IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS Plaintiff, v. LEONORA F. BORDALLO, et al., Defendants.	Civil Action Nos. 84-346 84-347, 84-349, 84-350 84-354, 84-355 **DECISION AND ORDER**

The above-captioned condemnation cases were submitted for final determination of value on August 30, 1993, based on the mandate of the Commonwealth Supreme Court, the original trial of August 27-28, 1985, the re-trial of February 22, 1993, and the appraisals, expert deposition transcripts, and briefing submitted by the parties.

I. FACTS

A. Procedural Background.

These companion cases have a long history. The Government filed the original condemnation action on September 14, 1985, concerning seven parcels of land on Tinian. One of the seven

cases settled prior to re-trial. The six remaining condemned parcels of land are described as follows:

1. Lot No. 306 T 03, containing 59,782 square meters, located in Mulatu, Tinian, owned by Leonora F. Bordallo (Civil Action No. 84-346);

2. Lot No. 349 T 01, containing 49,386 square meters, located in Puntan Diablo, Tinian, owned by Leonora F. Bordallo (Civil Action No. 84-347);

3. Lot No. 393 T 02, containing 47,021 square meters, located in Kahet, Tinian, owned by Pedro L. Cruz (Civil Action No. 84-349);

4. Lot No. 315 T 18, containing 6,058 square meters, located in Old San Jose Village, Tinian, owned by Henry Hofschneider (Civil Action No. 84-350);

5. Lot No. 332 T 02, containing 32,779 square meters, located in Banaderan, Tinian, owned by the Heirs of Jose Hocog (Civil Action No. 84-354).

6. Lot No. 201 T 01, containing 70,892 square meters, located in Puntan Diablo, Tinian, owned by Alfonso S. Borja (Civil Action No. 84-355).

The parcels were largely unimproved at the time of the taking, and none had any utilities. They were condemned in order to provide land pursuant to the Tinian Lease Agreement and Land Acquisition Agreement executed between the Commonwealth and the United States on January 6, 1983, which created the United States Military Retention Area (MRA), covering approximately 17,779 acres -- over 70% of the island.

The Commonwealth Trial Court's original Memorandum Opinion of October 1, 1985[1/] granted Defendants compensation ranging from $1.20 to $1.50 per square meter. Defendants appealed, on the grounds that they were forced to go to trial without their expert

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[1/] *See CNMI v. Nabors*, No. 84-351 (N.M.I. Tr. Ct., Oct. 1, 1985). Although this particular case was settled by the parties, the Trial Court's Memorandum Opinion therein was incorporated by reference in the Orders of the other companion cases.

appraiser. The Appellate Division affirmed the Trial Court's decision. *CNMI v. Bordallo*, App. No. 85-9029 (D.N.M.I. App. May 8, 1989); however, by the date of its decision the Appellate Division no longer had jurisdiction over the case. Defendants therefore appealed to the Commonwealth Supreme Court, which reversed the Trial Court and remanded the case for re-trial to allow Defendants' appraiser to testify. *CNMI v. Bordallo*, No. 90-003 (N.M.I. June 8, 1990).

By the time of the remand in 1990, Defendants' appraiser had retired. The Superior Court, applying a strict interpretation of the Supreme Court's mandate, denied Defendants' motion for a continuance to prepare and present testimony from another appraiser, and Defendants once again appealed. The Supreme Court again reversed and remanded with instructions to allow Defendants to hire a new appraiser. *CNMI v. Bordallo*, No. 90-050-055 (N.M.I. Aug. 19, 1991).

On this second remand, Defendants selected an appraiser, Ponciano C. Rasa, who was once again unavailable for trial.[2/] However, this time the parties stipulated[3/] that the trial should proceed in his absence, based upon his written appraisal as well as the video and written records of his deposition taken on October 28, 1992, both sides having had an opportunity for direct

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[2/] The reasons for Mr. Rasa's unavailability for trial are detailed in his deposition. *See Deposition of Ponciano Rasa,* Oct. 28, 1992 (hereinafter, "*Rasa Dep.*"), 72:13-73:11

[3/] Initially, Defendants moved for yet another continuance of trial. However, it later became apparent that Mr. Rasa would not become available to testify until April 1994. On the morning trial was to start, Defendants' counsel stated that his motion for continuance was "mooted out" by this circumstance. *Transcript of Proceedings,* Feb. 22, 1993, 3:9-13.

and cross-examination on the record. The Government's appraiser, Alan J. Conboy, presented his appraisal at the 1985 trial and testified in a rebuttal capacity at the 1993 re-trial.

B. The Government's Appraisal

Plaintiff relies on the Conboy appraisal commissioned in advance of the 1985 trial. Mr. Conboy testified that the "highest and best use" of all of the properties was "limited agriculture." *Transcript of Trial Proceedings*, Aug. 27, 1985, at 34:8-10. His appraisal uses a "direct market" approach, using thirteen land sales on Tinian and seven sales on Saipan as "comparable sales." *Id.* at 35:5-8. According to Mr. Conboy, these twenty transactions were selected from outside the Tinian MRA, in order to keep the "comparable" value from being "affected by any adverse effects of the potential lease, government lease that was being considered." *Id.* at 35:18-21. The appraisal concludes that the condemned properties were worth 80 cents per square meter, as of March 8, 1983. *Id.* at 22:2-6.

C. The Landowners' Appraisal.

Mr. Rasa, the landowners' appraiser, also based his appraisal on the assumption that the land's primary value was agricultural. *Rasa Dep.* at 22:4-23:10. However, Mr. Rasa rejected Mr. Conboy's "direct market" approach, arguing that Northern Mariana Islanders' experience with Federal condemnation in the years since World War Two led to a widespread suppression of land values on Tinian: "[W]hen people hear condemnation, especially when it is affiliated with Government military entities, the fear is that if we don't obey they can take it for nothing." *Rasa Dep.* at 33:21-24. Mr. Rasa cited evidence that as early as 1970, the District

Administrator for the Trust Territory rejected business development projects on Tinian "because of the future military interests." *Id.* at 36:5-40:22. The long anticipation of the Tinian lease, Mr. Rasa argued, created "condemnation blight" across Tinian, suppressing land values, causing local authorities to withhold municipal services such as roads and utilities, and deterring owners from improving their own land. *Appraisal Report of Ponciano C. Rasa* (Oct. 2, 1992) *("Rasa App.")* at 26-27. To correct for the effect of this "condemnation blight," Mr. Rasa utilized an "Income Capitalization" approach to value, based on a hypothetical farming operation. He estimated the potential income derivable from each of the properties if one acre of each were devoted to betel nut cultivation, and used that hypothetical income stream to determine an estimated land value of $4.61 per square meter. *Id.* at 79-82.

II. ISSUE

A single issue is presented for determination here: what amount of compensation is due the owners of the six parcels at issue as a result of the Government's condemnation of their land?

III. ANALYSIS

A. Sources of Law and Burden of Proof.

Land valuation in eminent domain proceedings is governed by 1 CMC § 9224, which simply directs that "the Court must hear the parties, and establish a fair market value for the land." The Supreme Court emphasized in its opinion on appeal of this case that "it is the Court, not the experts, who establishes the fair

value of the land." *Bordallo, supra* (June 8, 1990), slip. op. at 11. There are no applicable Restatement provisions. This scant authority is buttressed by the common law of the United States. 7 CMC § 3401.[4/]

Title 1 CMC § 9224 is silent as to which party bears the burden of proving land value. The common law assigns the defendant landowner the burden of proving entitlement to compensation greater than that offered by the Government. *See United States v. Powelson*, 319 U.S. 266, 63 S. Ct. 1047, 1052 (1943); *Pappas v. State of Nevada*, 763 P.2d 348, 350 (Nev. 1988); 5 Nichols, *The Law of Eminent Domain*, § 18.5. *But see Comment, Uniform Eminent Domain Code* § 904 (criticizing common law rule and allocating no burden of proof to either party). Thus, Defendants here must show by a preponderance of the evidence that the price offered by the Government does not reflect the value of the land taken as of the date of the taking. If that showing is made, the Court must assess all the evidence submitted by the parties to determine the actual value.

B. The Landowners' Attack on the Government's Appraisal.

1. "Condemnation Blight." Defendants correctly assert that evidence of "condemnation blight," if credible, must be taken into

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[4/] It could be argued that, because eminent domain can only be exercised pursuant to statutory authorization, there is no common law of eminent domain. *See Welch v. Tennessee Valley Authority*, 108 F.2d 95, 99 (6th Cir. 1939). However, the U.S. Supreme Court has held that, despite their statutory source, eminent domain suits are classified as "suits at common law." *Louisiana Power & Light Co. v. Thibodaux*, 360 U.S. 25, 79 S. Ct. 1070, 1072 (1959). Therefore, this Court holds that judicially-created rules of eminent domain procedure applied in the United States constitute applicable "common law" for the purposes of 7 CMC § 3401.

account in assessing the market value of condemned land. *United States v. Virginia Electric & Power Co.*, 365 U.S. 624, 81 S. Ct. 784, 792 (1961) ("it would be manifestly unjust to permit a public authority to depreciate property values by a threat [of condemnation] and then to take advantage of this depression in the price which it must pay" (citations omitted)); *see also State v. Alaska Continental Dev. Corp.*, 630 P.2d 977, 984 (Alaska 1980); *Assateague Island Condemnation Cases No. 3*, 324 F. Supp. 1170, 1180 (D. M.D. 1971); *Foster v. City of Detroit*, 254 F. Supp. 655, 666 (E.D. Mich., 1966). In *Alaska Continental*, *supra*, the Court stated the common law "indefinite location" rule:

> It frequently happens that the exact site of the projected [condemnation] is not determined until the condemnation proceedings have been actually instituted, and that it is only known in a general way that it will be located in a certain neighborhood.

630 P.2d at 985 (citing 4 Nichols, *The Law of Eminent Domain*, § 12.3151(2)). When such uncertainty depresses market values throughout the area, it would be "abhorrent to the public sense of justice" not to correct for the artificially lowered price. *Alaska Continental, supra*, 630 P.2d at 985.

Here, the Conboy appraisal attempts to make this correction by selecting comparable sales from outside the MRA on Tinian and Saipan, with dates ranging from 1980 to 1983. However, Mr. Rasa testified that the Trust Territory Government's actions began to depress property values on Tinian well before the actual scope of the condemnation project had been fixed. Moreover, he identified specific development projects which were prevented from going forward because of the "future military interest" as early as

1970. *Rasa App.* at 26-27; *Rasa Dep.* at 36:4-40:22. This evidence was not rebutted by the Government.[5/]

The land area of Tinian to be used for the MRA became fixed when the United States and the CNMI signed Commonwealth Covenant on February 15, 1975. *See Covenant to Establish a Commonwealth of the Northern Mariana Islands*, § 801(a)(1). However, in the early 1970's, there was considerable uncertainty about how much of Tinian would be condemned, and how extensive the military activities on the island were going to be. As Ambassador Franklin Haydn Williams stated in a speech to the Opening Round of the Marianas Political Status Negotiations:

> The Department of Defense is currently making a series of studies aimed towards specifically identifying future military land needs in the Marianas. [...] [T]he United States' current thinking is to consolidate its military activities as much as possible on the island of Tinian in order to avoid as much disruption as possible of normal civilian activities through the rest of the Marianas. Current plans call for the development of a joint service-Air Force, Navy, Marine Airfield/Logistic Facility on the island of Tinian and to rehabilitate the harbor.

Marianas Political Status Negotiations, Opening Round, Saipan (Dec. 13-14, 1972), at 11. The degree of uncertainty manifest in this statement, coupled with the sheer scale of the projects contemplated, is clearly enough to create an expectation of condemnation by landowners throughout Tinian.

[5/] The Government's hearsay objections to this testimony are not well-founded. Experts are entitled to rely on material which would not be independently admissible at trial in support of their opinion, if the supporting information is "of a type reasonably relied upon by experts in the field." Com. R. Evid. 703; *see also United States v. Sims*, 514 F.2d 147, 149 (9th Cir. 1975). At issue here are interviews with former Trust Territory officials and landowners. These contacts are definitely of a type reasonably relied upon by appraisers and are properly admitted as part of Mr. Rasa's expert testimony.

This evidence supports Defendants' contention that the value of land all over Tinian was affected by the prospect of condemnation between 1970 and 1975. In the face of Defendants' showing, Mr. Conboy's solution of choosing Tinian land sales outside the MRA is clearly insufficient to correct for "condemnation blight." Accordingly, Defendants have met their burden of proving that the amount offered by the Government is below what the value of the land would have been absent condemnation.[6/]

C. Defects in the Rasa Appraisal.

If Mr. Rasa's own opinion as to the value of the parcels were as persuasive as his testimony in discrediting the Government, the remaining issues here would be simple. However, the Rasa appraisal is at least as flawed as the Conboy appraisal, for the reasons described below.

1. Capitalized Income From Potential Use. As noted above, the Rasa appraisal rejects the "direct market" approach in favor of an estimate based on the capitalized income derivable from the

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[6/] Defendants' Post-Trial Brief (at 15-16) also attacks the reliability of certain individual sales cited by the Conboy Appraisal, complaining that the sales contained non-cash elements or were not sufficiently "arms-length." However, Defendants present no tangible evidence that these transactions did not reflect the land's market value. Mr. Rasa, Defendants' rebuttal witness, did not attack the transactions cited in Defendants' brief, but instead called others into question. Indeed, Mr. Rasa specifically called into question the transaction with the highest per-meter value (*see Rasa Dep.* 27:2-28:5), a transaction that Defendants' Post-Trial Brief suggested was among the most reliable ones. *Defendants' Post-Trial Brief* at 30-31. But here too, his testimony was not based on any tangible evidence of unreliability. *Id.* Plaintiff objected to this testimony on the grounds of speculation. The Court sustains this objection.

properties, were they to be used for cultivating betel nut. It is undisputed that none of the subject properties have ever been put to such a use. In defense of this methodology, Defendants point out that courts admit a wide variety of approaches to land value in eminent domain proceedings, including the "capitalization of income" approach. *United States v. Toronto, Hamilton and Buffalo Navigation Co.*, 338 U.S. 396, 70 S. Ct. 217 (1949); *see also Board of County Commissioners v. Kiser Living Trust*, 825 P.2d 130, 137 (Kan. 1992); *Stockholders and Spouses of Carioca Co. v. Superior Ct.*, 687 P.2d 1261, 1264 (Ariz. 1980); *Maricopa County v. Barkley*, 812 P.2d 1052, 1057 (Ariz. App. 1990); *but see United Staves v. Harralson*, 43 F.R.D. 318, 324 (W.D. Ky. 1966).

Likewise, courts generally allow expert testimony on potential uses for property as evidence of "highest and best use." As stated in *Olson v. United States*, 292 U.S. 246, 54 S. Ct. 704, 708 (1934), "[t]he sum required to be paid to the owner does not depend upon the uses to which he has devoted his land but is to be arrived at upon just consideration of all the uses for which it is suitable." *See also United States v. 320.0 Acres of Land*, 605 F.2d 762, 811 (5th Cir. 1979); *United States v. 100 Acres of Land*, 468 F.2d 1261 (9th Cir. 1972), *cert. denied*, 414 U.S. 864 (1973); *State v. Pioneer Mill Co., Ltd.*, 637 P.2d 1131, 1138-39 (Haw. 1981).

However, an entirely different issue is presented here: the admissibility of an appraisal based on the <u>combination</u> of the capitalized income and potential use approaches, which is the methodology of the Rasa report. Neither party submitted any authority on point. The few reported cases treating this question

express extreme skepticism regarding the combination of these two hypothetical factors. In *Chase v. City of Tacoma*, 594 P.2d 492, 945 (Wash. App. 1979), the court stated:

> The proper approach is for the evidence of potential use to come in to show impact of present market value arising from the adaptability of the property to the use and demand for that property adapted to that use. The evidence [...] which a court "cannot be too careful to exclude" is evidence of expected profits from an imagined development scheme and the like, inadmissible because it is speculative and conjectural.

594 P.2d at 945 (citing 5 Nichols, *The Law of Eminent Domain*, § 18.11(2)) (emphasis added); *see also Harralson, supra*, 43 F.R.D. at 324 ("anticipated profits from any business, especially farming, are too uncertain and too speculative" to be considered) (emphasis added); *State v. Cerruti*, 214 P.2d 346 (Ore. 1950) (evidence of potential profits from potential farming operations "introduces collateral issues and is too speculative and too likely to mislead the jury to be considered as a factor in determining value"); *Annotation*, 16 A.L.R.2d 1105.

The Court has found only one case admitting an expert appraisal based on the capitalized income from a potential use of land. In *State Department of Highways v. Mahaffey*, 697 P.2d 773, 776 (Colo. App. 1984), the court admitted evidence of the income-producing capacity of land if certain minerals located upon it were mined. Recognizing that "there are necessarily elements of speculation and uncertainty in relation to valuation opinions," the court nevertheless found that the proffered evidence was "sufficiently specific to allow [the] expert appraiser to make a reasonable opinion as to the value of the property." *Id.*

Unfortunately for Defendants, *Mahaffey* must be distinguished from the present case in that it involved mineral deposits, which

have long been recognized as a much more reliable element of value than other types of potential profits, especially those derived from agriculture. *See, e.g., Harralson, supra*, 43 F.R.D. at 321, 324 (presence of mineral deposits admissible as element of land value, whereas farm productivity is less reliable because affected by "weather conditions, rainfall, efficiency of management, market conditions, acreage allotments likely to be available to a purchaser, and other variable factors").

Viewing this authority in its totality, this Court holds that there is simply too much speculation inherent in an appraisal based on the capitalization of income expected from a potential use of land. Accordingly, the Rasa appraisal's estimate of income from betel nut farming cannot form the basis of a compensation award by this Court.

2. Other Flaws. Even if the Court were to adopt the permissive view expressed in *Mahaffey, supra*, 697 P.2d at 776, the Rasa appraisal's betel nut scenario would still be improper evidence of value because it lacks specificity and is burdened with analytic flaws.

First, several of the assumptions built into the Rasa approach are unsupported by data. In particular, no data is presented about start-up costs of the betel nut farm, such as purchasing and planting trees or purchasing other capital equipment. Moreover, operating costs of the operation are set at a flat 15% of income, with unexpected losses set at an additional 5%. *Rasa App.* at 81. None of these figures are supported with data on betel nut farming in particular. *Id.* Further, even though the Rasa Appraisal states (at 77) that "[t]he Income

Capitalization Approach [...] requires extensive market research," very little such research is presented in the report. Instead, Mr. Rasa makes the unsupported claim that "[b]etel nut chewing is a habit of an estimated one-tenth of the world's population (approximately 520 million people)." *Rasa App.* at 79. The Court finds this statement grossly exaggerated. Most of these flaws were noted by Mr. Conboy in his capacity as rebuttal witness at the 1993 retrial. *See Transcript*, Feb. 22, 1993, at 28:7-34:17. Mr. Conboy also noted that Mr. Rasa used a 6% "interest rate" in his calculations, rather than a "capitalization rate," as called for in his methodology.[7/]

Perhaps the largest analytic flaw in the Rasa Report is its application of the $4.61 per square meter figure to all six parcels at issue. Mr. Rasa's method assumes that same amount of land -- only one acre -- of each parcel is under cultivation. *Rasa Dep.* at 55:18-56:3. Therefore, under his model the total capitalized income from each parcel should be the same. The $4.61 per square meter figure is derived by dividing the capitalized income by the 47,021 square meters in the Pedro Cruz parcel. However, the sizes of the six parcels vary substantially, from 70,982 square meters to 6,058 square meters. Thus, consistent application of the Rasa methodology should result in a much higher per-square-meter value for the smallest parcel than for the largest. Yet the Rasa Appraisal asserts the same value for all.

[7/] *Transcript*, February 22, 1993, at 54:17-57:8. The effect of this substitution on the report's "concluded value" is startling. If the Income Capitalization calculations are re-run using a 12% "capitalization rate," which Mr. Rasa himself uses later in the analysis, rather than the 6% "interest rate" used here, the "concluded value" falls to $2.30 per square meter.

This step in the methodology goes beyond speculation and enters the realm of arbitrariness.

3. Rasa's "Development Approach." In addition to its Capitalized Income approach, the Rasa Appraisal employs a separate "Development Approach," in which the Cruz parcel is divided into eleven one-acre plots, each with a small house and betel nut stand. Mr. Rasa then calculates an income stream for the house rental and betel nut income for each plot. *Id.* at 70:9-71:20; *Rasa App.*, 83-86.

This approach shares the flaws of the Appraisal's main analysis: 1) it is based on hypothesizing capitalized income and potential use; 2) it fails to account for costs in any detailed way (costs of house construction are pegged at an improbable $300); and 3) it is unsupported by data on either betel nut demand or residential demand as of 1973. True, Mr. Rasa's testimony regarding condemnation blight beginning in 1970 suggests that any data on demand for residential plots on Tinian in 1983 would be artificially depressed. Nevertheless, the Report's failure to provide any data at all on the issue requires the finder of fact to take the analysis on faith, something the law forbids the Court to do.

4. Evidence of Land Exchanges. Defendants assert that their estimates of value are not informed by the land exchanges by which other Tinian landowners received Saipan beachfront property for their land. *See Defendants' Post-Trial Brief*, at 33. However, Mr. Rasa devoted considerable discussion to the exchanges, both in his appraisal (*Rasa App.* at 12-19, 32) and at his deposition (*Rasa Dep.* at 67-70). And the example of the land

exchanges clearly animates Defendants' claim of entitlement to an amount of compensation "sufficient [...] to buy similar farm land, whether on Tinian or Saipan, wherever such replacement land is available." *Defendants' Post-Trial Brief* at 33.

But whatever awards may have been given to Tinian landowners under the land exchanges, the law of eminent domain simply does not authorize compensation based on replacement value in today's market. The essential inquiry is to determine the value of the condemned land on the date of the taking. Even if considerations of substantial justice urge compensation in line with the land exchanges, the Court is precluded by a statute (7 CMC § 3308), a rule of evidence (Com. R. Evid. 408), and the express dictate of the Supreme Court (*Bordallo, supra* (June 8, 1990), slip op. at 7) from adopting this approach. Evidence of land exchanges cannot inform the Court's decision, either explicitly or implicitly.

D. The Court's Determination of Value.

As is clear from the foregoing, neither of the parties' appraisals can be taken at face value as evidence of the condemned properties. Therefore, the Court is left to implement the ruling of the Commonwealth Supreme Court that "it is the court, not the experts, who establishes the fair value of the land." *Bordallo, supra* (June 8, 1990), slip. op. at 11.

In *Assateague Island Condemnation Cases No. 3*, the Federal District Court for the District of Maryland found that widespread "condemnation blight" had affected land values throughout the community at issue. In order to determine just compensation, the court took land values at the time the condemnation blight began

and adjusted them upwards by 50%. *Assateague Island, supra*, 324 F. Supp. at 1182.

Here, the Conboy appraisal presents thirteen transactions on Tinian which took place between 1980 and 1983. In its initial opinion, the Commonwealth Trial Court based its conclusions on the Conboy Appraisal's base figure of $0.80 per square meter, adjusted to reflect the fact that the taking occurred in September 14, 1984, over a year and a half after the date of the appraisal. *See CNMI v. Nabors, supra*, slip op. at 9. Depending on the characteristics of each parcel, the Trial Court awarded base values ranging from $1.20 to $1.50 per square meter.

This Court has found that the Conboy appraisal failed to account for condemnation blight on Tinian from 1970 through 1975. However, in other respects the Conboy appraisal provides the most reliable evidence available. Accordingly, the Court will determine the value per square meter of the condemned properties by adjusting the Trial Court's original base value findings to reflect the condemnation blight on Tinian between 1970 and 1975. Ideally, the amount of such an adjustment would be based on data reflecting the average annual increase in property values in the CNMI during the relevant period. Unfortunately, no such data exist for the period 1970-1975. The Court therefore finds that the statutory rate of nine percent per annum for post-judgment interest, established by 7 CMC § 4101, represents a fair adjustment for this period of condemnation blight. Aggregating this increase over a five year period results in a total adjustment of fifty-four percent (54%).

E. Prejudgment Interest.

The parties differ as to the prejudgment interest rate to be applied. 1 CMC § 9227(b) establishes a three percent rate at which interest will accrue on the amounts deposited by the government under the "Immediate Possession Procedure." However, as Defendants correctly note, the Constitution may mandate prejudgment interest above statutory rates "to ensure that [the landowner] is placed in as good a position pecuniarily as he would have occupied if the payment had coincided with the appropriation." *Kirby Forest Industries, Inc. v. United States*, 104 S. Ct. 2187, 2194 (1984). *See also Redevelopment Agency of Burbank v. Gilmore,* 700 P.2d 794, 802 (Cal. 1985) (mandating prejudgment interest above rate set by state "quick take" eminent domain statute in order to compensate landowner fully); *Lea Co. v. North Carolina Board of Transportation*, 345 S.E. 2d 355, 359 (N.C. 1986) (allowing landowner to rebut presumption that statutory rate is reasonable).

Here, the statutory rate of three percent is clearly inadequate to compensate for Defendants' opportunity costs since 1984. Defendants propose using the nine percent post-judgment statutory rate. Plaintiff does not address the matter. The Court agrees that nine percent annual interest, uncompounded, constitutes a reasonable compensation during the preceding decade.

CONCLUSION

For the foregoing reasons, the Court ORDERS the base compensation for each of the parcels at issue to be set as follows:

1. Lot No. 306 T 03, owned by Leonora F. Bordallo (Civil Action No. 84-346), originally valued by the Trial Court at $1.30 per square meter, is hereby valued at $2.00 per square meter.

2. Lot No. 349 T 01, owned by Leonora F. Bordallo (Civil Action No. 84-347), originally valued by the Trial Court at $1.30 per square meter, is hereby valued at $2.00 per square meter.

3. Lot No. 393 T 02, owned by Pedro L. Cruz (Civil Action No. 84-349), originally valued by the Trial Court at $1.40 per square meter, is hereby valued at $2.15 per square meter.

4. Lot No. 315 T 18, owned by Henry Hofschneider (Civil Action No. 84-350), originally valued by the Trial Court at $1.20 per square meter, is hereby valued at $1 85 per square meter.

5. Lot No. 332 T 02, owned by the Heirs of Jose Hocog (Civil Action No. 84-354), originally valued by the Trial Court at $1.20 per square meter, is hereby valued at $1.85 per square meter.

6. Lot No. 201 T 01, owned by Alfonso S. Borja (Civil Action No. 84-355), originally valued by the Trial Court at $1.50 per square meter, is hereby valued at $2.30 per square meter.

7. Prejudgment interest on each of these parcels shall be paid at the rate of nine percent per annum, uncompounded, from the date of September 14, 1984 until the date of payment. If partial payments have been made to individual landowners, prejudgment

interest will be awarded retroactively on those partial payments up to the date of payment.

8. The parties shall meet and confer and submit to the Court mutually-agreeable proposed final orders for each case, detailing all payments made and calculating principal and interest owed on each parcel pursuant to this opinion. Such proposed final orders shall be submitted no later than January 14, 1994.

So ORDERED this 9th day of December, 1993.

Marty W.K. Taylor

MARTY W.K. TAYLOR, Associate Judge