

FILED  
SUPERIOR COURT  
OF GUAM

2022 FEB 17 PM 3:37

CLERK OF COURT

BY: \_\_\_\_\_

1 DANIEL J. BERMAN, ESQ.  
2 BERMAN LAW FIRM  
3 111 W Chalan Santo Papa, Suite 503  
4 Hagåtña, Guam 96910  
5 Telephone: (671) 477-2778  
6 Facsimile: (671) 477-4366  
7 Email: djberman@pacificlawyers.law

8 Of Counsel:

9 BAYS LUNG ROSE & VOSS

10 MICHAEL C. CARROLL (*Pro Hac Vice*)

11 Attorney at Law

12 A Law Corporation

13 SHARON PARIS (*Pro Hac Vice*)

14 Topa Financial Center

15 700 Bishop Street, Suite 900

16 Honolulu, Hawaii 96813

17 Telephone: (808) 523-9000

18 Facsimile: (808) 533-4184

19 Email: mcarroll@legalthawaii.com

20 sparis@legalthawaii.com

21 Attorneys for Defendant:

22 SAMSUNG E&C AMERICA, INC.

23 IN THE SUPERIOR COURT OF GUAM

24 THE GOVERNMENT OF GUAM,

25 Plaintiff,

26 vs.

27 KEPCO MANGILAO SOLAR, LLC and  
28 SAMSUNG E&C AMERICA, INC.,

Defendants.

) CIVIL CASE NO. CV0597-21  
)  
) DEFENDANT SAMSUNG E&C  
) AMERICA, INC.'S MOTION FOR AND  
) MEMORANDUM IN SUPPORT OF  
) JUDGMENT ON THE PLEADINGS AS  
) TO THE AMENDED COMPLAINT,  
) FILED AUGUST 30, 2021  
)  
)  
)

1 **DEFENDANT SAMSUNG E&C AMERICA, INC.'S MOTION FOR JUDGMENT ON**  
2 **THE PLEADINGS AS TO THE AMENDED COMPLAINT, FILED AUGUST 30, 2021**

3 Defendant SAMSUNG E&C AMERICA, INC., by and through counsel  
4 undersigned, hereby respectfully moves this Court for an Order Granting Judgment on  
5 the Pleadings as to Plaintiff THE GOVERNMENT OF GUAM's ("Government")  
6 Amended Complaint, filed August 30, 2021 ("FAC"). The Legislature has established a  
7 comprehensive statutory scheme to address the alleged violations of Guam's erosion and  
8 sediment control regulations described in the FAC, which creates an exclusive  
9 administrative remedy and bars direct claims by the Government. The Guam  
10 Environmental Protection Agency, Guam's Department of Parks and Recreation's  
11 Historic Preservation Office, Department of Public Works ("DPW") and Contractors  
12 License Board ("CLB") alone have the jurisdiction and authority to enforce these  
13 administrative remedies, and these administrative remedies have not yet been exhausted.  
14 Additionally, the Government's claim for nuisance is moot, and its claim for natural  
15 resource damage is unsupported by any legal authority. Accordingly, the FAC must be  
16 dismissed, with prejudice, for failure to state a claim upon which relief can be granted.

17 This Motion is made under Rules 7(b) and 12(c) of the Guam Rules of Civil  
18 Procedure, as well as Rule 7.1(c) of the Local Civil Rules of the Superior Court of Guam,  
19 and is based upon the attached memorandum, exhibits, and additional argument that  
20 may be presented prior to and at the hearing on this Motion.

21 **MEMORANDUM IN SUPPORT OF MOTION**

22 **I. INTRODUCTION**

23 This lawsuit is a mistaken attempt by Plaintiff THE GOVERNMENT OF GUAM  
24 ("Government") to circumvent a comprehensive regulatory scheme by asserting claims  
25 that directly conflict with this regulatory architecture carefully established by the  
26 Legislature. The Government broadly alleges that Defendants KEPCO MANGILAO  
27 SOLAR, LLC ("KEPCO") and SAMSUNG E&C AMERICA, INC. ("Samsung") failed to

1 implement erosion control measures during a construction project, resulting in damage  
2 to Guam's natural resources. See (First) Amended Complaint ("FAC"). However, the  
3 Legislature has adopted a comprehensive scheme to regulate erosion control and  
4 construction permit conditions whereby enforcement of alleged violations is delegated to  
5 the relevant agencies. It is well recognized that where the legislature has adopted a  
6 comprehensive scheme to regulate certain activities, the statutory remedy provided is  
7 deemed "exclusive."

8         It is also well established that no one is entitled to judicial relief for a supposed or  
9 threatened injury until the prescribed administrative remedy has been exhausted. Here,  
10 the relevant agencies – the Guam Environmental Protection Agency ("GEPA"), Guam's  
11 Department of Parks and Recreation's Historic Preservation Office, DPW and CLB – have  
12 initiated enforcement actions, which are pending and not yet resolved. In fact, the DPW's  
13 actions in issuing and subsequently rescinding a stop work order for the project to  
14 address the erosion and sediment control issues have rendered the Government's claims  
15 for injunctive and declaratory relief under its nuisance claim moot. Moreover, the  
16 Government failed to cite any statutory or common law authority supporting the  
17 Government's standalone claim for damages to natural resources and request for  
18 punitive damages.

19         This action is entirely inconsistent with the regulatory scheme and would result in  
20 duplicative government proceedings; inconsistent rulings; double recovery and piling on  
21 of penalties; force the parties to litigate issues on multiple fronts; and violate the  
22 substantive rights of Samsung. The Government has failed to assert a valid claim for  
23 relief, and thus the FAC must be DISMISSED in its entirety, with prejudice.

1 **II. BACKGROUND**

2 **A. Factual Background<sup>1</sup>**

3 Defendant KEPCO Mangilao Solar, LLC (“KEPCO”) is the owner of the Mangilao  
4 Solar Project (“Project”), located on Lot 1-R3 Tract 1541, Sasayan, Mangilao, Guam. *See*  
5 FAC at ¶ 3. Samsung is engaged in earth moving and construction on the Project. *Id.* at  
6 ¶ 4. (KEPCO and Samsung are hereinafter referred to collectively as “Defendants”). The  
7 Project is located within a watershed area. *Id.* at ¶ 7.

8 Defendants were required to seek—and received—approval from the Guam  
9 Environmental Protection Agency (“GEPA”) and Department of Public Works (“DPW”)  
10 as part of the permitting process for the Project. *Id.* at ¶¶ 8-9. Defendants had a duty to  
11 implement erosion and sediment controls according to best management practices and  
12 local regulations. *Id.* ¶ 11. Thus, Defendants submitted an Erosion and Sediment Control  
13 Plan (“E&SC Plan”) to GEPA, which GEPA approved. *Id.* at ¶ 9.

14 According to the FAC, Defendants did not fully implement the approved  
15 measures required under the ES&C Plan. *Id.* at ¶¶ 15. On July 23, 2021, GEPA received a  
16 complaint alleging discharge of runoff and sediment from the Project. *Id.* at ¶ 13. GEPA  
17 conducted a site investigation and observed evidence of off-site discharge and sediment  
18 from at least two locations at the Project. *Id.* at ¶ 14. On July 28, 2021, GEPA conducted a  
19 follow-up inspection and observed evidence of discharge of runoff and sediment from  
20 the Project into Marbo Cave, as well as erosion damage and sedimentation into Marbo  
21 Cave and the surrounding area. *Id.* at ¶¶ 16-17.

22 **B. Procedural Background**

23 On August 5, 2021, the Government filed its Complaint against Korea Electric  
24 Power Company and Samsung. On August 30, 2021, the Government filed the FAC, this  
25 time naming KEPCO as a defendant in place of Korea Electric Power Company. The  
26

---

27 <sup>1</sup> The factual allegations set forth in the FAC are taken as true solely for the purposes of this Motion.

1 Office of the Attorney General (“OAG”) alleges it has authority to bring civil actions to  
2 abate public nuisances on behalf of the Government pursuant to 5 GCA § 30110 and 21  
3 GCA §23101. See FAC at ¶ 2.

4 The FAC asserts two claims for relief: public nuisance (Count I) and natural  
5 resource damage (Count II). In Count I, the Government claims that Defendants created  
6 or permitted a condition that resulted in (1) soil being discharged into Guam’s freshwater  
7 and ocean; (2) soil (sediment), debris, and trash being discharged onto adjoining  
8 properties, including Marbo Cave; and (3) large volumes of water and sediment entering  
9 Marbo Cave. *Id.* at ¶¶ 19-21. In Count II, the Government claims Defendants created or  
10 permitted a condition that has damaged Guam’s waters and that has caused and  
11 continues to cause damage to Guam’s natural resources and environment. *Id.* at ¶¶ 25-

12 26. The Government seeks the following relief:

13 Preliminary Injunctive Relief in the form of an order  
14 preventing the unreasonable discharge of sediment, debris,  
15 and trash onto adjoining properties, into Guam’s  
groundwater, or into the ocean;

16 Declaratory Judgment in the form of a declaration that the  
17 conditions created or permitted to be created by Defendants  
are a public nuisance;

18 Compensatory Damages for (1) Costs incurred in cleaning up  
19 or abating the discharge of sediment, debris and trash onto  
adjoining properties, into Guam’s groundwater, and into the  
ocean, and (2) costs and damages to natural resources;

20 and

21 Punitive Damages.

22 See FAC at p. 5.

23 The parties agreed to extend the deadline for Defendants to file their responsive  
24 pleadings through stipulations filed on September 1, 2021, October 11, 2021 and  
25 November 5, 2021. Samsung and KEPCO filed their Answers to the FAC on January 4,  
26 2022, and January 6, 2022, respectively.

1 **III. LEGAL STANDARD**

2 Rule 12 of the Guam Rules of Civil Procedure (“GRCP”) allows any party to move  
3 for judgment on the pleadings “[a]fter the pleadings are closed but within such time as  
4 not to delay the trial.” Under Guam law, “the substantive standards of Rule 12(b)(6) and  
5 Rule 12(c) are identical.” Yokeno v. Lai, 2014 Guam 18, ¶ 20, fn. 4 (2014). The Court may  
6 dismiss a complaint for “failure to state a claim upon which relief can be granted.” GRCP  
7 Rule 12(b)(6). Dismissal under Rule 12(b)(6) is proper “when the non-moving party ‘can  
8 prove no set of facts in support of his claim which would entitle him to relief.” Ukau v.  
9 Fusheng Wang, 2016 Guam 18, ¶ 51 (internal quotations omitted). Although the  
10 allegations in the Complaint are deemed to be true and viewed in a light most favorable  
11 to the non-moving party, “[t]he court is not required to accept legal conclusions cast in  
12 the form of factual allegations if those conclusions cannot reasonably be drawn from the  
13 facts alleged.” First Hawaiian Bank v. Manley, 2007 Guam 2, ¶ 9.

14 **IV. THE COMPLAINT (“FAC”) MUST BE DISMISSED BECAUSE THE**  
15 **GOVERNMENT IS NOT ENTITLED TO ITS CLAIMED RELIEF**

16 **A. The Legislature Has Established a Comprehensive Statutory Scheme to**  
17 **Address Alleged Violations of Erosion Control Permit Conditions,**  
**Thereby Creating An Exclusive Administrative Remedy**

18 Both counts of the FAC are based on the Government’s allegations that Defendants  
19 failed to follow the ES&C and damaged Guam’s natural resources as a result. However,  
20 the OAG is preempted from asserting these claims because a violation of an approved  
21 ES&C and construction permit is subject to enforcement under a comprehensive  
22 regulatory scheme by the appropriate Government of Guam agencies. These  
23 administrative remedies are exclusive and preclude the Government from filing a civil  
24 action based on the same alleged violation.

1           The doctrine of preemption is well established in federal law<sup>2</sup> and has been  
2 applied to facts analogous to this case. For example, in Kyoei Kaiun Kaisha, Ltd. v. M/V  
3 Bering Trader, the Washington Western District Court concluded that the Ninth Circuit  
4 would join the Second, Fourth, and Fifth Circuits and hold that the Federal Water Control  
5 Pollution Act preempts common law claims asserted by the federal government,  
6 including negligence and nuisance. 760 F. Supp. 174, 175, 177 (W.D. Wash. 1991). As the  
7 court explained, “An act of Congress will preempt federal common law when the act  
8 ‘speaks directly’ to a question or ‘addresses’ a problem which had previously been settled  
9 by appeal to federal common law.” *Id.* at 175. Accordingly, the court dismissed the  
10 government’s common law claims. *Id.* at 177.

11           The same principle applies under state law:

12                       Where a right not existing at common law is created by  
13 statute, and a statutory remedy for its violation is provided,  
14 the statutory remedy is exclusive and no other remedy may  
15 be pursued. Where the Legislature has provided a  
comprehensive remedial scheme, there is a strong indication  
that the legislature intended the remedy to be exclusive.

16 Mahoney v. Crocker Nat’l Bank, 571 F. Supp. 287, 293 (N.D. Cal. 1983) (citations omitted);  
17 *see also* Van Baale v. City of Des Moines, 550 N.W.2d 153, 155 (1996) (“Where the  
18 legislature has provided a comprehensive scheme for dealing with a specified kind of  
19 dispute, the statutory remedy provided is generally exclusive.”). In accord, our Guam  
20 Supreme Court recognized that statutory remedies can be exclusive and preempt  
21 common law claims in certain circumstances. *See* Hemlani v. Hemlani, 2015 Guam 16,  
22 ¶¶ 29-31 (providing the UCC provides exclusive remedies precluding recovery through  
23

---

24 <sup>2</sup> *See, e.g.,* Middlesex County Sewerage Auth. v. Nat’l Sea Clammers Ass’n, 453 U.S. 1, 22, 101 S. Ct. 2615,  
25 2627 (1981) (holding “the federal common law of nuisance in the area of water pollution is entirely pre-  
26 empted by the more comprehensive scope of the [Federal Water Pollution Control Act]”); *also*, United States  
27 v. Dixie Carriers, Inc., 627 F.2d 736, 742 (5th Cir. 1980) (providing “[i]n the absence of a clearer indication  
28 from Congress that the government may obtain recovery under additional theories, we conclude that the  
balanced and comprehensive scheme [] provides the exclusive remedy for the government”).

1 common law breach of contract); *also*, Benavente v. Taitano, 2006 Guam 20, ¶¶ 10-12  
2 (providing the statutory remedy under the election law is exclusive and renders common  
3 law claims unavailable).

4 Here, Guam's Legislature has provided a comprehensive scheme for dealing with  
5 disputes regarding environmental protection and construction permit violations and  
6 provided particular administrative remedies for violations. Guam's Environmental  
7 Protection Act provides:

8 It is hereby declared to be the public policy of this territory of  
9 Guam that a high quality environment be maintained at all  
10 times to guarantee an enjoyable life for all people at present  
11 and in the future, and that environmental degradation of the  
12 quality of land, water and air by any pollutants, including all  
13 physical, chemical and biological agents, should not be  
14 allowed.

15 To these ends, it is the purpose of this Act to provide a united,  
16 integrated and *comprehensive territory-wide program of*  
17 *environmental protection and to provide a framework to fulfill that*  
18 *task.*

19 10 GCA § 45102 (emphasis added).

20 GEPA is responsible for the implementation of, among others, the Water Pollution  
21 Control Act ("WPCA"). 10 GCA § 45105. The WPCA declares that "the policy of the  
22 Government of Guam" is "to provide a comprehensive program in the public interest for  
23 the prevention, abatement and control of new or existing water pollution [and] to provide  
24 effective means for the carrying out and enforcement of such program." 10 GCA § 47102.  
25 GEPA is expressly directed to "develop and adopt a comprehensive program for the  
26 prevention, control, and abatement of pollution from the waters of the territory" and "to  
27 receive complaints and make investigations in relation thereto." 10 GCA § 47104. The  
28 GEPA administrator has the sole power to "issue, modify revoke orders for the abatement  
of pollution or to require the adoption of such remedial measure." 10 GCA § 47105(c).



1           Thus, in accordance with its rulemaking authority, GEPA has promulgated  
2 regulations relative to the WPCA, including the specifically relevant Guam Soil Erosion  
3 and Sediment Control Regulations (“GSESCR”). *See* 22 GAR §§ 10101, *et seq.* These  
4 Regulations deal specifically with the issues raised in the FAC, as the express purpose of  
5 the GSESCR is “to control accelerated soil erosion and the resulting sedimentation of the  
6 waters of the territory.” 22 GAR § 10102(a). It is these regulations that form the basis of  
7 the OAG’s allegations with respect to Defendants’ duty “to implement erosion and  
8 sediment control in line with...local regulations.” *See* FAC at ¶ 11. However,  
9 enforcement of these regulations is “as provided in 22 GCA Chapter 46, relative to Water  
10 Pollution Control.”<sup>3</sup> 22 GAR § 10103. The statutory remedy under the WCPA is  
11 comprehensive and exclusively granted to GEPA, not the OAG:

12                           Whenever the agency has reason to believe that a violation of  
13 any provision of this Act, or rule or regulation pursuant  
14 thereto, has occurred, it may cause written notice to be served  
15 upon the alleged violator or violators. The notice shall specify  
16 the provision of this Act or rule or regulation alleged to be  
17 violated, and the facts alleged to constitute a violation thereof,  
18 and may include an order that necessary corrective action be  
19 taken within a specified time.

20 10 GCA § 47109(a).

21           To the extent the Government alleges Defendants violated the conditions of  
22 permits approved by the Department of Public Works (DPW), *see* FAC ¶ 8, the  
23 enforcement authority for “willful departure from or willful disregard of plans or  
24 specifications in any material respect” is comprehensively and exclusively granted to the  
25 CLB, not the OAG. *See* 29 GAR § 1446. Nothing in the statutes or rules governing  
26 contractors allows for the OAG to circumvent the regulatory scheme and pursue its own  
27 action for alleged violations of those rules.

---

28 <sup>3</sup>The Guam Water Pollution Control Act was enacted in its present form as 10 GCA Chapter 47 by P.L. No. 17-87.

1           The Legislature adopted 21 GCA §§ 70100, *et seq.* as the comprehensive scheme  
2 regulating contractors, like Defendants, and created the CLB to enforce that scheme. The  
3 CLB has itself interpreted the primary intent of the Legislature in creating the Board to  
4 be “the protection of the public health, safety and general welfare in dealing with persons  
5 engaged in the construction industry, and the affording to the public of an effective and  
6 practical protection against the incompetent, inexperienced, unlawful and unfair  
7 practices of contractors with whom they may contract.” 29 GAR § 1402.

8           Under Chapter 70, the CLB is the administrative agency tasked with the authority  
9 to, “[e]nforce this Chapter and rules and regulations adopted pursuant thereto” and  
10 “[s]uspend *or* revoke any license for any cause prescribed by § 70116 *or* for any cause for  
11 suspension *or* revocation prescribed by the rules and regulations. 21 GCA § 70103(b) and  
12 (c).

13           The CLB is specifically tasked with investigating “for compliance with the rules  
14 and regulations of the Board and the provisions of this Chapter” and “may issue citations  
15 to acting contractors, licensed or unlicensed, in violation of the provisions of this Chapter  
16 and rules promulgated pursuant to the requirements of the Administrative Adjudication  
17 Law.” *See* 21 GCA §§ 70109-70109.1 and Guam Administrative Rules (“GAR”) Title 25,  
18 Chapter 12 and Title 29, Chapter 1, Article 4. The CLB may also, “in addition to any other  
19 remedies available, apply to a judge of the Superior Court for a preliminary and/or  
20 permanent injunction.” 29 GAR § 1405.

21           Based on the foregoing, the FAC must be dismissed. The OAG’s right to assert a  
22 common law nuisance claim based on violations of construction permits has been  
23 abrogated by statute. The statutes governing these issues, the WPCA and 21 GCA  
24 Chapter 70, provide remedies for their violations, which are exclusive to the relevant  
25 agencies, and no other remedy may be granted. Accordingly, the Government also has  
26 no basis to assert a claim for “natural resource damage.”

1           **B.      The Government Has Failed To Exhaust Its Administrative Remedies**

2           In this action, the OAG attempts to assert civil claims based upon the same alleged  
3 conduct that is already subject to administrative action by GEPA and CLB. *See* Exhibit  
4 “1” (GEPA Notice of Violation alleging numerous violations of the GSESCR, 22 GAR  
5 Chapter 10); *also*, Exhibit “2” (CLB Accusation and Statement of Charges incorporating  
6 GEPA’s allegations and alleging violations of 21 GCA Chapter 70), attached to  
7 Declaration of Counsel for Defendant Samsung filed contemporaneously herewith.<sup>4</sup> The  
8 FAC violates the doctrine of exhaustion of administrative remedies given the undisputed  
9 pending agency enforcement actions asserted by GEPA and CLB; thus warranting  
10 dismissal of the Government’s FAC.

11           “The doctrine of exhaustion of administrative remedies is well established in the  
12 jurisprudence of administrative law. The doctrine provides that no one is entitled to  
13 judicial relief for a supposed or threatened injury until the prescribed administrative  
14 remedy has been exhausted.” Barrett-Anderson v. Camacho, 2015 Guam 20, ¶ 31.  
15 “[E]ven where the administrative remedy may not provide the specific relief sought by a  
16 party or resolve all the issues, exhaustion is preferred because agencies have the  
17 specialized personnel, experience and expertise to unearth relevant evidence and provide  
18 a record which a court may review.” Barrett-Anderson v. Camacho, 2015 Guam 20, ¶ 31.  
19 Here, the authority to enforce the WPCA and GSESCR has been delegated to an agency,  
20 thus prohibiting the Attorney General for the Government from directly asserting a claim  
21 for natural resource damage (Count II) prior to the exhaustion of its administrative  
22 remedies.

23           Moreover, with respect to Count I, the Government prays for a “[d]eclaration that  
24 the conditions created or permitted to be created by Defendants are a public nuisance.”  
25 However, the law is clear that “the doctrine of exhaustion of administrative remedies

---

26  
27 <sup>4</sup> See footnote 5, *infra* at 12.

1 may not be circumvented by bringing . . . actions for declaratory relief.” Barrett-  
2 Anderson v. Camacho, 2015 Guam 20, ¶ 24, 2015. Because the Government has failed to  
3 exhaust its administrative remedies, the FAC must be dismissed in its entirety, with  
4 prejudice. See DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth., 2020 Guam 20, ¶ 63  
5 (citation omitted) (explaining failure to exhaust administrative remedies presents a  
6 complete defense to a plaintiff’s claims).

7 **C. Count I For Public Nuisance Must Be Dismissed As Moot**

8 In addition to the foregoing reasons, the Court cannot adjudicate Count I because  
9 the request for relief is moot. A “court lacks jurisdiction to resolve issues that have  
10 become moot by intervening events.” Taitano v. Lujan, 2005 Guam 26, ¶ 27. “Generally,  
11 a cause of action is moot where the precise relief sought has already been achieved ... an  
12 injunction cannot issue in a vacuum based on the proponents’ fear about something that  
13 may happen in the future.” Sule v. Guam Bd. of Examiners for Dentistry, 2011 Guam 5,  
14 ¶ 19.

15 Here, the Government has brought this civil action under 5 GCA § 30110 and 21  
16 GCA § 23101, which confers authority upon the OAG to “to abate public nuisances.” See  
17 FAC at ¶ 2. Thus, with respect to its nuisance claim, the Government requests declaratory  
18 and injunctive relief. See *id.* at p. 5. However, the Government—through DPW—has  
19 already imposed legally binding obligations on Defendants to abate the conditions at the  
20 Project constituting the alleged public nuisance and to remediate and restore potentially  
21 affected properties, with which Defendants have complied, as explained below.

1 Samsung respectfully requests that this Court take judicial notice<sup>5</sup> of the following  
2 facts: (1) on August 16, 2021, GEPA issued an Amended Notice of Violation and  
3 Compliance Order (“NOV”) to Defendants regarding the Project; (2) on August 20, 2021,  
4 DPW issued a Stop Work Order (“SWO”) to Defendants regarding the Project; and (3) on  
5 September 27, 2021, DPW issued a Notice of Rescission of the SWO to Defendants  
6 regarding the Project. *See* Exhibits “3”, “4” and “5”, respectively, attached to Declaration  
7 of Counsel for Samsung.

8 The SWO issued by DPW ordered Defendants to stop “[a]ll work and operations  
9 on the [] Project, other than to comply with ... Guam’s Erosion and Sediment Control  
10 Regulations ...” effective August 21, 2021. *See* Exhibit “4” at 1. DPW’s Notice of  
11 Rescission (“NOR”), issued September 27, 2021, rescinded the SWO on the following  
12 conditions:

13 (1) Defendants provide DPW remediation and restorations plans;

14 (2) Defendants continue compliance progress with the remediation and restoration  
15 work identified in GEPA’s NOV;

16 (3) Defendants update all building/grading permits affected by design revisions;  
17 and

18 (4) Defendants provide DPW monthly project compliance status reports. *See*  
19 Exhibits “4” and “5”.

---

21 <sup>5</sup> While “a court should generally convert a Rule 12(b)(6) motion to one for summary judgment if it  
22 considers matters outside of the pleadings ... the court is permitted, under exceptional circumstances, to  
23 deviate from this general rule by considering evidence outside the pleadings when deciding a Rule 12(b)(6)  
24 motion if those facts are integral to the complaint and relied upon by the plaintiff.” *Ukau*, 2016 Guam 18  
25 at ¶ 8. Judicial notice of adjudicative facts is mandatory under Rule 201 of the Guam Rules of Evidence  
26 where the facts are “not subject to reasonable dispute” and “capable of accurate and ready determination  
27 by resort to sources whose accuracy cannot reasonably be questioned.” 6 GCA Appx. A, Rule 201. Further,  
28 a court may take judicial notice of matters of public record where the records may be central to determining  
a determinative issue. *Taitano v. Calvo Fin. Corp.*, 2009 Guam 9 ¶ 31. Accordingly, judicial notice of these  
facts is warranted here because they are all “not subject to reasonable dispute” and “capable of accurate  
and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Further,  
these facts are a matter of public record, “are integral to the complaint,” and relate to allegations “relied  
upon by the plaintiff.”

1 DPW has not reinstated the SWO nor issued any new stop work orders following  
2 the NOR. This indisputable fact establishes the Government's satisfaction with  
3 Defendants' material compliance with their obligations to abate the complained-of  
4 conditions at the Project and remediate and restore conditions at adjoining properties.  
5 Accordingly, Count I is moot because the "precise relief sought has already been  
6 achieved," and Count I must be dismissed as a matter of law.

7  
8 **D. Count II For "Natural Resource Damage" Is Not A Cognizable Claim  
Under Guam Law**

9 Neither of the statutes cited in the FAC, 5 GCA § 30110 and 21 GCA § 23101,  
10 support a claim for "natural resource damage." See FAC at ¶ 2. As discussed above, the  
11 plain meaning of these statutes makes it clear that these statutory provisions only  
12 authorize the Attorney General to bring civil actions to "abate public nuisances." See 5  
13 GCA § 30110 and 21 GCA § 23101. Further, no other statute, regulation, rule, or case  
14 indicate that Guam law recognizes a cause of action for "natural resource damage," let  
15 alone punitive damages, and the Government has cited no authority to support such  
16 claim. Accordingly, Plaintiff's Count II for natural resource damage is not a cognizable  
17 cause of action under Guam law, and must be dismissed as a matter of law for failure to  
18 state a claim upon which relief can be granted.

19 **V. CONCLUSION**

20 Based on the foregoing, Defendant respectfully requests the Court DISMISS the  
21 Plaintiff's Amended Complaint filed August 30, 2021 in its entirety, with prejudice.

22 DATED: Hagatna, Guam, February 17, 2022.

23 

24 DANIEL J. BERMAN  
25 MICHAEL C. CARROLL  
26 SHARON PARIS

27 Attorneys for Defendant  
28 SAMSUNG E&C AMERICA, INC.