests and a safeguard for the residents of Guam against the machinations, devices and schemes of speculators and adventurer it is hereby ordered that all persons who claim ownership of land in this Island or its dependencies are prohibited from selling or transferring any portion of such property without first obtaining the consent of the Government. Violation of this order may be punished by fine or imprisonment, or both."

Par. 6 of E.G.O.No. 110, provides:-

"Every transaction affecting real estate shall, in order to be binding, be recorded in the Registry of Lands, Deeds and Titles."

Last par. of Art.2 of E.G.O.No.156, provides:-

"After the taking effect of this Order no instrument, paper, or document of those referred to in this section, nor any copy thereof, shall be recorded nor shall it or any record or transfer thereof be admitted or used as evidence in any court of the Island, until the payment of said taxes has been noted at the bottom of said instrument, paper, or document."

E.G.O.No.152, provides:-

"It is hereby ordered and decreed:-  
From and after the date of this order, any and all forms authorized and legally in use in the several states, territories or possessions of the United States, for the conveyancing, cession, sale or lease of real property, shall be held legal and recognized as such in the Island of Guam for the conveyancing, cession, sale or lease of such property, when duly signed, sealed, witnessed and attested before a notary public or other authorized office  
All laws or parts of laws conflicting with this law are hereby repealed."

Art.2 of the Mortgage Law, provides:-

"In the Registries mentioned in the preceding article shall be recorded:

1. Instruments transferring or declaring ownership of realty, or of property rights thereto.
2. ....

5. ....  
6. ...."

Art. 3 of the Mortgage Law, provides:-

"To permit the record of the title deeds mentioned in the preceding article, they must be in the shape of a public document, writ, or certified document, issued by a judicial authority or by the Government or its agents, in the form prescribed by the regulations."

Art. 23 of the Mortgage Law, provides:-

"The instrument mentioned in articles 2 and 5 which are not duly recorded or entered in the Registry can not prejudice third persons."

Art. 389 of the Mortgage Law, provides:-

"From the time this law goes into operation, no document or instrument which has been recorded in the Registry shall be admitted in the ordinary or special Courts or Tribunals, in the Councils or offices of the Government, by which interests subject to record are created, conveyed, acknowledged, modified, or extinguished, according to the same law, if the object of the presentation be to enforce, to the prejudice of third persons, the interests which should have been recorded."

Arts. 51 and 435 of the General Regulations for the Execution of the Mortgage Law, provides:-

"Art. 51. Authentic documents for the purposes of the shall be those which, serving as title deeds for the ownership or property right, are issued by the Government or by competent authority or official, and which must be evidence in and of themselves."

"Art. 435. The prohibition to admit documents in Tribunals, Councils, and offices, which have not been recorded, mentioned in article 389 of the law, shall be observed even when said documents can no longer be recorded by the person who desires to make use thereof, provided it is desired to prove any right whatsoever arising from the instrument or contract to which they refer, but not when they are invoked by a third person in support of a different right, not depending on said instrument or contract."

For the reasons stated above I declare null, void and of no effect the decree rendered by the Senior Judge Hon. Luis Torres on April 10, 1915. I also declare that the deed of sale drawn on January 14, 1914 by Pedro M. Duarte in favor of Jose Torres Martinez is not legal as contrary to the laws above quote

... in Dededo is hereby denied.  
B Jose Torres Martinez notified of this decree.  
So ordered.

(Sgd.) FRANK PORTUSACH.  
Judge.

(Sgd.) J. CAMACHO.  
Chief Clerk.

CERTIFIED TO BE A TRUE COPY.

*J. Camacho*  
Chief Clerk.

1st. indorsement.  
Island Court, Guam,  
April 17, 1915.

From: Judge, Island Court, Part II.  
To: Jose Torres.

1. Returned.
2. This Court has no authority to issue a certified copy as requested in the foregoing letter.

*Ernest Torres*

---

Agana, Guam,  
March 26, 1915.

To His Excellency, the Governor of Guam.

Sir:

On the twenty-fourth instant, the undersigned received an official letter signed by the Examiner of Titles and the Governor of Guam, returning to the undersigned the documents referring to a rural, in Dededo, of which Pedro M. Duarte was owner, and the private document executed by the said Duarte and the undersigned, before witnesses, on the fourteenth of January, 1914, in accordance with which the party of the first part, that is, Pedro M. Duarte, sold to Jose Torres Martinez, that is, the undersigned, the said rural estate for the agreed price of four thousand dollars, of which amount the vender received from the purchaser two thousand dollars at the time that the contract was made by means of the above mentioned private document; it being stipulated that the remaining two thousand dollars should be delivered to the vender within a certain time, which delivery has not yet been made on account of an agreement between the vender and the purchaser that the said remaining two thousand dollars should be delivered and satisfied in the month of December, nineteen hundred and fifteen, according to the document carried out and signed to that effect.

In the above mentioned official letter it is said that the sale in question is not legal because it did not take place before a Notary Public.

The undersigned wishes to demonstrate that the said sale is legal just as though it had been executed before a Notary Public; because the laws which are still in force in Guam authorize two forms of making contracts of purchase and sale, the one private, and the other public; the former between the contracting parties themselves in the presence of witnesses, and the latter before a Notary Public, also in the presence of witnesses. The only difference which distinguishes the one form from the other is that private documents cannot be inscribed in the Registry of Property, while the public documents can always be inscribed unless they bear some defect which does not allow their inscription; such defect or defects can be irreparable or reparable. The first case occurs when, for example, the contracting parties of a public document do not have legal capacity to bind themselves or to make a contract; the second case occurs when the defect can be corrected without opposing the Law; it being possible, then, for the document to be inscribed after the rectification of the reparable defect.

In the above mentioned document of private sale it was stipulated that the deed of sale would be formally executed before a Notary Public at some convenient time, that is, when the map of the said estate could be drawn up; for, even if the sale had been executed before a Notary Public in January, 1914, it would not have been possible to present it to the Registry of Lands for inscription, for the reason that a certain general order prescribes that documents of transfer of real estate cannot be inscribed in the Registry of Property if they are not accompanied by the corresponding croquis or maps.

When the sale of the real estate in question was made, the contracting parties, that is, Pedro M. Duarte and Jose Torres Martinez, were in full enjoyment of their civil rights and, therefore, had the legal capacity to assume obligations and to make contracts; and the witnesses who attested the contract also had legal capacity therefor. Therefore, the said document of private sale, for the purposes of right, is as valid as if it had been legalized before a Notary Public, with the sole difference that it could not and cannot be inscribed in the Registry of Property, because the Law requires that it have, for this purpose, the character of a public document.

The undersigned has reviewed carefully the articles comprehended in the four books of the Civil Code which treat of the contract of sale, and nothing has been found in which it is limitedly prescribed or ordered that the deed of sale of real estate, such as the estate of Dededo in question, must appear in a public document, that is, that it must be executed before a Notary Public.

The article 1462 of the said Civil Code, in the second paragraph, says: "Should the sale be made by means of a public deed, the execution of it would be equivalent to the delivery of the thing which is the object of the contract, if the contrary does not result, or is not clearly deduced, from the document itself".

This text of the Law convinces us, without reading the remainder regarding the matter, that the intervention of the Notary Public was not an indispensable requisite in the sale of real estate.

Let us suppose for a moment that the deed of sale of the estate in Dededo is null, or that it is not legal on account of not having been executed before a Notary Public. In this case, the question falls fully under the article 1303 of the said Civil Code, the context of which is as follows: "The nullity of an obligation being declared, the contracting parties must reciprocally restore the things which have been the material of the contract, together with their fruits, and the price with

the interests, with the only exception provided in the following articles".

Under this supposition, the undersigned ought to restore to the vender, Pedro M. Duarte, the estate in Dededo, the object of the contract; and Pedro M. Duarte ought to restore to the undersigned the Two Thousand Dollars which has already been received as an integral part of the Four Thousand Dollars, the price which is stipulated in the sale of the estate. This is the very essence of equity and justice; and to deprive the undersigned of his perfect right of recovering the Two Thousand Dollars, which already have been religiously delivered, would be an act of injustice and contrary to the law.

Now then, if the Government insists that the deed of sale of the estate in Dededo, made in favor of the undersigned by the owner, Pedro M. Duarte, is not legal, in spite of the texts of the Law which have been cited above, and which justify the affirmation that the said sale is legal, the undersigned is conformable to the supposed illegality of the contract; and he will not object to the sale of the estate at public auction to cover the responsibilities of Pedro M. Duarte as Postmaster resulting from his own actions, not related in any way with the deed of sale repeatedly mentioned above. But in this case, the Government ought to restore to the undersigned, from the product of the auction itself, the Two Thousand Dollars already paid to the said Pedro M. Duarte as an integral part of the price of Four Thousand Dollars.

And if the Government, taking into account the reasons previously set forth, accepts or agrees that the above mentioned sale is legal, the undersigned prays that the land or rural estate in Dededo, repeatedly mentioned, be eliminated from the list of distrained property of Pedro M. Duarte, the public auction of which will take place on the fifteenth of the coming April; the undersigned to pay to the Government the Two Thousand Dollars which remain to be paid on the price of the sale.

Therefore, the undersigned prays and beseeches the Governor of Guam that he would be pleased to decide in favor of one or the other of the solutions above suggested.

Very respectfully,

*Jonc Jones*

2nd. indorcement.  
Naval Government of Guam,  
Government House,  
Guam, March 30, 1915.

To: Attorney General of Guam.

1. Forwarded.

2. Acknowledge receipt of Jose Torros Martinez's letter and inform him that the Courts are open to him for such action as he may deem necessary to protect his legal rights in this case.

(sgd) W.J. MAXWELL.

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"E,"

OFFICE OF THE ATTORNEY GENERAL  
AND  
PROTEST MARSHAL JUDGE,

March 30, 1915.

From: The Attorney General.  
To: Jose Torres Martinez.

1. I hereby acknowledge receipt of your letter, dated March 26, 1915, forwarded to me by the Governor, and beg to inform you that the Courts are open to you for such action as you may deem necessary to protect your legal rights in this case.

*Dwight F. Smith*

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Mar 27, 15 *h*  
**FILED**

2015 MAR 27 PM 12:54

**SUPREME COURT  
OF GUAM**

**IN THE SUPREME COURT OF GUAM**

**GOVERNMENT OF GUAM,**  
Plaintiff-Appellee/Cross-Appellant,

v.

**GERALDINE T. GUTIERREZ, in her capacity as Administratrix of the  
ESTATE OF JOSE MARTINEZ TORRES and the ESTATE OF JOSE  
MARTINEZ TORRES,**  
Defendants-Appellants/Cross-Appellees.

Supreme Court Case No.: CVA14-007  
Superior Court Case No.: CV1124-09

**OPINION**

**Cite as: 2015 Guam 8**

Appeal from the Superior Court of Guam  
Argued and submitted on September 29, 2014  
Hagåtña, Guam

For Defendants-Appellants/Cross-Appellees:

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For Plaintiff-Appellee/Cross-Appellant:

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Assistant Attorney General  
Office of the Attorney General  
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09. 0309 DH



BEFORE: KATHERINE A. MARAMAN, Presiding Justice;<sup>1</sup> DAVID A. WISEMAN, Justice *Pro Tempore*; J. BRADLEY KLEMM, Justice *Pro Tempore*.

MARAMAN, J.:

[1] This appeal concerns the ownership of certain real property seized by the United States Government following the Japanese occupation of the island during the Second World War and thereafter returned to the Government of Guam for transfer to its original owners. The present dispute centers on a deed for one such property granted by the Guam Ancestral Lands Commission (“GALC”) to the Estate of Jose Martinez Torres. Defendants-Appellants/Cross-Appellees Geraldine T. Gutierrez, Administratrix of the Estate of Jose Martinez Torres, and the Estate of Jose Martinez Torres (collectively, “the Estate”) appeal a decision and order from the trial court granting reformation of the Estate’s deed and remanding determination of the Estate’s land claims back to the GALC. The Estate alleges that the trial court lacked jurisdiction to reform the deed and erred in granting summary judgment based solely on evaluation of a transcript from the 2006 GALC hearing. The Estate further opposes the continued injunction levied against it and contends that the trial court erred in failing to address its motion for sanctions against Plaintiff-Appellee/Cross-Appellant Government of Guam (“the Government”). The Government cross-appeals, alleging that the GALC lacked authority to transfer the property to the Estate in the first instance and claiming that the trial court possessed jurisdiction to address its remaining claims of quiet title, declaratory judgment, and constructive trust. For the reasons set forth below, both the appeal and cross-appeal are affirmed in part and reversed in part, and the case is remanded for further proceedings in the Superior Court.

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<sup>1</sup> Associate Justice Maraman, as the senior member of the panel, was designated as the Presiding Justice.

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## I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This case arises from a dispute regarding a quitclaim deed to certain property in Dededo marked as lots AL002, AL002-1, and AL002-2 (the "Property"). According to the Estate, Mariquita Souder, an heir of the purported landowner Jose Martinez Torres, began filing applications with the GALC for the return of ancestral land in 2003. Although most of her applications were granted, the application as to the Property was denied because the GALC deemed the land to be former Spanish Crown Land. After Ms. Souder died, Evelyn O'Keefe assumed her role. O'Keefe hired experts to demonstrate that the land was not Spanish Crown Land, filed a Motion for Reconsideration, and presented the expert testimony at a hearing before the GALC in August 2006.

[3] In September 2006, the GALC held a hearing with five commissioners present, as well as Attorneys Rawlen Mantanona, Joseph Razzano, and Louis Yanza, who represented O'Keefe. After discussing the location of the lands at issue, the commission clarified the Estate's claim.

According to a transcript provided by the Estate, the following conversation took place:

MR. CHARFAUROS: I'd like to make a motion and my motion would be basically to be in line with the request of the family to recognize the claim to the estate of the lots mentioned herein on the record, which would also extinguish all claims to the Duarte Estate. And also that this be a conditional deed that you still have to go to the courts and go through the regular court proceedings to – and correct me if I'm wrong, is that going to the court proceedings to review this claim and the court will make the final judgment on the claim.

MR. YANZA: That is correct Mr. Chairman. On behalf of the estate, neither I myself, Mr. Mantanona and Mr. Razzano or Mrs. O'Keefe can declare that we hereby terminate all future claims to ancestral lands. But, as we saw fit best [sic] for the estate, we are willing to go before the probate court and the probate estate of Mr. Torres and

request the court that they, the Court, approves the receipt of these ancestral lands and approve the final termination of future claims within the inventory of the commission.

MR. CHARFAUROS: And understand this, this is a conditional deed and if the Court comes back that says, that you will have absolutely no claim to this property, this property comes right back into the inventory of the Ancestral Lands Commission and that we are not going to rehear this case again. Unless you guys have convincing evidence that has not been reviewed by the Court to rehear the case. Do you understand exactly what this motion is?

MR. YANZA: Yes.

MR. MANTANONA: Yes, we do.

....

MR. CHARFAUROS: Yeah. And understand, I'm not asking the family for permission for this extinguishment. My motion is not asking for permission, I'm making this motion. And this motion is to extinguish this claim and basically, it's up to the Courts and if the Court see fit that this motion is inappropriate then the Courts can rule against that and if the Court sees fit that this claim is invalid, this property would come back to the inventory of the Ancestral Lands Commission. But basically the Court is going to be the final say so. Do you understand that motion?

MR. MANTANONA: Yes.

MR. YANZA: Mr. Commissioner? Just to clarify.

MR. CHARFAUROS: Yeah.

MR YANZA: This present motion on the floor, this would be a conditional transfer of the properties so long as the court approves it and once the court approves it –

MR. CHARFAUROS: Yes. In other words, where it's a conditional deed that we're giving you. You still have to go to the courts and – if the Courts comes back and say yes –

MR. YANZA: Okay. We understand that. We accept that.

MS. ORLINO: And then it's going to not come before this commission again?

MR. MANTANONA: Right, yeah.

MR. YANZA: No, no. If the court approves of the transfer –  
MS. ORLINO: Then it's a done deal.  
....  
MR. YANZA: And then the condition would be satisfied?  
MR. MANTANANE: Yeah, right.  
MR. CHARFAUROS: If the court rules against it, then it comes – that property comes back into –  
MR. ECLAVEA: Into our inventory.

RA, tab 128, Ex. 1 at 26-30 (Guam Ancestral Lands Comm'n Hr'g, Sept. 26, 2006) ("GALC Hr'g"). The attorneys agreed to draft the deed for the GALC's review.

[4] On September 25, 2006, the Estate's attorneys sent a letter to the GALC and its commissioners. The letter stated:

As per the GALC September 20, 2006 hearing, I enclose for your easy reference, a copy of our proposed Quitclaim Deed deeding from the GALC to the Estate. As you will note, I have essentially copied the same language in the GALC's Quitclaim Deed template. There are, however, a few changes. The changes are:

1. Decision: The decision by the Commission acknowledging the Estate's property (pp. 3-4).
2. Lot Descriptions (pp. 3-4 and 6-7).
3. *Condition: Pursuant to the motion approved by the Commission, I direct your attention to pages 11-12 in which the conditions of the Quitclaim Deed are set forth therein. As was decided, the transfer of the properties to the Estate is conditioned upon the Estate going before the probate court to approve the acceptance of the properties in exchange for the Estate to forego all other claims against the Commission for other properties held by the Commission.*

RA tab 134, Ex. G at 1-2 (Letter from Louie J. Yanza to GALC, Sept. 25, 2006) (emphasis added).

[5] The Final Written Decision and Order, issued by the GALC and signed by GALC Commissioners Orlino and Cruz, expressly stated that:

The Commission . . . directs the Chairperson and Secretary of the Commission to condition the return of the properties to the Estate that the Estate shall request the probate court of the Jose M. Torres Estate to accept the return of the properties in exchange for the Estate terminating all future claims . . . .

RA tab 134, Ex. I at 4 (Final Written Dec. & Order, Dec. 26, 2006).

[6] On June 7, 2007, the Estate petitioned the Probate Court “to Compromise and to Confirm Quitclaim Deed and Real Property Received by the Estate [t]hrough the Ancestral Lands Commission.” RA, tab 89, Ex. 2 at 1 (Pet. Compromise, June 12, 2007). The petition was approved by the probate court on August 31, 2007. The GALC thereafter filed a “Satisfaction and Release of Condition Placed on Deed” on September 26, 2007. RA, tab 66, Ex. A at 1 (Satisfaction & Release, Sept. 26, 2007). This release quotes the condition in the quitclaim deed, and declares it to be satisfied. The deed was signed on October 17, 2006.

[7] The Government, acting on behalf of the GALC,<sup>2</sup> filed a “Complaint for Reformation of Deed, for Declaratory Judgment, to Quiet Title, and for Imposition of a Constructive Trust” on July 24, 2009. RA, tab 2, at 1 (Compl. Reformation of Deed, July 24, 2009).<sup>3</sup>

[8] The court issued a preliminary injunction on February 10, 2009, “to enjoin [the Estate] from distributing the assets contained within the Estate . . . .” RA, tab 45 at 1 (Order, Feb. 10, 2010). The court stated that the injunction would be in effect “for ten (10) days from the date of this order.” *Id.* at 3. The court held a hearing for a motion for a permanent injunction on February 22, 2010. It continued the injunction until a hearing on March 31, 2010. The Estate filed for dissolution of the injunction on March 18, 2011. The court ruled that the original

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<sup>2</sup> It appears that the Government’s representation of GALC was in dispute at one point. However, this is not an issue on appeal, and no party now contends that the Government is not the proper representative of the GALC.

<sup>3</sup> The Government attempted to intervene in the Estate’s probate court case in 2008, but the court denied the Government’s petition.

injunction expired on February 24, 2009, ten days after it was first ordered. However, the court then renewed and extended the injunction “until resolution of the issue of whether the [Government has] properly set forth claims as taken under advisement on February 17, 2012.” RA, tab 163 at 5 (Dec. & Order, Mar. 6, 2012).

[9] After filing first and second amended complaints, the Government eventually filed a third amended complaint. The Government alleged reformation of the deed as its first cause of action, and it requested declaratory judgment, quiet title, and imposition of a constructive trust as its second cause of action. The Government thereafter moved for summary judgment on the complaint. The Estate filed an opposition and cross-motion for summary judgment. The trial court heard the matter on November 30, 2012. It issued a decision and order on September 30, 2013. The Estate timely filed an appeal, and the Government timely filed a cross-appeal.

## II. JURISDICTION

[10] This court has jurisdiction over appeals from final judgments of the Superior Court pursuant to 48 U.S.C.A. §1424-1(a)(2) (Westlaw through Pub. L. 113-296 (2014)), and 7 GCA §§ 3107(b) and 3108(a) (2005).

## III. STANDARD OF REVIEW

[11] We review decisions to dismiss for lack of subject matter jurisdiction *de novo*. *Core Tech Int'l Corp. v. Hanil Eng'g & Constr. Co.*, 2010 Guam 13 ¶ 16. We review a trial court's decision granting a motion for summary judgment *de novo*. *Taitano v. Lujan*, 2005 Guam 26 ¶ 11.

[12] This court generally considers the trial court's grant of a preliminary or permanent injunction for abuse of discretion. *Hongkong & Shanghai Banking Corp. v. Kallingal*, 2005 Guam 13 ¶ 17 (citing *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 15 n.3). Issues of law that

underlie the grant of an injunction are reviewed *de novo*, while findings of irreparable harm or likelihood of success on the merits are reviewed for abuse of discretion. *Id.*

[13] We review a court's decision to deny sanctions for abuse of discretion. *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, 2014 Guam 12 ¶ 10.

#### IV. ANALYSIS

##### A. Whether the Superior Court has Jurisdiction over the Dispute

###### 1. Original jurisdiction over the Government's causes of action

[14] The Superior Court of Guam holds original jurisdiction over all causes of action and some appellate jurisdiction, not exclusively reserved for the Supreme Court, as provided by the legislature. 7 GCA § 3105 (2005). In addition, Guam law provides the trial court with jurisdiction to hear the claims at issue in this case. The court may reform contracts pursuant to its general jurisdiction under 7 GCA § 4101. *See* 7 GCA § 4101 (2005); *see also* 7 GCA § 11305(h) (2005); *Burkhart v. Miranda*, 2013 Guam 2 ¶¶ 15, 27 (discussing Superior Court's reformation of deed); *Exec. View Estate, Inc. v. Kamminga*, No. 95-00125A, 1996 WL 104469, at \*2 (D. Guam App. Div. Mar. 1., 1996) (Superior Court sits in both law and equity); 66 Am. Jur. 2d *Reformation of Instruments* § 92 (2014) (reformation of an instrument is subject to court sitting in equity). Further, the Superior Court possesses jurisdiction to make a declaratory judgment involving a deed. *See* 7 GCA § 26801 (2005); *see also Hart v. Hart*, 2008 Guam 11 ¶¶ 13-14 (Superior Court may clarify ambiguous decrees pursuant to Section 26801). Finally, the Legislature has vested the court with jurisdiction to hear actions to quiet title. 21 GCA § 25101 (2005); *Taitano*, 2005 Guam 26 ¶ 23 (holding that a petition "to quiet title to real property [is] a matter the trial court obviously has jurisdiction over pursuant to 21 GCA § 25101 and 7 GCA §

3105 (2005).”). Thus, the Superior Court possesses the general authority under its original jurisdiction to rule on the claims at issue in this case.

[15] Despite the existence of independent jurisdiction over the claims presented in this case, the court must resolve whether an administrative remedy precludes the exercise of traditional jurisdiction and limits the trial court to review of the administrative decision. Case law from other courts addressing this question reveals a split of authority. Some cases hold that administrative deference prevents the court from exercising its original jurisdiction in cases over which an administrative body has authority. *See, e.g., Phillips v. Lowe's Home Ctr., Inc.*, 879 So. 2d 200, 203 (La. Ct. App. 2004) (“The grant of original exclusive jurisdiction of designated subject matters to an agency results in the removal of those matters from the [trial] court’s jurisdiction.”); *Pittsburgh Bd. of Pub. Educ. v. Pa. Human Relations Comm’n*, 820 A.2d 838, 841 (Pa. Commw. Ct. 2003) (“In matters involving administrative agencies, this court’s original jurisdiction is limited to those actions not within its appellate jurisdiction.”). However, other courts have determined that, with regard to administrative decisions, the existence of appellate jurisdiction does not foreclose a trial court from exercising its original jurisdiction. *See, e.g., City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 168-69 (1997) (claims requiring review of administrative determinations do not deny trial courts alternate avenues of jurisdiction); *Emp’rs Mut. Cos. v. Skilling*, 644 N.E.2d 1163, 1165 (Ill. 1994) (agencies may be given exclusive jurisdiction over certain matters, but “if the legislative enactment does divest the [trial] courts of their original jurisdiction through a comprehensive statutory administrative scheme, it must do so explicitly” (citations omitted)); *Tri-State Generation & Transmission Ass’n v. D’Antonio*, 249 P.3d 924, 931 (N.M. Ct. App. 2011) (in evaluating an administrative proceeding,

“the court’s original jurisdiction may be exercised at the same time as its appellate jurisdiction” (citations omitted)). Accordingly, we hold that whether the Superior Court retains its jurisdiction to rule on the Government’s claims depends on whether applicable legislation intended to grant exclusive jurisdiction over such claims to the GALC.

[16] The GALC is considered an administrative body subject to the rules and privileges of the Guam Administrative Adjudication Act. 21 GCA § 80104(b) (2005); 5 GCA § 9102 (2005). Under the Act, the commission has primary jurisdiction to make determinations of matters within its authority, and such decisions are entitled to deference unless contrary to law or unsupported by substantial evidence. *See* 5 GCA §§ 9239-9240 (2005). Based on these rules, the Estate claims that issuance of the deed represents a conclusive transfer of ancestral land rights to the Estate and that evaluation by the Superior Court improperly usurps the authority of the commission. However, notwithstanding the general rules regarding administrative bodies, analysis of the specific statutory provisions governing the GALC strongly suggests that it was designed to maintain concurrent original jurisdiction with the Superior Court. In creating the GALC, legislative findings traced the history of land seizure on Guam, noting the significant public policy interest in favor of obtaining due process through “impartial courts” and “independent” triers of fact. *See* Guam Pub. L. (“P.L.”) 25-45:2(c) (June 9, 1999). In fact, the GALC itself was created to provide a means of remedy for those landowners who lacked litigation resources or whose claims could not be satisfied after conclusion of litigation under 48 U.S.C. § 1424. P.L. 25-45:2(d). Additionally, the Legislature stated explicitly that “[n]othing in this Act shall be interpreted to eliminate in whole or in part any remedy or procedure which may be utilized to further the just claim of any party to land.” P.L. 25-45:7. Thus, it is clear that,

rather than impose exclusive administrative jurisdiction, the Legislature intended the GALC to exercise jurisdiction over land claims concurrent with the legal remedies available under the Superior Court's original jurisdiction. *See id.*; *see also Phillips*, 879 So. 2d at 203 (“[E]xclusive jurisdiction can be contrasted with concurrent jurisdiction where the [trial] court maintains original jurisdiction in certain matters at the same time that an agency or other court has been granted the same original jurisdiction.” (citation omitted)).

[17] Furthermore, even if the Legislature had intended to provide statutory deference to the GALC, such deference would not apply to the specific actions brought in this case. Administrative deference and exhaustion requirements do not apply when a quiet title action is predicated upon an *ultra vires* challenge to the exercise of administrative jurisdiction. *Appraisal Review Bd. of Harris Cnty. Appraisal Dist. v. O'Connor & Assocs.*, 267 S.W.3d 413, 418-19 (Tex. App. 2008) (“[The general rule] is that courts do not interfere with the statutorily conferred duties and functions of an administrative agency. However, courts may intervene in administrative proceedings when an agency exercises authority beyond its statutorily conferred powers.” (citations omitted)). Additionally, the existence of an administrative proceeding does not preclude the court's jurisdiction over remedies that cannot be adjudicated by the administrative body. *Comm'n on Human Rights & Opportunities v. Human Rights Referee of Comm'n on Human Rights & Opportunities*, 783 A.2d 1214, 1218 (Conn. App. Ct. 2001) (trial court has jurisdiction to hear claim for which no adequate administrative remedy is available).

[18] The GALC possesses authority only to hear ancestral land claims. 21 GCA § 80104(b). It is not a court in equity and thus possesses no jurisdiction to evaluate claims for contract reformation. *See Fed. Trade Comm'n v. Eastman Kodak Co.*, 274 U.S. 619, 627 (1927) (Federal

Trade Commission is not court of equity, because it was not given those powers by statute); *United States v. Milliken Imprinting Co.*, 202 U.S. 168, 174 (1906) (“Reformation is not an incident to an action at law, but can be granted only in equity.”); *New Standard Pub. Co. v. Fed. Trade Comm’n*, 194 F.2d 181, 183 (4th Cir. 1952) (“[A]n administrative agency is not a court of equity . . . .”). Thus, the trial court is the only entity which may properly exercise independent jurisdiction on the issue of reformation and quiet title related to a challenge of administrative authority over the land claim. *See* 7 GCA §§ 3105, 4101; *see also* 21 GCA § 25101.

## 2. Appellate jurisdiction to remand to the GALC

[19] Remand is an appropriate remedy following appellate review of a lower proceeding. *See, e.g., Sierra Club v. Van Antwerp*, 719 F. Supp. 2d 77, 79 (D.D.C. 2010) (stating that remand is proper when reviewing an administrative decision). In addition to its original jurisdiction, the Superior Court does possess limited appellate jurisdiction to review administrative determinations, including those made by the GALC. *See* 5 GCA §§ 9240-9241 (2005); *see also* 21 GCA § 80104(g). However, both parties concede that appellate jurisdiction is not applicable in this case because the action did not arise as an appeal of the commission’s decision to convey the quitclaim deed to the Estate. *See* Appellee’s Br. at 15-16 (June 18, 2014); Appellant’s Br. at 14 (May 20, 2014). Thus, appellate jurisdiction is not implicated and cannot justify the Superior Court’s use of remand as a remedy. Because the trial court did not obtain jurisdiction through an appeal of an administrative decision, it had no authority to remand the case to the GALC. Furthermore, even if this claim did arise pursuant to an appeal, remand may be ordered only when a lower adjudicative body possesses authority to comply with the instructions of the remanding court. *Olivier Plantation, LLC v. St. Bernard Parish*, 744 F. Supp. 2d 575, 590 (E.D.

La. 2010) (remanding to state court). As this court has established above, the GALC does not possess jurisdiction to reform the deed or to rule on challenges to its own authority. *New Standard*, 194 F.2d at 183 (administrative agency is not a court in equity); *O'Connor*, 267 S.W.3d at 418-19 (administrative exhaustion not required where challenge is to exercise of administrative jurisdiction). Therefore, the court erred to the extent that it remanded the Government's claims to the GALC.

**B. Whether the Deed is Void as Exceeding the GALC's Authority**

[20] In addition to challenging the terms of the deed at issue in this case, the Government alternately contends on appeal that the deed is void as a matter of law since the GALC did not possess jurisdiction to transfer the land in question. Appellee's Br. at 16-17. This claim is premised on the assertion that Jose Martinez Torres did not own the Property at the time it was seized by the United States. *Id.* at 10-13. According to the Estate, the land at issue belonged to Torres, who purportedly bought the land from Pedro M. Duarte in 1915. RA, tab 218, Ex. I at 1 (Supporting Aff. of Applicant, Apr. 23, 2001); Appellee's Br. at 4. The Government disputes that the Property was ever validly transferred from Duarte to Torres, claiming that after the latter had tendered partial payment for the lots, Duarte's property was put up for auction and ultimately adjudicated to the Government of Guam. RA, tab 127 at 3-4 (Mot. Summ. J., Dec. 3, 2010). However, it is alleged that Torres maintained ownership and hired several people to care for the Property and harvest copra until the land was taken by the Japanese army in 1941. RA, tab 218, Ex. I at 1 (Supporting Aff. of Applicant). This land was taken from the Japanese by the United States government in 1944. *Id.* The federal government returned this land to the Government of Guam in 2002. RA, tab 89, Ex. I at 1 (Quitclaim Deed, Oct. 17, 2006). The Government of

Guam then delivered this land to the GALC. *Id.*; *see also* Guam Pub. L. 22-145 (requiring federal properties reacquired by the Government of Guam be returned to the estates of original landowners); Guam Pub. L. 23-141 (same).

[21] It should initially be noted that the Government did not appeal the GALC's original decision determining that the Estate was the legitimate owner of the Property and entitled to its return. *See* RA, tab 218, Ex. C at 3 (GALC Final Written Dec. & Order, Dec. 22, 2006) ("The Commission, having reviewed the evidence presented, having considered testimony given under oath and having voted on the Application, determines by greater weight of the evidence that Jose Torres Martinez aka Jose Martinez Torres is the ancestral landowner of [the Property]."); 5 GCA § 9240 (procedure for appealing administrative decisions); 21 GCA § 80104(g) (authority to appeal issues before the GALC). Further, the Government's theory that the GALC never possessed jurisdiction to transfer the Property was presented for the first time on appeal, and the factual issues underpinning this claim were not presented to or ruled upon by the Superior Court. *See* Appellant's Reply Br. at 1-8 (Aug. 5, 2014); Appellee's Reply. Br. at 3 (Sept. 2, 2014). "[A]s a matter of general practice, 'this court will not address an argument raised for the first time on appeal.'" *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 78 (quoting *Univ. of Guam v. Guam Civil Serv. Comm'n*, 2002 Guam 4 ¶ 20). Indeed, this court may only exercise discretion to review new issues "(1) when review is necessary to prevent a miscarriage of justice or to preserve the integrity of the judicial process; (2) when a change in law raises a new issue while an appeal is pending; and (3) when the issue is purely one of law." *Id.* ¶ 80 (quoting *Dumaliang v. Silang*, 2000 Guam 24 ¶ 12 n.1). None of these exceptions apply here. Additionally, resolution of factual issues not evaluated by the trial court is not an appropriate

function of an appellate court. *See Kloppenburg v. Kloppenburg*, 2014 Guam 5 ¶ 27 (factual inquiries are more appropriately addressed by a trial court in the first instance); *McNeil v. Pub. Defender Serv. Corp.*, No. 90-00044A, 1990 WL 320362, at \*2 (D. Guam App. Div. Oct. 30, 1990) (“An appellate court has no fact-finding function. It cannot receive new evidence from the parties, determine where the truth actually lies, and base its decision on that determination.” (emphasis omitted)).

[22] Finally, the court is not persuaded by the Government’s argument that addressing this issue on appeal is necessary to determine the subject matter jurisdiction of the trial court. *See Appellee’s Reply Br.* at 3 (citing *Taitano*, 2005 Guam 26; *Bank of Guam v. Del Priore*, 2007 Guam 7). As indicated above, the trial court possesses independent jurisdiction to hear an *ultra vires* challenge as well as appellate jurisdiction to review alleged errors of GALC decisions. *See* 7 GCA §§ 3105, 26801; *see also* 21 GCA § 80104(g). The failure of the Government to take advantage of these available channels of judicial review does not entitle them to adjudication in the first instance by this court. Therefore, this court will not address the Government’s argument as to whether the GALC had jurisdiction to deed the Property to the Estate.<sup>4</sup>

### C. Whether the Doctrine of Estoppel by Deed Applies

[23] The court next addresses whether the doctrine of estoppel by deed precludes the Government from attacking the deed’s validity. The parties have argued at length as to whether the doctrine applies only to issues involving after-acquired title. *See Appellee’s Br.* at 22-23;

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<sup>4</sup> Similarly, the Government at times appears to argue that the deed was invalid due to failure of a condition precedent. *Appellee’s Br.* at 17. Again, this argument attacking the validity of the deed could be made in a quiet title action in the Superior Court, but was never made at the trial court level, and neither party designates it as an issue for appeal. The existence of a condition precedent, as well as whether it was waived, is a factual matter. As discussed, we do not review new facts on appeal, and typically will not even address issues raised for the first time on appeal.

Appellant's Reply Br. at 25-26. However, determination of that question is unnecessary in this case.

[24] Regardless of whether the doctrine of estoppel by deed is limited to after-acquired title, it is established that the doctrine does not apply where a claim of invalidity exists. *Gordon v. City of San Diego*, 36 P. 18 (Cal. 1894) ("It is essential to an estoppel by deed that the deed itself should be a valid instrument . . .");<sup>5</sup> see also *Dominex, Inc. v. Key*, 456 So. 2d 1047, 1057 (Ala. 1984); *Perkins v. Kerby*, 308 So. 2d 914, 917 (Miss. 1975); 31 C.J.S. *Estoppel and Waiver* § 56 (2014). Likewise, the doctrine does not apply where a deed has been procured through fraud or is the product of mistake. See *Vai v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 364 P.2d 247, 256 (Cal. 1961) (en banc); see also *San Juan Basin Consortium, Ltd. v. EnerVest San Juan Acquisition Ltd. P'ship*, 67 F. Supp. 2d 1213, 1226 (D. Colo. 1999); *Levatino v. Levatino*, 506 So. 2d 858, 862 (La. Ct. App. 1987); *Kolker v. Gorn*, 67 A.2d 258, 261 (Md. 1949); 31 C.J.S. *Estoppel and Waiver* § 57 (2014). Here, the Government has asserted both fraud and mistake in its first cause of action and has alleged that the deed is invalid in its second cause of action. RA, tab 89 at 2-8 (Third Am. Compl., Aug. 30, 2010). Until these claims are resolved, the doctrine of estoppel by deed cannot apply in this case. Accordingly, the Government is not estopped from arguing that the deed is invalid, or from requesting reformation on the basis of mistake.

**D. Whether the Trial Court Erred in Granting Summary Judgment in Favor of the Government Based on its Claim for Reformation**

[25] Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as

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<sup>5</sup> This court finds California case law to be persuasive in determining matters of estoppel by deed. See *Taitano*, 2005 Guam 26 ¶¶ 36 n.10, 44.

to any material fact.” *Gayle v. Hemlani*, 2000 Guam 25 ¶ 20 (quoting Guam R. Civ. P. 56(c)); see also *Bank of Guam v. Flores*, 2004 Guam 25 ¶ 8. A genuine issue exists where there is “sufficient evidence” which establishes a factual dispute requiring resolution by a fact-finder. *Gayle*, 2000 Guam 25 ¶ 20 (citing *Iizuka Corp. v. Kawasho Int’l, Inc.*, 1997 Guam 10 ¶ 7 (citation omitted)). However, the dispute must involve a “material fact.” *Id.* “A ‘material’ fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit . . . Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment.” *Id.* (omission in original).

[26] In motions for summary judgment, a court must view the evidence and draw inferences in the light most favorable to the non-movant. *Id.* ¶ 21. If, however, there are no genuine issues of material fact, the non-movant may not simply rely on allegations in the complaint, but must provide some significant probative evidence supporting the complaint. *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

#### 1. Unilateral mistake

[27] The Estate contends that the trial court erred in granting summary judgment in favor of the Government. Appellant’s Br. at 22. The court held that the Government was entitled to reformation based upon unilateral mistake. RA, tab 219 at 10-13 (Dec. & Order, Sept. 30, 2013). In making this determination, the court reasoned that the Estate’s attorney “knew or should have known” that submission to the probate court did not properly satisfy the intended condition. *Id.* at 13. However, this conclusion is not drawn from the appropriate standard for determining whether reformation is warranted. Unilateral mistake may, in some cases, justify rescission of a contract where the other party knew or should have known of the mistake. See 18 GCA § 89202

(2005) (“A party to a contract may rescind the same . . . [i]f the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake.”); *see also Mendiola v. Bell*, 2009 Guam 15 ¶ 32 n.5 (“Guam statutory law . . . recognizes a right of rescission for fraud [or] for mistake . . . .” (internal quotation marks omitted)); *ArcelorMittal Cleveland, Inc. v. Jewell Coke Co.*, 750 F. Supp. 2d 839, 848 (N.D. Ohio 2010) (applying Restatement (Second) of Contracts § 153). However:

It has been pointed out that the difference between reformation and rescission of a written contract on account of a mistake of one of the parties is very distinct, for the reformation of a contract involves an effort to enforce it as reformed, whereas rescission involves an effort to abandon and recede from a contract which the party did not intend to make. One of the parties to a contract cannot have it reformed on account of mistake which is not mutual, for to do so would be to enforce the reformed contract which the other party had not intended to make.

Annotation, *Unilateral Mistake as Basis of Bill in Equity to Rescind the Contract*, 59 A.L.R. 809 (originally published in 1929).

[28] In light of these differences in remedy, “[a] unilateral mistake alone is not an adequate ground for reformation.” *M Electric Corp. v. Phil-Gets (Guam) Int’l Trading Corp.*, 2012 Guam 23 ¶ 26; *see also ArcelorMittal*, 750 F. Supp. 2d at 848 (“Generally, a court will not reform a contract in the case of a unilateral mistake”); *Kopff v. Econ. Radiator Serv.*, 838 S.W.2d 449, 452 (Mo. Ct. App. 1992). Instead, only a “unilateral mistake accompanied by fraud or misrepresentation by the other party will warrant reformation.” *M Electric Corp.*, 2012 Guam 23 ¶ 26. This requirement of wrongdoing by the party opposing reformation mirrors similar limitations articulated in other jurisdictions. *See, e.g., John John, LLC v. Exit 63 Dev., LLC*, 826 N.Y.S.2d 656, 657 (N.Y. App. Div. 2006) (“To reform a contract based on mistake, a plaintiff must establish that the contract was executed under mutual mistake or a unilateral mistake

induced by the defendant's fraudulent misrepresentation." (citation and internal quotation marks omitted)); *Poly Trucking, Inc. v. Concentra Health Servs., Inc.*, 93 P.3d 561, 563 (Colo. App. 2004) ("Reformation is generally permitted when . . . one party made a unilateral mistake and the other engaged in fraud or inequitable conduct." (citations omitted)); *Faivre v. DEX Corp. Ne.*, 913 N.E.2d 1029, 1036 (Ohio. Ct. App. 2009) ("[W]here the mistake occurred due to a drafting error by one party and the other party knew of the error and took advantage of it, the trial court may reform the contract." (citation omitted)); *Kish v. Kustura*, 79 P.3d 337, 339 (Or. Ct. App. 2003) ("To obtain reformation of a contract, a party must prove . . . that there was a mutual mistake or a unilateral mistake on the part of the party seeking reformation and inequitable conduct on the part of the other party . . . ." (citation and internal quotation marks omitted)).

[29] "The elements of fraud include: 1) a misrepresentation; 2) knowledge of falsity (or scienter); 3) intent to defraud to induce reliance; 4) justifiable reliance; 5) resulting damages. The absence of any of these required elements will preclude recovery." *Wilkinson v. Jones*, 2004 Guam 14 ¶ 18 (quoting *Trans Pac. Exp. Co. v. Oka Towers Corp.*, 2000 Guam 3 ¶ 23). Here, the trial court did not make a finding that the Estate intentionally misrepresented the terms of the contract for the purpose of misleading the GALC. Rather, the court merely opined that "[t]he distinction between a 'probate court' and a court of general jurisdiction, competent to adjudicate the validity of the Defendants' ancestral claim . . . was clear to the Defendants' attorneys, or should have been so in the exercise of reasonable diligence." RA, tab 219 at 11 (Dec. & Order). As discussed above, this conclusion alone is insufficient for a grant of summary judgment under the reformation standard for unilateral mistake. The trial court's decision in this case makes no reference to evidence that the error was intentionally included for the purpose of

misleading the GALC or that the commissioners reasonably relied on such representation. *Id.* at 9-12. Thus, reformation was improper.

## 2. Dispute of material fact

[30] In addition to evaluating summary judgment under an improper standard, the trial court also erred in concluding that no dispute of material fact remained. "Summary judgment is generally proper in a contract dispute only if the language of the contract is wholly unambiguous." *Compagnie Financiere de CIC et de L'Union Europeenne v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 232 F.3d 153, 157-58 (2d Cir. 2000) (citations omitted). Further, if parties assert conflicting intentions about the meaning of the same contract language, then disputes of material fact remain and preclude summary judgment. *Atalla v. Abdul-Baki*, 976 F.2d 189, 195 (4th Cir. 1992). If a contract's terms remain ambiguous, summary judgment may be granted only "if the evidence presented about the parties' intended meaning [is] so one-sided that no reasonable person could decide the contrary." *Compagnie Financiere*, 232 F.3d at 158 (citing *3Com Corp. v. Banco do Brasil, S.A.*, 171 F.3d 739, 746-47 (2d Cir. 1999)). This presumption against summary judgment has been applied specifically to claims of unilateral mistake relating to the substance of a contract. *See, e.g., Bethlehem Steel Corp. v. Centex Homes Corp.*, 327 So. 2d 837, 838-39 (Fla. Dist. Ct. App. 1976).

[31] In this case, the Estate has presented multiple pieces of evidence regarding the intended meaning of the contract and whether a unilateral mistake occurred at all. For example, in a deposition provided by the Estate, Commissioner Mark Charfauros stated that some commissioners had concerns about the deed that were resolved, and that they were involved in the drafting of the deed. RA, tab 218, Ex. D at 5-8 (Mark Charfauros Dep., June 17, 2008). He

stated that he had no problems with the condition in the quitclaim deed as it was drafted and signed. *Id.* at 21. Moreover, he also stated that “[i]t was not the GALC’s intent to have the Superior Court of Guam actually review whether the Estate actually owned the property or have the court review our decision.” RA, tab 218, Ex. G at 2 (Decl. Mark C. Charfauros, Apr. 2008).<sup>6</sup> Additionally, one of the Estate’s attorneys,<sup>7</sup> Louie Yanza, testified in writing that he “received comments and revised the Deed in accordance with the GALC’s wishes.” RA, tab 218, Ex. E at 2 (Decl. Louie Yanza, Aug. 17, 2009). He stated, “I had three conversations with Mr. Leon Guerrero all which resulted in amendments to the Deed.” *Id.* According to Yanza, Joey Leon Guerrero finally approved the deed on October 16, 2006. *Id.* Further, the language of the condition stated in both the GALC’s final decision and order and on the quitclaim deed supports the interpretation of the Estate. RA, tab 134, Ex. I at 4 (Final Written Dec. & Order, Dec. 26, 2006); RA, tab 89, Ex. 1 at 1 (Quitclaim Deed, Oct. 17, 2006). These documents are themselves evidence sufficient to create a dispute of material fact.

[32] Even assuming *arguendo* that a unilateral mistake occurred, the Estate has also presented evidence challenging several elements of the fraud allegation, a necessary component for reformation. On the issue of misrepresentation, Yanza sent a letter to the entire commission that directed its attention to the specific terms of the condition he included in the deed. RA, tab 134, Ex. G at 1-2 (Letter from Louie J. Yanza to GALC). This fact would suggest that the Estate’s attorneys made no false representation with regard to the condition included in the deed. Further, in the deposition of Joey Leon Guerrero, Leon Guerrero affirmed that he “saw a

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<sup>6</sup> The copy of this declaration in the Estate’s Excerpts of Record is not signed or dated.

<sup>7</sup> Although the attorneys represented O’Keefe, and not the Estate, at the GALC hearing, they are now attorneys for the Estate as well and will be referred to collectively as the “Estate’s attorneys.”

problem” with the draft quitclaim deed, but failed to object or bring the issue to the attention of other commissioners. RA, tab 134, Ex. A at 2 (Joey G. Leon Guerrero Dep., Feb. 17, 2011). Additionally, one of the commissioners who signed the deed, Maria Cruz, stated that she did not review or even read the deed. RA, tab 134, Ex. D at 4, 7 (Maria G. Cruz Dep., Aug. 11, 2010). The fact that the commissioners were either explicitly aware of the condition or failed to read the deed, viewed in the light most favorable to the nonmoving party, would indicate that, even if a misrepresentation had occurred, reliance by the commissioners would not have been reasonable. *See Randas v. YMCA of Metro. L.A.*, 21 Cal. Rptr. 2d 245, 248 (Ct. App. 1993) (quoting 1 Witkin, Summary of Cal. Law (9th ed. 1987), § 120, at 145) (“Ordinarily, one who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms, and cannot escape liability on the ground that he has not read it.”); *see also Stevens v. Illinois Cent. R.R. Co.*, 234 F.2d 562, 564 (5th Cir. 1956); *DSP Venture Grp., Inc. v. Allen*, 830 A.2d 850, 854 (D.C. 2003) (party “bore the risk of his mistake, because he knowingly did not bother to read the contract he signed.”); *73 Park Ave. Acquisition LLC v. Shalov*, 964 N.Y.S.2d 533, 533 (N.Y. App. Div. 2013); *Torchia v. Aetna Cas. & Sur. Co.*, 804 S.W.2d 219, 224-25 (Tex. App. 1991) (“Parties to an agreement have a duty to read what they sign. Absent fraud in procuring the signing of the release, unilateral mistake is not grounds for rescinding or setting aside a release.” (citations omitted)).

[33] Rather than concluding that a sufficient showing of factual dispute had been made, the trial court chose instead to ignore or dismiss the evidence presented by the Estate. In reference to the communications between Yanza and the commissioners, the court inferred that their status as non-lawyers rendered them incapable of comprehending the proposed condition they were

presented. RA, tab 219 at 11-13 (Dec. & Order). The court similarly discounted the language of the GALC's written decision and order simply because it was prepared by the Estate's attorneys. *Id.* at 13. Finally, the court disregarded Commissioner Charfauros's claim that the condition in the deed properly expressed the intent of the GALC, instead favoring what the court considered the objective meaning of the condition in the transcript. *Id.* at 11. These actions demonstrate that the trial court impermissibly assessed the credibility of declarations and compared the relative weight of competing evidence and inferences. *See Guam Sanko Transp., Inc. v. Pac. Modair Corp.*, 2012 Guam 2 ¶ 10 (“Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of the judge . . . .” (quoting *Anderson*, 477 U.S. at 255)); *see also Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 123 P.3d 186, 189 (Ariz. Ct. App. 2005) (“Summary judgment is not appropriate when a trial judge must pass on the credibility of witnesses with differing versions of material facts, weigh the quality of documentary or other evidence, or choose among competing or conflicting inferences.” (internal quotation marks omitted)).

[34] Because the trial court did not apply the appropriate standard governing unilateral mistake in claims for reformation and impermissibly weighed competing evidence of material facts, summary judgment was not proper and must be reversed. As resolution of the Estate's evidentiary challenges regarding admissibility of the transcript is unnecessary to the outcome of this matter, this court declines to address them. *See SST Global Tech., LLC v. Chapman*, 270 F. Supp. 2d 444, 457 (S.D.N.Y. 2003) (declining to address an argument because it “is not necessary to resolution of the . . . claim”); *In re Byker*, 64 B.R. 640, 642 (Bankr. N.D. Iowa 1986) (“Since the resolution of that issue is not necessary to the decision in this case, this Court

declines to make any pronouncement on that issue . . . .”); *Kosmyna v. Botsford Cmty. Hosp.*, 607 N.W.2d 134, 138 (Mich. Ct. App. 1999) (“This Court may decline to address issues not necessary to the resolution of the case at hand.” (citation omitted)).

#### **E. Whether the Trial Court Erred in Granting an Injunction**

[35] The Estate next asserts that the trial court erred in granting a preliminary injunction<sup>8</sup> in favor of the Government, which enjoined the Estate from distributing its assets to the heirs. Appellant’s Br. at 29. We have held that “[an] injunction is a ‘drastic remedy,’ which serves to maintain the status quo ante litem.” *Mack v. Davis*, 2013 Guam 13 ¶ 12 (quoting *Benavente v. Taitano*, 2006 Guam 20 ¶ 16). This court has stated that “the test for obtaining a preliminary injunction is for a movant to show: ‘(1) irreparable injury, and (2) the likelihood of succeeding on the merits.’” *Id.* (quoting *Sananap v. Cyfred*, 2009 Guam 13 ¶ 14). Both of these findings are reviewed for abuse of discretion. *Id.* ¶ 11.

##### **1. Likelihood of irreparable harm**

[36] In its first order granting the injunction, the court found that there was a likelihood of irreparable harm. RA, tab 45 at 2 (Order, Feb. 10, 2010). It found that “[the Government] has demonstrated that money is being collected for disbursement to the heirs of Jose Martinez Torres for certain parcels of property, which may not be properly included as part of the Estate . . . .” *Id.* The Estate argues that monetary loss alone is not sufficient to satisfy the irreparable harm

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<sup>8</sup> The Government claims that, while the injunction was initially characterized as preliminary, it became permanent following a dispositive final judgment by the Superior Court. See Appellee’s Br. at 24-25. However, this distinction is immaterial to the court’s analysis, since both require a showing of irreparable harm which cannot be remedied through monetary compensation. *Id.* (citing *Marangi v. Gov’t of Guam*, 319 F. Supp. 2d. 1179, 1186 (D. Guam 2004)); see also *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (adequacy of monetary compensation is a sufficient remedy at law to defeat a permanent injunction).

prong. Appellant's Br. at 30-31. The Government has not provided any argument to contradict this assertion. See Appellee's Br. at 25.

[37] "A determination of irreparable harm typically focuses on categories of harm that do not easily lend themselves to monetary compensation." *Sule v. Guam Bd. of Exam'rs for Dentistry*, 2011 Guam 5 ¶ 12. Irreparable harm exists where "pecuniary compensation would not afford adequate relief or [where] it would be extremely difficult to ascertain the amount that would afford adequate relief." *Id.* (quoting *DVD Copy Control Ass'n, v. Kaleidescape, Inc.*, 97 Cal. Rptr. 3d 856, 876 (Ct. App. 2009)). In *Kaleidescape*, the California court found no irreparable harm where the moving party "failed to prove that pecuniary compensation would be inadequate or extremely difficult to calculate." 97 Cal. Rptr. 3d at 877.

[38] The Government contends that the injunction is necessary to "protect the funds" acquired through the land sale from disbursement by the Estate. Appellee's Br. at 25. However, the Estate has affirmed that it possesses "tens of millions of dollars' [sic] worth of assets" from which potential compensation could be collected. Appellant's Br. at 31. In this case the remedy for the quiet title action—the proceeds from the sale of the Property—is extremely easy to calculate. There is also no reason to conclude that monetary damages in an amount equaling the proceeds would be inadequate.

[39] Because of the general practice of not granting injunctions relating to monetary relief and because the Government made no showing that the Estate would have insufficient funds to cover any recovery by the Government in the absence of an injunction, the trial court erred in finding irreparable harm.

## 2. Likelihood of success on the merits

[40] Regardless of whether the trial court erred in finding irreparable harm, it undoubtedly abused its discretion because the “likelihood of success on the merits” requirement is not satisfied. *See PHG Techs., LLC v. St. John Cos.*, 469 F.3d 1361, 1365 (Fed. Cir. 2006) (“[A] movant cannot be granted a preliminary injunction unless it establishes both . . . likelihood of success on the merits and irreparable harm.”); *see also Sule*, 2011 Guam 5 ¶ 21. “The appellate court may affirm the trial court’s grant of an injunction as long as the record produces any ground on which it may appear that the seeking party may recover on the merits.” *Kallingal*, 2005 Guam 13 ¶ 27.

[41] In its first decision and order relating to the injunction, the court stated that it could not resolve whether there was a likelihood of success on the merits because the Estate was not a party at the time. RA, tab 45 at 2, 15 (Dec. & Order). However, in the same order, it ruled *sua sponte* to join the Estate as a party and granted the injunction. *Id.* at 3. The court’s failure to provide any specific finding of a likelihood of success constituted an error. *See Sule*, 2011 Guam 5 ¶ 30 (“[T]he trial court necessarily had to address, at least to some extent, the merits of the complaint itself in order to determine whether Dr. Sule has established both irreparable harm and a likelihood of success on the merits.”).

[42] For the same reasons, the trial court erred in the January 17, 2014 judgment stating that the injunction remained in effect. RA, tab 233 (Judgment, Jan. 17, 2014). Even though the court found in favor of the Government on the reformation claim, the pertinent claims for granting injunctive relief were the claims for quiet title and declaratory judgment. The trial court never made a finding of a likelihood of success on the merits of these arguments, because it dismissed

the claims for lack of subject matter jurisdiction. RA, tab 45 at 2 (Dec. & Order). Where a court does not make a finding of likelihood of success on the merits, it should not grant an injunction. *See Small v. Kiley*, 567 F.2d 163, 164 (2d Cir. 1977); *see also Cadicamo v. Alite*, 4 So. 3d 699, 700 (Fla. Dist. Ct. App. 2009).

[43] Because the trial court did not make any findings on the likelihood of the Government's success on the merits of its quiet title and declaratory judgment action, and because it did not have a sufficient basis to find irreparable harm, the Superior Court abused its discretion in granting an injunction.

**F. Whether the Trial Court Erred in Failing to Address the Estate's Rule 11 Motion**

[44] The Estate argues that the trial court erred in failing to address its Guam Rules of Civil Procedure ("GRCP") Rule 11 motion for sanctions. Appellant's Br. at 32-35. It argues that sanctions are warranted because the Government's case for fraud or mistake is directly contradicted by the evidence, showing that the GALC failed to review the deed. *Id.* at 33-34. However, the Estate does not specify which GRCP 11 motion the court purportedly ignored. In fact, the only motion for sanctions on the record involves the Government's alleged act of "purposefully violat[ing] the established Rules of Civil Procedure" in filing the tape recording of the September 2006 GALC proceedings. RA, tab 212 at 4 (Obj. & Mot. Strike Recording, June 7, 2013). This motion for sanctions was based upon General Rule 2.1 of the Local Rules of the Superior Court of Guam ("Local Rules"), which implicates a violation of civil procedure. *Id.* However, in the Estate's reply to the Government's opposition, it suggested that sanctions should also be imposed based upon Civil Rule 7.1(k) of the Local Rules, because the Government's argument is frivolous. RA, tab 215 at 5 (Def.'s Reply to Pl.'s Opp'n, July 19, 2013). The trial

court did not address the Estate's argument for sanctions at all. *See* RA, tab 219 at 14 (Dec. & Order).

[45] Courts may find no abuse of discretion where a trial court does not rule on a motion for sanctions if it finds that a denial of sanctions would not be an abuse of discretion. *See Justofin v. Metro. Life Ins. Co.*, 372 F.3d 517, 526 (3d Cir. 2004) (leaving failure to address sanctions within the trial court's discretion). Here, because the trial court ruled against the Estate, this court may assume that it denied the sanctions motion, even though it did not mention it in the decision and order. *See Pearson v. Pearson*, 946 P.2d 1291, 1297 (Ariz. Ct. App. 1997) ("The failure to rule implies that the respective motions for fees were denied."); *Mercede Equip. Rental, Inc. v. Rick's Equip. Rental, Inc.*, 559 So. 2d 339, 340 (Fla. Dist. Ct. App. 1990) (declining to address motion to amend).

[46] The Superior Court would not have abused its discretion in denying sanctions in this case. Sanctions may be imposed under GRCP 11(c) for presenting pleadings that are made to harass, that are frivolous, or that have no evidentiary support. GRCP 11(b)-(c). A pleading is frivolous if it is objectively "both baseless and made without a reasonable and competent inquiry." *In re Oka Towers Corp.*, 2000 Guam 16 ¶ 9 (citations omitted); *Nateroj v. Haruyama*, No. 91-00039A, 1992 WL 97207, at \*3 (D. Guam App. Div. Apr. 16, 1992). "[A] 'reasonable inquiry' means an inquiry reasonable under all the circumstances of a case." *In re Oka Towers Corp.*, 2000 Guam 16 ¶ 9 (citation omitted).

[47] In this case, there is no evidence that the pleadings were made to harass the Estate or for another improper purpose. Likewise, the Estate's claims have some evidentiary support in the GALC hearing from 2006. For the same reasons, the claims were not frivolous. *See In re Estate*

of *Concepcion*, 2003 Guam 12 ¶ 35 (“Although the handling of this case in the probate court and on appeal . . . may be questioned, the issues presented show that the appeal was not frivolous.”). Therefore, it was not an abuse of discretion for the trial court to decline to impose sanctions upon the Government.

**V. CONCLUSION**

[48] In light of the facts and arguments presented, we reverse the trial court’s grant of summary judgment on the reformation claim and remand. Additionally, we reverse the trial court’s continuance of the injunction. However, we affirm that the trial court did not abuse its discretion in declining to grant the Estate’s motion for sanctions.

[49] On the Government’s cross-appeal, we reverse the dismissal of the Government’s claims for quiet title, declaratory judgment, and constructive trust, and remand for further proceedings. Further, we decline to rule on the *ultra vires* challenge presented for failure to seek initial disposition in the trial court.

[50] Accordingly, we **REVERSE** in part, **AFFIRM** in part, and **REMAND** for proceedings not inconsistent with this opinion.

Original Signed by: David A. Wiseman  
DAVID A. WISEMAN  
Justice Pro Tempore

Original Signed By: J. Bradley Klemm  
J. BRADLEY KLEMM  
Justice Pro Tempore

Original Signed By: Katherine A. Maraman  
KATHERINE A. MARAMAN  
Presiding Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam.

MAR 27 2015

By: Charlene T. Santos  
Deputy Clerk  
Supreme Court of Guam

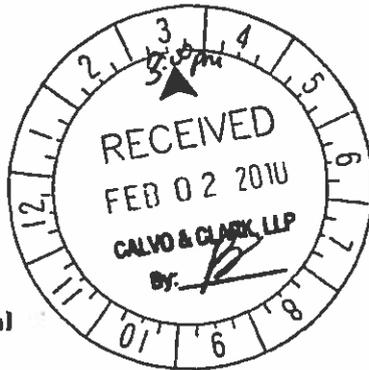
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410 pm Mar 27, 15 Q

Rec'd 6/13/11



Office of the Attorney General  
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Civil Division  
287 West O'Brien Drive  
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www.guamattorneygeneral.com

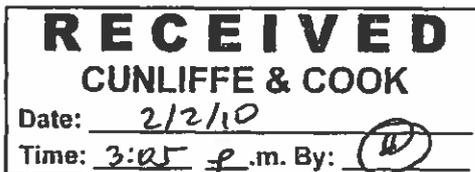


SUPERIOR COURT  
OF GUAM

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CLERK OF COURT

BY:



Attorneys for the Government of Guam

IN THE SUPERIOR COURT OF GUAM  
HAGÁTÑA, GUAM

GOVERNMENT OF GUAM,

Plaintiff,

vs.

HELENE TORRES and EVELYN  
O'KEEFE, in their capacities as  
CO-ADMINISTRATRIXES OF THE  
ESTATE OF JOSE MARTINEZ TORRES,

Defendants.

CIVIL CASE NO. CV1124-09

DECLARATION OF COUNSEL RE: EX  
PARTE APPLICATION FOR  
RESTRAINING ORDER  
PHILLIPS & BORDALLO

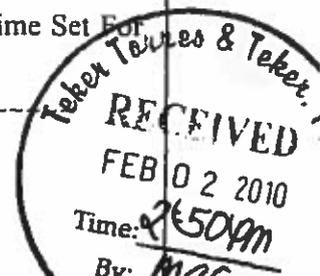
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DATE: 02-03-10  
TIME: 3:05 PM



I, William C. Bischoff, counsel for plaintiff Government of Guam in this case, declare under penalty of perjury as follows:

1. That attached hereto, Exhibit 1, is a true and correct copy of the PR0220-50, Estate of Jose Martinez Torres, Joint Petition For Fourth Distribution Of Funds Received By The Estate For The Sale Of Lot No. AL-002, Dededo, Guam And Lot No. 5041, Dededo, Guam, filed by the Estate on January 21, 2010; and its accompanying Notice of Time Set For

COPY



1 Hearing Joint Petition. The Petition and Notice recite that the Estate is now in possession of  
2 \$3,100,000.00 paid to it for the land in question and will be seeking a probate court order for  
3 the distribution of that money on February 11, 2010.

4 2. That attached hereto, Exhibit 2, is a true and correct copy of pages 25-33 of the  
5 transcript of the September 20, 2006 GALC hearing at which the Commission made its  
6 decision on the Estate's claim before it to the land in question.

7 3. That attached hereto, Exhibit 3, is a true and correct copy of the PR0220-50,  
8 Estate of Jose Martinez Torres, June 12, 2007 Petition brought by the Estate.

9 4. That attached hereto, Exhibit 4, is a true and correct copy of the PR0220-50,  
10 Estate of Jose Martinez Torres, August 31, 2007 Order.

11 5. That attached hereto, Exhibit 5, is a true and correct copy of the transcript of the  
12 June 20, 2008 hearing in PR0220-50, the Estate of Jose Martinez Torres.

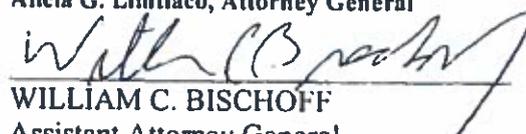
13 6. That attached hereto, Exhibit 6, is a true and correct copy of the PR0220-50,  
14 Estate of Jose Martinez Torres, July 13, 2009 Order for Ex Parte Distribution.

15 7. That attached hereto, Exhibit 7, is a true and correct copy of the transcript of the  
16 April 15, 2009 GALC meeting.

17 8. That attached hereto, Exhibit 8, is a true and correct copy of the Estate's June  
18 17, 2009 cover letter to the Commission.

19 Dated this 2<sup>nd</sup> day of February, 2010

20  
21  
22 OFFICE OF THE ATTORNEY GENERAL  
Alicia G. Limtiaco, Attorney General

23   
24 WILLIAM C. BISCHOFF  
Assistant Attorney General  
Attorneys for the Government of Guam

# EXHIBIT

1

DIZZIOMAN

**TEKER TORRES & TEKER**

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Facsimile: (671) 472-2601

**CUNLIFFE & COOK**

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Hagåtña, Guam 96910  
Telephone: (671) 472-1824  
Facsimile: (671) 472-2422

31 JAN 2010 10:25

**RECEIVED**  
JAN 22 2010  
4:13

Office of the Attorney General of Guam  
Civil/Solicitor Division

**IN THE SUPERIOR COURT OF GUAM**

IN THE MATTER OF THE ESTATES  
OF  
JOSE MARTINEZ TORRES  
AND  
MARIA CALVO TORRES  
Decedents.

PROBATE CASE NOS.  
PR0220-50 and PR114-08  
**JOINT PETITION FOR FOURTH  
DISTRIBUTION OF FUNDS  
RECEIVED BY THE ESTATE FOR  
THE SALE OF LOT NO. AL-002,  
DEDEDO, GUAM AND LOT NO.  
5041, DEDEDO, GUAM**

COME NOW, HELENE TORRES and EVELYN V. O'KEEFE, Co-Administratrixes of the above-captioned Estates, respectfully hereby allege and petition the Court as follows:

1. That on or about May 9, 1950, Decedent JOSE M. TORRES, died in Guam, and was at the time, a resident of Guam.
2. That on or about February 20, 2007, Petitioners were duly appointed by the Superior Court of Guam to act as Co-Administratrixes of the *Estate of Jose Martinez Torres*, Deceased (the "Estate"). Both are still serving in that capacity. See Court's February 20, 2009 Consolidation Order.

Handwritten marks at the bottom right of the page.

3. That all heirs have been properly noticed of the within Petition.

4. Petitioners request that the Court issue an Order requiring the Co-Administratrixes to disburse funds of the Estate, in the amount of **Three Million One Hundred Thousand Dollars (\$3,100,000.00)**, as follows:

5. Petitioners further request that payment be made to each legal counsel, **Teker Torres & Teker** and the law offices of **Cunliffe & Cook**, in the sum of Fifty Thousand Dollars (**\$50,000.00**) each for a portion of their legal fees as established by statute.<sup>1</sup>

**Eighteen and Thirty-Four Hundredths Percent (18.34%)**

6. The sum of Five Hundred Fifty Thousand and Seventy Eight Dollars (**\$550,078.00**), less any approved deductions by her, if any, to **Evelyn V. O'Keefe**. The amount being disbursed represents her eighteen and thirty-four hundredths percent (18.34%) interest in the Estate, less One Hundred Twenty Two Dollars (\$122.00) which was previously overpaid to said heir.

**Twenty Percent (20%)**

7. The sum of Six Hundred Thousand Dollars (**\$600,000.00**) to the Estate of **Concepcion Torres Bordallo**.<sup>2</sup> A portion of this money, namely Two Hundred and Sixty Thousand Dollars (**\$260,000.00**) has been redirected to **David Burger** as Trustee of the **Betty Carmencita Irrevocable Trust** pursuant to Order of the

<sup>1</sup> The Estate has a value in excess of Fifty Million Dollars (\$50,000,000.00) based upon the sales of two properties, the appraisal of another remaining property. The Estate is continuing to have additional lots appraised. At \$50,000,000.00, the statutory attorney's fees exceed

Superior Court dated April 30, 2009. See Joint Ex Parte Petition for Third Distribution of Funds Received by the Estate for sale of Lot No. AL-002, Dededo, Guam and Lot No. 5041, Dededo, Guam filed on July 9, 2009; see also July 12, 2009 Order.

The remaining Three Hundred Forty Thousand Dollars (\$340,000.00) shall be distributed as follows:

- a. One Hundred Seventy Thousand Dollars (\$170,000.00) to the Estate of Alfred J. Bordallo.
- b. One Hundred Seventy Thousand Dollars (\$170,000.00) as follows:
  - i) Eighty Five Thousand Dollars (\$85,000.00) to Betty Carmencita Cruz; and
  - ii) Eighty Five Thousand Dollars (\$85,000.00) to Stephen Bordallo<sup>3</sup>

---

\$500,000.00. To date, legal counsels for Co-Administratrix have been paid the sum of \$50,000.00 each and there has been, and continues to be extensive litigation in this matter.

<sup>2</sup> This Estate has been closed by court order on April 30, 2009.

<sup>3</sup> Certain heirs of the Estate of *Rudy Bordallo*, deceased, namely Timothy T. Bordallo, Rossana B. Garcia, Pia Valencia, Rudy Bordallo, Jr. and Alfredo Thomas Bordallo III, on behalf of the *Estate of Rudy Bordallo, Jr.*, waived their interest pursuant to that certain Settlement Agreement lodged with this Court in Probate Case Nos. PR0063-93 and PR0048-97 and confirmed in Civil Case No. CV1469-06.

**Twenty Percent (20%)**

8. The sum of Six Hundred Thousand Dollars (\$600,000.00) to the heirs of **Mariquita Torres Souder, Deceased**, as follows:

- (a) **Laura Torres Souder:** The sum of Two Hundred Thousand Dollars (\$200,000.00), less approved deductions by the heir, if any. The amount being disbursed represents her six and sixty-seven hundredths percent (6.67%) interest in the Estate;
- (b) **Deborah Souder Freitas:** The sum of Two Hundred Thousand Dollars (\$200,000.00), less approved deductions by the heir, if any. The amount being disbursed represents her six and sixty-seven hundredths percent (6.67%) interest in the Estate; and
- (c) **Paul Joseph Souder:** The sum of Two Hundred Thousand Dollars (\$200,000.00), less approved deductions by the heir, if any. The amount being disbursed represents his six and sixty-seven hundredths percent (6.67%) interest in the Estate.

**Twenty Percent (20%)**

9. The sum of Six Hundred Thousand Dollars (\$600,000.00) to the heirs of **Felix C. Torres, Deceased**, in accordance with his Will, as follows:

- (a) **Geraldine T. Gutierrez:** The sum of Two Hundred Forty Thousand Dollars (\$240,000.00), less approved deductions by the heir, if any. The amount being disbursed represents her eight percent (8%) interest in the Estate;

- (b) **Vincent Duenas:** The sum of One Hundred Twenty Thousand Dollars (\$120,000.00), less approved deductions by the heir, if any. The amount being disbursed represents his four percent (4%) interest in the Estate;
- (c) **The Estate of Yvonne T. Doerge, Deceased,** by and through her Special Administratrix, Helene Torres: The sum of One Hundred Twenty Thousand Dollars (\$120,000.00), less approved deductions by the heir, if any. The amount being disbursed her represents four percent (4%) interest in the Estate; and
- (d) **Helene Torres:** The sum of One Hundred Twenty Thousand Dollars (\$120,000.00), less approved deductions by the heir, if any. The amount being disbursed represents her four percent (4%) interest in the Estate.

**Twenty Percent (20%)**

10. The sum of Six Hundred Thousand Dollars (\$600,000.00) to the heirs of **Francisco C. Torres, Deceased**, as follows:

- (a) **The Estate of Robert J. Torres, Deceased:** The sum of One Hundred Thousand Dollars (\$100,000.00), as follows:<sup>4</sup>

<sup>4</sup> **Mary Torres**, the surviving spouse of Robert J. Torres, has assigned all of her interest in the *Estate* to her children, to wit: *Robert J. Torres, Jr., Christopher A. Torres, Melissa V. Torres, and Edwin F. Torres.*

- i. **Lucy Torres:** The sum of Twelve Thousand Three Hundred Twenty Dollars (**\$12,320.00**), less approved deductions by the heir, if any. The amount being disbursed represents forty-one hundredths percent (.41%) of the estate;
- ii. **Robert J. Torres, Jr.:** The sum of Twenty One Thousand Nine Hundred Twenty Dollars (**\$21,920.00**) less approved deductions by the heir, if any. The amount being disbursed represents seventy-three hundredths percent (.73%) of the estate;
- iii. **Christopher A. Torres:** The sum of Twenty One Thousand Nine Hundred Twenty Dollars (**\$21,920.00**) less approved deductions by the heir, if any. The amount being disbursed represents seventy-three hundredths percent (.73%) of the estate;
- iv. **Melissa V. Torres:** The sum of Twenty One Thousand, Nine Hundred Twenty Dollars (**\$21,920.00**) less approved deductions by the heir, if any. The amount being disbursed represents seventy-three hundredths percent (.73%) of the estate; and
- v. **Edwin F. Torres:** The sum of Twenty One Thousand, Nine Hundred Twenty Dollars (**\$21,920.00**) less approved deductions by the heir, if any. The amount being disbursed represents seventy-three hundredths percent (.73%) of the estate.

- (b) **Jerry Milton Torres:** The sum of One Hundred Twenty Four Thousand, Nine Hundred Dollars (**\$124,900.00**) less approved deductions by the heir, if any. The amount being disbursed

represents four and sixteen hundredths percent (4.16%) of the estate;

- (c) **Jacqueline Torres Flores:** The sum of One Hundred Thousand Dollars (\$100,000.00) less approved deductions by the heir, if any. The amount being disbursed represents three and thirty-three hundredths percent (3.33%) of the estate;
- (d) **Sr. Mary Stephen Torres:** The sum of One Hundred Thousand Dollars (\$100,000.00) less approved deductions by the heir, if any. The amount being disbursed represents three and thirty-three hundredths percent (3.33%) of the estate;
- (e) **Maureen Torres Chargualaf:** The sum of One Hundred Thousand Dollars (\$100,000.00) less approved deductions by the heir, if any. The amount being disbursed represents three and thirty-three hundredths percent (3.33%) of the estate; and
- (f) **Frank C. Torres, Jr.:** The sum of One Hundred Twenty Thousand, Eight Hundred Fifty One Dollars (\$120,851.00). The amount being disbursed represents four and sixteen hundredths percent (4.16%) of the estate, less the sum of Four Thousand Forty Nine Dollars (\$4,049.00), which was previously overpaid to said heir.

j. That the heirs receiving monies under this preliminary distribution do so *without* bond or other form of security.

k. The Petitioners request that the Court approve the percentages of distributions so that future disbursements of sale of proceeds from the sales of Lot No. AL-002 and/or 5041 may be disbursed.

**PRAYER**

**WHEREFORE**, Petitioners pray as follows:

- (1) That the actions of Petitioners serving in the capacity as Co-Administratrixes be ratified and approved;
- (2) That the actions of counsel for the Co-Administratrixes be ratified and approved;
- (3) That the within Joint Petition for Fourth Distribution be approved and that the Co-Administratrixes be ordered to distribute funds to the heirs and attainers as set forth hereinabove;
- (4) That the distribution be made *without* bond being required; and
- (5) For such other and further relief as the Court deems proper.

Respectfully submitted:

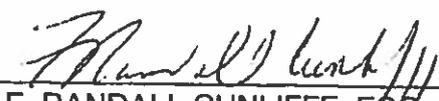
DATED: 1/20/10

**TEKER TORRES & TEKER, P.C.**  
Attorneys for Co-Administratrix  
Evelyn V. O'Keefe

DATED: 1/20/10

**CUNLIFFE & COOK**  
Attorneys for Co-Administratrix  
Helene Torres

By   
JOSEPH C. RAZZANO, ESQ.

By   
F. RANDALL CUNLIFFE, ESQ.

**VERIFICATION**

Hagåtña, Guam ) ss:

WE, EVELYN V. O'KEEFE and HELENE TORRES being first duly sworn, depose and say that we are the Petitioners in the above-entitled action; that we have read the foregoing Joint Petition for Fourth Distribution of Funds Received By the Estate For the Sale of Lot AL-002, Dededo, Guam, and Lot No. 5041, Dededo, Guam and know the contents thereof; and that the same is true of our own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, we believe them to be true.

Dated: 1/15/10

*Evelyn V. O'Keefe*  
EVELYN V. O'KEEFE

Dated: July 20, 2010

*Helene Torres*  
HELENE TORRES

SUBSCRIBED and SWORN to before me, a Notary Public in and for Guam, by Evelyn V. O'Keefe, on January 15, 2010

**CECILIA M. SCROGGS**  
NOTARY PUBLIC  
In and for Guam, U.S.A.  
My Commission Expires: Oct. 08, 2011  
P. O. Box 26695, G.M.F., Guam 96921

*Cecilia M. Scroggs*  
NOTARY PUBLIC

SUBSCRIBED and SWORN to before me, a Notary Public in and for Guam, by Helene Torres on July 20, 2010

**RYTA S. BARCINAS**  
NOTARY PUBLIC  
In and for Guam, U.S.A.  
My Commission Expires: Aug. 31, 2010  
Suite 200, 210 Archbishop F.C. Flores Street  
Hagåtña, Guam 96910

*Ryta S. Barcinas*  
NOTARY PUBLIC

0121074

SUPERIOR COURT  
JAN 21 10:25  
OFFICE OF THE ATTORNEY GENERAL

1 **TEKER TORRES & TEKER, P.C.**  
2 SUITE 2A, 130 ASPINALL AVENUE  
3 HAGÄTÑA, GUAM 96910  
4 TELEPHONE: (671) 477-9891-4  
5 FACSIMILE: (671) 472-2601  
6 *Attorneys for the Petitioner/Co-Administratrix,*  
7 *Evelyn O'Keefe*

5 **CUNLIFFE & COOK**  
6 SUITE 200, 210 ARCHBISHOP F.C. FLORES STREET  
7 HAGÄTÑA, GUAM 96910  
8 TELEPHONE: (671) 472-1824  
9 FACSIMILE: (671) 472-2422  
10 *Attorneys for the Petitioner/Co-Administratrix,*  
11 *Helene Torres*

**RECEIVED**  
JAN 22 2010  
Office of the Attorney General of Guam  
Civil/Solicitor Division

IN THE SUPERIOR COURT OF GUAM

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IN THE MATTER OF THE ESTATES	)	PROBATE CASE NOS.
	)	PR0220-50 and PR114-08
OF	)	
	)	<b>NOTICE OF TIME SET FOR</b>
JOSE MARTINEZ TORRES,	)	<b>HEARING JOINT PETITION FOR</b>
	)	<b>FOURTH DISTRIBUTION OF</b>
And	)	<b>FUNDS RECEIVED BY THE ESTATE</b>
	)	<b>FOR THE SALE OF LOT NO. 5041</b>
MARIA CALVO TORRES	)	<b>DEDEDO, GUAM</b>
	)	
Decedents.	)	

NOTICE is hereby given that a Joint Petition for Fourth Distribution of Funds Received by the Estate for the Sale of Lot No. AL-002, Dededo, Guam has been filed in this Court, and that on February 11, 2010, at 10:00 o'clock a.m. of said day in the courtroom of the Honorable Elizabeth Barrett-Anderson, Superior Court of Guam, Hagätña, Guam, has been set for the hearing of said petition and all persons interested are hereby notified to appear at the time and place set for said hearing and show cause, if any they have, why the petition should not be granted.

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Reference is hereby made to the said petition for further particulars.

*Dated* at Hagåtña, Guam, on January 21, 2010.

TEKER TORRES & TEKER, P.C.

By 

JOSEPH C. RAZZANO, ESQ.

Attorneys for *Evelyn V. O'Keefe*

JCR thm

M:\COMMONUSERS\PLEADINGS\ESTATES OF JOSE M. TORRES AND MCT - CONSOLIDATED\026 PLDG NOTICE OF HEARING.wpd

TEKER TORRES & TEKER, P.C.  
SUITE 2A, 130 ASPINALL AVENUE  
HAGÁTÑA, GUAM 96910

# EXHIBIT

2

**GUAM ANCESTRAL LANDS  
COMMISSION HEARING**

September 26, 2006

**COPY**

**PREPARED BY:** GEORGE B. CASTRO  
**DEPO RESOURCES**  
#49 Anacoco Lane, Nimitz Hill Estates  
Piti, Guam 96915  
Tel: (671)688-DEPO \* Fax: (671)472-3094

1 MR. CHARFAUROS: Yeah. Madam Chair --  
2 I don't have any questions. The other members,  
3 any questions?

4 MR. MANTANANE: No.

5 MR. CHARFAUROS: I'd like to ask the  
6 family to clarify something for the commission.  
7 What is the pleasure of the -- what is the  
8 request before this commission at this point in  
9 time? So I'll make sure that whatever motion  
10 that we're going to make would be clear. So  
11 can the -- a representative of the family state  
12 to the commission, what is its official request  
13 before us?

14 MR. MANTANONA: In which you -- if I  
15 may, for the Commissions pleasure. Your  
16 Honor, at this point, we are asking that the  
17 commission award, recognize the claims of the  
18 heirs of Jose Torres Martinez -- Martinez  
19 Torres, for the lots as contained in 2531 and  
20 1540.

21 Today, recognized by Ancestral Lands  
22 Commission on their own documentation as Lots  
23 AL002, Lot AL002-1, and Lot AL002-2. We  
24 believe that this will extinguish all claims  
25 that the family have to any and all properties

1 inside the Ancestral Lands inventories.

2 MR. CHARFAUROS: Okay. All right.  
3 Madam Chair? If there's no other questions by  
4 the other commission member, I'd like to make a  
5 motion and my motion would be basically to be  
6 in line with the request of the family to  
7 recognize the claim to the estate of the lots  
8 mentioned herein on the record, which would  
9 also extinguish all claims to the Duarte  
10 Estate. And also that this be a conditional  
11 deed that you still have to go to the courts  
12 and go through the regular court proceedings to  
13 -- and correct me if I'm wrong, is that going  
14 to the court proceedings to review this claim  
15 and the court will make the final judgment on  
16 the claim.

17 MR. YANZA: That is correct Mr.  
18 Chairman. On behalf of the estate, neither I  
19 myself, Mr. Mantanona and Mr. Razzano or Mrs.  
20 O'Keefe can declare that we hereby terminate  
21 all future claims to ancestral lands. But, as  
22 we saw fit best for the estate, we are willing  
23 to go before the probate court and the probate  
24 estate of Mr. Torres and request the court that  
25 they, the Court, approves the receipt of these

1 ancestral lands and approve the final  
2 termination of future claims within the  
3 inventory of the commission.

4 MR. CHARFAUROS: And understand this,  
5 this is a conditional deed and if the Court  
6 comes back that says, that you have absolutely  
7 no claim to this property, this property comes  
8 right back into the inventory of the Ancestral  
9 Lands Commission and that we are not going to  
10 rehear this case again. Unless you guys have  
11 convincing evidence that has not been reviewed  
12 by the Court to rehear the case. Do you  
13 understand exactly what this motion is?

14 MR. YANZA: Yes.

15 MR. MANTANONA: Yes, we do.

16 MR. CHARFAUROS: All right. So that's  
17 my motion.

18 MR. MANTANANE: I second.

19 MS. CHARFAUROS: Seconded by the --

20 MS. ORLINO: Okay. The motion has been,  
21 second and now we're going to be voting.

22 MR. CHARFAUROS: Yeah. It wasn't  
23 there. There's an extinguishment.

24 MS. ORLINO: Yeah.

25 MR. CHARFAUROS: That this extinguish

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**Court Reporter**

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1 the Duarte claim.

2 MS. ORLINO: All future.

3 MR. CHARFAUROS: It's a conditional  
4 motion.

5 MR. ECLAVEA: That's just for the  
6 inventory we have? Or is that for everything?

7 MR. CHARFAUROS: For everything.  
8 Everything.

9 MR. ECLAVEA: So does the family  
10 understand that?

11 MR. YANZA: Yes.

12 MR. MANTANONA: For present and future.  
13 We believe that we represent about 90 percent  
14 of the heirs, of course there's 10 percent so  
15 we can't speak for those 10 percent at this  
16 point. But we believe that the recommendation  
17 from the estate will be that we acknowledge the  
18 receipt and terminate all future interest.

19 MR. CHARFAUROS: Yeah. And understand,  
20 I'm not asking the family for permission for  
21 this extinguishment. My motion is not asking  
22 for permission, I'm making this motion. And  
23 this motion is to extinguish this claim and  
24 basically, it's up to the Courts and if the  
25 Court see fit that this motion is inappropriate

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1 then the Courts can rule against that and if  
2 the Court sees fit that this claim is invalid,  
3 this property would come back to the inventory  
4 of Ancestral Lands Commission. But basically  
5 the Court is going to be the final say so. Do  
6 you understand that motion?

7 MR. MANTANONA: Yes.

8 MR. YANZA: Mr. Commissioner? Just to  
9 clarify.

10 MR. CHARFAUROS: Yeah.

11 MR. YANZA: This present motion on the  
12 floor, this would be a conditional transfer of  
13 the properties so long as the court approves it  
14 and once the court approves it --

15 MR. CHARFAUROS: Yes. In other words,  
16 where it's a conditional deed that we're giving  
17 you. You still have to go to the courts and --  
18 if the Courts comes back and say yes --

19 MR. YANZA: Okay. We understand that.  
20 We accept that.

21 MS. ORLINO: And then it's going to not  
22 come before this commission again?

23 MR. MANTANONA: Right, yeah.

24 MR. YANZA: No, no. If the court  
25 approves of the transfer --

1 MS. ORLINO: Then it's done deal.

2 MR. CHARFAUROS: Then it's your then --

3 MS. ORLINO: It's a done deal, yeah.

4 MR. YANZA: And then the condition  
5 would be satisfied?

6 MR. MANTANANE: Yeah, right.

7 MR. CHARFAUROS: If the court rules  
8 against it, then it comes -- that property  
9 comes back into --

10 MR. ECLAVEA: Into our inventory.

11 MR. YANZA: And the transfer will be  
12 ineffective?

13 MR. MANTANANE: Right.

14 MR. CHARFAUROS: Yes.

15 MS. ORLINO: Yeah, that's why the  
16 extinguishment is there to let you know.

17 MR. YANZA: Yes.

18 MS. ORLINO: Okay?.

19 MR. CHARFAUROS: So we are approving  
20 the -- and my motion is to approve it on the  
21 condition that it goes to the court. All  
22 right?

23 MR. ECLAVEA: Okay, we're voting.

24 MS. ORLINO: Yeah. So go ahead --

25 MR. ECLAVEA: I approve. I approve.

1 MS. ORLINO: Commissioner Eclavea?

2 MR. ECLAVEA: I approve.

3 MS. ORLINO: Commissioner Matanane?

4 MR. MATANANE: Approve.

5 MS. ORLINO: Commissioner Charfauros?

6 MR. CHARFAUROS: (approves in the  
7 Chamorro language to indicate in the  
8 affirmative).

9 MS. ORLINO: Commissioner Laguana?

10 MR. LAGUANA: (approves in the Chamorro  
11 language to indicate in the affirmative).

12 MS. ORLINO: Okay. So that -- the  
13 request for today has been approved.

14 MR. CHARFAUROS: Did you vote?

15 MS. ORLINO: Yeah, I did.

16 MR. ECLAVEA: Did you vote?

17 MS. ORLINO: I said, yeah. Okay.

18 MR. MANTANANE: All right.

19 MR. ECLAVEA: All right.

20 MR. YANZA: One last issue. So, should  
21 we prepare the language of the conditional  
22 deed?

23 MR. CHARFAUROS: You've got my --

24 MS. ORLINO: That one would come from -

25 -

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1 MR. CHARFAUROS: -- and it's going to  
2 be prepared, it'll be prepared to the T.

3 MR. YANZA: Okay.

4 MS. ORLINO: Okay. Prepare the  
5 preparation and then you'll come before us for  
6 review and then it'll --

7 MR. CHARFAUROS: Agree.

8 MS. ORLINO: Yeah. The deed signing.

9 MR. YANZA: Will there be also a record  
10 of or a decision and order issued by the --

11 MR. CHARFAUROS: Yes, yes, yes. There  
12 will be.

13 MR. YANZA: Okay

14 MS. ORLINO: That will come from the  
15 commission that --

16 MR. CHARFAUROS: I think the next time  
17 we meet would be the deed signing ceremony.

18 MR. MANTANANE: Yeah.

19 MR. CHARFAUROS: Okay.

20 MR. MANTANANE: When they --

21 MS. ORLINO: Okay, thank you.

22 MR. YANZA: Thank you.

23 MR. MANTANANE: -- the Governor signs  
24 the deed.

25 MR. YANZA: Thank you very much.

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(Hearing concluded; no time specified)  
HAGATNA, GUAM, SEPTEMBER 26, 2006.

1 REPORTER'S CERTIFICATE  
2

3 I, **George B. Castro**, Court Reporter, do  
4 hereby certify the foregoing 33 pages to be a  
5 true and correct transcript of the audio  
6 recording provided to me in the within-entitled  
7 and numbered case at the time and place as set  
8 forth herein.

9 I do hereby certify that thereafter the  
10 transcript was prepared by me or under my  
11 supervision.

12 I am not a direct relative, employee,  
13 attorney or counsel of any of the parties, nor  
14 a direct relative or employee of such attorney  
15 or counsel; and that I am not directly or  
16 indirectly interested in the matters in  
17 controversy.

18 In testimony whereof, I have hereunto set  
19 my hand and seal of Court this 5<sup>th</sup> day of March  
20 2008.

**COPY**

21  
22 \_\_\_\_\_  
George B. Castro  
23  
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25

DEPO RESOURCES  
George B. Castro  
Court Reporter

Tel: (671) 698-8588

# EXHIBIT

3

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10 *Attorneys for the Petitioner/Co-Administratrix,*  
11 *Helene Torres*

6-12-07  
4:31 PM  
8

9 IN THE SUPERIOR COURT OF GUAM

10 -----  
11 IN THE MATTER OF THE ESTATE )  
12 OF )  
13 JOSE MARTINEZ TORRES, )  
14 Deceased. )  
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PROBATE CASE NO. PR0220-50  
PETITION TO COMPROMISE AND  
TO CONFIRM QUITCLAIM DEED  
AND REAL PROPERTY RECEIVED  
BY THE ESTATE THROUGH THE  
ANCESTRAL LANDS COMMISSION

16 Helene Torres and Evelyn V. O'Keefe, Co-Administratrixes of the captioned Estate, hereby  
17 Petition the Court, pursuant to 15 G.C.A. § 2215, to approve the compromise and settlement of the  
18 Estate's claim against the Ancestral Lands Commission (the "Commission") and, pursuant thereto,  
19 allege as follows:

20 **HISTORY OF THE CLAIM TO ANCESTRAL LANDS**

21 1. In or about 2001, Mrs. Evelyn O'Keefe filed a claim with the Commission, which  
22 started with her recollection of the decedent's ranch located in the *Dos Amantes* "As UKKUDO"  
23 and "As Dededo" areas. Mrs. O'Keefe's claim was confirmed and her efforts to prove that the

**COPY**

1 Commission. Mrs. O'Keefe, through her own personal efforts and through the efforts of others, was  
2 able to reclaim Lot Nos. 5001, 5002, 5007, 5007-1, 5008, 5008-1, and 5041.

3 2. In addition, Mrs. O'Keefe believed that other properties remained in the inventory  
4 of the Estate and continued her research when she filed for a new hearing before the Commission,  
5 which was heard by the Commission on August 30, 2006 and continued through September 20,  
6 2006. At the hearing, Evelyn O'Keefe appeared on behalf of the heirs of *Jose Martinez Torres*,  
7 deceased, (hereinafter the "Estate") to assert that the *Estate of Jose Martinez Torres* is entitled to  
8 the entirety of Estate 1540, surveyed and unsurveyed, to include now what is known as Estate 2531  
9 (aka AL-002, AL-002-1 and AL-002-2), surveyed and unsurveyed, and Lot Nos. 5012, 5037 and  
10 5039 (hereinafter collectively referred to as the "Property"). At the hearing on August 30, 2006,  
11 Mrs. O'Keefe directly and through her attorneys submitted the following evidence to the  
12 Commission:

- 13 a. Various maps of Estate 2531 and Estate 1540, formerly known as "As  
14 UKKUDO", and "As Dededo";
- 15 b. The *Dos Amantes* survey map adopted by the Commission, dated  
16 July 19, 2005, and adopted September 13, 2005 by the Department of  
17 Land Management, government of Guam. *See Exhibit "I"*,  
18 incorporated by reference herein;
- 19 c. A 1927 map which depicts J.M. Torres' Agent, Mr. Olive, was in  
20 possession of the Torres' Property;
- 21 d. Affidavit of Mariquita Souder; and
- 22 e. Government of Guam Registration Decree of Lot No. 5013, Dededo,  
23 memorializing the sale of Lot No. 5013 from Jose M. Torres to Pedro  
Martinez Ada, dated January 8, 1929.
3. The Commission, having reviewed the evidence presented, and having considered  
the testimony of the Historian, Professor Omaira Brunal-Perry, under oath, and having voted on the

1 application, determined that Jose Torres Martinez aka Jose Martinez Torres, is the ancestral  
2 landowner of Lot AL-002 (which contains Lot No. 5039 and the unsurveyed remaining portions of  
3 Estates 1540 and 2531), Lot AL-002-1 (formerly known as Lot No. 5037, which historically was part  
4 of Estates 1540 and 2531) and Lot AL-002-2 (formerly known as Lot No. 5012, which historically  
5 was part of Estates 1540 and 2531), Dededo. See Final Written Decision and Order executed by the  
6 Commission executed on December 22, 2006 and recorded with the Department of Land  
7 Management Under Instrument No. 747755 on December 26, 2006, attached hereto as Exhibit "J."

#### 8 RECEIPT OF CONDITIONAL DEED

9 4. During the hearing, the Commission recognized that Mrs. O'Keefe's claim on behalf  
10 of the Estate could extend north of the *South Finegayan* line to property, which has not yet been  
11 returned to the Commission. See Exhibit "J". At the close of the hearing, the Commission inquired  
12 of Mrs. O'Keefe if the Estate would consider waiving any and all other claims and/or interest the  
13 Estate may have in the unsurveyed portions of Estate 1540, not currently within the Commission  
14 Inventory. Mrs. O'Keefe explained to the Commission that she had not yet been appointed the  
15 Administratrix of the Estate and, therefore, was unclear on whether she had the power to waive the  
16 Estate's interest and requested a continued hearing. At the continued hearing, Mrs. O'Keefe still had  
17 yet to be appointed as Administratrix, but wished to receive the Property which was within the  
18 power and inventory of the Commission. The Commission suggested, and Mrs. O'Keefe agreed,  
19 that a Conditional Deed would be executed to the Estate pending confirmation of the Probate Court.

20 The specific language of the Deed for the Property from the Commission, which was  
21 recorded at the Department of Land Management as Instrument No. 744340, a copy of which is  
22 attached hereto as Exhibit H, reads in part as follows:

23 ///

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MAGATNA, GUAM 96910  
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1 c) This Quitclaim Deed and the effective transfer of the Property is conditioned  
2 on the administrator/trix petitioning the probate court to approve the Jose Martinez  
3 Torres Estate's receipt of the Property and to approve the Jose Martinez Torres  
4 Estate's permanent extinguishment and termination of all claims to all other  
5 properties held by the Guam Ancestral Lands Commission, formerly known as As  
6 Ukkudo or Estates 2531 and 1540.

5 5. The Estate now requests this Court to approve the receipt of the Conditional Deed  
6 so that the Estate can satisfy and remove the condition contained in said deed and accept the Property  
7 on behalf of the Estate and terminate any and all future claims against the Commission for the return  
8 of the unsurveyed remaining portions of Estate 2531 and the unsurveyed remaining portions of  
9 Estate 1540. Specifically, north of the *South Finegayan* line. See Exhibit "I". The Estate believes  
10 that the property north of the *South Finegayan* line will unlikely be returned due to continued need  
11 and use by the federal government; and the Property north of the *South Finegayan* line has not been  
12 included or identified as parcels to be returned to the government of Guam; and, knowing that the  
13 federal government maintains a right of reversion to all returned lands, wishes this Court to  
14 recognize and confirm the actions of Mrs. O'Keefe before the Commission. This Court's  
15 confirmation will extinguish and terminate any and all interests which the Estate may have and place  
16 the Co-Administratrixes in a position where a final inventory and appraisalment can be submitted to  
17 the Court and distribution be conducted in a timely and efficient manner.

#### 18 REMAINING ANCESTRAL LOTS

19 6. As for Lot Nos. 5001, 5002, 5007, 5007-1<sup>1</sup>, 5008, 5008-1<sup>2</sup> and 5041, the Estate  
20 requests that this Court acknowledge the deeds attached hereto as Exhibits "A, B, C, D, E, F, G, and  
21 \_\_\_\_\_

22 <sup>1</sup>The Court should be aware that Lot No. 5007-1 was returned in two separate Deeds as the  
reflected in D1 and D2, because land was returned to the Estate on both sides of *Marine Drive*.

23 <sup>2</sup>The Court should be aware that Lot No. 5008-1 was returned in two separate Deeds as the  
reflected in F1 and F2, because land was returned to the Estate on both sides of *Marine Drive*.

1 H" for the purpose of obtaining title insurance. As the Court is most likely aware, only one title  
2 insurance company will insure ancestral lands returned property and that is Title Guaranty.  
3 However, Title Guaranty and its underwriters have taken the position that without confirmation of  
4 acceptance of the deeds by a Court of proper jurisdiction, the title insurance shall not issue.

5 WHEREFORE, the Co-Administratrixes pray that:

6 1. The Court confirm the acceptance of Lot AL-002 (which contains Lot No. 5039 and  
7 the unsurveyed remaining portions of Estates 1540 and 2531), Lot AL-002-1 (formerly known as  
8 Lot No. 5037, which historically was part of Estates 1540 and 2531) and Lot AL-002-2 (formerly  
9 known as Lot No. 5012, which historically was part of Estates 1540 and 2531), in the Municipality  
10 of Dededo;

11 2. Confirm Mrs. O'Keefe's representation of the Estate before the Commission that the  
12 Commission return land to the *Estate of Jose Martinez Torres* and extinguish any and all future  
13 claims against the Commission for the return of unsurveyed remaining portions of Estate 2531 and  
14 the unsurveyed remaining portions of Estate 1540 which are north of the *South Finegayan* line and  
15 are not in the inventory of the Ancestral Lands Commission; and

16 3. Confirm the acceptance of Deeds for Lot Nos. 5001, 5002, 5007, 5007-1, 5008, 5008-  
17 1, 5041, AL-002, AL-002-1 and AL-002-2 accepting those Deeds into the *Estate of Jose Martinez*  
18 *Torres* for the purpose of Final Inventory and Appraisalment and obtaining title insurance for same.

19 Respectfully submitted this 18<sup>th</sup> day of May, 2007.

20 TEKER TORRES & TEKER, P.C.

21  
22 By   
23 JOSEPH C. RAZZANO, ESQ.  
Attorneys for Co-Administratrix, Evelyn O'Keefe

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CUNLIFFE & COOK

By *F. Randall Cunliffe*  
F. RANDALL CUNLIFFE, ESQ.  
Attorneys for Co-Administratrix, *Helene Torres*

VERIFICATION

WE, EVELYN V. O'KEEFE, being duly sworn, depose and say that we are the Petitioners in the above-entitled action; that we have read the foregoing Petition To Compromise And To Confirm Quitclaim Deed And Real Property Received By the Estate Through The Ancestral Lands Commission and know the contents thereof; and that the same is true of our own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, we believe them to be true.

Dated at Hagåtña, Guam, on 6/7/07

*Evelyn V. O'Keefe*  
EVELYN V. O'KEEFE

*Helene Torres*  
HELENE TORRES

SUBSCRIBED and SWORN to before me, a notary public in and for Guam, by EVELYN V. O'KEEFE, this 25 day of May, 2007.

)SEAL(

**JOYLEEN SANCHEZ**  
**NOTARY PUBLIC**  
IN AND FOR GUAM, U.S.A.  
MY COMMISSION EXPIRES: OCTOBER 5, 2009  
P. O. BOX 7351 AGAT, GUAM 96928

*Teke Torres & Teke*

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SUBSCRIBED and SWORN to before me, a notary public in and for Guam, by **HELENE**  
**TORRES**, this 7th day of June, 2007.

)SEAL{

**RYTA S. BARCINAS**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: Aug. 01, 2010  
Suite 200, 210 Archbishop F.C. Flores Street  
Hagatna, Guam 96910



LJT cs  
PLDGS. ESTATE OF J.M. TORRES PROBATE.011

**TEKER TORRES & TEKER, P.C.**  
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# EXHIBIT

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Attorneys for the Petitioner/Co-Administratrix,

*Helene Torres*

11 IN THE SUPERIOR COURT OF GUAM

13 IN THE MATTER OF THE ESTATE )

PROBATE CASE NO. PR0220-50

14 OF )

ORDER APPROVING PETITION

15 JOSE MARTINEZ TORRES, )

TO COMPROMISE AND CONFIRM

16 Deceased. )

QUITCLAIM DEED AND REAL

PROPERTY RECEIVED BY THE

ESTATE THROUGH THE

ANCESTRAL LANDS COMMISSION

19 This matter came on regularly to be heard on the Co-Administratrixes', Helene Torres and  
20 Evelyn V. O'Keefe, Petition to Compromise and to Confirm Conditional Deed and Real Property  
21 Received by the Estate of Jose Martinez Torres, *deceased*, through the Ancestral Lands Commission  
22 (the "Petition"), and the Court, having considered the briefs, papers, exhibits on file and hearing the  
23 arguments of all counsel, finds that no objections from any of the heirs were lodged; and that notice

1 was mailed to all of the parties, and good cause appearing therefor, hereby GRANTS the Co-  
2 Administratrixes' Petition and CONFIRMS the receipt of the conditional deed; and

3 IT IS FURTHER ORDERED that the Administratrixes' Compromise of the Estate's claim  
4 which gave up the Estate's claim to any property north of the South Fingayan line is hereby  
5 approved; and

6 IT IS FURTHER ORDERED that the Condition in the Quitclaim Deed recorded under  
7 Instrument No. 744340 on October 17, 2006 is hereby satisfied; and

8 IT IS FURTHER ORDERED that the following parcels of property have been properly  
9 received by the Estate through the Ancestral Lands Commission:

10 Lot AL-002 (which contains Lot No. 5039 and the  
11 unsurveyed remaining portions of Estates 1540 and  
12 2531), Lot AL-002-1 (formerly known as Lot No.  
13 5037, which historically was part of Estates 1540 and  
14 2531) and Lot AL-00202 (formerly known as Lot No.  
15 5012, which historically was part of Estates 1540 and  
16 2531) Dededo, Guam,

(Instrument No. 744340)

17 Lot No. 5001, Dededo, Guam,

(Instrument No. 699978)

18 Lot No. 5002, Dededo, Guam,

(Instrument No. 699985)

19 Lot No. 5007, Dededo, Guam,

(Instrument No. 699987)

20 Lot No. 5007-1, Dededo, Guam,

(Instrument No. 697872 and  
Instrument No. 703612)

21 Lot No. 5008, Dededo, Guam,

(Instrument No. 699989)

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Lot No. 5008-1, Dededo, Guam, and  
(Instrument No. 697874 and  
Instrument No. 703614)

Lot No. 5041, Dededo, Guam  
(Instrument No. 709197)

DATED at Hagåtña, Guam, on 31 AUG 2007

  
HON. ELIZABETH BARRETT-ANDERSON  
Judge, Superior Court of Guam

LIT vs  
PLDGS ESTATE OF J M TORRES PROBATE 026

# EXHIBIT

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CLERK  
BY: 

IN THE SUPERIOR COURT OF GUAM

IN THE MATTER OF THE ESTATE OF:

JOSE MARTINEZ TORRES,  
aka JOSE M. TORRES,

Deceased.

SUPERIOR COURT CASE NO:  
PR0220-50

HEARING ON MOTIONS

June 20, 2008

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE ELIZABETH BARRETT-ANDERSON  
JUDGE, SUPERIOR COURT OF GUAM

APPEARANCES:

For Evelyn V. O'Keefe,  
Co-Administrator

For the Office of the Attorney  
General

For Helene Torres,  
Co-Administrator

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ORIGINAL

*Jessella B. Roberts, Court Transcriber, Superior Court of Guam*

1 THE COURT: Good afternoon everybody. And this  
2 is PR220-50. The Court had set this for, almost like a  
3 preliminary hearing before the June 26<sup>th</sup> hearing to hear  
4 some particular motions or procedural motions that were  
5 before the Court -- to raise to the Court.

6 And before we move any further, Counsels, it's  
7 digital, so let's just make sure we have everyone on the  
8 record and who they represent.

9 All right. Starting with Plaintiff's table.

10 MR. F. RANDALL CUNLIFFE: Thank you, Your  
11 Honor. Randall Cunliffe present, and with me is Helene  
12 Torres, who's sitting behind me who is one of the Co-  
13 Administrators of the Estate.

14 THE COURT: All right.

15 MR. JOSEPH RAZZANO: Your Honor, Joseph Razzano  
16 for Evelyn O'Keefe, a Co-Administratrix of the Estate.

17 UNIDENTIFIED COUNSEL: I'm just observing, Your  
18 Honor. We represent one of the heirs to the Estate.

19 THE COURT: Okay.

20 Go ahead, for the A G 's Office.

21 MR. PATRICK MASON: Patrick Mason representing  
22 the Office of the Attorney General and the Government of  
23 Guam.

24 THE COURT: Okay. And --

25 //

1 MR. WILLIAM BISCHOFF: Bill Bischoff. I'm here  
2 with Mr. Mason.

3 THE COURT: Okay.

4 I'd like you to follow along with me. The Court  
5 is fully briefed on all the motions that have been filed  
6 here. And what I'm going to do is call on the motion in  
7 limine first, which was raised by Mr. Cunliffe on behalf  
8 of his client, Ms. Helene Torres. And we'll take that one  
9 up first, all right?

10 All right. So, Mr. Cunliffe, is there anything  
11 you'd like to add to your briefing? You may go right  
12 ahead, sir.

13 MR. CUNLIFFE: Thank you, Your Honor. And I  
14 won't belabor the point, but we pointed out in some of the  
15 moving papers that although the Government has filed this  
16 motion for intervention, they didn't file a pleading as to  
17 what -- why they were intervening. And in their motion  
18 for intervention, they say that there are issues about the  
19 language and whether there were intentional or negligent  
20 misrepresentations, then in their motions they start  
21 talking about fraud and various other things. But when  
22 you file a motion to intervene, you're suppose to attach a  
23 copy of the pleading which it is you're trying to  
24 intervene for. And Mr. Bischoff has indicated that the  
25 purpose of their intervention is a 60(b) motion, but they

1 didn't file the 60(b) motion. And the reason I preface  
2 this to begin with is because his arguments become very  
3 fluid. When something doesn't seem to be working, he  
4 moves to another area, and he then -- when that doesn't  
5 seem to work, he moves to another area. And the reason  
6 that the motion -- And with a motion to intervene  
7 pursuant to Rule 24(c), you're supposed to set forth the  
8 pleading or defense, attach it so everybody knows what  
9 you're saying. And as he uses these words of either  
10 negligent or intentional misrepresentation, or fraud or  
11 constructive fraud, under Rule 9(b) those have to be  
12 specifically pled so we know what it is we're talking  
13 about that he's alleging we did wrong so that he can  
14 somehow get ... get into the Court. And not having done  
15 so, it makes it very difficult for us to actually address  
16 what he is saying because, as I said, initially in his  
17 motion to intervene, he said, you know, intentional or  
18 negligent misrepresentation, but in his reply to my  
19 motion -- his response to my motion for a motion in  
20 limine, he then moved further and talked about fraud,  
21 which he'd never talked about before. So, you know, we  
22 have a -- kind of a slippery slope that the Government  
23 is -- is throwing things at ... at us without ever having  
24 pled what they're required to plead, and that is their  
25 motion, the 60(b) motion. But in their response on the

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1 very first paragraph, the last sentence, Mr. Bischoff  
2 states, "Rather, the evidence is intended" -- that is, the  
3 extrinsic evidence -- "to prove that the conditioned  
4 paragraph was supposed to be completely different."

5 THE COURT: Well, Mr. Cunliffe, can I stop you  
6 right there? There is an initial threshold here, and I'd  
7 like you to address the initial threshold of the right to  
8 intervene. And I do understand the Attorney General's  
9 motion on the twenty-sixth is to intervene and to set  
10 aside under 60(b) the Court's decision last year. You're  
11 arguing to the Court that Mr. Bischoff, in his Rule 60(b),  
12 is bringing up issues of fraud or negligence and wants to  
13 produce evidentiary -- evidence and testimony as to that.  
14 Is that what you're saying?

15 MR. CUNLIFFE: It appears that he wants to -- I  
16 mean, he's basically said he wants to bring in people from  
17 the Guam Ancestral Lands Commission to testify that the  
18 language that is contained in the deed they gave to the  
19 Estate is not what they intended

20 THE COURT: And how does that fit, at least, in  
21 your perspective -- I'll let Mr. Bischoff argue it -- a  
22 motion to intervene?

23 MR. CUNLIFFE: Well -- And I think the Court  
24 at the ... at the ex parte hearing or the ... when the  
25 Court shortened time for Mr. Bischoff to come in and ask

1 initially for an injunction, the Court quite directly  
2 pointed out, "How do you have standing?" And I believe  
3 it's the Limtiaco case, and I didn't bring that case with  
4 me, where the Supreme Court has basically said that a  
5 probate court does not have the jurisdiction to hear a  
6 quiet title action. If you're not a party to the  
7 proceeding or somehow interested in the proceeding, you  
8 can't enter a probate case and try to get the probate  
9 court to make orders that you have no direct interest in.  
10 That's -- And that's -- Limtiaco versus Zahnen, I  
11 believe, it is, Your Honor.

12 THE COURT: Zahnen versus Limtiaco.

13 MR. CUNLIFFE: And so the -- from that initial  
14 standpoint, I mean, I don't think the Attorney General has  
15 standing to try to ask this Court to do anything with  
16 regard to this case. If they want to do so, and I think  
17 it was brought up in the other proceeding -- the earlier  
18 proceeding, they would need to file some other proceeding  
19 apart from this.

20 THE COURT: But your motion is, Your Honor,  
21 don't go down this slippery path of all the evidence and  
22 testimony, etcetera, because this is not the place to do  
23 it.

24 MR. CUNLIFFE: Not only that, Your Honor, but  
25 under the cases that we've cited, which is the Berg

1 decision and the Torres decision, the Supreme Court of  
2 Guam has said, if the document, the contract, as I said,  
3 of which Mr. Bischoff took offense to and said this isn't  
4 a contract case, had he read the statute he would have  
5 known that agreement includes deeds, contracts and wills.  
6 You -- If it's clear on its face and plain and  
7 unambiguous, you can't offer parole evidence or extrinsic  
8 evidence to try to explain what is in fact intended by the  
9 document that we are talking about. And in my initial  
10 memorandum, Your Honor, I cited subparagraph (c) on page  
11 two, and it states quite succinctly, "This quit claim deed  
12 and the effective transfer of the property is conditioned  
13 on the administrator/trix petitioning a probate court to  
14 approve the Jose Martinez Torres Estate's receipt of the  
15 property and to approve the Jose Martinez Torres Estate's  
16 permanent extinguishment and termination of all claims to  
17 all other properties held by the Guam Ancestral Lands  
18 Commission, formerly known as Ukudu or Estate 2531 and  
19 1540." Now, in the reply, the response, as I've  
20 indicated, Mr. Bischoff says, "The evidence is intended to  
21 prove that the conditioned paragraph was supposed to be  
22 completely different." And under the decisions that we've  
23 cited to the Court, the Torres and the Watson versus Berg,  
24 the Supreme Court has quite directly said, "You are not  
25 allowed to bring in extrinsic evidence to try to explain

1 away a condition that is clear on its face." In Torres at  
2 para- -- at their caption thirty-six, it says, "First the  
3 extrinsic evidence must comply with the parole evidence  
4 rule and thus evidence that contradicts the written  
5 document cannot be considered by the court." It goes on  
6 further, "It is the duty of the court to give effect to  
7 the intention of the parties where it is not wholly at  
8 variance with the correct legal interpretation of the  
9 terms of the contract and a practical construction placed  
10 by the parties upon the instruments is the best evidence  
11 of their intentions. These decisions prohibit extrinsic  
12 evidence that would contradict the written agreement."  
13 And, Mr. Bischoff, in his response, has indicated that's  
14 exactly what he wants to do. He wants to say that that's  
15 not the condition, that it's -- the condition is something  
16 else. And we're just saying to the Court that there's  
17 nothing under the law that permits him to do that. He  
18 does try to assert in his response that it's -- it's  
19 ambiguous, the paragraph is ambiguous. And -- and the  
20 Court has read the paragraph. I've just read it onto the  
21 record. And the Court can make a determination whether it  
22 believes that paragraph is in any bit ambiguous. But  
23 their assertion of ambiguity is on page two of their  
24 response that the paragraph may be ambiguous because the  
25 Commission intended one thing and the draft was another.

*Jessie B. Roberts, Court Reporter, Superior Court of Guam*

1 But that doesn't make the paragraph ambiguous, that makes  
2 perhaps a misunderstanding between somebody, may be his  
3 allegation, but it doesn't make the paragraph ambiguous.

4 The -- Also, Your Honor, I mean, the Government  
5 has, in its original motion to intervene, stated that  
6 there are no ancestral land records of any kind of a  
7 review of the condition. And they submitted a declaration  
8 by Joey Leon Guerrero from the Ancestral Lands Commission.  
9 But Mr. Bischoff filed with the Court a declaration re the  
10 opposition to the motions to quash that are also before  
11 the Court today, and the first exhibit is al- --

12 THE COURT: You know, I really don't want to go  
13 down that path just yet.

14 MR. CUNLIFFE: Okay.

15 THE COURT: I don't want to go down -- I mean,  
16 you're arguing explicitly to the Court to disregard a lot  
17 of the extrinsic evidence, and I -- I know you want to  
18 argue something to the Court by using that. But let me  
19 hear from Mr. Bischoff or Mr. Mason, if I can, and I'll  
20 let you close on that. Okay, Mr. Cunliffe?

21 MR. CUNLIFFE: Yes, Your Honor.

22 THE COURT: All right.

23 Mr. Mason, will you be arguing this, or  
24 Mr. Bischoff?

25

1 MR. MASON: Your Honor? If Your Honor wishes  
2 arguments, I'm here to present arguments regarding the  
3 standing of the Attorney General's Office and the  
4 Plaintiff -- and the Intervener's in this case.

5 THE COURT: I'm here to hear -- I want to know  
6 if there's anything from your office or yourself regarding  
7 the motion filed -- a lot of motions. I am taking them  
8 one at a time.

9 MR. MASON: Yes, Your Honor.

10 THE COURT: This is the motion in limine.

11 MR. MASON: Yes, Your Honor.

12 THE COURT: -- to prevent the Attorney  
13 General's Office from -- in its motion to intervene,  
14 presenting to the Court extrinsic evidence to go behind  
15 the deed itself. Any comments on that, sir? If not, I'll  
16 take it on the briefs.

17 MR. MASON: Your Honor, I think what I have to  
18 say regarding standing will bring to light the fact that  
19 we have to look behind this, we have to look at extrinsic  
20 evidence because, in this case, the Office of the Attorney  
21 General represents the Ancestral Land Commission. And, in  
22 fact, it appears that there were -- there was a deed  
23 drafted and -- whether you call it a contract, certainly  
24 if it's a contract, it should go through the Office of the  
25 Attorney General for approval -- and there was also a

1 decision and order drafted. And it appears from what we  
2 have in the record that these were drafted by private  
3 parties who have an interest in, who represent -- they  
4 were drafted by attorneys who represent private parties  
5 who have an interest in obtaining the land and selling it,  
6 and these were drafted for the Ancestral Land Commission.  
7 And my understanding is --

8 THE COURT: Well, Mr. Mason, let me ask you  
9 then the poignant question; I know we're set for the  
10 twenty-six, but Zahnen versus Limtiaco works very heavily  
11 against ...

12 MR. MASON: We're not --

13 THE COURT: ... the Attorney General's  
14 standing. I mean, you're bringing up to the Court  
15 standing right now. And the Court has briefed on that  
16 issue of standing in this probate case.

17 MR. MASON: Well, we're not asking the Court to  
18 quiet title or to amend the deed. We have an order --  
19 We have a petition that was presented to the Court, and  
20 that pos -- and that petition misled the Court. Based on  
21 that petition, the Court issued an order -- an order  
22 regarding -- regarding the transfer of this property.  
23 And this Court certainly has jurisdiction to either change  
24 that order, amend it, or stay that order because that's an  
25 order of this Court. That's the jurisdiction of this

1 Court. There will be a separate action to quiet title and  
2 to correct these errors. But as it stands now, because of  
3 misrepresentations, this Court has issued an order in  
4 which this property is being sold to someone and money is  
5 being paid into the Court.

6 THE COURT: Could you not in a quiet title  
7 action raise those very same issues to a quiet title court  
8 judge to then request an injunction on this probate court?

9 MR. MASON: Well, that's right, Your Honor, but  
10 each day -- the problem is, each day that goes by the  
11 Court has issued an order. The Court has jurisdiction to  
12 change that order. And we're coming here because that  
13 order has been issued, we want to advise the Court that  
14 that order that the Court was misled when it issued that  
15 order and it was (indiscernible) granted, and -- as a  
16 matter of fact, we would like a stay of that order or at  
17 least something that would grant us a remedy that would  
18 change that order and -- So we're saying this Court has  
19 jurisdiction over its own orders, Your Honor.

20 THE COURT: Mr. Mason, you make sense to the  
21 Court. What doesn't make sense are your arguments in this  
22 probate proceeding.

23 MR. MASON: Well --

24 THE COURT: And I asked Assistant Attorney  
25 General Mr. Bischoff way early in the ex parte action,

1 under what authority does a probate judge have to dig down  
2 deep into an administrative hearing of the executive  
3 branch and to delve into the discretionary decisions of  
4 that agency within the probate proceedings? Very narrow  
5 question. It doesn't say -- It is not a question that  
6 implies that the Attorney General doesn't have some other  
7 course of action or some other course of action to impose  
8 upon this probate court or even the Estate, or for that  
9 matter, the Governor, who signed the deed. It's a very  
10 narrow perspective of the jurisdiction of this probate  
11 court. And, Mr. Mason --

12 Mr. Bischoff, sit down.

13 MR. BISCHOFF: Yes, Your Honor.

14 THE COURT: And, Mr. Mason, I didn't just want  
15 to kick the Attorney General's Office and ignore the  
16 efforts of the Attorney General's Office. What is of  
17 grave concern here is that no judge can allow parties to  
18 come into particular actions if there are -- if there  
19 isn't standing. And, you know, Pat, I respect you a lot  
20 because you hit the nail on the head. We're here to talk  
21 about motions in limine, motions to quash, motions to  
22 recuse -- or -- or disqualify the A.G.'s Office. The  
23 whole problem here is the standing issue. That is the  
24 heart of this whole thing here.

25 ///

1 MR. MASON: Well, Your Honor, this Court has  
2 signed an order drafted by opposing counsel ordering that  
3 the property had been properly received by the Estate  
4 through the Ancestral Land Commission. That was an order  
5 issued by this Court. This Court has -- upon being  
6 presented with information regarding the petition that led  
7 to that order and the correctness of that order, this  
8 Court has jurisdiction to either amend that order or stay  
9 that order because that order was improperly given based  
10 on misrepresentations.

11 THE COURT: By your client. By your client and  
12 the Governor. The Governor signed a deed upon  
13 recommendation of the Ancestral Lands Committee.

14 *[Mr. Mason confers with Mr. Bischoff.]*

15 THE COURT: The Governor signed the deed, Pat.

16 MR. MASON: All right. The Governor may have  
17 signed the deed, Your Honor, but the A.G. did not sign the  
18 deed

19 THE COURT: I understand that I understand  
20 that, Pat

21 MR. MASON: And -- and all contracts are to be  
22 signed and reviewed by the Office of the Attorney General.  
23 And so what's happened here is they've bypassed the  
24 Attorney General, Your Honor

25 ///

1 THE COURT: That is your Attorney General's job  
2 with the Governor.

3 MR. MASON: Well, that's --

4 THE COURT: Yeah. Where is the Attorney  
5 General on this position? I understand that, through the  
6 pleadings I've read, she's recused off of --

7 I have another . . . I have another question to  
8 ask you, Mr. Mason, as a civil deputy, how can the  
9 Attorney General's Office on the one hand present itself  
10 to the Court and the other hand the Attorney General is  
11 not participating?

12 MR. MASON: Well, the Attorney General, this is  
13 a personal representation of the Attorney General when she  
14 was in private practice. This has nothing to do with the  
15 Office of the Attorney General's authority.

16 THE COURT: Who is pursuing this right now?

17 MR. MASON: Pardon me?

18 THE COURT: Who is pursuing this right now?

19 MR. MASON: The Office of the Attorney General.

20 THE COURT: The -- Is the --

21 MR. MASON: -- And the head of the office in  
22 the event . . .

23 THE COURT: Is the Attorney General

24 MR. MASON: . . . of the recusal of the Attorney  
25 General will be the Chief Deputy Attorney General. But --

1 Well, I don't think every case in which the Attorney  
2 General has been in private practice and ... and ...

3 THE COURT: Can I --

4 MR. MASON: ... has to be recused ...

5 THE COURT: Can I ... can I see those recusals?

6 MR. MASON: ... disqualifies the whole office.

7 THE COURT: May I see the recusals? Can I see  
8 that? Has that been presented to the Court?

9 MR. MASON: Presented that the Attorney  
10 General --

11 THE COURT: Is no longer in this issue? The  
12 Attorney General is the Attorney General's Office. It's  
13 pretty hard to bifurcate it.

14 MR. MASON: Well, Your Honor, the Attorney  
15 General was in private practice. We would have to ... we  
16 would have to get out of every single case in which she  
17 represented a client in private practice. But we do what  
18 we what we always do when an attorney has a conflict; we  
19 set up a conflict wall and we do not consult with that  
20 lawyer -- particular lawyer, but I think the Office of the  
21 Attorney General can proceed in those cases.

22 THE COURT: Hmm. Interesting. Interesting  
23 I have to say, Counsels, we have really gone far  
24 and astray from the original and ...

25 ://

1           And, Mr. Mason, I said to you and I allowed you  
2           to continue to discuss this because standing maybe is at  
3           the core of everything here -- the issue of standing is at  
4           the core. If you don't have standing, then all the other  
5           motions just fall.

6           MR. MASON: But, Your Honor, the first question  
7           of standing is -- I guess, is what kind of standing do we  
8           have? And it's clear, we have ... we have statutory  
9           powers of standing 'cause we represent the Ancestral Land  
10          Commission, although, in this case, documents were drafted  
11          and submitted and signed without going through the office.

12          THE COURT: Should you choose --

13          MR. MASON: -- Which is improper, I believe.

14          THE COURT: Should you choose to sue the --  
15          Has there been any consideration of the Attorney General's  
16          Office to sue the Ancestral Lands Commission?

17          THE COURT: Well, no. We ... we -- There's no  
18          reason to sue them, at this point. I mean, maybe if we  
19          quiet title. I ... I don't know the answer. At this  
20          point, we have no reason because the Ancestral Lands  
21          Commission, we represent them. We represented them when  
22          mo -- when the action was filed, we represent them now,  
23          and that's a statutory representation because they're a  
24          government agency. They don't have authority to hire  
25          their own lawyer so they are, therefore, represented by

1 the Office of the Attorney General. And it seems to me  
2 that most lawyers on this island, if they're drafting  
3 decision and orders and deeds for the Ancestral Land  
4 Commission without -- know that the Office of the Attorney  
5 General has a Solicitor's Division that reviews those  
6 matters, that these were drafted and presented and  
7 signatures were obtained by lawyers with private clients  
8 with private interests.

9 THE COURT: And, Mr. Mason, this Court  
10 recognizes more so than any other judge, the role and the  
11 power of the Attorney General. What I'm looking at in a  
12 narrower perspective, is this the forum for you? It  
13 wouldn't be the position of this Court to say you don't  
14 have a forum. And it was very difficult of Mr. Bischoff  
15 to come into this particular forum here -- I understand  
16 what you're saying. Time is of the essence here. I'm  
17 surprised that as of this date, no other action --  
18 You're putting all your eggs in one basket.

19 MR. MASON: No, Your Honor, we -- we are not  
20 doing that.

21 THE COURT: Okay. Well, that's fine. But what  
22 I see right now are all the eggs in this basket, and I  
23 have a very, very clear mandate for -- not mandate, but  
24 certainly a decision of the Supreme Court of Guam in  
25 Zahnen versus Limtiaco. I hadn't realized that that case

1 had -- I don't -- didn't have a chance to read it, but  
2 when it was cited to me, it fell straight in to what this  
3 Court's perspective was regarding the parameters of a  
4 probate -- parameters of this probate.

5 And, Counsels, here, I ... I believe that time  
6 is of the essence in this case for both sides of this  
7 issue. The Administrators over here and their buyer, and  
8 the Attorney General's Office under whatever course of  
9 action you need to take to protect whatever interest of  
10 the People of Guam needs to be protected and that you feel  
11 was not protected below. And whatever cause of action you  
12 have under the Ancestral Lands Commission statute that  
13 allowed that agency to transfer to original landowners,  
14 and if that agency transferred more than it was supposed  
15 to transfer, then you need to go back to that. I will not  
16 allow it to be done in the parameters of the probate.

17 And, Counsels, this is what -- I have read ... I  
18 have read through the pleadings.

19 And, Mr. Bischoff, if you say one more word in  
20 my courtroom that I'm wrong --

21 The Court is going to read its ruling of the  
22 record right now.

23 It will give the Attorney General's Office the  
24 best option from my decision on how you need to proceed  
25 next.

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1           And, Mr. Mason, I have the greatest respect for  
2 the Office. I may not have the greatest respect for  
3 Mr. Bischoff, and that's why I called you in here, and  
4 that's why I give you such time because I have the  
5 greatest respect for your knowledge on how to proceed. I  
6 disagree with you here. And since I disagree with you,  
7 why don't I make my ruling. And, sir, I don't think it  
8 precludes you from what other course of action that you  
9 may have.

10           The motion in limine of Co-Administrator Helene  
11 Torres is granted. The Court concurs with Mr. Cunliffe in  
12 his briefing. The motion of the A.G. to intervene is a  
13 procedural matter, not a substantive matter requiring  
14 evidence or testimony in the perspective of the Court.  
15 The Court must first determine under Rule 24 the authority  
16 of the A.G. to intervene, not as a matter of right, but  
17 under sub part 2, when the applicant claims an interest  
18 relating to the property or transaction which is the  
19 subject of the action.

20           The Attorney General attempts to have this Court  
21 delve into the administrative hearings and decisions of  
22 the Ancestral Lands Commission to determine whether an  
23 interest exists. In the Court's perspective, this is a  
24 backdoor attempt to get this Court to review matters not  
25 within the jurisdiction of this probate court no matter

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1 how vehemently members of the Ancestral Lands Commission  
2 wanted to make this Court the forum for those issues.

3 The Court will not take evidence, nor will it  
4 hear testimony from any witness in the Government's  
5 procedural motion to intervene. Having ruled that no  
6 testimony will be allowed or no evidence taken, all  
7 motions to quash are granted as to all parties.

8 The Court is fully briefed and the Court greatly  
9 appreciates Mr. Mason's arguments on standing. I'm fully  
10 briefed on the motions to intervene, and because -- that  
11 time is of the essence for both sides of this issue, the  
12 Court having read all the pleadings in support and  
13 opposition of the A.G.'s requests, the Court will not hear  
14 oral arguments on the twenty-sixth in the interest of  
15 judicial economy and in due regard for the amount attorney  
16 time spent by both sides in preparing for this hearing.  
17 The Court believes that this probate proceeding is not the  
18 correct forum to exert even more effort on the part of the  
19 Attorney General's Office or the Administrators and those  
20 interested in the Estate.

21 No further judicial time is required in this  
22 matter and, therefore, the Court will rule at this time.

23 The Court and this particular judge comprehends  
24 fully the common-law powers of the Attorney General of  
25 Guam. Those powers exist to give the Attorney General the

1 right to represent the public interest, oftentimes in  
2 conflict with the Governor, and perhaps even the agencies,  
3 particularly, the elected Attorney General position  
4 currently. In this matter, it is not clear what the  
5 public interest the Attorney General seeks to represent.  
6 The Court agrees with opposing counsel that the Attorney  
7 General cannot represent the 200 potential land claimants  
8 because they have their own statutory right to litigate.

9 More puzzling to the Court is the Court's  
10 concern whether the Attorney General is at all interested  
11 in this motion based on her recusal

12 Mr. Mason, you indicate to the Court that the  
13 Chief Deputy now stands in the shoes of the Attorney  
14 General, and if so, then she needs to clearly put forth  
15 that position on any other litigation she files, or have  
16 the matter referred to the Governor for appointment of a  
17 special assistant attorney general.

18 The Court is clear that the A.G. seeks to have  
19 this Court make a title determination. Unfortunately,  
20 this is not the type of interest the Court will allow  
21 under 24 - Rule 24

22 The Court denies the Attorney General's request  
23 to intervene in this probate for those reasons thus far  
24 stated, but more importantly, the Supreme Court of Guam  
25 has recently addressed this issue in Zalmen versus

1 Limtiaco. The probate court does not have jurisdiction to  
2 determine this issue of land title. And I believe it is a  
3 land title question. Moreover, the Court has no  
4 jurisdiction to consider administrative matters decided,  
5 or not decided, by the Ancestral Lands Commission. The  
6 Court was clear on this matter several months ago when --  
7 with Mr. Bischoff's attempt to intervene. The Attorney  
8 General has not cited to the Court any authority for this  
9 review. Any controversy over title which the Attorney  
10 General chooses to pursue beyond this probate jurisdiction  
11 is the Attorney General's discretion. The A.G. must  
12 decide whether to quiet title to the lands deeded by the  
13 Ancestral Lands Commission to the Estate. This is not a  
14 decision to be made by any particular Assistant Attorney  
15 General. It baffles the Court again to understand the  
16 Attorney General's desire to recuse herself. Although I  
17 do know that there is conflict at times but that conflict  
18 has to be clearly stated so that the Attorney General's  
19 Office and whoever steps forward as the Attorney General  
20 or on behalf of the Attorney General need to clearly  
21 express their position to the Court.

22 This Court will not delve into the reasons  
23 behind, for, against, misrepresentations at the Ancestral  
24 Lands Commission. It is not, however, the situation that  
25 this Court believes that this story is over, Counsels.

1 And I think Mr. Mason this afternoon has indicated that  
2 they may proceed in other forums.

3 The last issue the Court will review is the  
4 motion to disqualify the Attorney General, which the Court  
5 believes is now moot. However, Counsels have requested  
6 that the Court sanction the Attorney General's Office and  
7 Mr. Bischoff on this matter. The Court will not sanction  
8 Assistant Attorney General Bill Bischoff monetarily, and I  
9 don't think I'm going to go any further with regard to any  
10 other sanction against Mr. Bischoff here in court.

11 Mr. Mason, I believe that you in your position  
12 as Deputy Attorney General have the wherewithal, the  
13 knowledge, and the understanding of what needs to be done  
14 here to do so. I deny you the request to do that on  
15 behalf of the Attorney General or the People of Guam  
16 within the parameters of this probate proceeding. These  
17 probate proceedings will go forward. There are hearings  
18 set for August, a second distribution. There are other  
19 issues with regard to the discovery of a will herein I  
20 need to get to. But this Court will go forward with its  
21 probate proceedings until such time that I am presented  
22 any request to stay by injunctive relief that I feel that  
23 is procedurally and appropriately put before this Court.

24 And with that, the hearing on the twenty-sixth  
25 is vacated.

1           And to Mr. Razzano, I'm sorry I didn't let you  
2 speak, but I think the Court's resolution of this matter,  
3 the probate proceeding does still go forward and I have  
4 set those hearings appropriately.

5           MR. RAZZANO: Thank you, Your Honor.

6           THE COURT: And with that, thank you very much.  
7 The Court stands in recess.

8           MR. MASON: Thank you, Your Honor.

9           THE MARSHAL: All rise.

10           \*\* Whereupon the proceedings concluded. \*\*

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CERTIFICATE

I, Jeanette B. Roberto, do hereby certify that the foregoing pages, one through 26 inclusive, comprise the true and correct transcript of the Ex Parte Hearing heard in the following case:

Superior Court Probate Case No. PR0220-50

*In the Matter of the Estate of:*

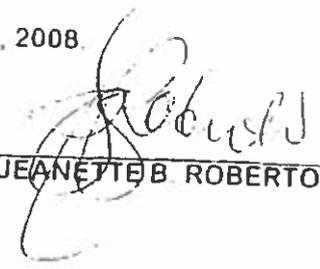
*JOSE MARTINEZ TORRES,*

*aka JOSE M. TORRES, Deceased,*

heard before the Honorable Judge Elizabeth Barrett-Anderson, digitally recorded on 20 June 2008.

This transcript was prepared to the best of my knowledge, skill and ability.

Dated this 2<sup>nd</sup> day of July, 2008.

  
JEANETTE B. ROBERTO

*Jeanette B. Roberto, Court Transcriber, Superior Court of Puerto Rico*

# EXHIBIT

6

TEKER TORRES & TEKER, P.C.  
 SUITE 2A, 130 ASPINALL AVENUE  
 H-AGÁTÑA, GUAM 96910  
 TELEPHONE: (671) 477-9891-4  
 FACSIMILE: (671) 472-2601

Attorneys for the Petitioner/Co-Administratrix,  
 Evelyn O'Keefe

FILED  
 SUPERIOR COURT  
 OF GUAM

2009 JUL 13 PM 5:16

CLERK OF COURT

**RECEIVED**

JUL 09 2009

**SUPERIOR COURT  
 OF GUAM  
 CLERKS OFFICE**

THE SUPERIOR COURT OF GUAM

IN THE MATTER OF THE ESTATES	)	PROBATE CASE NOS.
	)	PR0220-50 and PR114-08
OF	)	
	)	ORDER FOR JOINT EX-PARTE
JOSE MARTINEZ TORRES	)	PETITION FOR THIRD
	)	DISTRIBUTION OF FUNDS
And	)	RECEIVED BY THE ESTATE FOR
	)	THE SALE OF LOT NO. AL-002,
MARIA CALVO TORRES	)	DEDEDO, GUAM AND LOT NO.
	)	5041, DEDEDO, GUAM
Decedents	)	

The Joint Ex Parte Petition of Helene Torres and Evelyn V. O'Keefe, as Co-Administratrixes of the *Estate of Jose Martinez Torres*, deceased, having been granted and the Court having reviewed the Petition for Third Distribution of Funds; and good cause appearing therefor;

IT IS HEREBY ORDERED that a portion of the proceeds of the sale of said Estate property, in the amount of Three Million Seven Hundred Thousand Dollars (\$3,700,000.00) be disbursed as follows:

**Eighteen and Thirty-Four Hundredths Percent (18.34%)**

1. Six Hundred Seventy Eight Thousand Five Hundred Eighty Dollars (\$678,580.00), less approved deductions by the heir, if any, to Evelyn V. O'Keefe. The amount

ORIGINAL

Being disbursed represents her eighteen and thirty-four hundredths percent (18.34%) interest in the Estate.

Twenty Percent (20%)

2. Seven Hundred Forty Thousand Dollars (\$740,000.00) to David Burger, as Trustee of the *Betty Carmencita Cruz Irrevocable Trust*

Twenty Percent (20%)

3. Seven Hundred Forty Thousand Dollars (\$740,000.00) to the heirs of *Mariquita Torres Souder*, deceased, as follows:

a. Laura Torres Freitas, the sum of Two Hundred Forty-Six Thousand Six Hundred Sixty Six Dollars (\$246,667.00), less approved deductions by the heir, if any. The amount being disbursed represents her six and sixty-seven hundredths percent (6.67%) interest in the Estate;

b. Deborah Souder Freitas, the sum of Two Hundred Forty-Six Thousand Six Hundred Sixty Six Dollars (\$246,667.00), less approved deductions by the heir, if any. The amount being disbursed represents her six and sixty-seven hundredths percent (6.67%) interest in the Estate; and

c. Paul Joseph Souder, the sum of Two Hundred Forty-Six Thousand Six Hundred Sixty Six Dollars (\$246,666.00), less approved deductions by the heir, if any. The amount being disbursed represents his six and sixty-seven hundredths percent (6.67%) interest in the Estate.

Twenty Percent (20%)

4. Seven Hundred Forty Thousand Dollars (\$740,000.00) to the heirs of *Felix C. Torres*, deceased, in accordance with his Will, as follows:

a. *Geraldine T. Gutierrez*, the sum of Two Hundred Ninety Six Thousand (\$296,000.00), less approved deductions by the heir, if any. The amount being disbursed represents her eight percent (8%) interest in the Estate;

b. *Vincent Duenas*, the sum of One Hundred Forty Eight Thousand Dollars (\$148,000.00), less approved deductions by the heir, if any. The amount being disbursed represents his four percent (4%) interest in the Estate;

c. The Estate of *Yvonne T. Doerge*, deceased, by and through her Special Administratrix, *Helene Torres*, the sum of One Hundred Forty Eight Thousand Dollars (\$148,000.00), less approved deductions by the heir, if any. The amount being disbursed her represents four percent (4%) interest in the Estate; and

d. *Helene Torres*, the sum of One Hundred Forty Eight Thousand Dollars (\$148,000.00), less approved deductions by the heir, if any. The amount being disbursed represents her four percent (4%) interest in the Estate.

Twenty Percent (20%)

5. Seven Hundred Forty Thousand Dollars (\$740,000.00) to the heirs of *Francisco C. Torres* as follows:

a. *Estate of Robert J. Torres*, deceased, the sum of One Hundred Twenty Three Thousand Two Hundred Ten Dollars (\$123,210.00), as follows:

i. Lucy Torres, the sum of Fifteen Thousand Five Hundred Eighty Dollars (\$15,580.00) less approved deductions by the heir, if any. The amount being disbursed represents forty-one hundredths percent (.41%) of the estate;

ii. Robert J. Torres, Jr., the sum of Twenty Seven Thousand Seven Hundred Forty Dollars (\$27,740.00) less approved deductions by the heir, if any. The amount being disbursed represents seventy-three hundredths percent (.73%) of the estate;

iii. Christopher A. Torres, the sum of Twenty Seven Thousand Seven Hundred Forty Dollars (\$27,740.00) less approved deductions by the heir, if any. The amount being disbursed represents seventy-three hundredths percent (.73%) of the estate;

iv. Melissa V. Torres; the sum of Twenty Seven Thousand Seven Hundred Forty Dollars (\$27,740.00) less approved deductions by the heir, if any. The amount being disbursed represents seventy-three hundredths percent (.73%) of the estate; and

v. Edwin F. Torres, the sum of Twenty Seven Thousand Seven Hundred Forty Dollars (\$27,740.00) less approved deductions by the heir, if any. The amount being disbursed represents seventy-three hundredths percent (.73%) of the estate.

Mary Torres, the surviving spouse of Robert J. Torres, has assigned all of her interest in the *Estate* to her children, Robert J. Torres, Jr., Christopher A. Torres, Melissa V. Torres, and Edwin F. Torres.

b. Jerry Milton Torres, the sum of One Hundred Fifty Eight Thousand Eighty Dollars (\$158,080.00) less approved deductions by the heir, if any. The amount being disbursed represents four and sixteen hundredths percent (4.16%) of the estate;

Jacqueline Torres Flores, the sum of One Hundred Twenty Three Thousand Two Hundred Ten Dollars (\$123,210.00) less approved deductions by the heir, if any. The amount being disbursed represents three and thirty-three hundredths percent (3.33%) of the estate;

d. Sr. Mary Stephen Torres, the sum of One Hundred Twenty Three Thousand Two Hundred Ten Dollars (\$123,210.00) less approved deductions by the heir, if any. The amount being disbursed represents three and thirty-three hundredths percent (3.33%) of the estate;

e. Maureen Torres Chargualaf, the sum of One Hundred Twenty Three Thousand Two Hundred Ten Dollars (\$123,210.00) less approved deductions by the heir, if any. The amount being disbursed represents three and thirty-three hundredths percent (3.33%) of the estate; and

f. Frank C. Torres, Jr., the sum of One Hundred Fifty Eight Thousand Eighty Dollars (\$158,080.00). The amount being disbursed represents four and sixteen hundredths percent (4.16%) of the estate.

6. That the heirs receiving monies under this preliminary distribution do so *without* bond or other formalities.

JUL 13 2009

DATED at Hagåtña, Guam, on \_\_\_\_\_

  
HON. ELIZABETH BARRETT-ANDERSON  
Judge, Superior Court of Guam

# EXHIBIT

7

0127106m

**GUAM ANCESTRAL LANDS COMMISSION  
BOARD OF COMMISSIONERS MEETING**

April 15, 2009

**R E C E I V E D**

JAN 27 2010

*10:12m*  
Office of the Attorney General of Guam  
Civil/Solicitor Division

PREPARED BY:

**GEORGE B. CASTRO**

**DEPO RESOURCES**

#49 Anacoco Lane, Nimitz Hill Estates

Piti, Guam 96915

Tel: (671)688-DEPO • Fax: (671)472-3094

**GUAM ANCESTRAL LANDS COMMISSION  
BOARD OF COMMISSIONERS MEETING**

Guam Ancestral Lands Commission Hearing of April 15, 2009, at the Hagatna Youth Center, Hagatna, Guam. That at said time and place there transpired the following:

**APPEARANCES**

Maria Cruz	Chairperson
Lydia M. Tyner	Commissioner
Ronald F. Eclavea	Commissioner
Tony Ada	Commissioner
James C. Matanane	Commissioner
Ed Benavente	Director, GALC
Joey Leon Guerrero	GALC Staff

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George B. Castro  
COURT REPORTER

Tel.: (671)688-DEPO \* Fax: (671)472-3094

1 HAGATNA, GUAM, WEDNESDAY, APRIL 15, 2009: 4:45 P.M.

2

3 MADAM CHAIRPERSON: The JM Torres  
4 Estate. The Office of the Attorney General,  
5 William C. Bischoff, Assistant Attorney  
6 General, request a decision that Guam Ancestral  
7 Land Commission in the complaint for  
8 Reformation of Deed and for Declaration of  
9 Judgment to be filed by their office in the  
10 Superior Court of Guam. Attorney Bischoff?

11 MR. BISCHOFF: Thank you. That's all  
12 I'm here for. We just want to know the  
13 position of the Commission. Do you desire that  
14 we go forward and file that complaint, that  
15 action in the Superior Court for the  
16 reformation of the deed to reform the deed, to  
17 include the requirements that the estate is  
18 required to bring its Ancestral Lands claim  
19 evidence before a court to have a court decide  
20 whether they have, whether they are entitled to  
21 the properties in question under the provisions  
22 of the Ancestral Lands Act?

23 Do you want us to go forward and file  
24 that complaint in the court to have the deed  
25 reformed to include that condition?

1 MADAM CHAIRPERSON: All right.

2 MR. MATANANE: Madam Chair?

3 MADAM CHAIRPERSON: Okay. Commissioner  
4 Matanane?

5 MR. MATANANE: June of last year, Mr.  
6 Bischoff subpoenaed some of the members of this  
7 Commission, I was one of them, to go to court  
8 regarding this estate. I didn't have a chance  
9 to testify because I distinctly heard the judge  
10 says Mr. Bischoff don't have jurisdiction.

11 So, what is Mr. Bischoff wanted the  
12 Commission to do? We already have made a  
13 decision. The lot that is in question is the  
14 Okodu part, where after we have been presented  
15 the evidence and the Commission assessed all  
16 the evidence, we made a decision to deed the  
17 property back to JM Torres. And then they came  
18 back for more land and this Commission  
19 entertain that and we told them that in order  
20 for you to apply for more of those lands, you  
21 have to take it to court for a decision.

22 So, if -- the Commission set a  
23 precedent regarding this estate, all the 400  
24 lots that we have made a decision on, any  
25 lawyers could come in and say, "I want the

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1 Commission's intent." And I'm not here to  
2 entertain everything that has gone past. Some  
3 of them have built houses already. So, what do  
4 you want us to do, change our position in this?

5 MR. BISCHOFF: No, we don't want  
6 anybody to change their position. The question  
7 is, at the time when the hearings when these  
8 lots in question were conditionally given to  
9 the Jose M. Torres Estate, the question is, at  
10 that time at the hearing, did this Commission  
11 require as a condition that the Jose Martinez  
12 Torres Estate bring its evidence to a court and  
13 have a court really make the final decision  
14 about whether they were entitled to the land  
15 under the provisions of the Guam Ancestral  
16 Lands Act?

17 MR. MATANANE: It never went to court.  
18 It went to court when the Attorney General took  
19 this Estate to court. And I was subpoenaed to  
20 appear and testify on behalf of the Ancestral  
21 Land. I was not given the opportunity to  
22 testify because the case at that time is for  
23 the Okodu properties, not for the original  
24 award of deeds.

25 MR. BISCHOFF: Well, the only question

1 is whether the deed that you actually signed  
2 had a mistake in it.

3 MADAM CHAIRPERSON: I see.

4 MR. BISCHOFF: Whether it was supposed  
5 to say that the Jose Martinez Torres Estate has  
6 to bring this Ancestral Lands claim evidence to  
7 a court and have a court make the final  
8 decision on it.

9 MADAM CHAIRPERSON: Right.

10 MR. BISCHOFF: Because maybe you are  
11 unsure about the evidence.

12 MADAM CHAIRPERSON: Commissioner Ada,  
13 do you have any comments on that?

14 MR. ADA: Okay, at the time that this  
15 thing came forth, I was not yet appointed as a  
16 commissioner but since then I've had the  
17 opportunity to take a look at what had gone on.  
18 I think the last meeting -- I mean the  
19 Commissioners have made a resolution -- you  
20 initially made the Guam Ancestral Lands  
21 Commission a third party defendant, then you  
22 retracted that, right?

23 MR. BISCHOFF: Right.

24 MR. ADA: And then you brought a letter  
25 to us, the Commission, to clarify that the

1 Attorney General's Office can represent the  
2 Ancestral Lands Commission in this case. In  
3 fact, the attorney, Pat Mason, you were there  
4 also, right? And you came to clarify that we  
5 needed to clarify that point, and it was  
6 clarified. And then I believe that particular  
7 resolution was certified by five Commissioners  
8 and there was a question about an emergency  
9 meeting whether or not it needed to be a -- I  
10 guess, an emergency meeting was called and  
11 there was a question of whether or not this  
12 particular issue rises to calling an emergency  
13 meeting, and then there was no meeting because  
14 there wasn't a quorum, and that's where it  
15 ended.

16 Then -- in fact, what I do remember  
17 also, was that -- and you're in the room  
18 Attorney Yanza. You came with about an inch  
19 thick book or document highlighting all the  
20 issues about Attorney Bischoff. And then we  
21 didn't go further into that because we're not  
22 talking of Attorney Bischoff, we're talking  
23 about this particular estate.

24 And so, there was a recording made in  
25 2006 of the instructions that Commission at the

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1 time specified about regarding this property,  
2 right? And that's what you're referring to,  
3 that the estate is supposed to go to the court  
4 and clarify whether or not the estate is the  
5 heirs to this property. Am I correct so far?

6 MR. BISCHOFF: Whether their evidence  
7 entitles them to the land under the law, under  
8 the provisions of the Guam Ancestral Lands Act.

9 MR. ADA: Correct. So I believe some  
10 of the Commissioners that were brought in to be  
11 deposed, it kind of -- correct me if I'm wrong,  
12 it robbed the wrong way because it liked the  
13 Commissioners were being targeted for something  
14 that -- I mean, but that's not what you  
15 intended as to making us a third party  
16 defendant, right? Initially?

17 MR. BENAVENTE: You pointed us out as  
18 defendants in this case.

19 MR. BISCHOFF: I think we've been --  
20 that was a mistake. We've been through that  
21 before. It's not like you were going to be  
22 defendants in your personal capacities.

23 MR. BENAVENTE: Yeah.

24 MR. ADA: Yeah.

25 MR. BISCHOFF: The idea that the

1 Commission as an entity, had jurisdiction over  
2 a case where it looked to us that the Estate  
3 did not have adequate evidence under the Guam  
4 Ancestral Lands Act for you to give them this  
5 property.

6 MR. BENAVENTE: But do you understand  
7 where we're coming from, attorney Bischoff?

8 MR. BISCHOFF: Oh, yeah.

9 MR. BENAVENTE: I mean we're lay  
10 people, you guys are the legal people, and  
11 when words and terminologies come in like third  
12 defendant and stuff like that, it sends a  
13 chilling effect, especially to volunteers --

14 MR. BISCHOFF: I learned my lesson.

15 MR. BENAVENTE: -- who are not being  
16 paid here. They're not even being paid,  
17 they're volunteers from the community who sit,  
18 and appointed by the Governor. They don't get  
19 paid. And really, it does send a chilling  
20 effect. And nobody wants to sit. Nobody even  
21 wants to deliberate in the issue because  
22 they're afraid of being, what? Sued. Of their  
23 liabilities.

24 So, these are the things that they have  
25 to consider. And who are they? Who are the

1 enemies? Are they the enemies, are they the  
2 defendants or the plaintiff? These are the  
3 questions that a lot of us are not in the realm  
4 of --

5 MR. BISCHOFF: Well, you do understand  
6 the position of the AG's office always was at  
7 that time just a jurisdictional question about  
8 the Commission as an entity whether it had  
9 jurisdiction on this Jose Martinez Torres  
10 claim. It was never anything about your  
11 individual persons, Mr. Benavente.

12 MADAM CHAIRPERSON: Okay. I'll like to  
13 control this meeting. Now, Commissioner Ada  
14 had the floor. Let him finish.

15 MR. ADA: Okay. Thank you. I just  
16 needed to, you know, we're just bringing  
17 everybody up to speed because it's been a few  
18 months since we last met.

19 It had later been clarified that you  
20 needed to establish some kind of -- I guess,  
21 the word is jurisdiction, that you can bring  
22 this to the court, right? And the question was  
23 whether or not a line agency like the Guam  
24 Ancestral Lands Commission can be represented  
25 by the Attorney General, office of the Attorney

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1 General.

2 MR. MASON: I think it was more whether  
3 they could be an entity in a lawsuit.

4 MADAM CHAIRPERSON: All right. Please  
5 speak to the mic.

6 MR. MASON: I'm sorry. I think the  
7 issue was whether the Commission itself would  
8 have the authority to be an entity in a lawsuit  
9 as oppose to the lawsuit being the government  
10 of Guam.

11 MR. ADA: So, from what I've seen to  
12 this point, of what I've read to this point,  
13 the Commission does need the -- some legal  
14 representation on this matter, based on what  
15 I've seen in this case now.

16 MADAM CHAIRPERSON: The process.

17 MR. ADA: The recorded meeting dated in  
18 2006, there was -- I'm not sure, do we have  
19 copies of the transcript?

20 MR. LEON GUERRERO: No. I didn't bring  
21 any with me.

22 MR. ADA: Okay. I have it in my car.  
23 I can bring out. Anyway, the transcript did,  
24 it was interchanged between Attorney Yanza,  
25 mostly, and then Commissioner Charfauros. And

1 in there, he had stated that the estate had to  
2 go to the court and clarify this question of  
3 whether or not the estate is the rightful heirs  
4 to these properties. And if the court had  
5 determined that they weren't, then the lands  
6 will revert back to the Ancestral Lands  
7 Commission. From what I understand is that  
8 part never happened, correct?

9 MR. BISCHOFF: Correct. That condition  
10 was never included into the deed that you  
11 finally signed.

12 MR. ADA: However, the Commissioners,  
13 the Commissioners at the time trusted, because  
14 the attorney, the attorney for the estate had  
15 stated that they would draw up all necessary  
16 papers.

17 MR. BISCHOFF: Well, as far as the  
18 Attorneys for the estate, could maybe even have  
19 been negligent and not accurately reflecting  
20 that Commission's intention. So it's not  
21 necessarily that even the Attorneys for the  
22 estate were intentionally trying to  
23 misrepresent the Commission's intention, they  
24 may have been negligent. But the question is,  
25 if in fact the condition that was finally

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1 placed in the deed did not accurately reflect  
2 the condition you really imposed at that  
3 hearing, then we want to know if you want to go  
4 forward in court and have us file the  
5 appropriate action, for what's called  
6 Reformation of the Deed, to have the deed  
7 reformed, which means changed to include the  
8 condition that appears to have actually been  
9 imposed by the Commission at the hearing in  
10 2006.

11 MADAM CHAIRPERSON: Matanane?

12 MR. MATANANE: You know, Attorney  
13 Bischoff, when I was subpoenaed, I was willing  
14 to testify on case, but yet I wasn't given the  
15 opportunity to testify. That would have  
16 cleared most of the issues at hand.

17 MR. BISCHOFF: I believe at that point  
18 that Judge Anderson determined that she did not  
19 have jurisdiction to decide the underlying  
20 question of whether the deed accurately  
21 reflected your, the condition imposed by the  
22 Commission in September of 2006.

23 I believe that Judge Anderson didn't  
24 believe she had jurisdiction to even entertain  
25 that question. And that is why she did not

1 have you testify. As I understand what  
2 happened in that day in court, that she -- that  
3 question was not something that she thought  
4 that she could even take up in that particular  
5 case.

6 So, the whole point of this is we're  
7 trying to -- we want to know whether you want  
8 us to go forward in an appropriate, what Judge  
9 Anderson especially seem to believe is a more  
10 appropriate action for what is called a simple  
11 reaffirmation of the deed, to have the  
12 condition reflect what you appear to have  
13 actually imposed at that hearing.

14 So, it's really a question, if you  
15 believe that the condition that's in the deed  
16 right now does not accurately reflect the  
17 condition that you imposed at that hearing in  
18 2006, then it would seem appropriate to tell us  
19 to go forward and reform the deed to --

20 MR. MATANANE: Please do so, because --

21 MR. BISCHOFF: -- include the condition  
22 that you actually imposed.

23 MR. MATANANE: -- what the complain --

24 MADAM CHAIRPERSON: Please. Yes or no.

25 So, go ahead and whoever wants to make the

1 motion.

2 MR. ECLAVEA: I want to make a  
3 statement.

4 MADAM CHAIRPERSON: All right. Go  
5 ahead Commissioner Eclavea.

6 MR. ECLAVEA: I've always stated my  
7 position from the beginning, I mean it's  
8 documented. I totally believe that the Torres'  
9 own those properties.

10 Now, the historical evidence shows that  
11 it belongs to them, but you know, the criteria  
12 set by the law for us with abstracts and tax  
13 rules, would not apply in this case because,  
14 you know, they were not given that opportunity.  
15 They, you know, they did make payments on the  
16 property but there's no evidence of it.

17 The historical data shows, and I'm  
18 totally convinced it's theirs. We're not here  
19 to, in my opinion, you know, we're not here --  
20 we're here to protect the land owners, and  
21 we're not here to take back lands, you know.  
22 We -- our lands were taken and we try to  
23 correct, you know, and undo the injustices that  
24 was done in the past.

25 Now, we made the decision for them to

1 go to court, they took it to court. And we're  
2 willing to show up and give our testimony.

3 MR. MATANANE: Exactly.

4 MR. ECLAVEA: So it went to court. And  
5 it went to probate, again it went to probate  
6 court. As far as the legal implications of it,  
7 you know, it went through. For me, I'm  
8 satisfied that it's theirs. I know, for me in  
9 my heart, it's theirs, you know. They don't  
10 have the, you know, the tax rule, the abstract,  
11 of course they don't. We know the history why  
12 they don't have it.

13 But for me, I have reservations  
14 authorizing clarification on it. I just have  
15 reservations only because I believe it's  
16 theirs. And it went to court. It's done. But  
17 that's not the say, you know, if you have  
18 others ways to do it, you know --

19 MR. BISCHOFF: All I'm saying is, is  
20 the probate court did not look at the evidence  
21 and make its own independent determination of  
22 whether the estate was entitled to land,  
23 because that condition that a court look at the  
24 evidence and make that determination, was not  
25 included in the deed.

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1           So, when it went to probate court, the  
2 court never actually looked at the evidence and  
3 made that determination.

4           MR. ECLAVEA: Yeah, we understand where  
5 you're coming from. But as far as for me, I'm  
6 not comfortable at all.

7           MADAM CHAIRPERSON: All right. Can we  
8 make it short? We're running out of time,  
9 with all due respect. Commissioner Ada, did  
10 you want to say?

11           MR. ADA: Yeah. Okay. I guess I  
12 didn't share some of the exhibits that was made  
13 available by Attorney Bischoff. I did look at  
14 this, what went on in this property transaction  
15 way back in 1914. There was an attempt from  
16 Mr. Torres to buy this property from Mr.  
17 Duarte, and he paid half. He did not, it did  
18 not go through completely, because in between  
19 that time Mr. Duarte got in trouble with the  
20 law. And so, the government had seized all the  
21 properties.

22           Mr. Torres did make a move by writing  
23 to the Secretary of the Navy, by going to the  
24 court, local court, and even bringing a highly  
25 noted individual by the name of Padre Palomo to

1 talk to the Governor with regards to separating  
2 out the seizure, this property, as part of the  
3 properties seized. And Mr. Torres was given,  
4 was told, that his avenue that he can take, his  
5 recourse is to take it to the court, to the  
6 local court.

7 So, in the end, he did not prevail,  
8 only half of the total price was paid and it  
9 stayed that way. I did some -- because Mr.  
10 Torres is -- in my wife's family tree. He did  
11 pass away sometime in 1950. He didn't pursue  
12 it further from that time because he, I guess  
13 he already had been to the court, and the court  
14 already said that the -- the transaction was  
15 never completed. They didn't record it. They  
16 didn't get a notarize document, and from what I  
17 read, he didn't pay taxes on it.

18 MR. ECLAVEA: No. It was recorded.  
19 The sale of the property with the court, I  
20 understand it was recorded, right? It was  
21 recorded.

22 MR. BISCHOFF: Actually, I believe it  
23 was not but there was -- Mr. Martinez thought  
24 that it should have been. He thought that it  
25 was unjustly not recorded. But that's not

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1 really the question. That's all part of the  
2 evidence. And the question is, did the  
3 Commission want a court to review the evidence  
4 and make the final -- the only question we are  
5 here for today is, is that what you -- the  
6 Commission really want and what you really --  
7 the condition you really imposed in September  
8 of 2006, was that since you were perhaps unsure  
9 about the whole thing, whether the condition  
10 you imposed, was that a court review the  
11 evidence, that the estate be required to bring  
12 its evidence to a court and have a court review  
13 the evidence and make the final decision about  
14 whether the estate was entitled to the land  
15 under the Guam Land Ancestral Act.

16 And so, that's all we're here for to  
17 see, to know if that is the condition that you  
18 really impose and whether you want us to go  
19 forward with an action in the court just to  
20 reform the deed to include the condition that  
21 you appeared to have actually imposed, that a  
22 court review the evidence.

23 MR. MATANANE: What happened here is  
24 the Torres' came back, Mrs. O'Keefe came back  
25 for more land, because she has documents of the

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1 Okodu site. And that's what we imposed that  
2 whatever additional properties that you are  
3 claiming, should take to court and have the  
4 court approve it. That's my understanding of  
5 JM Torres' Estate, because the first deed or  
6 the deed that we issued, was plain and clear  
7 that it belongs to the Torres'. Now, when they  
8 came back for a larger portion, that's when we  
9 said, "If you can prove it in court, it's  
10 yours".

11 MR. ECLAVEA: And there's also a  
12 stipulation on the deed that they were to --  
13 not pursue any further claims on any --

14 MR. MATANANE: Right. On the Okodu.

15 MR. ECLAVEA: -- and so, which is what  
16 they agreed to. Even further released  
17 properties.

18 MR. MATANANE: Right.

19 MR. ECLAVEA: It was signed. That was  
20 agreed too, correct?

21 MR. MATANANE: Uh-huh. That's my  
22 understanding.

23 MR. BISCHOFF: So was the deed supposed  
24 to say, "If you can prove it in court, it's  
25 yours". That's the question. Is that what the

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1 deed was supposed to say, "If you can prove it  
2 in court, it's yours"?

3 MADAM CHAIRPERSON: Also the process of  
4 the way it was returned to the original, to the  
5 Torres' was we want to know if that's in  
6 conformance with the regulations that, you  
7 know, the regulations that was set forth by the  
8 legislature. So that was another important  
9 question. So with this in mind, can we proceed  
10 with a "yes or no" or make a commotion or what?  
11 We're running out of time here. I'm sorry to  
12 interrupt.

13 MR. YANZA: Ms. Chairman? Before the  
14 Commission makes some ruling on whether or not  
15 they're going to approve of the --

16 MR. ECLAVEA: Can you state your name,  
17 sir?

18 MR. YANZA: Good afternoon Honorable  
19 Commission members. Louie Yanza, for Ms.  
20 Evelyn O'Keefe. Before the Commission makes  
21 any move on whether they're going to approve of  
22 the AG's office representing the Commission,  
23 we would like to put on some arguments on why  
24 this issue should not even be reviewed again.  
25 First of all, we went through the evidentiary

1 hearing before this Commission.

2 The Commission was satisfied with all the  
3 evidence that we presented to the Commission.  
4 And the Commission approved of the return of  
5 the ancestral lands. The government had all  
6 the notice of when these hearings were being  
7 conducted. They had a time frame to come back  
8 in and appeal the return of these ancestral  
9 land, but they did not.

10 MR. BISCHOFF: Now you're getting into  
11 legal issues.

12 MR. YANZA: Hold on, hold on. Let me  
13 finish.

14 MR. BISHOP: I object. The Commission  
15 doesn't have to --

16 MR. YANZA: Let me finish Mr. Bischoff.

17 MR. BISCHOFF: -- take all this  
18 testimony if it doesn't want to.

19 MR. YANZA: Hey, Mr. Bischoff? Let me  
20 finish.

21 MADAM CHAIRPERSON: Please! One at a  
22 time. And first of all attorney Yanza, I  
23 didn't recognize you. And this meeting, I  
24 think it's really -- I mean it's -- right now,  
25 it's almost 5:00, and we're oppressed with

1 time. We're supposed to be out of here by  
2 5:00. So I don't know, could --

3 MR. YANZA: Can I just make one more  
4 point? And I'll make it very quick. We  
5 traveled this path, this road last year in  
6 April and June 2008. In our last hearing, this  
7 Commission made a decision to hire their own  
8 attorney general or hire their own attorney --  
9 or at least have independent counsel represent  
10 them and give them some meaningful advice  
11 rather than relying on the AG's office coming  
12 here and soliciting their own services. All  
13 we're asking the Commission to do is, get your  
14 own lawyer. Have your own lawyer give you  
15 independent advice. Because he has his own  
16 agenda, of course, we have our own interest.  
17 All you have to do is just get a lawyer. If  
18 the lawyer says, "Go forward with it", that's  
19 fine. If the lawyer says, "Don't", it's up to  
20 you.

21 MADAM CHAIRPERSON: Okay. Commissioner  
22 Ada.

23 MR. ADA: Okay. Attorney Yanza, I had  
24 the opportunity to read the transcripts. You  
25 did offer a plan of action to the

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1 Commissioners. In there, you were supposed to  
2 go to the court and have the court take a look  
3 at the information on these properties and  
4 determine whether or not the estate was the  
5 rightful heir.

6 MR. YANZA: I think --

7 MR. ADA: It's on the transcript.

8 MR. YANZA : Sure. Commissioner, I  
9 think --

10 MR. ADA: But did you do this?

11 MR. YANZA: No. Because I think  
12 there's a misunderstanding of what you're  
13 looking at in the transcripts. If you look at  
14 the transcript in its entirety, we're talking  
15 about my little colloquy or my discussion with  
16 Commissioner Charfauros. But if you look at  
17 the end of the transcripts, I specifically  
18 said, "We're going to court to have the court  
19 approve of the Estate, compromising its future  
20 ancestral land claims before the Commission".  
21 We could not go before this Commission and say,  
22 "You know what? We're not going to -- we'll  
23 accept this property and we will compromise  
24 future land claims". We could not do that,  
25 because the --

1 MR. ADA: You said that 10 percent of  
2 the heirs might not agree --

3 MR. YANZA: That's correct.

4 MR. ADA: Yes, I saw that in there.

5 MR. YANZA: So we had to go to court,  
6 have open probate of the JM Torres Estate and  
7 have the court -- go before the court and say,  
8 "You know what, Your Honor? We had this  
9 property here that was just returned by the  
10 Ancestral Lands Commission. However, we may  
11 have some future land claims with the  
12 Commission. We're willing to forego those  
13 claims, so long as we can get this property  
14 right now". And that's what we did. That was  
15 the intent of the Commission. That was the  
16 intent of the Estate.

17 MR. ADA: That was suppose to come  
18 after you guys had clarified that JM Torres'  
19 Estate was the rightful heirs to the property.

20 MR. YANZA: Well --

21 MR. ADA: Once you get there, then you  
22 say, "Okay. Now, it belongs to the Estate".  
23 And then this extinguishes all future claims.

24 MR. YANZA: Well, with all due respect  
25 Commissioner Ada, I think you're setting

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1 precedence here. Because if we're going to set  
2 this kind of precedent then -- someone just  
3 said recently, then you're putting up this  
4 Commission to other issues about other people  
5 coming back in and saying, "You know what? Why  
6 don't you have the court approve of this  
7 ancestral land too?"

8 MR. ADA: Attorney Yanza, what I'm  
9 looking for --

10 MR. YANZA: Sure.

11 MR. ADA: -- is a clear document from  
12 the court saying, "The questions about whether  
13 or not the rightful heirs in the JM Torres  
14 Estate has been clarified and they are the  
15 owner". I'd like to see that document. That's  
16 what the transcript called for. Commissioner  
17 Charfauros, even after that said, "You got to  
18 remember that if the court doesn't determine  
19 this, then the properties will return back into  
20 the inventory of the Guam Ancestral Lands  
21 Commission".

22 MR. YANZA: If the court did not  
23 approve of the Estate compromising its future  
24 Ancestral Land --

25 MR. ADA: It's not the compromise that

1 I read. How can we compromise property without  
2 first clarifying if the property is -- the  
3 estate is the compromise?

4 MR. YANZA: Well, the estate had future  
5 land claims with the Commission, so, as I said  
6 earlier, we could not compromise the estates  
7 future land claims with the Commission unless  
8 the court approved of that. That's --

9 MR. ADA: In my view of what went on  
10 when I looked at it -- you are an Attorney, and  
11 what happened was, under the understanding of  
12 what was said in that meeting, in that dialogue  
13 that went on when the documents were brought  
14 over, which were drawn out by your office,  
15 brought over. The Commissioners just trusted  
16 that what you said in that meeting was what you  
17 did, and the Commissioners -- I mean, we didn't  
18 go get a lawyer to say, "Hey, take a look and  
19 make sure then what's being said is what we  
20 wanted"; and they signed.

21 So, you're trying to say that the  
22 Commission signed off on it and they should not  
23 change their mind. But the Commission is not  
24 changing their mind, the Commission is just  
25 saying, "You got to satisfy what was

1 stipulated". So, if you can satisfy what was  
2 stipulated, we have no more discussion.

3 MR. YANZA: I understand that,  
4 Commissioner Ada. Right before the Commission  
5 signed off on the deeds and on the final  
6 decision and order, I did write a letter to the  
7 Commission members and I cc'd all the  
8 Commission members and I said "This is the  
9 deed. Look specifically at this particular  
10 provision in the deed. And if you have any  
11 questions or comments or any remarks, please  
12 give me a call."

13 No one called me. And then thereafter,  
14 the Commission members signed off on the deed.  
15 We gave notice to the Commission. We're not  
16 trying to fool the Commission.

17 MR. ADA: You did ask for -- the  
18 Commission -- you directed the Commission to a  
19 certain part of the document.

20 MR. YANZA: Yes.

21 MR. ADA: Okay.

22 MR. YANZA: I believe that letter is  
23 dated --

24 MR. RAZZANO: Yeah, Joe Razzano on  
25 behalf of the JMT Estate. I mean, it sounds to

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1 me like, from the colloquy that I'm listening  
2 to, is that, although Mr. Bischoff gave you  
3 certain documents that he wanted you to review,  
4 he didn't bother giving you the documents that  
5 were delivered to the Commission members.

6 So, I would ask that you take a look at  
7 -- there's a letter in September 9<sup>th</sup>, 2006, that  
8 was given to every single Commission member,  
9 and quite frankly, it disturbs me that Mr.  
10 Bischoff wouldn't have shown you the letter.  
11 Because every single Commission member received  
12 the letter, received the deed, three months in  
13 advance of the final deed being taken care of.

14 After everybody got an opportunity to  
15 review the deed and comment, nobody commented,  
16 and in fact, I also can now tell you, you've  
17 never seen e-mails that have gone back and  
18 forth through the Commission members talking  
19 about the deed. Mr. Bischoff didn't show those  
20 to you did he? But they are in his possession  
21 and they were taped and given with the  
22 depositions of the other committee members that  
23 were forced to go to deposition in this case  
24 already.

25 So, that worries me that he's not

1 giving you the full picture. I can also tell  
2 you, he didn't give you the order of the court  
3 of September 2007 that approved the deed and  
4 approved the receipt of the property. He  
5 didn't give you that order of Judge Anderson,  
6 did he? That wasn't in the pocket that he  
7 provided to you.

8 MR. ADA: Okay. Attorney Razzano?

9 MR. RAZZANO: Yes, sir?

10 MR. ADA: That's a lot of questions  
11 you're asking me.

12 MR. RAZZANO: Well, I'm not really  
13 asking --

14 MR. ADA: I'm going to refer to  
15 Attorney Mason. You're here representing us  
16 now, right?

17 MR. MASON: Yes.

18 MR. ADA: And we -- I mean, a lot of  
19 questions, you ask a lot of questions.

20 MR. RAZZANO: Sir, certainly --

21 MR. ADA: So because of the multitude  
22 of every single sentence is a question, I feel  
23 that that's beyond this meeting. Can you give  
24 me an update?

25 MR. RAZZANO: Before Mr. Mason speaks,

1 I would like to lodge an objection to him being  
2 the attorney for the Commission because he  
3 appeared in open court in the probate matter  
4 with Mr. Bischoff, and so an independent  
5 opinion of what's going on here is quite  
6 frankly impossible. You appeared in court  
7 before Judge Anderson, you gave your opinions  
8 on the record where Mr. Bischoff was basically  
9 admonished by the court, told to sit down and  
10 not talk in her court room.

11 So, the ability of you to be  
12 independent in giving these people analysis and  
13 legal abilities is completely --

14 MADAM CHAIRPERSON: Can you pause for a  
15 minute? Okay. All right you may continue.

16 MR. RAZANNO: Additionally, not only  
17 did you appear at that hearing -- I sort of  
18 lost my chain of thought.

19 MR. ADA: Attorney Razzano, Attorney  
20 Mason is here representing the Guam Ancestral  
21 Land Commission. If you want to say something,  
22 if you're going to disqualify of what he says  
23 because of some kind of conflict, then I guess  
24 we'll decide and we'll get another attorney who  
25 can say --

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1 MR. RAZZANO: That's all right. I just  
2 want the objection on the record. I'm not  
3 telling him -- he can do whatever he'd like to  
4 do.

5 MR. ADA: Yeah.

6 MR. RAZZANO: I just want to make sure  
7 that everybody understands that this office --  
8 also, this what I forgot to tell you. This  
9 office has filed a recusal on behalf of  
10 Attorney General Limtiaco. So actually, Mr.  
11 Mason should not appear on behalf of the  
12 Commission on this issue. And that recusal was  
13 filed with Judge Anderson and acknowledged by  
14 Judge Anderson, and Mr. Mason and Mr. Bischoff  
15 were questioned about the conflict. Could not  
16 answer the conflict.

17 MR. ADA: They say he cannot appear in  
18 the court, but he's advising us --

19 MR. RAZZANO: Cannot give legal advice  
20 in any capacity on a conflict matter. I mean,  
21 it's not a matter for you, it's a matter we'll  
22 bring up with the court. But I just want the  
23 objection clear on the record so that everybody  
24 understands what's going on.

25 MR. ADA: It's on the record. It's on

1 the record.

2 MR. RAZZANO: Thank you.

3 MADAM CHAIRPERSON: Go ahead.

4 MR. MASON: In fact, that was settled  
5 in court by the judge. She actually ordered me  
6 to go into court that day, and I did go into  
7 court that day. And the court did not  
8 entertain Mr. Bishop's motion, and denied it, as  
9 he said, that she felt it wasn't within her  
10 authority to look at the deed -- and that's  
11 what happened.

12 Now, as far as disqualifying, I have no  
13 idea what motion Mr. Razzano's talking about.  
14 I haven't seen any order in the court that said  
15 I can't represent the Commission. So, I think  
16 it's -- that's what happened, it's up to the  
17 Commission itself to decide whether or not it  
18 wants, you know, to solicit my opinion .

19 MR. ADA: So give us your opinion.

20 MR. MASON: Okay. I don't know what  
21 the specific -- I think the real crutch of this  
22 is, what was the intent of the Commission back  
23 then. And I can't tell you what the intent was  
24 and if what happened in court, which has been  
25 reviewed was, what the Commission expected.

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1 That's really up to the Commission to tell me  
2 and to tell us, before we move forward with  
3 anything.

4 MR. ADA: Yeah. For the benefit of the  
5 Commissioners, the -- by reading the  
6 transcripts of 2006, the next thing that I  
7 wanted to see was the document that coincides  
8 with the transcript. The document that states  
9 that the estate has -- the JM Torres Estate  
10 went to the court, asked the court or proved to  
11 the court that this property is theirs. The  
12 thing you must consider is that, being that Mr.  
13 JM Torres paid Mr. Duarte only half of the  
14 total due on this property.

15 MR. YANZA: Well --

16 MR. BISCHOFF: I actually --

17 MADAM CHAIRPERSON: I think it'll be  
18 simple if we can just --

19 MR. ECLAVEA: Actually, I -- I actually  
20 told Mr. Bischoff that, you know, for me it's  
21 like, you know, they're only getting a fraction  
22 of whatever he actually bought, so even though  
23 he only put down a certain, you know, even if  
24 it's half or less than half, it's a huge sum of  
25 money and he got zilch. This is, to me, a

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1 fragment of what he should actually be getting,  
2 he didn't pay the full amount. But you know,  
3 to me, justice is satisfying, in my opinion.

4 MADAM CHAIRPERSON: I think we will all  
5 be satisfied if we take a look at the court  
6 documents where we had stipulated that he go to  
7 court, and see if they really are, based on the  
8 evidence, they are the true owners. And then  
9 we, as the Commissioners, are supposed to have  
10 -- in compliance with the rules, laws, that,  
11 you know, that was set forth by this  
12 Commission. So, I think that this case will be  
13 resolved if we just present the document. I  
14 think that's the decent way.

15 MR. MATANANE: You know, if Mr.  
16 Bischoff wants to take this to court, take it  
17 to court. We already made our decision. And  
18 in clarifying our decision will jeopardized all  
19 the 400 lots that we have on this. So if Mr.  
20 Bischoff is willing to take the Torres' to  
21 court, take them to court. But we have made  
22 our decision.

23 MADAM CHAIRPERSON: Is that a motion,  
24 Commissioner Matanane?

25 MR. MATANANE: It's a motion.

1 MR. ECLAVEA: I second the motion.

2 MR. MASON: Could I get clarification  
3 of exactly -- you're saying that Mr. Bischoff  
4 take it to court to determine the ownership?

5 MR. MATANANE: If Mr. Bischoff is  
6 willing to do that, fine with us. But we  
7 already made our decision.

8 MR. ECLAVEA: No, what he's saying is  
9 on his own accord, on his own accord. You're  
10 not giving him authority from this Commission -  
11 -

12 MR. MATANANE: No. Right.

13 MR. ECLAVEA: -- on behalf of the  
14 Commission to go to court?

15 MR. MATANANE: No.

16 MR. ECLAVEA: Is that you're motion?

17 MR. MATANANE: That's my motion.

18 MR. ECLAVEA: Well, you're motion is on  
19 behalf of this Commission or not?

20 MR. MATANANE: No. If Mr. Bischoff is  
21 willing to take this issue to court, be it.  
22 But not with the Commission endorsement.

23 MR. MASON: Okay.

24 MADAM CHAIRPERSON: All right. Anymore  
25 comments?

1 MR. ADA: Was that a motion?  
2 MR. ECLAVEA: Is that a motion?  
3 MR. MATANANE: It is a motion. I move  
4 that anything status quo, and Mr. Bischoff is  
5 willing to take it to court, he could take it  
6 to court without the Commissions.  
7 MR. ECLAVEA: I seconded the motion.  
8 MADAM CHAIRPERSON: All right. Any  
9 discussions on this? Yes.  
10 MR. ECLAVEA: Discussions on the motion  
11 is a vote. After a motion is given and it's  
12 seconded, and again there's a vote; am I  
13 correct?  
14 MR. MATANANE: Yeah.  
15 MR. LEON GUERRERO: You can discuss it  
16 after it's been seconded.  
17 MR. ECLAVEA: You can discuss it?  
18 MR. LEON GUERRERO: Yes.  
19 MR. BENAVENTE: Yes.  
20 MR. ECLAVEA: That's not the  
21 indications I got in our past -- once a motion  
22 is given, seconded, it's vote time.  
23 MR. LEON GUERRERO: No, then it's  
24 available for --  
25 MR. ECLAVEA: Okay.

1 MR. LEON GUERRERO: -- you can discuss  
2 it if it hasn't been seconded. If it hasn't  
3 been seconded, then you can't continue. But  
4 once it's been seconded, then you can discuss,  
5 then vote.

6 MR. BENAVENTE: Then vote.

7 MR. LEON GUERRERO: That's my  
8 understanding.

9 MR. ECLAVEA: I yield, if they want to  
10 discuss it more.

11 MR. ADA: I think what I hear here is  
12 that there's a move to just forget about this  
13 whole thing and let this property just go to  
14 the estate, that's what I hear. But I guess  
15 you indicated earlier that based on the  
16 information you got, you're making this  
17 decision, either if you -- you really need to  
18 look at other information.

19 MR. ECLAVEA: Well, it really -- it's  
20 really a fine line there because just like the  
21 previous case we got here, the Federal  
22 Government took that property based on taxes.  
23 Now it's before us. And we have that decision  
24 to make whether it should go back to them based  
25 on what evidence we have, unless we want to

1 take the Federal Government's case. We're  
2 here, you know, trying to follow the mandate,  
3 the enabling legislation of this Commission.

4 MR. ADA: Right.

5 MR. ECLAVEA: And to me, it involves  
6 righting the wrong.

7 MR. ADA: Yeah. Well, the enabling  
8 legislation talks about, and I'm going to get  
9 technical again, talks about properties taken  
10 after 1931.

11 MR. ECLAVEA: I understand that there's  
12 an issue on that too now.

13 MR. ADA: Yeah.

14 MR. ECLAVEA: That I think there's  
15 still an issue with that, whether that applies.

16 MR. ADA: Well' -- yeah.

17 MR. ECLAVEA: Okay. And you know,  
18 that's why we do need legal counsel.

19 MR. ADA: Yeah.

20 MR. ECLEAVEA: Okay. Our time has --  
21 I'm sorry. Madam Chair, we are really pressed  
22 for time right now. It's already past five.

23 MADAM CHAIRPERSON: It's extended to  
24 6:00.

25 MR. ECLAVEA: Is it extended to six?

1 MR. BENAVENTE: Yeah. But that doesn't  
2 mean that --

3 MR. ECLAVEA: Is it extended to six?

4 MADAM CHAIRPERSON: Yes. But that  
5 doesn't mean that -- (multiple speakers;  
6 unintelligible).

7 MR. ADA: Okay. The best way that I  
8 saw, I could compare a case like this -- well,  
9 first of all, if I purchase something from you,  
10 and only paid you half of it, but then we found  
11 out that there was a question of whether or not  
12 you really owned it. Then the people, in this  
13 case, back then, it was the government that,  
14 that seized it because the seller apparently  
15 took government funds, and they couldn't at  
16 that time -- they went after his entire  
17 property.

18 The property was not recorded because  
19 the government didn't know that there was this  
20 thing going on. I guess there was like a  
21 private agreement between Mr. Torres and Mr.  
22 Duarte, and so the government doesn't know  
23 about that.

24 So, when Mr. Torres said yes, I already  
25 paid half for this property, and he even said

1 that if at the very least, could I at least get  
2 my money back. The governor at the time told  
3 him, the court is at your disposal, take it to  
4 court. He went to the court and it didn't work  
5 he didn't prevail. So, I guess, the way I see  
6 this, if the estate paid \$2,000.00 in 1914  
7 dollars, that's what they should come back here  
8 and say, we want that \$2,000.00 back. But it's  
9 been to the court. It's already been to the  
10 court and the court already settled it.

11 MR. ECLAVEA: Two thousand dollars, you  
12 mean in 2009 --

13 MR. ADA: Well, that's what I'm saying  
14 in 1914 dollars. So it might be a little bit  
15 more than that. But I don't think -- he never  
16 -- the title never passed into the hands of Mr.  
17 JM Torres.

18 MR. ECLAVEA: Madam Chair, just for  
19 clarification. From what I understand, I think  
20 we discussed it before. This is the oldest  
21 land claims case we have, from what I  
22 understand, correct? Dispute.

23 MR. MATANANE: Next to it.

24 MADAM CHAIRPERSON: You know, you're  
25 doing really good if --

1 MR. ECLAVEA: From what I understand,  
2 this is the oldest one.

3 MR. MATANANE: Similar to this.

4 MADAM CHAIRPERSON: Yes. It'll be  
5 really, really good, you know, I mean --

6 MR. ECLAVEA: I remember the --

7 MADAM CHAIRPERSON: -- I will have a  
8 peace of mind, and I'm sure everybody, if what  
9 we did was correct, but the conditions that we  
10 stipulated, they did go to court to find out  
11 whether it's actually should go back to the  
12 Torres' based on the information that they  
13 presented to us. Because don't forget, the  
14 reason why we couldn't make a decision is  
15 because it's an unusual case. We're talking  
16 about, my gosh, more than 50 years ago.

17 So, what's that stipulation meant, if  
18 it was, then can we please have a copy of that?

19 MR. MATANANE: It was specified what  
20 court they have to take it to?

21 MR. RAZZANO: Commissioner, if I may?  
22 We did take it to court. It was taken in  
23 August of '07, and a Decision and Order was  
24 issued. It was presented to the Commission,  
25 the Commission reviewed the Decision and Order

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1 and issued an Extinguishment of Claim.

2 We've done every single thing that  
3 we've been asked to do, and then some. And if  
4 you haven't been shown those documents, I find  
5 it hard to believe, we've filed it with the  
6 Commission, that's how we got you to issue the  
7 Extinguishment of Claim that's been recorded  
8 against the property.

9 So, if Mr. Bischoff didn't show you  
10 those documents, Commissioner Ada, when he was  
11 reviewing this case with you, I would provide  
12 those documents to you. And I'm sorry that he  
13 didn't give you the full story. And as my --

14 MR. BISCHOFF: I resent the implication  
15 of hiding records from the Commission, Mr.  
16 Razzano.

17 MR. RAZZANO: And as my final comment,  
18 I would say that you, Commissioner Ada, you've  
19 relied on this court in 1915, but I'll remind  
20 you that that court was also run by the Navy.  
21 So, it was one Navy officer sending another  
22 Navy officer an idea of just go ahead and do  
23 what we told you to do and take away the land.

24 And so, it's no different that it went  
25 to one Navy officer to another Navy officer.

1 It was the same wrong that was committed  
2 against that Ancestral land owner.

3 MR. ADA: Well, there is a question  
4 whether or not title passed into the hands of  
5 the buyer. There was a transaction, the  
6 transaction did not complete. Tell me.

7 MR. ECLAVEA: According to the Navy,  
8 or the government at that time.

9 MR. ADA: No, it was -- you can read  
10 the writings of Mr. JM Torres. He did  
11 acknowledge -- he did not record -- because  
12 you're supposed to go to the governor to get  
13 permission to buy property. Second, you're  
14 supposed to have it, these documents, the sale  
15 documents, notarized. It didn't happen, it was  
16 just a private thing between the two -- he made  
17 some argument as to, the two of them were not  
18 being --

19 MR. ECLAVEA: Well, what happened was  
20 they nullified the sale. That's what the  
21 government did, they nullified the sale.

22 MR. ADA: The government did not know  
23 that there was a sale.

24 MR. ECLAVEA: Yes, they did.  
25 Otherwise, how can they not nullify it? They

1 did know that there was a deal between Duarte  
2 and Torres. And he sold it, but they nullified  
3 it.

4 MR. ADA: But Torres did offer --  
5 Torres did offer, he says at least give me back  
6 the \$2,000.00 or if you sell this property, can  
7 I recover my \$2,000.00?

8 MR. ECLAVEA: Well, remember that a lot  
9 of the prominent businessmen back in those  
10 days, they had a protest. Remember? They had  
11 a protest. They all went and did their protest  
12 against what the government did by nullifying  
13 that sale.

14 MR. ADA: Yeah. I don't think it was a  
15 protest. What was written here was that, they  
16 said the standard practice is that if there's a  
17 property is put out for bid, and nobody bids,  
18 and government will turn around and try to  
19 rebid it under a lower price.

20 MR. ECLAVEA: Right. And what they  
21 tried to tell Torres was "Hey, we're going to  
22 put it out for bid and you can bid for it if  
23 you'd like". And of course he refused, because  
24 he bought the property.

25 MR. ADA: No, he tried to remove it

1 from that process, the seizure process.

2 MR. ECLAVEA: Right, because to him, he  
3 bought it.

4 MR. YANZA: If I may, Commissioners? I  
5 think what the discussion is about is actually  
6 going back and reviewing whether or not the JM  
7 Torres is the owner of the Estate. I think  
8 this Commission has already made that  
9 determination. This Commission issued a  
10 decision and order, this Commission made an  
11 oral decision when we finished presenting the  
12 evidence on behalf of the Estate. Now, we're  
13 going back and reviewing the merits of the  
14 Estate's claim.

15 MR. ADA: There were conditions. There  
16 were conditions. There are five different  
17 registries in the Ancestral Lands Commissions.  
18 One is the conditional registry, right? That's  
19 where I'm coming from. The conditions that  
20 were laid down, were they met, and if we could  
21 see that core document that says --

22 MR. RAZZANO: Commissioner, we'll  
23 provide that to you. And with all due respect,  
24 I know you're a new Commission member, but we  
25 came here three years ago and presented all of

1 that evidence. You weren't here to look at the  
2 maps, to hear the evidence, to listen to the  
3 expert testimony. So you're just here looking  
4 at this after the fact. And I understand that.  
5 But what's fair, is that the tryers of fact,  
6 the people who actually sat on the claim,  
7 reviewed the maps. They did pass, there was a  
8 motion that passed.

9           And the one other thing I'd like to put  
10 on the record is, and this, I think we can all  
11 agree to. There is a transcript in this case  
12 that is suppose to be held by the Ancestral  
13 Lands Commission, that no one has ever been  
14 able to find. And that is the transcript that  
15 presented all that evidence and entered into  
16 evidence all those maps. So, you also haven't  
17 had the ability to see that transcript.

18           Now, we're holding anybody at fault,  
19 we've asked the Commission, they don't have the  
20 tape, we've asked the attorney general, they  
21 claim they haven't taken possession of the  
22 tape, but that evidence was all presented,  
23 argued, discussed, and on motion was granted to  
24 the Estate. This case has been decided three  
25 years ago.           And all the documents,

1 extinguishments and everything that was suppose  
2 to be done, was already done.

3 Now, I understand where you're coming  
4 from, but I just want to respectfully remind  
5 you that you are not the tryer of fact in this  
6 case. Thank you.

7 MR. ADA: I've got this much of  
8 information. So, you're not entirely correct  
9 by saying I'm uninformed. Okay?

10 MR. RAZZANO: I'm just saying that you  
11 weren't there the day that the motion was  
12 carried and passed, that's all I'm saying.  
13 Thank you, sir.

14 MR. ADA: Now, the motion was carried  
15 and passed under the trust, from you lawyers,  
16 you attorneys, that what was set as a  
17 condition, was satisfied. You know, who are we  
18 to question? If you say "Okay, yeah, I'll draw  
19 up the documents".

20 So, I'm looking for that, I'm looking  
21 for a court document that coincides with the  
22 transcript of what was said that day. That's  
23 what I'm looking for.

24 MR. RAZZANO: And it's been provided  
25 and we'll provide it again, no problem. No

1 problem. We have a court order, we'll give it  
2 you. It's the order that the Ancestral Lands  
3 Commission then based their extinguishment of  
4 claim on it, recorded with the Department of  
5 Land Management. We'll provide it again, it's  
6 no problem.

7 MR. ADA: Could you do me a favor and -  
8 -

9 MR. RAZZANO: Absolutely.

10 MR. ADA: -- and even the transcripts  
11 of what was said that day?

12 MR. RAZZANO: We can order them.

13 MR. ADA: I want the transcript that  
14 were said that day.

15 MR. RAZZANO: Sure.

16 MR. ADA: And I want you to point out  
17 to me where in this court document, that it  
18 addresses what was said in the transcript.

19 MADAM CHAIRPERSON: And the ownership  
20 of that property.

21 MR. YANZA: Excuse me?

22 MADAM CHAIRPERSON: And the ownership  
23 of that property.

24 MR. BISCHOFF: You want a transcript of  
25 the Superior Court hearing where a Superior

1 Court Judge looked at the evidence and  
2 determined that title to the property should  
3 rest in Jose Martinez Torres Estate?

4 MR. ADA: I want that. I also want --  
5 I also want the transcripts of what the  
6 Commissioners said, and line-by-line point it  
7 out to me in a court document that addresses  
8 that condition that the Commissioners had set  
9 at that time. Attorney Mason, am I asking the  
10 right thing?

11 MR. MASON: Yeah, I think -- yes, I  
12 think I understand what you're asking for of  
13 those transcripts of both the court hearing and  
14 the hearing before the Commission.

15 MADAM CHAIRPERSON: Okay. Joey wants  
16 to say something.

17 MR. LEON GUERRERO: I just wanted to  
18 ask about Commissioner Matanane's motion. Did  
19 you guys want to vote on it, or you just going  
20 to withdraw the motion?

21 MR. LEON GUERRERO: Or do you want to  
22 make a new motion?

23 MR. MATANANE: I made my motion, it was  
24 seconded. Discussion.

25 MADAM CHAIRPERSON: Okay.

1 MR. MATANANE: I do not want to retract  
2 my motion.

3 MADAM CHAIRPERSON: Okay. So, there's  
4 a motion to ask the Attorney's Office to  
5 proceed on his own, you know, if he wants to on  
6 this issue. And it was seconded by?

7 MR. BISCHOFF: I have no independent  
8 authority to do that.

9 MR. MASON: Wait. You're saying  
10 proceed without --

11 MADAM CHAIRPERSON: Without our --

12 MR. MASON: -- the Commissions  
13 authority? Okay.

14 MADAM CHAIRPERSON: So --

15 MR. BISCHOFF: Excuse me? I'm not a  
16 sole practitioner, I work at the Attorney  
17 General's Office. What we need to know is if  
18 you want us to go forward with the draft of the  
19 complaint that we've shown you to bring an  
20 action in the court. To have a court reform  
21 the deed to include the provision, the  
22 condition that the --

23 MADAM CHAIRPERSON: Right. That was  
24 the purpose of this meeting.

25 MR. BISCHOFF: I can't act

1 independently. The question is whether you  
2 want the Attorney Generals Office to bring that  
3 action to court.

4 MR. MASON: My understanding is that  
5 this motion means if you want to go forward,  
6 but without the authority of the Commission.  
7 That's my understanding of the motion.

8 MADAM CHAIRPERSON: Right.

9 MR. LEON GUERREREO: Anymore  
10 discussion?

11 MR. MATANANE: Up for a vote.

12 MADAM CHAIRPERSON: Let's vote on the  
13 motion. Commissioner Ada?

14 MR. ADA: No.

15 MADAM CHAIRPERSON: I vote no?

16 MR. ADA: (no audible response)

17 MADAM CHAIRPERSON: Commissioner  
18 Matanane?

19 MR. MATANANE: Yes.

20 MADAM CHAIRPERSON: Commissioner Tyner?

21 MS. TYNER: No.

22 MR. ECLAVEA: Yes.

23 MADAM CHAIRPERSON: The nos have it.

24 MR. BISCHOFF: Clarification, what is  
25 the directive of the Commission? Do we go --

1 should the Attorney General's office go forward  
2 with the action in court?

3 MR. MASON: My understanding, what  
4 we're doing now is, the Commission has asked  
5 for certain information, and that's where we  
6 are?

7 MR. ADA: Right.

8 MADAM CHAIRPERSON: Okay. So --

9 MR. ADA: We're still under --

10 MADAM CHAIRPERSON: Do you want to make  
11 a motion?

12 MR. ECLAVEA: Ma'am, I'll make the  
13 motion.

14 MADAM CHAIRPERSON: Okay. So -- are we  
15 -- they're going to present evidence that what  
16 we have required of them, on that meeting, is -  
17 - because I didn't see -- I didn't see any  
18 court documents on the, you know, on  
19 stipulating if the Torres' really are in fact  
20 the owners of that property.

21 MR. ECLAVEA: Well, apparently we need  
22 to discuss it some more, and look into it some  
23 more. So, why don't we re-schedule it or --  
24 what's the term for it? Table it. And bring  
25 it up again, because there's no decision made

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1 right now.

2           MADAM CHAIRPERSON:    This whole thing  
3 will be resolved if you present that document.  
4 All right.   So, this is tabled until the next  
5 meeting.

6

7

8

(Hearing concluded at 5:30 p.m.)

9

HAGATNA, GUAM, WEDNESDAY, APRIL 15, 2009.

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1 REPORTER'S CERTIFICATE  
2

3 I, **George B. Castro**, Court Reporter, do  
4 hereby certify the foregoing 54 pages to be a  
5 true and correct transcript of the audio  
6 recording made by an Officer of Depo Resources  
7 of the hearing at the time and place as set  
8 forth herein.

9 I do hereby certify that thereafter the  
10 transcript was prepared by me or under my  
11 supervision.

12 I am not a direct relative, employee,  
13 attorney or counsel of any of the parties, nor  
14 a direct relative or employee of such attorney  
15 or counsel, and that I am not directly or  
16 indirectly interested in the matters in  
17 controversy.

18 In testimony whereof, I have hereunto set  
19 my hand and seal of Court this 15<sup>th</sup> day of June  
20 2009.

21  
22 \_\_\_\_\_  
George B. Castro  
23  
24  
25

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CHANGES TO TRANSCRIPTION

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# EXHIBIT

8

LAW OFFICES

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Of Counsel:  
Nagatomo Yamaoka

June 17, 2009

**VIA HAND DELIVERY**

Anthony J. Ada  
Commissioner  
Guam Ancestral Lands Commission  
588 West Marine Corps Drive Suite 101  
P.O. Box 2950  
Hagåtña, Guam 96932

*Re: The Estate of Jose Martinez Torres (the "Estate").*

Dear Mr. Ada:

Pursuant to your request during the Ancestral Lands Commission (the "Commission") hearing on April 15, 2009, we are providing the following documents:

1. The August 30, 2006 Guam Ancestral Lands Commission Agenda reflecting the re-hearing of Lot 5012 Dededo, Lot 5037 Dededo, Lot 5039 Dededo, and the Estate 1540 Dededo. Please note, as discussed on the record on April 15, 2009 and as confirmed by Joey Leon Guerrero, the tape and therefore the transcript of this August 30, 2006 hearing are missing. As I mentioned, the Attorney General claims they did not remove the tapes from the Commission and are not in the possession of them and of course, neither is the Estate;
2. The September 25, 2006 letter delivered hand delivery to each and every Commission Member as well as Mr. Eddie L.G. Benavente, received by the Ancestral Lands Commission on the same date by Joey Leon Guerrero signed by Louie J. Yanza, attorney for Evelyn V. O'Keefe, and directed the attention of the Commission to the conditional language of the Deed and the agreement reached by the parties. Attached to the letter is the Quitclaim Deed;
3. Enclosed please find email correspondence between the Commission Members between October 3, 2006 and November 28, 2006, discussing the condition of the Deed and the Agreement of the parties. Please note that only one substantive objection was ever made by Commissioner Eclavea on Sunday, October 15, 2006. Mr. Eclavea states "I am concerned that the word within the inventory only

Anthony J. Ada  
June 17, 2009  
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refers to whatever is in the current inventory, but excludes the future inventory." Obviously, Commissioner Eclavea's concern is that the Ancestral Lands Commission gets the full benefit of their bargain. That is, they will receive a full and complete release from the Estate, as he is acknowledging that the agreement is to return the property with the condition that the Court approves the release of all current and future properties which may come within the scope of the Commission's inventory. Moreover, a second issue is raised by Mary Cruz stating that an attorney may be necessary to review the claim. You will note, that neither Ms. Cruz, nor the Commission as a whole, ever decided to hire an attorney or bring this to the attention of the Attorney General. Finally, you will note that it is Ms. Cruz herself who executes several of the documents repeating and restating the agreement amongst the Commission and the Estate, to ensure that the Ancestral Lands Commission receives the full benefit of their bargain;

4. The Marianas Variety Guam Edition Wednesday, October 4, 2006 publishing of the Notice of Award and request for any comments or objections in writing on or before Friday, October 13, 2006;
5. The recorded Quitclaim Deed under Instrument No. 744340;
6. The Petition to Compromise and to Confirm Quitclaim Deed and Real Property Received by the Estate through the Ancestral Lands Commission filed in Probate Case No. PR 220-50 on June 12, 2007. Attached to the Petition is Exhibit "J", which is the final written Decision and Order of the Ancestral Lands Commission recorded with the Department of Land Management under Instrument No. 747755 and executed by Anita F. Orlino and by Ronald T. Laguana for Maria G. Cruz;
7. The Order Approving Petition to Compromise and to Confirm Quitclaim Deed and Real Property Received by the Estate through the Ancestral Lands Commission filed in Probate Case No. PR 220-50 on August 31, 2007 and recorded with the Department of Land Management on September 10, 2007 under Instrument No. 761145;
8. The September 26, 2007 letter from Mr. Yanza on behalf of Ms. Evelyn O'Keeffe delivering a recorded copy of the Satisfaction and Release of Condition placed on Deed regarding Lot No. A1-002, A1-002-1 (formerly Lot No. 5037) and Lot No. A1-002-2 (formerly Lot No. 5012). Please note that the Satisfaction of Condition was recorded on the 26<sup>th</sup> day of September with the Department of Land Management under Instrument No. 762017 and executed by Anita F. Orlino and Maria G. Cruz.

As you can see, the evidentiary matters which go to the issue of ownership and specifically the issue of whether or not the lands were covered under the Treaty of Paris between the United States and Spain in 1898 were fully adjudicated and resolved in favor of the Estate on August 30, 2006. You will note, that the Ancestral Lands Commission has not been able to locate those transcripts. The evidence now presented should give you a full picture of the history of what went on between September 20, 2006 until

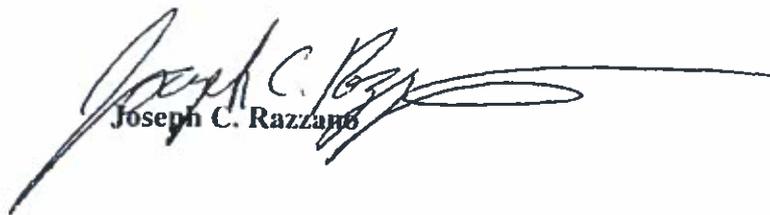
Anthony J. Ada  
June 17, 2009  
Page 3

the Final Satisfaction of Condition executed by the Commission on September 25, 2007. Pursuant to Exhibit "3", the Commission had full discussion, notice and understanding of the agreement between the Estate and the Commission and as the evidence shows were only concerned with the release of all property to which the Estate of Jose Martinez Torres may have a claim whether that be in the current inventory of the Commission or any future inventory of the Commission. The Estate, on August 30, 2007, complied with the Commission's condition and presented the extinguishment of claim to the Court, as well as a multitude of exhibits including the lands received by the Estate as well as the Decision and Order of the Ancestral Lands Commission. While we appreciate your concern and diligence with respect to the Estate's claim, you were misinformed and misled by Mr. Bischoff to believe that some mistake occurred in the progression of this case. As you can now see, this matter was fully discussed, adjudicated and resolved in the Estate's favor and the Commission was involved and informed in every step of the proceedings and in fact signed off on each and every document with full notice and approval. Finally, we believe this gives you a good picture that you can now sit and digest for yourself. If you have any additional questions or would like some additional documentation that we may have overlooked, please feel free to contact my office with your specific request and we will marshal the documents for your review.

I assume that my attendance at the Ancestral Lands Hearing set for June 19 will be unnecessary, 2009 as the full picture and evidence is now before you and should be entered into the record by yourself on behalf of the Commission.

In closing, I would like to remind you that the mission of the Commission is to right the wrongs of the past inflicted upon the Chamorro people by the United States Navy and the Federal Government.

Very truly yours,

  
Joseph C. Razzano

**Enclosures.**

cc: Ronald T. Laguana  
Maria G. Cruz  
James C. Matanane  
Lydia M. Tyner  
Ronald F. Eclavea  
Joey Leon Guerrero  
Eddie L.G. Benavente



# GUAM ANCESTRAL LANDS COMMISSION



**Eddie Baza Calvo**  
Governor

**Ray Tenorio**  
Lieutenant Governor

**Michael J.B. Borja**  
Director

**David V. Camacho**  
Deputy Director

## DEED SIGNING/TITLE HEARING/MEETING ATTENDANCE SHEET

DATE: February 22, 2017

PLACE: DLM Conference Room

CONVENED: 2:07 P.M.

RECESSED: 3:42 P.M.

RECONVENED: 3:54 P.M.

ADJOURNED: 5:17 P.M.

- Check one:
- Work Session
  - Executive Session
  - Regular Meeting
  - Special Meeting
  - Title Hearing
  - Rehearing
  - Deliberations
  - Final Determinations
  - Deed Signing
  - Other (Public Hearing)

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

### BOARD OF COMMISSIONERS:

		Present	Absent	
1. Anthony J.P. Ada	Chairwoman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u> <u>22 FEB 2017</u>
2. Ronald T. Laguana	Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>
3. Maria G. Cruz	Secretary/Treasurer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>
4. Ronald F. Eclavea	Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>
5. Anita F. Orlino	Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>
6. Antonio A. Sablan	Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>
7. Louisa M. Wessling	Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>

Quorum Confirmed by:  Yes  No  
[Signature]

Note here and initial if Board Member on GovGuam work time:

RTL  Yes  No  
 Yes  No

### STAFF and GUESTS:

		Present	Absent	
1. Michael J.B. Borja	Director	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>
2. David V. Camacho	Deputy Director	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>
3. Margarita Borja	Land Administrator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>
4. Matthew Leon Guerrero	Land Agent Supervisor	<input type="checkbox"/>	<input type="checkbox"/>	
5. Joey Leon Guerrero	Land Agent II	<input type="checkbox"/>	<input type="checkbox"/>	
6. Karen N. Charfauros	Land Agent I	<input type="checkbox"/>	<input type="checkbox"/>	
7. Kristen Finney	OAG - Legal Council	<input type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>
8. Joe Borja	Senator Tom Ada	<input type="checkbox"/>	<input type="checkbox"/>	

Number of Board Members certified for stipend this meeting: 7  
Confirmed by: [Signature]

Remarks:





