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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

|                                    |   |                                 |
|------------------------------------|---|---------------------------------|
| GUAM PRESERVATION TRUST,           | ) | No. 1:10-cv-00677-LEK-RLP       |
| et al.,                            | ) |                                 |
| Plaintiffs,                        | ) | DEFENDANTS' NOTICE OF           |
| v.                                 | ) | MOTION AND MOTION TO            |
|                                    | ) | DISMISS THE COMPLAINT           |
| KATHERINE GREGORY, Rear            | ) |                                 |
| Admiral, Commanding Officer, Naval | ) |                                 |
| Facilities Engineering Command,    | ) | DATE: TBD                       |
| Pacific, <i>et al.</i> ,           | ) | TIME: TBD                       |
| Defendants.                        | ) | COURT: AHA NONOI                |
| _____                              | ) | JUDGE: Hon. Leslie E. Kobayashi |

Defendants Katherine Gregory, *et al.*, file this notice and motion to give notice to the court and to plaintiffs of the filing of the Defendants' Motion to Dismiss the Complaint. The defendants file this motion under Local Rule 7.1, Federal Rule of Civil Procedure 12(b)(1), and Article III of the U.S. Constitution. On June 16, 2011, the court directed the defendants to file a motion to dismiss by July 29, 2011. Order Denying Defendants' Motion for Voluntary Remand and Stay at 15 (Doc. 76).

The defendants' motion to dismiss requests that the court dismiss the Complaint (Doc. 1) for lack of subject matter jurisdiction. The motion is based on three related grounds.

First, the plaintiffs' Complaint fails to challenge a final agency action by the defendants with respect to the selection of a location for the live-fire training range complex on the Island of Guam, as part of the proposed relocation of United States Marines from Okinawa, Japan, to the Territory of Guam. Without a final agency action, there is no waiver of the United States' sovereign immunity and, accordingly, no basis for judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Second, the case is not ripe for judicial review under Article III of the United States Constitution, which limits federal court jurisdiction to adjudicating

live cases and controversies. Absent a final decision by the defendants on where to locate the training range complex on Guam, there is no ripe dispute presently before the court that would support judicial review.

Third, even if the court were to determine that the defendants have taken final agency action and that the case is ripe under the Article III constitutional standard, the court nevertheless should exercise its jurisprudential authority and discretion under both the prudential element of the ripeness doctrine and the doctrine of primary jurisdiction to withhold judicial review until the defendants have completed an ongoing review of possible locations for the proposed training range complex. Delaying judicial review by dismissing or staying the case until that time would ensure that the court has the benefit of (1) the ongoing review process addressing potential locations for the training range complex, culminating in a decision on an actual location, and (2) a complete administrative record on which to determine whether any of the plaintiffs' statutory claims has merit.

This motion is supported by the defendants' memorandum in support, filed concurrently with this motion, along with the declarations and exhibits that accompany that memorandum. The defendants also intend to rely on such further evidence and argument as may be presented to the court at the hearing on this motion.

Respectfully submitted this 29<sup>th</sup> day of July, 2011.

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*/s/ Charles R. Shockey*

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CERTIFICATE OF SERVICE

I hereby certify that, on July 29, 2011, I electronically filed the “Defendants’ Notice of Motion and Motion to Dismiss the Complaint” with the Clerk of the Court using the ECF system, which automatically will send email notification to the attorneys of record listed below:

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