

Senator Mark Forbes
Twenty-third Guam Legislature
155 Hesler Street
Agana, Guam 96910

FEB 27 1995

Mr. Alan Dixon
Chairman
Defense Base Closure and
Realignment Commission
Rosslyn Metro Center Building
1700 N. Moore Street
Arlington, VA 22209

Please refer to this number
when responding 950228-2

Dear Chairman Dixon:

As you are aware, Guam has been uncommon among most jurisdictions in its previous strong advocacy of the closure of a military base located in Guam, namely the soon to be closed Naval Air Station Agana. We in Guam remain very grateful for BRAC's speedy action on that previous matter, and note that the action BRAC took to close NAS Agana, not only is resulting in a tremendous savings for the taxpayers of America, but also promises to be of great benefit to the people of Guam, as the former naval air base is used for the expansion of our commercial airport.

In the case of NAS Agana, Guam successfully demonstrated that in spite of Navy assertions to the contrary, activities at the base were either unnecessary or easily consolidated with other military facilities located in Guam. We note that once BRAC took the action that it did, the Navy closed the base in record speed (in spite of previous assertions that the process would take many years), transferred units completely out of the island of Guam and relocated them elsewhere (in spite of the assertion that the presence of these units were vital to national defense), and relocated the balance to Andersen Air Force Base with a minimum of difficulty (in spite of Navy assertions that relocation could only be accomplished with tremendous and expensive renovations to Andersen). It is further noted that in spite of previous Navy assertions that all of the housing units at NAS were critical to military needs in Guam, given the order to close the base, they threw most of the houses in as well, even though this was not mandated by BRAC.

The Commission will soon be releasing its list of closures for 1995. We in Guam have no way of knowing at this time what military installations in Guam are slated for some sort of action, if any indeed are. Nonetheless, some of us in Guam would like to bring to your attention yet another naval facility in Guam that we believe is superfluous to actual military needs in the Territory and whose closure would benefit not only the U.S. taxpayer and the people of Guam, but do so in a manner that would have negligible impact upon the defense needs of America.

The U.S. Naval Magazine, Guam and the associated Fena Reservoir comprise a bit over 5,000 acres in the central south of Guam. The Magazine's purpose is the storage of munitions and the Reservoir includes Fena Lake, the largest (indeed only) freshwater surface feature of its kind in Guam as well as certain freshwater springs and associated watershed areas. The Navy maintains facilities for the production of potable water, for Navy consumers as well as portions of the civilian population that reside in areas proximate to the base. The people of Guam actually purchase water from the Navy, at least that portion of our people who reside in the vicinity.

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This strange reversal from normal practice is the result of historic accident and the failure of the Navy to comply with an Act of Congress that is now almost fifty years old. After the end of World War II, Guam was administered by the Navy Department, and consequently all utilities in Guam were possessed by the Navy. With the passage of the Organic Act of Guam and its signing into law by President Truman, all utilities were mandated to be turned over to the civilian government established by the Act.

The Navy failed to do this, and kept the Reservoir and the waterworks associated with it. In the passage of time, the civilian government built its own water infrastructure and today, the vast majority of the people of Guam are serviced by the civilian utility. Most of the water produced by the local utility is groundwater from wells tapping into Guam's vast aquifer. Guam's utility system is perfectly capable of providing water to the Navy. It should be noted that last year during a drought, it was the Navy system which was forced to ration water to its customers, not the government of Guam water utility which had ample supplies. Only those civilians serviced by Navy lines suffered.

The munitions storage mission at Naval Magazine is important, but as in the case of NAS, it is a mission that lends itself to consolidation with other activities in Guam.

Currently, we believe that Naval Magazine has,

- 7.6 million lbs. of Net Explosive Weight (NEW) High Explosive (HE) Magazine capacity or 241,244 sq. ft. capacity
- 5.7 million lbs. NEW capacity for Smokeless Powder and Projectile (SP&P) ordinance or 42,043 sq. ft. capacity
- 3.6 million lbs. NEW Open Ammunition Storage Pad capacity or 10,209 sq. yds. of open space to store bomb-type munitions in case of emergency.

Moreover, Naval Magazine has 8,367 sq. ft. and 10,398 sq. ft. capacity for Mine Assembly and Ammunition Renovation facilities respectively.

We understand Andersen Air Force Base to have 97 million lbs. NEW capacity.

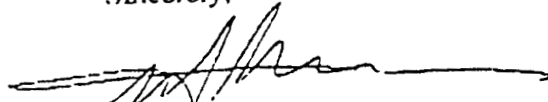
Bear in mind that the bulk of ammunition stored by Naval Magazine has historically been in support of air operations originating in Guam. Andersen Air Force Base currently has no strategic or tactical aircraft, indeed no aircraft of any type assigned to it except for a Naval transport helicopter squadron. Also note that Andersen Air Force Base will be the only military airfield in Guam upon the closure of NAS Agana. Doesn't it make sense that ammunition storage be consolidated at the capacious Andersen storage facilities?

The only new requirements for ammunition storage that we are aware of in Guam involve the potential storage of some 150 Tomahawk cruise missiles being brought to Guam as a result of the closure of Subic Bay Naval Base. We are unaware if this is in fact taking place. Many purported fallback moves as a result of the closure of Subic and Clark Air Force Base have never actually occurred. Even if the move of Tomahawks does occur, is there truly no room for them at Andersen, which again has 75 million lbs. of storage capacity?

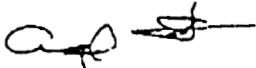
Consolidating ammunition storage at Andersen would relieve the Defense Department of the cost of maintenance at Naval Magazine and returning the water production and reservoir facilities at Fena would relieve the Navy of the cost of maintaining that plant as well.

We don't know if this is already being done, as we have no knowledge of the activities the Commission is taking action on in Guam. If in fact no thought is being given to closing Naval Magazine and the Fena Reservoir, we urge you to consider this action.

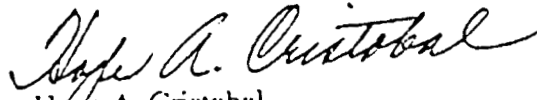
Sincerely,



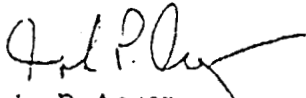
Mark Forbes
Senator, Twenty-third Guam Legislature



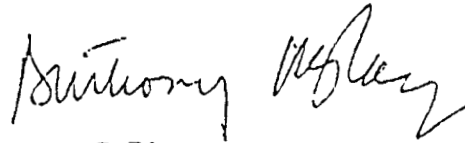
Angel L.G. Santos
Senator, Twenty-third Guam Legislature



Hope A. Cristobal
Chairperson, Committee on Federal and
Foreign Affairs
Twenty-third Guam Legislature



John P. Aguon
Senator, Twenty-third Guam Legislature



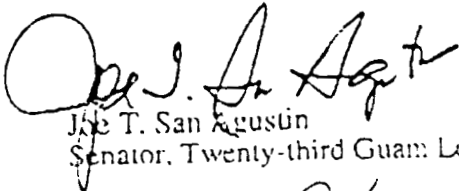
Anthony C. Blaz
Senator, Twenty-third Guam Legislature



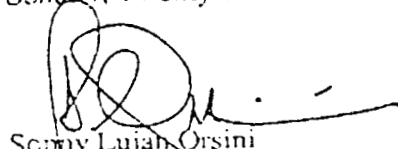
Elizabeth Barrett-Anderson
Senator, Twenty-third Guam Legislature



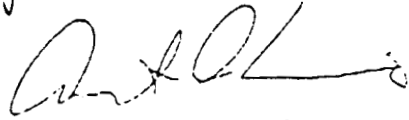
Felix P. Camacho
Senator, Twenty-third Guam Legislature



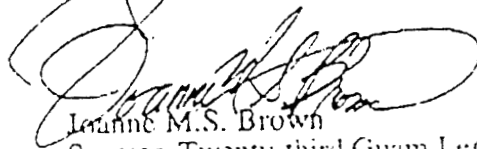
Joe T. San Agustin
Senator, Twenty-third Guam Legislature



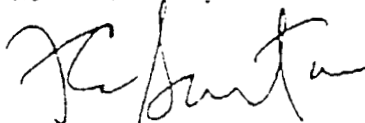
Semy Lujan Orsini
Senator, Twenty-third Guam Legislature



Alberto C. Lamorena V
Senator, Twenty-third Guam Legislature



Joanne M.S. Brown
Senator, Twenty-third Guam Legislature



Francis E. Santos
Senator, Twenty-third Guam Legislature

SUMMARY OF DOCUMENTS

COMPRISING TESTIMONY OF HONORABLE DON PARKINSON
SPEAKER 23RD GUAM LEGISLATURE, AGANA, GUAM BEFORE
THE BASE REALIGNMENT & CLOSURE COMMISSION ON APRIL
28, 1995 AT SAN FRANCISCO, CALIFORNIA

1. THIS SUMMARY
2. ORAL TESTIMONY
3. SUMMARY OF WRITTEN TESTIMONY
4. WRITTEN TESTIMONY
5. VARIOUS SUPPORTING DOCCUMENTS CITED IN SUMMARY OF WRITTEN
TESTIMONY AND WRITTEN TESTIMONY.

Document Separator

ORAL TESTIMONY OF
HONORABLE DON PARKINSON
SPEAKER
23RD GUAM LEGISLATURE
AGANA, GUAM
BEFORE THE
BASE REALIGNMENT & CLOSURE COMMISSION
APRIL 28, 1995
SAN FRANCISCO, CALIFORNIA

HONORABLE COMMISSIONERS, I AM DON PARKINSON,
SPEAKER OF THE GUAM LEGISLATURE. I AM TESTIFYING
AGAINST THE CLOSURE OF MILITARY BASES ON GUAM.

THE UNITED STATES CONGRESS HAS SET CRITERIA FOR
YOU AND THE NAVY TO USE IN DECIDING WHICH BASES TO
CLOSE. I SUBMIT TO YOU THAT THE TRUE CRITERIA WHICH IS
BEING USED BY NAVY OFFICIALS AT THE HIGHEST LEVEL IS
NOT THE CRITERIA SET BY THE CONGRESS. I SUBMIT TO YOU
THAT THE TRUE MOTIVES OF THE NAVY ARE AS FOLLOWS:

PRIMARY

- RETAIN GUAM AS A SECURE FALL-BACK FOR THE NAVY AT ANY COST - EVEN AT THE EXPENSE OF WEAKENING OUR PRESENT DEFENSE CAPABILITIES IN FAVOR OF THE LONG TERM RETENTION OF GUAM AS A SAFE FOREWORD BASE, FALL-BACK POSITION, AND STAGING AREA.

SECONDARY

- KEEP LARGE AREAS OF DESIRABLE GUAM LAND VACANT IN CASE NEEDED FOR FUTURE MILITARY USE.

- MOTHBALL THE ASSETS ON GUAM BECAUSE THE NAVY RECOGNIZES THE LONG TERM MILITARY AND STRATEGIC IMPORTANCE OF THE ISLAND.
- RESTRICT THE ECONOMIC AND POLITICAL DEVELOPMENT OF THE ISLAND TO PREVENT INDEPENDENCE, STATEHOOD, OR FREE ASSOCIATION FROM BECOMING VIABLE ALTERNATIVES FOR GUAM, SINCE THIS WOULD LESSEN OR ELIMINATE THE NAVY'S INFLUENCE OVER GUAM'S AFFAIRS.
- PUNISH THE PEOPLE OF GUAM FOR BECOMING TOO "UPPITY" AND FOR DEMANDING FAIR TREATMENT AND JUSTICE. IN OTHER WORDS, THE NAVY WANTS TO PUT US BACK IN OUR PLACE.
- CONTINUE THE NAVY'S INFLUENCE OVER GUAM'S AFFAIRS.
- ACCOMPLISH THE FOREGOING GOALS WHILE ALSO REDUCING COSTS AS MANDATED BY CONGRESS.

WE HAVE SEEN A PATTERN OF ECONOMIC MANIPULATION AND CONTROL OF THE ECONOMY OF GUAM BY THE U.S. NAVY, AND THOUGH THIS ECONOMIC INTERFERENCE HAS COME POLITICAL MANIPULATION. EXAMPLES:

- HOLDING ONE-THIRD OF THE ISLAND UNDEVELOPED FOR ALMOST 50 YEARS.
- REQUIRING SECURITY CLEARANCES TO GO TO AND FROM GUAM, UNTIL 1962.

- THE ACTIONS BY DEPARTMENT OF DEFENSE IN PLACING HUGE AMOUNTS OF EXCESS LAND AND BIRD AND WILDLIFE REFUGES, NATIONAL PARKS, ETC., WHILE RETAINING THE UNILATERAL RIGHT TO REENTER AND USE. THIS NOT ONLY INHIBITS GUAM'S ECONOMY, BUT ALSO IS EVIDENCE OF THE MILITARY'S INSINCERITY IN CLOSING GUAM'S BASES AND ITS RECOGNITION OF THE STRATEGIC IMPORTANCE OF GUAM.
- RECENT ACTIONS OF THE NAVY IN PROPOSING TO MOTHBALL FACILITIES IS FURTHER EVIDENCE OF THE NAVY'S MANIPULATION.
- OTHER RESTRICTIVE MEASURES, SUCH AS RESTRICTING CIVILIAN TRANSFER OF PRIVATE LAND DURING THE 1940'S TO FREEZE THE MARKET PRICE OF LAND ON, GUAM UNTIL THE NAVY COULD CONDEMN WHAT IT WANTED, MANIPULATION OF THE ECONOMY THROUGH MILITARY SPENDING ON GUAM, ETC.

I SUBMIT TO YOU THAT THE MOTIVES OF THE NAVY, AND THE CRITERIA WHICH THEY ARE USING TO RECOMMEND BASE CLOSURE OF GUAM'S BASES, IS NOT THE CRITERIA SET BY FEDERAL LAW, BUT RATHER THE NAVY'S TRUE CRITERIA IS PART OF AN ONGOING DEFACTO HIDDEN AGENDA WHICH THE NAVY HAS MANIFESTED SINCE SHORTLY AFTER WORLD WAR II.

WHEN YOU REVIEW ALL OF THE WRITTEN TESTIMONY WHICH I, ALONG WITH TEAM GUAM, AM SUBMITTING, YOU CAN

ONLY CONCLUDE THAT GUAM'S BASES SHOULD NOT BE CLOSED. IF, IN YOUR WISDOM, YOU SHOULD DECIDE TO CLOSE SOME FACILITIES, I AM JOINING WITH TEAM GUAM IN ASKING THAT THE REAL PROPERTY ASSETS INVOLVED BE RETURNED TO THE PEOPLE OF GUAM.

ONCE AGAIN, THANK YOU FOR THIS OPPORTUNITY, AND PLEASE, DON'T BE FOOLED BY THE NAVY. LOOK CAREFULLY AT THE TRUE MOTIVES AND CRITERIA OF THE NAVY IN RECOMMENDING THE CLOSURE OF BASES ON GUAM,

IN CLOSING, I REITERATE THAT THE TRUE CRITERIA THAT THE NAVY IS USING AS TO ITS RECOMMENDATIONS TO THE BRAC COMMISSION ARE TO DEPRESS THE ECONOMY OF GUAM TO INSURE THE FUTURE INFLUENCE OF THE NAVY OVER GUAM'S AFFAIRS AND TO KEEP ONE THIRD OF THE ISLAND MOTHBALLED, JUST IN CASE OF FUTURE NEEDS BY THE US NAVY.

PLEASE CONSIDER AS PART OF MY TESTIMONY THE RATHER LENGTHY WRITTEN TESTIMONY AND SUMMARY

THEREOF WHICH I AM SUBMITTING, ALONG WITH ATTACHED
DOCUMENTS.

Document Separator

WRITTEN SUMMARY

HONORABLE DON PARKINSON

SPEAKER

23RD GUAM LEGISLATURE

AGANA , GUAM

BEFORE THE

BASE REALIGNMENT & CLOSURE COMMISSION

APRIL 28 , 1995

SAN FRANCISCO, CALIFORNIA

HONORABLE COMMISSIONERS, I AM SENATOR DON PARKINSON,
SPEAKER OF THE 23RD GUAM LEGISLATURE.

COMMISSIONERS, THE INTENT OF THIS SECTION OF OUR
TESTIMONY IS TO SENSITIZE YOU TO THE HISTORICAL CIRCUMSTANCES
OF THE ECONOMIC DEVELOPMENT OF GUAM. IT IS OUR CONTENTION
THAT THESE CIRCUMSTANCES APPROPRIATELY WARRANT THAT
DISCRETION AND FLEXIBILITY BE EXERCISED IN THE BRAC
COMMISSION'S FINAL DETERMINATION ON CLOSURE AND
REALIGNMENT.

THE POLITICAL, SOCIAL AND ECONOMIC DREAMS OF OUR PEOPLE
ARE BEING PURSUED UPON ONE OF THE MOST ECONOMICALLY VIABLE
PIECES OF REAL ESTATE IN THE WESTERN PACIFIC. IT IS TO OUR GOOD
FORTUNE THAT OUR REAL PROPERTY BASE, NATURAL RESOURCES AND
GEOGRAPHIC LOCATION HAS THE CURRENT DAY POTENTIAL OF
PROVIDING THE FOUNDATION FOR OUR ECONOMIC INDEPENDENCE.
UNFORTUNATELY, THEREIN LAYS THE PROBLEM.

INDEPENDENCE, ECONOMIC OR OTHERWISE, WHEN APPLIED TO
THE VENUE OF A NON-SELF-GOVERNING TERRITORY, IS INSTINCTIVELY
TAKEN TO BE INIMICAL TO THE PRESERVATION OF THE SPHERE OF
INFLUENCE OF THE DEPARTMENT OF DEFENSE AND THE
BUREAUCRATIC ZOO KEEPERS IN INTERIOR. IRONICALLY, THOUGH
RARELY TAKEN SERIOUSLY, ECONOMIC INDEPENDENCE, OR IF YOU
PREFER, ECONOMIC SELF-SUFFICIENCY AND RESPONSIBILITY, IS THE
TOUTED GOAL OF EVERY FEDERAL BUREAUCRAT AND POLITICIAN IN
THE UNION.

OUR RATHER UNIQUE PROBLEM LAYS IN GUAM'S *STRATEGIC* GEOGRAPHIC PLACEMENT UPON AN INTERNATIONAL CHESS BOARD, WITH MALLEABLE RULES DETERMINED BY INTERNATIONAL CONSIDERATIONS. CONSIDERED LESS IMPORTANT THAN A PAWN, THE OLYMPIAN AGENDAS OF THE FEDERAL PLAYERS REPEATEDLY UNDERMINE THE OPTIMAL REALIZATION OF OUR PEOPLES ECONOMIC OPPORTUNITIES.

UNFORTUNATELY, OUR VOCAL EFFORTS TO BECOME PLAYERS IN THE GAME HAVE BEEN PERCEIVED AS ANIMUS ANIMOSITY TOWARDS THE MILITARY SPECIFICALLY, AND THE FEDERAL GOVERNMENT IN GENERAL. COMMISSIONERS, WHAT YOU ARE OBSERVING ON GUAM IS NOT ANGER AGAINST AN ENEMY, BUT RATHER, THE VENTING OF OUR RAPIDLY RISING FRUSTRATION. WE ARE REPEATEDLY TOLD TO BE ECONOMICALLY SELF-SUFFICIENT, THEN ARE CUT OFF AT THE KNEES WHEN WE TRY. SIMPLY STATED, WE FIND OUR 96 YEAR STATUS AS AN INDENTURED PRIZE-OF-WAR UNACCEPTABLE.

AN EXAMINATION OF THE HISTORIC, RESIDUAL AND CURRENT IMPACT OF FEDERAL CONDUCT ON GUAM, AND ITS EFFECT UPON OUR PEOPLE, MUST BEGIN FROM TWO SEPARATE POINTS IN TIME - 1898 AND 1963. GUAM IN 1995, IS A COMMUNITY COMPRISED OF AN INDIGENOUS AND IMMIGRANT POPULATION. DUE IN GREAT PART TO THE HOSPITABLE PACIFIC NATURE OF THE CHAMBERS, OUR LIVES AND LIFESTYLES HAVE OVER THE YEARS BECOME INTERTWINED. FOR ALL OUR DIFFERENCES, WE HAVE BECOME A DYNAMIC COMMUNITY WORKING TOWARDS A COMMON FUTURE. OUR EXPERIENCES UNDER FEDERAL POLICIES BEGIN 64 YEARS APART.

WITH TREATY OF PARIS, BEGAN THE TUMULTUOUS LEGAL AND CULTURAL JOURNEY OF A NATIVE ISLAND PEOPLE TOWARDS THE AMERICAN WAY OF LIFE. THOUGH NOT SIGNATORIES TO THE TREATY, CHAMORROS WOULD NONE-THE-LESS SPEND THE NEXT 96 YEARS SUBJECT TO ITS PROVISION THAT THEIR, ". . . CIVIL RIGHTS AND POLITICAL STATUS. . . SHALL BE DETERMINED BY THE CONGRESS".¹ HOWEVER, PRIOR TO 1962, CONGRESS PLAYED LITTLE OR NO ROLE IN THE ECONOMIC DEVELOPMENT OF GUAM. INSTEAD GUAM AND HER PEOPLE BECAME WARDS OF THE NAVY WHO, ". . . GOVERNED" THE PEOPLE OF GUAM MUCH AS THEY COMMANDED NAVAL VESSELS OR NAVAL ESTABLISHMENTS . . ." ² IT BECAME THE STATED GOAL OF THE NAVY "TO GUIDE THEM FROM DISEASE-RIDDEN MEDIEVAL PEONAGE TO THE DIGNITY AND DEMEANOR OF A HEALTHY CITIZENRY. . ." ³

THAT THEY WERE UNABLE TO ACCOMPLISH THIS ENDEAVOR, IS REFLECTED IN NUMEROUS REPORTS WHICH CONSISTENTLY FOUND THAT, "THE AVERAGE CHAMORRO HAS VERY LITTLE IDEA OF ECONOMICS, OR THE VALUE OF MONEY. . ." ⁴. AS A RESULT, THE FUNDAMENTAL PRINCIPLES OF A MONEY ECONOMY WERE HARDLY UNDERSTOOD - IN SPITE OF 42 YEARS OF AMERICAN INFLUENCE.

THE PRE-WAR SITUATION OF PATERNALISTIC "WARDSHIP", FOLLOWED BY THE POST-WAR DESTRUCTION AND DISRUPTION, LED TO A DEEPENING DEPENDENCY OF THE CHAMORRO PEOPLE UPON THE

¹ Treaty of Peace, 1899.

² Roy E. James, Cmdr., USNR, "America's Pacific Dependencies", 1949, p. 79.

³ "Report on Guam, 1898-1950", Chief of Naval Operations, 1951, a review of the Naval Government.

⁴ Strategic Study of Guam ONI-99, Office of Chief of Naval Operations, Division of Naval Intelligence, February, 1944, p. 294.

FIDUCIARY 'GOOD WILL' OF THE UNITED STATES. IN RECOGNITION OF THE DEPENDENCY, IT WAS HELD IN 1948 THAT,

" . . . THE POLICY OF THE NAVY DEPARTMENT IS TO PREVENT THE ENTRANCE OF PRIVATE ENTERPRISES UNTIL SUCH TIME AS THE GUAMANIAN ECONOMY HAS BEEN REHABILITATED BY PAYMENT OF GUAMANIAN SETTLEMENTS, LAND ALLOCATIONS, AND RESTORATION OF CIVILIAN FACILITIES TO THE POINT WHERE THE PEOPLE HAVE THEIR GOVERNMENT ON AN EQUITABLE BASIS."⁵ [EMPHASIS ADDED]

THE STATED COMMITMENTS OF PROTECTING CHAMORRO REAL PROPERTY RESOURCES, PROVIDING REHABILITATION BY THE PAYMENT OF SETTLEMENTS, DEVELOPING A CHAMORRO DRIVEN ECONOMY, RESTORING CIVILIAN FACILITIES, AND PROVIDING SELF-GOVERNMENT ON AN EQUITABLE BASIS, WERE NEVER REALIZED. QUITE TO THE CONTRARY, THE NAVAL GOVERNMENT INSTITUTED POLICIES WHICH WOULD DIRECTLY RETARD THEIR RECOVERY, AS WELL AS EFFECTIVELY REPRESS PRIVATE SECTOR ECONOMIC DEVELOPMENT IN GENERAL.

OF THE NUMEROUS RESTRICTIONS INTRODUCED BY MILITARY AUTHORITIES ON THE NATIVE POPULATION DURING THE POST-WAR REOCCUPATION, THE MOST SEVERE WERE THE LIMITATIONS ON ENTRY TO GUAM, COMMERCE, DAY-TO-DAY ON-ISLAND TRAVEL, AND PERSONAL CONDUCT.

⁵ News Release by Navy Department, reported by United Press International, dateline Washington, D.C., December 19, 1948.

THESE POLICIES HAD SEVERAL SPECIFIC ASPECTS OF CONCRETE CONTROL, THE MOST SIGNIFICANT, FROM AN ECONOMIC DEVELOPMENT STANDPOINT, WAS THE PREVENTION OF NON-GUAMANIAN FROM ENTERING THE ISLAND TO DO BUSINESS.⁶

A SECOND METHOD OF ECONOMIC CONTROL WAS THROUGH THE IMPLEMENTATION OF A "WAGE SCHEDULE", WHICH ALLOWED STATESIDERS SIGNIFICANTLY HIGHER SALARIES THAN CHAMORROS FOR IDENTICAL WORK, WITH THE ADDED CONDITION THAT, "...ONCE A NATIVE TAKES A JOB HE CANNOT QUIT ON HIS OWN FREE WILL AND ABSENTEEISM IS PUNISHED BY FINE OR IMPRISONMENT."⁷ [EMPHASIS ADDED]

A THIRD METHOD OF LIMITING ECONOMIC ACTIVITY WAS THE CONTINUED ENFORCEMENT OF NAVY RESTRICTIONS ON THE USE, LEASE AND ALIENATION OF REAL PROPERTY BY CIVILIANS. ADDITIONALLY, LANDOWNERS WHOSE PROPERTY HAD BEEN OCCUPIED BY MILITARY AUTHORITIES WERE ALLOWED ONLY LIMITED ACCESS AND USE OF THEIR PROPERTY, SUBJECT TO IMMEDIATE EVICTION WITHOUT COMPENSATION FOR IMPROVEMENTS.⁸

THESE RESTRICTIONS UPON A CIVILIAN COMMUNITY WOULD NEVER HAVE BEEN TOLERATED IN THE UNITED STATES. DISTANCE AND REGULATORY ISOLATION BY THE NAVY SHIELDED THE NAVY'S CONDUCT FROM PUBLIC VIEW. ON GUAM, THE SPANISH AND JAPANESE HAD TAUGHT CHAMORROS WELL THAT "LAWS" ARE NOT TO BE CHALLENGED. THIS 'RESPECT' FOR THE LAW WAS FULLY APPRECIATED

⁶ Letter from Secretary of the Navy Andrews of January 29, 1948, pp. 1-2.

⁷ General Order No. 14-44, December 21, 1944.

⁸ Testimony of Frank D. Perez, Transcript, p. 52.

BY THE NAVAL GOVERNMENT AND FULLY USED TO THE NAVY'S
ADVANTAGE.

"ALL CLASSES ARE DOCILE. STAND IN GREAT AWE OF THE LAW
AND MANIFEST THE GREATEST RESPECT FOR ITS HUMBLEST
OFFICER. NO THREAT OF PERSONAL VIOLENCE MAY MOVE A
STUBBORN CHAMORRO, BUT A MENTION OF THE LAW WILL END
ALL OPPOSITION AND MAKE HIM A WILLING PRISONER, IF NOT A
DOER. . ."⁹ [EMPHASIS ADDED]

THE ULTIMATE EFFECTS OF ALL THE COMPREHENSIVE SOCIAL
AND ECONOMIC CONTROLS ON THE NATIVE INHABITANTS OF GUAM
WERE PROFOUND. COMPOUNDING THE IMPACT WAS THE COINCIDING
TAKING OF GUAM'S BEST REAL PROPERTY RESOURCES

INADEQUATE REPRESENTATION BEFORE A DEFACTO MILITARY
COURT, AND WITHOUT BENEFIT OF A JURY OR LEGITIMATE APPEAL,
EFFECTIVELY ASSURED COMPLETE NAVY CONTROL

THE TAKING OF 2/3 OF THE LAND ON GUAM EFFECTIVELY
REDUCED THE REAL PROPERTY BASE. IN ADDITION TO TAKING HUGE
AMOUNTS OF LAND, THE NAVAL ADMINISTRATION PREVENTED LAND
FROM BEING SOLD, TRANSFERRED OR LEASED KEEPING LAND PRICES AT
ROCK BOTTOM LEVELS ALLOWING FOR NO ECONOMIC MOVEMENT AS
FAR AS REAL PROPERTY IS CONCERNED.

⁹ "Strategic Study of Guam ONI-99", Office of Chief of Naval Operations, Division of Naval
Intelligence, February, 1944.

WITH THE EXECUTIVE REPEAL OF THE SECURITY CLEARANCE REQUIREMENTS IN 1963, BEGAN THE IN-MIGRATION OF GUAM'S NON-INDIGENOUS CITIZENRY. LIFE ON GUAM WOULD BEGIN TO TAKE ON NEW DIRECTION AND MEANING WITH THE BEGINNINGS OF A SELF-DIRECTED ECONOMIC AGENDA. NONE-THE-LESS, THE NAVY'S INTRANSIGENCE TOWARDS RELINQUISHING CONTROL OF UNUTILIZED LANDS WOULD CONTINUE DUE TO THE NEED TO DEVELOP AND MAINTAIN 'COLD-WAR' CONTINGENCY SCENARIOS FOR "POTENTIAL" FUTURE USE.

THE RETARDATION OF GUAM'S ECONOMY, THE EXCESSIVE TAKING AND CONTINUED RETENTION, AND THE IN-MIGRATION OF NEW ISLAND RESIDENTS, COLLECTIVELY, CREATED THE VERY CIRCUMSTANCES WHEREBY EMPLOYMENT WITH THE NAVY WOULD CONTINUE TO BE THE MAJOR JOB/CAREER OPPORTUNITY AVAILABLE THROUGH THE 1960'S AND '70'S, ON INTO THE MID-1980'S. IT IS THESE SAME PEOPLE, AND, NOW, THEIR CHILDREN, WHO PURSUE CAREERS IN THE FACILITIES PROPOSED FOR CLOSURE UNDER BRAC '95.

THE 1980'S SAW GUAM'S PRIVATE SECTOR ECONOMY NOT ONLY TAKE HOLD, BUT TAKE OFF! TODAY, IN 1995, PRIVATE SECTOR REVENUES EXCEED ALL OTHER SOURCES. NONE-THE-LESS, THE REVENUE GENERATED FROM FEDERAL ACTIVITIES AND EMPLOYEES CONTINUES TO PROVIDE THE ECONOMIC STIMULUS REQUIRED TO BALANCE GUAM'S ECONOMY.

NOT ALL HAVE REJOICED IN THE SUCCESS ACHIEVED IN GUAM'S JOURNEY TOWARDS ECONOMIC SELF-SUFFICIENCY BASED UPON A GUAM DRIVEN AGENDA. WITH THE APPROACH OF ECONOMIC SELF-SUFFICIENCY AND THE ENDING OF THE 'COLD WAR', CAME A RENEWED

AND GREATLY INTENSIFIED PRIVATE SECTOR CALL FOR THE MILITARY TO LEGITIMATELY RE-EVALUATE LAND USE REQUIREMENTS.

THE INABILITY TO JUSTIFY NEEDS, BEYOND THE SCOPE OF A POTENTIAL WORST CASE CONTINGENCY SCENARIO, EVENTUALLY MOVED THE NAVY TO PREVAIL UPON OTHER FEDERAL AGENCIES TO PROVIDE A MORE OBFUSCATED MEANS OF DEFACTO NAVY CONTROL. TOWARDS THIS END, WITH THE ACTIVE AID AND SUPPORT OF THE DEPARTMENT OF THE INTERIOR, THE NAVY AND AIR FORCE BEGAN TO PROFFER AN IMAGE OF 'ENVIRONMENTAL ENLIGHTMENT'.

AS IF BY ORIGINAL DESIGN, THE HISTORIC RETENTION OF VAST TRACTS OF UNUSED LAND IS TO NOW BE CREDITED FOR PROTECTING, AND, GIVE OR TAKE A FEW DOZEN FEDERAL HAZARDOUS WASTE SITES, PRESERVING IT IN ITS' NATURAL STATE. AS 'STEWARDS OF THE LAND' THEY ARE NOW DETERMINED TO CONTINUE THEIR MISSION OF PROTECTING GUAM'S ENVIRONMENT, ALBEIT, FROM THE PEOPLE OF GUAM; UNDER THE GUISE OF BEING FOR THE PEOPLE OF GUAM.

THE FEDERAL DESIGNATION OF GUAM'S NORTHWESTERN COASTLINE AS A MARINE PRESERVE, AND THE ADJACENT 22,000 ACRES AS A WILDLIFE REFUGE, WAS ENACTED IN SPITE OF STRONG OPPOSITION FROM GUAM'S POLITICAL LEADERS. IT WAS NOT THAT PRESERVATION IS OBJECTIONABLE, BUT RATHER, OUR BELIEF THAT SUCH A DETERMINATION IS RIGHTFULLY THE PREROGATIVE OF OUR PEOPLE. WE CANNOT SWALLOW THE OBFUSCATED OBJECTIVE OF LAND RETENTION; ESPECIALLY, WHEN SUCH INTENT IS SO THINLY CLOAKED WITHIN A REFUGE AGREEMENT WHICH SPECIFICALLY PROVIDES FOR FUTURE MILITARY USE BASED UPON REQUIREMENTS PREMISED UPON A

SEEMINGLY NEVER ENDING, AND OBVIOUSLY NEVER USED, LIST OF CONTINGENCY SCENARIOS.

TODAY, IN 1995, WE AGAIN SEE AN ATTEMPT TO CLOAK CONTINUED RETENTION. THIS TIME UNDER QUESTIONABLE GUISE OF A COST EFFECTIVE MOTHBALLING SCENARIO. THIS PROPOSAL IS PORTRAYED AS AN EXPEDITIOUS MEANS TO ENSURE A TIMELY RESPONSE TO FUTURE CRISISES, AS YET PREDICTED BY STILL MORE CONTINGENCY SCENARIOS.

IF THERE IS ONE THING THE NAVY SHOULD HAVE LEARNED IN THEIR 96 YEARS ON GUAM, IT'S THAT OUR TROPICAL SALT-LADEN ENVIRONMENT IS HOSTILE TO ANYTHING 'MOTHBALLED'. A HIGH MAINTENANCE BUDGET, WILL PRESERVE NOTHING BUT RUST. THE NAVY'S PROPOSED 'LOOSE-LOOSE' SCENARIO, WILL LEAVE THEM WITHOUT READY ACCESS TO VIABLE ASSETS, AND, THE PEOPLE OF GUAM, WILL BE WITHOUT THE NECESSARY LAND RESOURCE REQUIRED TO BALANCE OUR ECONOMY.

WE SEE IT AS TRAGIC THAT OBSCURE NAVAL AGENDAS MAY AGAIN BE USED TO CAST ASIDE THE HOPES AND DREAMS OF OUR PEOPLE; AS OPPOSED TO OUR BECOMING PARTNERS IN A MUTUALLY BENEFICIAL CONTINGENCY SCENARIO. TODAY'S ACTIONS CANNOT HELP BUT DIRECTLY IMPACT EVERY ASPECT OF OUR POLITICAL, ECONOMIC AND SOCIAL STRUCTURE.

COMMISSIONERS, OUR TESTIMONY IS NOT A DEBATE ON THE GOOD OR BAD INTENT OF AMERICA'S CONDUCT RELATIVE TO THE PEOPLE OF GUAM. IT IS A HISTORY OF IT AND THE LINGERING EFFECT;

THE SEVERITY OF WHICH IS COMPOUNDED BY BRAC '95. REGARDLESS OF INTENT, FEDERAL AGENDAS ARE ONCE AGAIN UNDERMINING THE POLITICAL, ECONOMIC AND SOCIAL FOUNDATION OF OUR ISLAND COMMUNITY.

A PRECURSOR TO CHANGE IS *WILLINGNESS*. THOUGH CITATIONS OF LAW MAY PROVIDE IMPEDIMENTS, YOU NONE-THE-LESS POSSESS THE MEANS OF DISPENSING A SMALL MEASURE OF EQUITY. WHAT MAY BE PORTRAYED AS LEGAL OR ILLEGAL, POSSIBLE OR NOT POSSIBLE, IS NOT NECESSARILY REFLECTIVE OF WHAT IS EQUITABLE. THOUGH THE COMMISSION IS NOT A COURT TASKED WITH THE RETRIAL OF A DARK HISTORY, YOU NONE-THE-LESS HAVE AN OPPORTUNITY TO RENDER A JUST DECISION IN YOUR EXECUTION OF THE BRAC PROCESSES.

IT IS TO THE MANNER IN WHICH POLICY RELATIVE TO THE BRAC PROCESSES ARE TO BE EXECUTED THAT WE NOW FOCUS OUR CONCERNS. THE BRAC PROCESS REMAINS A PROCESS WHICH WAS NOT CREATED FOR THE PURPOSE OF ADDRESSING GUAM'S UNIQUE SITUATION. THIS LEAVES BEGGING TWO QUESTIONS: 1). HAS THE NAVY FOLLOWED THE CRITERIA MANDATED BY LAW IN RECOMMENDING CLOSURE OF GUAM'S BASES?, AND 2). DO THE DISCRETIONARY POWERS OF THE BRAC COMMISSION ALLOW FOR THE ADMINISTRATIVE APPLICATION OF DECISIONS WEIGHED ON THE SCALE OF JUSTICE AND MEASURED BY THE YARDSTICK OF 'AMERICAN FAIR PLAY'?

PLEASE SEE MY ORAL TESTIMONY FOR A SUMMATION OF THESE ARGUMENTS AND THE CONCLUSIONS TO BE DRAWN THEREFROM.

Document Separator

**WRITTEN
PRESENTATION BY**

**HONORABLE DON PARKINSON
SPEAKER
23RD GUAM LEGISLATURE
AGANA, GUAM**

TO

**BASE REALIGNMENT & CLOSURE COMMISSION.
APRIL 28, 1995
SAN FRANCISCO, CALIFORNIA**

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INTRO

HONORABLE COMMISSIONERS, {for the record,} I AM SENATOR DON PARKINSON, SPEAKER OF THE 23RD GUAM LEGISLATURE. ALLOW ME TO BEGIN BY SINCERELY THANKING YOU FOR THIS OPPORTUNITY TO TESTIFY ON BEHALF OF THE 23RD GUAM LEGISLATURE AND THE PEOPLE OF GUAM.

COMMISSIONERS, THE OBVIOUS INTENT OF THIS SECTION OF OUR TESTIMONY IS TO SENSITIZE YOU TO THE HISTORICAL CIRCUMSTANCES OF THE PEOPLE OF GUAM. IT IS OUR CONTENTION THAT THESE CIRCUMSTANCES APPROPRIATELY WARRANT THAT HUMANE DISCRETION AND FLEXIBILITY BE EXERCISED IN THE BRAC COMMISSION'S FINAL DETERMINATION ON CLOSURE.

THE POLITICAL, SOCIAL AND ECONOMIC DREAMS OF OUR PEOPLE ARE BEING PURSUED UPON ONE OF THE MOST ECONOMICALLY VIABLE PIECES OF REAL ESTATE IN THE WESTERN PACIFIC. IT IS TO OUR GOOD FORTUNE THAT OUR REAL PROPERTY BASE, NATURAL RESOURCES AND GEOGRAPHIC LOCATION HAS THE POTENTIAL OF PROVIDING THE FOUNDATION FOR GUAM'S ECONOMIC INDEPENDENCE. UNFORTUNATELY, THEREIN LAYS THE PROBLEM.

INDEPENDENCE, ECONOMIC OR OTHERWISE, WHEN APPLIED TO THE VENUE OF A NON-SELF-GOVERNING TERRITORY, IS INSTINCTIVELY TAKEN TO BE INIMICAL TO THE PRESERVATION OF THE SPHERE OF INFLUENCE OF THE DEPARTMENT OF DEFENSE AND THE BUREAUCRATIC ZOO KEEPERS IN INTERIOR. IRONICALLY, THOUGH RARELY TAKEN SERIOUSLY, ECONOMIC INDEPENDENCE, OR IF YOU PREFER, ECONOMIC

SELF-SUFFICIENCY AND RESPONSIBILITY, IS THE TOUTED GOAL OF EVERY FEDERAL BUREAUCRAT AND POLITICIAN IN THE UNION.

OUR RATHER UNIQUE PROBLEM LAYS IN GUAM'S *STRATEGIC* GEOGRAPHIC¹ PLACEMENT UPON AN INTERNATIONAL CHESS BOARD, WITH MALLEABLE RULES DETERMINED BY INTERNATIONAL CONSIDERATIONS. CONSIDERED LESS IMPORTANT THAN A PAWN, THE OLYMPIAN AGENDAS OF THE FEDERAL PLAYERS REPEATEDLY UNDERMINE THE OPTIMAL REALIZATION OF OUR PEOPLES ECONOMIC OPPORTUNITIES.

UNFORTUNATELY, OUR VOCAL EFFORTS TO BECOME PLAYERS IN THE GAME HAVE BEEN PERCEIVED AS ANIMUS ANIMOSITY TOWARDS THE MILITARY SPECIFICALLY, AND THE FEDERAL GOVERNMENT IN GENERAL. COMMISSIONERS, WHAT YOU ARE OBSERVING ON GUAM IS NOT ANGER AGAINST AN ENEMY, BUT RATHER, THE VENTING OF OUR RAPIDLY RISING FRUSTRATION. WE ARE REPEATEDLY TOLD TO BE ECONOMICALLY SELF-SUFFICIENT, THEN ARE CUT OFF AT THE KNEES WHEN WE TRY. SIMPLY STATED, WE FIND OUR 96 YEAR STATUS AS AN INDENTURED PRIZE-OF-WAR UNACCEPTABLE.

IN FAIRNESS TO OUR PEOPLE, YOUR DELIBERATIONS SHOULD BE EXPANDED BEYOND THE TECHNICAL SCOPE OF DETERMINING THE DISPOSITION OF FEDERAL LAND AND ASSETS RELATIVE TO BRAC PROCESSES. OUR HISTORY, WHICH IS PART AND PARCEL TO TODAY'S ECONOMIC HANDICAP, MANDATES THAT ECONOMIC EQUITY BE A PART OF YOUR FINAL DETERMINATION. IN THIS LIGHT, I RESPECTFULLY

¹ 13.4 deg. N. Lat. / 146.3 deg. E. Longitude.

SUBMIT THAT THE COMMISSION CANNOT DISASSOCIATE OR EXCLUDE THIS ARGUMENT AS NON-GERMANE.

AN EXAMINATION OF THE HISTORIC, RESIDUAL AND CURRENT IMPACT OF FEDERAL CONDUCT ON GUAM, AND ITS EFFECT UPON OUR PEOPLE, MUST BEGIN FROM TWO SEPARATE POINTS IN TIME - 1898 AND 1963. GUAM IN 1995, IS A COMMUNITY COMPRISED OF AN INDIGENOUS AND IMMIGRANT POPULATION. DUE IN GREAT PART TO THE HOSPITABLE PACIFIC NATURE OF THE CHAMORROS, OUR LIVES AND LIFESTYLES HAVE OVER THE YEARS BECOME INTERTWINED. FOR ALL OUR DIFFERENCES, WE HAVE BECOME A DYNAMIC COMMUNITY WORKING TOWARDS A COMMON FUTURE. NONE-THE-LESS, OUR EXPERIENCES UNDER FEDERAL POLICIES BEGIN 64 YEARS APART.

WITH TREATY OF PARIS, BEGAN THE TUMULTUOUS LEGAL AND CULTURAL JOURNEY OF A NATIVE ISLAND PEOPLE TOWARDS THE AMERICAN WAY OF LIFE. THOUGH NOT SIGNATORIES TO THE TREATY, CHAMORROS WOULD NONE-THE-LESS SPEND THE NEXT 96 YEARS SUBJECT TO ITS PROVISION THAT THEIR, ". . . CIVIL RIGHTS AND POLITICAL STATUS. . . SHALL BE DETERMINED BY THE CONGRESS".² FOR WANT OF CONGRESSIONAL POLICY, HOWEVER, CHAMORROS FOUND THEMSELVES AS WARDS OF THE NAVY WHO, ". . . GOVERNED" THE PEOPLE OF GUAM MUCH AS THEY COMMANDED NAVAL VESSELS OR NAVAL ESTABLISHMENTS . . ." ³ NONE-THE-LESS, IT BECAME THE STATED GOAL OF THE NAVY WAS "TO GUIDE THEM FROM DISEASE-RIDDEN MEDIEVAL PEONAGE TO THE DIGNITY AND DEMEANOR OF A HEALTHY CITIZENRY. . ." ⁴

² Treaty of Paris, 1899.

³ Roy E. James, Cmdr., USNR, "America's Pacific Dependencies", 1949, p. 79.

⁴ "Report on Guam, 1898-1950", Chief of Naval Operations, 1951, a review of the Naval Government.

THAT THEY WERE UNABLE TO ACCOMPLISH THIS ENDEAVOR, IS REFLECTED IN NUMEROUS REPORTS WHICH CONSISTENTLY FOUND THAT, *"THE AVERAGE CHAMORRO HAS VERY LITTLE IDEA OF ECONOMICS, OR THE VALUE OF MONEY. . ."*⁵ AS A RESULT, THE FUNDAMENTAL PRINCIPLES OF A MONEY ECONOMY WERE HARDLY UNDERSTOOD - IN SPITE OF 42 YEARS OF AMERICAN INFLUENCE.

THE PRE-WAR SITUATION OF PATERNALISTIC "WARDSHIP", FOLLOWED BY THE POST-WAR DESTRUCTION AND DISRUPTION, LED TO A DEEPENING DEPENDENCY OF THE CHAMORRO PEOPLE UPON THE FIDUCIARY 'GOOD WILL' OF THE UNITED STATES. IN RECOGNITION OF THE DEPENDENCY, IT WAS HELD IN 1948 THAT,

" . . .THE POLICY OF THE NAVY DEPARTMENT IS TO PREVENT THE ENTRANCE OF PRIVATE ENTERPRISES UNTIL SUCH TIME AS THE GUAMANIAN ECONOMY HAS BEEN REHABILITATED BY PAYMENT OF GUAMANIAN SETTLEMENTS, LAND ALLOCATIONS, AND RESTORATION OF CIVILIAN FACILITIES TO THE POINT WHERE THE PEOPLE HAVE THEIR GOVERNMENT ON AN EQUITABLE BASIS."⁶ [EMPHASIS ADDED]

THE STATED COMMITMENTS OF PROTECTING CHAMORRO REAL PROPERTY RESOURCES, PROVIDING REHABILITATION BY THE PAYMENT OF SETTLEMENTS, DEVELOPING A CHAMORRO DRIVEN ECONOMY, RESTORING CIVILIAN FACILITIES, AND PROVIDING SELF-GOVERNMENT

⁵ Strategic Study of Guam ONI-99, Office of Chief of Naval Operations, Division of Naval Intelligence, February, 1944, p. 294.

⁶ News Release by Navy Department, reported by United Press International, dateline Washington, D.C., December 19, 1948, p. 294.

ON AN EQUITABLE BASIS, WERE NEVER REALIZED. QUITE TO THE CONTRARY, THE NAVAL GOVERNMENT INSTITUTED POLICIES WHICH WOULD DIRECTLY RETARD THEIR RECOVERY, AS WELL AS EFFECTIVELY REPRESS PRIVATE SECTOR ECONOMIC DEVELOPMENT IN GENERAL.

OF THE NUMEROUS RESTRICTIONS INTRODUCED BY MILITARY AUTHORITIES ON THE NATIVE POPULATION DURING THE POST-WAR REOCCUPATION, THE MOST SEVERE WERE THE LIMITATIONS ON ENTRY TO GUAM, COMMERCE, DAY-TO-DAY ON-ISLAND TRAVEL, AND PERSONAL CONDUCT.

THESE POLICIES HAD SEVERAL SPECIFIC ASPECTS OF CONCRETE CONTROL, THE MOST SIGNIFICANT, FROM AN ECONOMIC DEVELOPMENT STANDPOINT, WAS THE PREVENTION OF NON-GUAMANIAN FROM ENTERING THE ISLAND TO DO BUSINESS.⁷

A SECOND METHOD OF ECONOMIC CONTROL WAS THROUGH THE IMPLEMENTATION OF A "WAGE SCHEDULE", WHICH ALLOWED STATESIDERS SIGNIFICANTLY HIGHER SALARIES THAN CHAMORROS FOR IDENTICAL WORK, WITH THE ADDED CONDITION THAT, "...ONCE A NATIVE TAKES A JOB HE CANNOT QUIT ON HIS OWN FREE WILL AND ABSENTEEISM IS PUNISHED BY FINE OR IMPRISONMENT."⁸ [EMPHASIS ADDED]

A THIRD METHOD OF LIMITING ECONOMIC ACTIVITY WAS THE CONTINUED ENFORCEMENT OF NAVY RESTRICTIONS ON THE USE, LEASE

⁷ Letter from Secretary of the Navy Andrews of January 29, 1948, pp. 1-2.

⁸ General Order No. 14-44, December 21, 1944. Source: Thompson, Laura, "Guam & Its People", 1947 ed.; citing Roy E. James, USNR, "Military Government: Guam", Far Eastern Survey, Volume 15, Nov. 18, 1946, p. 275.

AND ALIENATION OF REAL PROPERTY BY CIVILIANS. ADDITIONALLY, LANDOWNERS WHOSE PROPERTY HAD BEEN OCCUPIED BY MILITARY AUTHORITIES WERE ALLOWED ONLY LIMITED ACCESS AND USE OF THEIR PROPERTY, SUBJECT TO IMMEDIATE EVICTION WITHOUT COMPENSATION FOR IMPROVEMENTS.⁹

THOUGH THESE RESTRICTIONS UPON A CIVILIAN COMMUNITY WOULD NEVER HAVE BEEN TOLERATED IN THE UNITED STATES, DISTANCE AND REGULATORY ISOLATION EFFECTIVELY SHIELDED NAVY CONDUCT PUBLIC VIEW. ON GUAM, THE SPANISH AND JAPANESE HAD TAUGHT CHAMORROS WELL THAT "LAWS" ARE NOT TO BE CHALLENGED. THIS 'RESPECT' FOR THE LAW WAS FULLY APPRECIATED BY THE NAVAL GOVERNMENT:

"ALL CLASSES ARE DOCILE, STAND IN GREAT AWE OF THE LAW AND MANIFEST THE GREATEST RESPECT FOR ITS HUMBLEST OFFICER. NO THREAT OF PERSONAL VIOLENCE MAY MOVE A STUBBORN CHAMORRO, BUT A MENTION OF THE LAW WILL END ALL OPPOSITION AND MAKE HIM A WILLING PRISONER, IF NOT A DOER. . ."¹⁰ [EMPHASIS ADDED]

THE ULTIMATE EFFECTS OF ALL THE COMPREHENSIVE SOCIAL AND ECONOMIC CONTROLS ON THE NATIVE INHABITANTS OF GUAM WERE PROFOUND. COMPOUNDING THE IMPACT WAS THE COINCIDING TAKING OF GUAM'S BEST REAL PROPERTY RESOURCES - WITHOUT JUST COMPENSATION.

⁹ Hearings on Organic Act of Guam, Sub-Committee on Public Lands, U.S. House of Representatives, November, 1949, Testimony of Frank D. Perez, Transcript, p. 52.

¹⁰ "Strategic Study of Guam ONI-99", Office of Chief of Naval Operations, Division of Naval Intelligence, February, 1944, p. 287.

INADEQUATE REPRESENTATION BEFORE A DE FACTO MILITARY COURT, SUBJECT TO LAWS WHICH, ARGUABLY, FACILITATED THE TAKING WHILE SIGNIFICANTLY MINIMIZING U.S. LIABILITIES, WITHOUT BENEFIT OF A JURY OR LEGITIMATE APPEAL, EFFECTIVELY DENIED CHAMORRO LANDOWNERS THE MOST BASIC OF RIGHTS DEEMED SACRED BY AMERICANS - WHICH CHAMORROS WERE NOT.

AS A CONSEQUENCE OF THE TAKING IN EXCESS OF 2/3 OF THE ISLAND, THE AVAILABLE PRIVATE SECTOR REAL PROPERTY RESOURCE BASE WAS SUBSTANTIALLY REDUCED. CONSISTENT WITH THE *LAW OF SUPPLY AND DEMAND*, THE REMAINING PRIVATELY HELD LANDS SUBSTANTIALLY INCREASED IN VALUE. AWARDS, WHEN PROVIDED, WERE BY NO MEANS ADEQUATE SINCE THE BENCHMARK PERIOD FOR FAIR MARKET VALUE WAS HELD TO 1941 - WELL PRIOR TO THE TIME OF TAKING. FURTHER, THESE ARBITRARY VALUATIONS WERE PREMISED UPON AN ARTIFICIALLY REPRESSED ECONOMY, THE REPRESSION OF WHICH CAN BE DIRECTLY ATTRIBUTED TO THE CONDUCT OF THE PARTY EXERCISING EMINENT DOMAIN.

THE INITIAL MILITARY LEASEHOLD TAKING OF THE 1940'S WERE CONVERTED TO TAKING IN FEE IN THE DISTRICT COURT OF GUAM IN THE EARLY 1950'S, WITHOUT ADDITIONAL COMPENSATION. THE ABILITY JUDICIALLY REVISIT THE TAKING CAME IN 1977, WITH THE STIPULATION THAT CLAIMANTS MUST PROVE THAT, "LESS THAN FAIR MARKET WAS PAID AS A RESULT OF (1) DURESS, UNFAIR INFLUENCE OR OTHER UNCONSCIONABLE ACTIONS OR (2) UNFAIR AND INEQUITABLE ACTIONS OF THE UNITED STATES." ¹¹

¹¹ U.S. P.L. 95-134 (Title II, Section 204) - (Omnibus Territories Act of 1977).

DURING THESE PROCEEDINGS, IT WAS THE OPINION OF THE COURT, BASED UPON INTENT PROVIDED IN THE CONGRESSIONAL RECORD, THAT THE EXISTENCE OF SECURITY CLEARANCE RESTRICTIONS WERE NOT TO BE CONSIDERED SUFFICIENT DEMONSTRATION OF UNFAIR INFLUENCE OR INEQUITABLE ACTIONS BY THE UNITED STATES. ALTHOUGH A CLEAR DOMINANT/DEPENDENT RELATIONSHIP WAS DEMONSTRATED TO EXIST FROM 1898 THROUGH 1963, IT WAS, SUBSEQUENTLY, FURTHER OPINIONED, THAT, "A FIDUCIARY OR TRUST RELATIONSHIP DOES NOT EXIST BETWEEN THE UNITED STATES AND THE GUAMANIAN PEOPLE . . . " [SINCE] ". . . GUAM WAS CEDED TO THE UNITED STATES BY SPAIN THROUGH THE TREATY OF PARIS. IT IS NOT A TREATY WITH THE GUAMANIAN PEOPLE."¹² SUBSEQUENTLY, IT WAS DECIDED BY THE COURT THAT FAIR MARKET VALUATIONS, AS WAS DETERMINED TO BE FAIR IN 1986, WERE TO BE HELD TO THE BENCHMARK YEAR OF 1953.

EVEN WHEN CUMULATIVELY CONSIDERED, COMPENSATION AWARDED TO DATE NEVER CLOSED THE GAP BETWEEN THE LAND LOST AND THE ABILITY TO REPLACE IT. THUS, THE PROFOUND AND LASTING EFFECTS REALIZED UNDERMINE THEIR 1995 ABILITY TO EQUITABLY PARTICIPATE IN GUAM'S ECONOMY.

WITH THE EXECUTIVE REPEAL OF THE SECURITY CLEARANCE REQUIREMENTS IN 1963, BEGAN THE IN-MIGRATION OF GUAM'S NON-INDIGENOUS CITIZENRY. LIFE ON GUAM WOULD BEGIN TO TAKE ON NEW DIRECTION AND MEANING WITH THE BEGINNINGS OF A SELF-

¹² In the Matter of Guam Land Cases Filed Under the Provisions of the Omnibus Territories Act of 1977 and which were Subject to Option 3 Elections, No. C-78-0044 MF ET AL; Response to Plaintiffs' Motion In Limine and Supporting Memorandum Regarding the Existence and Effect of the Fiduciary Relationship Between Guam and the United States (December 19, 1988).

DIRECTED ECONOMIC AGENDA. NONE-THE-LESS, THE NAVY'S INTRANSIGENCE TOWARDS RELINQUISHING CONTROL OF UN-UTILIZED LANDS WOULD CONTINUE DUE TO THE NEED TO DEVELOP AND MAINTAIN 'COLD-WAR' CONTINGENCY SCENARIOS FOR "POTENTIAL" FUTURE USE.

THE RETARDATION OF GUAM'S ECONOMY, AND THE EXCESSIVE LAND TAKING AND CONTINUED RETENTION WITHOUT JUSTE COMPENSATION, CUMULATIVELY CREATED THE VERY CIRCUMSTANCES WHEREBY EMPLOYMENT WITH THE NAVY WOULD CONTINUE TO BE THE MAJOR JOB/CAREER OPPORTUNITY AVAILABLE THROUGH THE 1960'S AND '70'S, ON INTO THE EARLY-1980'S. IT IS THESE VERY SAME PEOPLE, AND NOW THEIR CHILDREN, WHO PURSUE CAREERS IN THE FACILITIES PROPOSED FOR CLOSURE UNDER BRAC '95.

THE 1980'S SAW GUAM'S PRIVATE SECTOR ECONOMY NOT ONLY TAKE HOLD, BUT TAKE OFF! TODAY, IN 1995, PRIVATE SECTOR REVENUES EXCEED ALL OTHER SOURCES. NONE-THE-LESS, THE REVENUE GENERATED FROM FEDERAL ACTIVITIES AND EMPLOYEES CONTINUES TO PROVIDE THE ECONOMIC STIMULUS REQUIRED TO BALANCE GUAM'S ECONOMY.

UNFORTUNATELY, NOT ALL HAVE REJOICED IN THE SUCCESS ACHIEVED IN GUAM'S JOURNEY TOWARDS ECONOMIC SELF-SUFFICIENCY BUILT UPON A LOCALLY DRIVEN AGENDA. WITH THE APPROACH OF ECONOMIC SELF-SUFFICIENCY AND THE ENDING OF THE 'COLD WAR', CAME A RENEWED AND GREATLY INTENSIFIED PRIVATE SECTOR CALL FOR THE MILITARY TO LEGITIMATELY RE-EVALUATE LAND USE REQUIREMENTS.

THE INABILITY TO JUSTIFY NEEDS, BEYOND THE SCOPE OF A POTENTIAL WORST CASE CONTINGENCY SCENARIO, EVENTUALLY MOVED THE NAVY TO PREVAIL UPON OTHER FEDERAL AGENCIES TO PROVIDE A MORE OBFUSCATED MEANS OF DE FACTO NAVY CONTROL. TOWARDS THIS END, WITH THE ACTIVE AID AND SUPPORT OF THE DEPARTMENT OF THE INTERIOR, THE NAVY AND AIR FORCE BEGAN TO PROFFER AN IMAGE OF 'ENVIRONMENTAL ENLIGHTENMENT'.

AS IF BY ORIGINAL DESIGN, THE HISTORIC RETENTION OF VAST TRACTS OF UNUSED LAND ARE TO NOW BE CREDITED FOR PROTECTING, AND, GIVE OR TAKE A FEW DOZEN FEDERAL HAZARDOUS WASTE SITES, PRESERVING IT IN ITS' NATURAL STATE. AS 'STEWARDS OF THE LAND' THEY ARE NOW DETERMINED TO CONTINUE THEIR MISSION OF PROTECTING GUAM'S ENVIRONMENT, ALBEIT, FROM THE ECONOMIC RAVAGES OF THE PEOPLE OF GUAM.

THE FEDERAL DESIGNATION OF GUAM'S NORTHWESTERN COASTLINE AS A MARINE PRESERVE, AND THE ADJACENT 22,000 ACRES AS A WILDLIFE REFUGE, WAS ENACTED IN SPITE OF STRONG OPPOSITION FROM GUAM'S POLITICAL LEADERS. IT WAS NOT THAT PRESERVATION IS OBJECTIONABLE, BUT RATHER, OUR BELIEF THAT SUCH A DETERMINATION IS RIGHTFULLY THE PREROGATIVE OF OUR PEOPLE. WE CANNOT SWALLOW THE OBFUSCATED OBJECTIVE OF LAND RETENTION; ESPECIALLY, WHEN SUCH INTENT IS SO THINLY CLOAKED WITHIN A REFUGE AGREEMENT WHICH SPECIFICALLY PROVIDES FOR FUTURE MILITARY USE, AND MOST LIKELY BASED UPON REQUIREMENTS PREMISED UPON A SEEMINGLY NEVER ENDING, AND OBVIOUSLY RARELY- USED, LIST OF CONTINGENCY SCENARIOS.

DURING THE PAST FIFTY YEARS WE HAVE SEEN GUAM'S STRATEGIC VALUE DECLINE RELATIVE TO A POLITICAL ENVIRONMENT SLOWLY EVOLVING TOWARDS UNIVERSAL PEACE. AS RECENTLY AS THE LATE '70'S AND EARLY '80, GUAM HAD ONE OF THE HIGHEST PEACETIME BASE LOSS VALUES IN THE PACIFIC. THE QUESTION IS, HAS OUR VALUE TRULY DECLINED TO THE NAVY EQUIVALENT OF A BY-WAY GAS STATION WITH A TOWN AND COUNTRY STORE WHICH HAS BEEN BY-PASSED BY A NEW SUPER NEW HIGHWAY- I THINK NOT.

TODAY, IN 1995, WE AGAIN SEE AN ATTEMPT TO CLOAK CONTINUED RETENTION. THIS TIME UNDER QUESTIONABLE GUISE OF A COST EFFECTIVE MOTHBALLING SCENARIO. THIS PROPOSAL IS PORTRAYED AS AN EXPEDITIOUS MEANS TO ENSURE A TIMELY RESPONSE TO FUTURE CRISIS'S; AS PREDICTED BY STILL MORE CONTINGENCY SCENARIOS.

IF THERE IS ONE THING THE NAVY SHOULD HAVE LEARNED IN THEIR 96 YEARS ON GUAM, IT'S THAT OUR TROPICAL SALT-LADEN ENVIRONMENT IS HOSTILE TO ANYTHING 'MOTHBALLED'. FOR WANT OF A HIGH MAINTENANCE BUDGET, THEY WILL PRESERVE NOTHING BUT RUST. THE NAVY'S PROPOSED 'LOOSE-LOOSE' SCENARIO, WILL LEAVE THEM WITHOUT READY ACCESS TO VIABLE ASSETS, AND, THE PEOPLE OF GUAM, WITHOUT THE REVENUE REQUIRED TO BALANCE OUR ECONOMY.

WE SEE IT AS TRAGIC THAT OBSCURE NAVAL AGENDAS MAY AGAIN BE USED TO CAST ASIDE THE HOPES AND DREAMS OF OUR PEOPLE; AS OPPOSED TO OUR BECOMING PARTNERS IN A MUTUALLY BENEFICIAL CONTINGENCY SCENARIO. LACKING TRUST AND A SINCERE COMMUNITY SPIRIT OF COOPERATION, THE NAVY'S PROPOSED ACTION

CANNOT HELP BUT REND THE ECONOMIC, POLITICAL AND SOCIAL FABRIC OF OUR COMMUNITY.

COMMISSIONERS, OUR TESTIMONY IS NOT A DEBATE ON THE GOOD OR BAD INTENT OF AMERICA'S CONDUCT RELATIVE TO THE PEOPLE OF GUAM. IT IS A HISTORY OF IT AND THE LINGERING EFFECT; THE SEVERITY OF WHICH IS COMPOUNDED BY BRAC '95. REGARDLESS OF INTENT, FEDERAL AGENDAS ARE ONCE AGAIN UNDERMINING THE POLITICAL, ECONOMIC AND SOCIAL FOUNDATION OF OUR ISLAND COMMUNITY.

A PRECURSOR TO CHANGE IS *WILLINGNESS*. THOUGH CITATIONS OF LAW MAY PROVIDE IMPEDIMENTS, YOU NONE-THE-LESS POSSESS THE MEANS OF DISPENSING A SMALL MEASURE OF EQUITY. WHAT MAY BE PORTRAYED AS LEGAL OR ILLEGAL, POSSIBLE OR NOT POSSIBLE, IS NOT NECESSARILY REFLECTIVE OF WHAT IS EQUITABLE. THOUGH THE COMMISSION IS NOT A COURT TASKED WITH THE RETRIAL OF A DARK HISTORY, YOU NONE-THE-LESS HAVE AN OPPORTUNITY TO RENDER A JUST DECISION IN YOUR EXECUTION OF THE BRAC PROCESSES.

IT IS TO THE MANNER IN WHICH POLICY RELATIVE TO THE BRAC PROCESSES ARE TO BE EXECUTED THAT WE NOW FOCUS OUR CONCERNS. THE BRAC PROCESS REMAINS A PROCESS WHICH WAS NOT CREATED FOR THE PURPOSE OF ADDRESSING GUAM'S UNIQUE SITUATION. THIS LEAVES BEGGING TWO QUESTIONS: 1) DO THE DISCRETIONARY POWERS OF THE BRAC COMMISSION ALLOW FOR THE ADMINISTRATIVE APPLICATION OF DECISIONS WEIGHED ON THE SCALE OF JUSTICE AND MEASURED BY THE YARDSTICK OF 'AMERICAN FAIR PLAY'; AND, 2) IF YES, IS THE COMMISSION WILLING TO FAVORABLY EXERCISE SUCH POWERS TO OUR JUST FAVOR?

COMMISSIONERS, THE FOLLOWING SECTIONS ARE DRAWN IN GREAT PART FROM THE ATTACHED MEMORANDUM ENTITLED, MEMORANDUM OF CIRCUMSTANCES AND AUTHORITIES RELATING TO "ABNORMAL SOCIO-ECONOMIC INFLUENCES IN THE TERRITORY OF GUAM 1898 THROUGH AUGUST 23, 1963".¹³ THE MEMORANDUM, WHICH WAS DEVELOPED BY THE EXECUTIVE DIRECTOR AND STAFF OF THE GUAM LANDOWNERS ASSOCIATION, TELLS THE HISTORY OF NATIVE CHAMORRO LANDOWNERS FROM THEIR SOCIAL, ECONOMIC AND LEGAL PERSPECTIVE.

I.
THE PRE-WWII HISTORY OF AMERICA IN GUAM
"DEPENDENCY; 1898-1944"

FOR FOUR HUNDRED YEARS, GUAM HAS BEEN COVETED FOR ITS STRATEGICALLY DESIRABLE LOCATION IN THE WESTERN PACIFIC. HELPLESS TO DEFEND THEIR OWNERSHIP RIGHTS FROM THE INTERESTS OF WORLD POWERS, THE CHAMORRO PEOPLE HAVE SEEN A VARIETY OF GOVERNMENTAL REPRESENTATIVES COME AND GO. THE SPANISH CAME FIRST, ONLY TO BE DISPLACED BY THE AMERICANS WHO WERE IN TURN DISPLACED BY THE JAPANESE WHO WERE IN TURN DISPLACED BY THE AMERICANS.

AMERICA'S 'LEGAL' ACQUISITION OF GUAM AS A TERRITORY CAME WITH THE SIGNING OF THE TREATY OF PARIS AND THE ENDING OF THE SPANISH-AMERICAN WAR. NON-COMBATANTS CAUGHT BETWEEN WARRING WORLD POWERS, THE CHAMORRO PEOPLE WERE FORFEITED BY SPAIN AND ACCEPTED BY THE UNITED STATES AS A SPOIL OF WAR. THOUGH NOT SIGNATORIES TO THE TREATY, THEY

¹³ Memorandum of Circumstances and Authorities Relating to "Abnormal Socio-Economic Influences in the Territory of Guam 1898 Through August 23, 1963." GUAM LANDOWNERS ASSOCIATION, John A. Bohn, Esq., August 12, 1981; as Edited & Revised, 1986/1988/1993, Ron E. Teehan.

WOULD NONE-THE-LESS SPEND THE NEXT 96 YEARS SUBJECT TO ITS PROVISION THAT, *"THE CIVIL RIGHTS AND POLITICAL STATUS OF THE NATIVE INHABITANTS OF THE TERRITORY HEREBY CEDED TO THE UNITED STATES SHALL BE DETERMINED BY THE CONGRESS"*.¹⁴

CONTRARY TO THE TERMS OF THE TREATY, PRESIDENT MCKINLEY SET THE TONE FOR THE FIRST 51 YEARS OF ADMINISTRATIVE POLICY WITH ISSUANCE OF EXECUTIVE ORDER NO. 108A. IT PROVIDED THAT, *"THE ISLAND OF GUAM IN THE LADRONES IS HEREBY PLACED UNDER THE CONTROL OF THE NAVY. THE SECRETARY OF THE NAVY WILL TAKE SUCH STEPS AS ARE NECESSARY TO ESTABLISH THE AUTHORITY OF THE UNITED STATES AND TO GIVE IT THE NECESSARY PROTECTION AND GOVERNMENT."*

FOR WANT OF CONGRESSIONAL POLICY RELATIVE TO THE ESTABLISHMENT OF CIVILIAN GOVERNMENT, THE NAVY DETERMINED THAT, *"IN THE ABSENCE OF CONGRESSIONAL LEGISLATION, THE DEPARTMENT CONSIDERS THAT IT HAS THE FULL POWER TO MAKE ANY NECESSARY REGULATION FOR THE GOVERNMENT OF THE ISLAND."*¹⁵ THUS, BY DEFAULT, CHAMORROS BECAME 'WARDS OF THE NAVY'.

THE BROAD EXTENT OF NAVAL CONTROL WAS NOT MISSED BY KNOWLEDGEABLE COMMENTATORS OF THE PERIOD. ROY E. JAMES, FORMER COMMANDER, USNR, A TRAINED AND EXPERIENCED LAWYER WHO SERVED IN THE MILITARY GOVERNMENT STAFF ON GUAM DURING AND AFTER WORLD WAR II, AND WHO MADE A SPECIAL STUDY OF THE NATIVE POPULATION, OBSERVED: ". . . *THEY "GOVERNED" THE PEOPLE OF GUAM MUCH AS THEY COMMANDED NAVAL VESSELS OR NAVAL ESTABLISHMENTS . . . THE POPULATION AS A WHOLE WAS REGARDED AS A*

¹⁴ Treaty of Paris, 1899.

¹⁵ Secretary of the Navy; ltr. to Congressman Julius Kahn. November 13, 1909.

'WARD OF THE NAVY' TO BE TREATED MUCH LIKE NAVAL ENLISTEDMEN." ¹⁶
[EMPHASIS ADDED].

ANOTHER NOTED HISTORIAN AND FIRST HAND OBSERVER OF THE PERIOD, LAURA THOMPSON, FURTHER DESCRIBED THE EXTENT OF MILITARY RULE: "THUS IT CAME TO BE THAT [THE] AUTHORITY OF THE NAVAL GOVERNOR OVER THE NATIVE POPULATION WAS IN CERTAIN RESPECTS GREATER THAN THE COMPARABLE POWER OF ANY OTHER UNITED STATES OFFICIAL, EVEN THE PRESIDENT HIMSELF, FOR IN THE GOVERNOR RESTED THE HIGHEST CIVILIAN APPEAL TO JUSTICE." ¹⁷ [EMPHASIS ADDED].

THOUGH THEY MAY DISPUTE THE DEGREE, NAVAL AUTHORITIES HAVE ACKNOWLEDGED THAT THE PRE-WAR NAVAL GOVERNMENT OF GUAM EXERCISED CONTINUOUS AND ABSOLUTE CONTROL OVER THE AFFAIRS OF GUAM:

"SINCE THE ISLAND OF GUAM BECAME AMERICAN TERRITORY . . . THE NATIVES OF GUAM OCCUPY [A] PECULIAR AND VERY CLOSE RELATIONSHIP TO THE NAVY AND HAVE BEEN CONSIDERED WARDS OF THE NAVY. SINCE THE ACQUISITION OF THE ISLAND BY THE UNITED STATES, THE INHABITANTS OF THE ISLAND HAVE BEEN UNDER THE SPECIAL AND SOLE PROTECTION OF AN ADMINISTRATION BY THE NAVY DEPARTMENT UNDER A NAVAL OFFICER DESIGNATED AS THE GOVERNOR OF GUAM." ¹⁸ [EMPHASIS ADDED].

NAVAL EXECUTIVE ORDER DIRECTED VIRTUALLY EVERY ASPECT OF CIVILIAN LIFE: FROM THE APPROVAL OR RESTRICTION OF LAND SALES - TO THE ACTUAL DETERMINATION OF MARKET PRICE AND THE

¹⁶ Roy E. James, Cmdr., USNR, "America's Pacific Dependencies", 1949, p. 79.

¹⁷ Thompson, Laura "Guam & Its People", 1947, ed., p. 67.

¹⁸ House Report No. 1139, Meritorious Clams Act, 79th Congress, First Session, October 19, 1945, quoting letter from Acting Secretary of the Navy Hensel to the Speaker of the House, dated June 9th, 1945.

APPROVAL OR DENIAL OF ENTREPRENEURIAL ENDEAVORS. THOUGH SOME MAY REFER TO THESE AS POLICIES OF PATERNALISTIC CARE, THEY NONE-THE-LESS RESULTED IN THE FULL NAVY CONTROL OF GUAM'S CIVILIAN ECONOMY AND THE RESTRICTED USE OF REAL PROPERTY.

ONE OF THE INITIAL ORDERS OF GUAM'S FIRST MILITARY GOVERNOR, RICHARD P. LEARY, RESTRICTED THE SALE AND LEASING OF ANY PRIVATELY-OWNED LANDS AND REQUIRED THE EXPRESS CONSENT OF THE NAVAL GOVERNOR PRIOR TO DISPOSAL OF ANY REAL PROPERTY.¹⁹ SUBSEQUENTLY, SALE OF LAND ON GUAM TO ALIENS, OR LEASING SUCH LAND FOR LONGER THAN A SPECIFIED PERIOD, WAS ALSO PROHIBITED.²⁰ THE NAVY PREMISED THEIR RIGHT TO ENACT SUCH PROHIBITIONS ON THE GROUNDS THAT "IN THE ABSENCE OF CONGRESSIONAL LEGISLATION, THE DEPARTMENT CONSIDERS THAT IT HAS THE FULL POWER TO MAKE ANY NECESSARY REGULATION FOR THE GOVERNMENT OF THE ISLAND."²¹

THE BASIC REALITY OF THE GOVERNMENT'S ADMINISTRATIONS IN THE ECONOMIC SPHERE DURING THE PRE-WAR PERIOD ON GUAM AROSE FROM THE RELATIVE ISOLATION ON THE ISLAND. "THROUGHOUT THE AMERICAN PERIOD, THE ISLAND HAS NOT BEEN ON TRADE ROUTES OR LINES OF CALL, AND IT HAS LED A SHELTERED, OUT-OF-THE-WAY EXISTENCE DOMINATED BY UNITED STATES NAVAL CONSIDERATIONS".²² "DURING THE PERIOD OF NAVAL

¹⁹ General Order No. 3, August 21, 1899 (see also: Guam Recorder, Issue No. 2, 1974, p. 50).

²⁰ Executive General Order No. 310, April 21, 1919.

²¹ Letter by the Secretary of the Navy to Representative Julius Kahn, United States Congress, November 13, 1909.

²² Office of Strategic Services Far Eastern Section, "Social-Political-Economic Survey of Guam", June 17, 1942, P. 2.

ADMINISTRATION, THE ROLE OF MILITARY IN GUAM WAS A PATERNALISTIC ONE . . . PRIOR TO, AND IMMEDIATELY FOLLOWING WORLD-WAR II, THE NAVY TRANSPORTED PRACTICALLY ALL IMPORTS AND EXPORTS TO AND FROM GUAM."²³ [EMPHASIS ADDED]

BY THE ADVENT OF WORLD-WAR II AND WITH INCREASING DEVELOPMENT OF THE ISLAND THEREAFTER, THE ECONOMY OF GUAM STILL REMAINED CUT-OFF FROM THE INFLUENCE OF THE OUTSIDE WORLD. AS STATED IN THE GOVERNOR OF GUAM'S 1941 ANNUAL REPORT, ". . .THE AFFAIRS OF THE ISLAND AND ITS PEOPLE HAVE CONTINUED TO BE LITTLE AFFECTED BY POLITICAL, ECONOMIC AND INDUSTRIAL PROBLEMS OF THE WORLD AT LARGE." ²⁴

EVEN AT THE TIME THE ORGANIC ACT WAS UNDER CONSIDERATION BOTH IN GUAM AND IN WASHINGTON, COMMENTATORS LOOKED BACK OVER THE PERIOD OF NAVAL ADMINISTRATION AS "THE ERA OF EXTREME PATERNALISM".²⁵ THE NAVY ATTITUDE TOWARDS THE SOCIAL AND ECONOMIC LIFE OF THE NATIVES OF GUAM IS SET FORTH IN ITS "REPORT ON GUAM, 1899-1950", SUBMITTED BY THE CHIEF OF NAVAL OPERATIONS AS A REVIEW OF THE NAVAL GOVERNMENT UP TO THE TIME OF THE ORGANIC ACT:

"NO MASONS, NO CARPENTERS, NO PHYSICIANS AND NO TRAINED SCHOOL TEACHERS, THE FEW SCHOOLS MEDIEVAL AND THEIR SCANTY, RELIGION-DOMINATED CURRICULA;

A POPULATION ABUSED AND OPPRESSED OVER THE CENTURIES, SO DISEASE-INFESTED , SO ISOLATED FROM THE

²³ (Stanford Research Institute, "Guam: Its Economy and Selected Development Opportunities," 1959).

²⁴ "Annual Report of the Governor of Guam", 1941.

²⁵ Michael Zenor, "United States Naval Government and Administration of Guam", August, 1949, p. 225.

WORLD , SO HAUNTED BY SUPERSTITIONS, THAT IT WAS A LISTLESS, AMBITIONLESS, UNORGANIZED MASS OF HUMANITY STIRRED ONLY BY THE HOPE FOR INDIVIDUAL SURVIVAL. THAT WAS WHAT WAS HANDED TO THE NAVY DEPARTMENT 50 YEARS AGO... IT WAS A TASK NEW TO THE NAVY;... THE ASSIGNMENT WAS HANDED TO THE NAVY BECAUSE GUAM WAS TO BE PRIMARILY OF STRATEGIC VALUE TO THE PACIFIC EMPIRE, KEYSTONE OF THE MARITIME ARCH STRETCHING FROM THE NEWLY ACQUIRED TERRITORY OF HAWAII TO THE JUST-PURCHASED PHILIPPINE DOMAIN... THE CHALLENGE WAS...TO ACHIEVE A TRANSFORMATION IN THE BODIES AND MINDS OF THE PEOPLE. THE RESPONSIBILITY WAS TO GUIDE THEM FROM DISEASE-RIDDEN MEDIEVAL PEONAGE TO THE DIGNITY AND DEMEANOR OF A HEALTHY CITIZENRY....

WITH GUAM CONVERTED FROM A HAND-TO-MOUTH AGRARIAN CULTURE TO A WAGE ECONOMY, IT IS ESTIMATED THAT MORE THAN 90% OF THE FINANCIAL WELFARE-AND HENCE STANDARD OF LIVING-DEPENDED ON THE EXPENDITURES OF THE NAVY AND ITS PERSONNEL. THIS REMAINS UNHEALTHY FROM THE ECONOMIST'S POINT OF VIEW, ALTHOUGH UNDER IT THE GUAMANIAN PEOPLE HAVE RISEN FROM A STATE LITTLE BETTER THAN BARBARISM TO A COMMUNITY WHICH ACCEPTS NORMAL NECESSITIES OF LIFE..."²⁶ [EMPHASIS ADDED]

NOTWITHSTANDING SUCH "ACCOMPLISHMENTS" CLAIMED BY THE NAVY, THERE HAS BEEN GREAT DOUBT EXPRESSED AS TO THE ACTUAL BENEFICIAL EFFECT OF THESE POLICIES UPON THE NATIVE POPULATION. THE ABILITY OF THE CHAMORRO PEOPLE TO TAKE ADMINISTRATIVE CONTROL OF THEIR AFFAIRS REMAINED NON-EXISTENT. THE WARD-LIKE DEPENDENCY OF THE CHAMORRO PEOPLE WAS A FACT OF LIFE ON GUAM.

TO THEIR CREDIT, THE NAVY ACCEPTED THE CHALLENGE OF BRINGING A NATIVE PACIFIC CULTURE INTO THE MODERN ECONOMIC

²⁶ "Report on Guam, 1899-1950", Chief of Naval Operations, 1951, a review of the Naval Government, pp. 13 & 14.

WORLD. THAT THEY WERE UNABLE TO ACCOMPLISH THIS ENDEAVOR, IS REFLECTED IN A 1944 NAVY REPORT WHICH STATED:

"THE AVERAGE CHAMORRO HAS VERY LITTLE IDEA OF ECONOMICS, OR THE VALUE OF MONEY. THE PRICES HE CHARGES FOR ANYTHING HE WISHES TO PURCHASE ARE LARGELY DEPENDENT UPON WHAT HE THINKS [THE BUYER] WILL PAY" 27

A PRIOR REPORT SHEDS SOME LIGHT ON AT LEAST ONE ASPECT AS TO PERHAPS WHY, IMMEDIATELY PRIOR TO WWII, THE CHAMORRO PEOPLE HAD YET TO ATTAIN THE DESIRED LEVEL OF ECONOMIC DEVELOPMENT. THE OFFICE OF STRATEGIC SERVICES CHARACTERIZED GUAM IN 1942 AS AN ISLAND "WITH A BASIC TROPICAL AGRICULTURAL ECONOMY THROWN SERIOUSLY OUT OF GEAR BY THE PRESENCE OF THE UNITED STATES NAVAL STATION . . . AND BY NAVAL STATION WORK PROJECTS WHICH HAVE SET WAGE STANDARDS OUT OF PROPORTION TO RETURNS FOR LABOR IN AGRICULTURAL OCCUPATIONS"²⁸ AS A RESULT OF THIS POLICY OF ECONOMIC PATERNALISM, PARTICULARLY WITH REGARD TO THE PRICE OF LABOR AND THE USE OF LAND, THE FUNDAMENTAL PRINCIPLES OF A MONEY ECONOMY WERE NEVERTHELESS HARDLY UNDERSTOOD BY THE MAJORITY OF NATIVE GUAMANIAN DURING THE PERIOD OF NAVAL GOVERNMENT ADMINISTRATION.

THOUGH THE PRE-WAR PERIOD OF AMERICA'S ADMINISTRATION DID IMPACT LAND USE PATTERNS, IT HAD LITTLE IMPACT ON THE AVAILABILITY OF LAND. THOUGH SOME ACCOMPLISHMENTS MAY MADE BE CREDITED TO THE NAVY, SUCH AS THE INSTITUTION OF

²⁷ Strategic Study of Guam ONI-99, Office of Chief of Naval Operations, Division of Naval Intelligence, February, 1944, p. 294.

²⁸ "Social-Political-Economic Survey", Office of Strategic Services, Far Eastern Section, June 17, 1942, p. 20.

MODERN SANITARY PRACTICES, LITTLE TRUE ECONOMIC DEVELOPMENT ACTUALLY TOOK PLACE. CONSEQUENTLY, CHAMORROS REMAINED ESSENTIALLY AN AGRARIAN SOCIETY, IN SPITE OF 42 YEARS OF AMERICAN INFLUENCE AND THEIR STATED INTENT "*TO GUIDE THEM FROM DISEASE-RIDDEN MEDIEVAL PEONAGE TO THE DIGNITY AND DEMEANOR OF A HEALTHY CITIZENRY*".²⁹ JUST PRIOR TO WWII, THEIR CONTINUING DEPENDENCY WAS AGAIN REFLECTED IN A MEMORANDUM:

" . . . THEY ARE NOT SELF-SUPPORTING AND REQUIRE NOT ONLY FEDERAL ECONOMIC ASSISTANCE BUT CAREFUL TRAINING AND SUPERVISION FROM THE PATERNAL ISLAND GOVERNMENT, . . ."³⁰
[EMPHASIS ADDED]

²⁹ Report on Guam, 1899-1950", supra (see footnote #26).

³⁰ Secretary of the Navy, Claude A. Swanson, Letter to Senate Committee considering Bill 1450, 75th Congress, First Session, 1937.

II. WW II

I WILL NOT DELVE INTO THE HISTORY OF THE JAPANESE OCCUPATION OR THE ASSOCIATED PAIN AND SUFFERING INFLICTED UPON THE CHAMORRO PEOPLE. THE BRUTAL CIRCUMSTANCES OF THIS PERIOD ARE WELL DOCUMENTED. SUFFICE TO SAY, CHAMORROS WERE ONCE AGAIN CAUGHT BETWEEN WARRING WORLD POWERS. IT WAS A PERIOD OF GREAT SUFFERING, DEATH AND DESTRUCTION.

ONE CONSIDERATION, HOWEVER, RELATIVE TO THIS PERIOD, MUST BE PRESENTED. BY EVERY YARDSTICK OF EVALUATION WHICH MAY BE APPLIED, AND IN SPITE OF FORTY-TWO YEARS OF AMERICAN PATERNALISM, THE CHAMORRO PEOPLE ECONOMICALLY AND SOCIALLY REMAINED A DEPENDENT 'NATIVE' PACIFIC PEOPLE. THE ASSOCIATED STRESS INFLICTED UPON THEM DURING THIS PERIOD, ONLY SERVED TO FURTHER COMPOUND THE EXTENT OF THEIR DEPENDENCY, THUS FURTHER RETARDING THEIR PROGRESS TOWARDS EVENTUAL ENTRY INTO AMERICAN SOCIETY AS VIABLE PARTICIPANTS.

III.
THE POST-WWII HISTORY OF AMERICA IN GUAM
“DEPENDENCY CONTINUED; 1944 - 1963”

THE REOCCUPATION

THE PROSECUTION OF THE WAR WITH JAPAN EVENTUALLY LED TO THE VIOLENT REOCCUPATION OF GUAM BY AMERICAN FORCES ON JULY 21, 1944, AND THE "LIBERATION" OF THE CHAMORRO PEOPLE. THOUGH NOT TRULY A LIBERATION, AS WAS THE OCCASION WITH OTHER ISLANDS WHICH ARE NOW SELF-GOVERNING, IT NONE-THE-LESS CONTINUES TO BE GREATLY APPRECIATED.

WITH THE REOCCUPATION CAME THE IMMEDIATE COMMENCEMENT OF ACTIVITIES DIRECTED TOWARDS PROSECUTING THE WAR WITH JAPAN. ENTIRE VILLAGES WERE RELOCATED AS U.S. NAVY ENGINEERS BEGAN TO RESHAPE VAST AREAS. GUAM'S WAR TORN LANDSCAPE WAS FURTHER ALTERED AS JUNGLES WERE CLEARED, HILLS BULLDOZED, AND RAVINES FILLED IN A MASSIVE EFFORT TO CONSTRUCT FORTIFICATIONS AND SUPPORT FACILITIES. AIRSTRIPS, ORIGINALLY BUILT BY THE JAPANESE USING CHAMORROS AS SLAVE LABORERS, WERE GREATLY EXPANDED. NEW AIRSTRIPS WERE BUILT AS NEEDED. THE VILLAGE OF SUMAY WAS COMPLETELY DESTROYED AND THE ADJACENT COASTLINE ALTERED TO FACILITATE THE CONSTRUCTION OF NAVAL STATION, GUAM, AND ITS' ASSOCIATED NAVAL PORT FACILITY.

ANGERED BY THE JAPANESE OCCUPATION, AND GRATEFUL FOR THEIR LIBERATION, CHAMORROS WERE MORE THAN WILLING TO ASSIST AMERICA IN THE PROSECUTION OF THE WAR. WITHOUT HESITATION THEY ENDORSED THE MILITARY'S USE OF THEIR LANDS; THE ONLY

CONDITION BEING, THAT IT EVENTUALLY BE RETURNED TO THE ORIGINAL OWNERS. THEY WERE EVEN WILLING TO ACCEPT WHAT THEY BELIEVED TO BE THEIR TEMPORARY RELOCATION TO OTHER AREAS OF GUAM WHERE THEIR PRESENCE WOULD NOT INTERFERE WITH MILITARY ACTIVITIES. THE POSTING OF NO TRESPASSING SIGNS UPON THEIR PROPERTY THREATENING DEATH WERE UNNECESSARY, IF NOT OUTRIGHT OFFENSIVE.

POST-WAR TO COLD WAR.

VOWING NEVER AGAIN TO LOSE STRATEGIC CONTROL OF THE PACIFIC REGION, US MILITARY PLANNERS ENTERED WHAT BECAME KNOWN AS THE 'COLD WAR' ERA. STRATEGIC AGENDAS CALLED FOR THE CONSTRUCTION OF PERMANENT MODERN FACILITIES. WITH NO REGARD TO THE RIGHTS OF THE CHAMORROS, OR THE CONSTITUTION WHICH DID NOT PROTECT THEM, MILITARY PLANNERS EMBARKED UPON THEIR NEW MISSION. THE RETENTION OF HUGE TRACTS OF LAND WAS DEEMED CRITICAL TO THE SUCCESSFUL IMPLEMENTATION OF THE "PACIFIC BASES DEVELOPMENT PLAN" OF 1946.

FAMILIES HAD BEEN REMOVED FROM THEIR ANCESTRAL HOMELANDS DUE TO WARTIME REQUIREMENTS. BY 1946, CHAMORROS WERE BECOMING ANXIOUS OVER THE RETURN OF THEIR LANDS. UNABLE TO RETURN TO THEIR PREVIOUS WAY OF LIFE, DUE TO PHYSICAL CHANGES OR CURRENT UTILIZATION, THEY DESPERATELY DESIRED TO RE-ESTABLISH SOME SEMBLANCE OF STABILITY. THIS COINCIDED WITH THE RESURGENCE OF A PRE-WAR DESIRE FOR THE ESTABLISHMENT OF DEMOCRATIC SELF-GOVERNING INSTITUTIONS.

IGNORING THE POST-WAR OBJECTIONS OF LANDOWNERS, HUGE TRACTS OF LAND WERE ONCE AGAIN SUBJECTED TO THE BLADES OF

BULLDOZERS. OF FAR LESSER CONCERN THAN THE DEVELOPMENT OF PERMANENT FACILITIES WAS THE ISSUE OF DUE PROCESS IN THE EXERCISE OF EMINENT DOMAIN.

POST WAR LAND ACQUISITION PROGRAM & JUDICIAL DUE PROCESS.

THE ABILITY TO OBTAIN JUST COMPENSATION IN A TAKING IS DIRECTLY DEPENDENT UPON: 1) THE AVAILABILITY OF A FAIR MARKET OFFER; OR, 2) LEGITIMATE ACCESS TO JUDICIAL DUE PROCESS IN THE DETERMINATION OF A 'FAIR MARKET' VALUATION. IF YOU ARE A CIVILIAN LIVING IN A DEMOCRACY, ONE MIGHT EXPECT THIS WOULD TAKE PLACE BEFORE A CIVILIAN COURT OF LAW; WITH THE ABILITY TO APPEAL TO A HIGHER COURT. AGAIN ONE MIGHT REASONABLY EXPECT THAT THE APPEAL WOULD TAKE PLACE BEFORE A CIVILIAN COURT OF LAW. TO THE CONTRARY, IT WAS A MILITARY PROCESS WHEREIN *DUE PROCESS* TOOK A BACK SEAT TO *DUE HASTE* AS THE TAKING MOVED FORWARD MORE RAPIDLY THAN THE ACTUAL TAKING PROCESSES AND THE DISTRIBUTION OF 'FAIR MARKET' AWARDS.

THOUGH WELL VERSED IN THE DEVELOPMENT OF MILITARY INSTALLATIONS, THE DEPARTMENT OF THE NAVY WAS ILL EQUIPPED TO ADDRESS THE PROBLEMS INHERENT TO THE EXERCISE OF EMINENT DOMAIN. AS MAY BE OBSERVED IN NAVAL REPORTS AND CONGRESSIONAL RECORDS, THERE WAS A SERIOUS LACK OF COORDINATION BETWEEN CONGRESSIONAL AUTHORIZATIONS AND APPROPRIATIONS FOR THE IMPLEMENTATION OF THE MERITORIOUS CLAIMS ACT, THE LAND TRANSFER ACT, AND THE LAND ACQUISITION ACT, AND THE NAVY'S ACTUAL EXECUTION AND CONDUCT OF RELATED PROCEEDINGS. IN THE END, ALL EFFORTS FELL FAR SHORT OF BEING A LEGITIMATE MECHANISM FOR THE ADJUDICATION OF CHAMORRO LAND CLAIMS.

INHERENT TO THE PROCESS OF JUDICIAL REVIEW IS UNRESTRICTED ACCESS TO PROPER LEGAL REPRESENTATION. THE SEVERE DISPARITY BETWEEN GOVERNMENT AND CIVILIAN REPRESENTATION WAS OBSERVED BY HISTORIAN LAURA THOMPSON:

"ALTHOUGH A LARGE NUMBER OF WELL-TRAINED AND EXPERIENCED TECHNICIANS ARE BEING SENT TO GUAM TO PURSUE THE INTERESTS OF THE GOVERNMENT, IT IS APPARENT THAT NONE HAVE BEEN IMPORTED TO HELP THE TWO OR THREE PARTIALLY-TRAINED GUAMANIAN ATTORNEYS ON THE ISLAND TO DEFEND THE NATIVE INTERESTS IN THE COMPENSATION AWARDS. UNLESS THIS IS DONE AND NATIVE INTERESTS ARE ALSO DEFENDED BY MAINLAND-TRAINED AND EXPERIENCED LAWYERS, IT CAN HARDLY BE CLAIMED WITH JUSTICE THAT THEIR PROPERTY RIGHTS ARE BEING UPHELD BY DUE PROCESS OF LAW." ³¹

THE APPARENT INTENT OF NAVY RESTRICTIONS UPON ADMISSION TO THE GUAM BAR ARE NOTABLY EVIDENCED BY THE CASE OF FOUNTAIN D. DAWSON AND THE GROUNDS FOR THE REJECTION OF HIS REQUEST FOR ADMISSION:

"DAWSON IS A CLAIMS INVESTIGATOR FOR THE LAND AND CLAIMS COMMISSION. IT IS NEITHER NECESSARY NOR DESIRABLE THAT HE BE ADMITTED TO THE BAR OF GUAM. THE SENIOR MEMBER OF THE LAND AND CLAIMS COMMISSION (J.A. ROBERTS) WITH THE APPROVAL OF THE NAVAL GOVERNOR HAS DETERMINED UNDER NCPI 45-12.2 THAT PRIVATE EMPLOYMENT AS A MEMBER OF THE BAR OF GUAM IS INCOMPATIBLE WITH EMPLOYMENT AS A CLAIMS INVESTIGATOR. THIS IS CONSISTENT WITH POLICY AS NECESSARY TO PREVENT OUTSIDE PRACTICE OF LAW ON GUAM TO THE DETRIMENT OF THE GOVERNMENT'S POSITION. EVEN ATTORNEYS WITH THE CONDEMNATION PROCEEDINGS ARE ADMITTED SPECIALLY FOR THAT PURPOSE ONLY."³² [EMPHASIS ADDED]

³¹ Thompson, Laura, "Guam & Its People, 1947 ed., p. 126.

³² Restricted Cable No. 290140Z, Naval Governor of Guam C.A. Pownall to Judge Advocate General, December 29, 1948.

THE EXTENT OF NAVY CONTROL BECOMES EVEN MORE ONEROUS WHEN CONSIDERED AGAINST THE ADVANTAGE THUS REALIZED. IN 1947, THE LOCAL COURTS ESTABLISHED BY THE NAVAL GOVERNMENT WERE STAFFED BY OFFICERS AND MEN UNDER THE ISLAND COMMAND. ALL JUDGES EMPLOYED BY THE COURTS WERE PERSONALLY APPOINTED BY THE NAVAL GOVERNOR OF GUAM.³³ ACCORDINGLY, THE PRACTICAL RESULT IN ANY ACTION IN CONDEMNATION WAS THAT THE PLAINTIFF HAD UNDER ITS CONTROL THE VERY JUDICIAL SYSTEM WHICH IN THEORY DETERMINED FAIR COMPENSATION TO BE PAID TO DEFENDANT LANDOWNERS.

"...SINCE THERE WAS NO U.S. ATTORNEY HERE AND NO UNITED STATES COURT, THE NAVAL GOVERNMENT OF GUAM TOOK THE PLACE OF THE DEPARTMENT OF JUSTICE IN A NORMAL LAND TAKING AND ALL TAKINGS ARE THEREFORE IN THE NAME OF THE GOVERNOR. . . .ALL OF THE LAND WORK WAS DONE BY THE NAVAL GOVERNMENT OF GUAM THROUGH THE LAND AND CLAIMS COMMISSION."³⁴

THE AFOREMENTIONED TESTIMONY GENERATES MORE CONCERNS THAN JUSTIFICATIONS WHEN CHANGES TO TITLE IV OF THE GUAM CODE OF CIVIL PROCEDURE, WHICH WAS INTENDED TO ESTABLISH SPECIFIC PROCEDURES FOR ACTIONS IN CONDEMNATION BROUGHT BY THE NAVAL GOVERNMENT, ARE EXAMINED. ALTHOUGH DETAILED RULES WERE SET FORTH INDICATING HOW THE GOVERNMENT WAS TO PROCEED IN ITS CAPACITY AS PLAINTIFF (SECTION 1245), THE SUBSEQUENT PROVISION (SECTION 1246), ENTITLED "WHO MAY DEFEND. WHAT THE ANSWER MAY SHOW", WAS COMPLETELY OMITTED FROM THE TEXT. ASIDE FROM THE QUESTION OF THE NAVAL GOVERNMENT'S INTENTIONS WITH REGARD TO THIS OMISSION, AS A PRACTICAL MATTER, ANY DEFENDANT LANDOWNER WHO MIGHT HAVE BEEN

³³ Guam Code of Civil Procedure, 1947, Section 156.

³⁴ Testimony of Governor Carlton Skinner, Naval Governor of Guam, Hearings before Sub-Committee of the Committee on Public Lands, U.S. House of Representatives, November 22, 1949, Transcript, p. 63.

INCLINED TO CONTEST THE QUESTION OF FAIR COMPENSATION RECEIVED NO GUIDANCE WHATSOEVER FROM THE CODE.³⁵

WITHIN THE AFORESAID JUDICIAL CONTEXT, THE GOVERNOR OF GUAM, A NAVY OFFICER, BY EXECUTIVE ORDER NO. 24-47 OF OCTOBER 12, 1947, CREATED A NEW COURT CALLED THE SUPERIOR COURT OF GUAM.

". . . THIS NEW ONE-JUDGE COURT WAS GIVEN EXCLUSIVE JURISDICTION OF ALL CIVIL ACTIONS AND PROCEEDINGS TO WHICH THE NAVAL GOVERNMENT OR THE UNITED STATES WAS A PARTY. IT WAS GIVEN NO APPELLATE JURISDICTION AND 'APPEALS' FROM ITS DECISIONS COULD BE TAKEN ONLY DIRECTLY TO SECRETARY OF THE NAVY."³⁶ [EMPHASIS ADDED]

"IN 1947, THE GOVERNOR OF GUAM APPOINTED A CIVILIAN LAWYER WITH PROFESSIONAL TRAINING AND EXPERIENCE IN THE UNITED STATES TO SERVE AS JUDGE OF THE SUPERIOR COURT OF GUAM, WHICH WAS ESTABLISHED FOR THE MORE EXPEDITIOUS TRIAL OF LAND ACQUISITION CASES TO WHICH THE NAVAL GOVERNMENT OR THE UNITED STATES WAS A PARTY."³⁷ [EMPHASIS ADDED]

THE FIRST AND ONLY JUDGE OF THE SUPERIOR COURT WAS JUDGE JOHN C. FISCHER, APPOINTED BY THE NAVAL GOVERNOR TO PRESIDE OVER THE OPENING OF THE FIRST TERM ON OCTOBER 1, 1947. AS WAS STATED BY JUDGE FISCHER IN SUBSEQUENT HEARINGS HELD BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, U.S. HOUSE OF REPRESENTATIVES, ON NOVEMBER 22, 1949, "THE SUPERIOR COURT IS A SPECIAL COURT INSTITUTED BY THE NAVY DEPARTMENT CONSISTING OF ONE TRAINED, STATESIDE JUDGE, PRINCIPALLY TO TRY LAND CONDEMNATION CASES."³⁸ (EMPHASIS ADDED). THE JUDGE ALSO REVIEWED HIS EXTENSIVE EXPERIENCE IN CONDEMNATION, "HAVING TRIED 2,400 CASES WITH THE COLUMBIA RIVER AUTHORITY--OREGON,

³⁵ Guam Code of Civil Procedure, Section 1245 and Section 1246.

³⁶ James, Roy E., "America's Pacific Dependencies", 1949, p. 87.

³⁷ Naval Government of Guam, "Report to the United Nations", 1948, p. 9.

³⁸ Judge John C. Fischer: Transcript of Hearings, p. 75; Hearings on Organic Act of Guam, Subcommittee on Public Lands, U.S. House of Representatives, November, 1949

WASHINGTON, MONTANA, WYOMING AND IDAHO. . . AS THE GOVERNMENT COUNSEL."³⁹ [EMPHASIS ADDED]. OF THE SUPERIOR COURT'S OBJECTIVES, JUDGE FISCHER STATED THAT THE MAJOR GOAL WAS:

"TO ADJUDICATE LAND CONDEMNATION AND EMINENT DOMAIN CASES AND THE FURTHERANCE OF THE LAND ACQUISITION PROGRAM OF THE ARMED FORCES OF THE UNITED STATES;APPEALS FROM ALL DECISION OF THE SUPERIOR COURT ARE MADE DIRECTLY TO THE SECRETARY OF THE NAVY..."⁴⁰ [EMPHASIS ADDED]

IN ORDER TO 'STREAMLINE' THE TAKING IN 1946, THE NAVAL GOVERNMENT CHOSE TO USE A FLAT RATE SCHEDULE FOR LEASEHOLDS, BASED UPON A 1941 "APPRAISED VALUE", AS OPPOSED TO INDIVIDUALLY APPRAISING EACH PARCEL. AS WAS STATED IN A REVIEW OF CIVIL CASE NO. 15-47:

"IF THE GOVERNMENT HAD DECIDED TO NEGOTIATE A LEASE ON EACH PARCEL OF LAND NECESSARY FOR THE BASE DEVELOPMENT PROGRAM DURING THE FISCAL YEAR 1947, IT WOULD HAVE BEEN AN IMPOSSIBLE TASK BECAUSE THE LAND CLAIMS COMMISSION DID NOT HAVE A STAFF OF APPRAISERS AND NEGOTIATORS UNTIL OCTOBER, 1946. LACK OF TITLE INFORMATION AND SURVEY DATA MADE IT IMPRACTICAL TO ATTEMPT TO LEASE THE PRIVATE LAND WITH STANDARD LEASES." ⁴¹ [EMPHASIS ADDED].

THIS EXPEDITED LEASEHOLD PROCESS CONTINUED ON INTO 1950, BY WHICH TIME THE INITIAL RENTALS 'JUDGMENTS' CAME TO BE CONSIDERED AS FULL PAYMENT FOR TAKING IN FEE.⁴² FINANCIAL CONSTRAINTS WERE THE CONTROLLING FACTOR IN THE DETERMINATION OF JUSTE COMPENSATION, AS EVIDENCED IN THE

³⁹ Transcript, *ibid.*, p. 79.

⁴⁰ Transcript, *ibid.*, p. 74-75.

⁴¹ ComNavMar Memorandum, "Real Estate Appraisals for Loss of Use", February 17, 1947, p.8.

⁴² Civil Case No. 3-48 (1948), Civil Case No. 1-49 (1949) & Civil Case No. 1-50 (1950).

TRANSCRIPT OF A PUBLIC HEARING BEFORE THE HOUSE SUB-
COMMITTEE ON PUBLIC LAND IN 1949:

"JUDGE FISCHER: THE ACQUISITION IN FEE OF 26,000 ACRES OF LAND FOR ARMED FORCES, TO BE PAID FOR FROM THE APPROPRIATION OF \$1,600,000 MADE AVAILABLE BY CONGRESS IN JULY, 1948, AVERAGES \$62.50 ACRE . . .

QUESTION: WOULD YOU TAKE INTO CONSIDERATION THE LOCATION, THE DESIRABILITY FOR RESIDENCE, DESIRABILITY FOR BUSINESS OR FOR AGRICULTURE?

JUDGE FISCHER: YES, OR ANY OTHER REASONABLE USE.

QUESTION: WOULD YOU ARRIVE AT WHAT YOU THINK IS A FAIR AND REASONABLE INCOME FROM SUCH PROPERTY, AND WOULD YOU ARRIVE AT ACTUAL VALUE?

JUDGE FISCHER: YES, AND THAT AVERAGE ON GUAM, AS I SAID ON THE FINAL ACQUISITION OF 26,000 ACRES, RUNS ABOUT \$62.50.

QUESTION: HOW DID YOU SAY YOU ARRIVE AT THOSE FIGURES?

JUDGE FISCHER: WELL, THE CONGRESS OF THE UNITED STATES IN JULY, 1948 APPROPRIATED \$1,600,000 UNDER PUBLIC LAW 594, TO BE DIVIDED AMONG THE 26,000 ACRES WHICH ARE TO BE TAKEN IN FEE BY THE ARMED FORCES - ARMY, NAVY, AND AIR FORCE - AND THE AVERAGE IS \$62.50."⁴³ [EMPHASIS ADDED]

AS IS SUGGESTED BY THE FOREGOING, THE PRIMARY EMPHASIS, IF NOT THE SOLE DIRECTIVE, UNDERLYING THE EXISTENCE OF THE SUPERIOR COURT WAS EXPEDITED "PROCESSING" OF LAND CONDEMNATION CASES. THE NAVY DEPARTMENT PLACED HIGHEST PRIORITY UPON MAXIMIZING THE PRODUCTION OF THE COURT AND OBTAINING "STIPULATED JUDGMENTS" FROM THE GREATEST NUMBER OF LANDOWNERS IN THE LEAST AMOUNT OF TIME. THIS MAJOR EMPHASIS WAS REFLECTED IN JUDGE FISCHER'S REPORT TO THE NAVAL

⁴³ Transcript; Hearings on Organic Act of Guam, Sub-Committee on Public Lands, U.S. House of Representatives, November, 1949.

GOVERNMENT, AS THE SUPERIOR COURT'S CONDEMNATION CASELOAD ACCELERATED DRAMATICALLY FROM 1947 TO 1949:

"THE JUDICIARY DEPARTMENT RESUME FOR THE MONTH OF NOVEMBER 1947 INDICATED A HEAVY INCREASE OF NEARLY 300% IN LAND MATTERS HANDLED BY THE SUPERIOR COURT OVER THE INITIAL MONTH OF OCTOBER."⁴⁴

"LAND MATTERS HANDLED BY THE SUPERIOR COURT IN DECEMBER ROSE 13% OVER THE PRECEDING MONTH OF NOVEMBER. INCLUDED IN THE MATTERS PRESENTED TO THE SUPERIOR COURT WERE AWARDS TO 82 LANDOWNERS AT AN AVERAGE OF \$588.25 PER DEFENDANT. IF THIS PACE IS TO BE EXPEDITIOUSLY HANDLED, AND IF THIS RATIO OF INCREASE IS CONTINUED, WHICH IT MUST BE IN ORDER TO ACCOMPLISH THE LAND PROGRAM WITHIN A REASONABLE TIME, ADDITIONAL HELP MUST BE FORTH-COMING."⁴⁵ [EMPHASIS ADDED]

"THE RESUME OF MATTERS HANDLED BY THE SUPERIOR COURT SHOWS AN AVERAGE INCREASE FOR THE QUARTER OF 412% OVER THAT OF OCTOBER, 1947, WHICH IS TAKEN AS THE NORM. MAINTENANCE OF THIS AVERAGE MAKES CERTAIN THAT THE LAND PROGRAM ON GUAM CAN BE HANDLED WITHIN A REASONABLE TIME... HOWEVER, SUCH A COURT, ESPECIALLY WITH A PROJECTED INCREASE OF 1,000 PROBATE CASES NEXT YEAR. CLERICAL AND REPORTORIAL HELP IS BEING URGENTLY SOUGHT AND RECRUITED, BUT A DEARTH OF QUALIFIED PERSONNEL FROM THE INDIGENOUS POPULATION, FROM WHICH SOURCE THESE POSITIONS MUST BE FILLED, MAKES THIS PROBLEM DIFFICULT."⁴⁶

"THIS QUARTER INCLUDED THE GREATEST NUMBER OF MATTERS EVER HANDLED BY THE SUPERIOR COURT (521)--AN AVERAGE INCREASE OF 430% FOR EACH MONTH IN THE QUARTER OVER THE AVERAGE OF LAST OCTOBER... THE HIGHEST AVERAGE BEING ATTAINED MONTHLY TO MAKE THE SUPERIOR COURT (WHICH AVERAGE MUST BE MAINTAINED TO MAKE CERTAIN THAT THE LAND PROGRAM ON GUAM WILL BE HANDLED WITHIN A REASONABLE TIME) DEPENDS UPON...AN ADEQUATE NEGOTIATING STAFF, COORDINATED WITH THE EFFORTS OF

⁴⁴ Naval Government of Guam, Monthly Report, November, 1947, p. 4.

⁴⁵ Naval Government Monthly Report, December, 1947, p. 5.

⁴⁶ Naval Government Quarterly Report, January through March, 1948, p. 8.

SUFFICIENT LEGAL AND CLERICAL PERSONNEL IN THE LAND
DIVISION OF THE LAND AND CLAIMS COMMISSION.⁴⁷
[EMPHASIS ADDED]

"THIS QUARTER'S ACCOMPLISHMENTS INCLUDED THE GREATEST NUMBER OF MATTERS HANDLED BY THE SUPERIOR COURT (1,047)--AN AVERAGE INCREASE OF 877% FOR EACH MONTH IN QUARTER OVER THE AVERAGE OF OCTOBER, 1947."⁴⁸

"THIS QUARTER'S ACCOMPLISHMENTS INCLUDED THE GREATEST NUMBER OF MATTERS HANDLED BY THE SUPERIOR COURT (1,146)--AN AVERAGE INCREASE OF 920% FOR EACH MONTH IN THE QUARTER OVER THE AVERAGE OF OCTOBER, 1947... IT IS TO BE OBSERVED THAT THERE ARE 99 MORE MATTERS, OR AN AVERAGE OF 33 PER MONTH, HANDLED IN THE SUPERIOR COURT THIS QUARTER THAN IN THE PRECEDING QUARTER. AS STATED IN PREVIOUS REPORTS, THIS RATIO OF INCREASE MUST BE MAINTAINED AND ADMINISTRATIVE PROCEDURE SIMPLIFIED IF THE LAND PROGRAM IS TO BE COMPLETED WITHIN A REASONABLE PERIOD.⁴⁹" [EMPHASIS ADDED]

"IT IS TO BE OBSERVED THAT THE 920 MATTERS HANDLED IN THE SUPERIOR COURT, OR AN AVERAGE OF 307 MATTERS PER MONTH, INCLUDED AWARDS OF \$102,575 IN THE SETTLEMENT OF LAND CONDEMNATION PROCEEDINGS FOR THE QUARTER. THE FIGURES INDICATE THAT PROGRAM BEING LAND CASES ARE NOW BEING SETTLED AND THE LAND PROGRAM BEING BROUGHT TO COMPLETION WITHIN AS SHORT A TIME AS POSSIBLE."⁵⁰

"THIS QUARTER'S ACCOMPLISHMENTS INCLUDED 196 MORE MATTER HANDLED IN THE SUPERIOR COURT THIS QUARTER THAN THE 920 MATTERS HANDLED IN PRECEDING QUARTER. THIS IS AN AVERAGE MONTHLY INCREASE OF 20%... THE 1,116 MATTERS, CONSISTING OF APPEARANCES AND STIPULATIONS, JUDGMENTS, AND MOTIONS AND EX PARTE MATTERS, HANDLED IN THE SUPERIOR COURT AVERAGED 372 PER MONTH THE NECESSITY FOR MORE SURVEYS TO ACCELERATE THE LAND ACQUISITION PROGRAM IS APPARENT. IT IS ALSO EVIDENT THAT THE ATTRITION AND DIMINUTION OF PERSONNEL IN THE LAND AND CLAIMS COMMISSION WILL RESULT IN A SLOWING DOWN OF THE

47 Naval Government Quarterly Report, April through June, 1948, p. 15.

48 Naval Government Quarterly Report, October through December, 1948, p 13.

49 Naval Government Quarterly Report, January through March 1949, p. 16-17.

50 Naval Government Quarterly Report, April through June, 1949, p. 15.

LAND ACQUISITION PROGRAM ON GUAM. FURTHER, FINAL DECISION OF ALL LAND TO BE EXPROPRIATED BY THE JOINT CHIEFS OF STAFF IS STILL LACKING."⁵¹ [EMPHASIS ADDED]

IN THE FALL OF 1949 JUDGE FISCHER TRAVELED TO WASHINGTON, D.C., TO MEET WITH MILITARY OFFICIALS WITH REGARD TO THE PROGRESS OF THE LAND PROGRAM:

"CHIEF JUSTICE CONFERRED WITH THE SECRETARIES OF THE NAVY AND INTERIOR DEPARTMENTS AND OTHER OFFICIALS IN WASHINGTON ON VARIOUS PHASES OF THE LAND ACQUISITION PROGRAM ON GUAM IN WHICH THE COURT IS CONCERNED."⁵² [EMPHASIS ADDED]

PURSUANT TO THESE DISCUSSIONS, THE JUDGE WAS ABLE TO RETURN TO ISLAND AND ADVISE THE NAVAL GOVERNMENT THAT THE LAND ACQUISITION PROGRAM, AT LEAST FROM THE COURT'S POINT OF VIEW, WAS "NEARING COMPLETION":

"IT IS ESTIMATED THAT WITH THE FILING OF SOME SIX ADDITIONAL FUNDAMENTAL CONDEMNATION SUITS IN THE BASE DEVELOPMENT PROGRAM, THE ENTIRE LAND TAKINGS FOR THE BENEFIT OF THE ARMED FORCES WILL HAVE BEEN LODGED IN THE COURT FOR FINAL DISPOSITION AND ADJUDICATION."⁵³ [EMPHASIS ADDED]

WITHIN SIX (6) MONTHS, AND PRIOR TO THE CRITICAL DATE OF TRANSITION OF ADMINISTRATIVE CONTROL FROM MILITARY TO CIVILIAN ON AUGUST 1, 1950 PURSUANT TO ORGANIC ACT OF GUAM, THE REMAINING CONDEMNATION SUITS REFERRED TO BY JUDGE FISCHER WERE FILED IN THE SUPERIOR COURT, THUS EFFECTIVELY VESTING TITLE TO THE VAST BULK OF MILITARY LAND HOLDINGS IN THE NAVAL GOVERNMENT. EXECUTIVE ORDER NO. 10178, ISSUED BY THE PRESIDENT ON OCTOBER 30, 1950 AND ENTITLED "RESERVATION OF PROPERTY ON GUAM FOR THE USE OF THE UNITED STATES," SPECIALLY PROVIDED THAT ALL REAL PROPERTY CONDEMNED DURING THE

⁵¹ Naval Government Quarterly Report, July through September, 1949, 22.

⁵² Naval Government Quarterly Report, October through December, 1949, p. 25.

⁵³ Ibid., p. 26.

EXISTENCE OF THE SUPERIOR COURT WAS TO CONTINUE UNDER THE OWNERSHIP OF THE UNITED STATES GOVERNMENT PURSUANT TO A QUITCLAIM DEED EXECUTED BY THE NAVAL GOVERNMENT OF GUAM TO THE UNITED STATES AND DATED JULY 31, 1950, THE DAY BEFORE OFFICIAL EFFECTIVENESS OF THE ORGANIC ACT. THE EXECUTIVE ORDER CONTAINED THE FOLLOWING LIST OF CONDEMNED PROPERTIES:⁵⁴

<u>Case No.</u>	<u>Purpose</u>	<u>Acres</u>
2-48	North Field	4,566.757
5-48	Mt. Santa Rosa Water Reservoir	9.372
6-48	Mt. Santa Rosa -Marbo Water Lines	5.990
7-48	Tumon Maui Well Site	5.990
2-49	Naval Ammunition Depot	4,803.000
3-49	Primary Transmission Line	44.651
4-49	Mt. Santa Rosa-Marbo Water Line	12.169
5-49	Apra Harbor Reservation	6,332.000
2-50	Acecorp Tunnel	6.450
3-50	Camp Dealy	35.391
4-50	Tumon Bay Recreation Area Utility Lines	0.637
5-50	Agana Springs	24.914
6-50	Asan Point Tank Farm	41.360
7-50	Asan Point Housing	85.032
8-50	Medical Center	137.393
9-50	Agafu Gumas	45.630
10-50	Naval Communication Station	4,798.682
11-50	Nimitz Beach	11.726
12-50	Command Center	800.443
13-50	Tarague Natural Wells	4,901.100
14-50	Agana Diesel Electric Generating Plant	5.945
15-50	Mt. Santa Rosa Haul Road	23.708
16-50	Northwest Air Force Base	4,562.107
18-50	Marbo Base Command Area	60.480
19-50	Loran Station, Cocos Island	21.695
20-50	Av-Gas Tank Farm #12	15.322
21-50	Proposed Boundary of NAS Agana, Hsng.	1,820.148
22-50	C.A.A. Site (Area #90)	37.519
23-50	Tumon Maui Well	3.575
24-50	Tumon Bay Recreation Area	49.277
25-50	Utility Easement from Rt. #1 to Rt. #6	0.208
26-50	Tumon Bay Recreation Area	65.300
27-50	Marbo Base Command	2,497.400
28-50	Mt. Tenjo VIIF Station Site	0.918
29-50	Sasa Valley Tank Farm	285.237
30-50	Sub Transmission System Piti Steam Plant	17.793
31-50	Route #1 (Marine Drive)	28.888
32-50	Sub Transmission System	94.000

⁵⁴ Presidential Executive Order No. 10178.

33-50	Harmon Air Force Base	953.000
34-50	Radio Barrigada	2,922.000
35-50	AACS Radio Range (Area #30)	25.000
36-50	Water Line Apra Heights Reservoir to Fena Pump Station	37.000
37-50	Fena River Reservoir	2,185.00

THE QUESTIONABLE NAVY EXERCISE OF DUE PROCESS RECEIVED SOME ATTENTION, THOUGH NOT ENOUGH, FROM FRIENDS OF GUAM IN CONGRESS. REPRESENTATIVE WILLIAM LEMKE, HAVING VISITED GUAM, MADE THE FOLLOWING STATEMENT BEFORE THE SUB-COMMITTEE ON PUBLIC LANDS:

" . . . I WOULD SAY THAT THEY USED DURESS, THEY USED PERSUASION, THEY DO EVERYTHING UNDER THE SUN TO MAKE A NAME FOR THEMSELVES TO BROW-BEAT THE OWNER DOWN . . . UNFORTUNATELY, PEOPLE REPRESENTING THE GOVERNMENT ARE ALWAYS OVERZEALOUS TO FIND FACTS FAVORABLE TO THE GOVERNMENT AND TO SUBMIT THEM AS JUST. IN OUR NATION, IT IS DETERMINED BY A JURY OF TWELVE. HERE UNFORTUNATELY, THE ONLY APPEAL IS TO THE SECRETARY OF THE NAVY. IT IS THEREFORE A QUESTION OF WHETHER HE IS A DISINTERESTED PARTY. IN MY OPINION, HE IS NOT." ⁵⁵ [EMPHASIS ADDED]

"NOW, AS TO ABUSES, I AM NOT GOING TO COMMENT ON THOSE. THE COMMITTEE FOUND IT TRUE ON GUAM THAT A ONE-MAN GOVERNMENT WOULD CHANGE HIS MIND OVERNIGHT, AND HIS DICTATES WERE LAW. THERE WERE PLENTY OF SIGNS OF ABUSE... FOR INSTANCE ON GUAM THE MILITARY TOOK THE LANDS OF THE PEOPLE AND FORGOT TO EVEN ASK THEM HOW MUCH THEY WANTED, OR TO PAY FOR IT....I WILL SAY FURTHER THAT SOME OF THE WITNESSES WERE AFRAID TO TESTIFY. WHEN WE ASKED THEM WHY, THEY SAID THEY WERE AFRAID OF REPRISALS."⁵⁶ [EMPHASIS ADDED]

⁵⁵ Repr. William Lemke; Hearings on Organic Act of Guam, Sub-Committee on Public Lands, U.S. House of Representatives, November, 1949, p.____.

⁵⁶ Hearings before Committee on Interior and Insular Affairs, United States Senate, 81st Congress, Second Session, on Legislation "Providing Civil Government for Guam," April 19, 1950. Statement of Representative Lemke, Transcript, p. 36-37

INADEQUATE REPRESENTATION BEFORE A DE FACTO MILITARY COURT, SUBJECT TO LAWS WHICH, ARGUABLY, FACILITATED THE TAKING WHILE SIGNIFICANTLY MINIMIZING U.S. LIABILITIES, WITHOUT BENEFIT OF A JURY OR LEGITIMATE APPEAL, EFFECTIVELY DENIED CHAMORRO LANDOWNERS THE MOST BASIC OF RIGHTS DEEMED SACRED BY AMERICANS - WHICH CHAMORROS WERE NOT.

CHAMORRO RESETTLEMENT.

THE PRE-WAR SITUATION OF PATERNALISTIC "WARDSHIP", FOLLOWED BY THE POST-WAR DESTRUCTION AND DISRUPTION, LED TO A DEEPENING DEPENDENCY OF THE CHAMORRO PEOPLE UPON THE FIDUCIARY 'GOOD WILL' OF THE UNITED STATES. THOUGH CLAIMS HAVE BEEN MADE THAT THE UNITED STATES ENACTED AGGRESSIVE PROGRAMS OF RESTORATION, THE VALIDITY OF THIS CLAIM FALLS SHORT UPON CLOSER EXAMINATION.

BY 1949, *"VERY LITTLE OF THE CONSTRUCTION OF AGAÑA HAD BEEN COMPLETED . . ."* THE ACTUAL PROGRESS MAY BE SUMMED UP IN THIS STATEMENT BY THE BISHOP OF GUAM: *"ONE DOES HEAR NOW AND AGAIN THAT THIS "REHABILITATION BUSINESS" IS RATHER LONG IN COMING, AND THE DRIBS AND DRABS THAT DO COME ALONG COME IN SOME PECULIAR WAYS. PROMISES ARE HEAPED UPON PROMISES AND DELIVERY IS ANOTHER THING . . . NO NEW PERMANENT BUILDINGS SEEM TO BE GOING UP. WHAT TEMPORARY STRUCTURES THERE ARE WILL SOON HAVE YIELDED TO THE RAVAGES OF TROPICAL CLIMATE."* ⁵⁷

⁵⁷ UMATUNA SI YUUS, Catholic Church Bulletin, August 29, 1948, as reprinted in the Guam Echo, September 30, 1948, p. 3).

IN DIRECT CONTRADICTION TO THE 1948 OBSERVATION BY THE BISHOP OF GUAM, A 1946 REPORT BY THE NAVAL GOVERNMENT⁵⁸ CLAIMED, *"THE REHABILITATION OF GUAM HAS BEEN COMPLETED; HENCEFORTH, IT IS ONLY A MATTER OF IMPROVING ON WHAT NOW EXISTS."*

ANOTHER CONTRADICTION MAY BE FOUND IN A 1948 REPORT TO THE UNITED NATIONS⁵⁹ WHICH CLAIMED 58% OF THE LAND ON GUAM WAS PRIVATELY OWNED. NAVAL RECORDS, WHICH WERE NOT SUBMITTED TO THE UNITED NATIONS, CLEARLY SHOW THAT LESS THAN 25% OF THE LAND REMAINED IN CIVILIAN HANDS AT THAT TIME:

"MUCH DIFFICULTY IS BEING EXPERIENCED IN FINDING SUITABLE SITES FOR ADDITIONAL NATIVE VILLAGES, AS RESERVATIONS FOR MILITARY USE HAVE ALREADY APPROPRIATED 75% OF THE ISLAND, AND OTHER PLANNED MILITARY RESERVATIONS PRECLUDE CIVILIAN USE OF OTHER DESIRABLE AREAS." ⁶⁰

UP UNTIL LATE 1949, IT HAD BEEN THE DESIRE OF MILITARY PLANNERS THAT APPROXIMATELY 80% OF THE ISLAND BE PERMANENTLY HELD FOR BASE DEVELOPMENT AND CONTINGENCY CONSIDERATIONS. BY THEIR OWN STATEMENTS IN CONGRESSIONAL RECORDS, THEY REALIZED FULL WELL THAT THE LANDS BEING ACQUIRED WERE IN FACT THE BEST GUAM HAD TO OFFER. UNRESTRICTED IN THEIR ABILITY TO SELECT LANDS NEEDED, AND NOT HAMPERED BY CONSTITUTIONAL RESTRICTIONS, THEY CHOSE THE BEST. LATER, WHEN HOLDINGS WERE FOUND TO BE UNJUSTIFIED AND EXCESSIVE, CONGRESS MANDATED IN THE ORGANIC ACT THAT THE

⁵⁸ "Final Monthly Report for Island Command War Diary", 31 May 1946, p. 34.

⁵⁹ "Report on Guam, 1948", United States to the Secretary General, United Nations.

⁶⁰ Monthly Report for June, 1945, "Report for Island Command War Diary", 2 June, 1945, p.2.

NAVY DETERMINE ACTUAL REQUIREMENTS, AND THAT THE NON-RESERVED BALANCE BE RETURNED FOR CIVILIAN RESETTLEMENT AND PUBLIC USE. AS MAY BE OBSERVED TODAY, THEY NOT ONLY RETAINED MORE THAN THEY NEEDED, THEY RETAINED THE BEST OF THE BEST. THOUGH MOST OF THE LAND RETAINED WAS NEVER USED IN THE SUCCEEDING 45 YEARS. NO SINCERE EFFORT, PRIOR TO THE BRAC PROCESS, HAS EVER BEEN MADE TO REALISTICALLY DOWN-SIZE THE MILITARY'S HOLDING, WITH THE UNUSED LANDS BEING UNCONDITIONALLY RETURNED. UNFORTUNATELY, THE BRAC PROCESS, AS WELL, IS NOT UNCONDITIONAL. THOUGH THE TOTAL HOLDINGS OF THE FEDERAL GOVERNMENT HAVE VARIED OVER THE YEARS, THEY CURRENTLY COMPRISE AN AREA EQUAL TO APPROXIMATELY 1/3 OF THE ISLAND.

WITH THE ENACTMENT OF THE ORGANIC ACT CAME THE END OF NAVAL EFFORTS TOWARDS THE RECONSTRUCTION OF GUAM. NEVERTHE-LESS, THE RECONSTRUCTION WOULD SLOWLY CONTINUE WITH THE SPORADIC AID OF CONGRESS, AND THE DETERMINATION OF THE CHAMORRO PEOPLE IN THE FACE OF ADVERSITY. IT IS INTERESTING TO NOTE HOWEVER, THAT EVEN WITH THE ENACTMENT OF THE ORGANIC ACT, THE NAVY REINSTATED IT PRE-ORGANIC ACT RESTRICTIONS ON ENTRY AND EXIT FROM GUAM, THEREBY CONTINUING THE EFFECTIVE CONCEALMENT OF UNITED STATES CONDUCT, AS WELL AS REPRESSING ANY OPEN-MARKET ECONOMIC OPPORTUNITIES WHICH WOULD HAVE HASTENED THE POST-WAR RECOVERY.

IV.
NAVAL GOVERNMENT CONTROL
OF
CIVILIAN COMMERCIAL ACTIVITY.

MILITARY CONTROL OF CIVILIAN CONDUCT.

ONE OF THE MAJOR RESTRICTIONS ON THE NATIVE POPULATION DURING THE POST-WAR REOCCUPATION WAS THE SEVERE LIMITATION ON DAY-TO-DAY TRAVEL AND CONDUCT INTRODUCED BY MILITARY AUTHORITIES. GUAMANIAN CIVILIANS WERE RESTRICTED TO LIVING IN DESIGNATED AREAS OF THE ISLAND, AND GOVERNMENTAL POLICY WAS TO MAINTAIN STRICT SEGREGATION BETWEEN MILITARY AND CIVILIAN POPULATIONS: "ALL NATIVE COMMUNITIES ARE OUT OF BOUNDS TO TROOPS, EXCEPT ON OFFICIAL DUTY, UNLESS PERMITS TO VISIT ARE OBTAINED."⁶¹ FURTHER RESTRICTIONS WERE ISSUED BY THE NAVAL GOVERNOR POWNALL ON OCTOBER 30, 1946⁶² :

"TO THE PEOPLE OF GUAM:

ALL CIVILIANS WHO ARE NOT PERMANENT RESIDENTS OF GUAM ARE PROHIBITED FROM ENTERING INTO ANY GUAMANIAN HOME, VILLAGE, OR COMMUNITY WITHOUT COMPLYING WITH THE FOLLOWING PROVISIONS:

- (A) BETWEEN THE HOURS OF SUNRISE AND SIX O'CLOCK IN THE EVENING SUCH CIVILIANS MAY ENTER SUCH AREAS PROVIDED THAT THEY HAVE IN THEIR POSSESSION FOR DISPLAY TO PROPER AUTHORITIES A WRITTEN INVITATION FROM AN ADULT MEMBER OF THE FAMILY VISITED AND A WRITTEN PASS FROM THE COMMANDING OFFICER OR CAMP COMMANDER OF SUCH CIVILIAN.

⁶¹ Monthly Report for May 1945, "Report for Island Command War Diary," 2 May 1945, p. 3.

⁶² Executive Order No. 21-46

- (B) IN THE VILLAGES OR COMMUNITIES WHERE THERE ARE ESTABLISHED POLICE HEADQUARTERS, SUCH INVITATION AND PASS MUST BE PRESENTED AT THE TIME OF ENTERING AND LEAVING THE VILLAGE OR COMMUNITY. SUCH PASS AND INVITATION WILL BE DISPLAYED AT ANY TIME UPON THE REQUEST OF A MEMBER OF THE GUAM POLICE FORCE, A LOCAL COMMISSIONER OR A MILITARY POLICEMAN.
- (C) ALL CIVILIANS WHO ARE NOT PERMANENT RESIDENTS OF GUAM MUST HAVE A PASS ISSUED BY THE OFFICE OF THE PROVOST MARSHALL, ISLAND COMMAND, GUAM, TO ENTER ANY GUAMANIAN HOME, VILLAGE OR COMMUNITY BETWEEN THE HOURS OF SIX O'CLOCK IN THE EVENING AND ELEVEN O'CLOCK IN THE EVENING.
- (D) NO CIVILIAN WHO IS NOT A PERMANENT RESIDENT OF GUAM SHALL ENTER INTO OR BE FOUND IN A GUAMANIAN HOME, VILLAGE OR COMMUNITY BETWEEN THE HOURS OF ELEVEN O'CLOCK IN THE EVENING AND SUNRISE OF THE FOLLOWING DAY WITHOUT THE WRITTEN AUTHORITY OF THE CIVIL ADMINISTRATOR OF THE NAVAL GOVERNMENT OF GUAM COUNTERSIGNED BY THE PROVOST MARSHALL, ISLAND COMMAND, GUAM.
- (E) ALL AREAS SOUTH OF THE TALOFOFO RIVER ARE RESTRICTED AND NO CIVILIAN WHO IS NOT A PERMANENT RESIDENT OF GUAM IS PERMITTED IN SUCH AREAS EXCEPT ON OFFICIAL BUSINESS AND WITH A PASS ISSUED BY THE PROVOST MARSHALL, ISLAND COMMAND, GUAM, IN HIS POSSESSION FOR PROMPT DISPLAY TO PROPER AUTHORITIES."

IN ORDER TO FACILITATE ENFORCEMENT OF THESE NUMEROUS RESTRICTIONS, "ALL RESIDENTS OF GUAM OVER 16 YEARS OF AGE WERE REQUIRED TO POSSESS AT ALL TIME A 'CERTIFICATE OF IDENTIFICATION' WHICH WAS TO BE PRESENTED IN ALL MATTERS HAVING LEGAL SIGNIFICANCE."⁶³ FURTHER, ISLAND SECURITY

⁶³ Zenor, Michael, "United States Naval Government & Administration of Guam", August, 1949, p. 16.

MEASURES WERE CAREFULLY COORDINATED THROUGH A DIRECTIVE⁶⁴ WHICH CONSOLIDATED THE EFFORTS OF THE PROVOST MARSHALL, GUAM POLICE, JOINT ARMY AND MARINE PATROLS AND COMNAVMAIR INTELLIGENCE FOR PURPOSES OF ENFORCING RESTRICTIONS. THE NET EFFECT OF THESE STRICT CONTROLS ON ALL CIVILIAN ACTIVITY WAS APPARENT NOT ONLY TO THE GUAMANIAN, ISOLATED IN THEIR DESIGNATED RESIDENTIAL AREAS, BUT ALSO TO THE RELATIVELY FEW CIVILIAN STATESIDERS WHO CAME TO THE ISLAND:

"THE STATESIDERS THAT I HAVE ASSOCIATED WITH HAVE CONSTANTLY COMPLAINED TO ME ABOUT THE LACK OF FREEDOM THAT THEY FEEL ON THIS ISLAND. THEY FEEL CHOKED. THINGS ARE SO DIFFERENT FROM WHAT THEY ARE AT HOME-RESTRICTED AREAS, DO NOT ENTER, YOU CAN'T DO THIS AND YOU CAN'T DO THAT. EVERY LITTLE THING YOU WANT TO DO, YOU HAVE TO GET PERMISSION FROM TEN OR FIFTEEN GOVERNMENT OFFICIALS. THIS VERY CHOKING AIR OF RESTRICTION IS SOMETHING UNIQUE ON GUAM. THERE IS A FEELING THAT AN AMERICAN CITIZEN WHO COMES HERE HAS THAT IS SO PECULIAR, IT IS ALMOST IMPOSSIBLE TO DESCRIBE UNTIL YOU HAVE LIVED THROUGH IT."⁶⁵ [EMPHASIS ADDED]

RESTRICTIONS ON THE ISLAND WERE SO COMPREHENSIVE THAT THE MILITARY GOVERNMENT DID NOT EVEN FIND IT IMMEDIATELY NECESSARY TO RE-INSTITUTE THE "SECURITY CLEARANCE" PROGRAM ORIGINALLY CREATED IN 1941 BY EXECUTIVE ORDER ⁶⁶ (DISCUSSED IN FURTHER DETAIL, INFRA). "CIVIL REGULATIONS WITH THE FORCE AND EFFECT OF LAW ON GUAM"⁶⁷, ORIGINALLY PROMULGATED IN 1936 BY THE NAVAL GOVERNOR, SUSPENDED DURING THE JAPANESE

⁶⁴ Commander, Naval Forces Marianas and Governor of Guam (Letter dated 17 February 1947, Serial No. 3286).

⁶⁵ Testimony of Frank D. Perez, Public Hearing before the Sub-Committee on Public Lands, United States House of Representatives, held in the Hall of Congress, Agana, Guam November 22, 1949. p. 41.

⁶⁶ Executive Order No. 8683 (1941).

⁶⁷ "Civil Regulations with the Force & Effect of Law on Guam."

OCCUPATION, AND REESTABLISHED AS OF JULY 21,, 1944, BY ADMIRAL NIMITZ, WERE REPRINTED IN 1947 WITH NO REFERENCE WHATSOEVER TO EXECUTIVE ORDER NO. 8683.

WITH GUAM REMAINING A HIGHLY STRATEGIC MILITARY COMPOUND DURING THESE POST-WAR YEARS, ALL CIVILIAN TRAVEL TO AND FROM THE ISLAND WAS AUTOMATICALLY AND CAREFULLY CONTROLLED BY THE NAVAL COMMAND:

"ALL DISPATCHES ORIGINATED BY THE NAVAL GOVERNOR OF GUAM AUTHORIZING ENTRY TO GUAM ARE CLEARED THROUGH COMMARIANAS F-20...COPIES OF GOVGUAM CLEARANCE DISPATCHES ARE SENT TO INTERNAL AFFAIRS DEPARTMENT NAVGOVT PIO, AND CUSTOMS AND IMMIGRATION DEPARTMENT...REQUESTS TO REMAIN ON GUAM ARE CLEARED BY GUAM POLICE DEPARTMENT, INTERNAL AFFAIRS DEPARTMENT PRIOR TO THE PERMIT LETTER ISSUED BY CUSTOMS AND IMMIGRATION DEPARTMENT. RETURN TRAVEL BONDS ARE REQUIRED."⁶⁸

"WRITTEN CLEARANCE FROM EITHER CNO, CINCPACFLT, COMSOPAC, COMMARIANAS, COMNAVPHIL OR COMNAVWESPAC IS REQUIRED FOR CIVILIAN TRAVEL TO:

- A.) U.S. NAVAL ACTIVITIES OR NAVAL UNITS UNDER ADMINISTRATIVE CONTROL OF CINCPACFLT.
- B.) AREAS UNDER NAVAL CIVIL OR ISLAND GOVERNMENT INCLUDING THE TRUST TERRITORY.
- C.) LOCALITIES IN THE PACIFIC COMMAND WHICH HAVE NOT BEEN OPENED TO UNRESTRICTED CIVILIAN TRAVEL.

ISSUANCE OF SUCH WRITTEN CLEARANCE WILL IN ALL CASES BE SUBJECT TO THE ADVANCE APPROVAL OF THE COMMANDER TO WHOSE AREA THE TRAVEL IS PROPOSED AND SUCH SCREENING OF APPLICANTS AS THE ISSUING AUTHORITY MAY DEEM ADVISABLE.

⁶⁸ Undated 1948 Memorandum from Naval Governor of Guam to Civil Administrator on the subject of "Entry Guam, Clearance For".

IN ALL INSTANCES CNO AND CINCPACFLT WILL BE KEPT INFORMED ON CLEARANCE GRANTED."⁶⁹ [EMPHASIS ADDED]

"UNDER THE AUTHORITY OF THE EXECUTIVE ORDERS WHICH CHARGED THE SECRETARY OF THE NAVY WITH RESPONSIBILITY FOR THE GOVERNMENT OF GUAM, AMERICAN SAMOA AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS, THE SECRETARY IS EMPOWERED TO DENY OR TO REVOKE THE RIGHT OF ENTRY INTO THE TERRITORY CONCERNED TO ANY PERSON WHOSE PRESENCE THEREIN IS DETRIMENTAL TO THE PUBLIC INTERESTS."⁷⁰ [EMPHASIS ADDED]

IMPLEMENTATION OF THIS SCREENING PROGRAM WAS ACCOMPLISHED BY REQUIRING EACH POTENTIAL VISITOR TO FILL OUT A DETAILED APPLICATION, TO BE SENT IN DUPLICATE TO THE NAVAL GOVERNOR OF GUAM AND THE CHIEF OF NAVAL OPERATIONS, RESPECTIVELY. AS A PRACTICAL MATTER, ALL SUCH "APPLICATIONS" FORWARDED TO THE NAVAL GOVERNOR OF GUAM WERE TO BE APPROVED BY THE COMMANDER IN CHIEF OF THE PACIFIC FLEET: "IN ACCORDANCE WITH PROVISIONS OF PACFLT RESTRICTED LTR 30L-46 DTD 30 DECEMBER 1946, CIVILIAN TRAVEL TO THE MARIANAS AREA IS CONTROLLED BY CINCPAC."⁷¹ [EMPHASIS ADDED]

A FURTHER MAJOR CONTROL PROGRAM DEVELOPED FOLLOWING RESUMPTION OF THE NAVAL CIVIL GOVERNMENT IN MAY, 1946, WHEN THE CIVILIAN ECONOMY OF THE ISLAND BEGAN TO SHOW THE IMPACT OF MASSIVE CONSTRUCTION AND INFLUX OF PERSONNEL. THIS EXPANSION, WHICH PRODUCED A SURGE IN DEMAND FOR LABOR,

⁶⁹ Pacific Fleet Letter 10L-48, Headquarters of the Commander in Chief, February 16, 1948, on the subject of "Travel in the Pacific, Clearance For," p.2.

⁷⁰ Letter from Secretary of the Navy M.E. Andrews to the Naval Governor of Guam, et al., Serial no. 61, P.22, January 29, 1948, on the subjects of "Policy Governing Right of Entry Into...Areas Under Naval Jurisdiction." Paragraph 4.

⁷¹ Letter from Naval Governor of Guam to Chief of Naval Operations, Serial No. 3260, September 10, 1947, p.1.

GOODS AND SERVICES, RESULTED IN THE DEVELOPMENT OF A NAVY POLICY OF CONTROLLING ALL ASPECTS OF THE ISLAND'S ECONOMY.

NAVAL GOVERNMENT CONTROL OF CIVILIAN COMMERCIAL ACTIVITY.

THE POLICY OF MILITARY AUTHORITIES ON GUAM WITH RESPECT TO THE ECONOMY DEVELOPED FROM CONCERNS EXPRESSED BY THE COMMERCE AND INDUSTRY DEPARTMENT IN THE LAST FEW MONTHS OF THE MILITARY GOVERNMENT:

"IT MUST BE RECOGNIZED THAT WITH GUAM AS A NAVAL AND AIR FORCE BASE, THE ECONOMY OF THE ISLAND MUST BE DEVELOPED, BY SOME METHOD, TO SATISFY THE REQUIREMENTS OF SOME 50-75,000 U.S. MAINLAND SERVICE PERSONNEL, DEPENDENTS THEREOF, CIVIL SERVICE PERSONNEL, CONTRACTOR PERSONNEL, AND OTHER MAINLAND CIVILIANS TO BE STATIONED ON GUAM. THE ECONOMIC DEVELOPMENT MUST BE GEARED TO MEET THE DEMANDS OF THESE SERVICE AND SERVICE-CONNECTED PERSONNEL AND CANNOT BE GEARED TO THE FINANCIAL, TECHNICAL, OR BUSINESS ABILITY OF THE GUAMANIAN ENTREPRENEUR. THERE ARE INSUFFICIENT GUAMANIAN WHO HAVE EITHER THE PREREQUISITE ABILITY, EXPERIENCE, DESIRE, OR CAPITAL TO ENABLE THEM TO PARTICIPATE IN THE INCREASING OPPORTUNITIES BECOMING AVAILABLE IN THEIR ECONOMY, LET ALONE PARTICIPATE, EXCEPT IN LIMITED FIELDS, IN A PRIVATE ENTERPRISE-TYPE ECONOMY DESIGNED TO MEET MAINLAND PERSONNEL REQUIREMENTS...DECISION BY HIGHER AUTHORITY AS TO THE MANNER IN WHICH THE REQUIREMENTS OF MAINLAND PERSONNEL ARE TO BE MET BEARING IN MIND THE LIMITATIONS OF THE GUAMANIAN AS TO NUMBER, TECHNICAL, FINANCIAL, AND ABILITY, SHOULD BE EXPEDITED."⁷² [EMPHASIS ADDED]

"DEVELOPMENT OF GUAM MAY MEAN THAT SOME 50 TO 70,000 U.S. MAINLAND SERVICE PERSONNEL (ARMY, NAVY, MARINE CORPS, ETC.), DEPENDENTS THEREOF, CIVIL SERVICE PERSONNEL, CONTRACTOR PERSONNEL, AND OTHER MAINLAND CIVILIANS, AS WELL AS 23,000 NATIVES, WILL BE RESIDING ON

⁷² Monthly Report for April, 1946, "Report for Island Command War Diary." 1 April 1946, p. 14.

THE ISLAND. THE PROBLEM CONFRONTING MANY IS HOW AND BY WHOM ARE THE NEEDS FOR THE MATERIAL WELL-BEING OF THESE 100,000 PEOPLE TO BE MET? WILL THE ARMY AND NAVY DIRECTLY PROCURE AND SUPPLY ALL REQUIREMENTS FOR SERVICE AND SERVICE-CONNECTED PERSONNEL? WILL ANOTHER FEDERAL AGENCY SUCH AS THE U.S. COMMERCIAL CO. BE ASKED TO PARTICIPATE IN THIS PROGRAM? WILL PRIVATE ENTERPRISE BE ASKED TO PERFORM THE FUNCTION? IF PRIVATE ENTERPRISE IS NOT CONSIDERED COMPATIBLE WITH MILITARY SECURITY AND CONTROL, WILL BUSINESS BE RESTRICTED TO NATIVE GUAMANIAN WHO OBVIOUSLY CANNOT, BY VIRTUE OF NUMBERS, EXPERIENCE, CAPITAL, OR DESIRE, OPERATE A PRIVATE ENTERPRISE-TYPE ECONOMY DESIGNED TO MEET MAINLAND PERSONNEL REQUIREMENTS? WILL U.S. MAINLAND SERVICEMEN BE PERMITTED TO BE DISCHARGED ON GUAM TO ESTABLISH BUSINESSES? WILL U.S. MAINLAND INDIVIDUALS OR CORPORATIONS BE PERMITTED TO ESTABLISH THEMSELVES ON GUAM? THIS BASIC QUESTION OF POLICY MUST BE SETTLED. A LONG DELAY MAY RESULT IN ADVERSE CRITICISM OF NAVAL MILITARY GOVERNMENT OF GUAM. U.S. MAINLAND FIRMS BELIEVE THEY HAVE A RIGHT TO SEEK EXPANSION OF THEIR POST-WAR MARKETS WITHIN U.S. TERRITORY. U.S. SERVICEMEN BELIEVE THEY, AS U.S. CITIZENS, HAVE A RIGHT TO ENTER BUSINESS ON GUAM. ANY POLICY TO GUARD THE GUAMANIAN AGAINST FOREIGN EXPLOITATION MUST CONSIDER THE NEED TO GUARD GUAMANIAN AGAINST EXPLOITATION BY GUAMANIAN."⁷³ [EMPHASIS ADDED]

THE RESULTING POLICY ADOPTED BY THE NAVY HAD SEVERAL SPECIFIC ASPECTS OF CONCRETE CONTROL, PROBABLY THE FOREMOST BEING THE PREVENTION OF NON-GUAMANIAN FROM ENTERING THE ISLAND TO DO BUSINESS. THIS EXCLUSION POLICY WAS ENFORCED MAINLY THROUGH THE BUSINESS LICENSE PROVISIONS OF THE GOVERNMENT CODE OF GUAM, AS IT EXISTED AT THAT TIME, AND THROUGH REGULATIONS AND ORDERS ISSUED BY THE NAVAL GOVERNOR:

⁷³ Monthly Report for May 1946, "Report for Island Command War Diary," 1 May 1946, p. 16.

"THE POLICY OF THE NAVY DEPARTMENT WITH RESPECT TO THE PROTECTION OF THE ECONOMIC INTERESTS OF LOCAL INHABITANTS OF GUAM IS SET FORTH IN CNO LTR SERIAL NO. 14P22 OF 15 JANUARY 1948...THE NAVY DEPARTMENT IS ALSO TO GRANT, WITHHOLD OR CANCEL PERMISSION TO ENGAGE IN ENTERPRISES THAT ARE DETRIMENTAL TO THE PUBLIC INTEREST OR INIMICAL TO THE INTEREST OF LOCAL INHABITANTS..THE SECRETARY OF THE NAVY SHALL BE KEPT INFORMED OF ALL INSTANCES OF THE DENIAL OR REVOCATION OF RIGHT OF ENTRY AND OF ALL GRANTS, DENIALS OR REVOCATIONS OF COMMERCIAL AND INDUSTRIAL LICENSES AND CONCESSIONS. THE CIRCUMSTANCES SURROUNDING AND REASONS CONNECTED WITH DENIALS AND REVOCATIONS SHALL BE REPORTED IN DETAIL."⁷⁴ [EMPHASIS ADDED]

"CAPT. JENNINGS, OFFICER IN CHARGE OF ISLAND GOVERNMENT, SAID APPLICATIONS FOR ENTERPRISES ON GUAM WOULD BE SCREENED CAREFULLY BY REAR ADMIRAL CHARLES POWNALL, MILITARY GOVERNOR OF GUAM...THE POLICY OF THE NAVY DEPARTMENT IS TO PREVENT THE ENTRANCE OF PRIVATE ENTERPRISES UNTIL SUCH TIME AS THE GUAMANIAN ECONOMY HAS BEEN REHABILITATED BY PAYMENT OF GUAMANIAN SETTLEMENTS, LAND ALLOCATIONS, AND RESTORATION OF CIVILIAN FACILITIES TO THE POINT WHERE THE PEOPLE HAVE THEIR GOVERNMENT ON AN EQUITABLE BASIS."⁷⁵ [EMPHASIS ADDED]

A SECOND METHOD OF CONTROLLING THE ECONOMIC SECTOR WAS THROUGH THE IMPLEMENTATION OF A "WAGE SCHEDULE", WHICH ALLOWED STATESIDERS SIGNIFICANTLY HIGHER SALARIES THAN NATIVES FOR IDENTICAL WORK:

"WHILE THERE IS PLENTY OF WORK AVAILABLE FOR THE GUAMANIAN, THE TYPES OF EMPLOYMENT, CONDITIONS OF WORK, WAGE RATES, NUMBER OF HOURS, DISTRIBUTION OF WHOLESALE AND RETAIL BUSINESSES, WHOLESALE AND RETAIL PRICES, ETC., ARE COMPLETELY CONTROLLED BY THE GOVERNMENT...ONCE A NATIVE TAKES A JOB HE CANNOT QUIT

⁷⁴ Letter from Secretary of the Navy Andrews of January 29, 1948, *supra*, pp. 1-2.

⁷⁵ News Release by Navy Department, reported by United Press International, dateline Washington, D.C., December 19, 1948.

ON HIS OWN FREE WILL AND ABSENTEEISM IS PUNISHED BY FINE OR IMPRISONMENT. (GENERAL ORDER NO. 14-44, DECEMBER 21, 1944). THERE ARE THREE WAGE SCHEDULES FOR CIVILIANS FOR THE SAME KIND OF WORK ON THE ISLAND: ONE FOR GUAMANIAN, ONE FOR 'CONTINENTAL AMERICANS' HIRED ON GUAM, AND ONE FOR 'CONTINENTAL AMERICANS HIRED IN THE STATES.. WAGE SCHEDULES SHOWING ALL THREE CATEGORIES ARE NOT MADE AVAILABLE TO THE PUBLIC. SOME IDEA OF THE DISCREPANCY CAN BE INFERRED FROM THE FACT THAT A GUAMANIAN AUTO MECHANIC GETS \$0.43 AN HOUR, A 'CONTINENTAL AMERICAN' HIRED ON GUAM GET \$1.42 AN HOUR, AND A 'CONTINENTAL AMERICAN' FROM THE STATES GETS \$1.72 AN HOUR. ALSO WHILE THE 'CONTINENTAL AMERICAN' WITH THE FEDERAL GOVERNMENT GETS TIME AND A HALF FOR OVERTIME, SICK AND ANNUAL LEAVE WITH PAY, AND OTHER SOCIAL SECURITY BENEFITS, BESIDES TRANSPORTATION TO AND FROM THE ISLAND, THE GUAMANIAN WORKS OVERTIME FOR THE REGULAR RATE AND GETS NO SICK LEAVE OR ANNUAL LEAVE WITH PAY." ⁷⁶ [EMPHASIS ADDED]

IN ITS 1946 "REPORT BY THE NAVAL GOVERNMENT OF GUAM TO UNITED NATIONS," THE MILITARY AUTHORITIES EXPLAINED THE FOREGOING "SCHEDULE" AS FOLLOWS: "THE INHABITANTS WERE TREATED IN ALL RESPECTS ON A BASIS OF EQUALITY WITH UNITED STATES CITIZENS, EXCEPT FOR THE MATTER OF WAGE SCALES, WHERE A DIFFERENTIATION EXISTS BASED ON THE RELATIVE STANDARD OF LIVING."⁷⁷ [EMPHASIS ADDED] SIMILARLY, IN THE SAME YEAR THE GOVERNOR OF GUAM ISSUED A "MEMORANDUM TO THE GUAMANIAN PEOPLE" ON THE SUBJECT OF "WAGE SCALES AND ECONOMIC POLICY," WHICH INCLUDED THE FOLLOWING:

"THE NAVAL GOVERNMENT DESIRES TO AVOID INFLATIONARY REACTIONS WHICH HAVE BEEN PREVALENT ELSEWHERE...IT IS EVIDENT THAT THE GUAMANIAN COST OF LIVING REFLECTS STATESIDE CONDITIONS AND IS FAR ABOVE THE

⁷⁶ Thompson, *supra*, pp. 161-162; citing Roy E. James, USNR, "Military Government: Guam" *Far Eastern Survey*, Volume 15, No. 18, 1946, p. 275

⁷⁷ "Report on Guam, 1946", United States to the Secretary General, United Nations, p. 8.

NORMAL OR DESIRED LEVEL FOR THE ISLAND... THE NAVAL GOVERNMENT WILL CONTINUE ITS DAY-BY-DAY JOB OF ECONOMIC SURVEY IN ITS ENTIRETY, AND WILL CONTINUE TO KEEP THE NAVY DEPARTMENT INFORMED." ⁷⁸ [EMPHASIS ADDED]

A THIRD METHOD OF LIMITING ECONOMIC ACTIVITY WAS THE CONTINUED ENFORCEMENT OF RESTRICTIONS ON THE USE AND ALIENATION OF REAL PROPERTY BY CIVILIANS:

"BY LAW, IT IS NOT POSSIBLE FOR ANY LANDOWNER TO ALIENATE LAND TO A NON-GUAMANIAN WITHOUT APPROVAL OF THE NAVAL GOVERNOR. THIS IS PART OF THE U.S. POLICY OF 'GUAM FOR THE GUAMANIAN' WHICH IS INTENDED TO AVOID EXPLOITATION OF THE INHABITANTS BY OUTSIDERS."⁷⁹ [EMPHASIS ADDED]

"TRANSFER OF REAL PROPERTY ON GUAM IS CAREFULLY CONTROLLED BY THE NAVAL GOVERNOR UNDER THE LAW...LEASE OF REAL PROPERTY TO [NON-GUAMANIAN] FOR ANY PERIOD EXCEEDING FIVE YEARS IS ALSO PROHIBITED."⁸⁰ [EMPHASIS ADDED]

"I WOULD LIKE TO GO ON RECORD WITH A STATEMENT TO SUPPORT TRANSACTIONS BETWEEN A LANDOWNER AND A PERSON INTERESTED IN PURCHASING REAL PROPERTY. THERE MUST BE NO OBSTRUCTION AGAINST THE CULMINATION OF WHATEVER THESE TWO HAVE AGREED UPON. THE VALUE OF ANY COMMODITY SHOULD DEPEND UPON THE OWNER'S PRICE AND THE WILLINGNESS OF THE PURCHASER. IT WILL NOT PROTECT THE LOCAL ECONOMY IF OTHER PEOPLE INTERFERE IN THE NEGOTIATIONS BETWEEN THE TWO PARTIES. AT PRESENT, THAT ECONOMY IS ABSOLUTELY AT VARIANCE WITH THE PRE-WAR ECONOMY. PRICES OF LAND SHOULD NEVER BE BASED ON PRE-WAR STANDARDS OR CONDITIONS. ALL COMMODITIES COST MORE NOW AND IF WE ARE TO ALLOW CONTROLLED PRICES FOR WHAT WE SELL WITHOUT A CORRESPONDING CONTROL ON PRICES OF WHAT WE BUY, THERE CAN BE NO WAY OF MAINTAINING A TRUE ECONOMIC BALANCE. THERE HAVE BEEN LAND PURCHASES

⁷⁸ Naval Governor of Guam, "Memorandum to the Guamanian People", December 28, 1946, pp. 1-2).

⁷⁹ "Report on Guam", 1946, *supra*, p. 8.

⁸⁰ "Report on Guam, 1947", *supra*, p. 26.

WHICH WERE DISAPPROVED BECAUSE ALLEGEDLY EXORBITANT PRICES AGREED UPON. THERE HAVE BEEN LEASES WHERE THE PROSPECTIVE TENANT WANTED TO PAY AN EVEN HIGHER RENTAL, BUT THE ORIGINAL FIGURE WAS NOT APPROVED; IT IS THINGS LIKE THESE THAT CREATE A BLACK MARKET CONDITION."⁸¹ [EMPHASIS ADDED]

FURTHER, LANDOWNERS WHOSE PROPERTY HAD BEEN OCCUPIED BY MILITARY AUTHORITIES WERE ONLY ALLOWED USE AND ACCESS OF THEIR PROPERTY IF THEY WERE ABLE TO OBTAIN A TEMPORARY "REVOCABLE PERMIT" WHICH ALLOWED THEM LIMITED RIGHTS OF OCCUPANCY UNTIL SUCH TIME AS THE MILITARY DECIDED TO TAKE PERMANENT POSSESSION THEREOF. THE INEVITABLE RESULT WAS THAT VERY FEW LANDOWNERS WERE INCLINED TO EXPEND TIME, EFFORT, OR MONEY FOR FARMING OR OTHER COMMERCIAL DEVELOPMENT IF THEY WERE SUBJECT TO IMMEDIATE EVICTION BY THE MILITARY WITHOUT COMPENSATION FOR IMPROVEMENTS:

"YOU MIGHT HAVE SEEN, GENTLEMEN, BY THIS TIME FLOURISHING LIVESTOCK AND FARMS ALL OVER THE ISLAND HAD ANY ACTION BEEN TAKEN TO PROTECT THE FARMERS AND DEED THEM THE LAND... THE ONLY THING WE CAN GET IS A TEMPORARY PERMIT TO INSTALL FACILITIES, THAT IS, BUILDINGS, FENCING, ETC., TO CARE FOR THE STOCK, WITH THE CONDITION THAT IN THE EVENT THAT PIECE OF LAND IS FINALLY CONDEMNED FOR THE GOVERNMENT USE, THAT YOU WILL NOT BE COMPENSATED FOR ALL IMPROVEMENTS MADE ON THE LAND...IT IS ONLY NATURAL FOR ANY INDIVIDUAL WHO HAS THE HEART, THE SOLE INTEREST IN THE SOIL, TO DIVERT FROM THAT PROFESSION TO FIND ANOTHER IN ORDER THAT HE MAY LIVE WITH HIS FAMILY. THERE ARE MANY OF US FARMERS WHO HAVE FORCED OURSELVES TO ACCEPT POSITIONS AND WORK FOR SOMEBODY ELSE, FOR THAT REASON ONLY."⁸² [EMPHASIS ADDED]

⁸¹ Statement of Francisco B. Leon Guerrero, member of Guam Congress, Session for May 1947; Transcript reproduced in Monthly Report of the Naval Government of Guam, June 1947, p. 22.

⁸² Testimony of Frank D. Perez, *supra*, Transcript, p. 52.

THE ULTIMATE EFFECTS OF ALL THE COMPREHENSIVE SOCIAL AND ECONOMIC CONTROLS ON THE NATIVE INHABITANTS OF GUAM, AS WELL-MEANING AS THEY MIGHT HAVE BEEN, WERE INEVITABLY PROFOUND AND LASTING. LAURA THOMPSON DESCRIBED THIS ATMOSPHERE IN 1947 AS BEING AN EVEN MORE COMPLETE DOMINATION OF THE ISLAND BY MILITARY AUTHORITIES THAN EVEN EXISTED UNDER THE EXECUTIVE POWER OF THE PRE-WAR NAVAL GOVERNORS:

"JUDGING FROM PRESENT REALITY, THE TENDENCY OF GUAM SEEMS TO BE TOWARD STILL MORE MINUTE REGULATION OF THE PUBLIC AND PERSONAL LIVES OF GUAMANIAN THAN EVEN BEFORE. WHEREAS FORMERLY, ALTHOUGH PRICES IN THE NATIVE MARKET WERE CONTROLLED THERE WAS A DEGREE OF FLEXIBILITY IN THE ECONOMIC LIFE; NOW IT APPEARS THAT THE GOVERNMENT IS ATTEMPTING TO REGULATE COMPLETELY THE ECONOMY OF THE ISLAND. PUBLIC UTILITIES FORMERLY PRIVATELY OWNED, SUCH AS BUS TRANSPORTATION AND THE MANUFACTURE OF ICE, HAVE BEEN TAKEN OVER BY THE GOVERNMENT; ALL NATIVE BUSINESS ENTERPRISES, WHOLESALE AND RETAIL, ARE GOVERNMENT AUTHORIZED AND LICENSED; ALL IMPORTS AND EXPORTS ARE REGULATED; THE NATIVE IS TOLD EXACTLY WHERE, HOW, AND ACCORDING TO WHAT DESIGN TO REBUILD HIS HOME...AT PRESENT EVEN THE MOVEMENTS AND TRANSPORTATION OF THE NATIVE POPULATION, WHO WERE BOMBED OUT OF THEIR HOMES AND WHOSE HOMES WERE CONDEMNED, ARE ALSO CONTROLLED."⁸³ [EMPHASIS ADDED]

AFTER FIFTY YEARS OF NAVY CONTROL, THEREFORE, IT APPEARED THAT THE NATIVES OF GUAM STILL HAD A LONG ROAD AHEAD BEFORE REALIZING THE NAVY'S PROFESSED GOAL OF "GUIDING THEM FROM DISEASE-RIDDEN MEDIEVAL PEONAGE TO THE DIGNITY AND DEMEANOR OF A SELF-RELIANT CITIZENRY IN THE MODERN WORLD," AND "EDUCATING THEM TO ACCEPT AND INTELLIGENTLY TO DISCHARGE THE RESPONSIBILITIES AND PRIVILEGES OF CITIZENSHIP."⁸⁴

⁸³ Thompson, *supra*, pp. 161, 165, 166.

⁸⁴ Department of the Navy, "Report on Guam, 1899-1950," *supra*, pp. 3 and 22.

V.

PASSAGE OF ORGANIC ACT
AND
REINSTITUTION OF "ENTRY CLEARANCE" REQUIREMENTS

EXECUTIVE ORDER NO. 8683.

IN JULY, 1950, THE UNITED STATES CONGRESS PASSED THE ORGANIC ACT OF GUAM (48 USC § 1421) WHICH TRANSFERRED RESPONSIBILITY FOR ADMINISTRATIVE AFFAIRS OF GUAM FROM THE NAVY TO THE DEPARTMENT OF INTERIOR. INCLUDED IN THIS ENACTMENT WAS A BILL OF RIGHTS AND AN AUTHORIZATION FOR THE CREATION OF A DISTRICT COURT OF GUAM, PATTERNED AFTER THE FEDERAL DISTRICT COURTS IN THE UNITED STATES.

"THE CLEAR CONGRESSIONAL INTENT OF THE ORGANIC ACT, AS REVEALED BY COMMITTEE HEARINGS AND NUMEROUS EXCHANGE OF CORRESPONDENCE AMONG SENATORS AND OTHERS, WAS TO GIVE THE UNITED STATES CITIZENS OF GUAM FULL CIVIL RIGHTS. [QUOTING STATEMENTS FROM S. REP. NO. 2109, 81ST CONGRESS, SECOND SESSION P. 2 (1950)]. THE INDICATIONS WERE THAT EXECUTIVE ORDER NO. 8683 WAS THEN DEAD AND FORGOTTEN. HOWEVER, THE NAVY RESURRECTED THE ORDER ON DECEMBER 4, 1950, THUS ENABLING IT TO RETAIN ITS LONG-ENJOYED POWER OVER THE CIVILIAN COMMUNITY."⁸⁵
[EMPHASIS ADDED]

"UNDER THE ORGANIC ACT ENACTED IN 1950, LOCAL GOVERNMENT WAS FORMED IN ACCORDANCE WITH THE DIRECTIONS OF CONGRESS. A BILL OF RIGHTS FOR THE PEOPLE WAS PATTERNED AFTER THAT PROVIDED IN OUR NATIONAL AND STATE CONSTITUTIONS... WHEN THE CIVIL GOVERNMENT ASSUMED ITS FUNCTIONS, IT WAS GENERALLY THOUGHT THAT THE SECURITY PROGRAM WOULD BE DISCONTINUED. THIS WAS BASED UPON THE ASSUMPTION THAT IMPLICIT IN THE ORGANIC

⁸⁵ W. Scott Barrett and Walter S. Ferenz, "Peacetime Martial Law on Guam", Vol. 48, No. 1, California Review, March, 1960, p. 5 (hereinafter referred to as "Barrett and Ferenz").

ACT IS THE RIGHT OF THE PEOPLE TO MOVE FREELY TO AND FROM THE TERRITORY OF GUAM, JUST AS THAT RIGHT HAS BEEN ACCEPTED AS A MATTER OF FACT IN ALL OTHER TERRITORIES- HAWAII, ALASKA, PUERTO RICO AND THE VIRGIN ISLANDS. NECESSARY RESTRICTIONS WOULD ONLY BE IMPOSED, IT WAS THOUGHT, UPON ENTRY INTO ACTUAL NAVAL OR MILITARY RESERVATIONS... HOWEVER, THE SECURITY PROGRAM WAS NOT DISCONTINUED; IN FACT, IT WAS INTENSIFIED."⁸⁶ [EMPHASIS ADDED]

ASIDE FROM SOCIAL AND POLITICAL QUESTIONS RAISED WITH REGARD TO THE REINSTITUTION OF THE "SECURITY CLEARANCE" PROGRAM ON GUAM, MAJOR LEGAL QUESTIONS WERE ULTIMATELY RAISED WITH RESPECT TO NAVY'S AUTHORITY TO IMPLEMENT AN EXECUTIVE ORDER ORIGINALLY PROMULGATED BY PRESIDENT ROOSEVELT IN 1941 UNDER CIRCUMSTANCES OF IMPENDING HOSTILITIES, THE TEXT OF WHICH READ AS FOLLOWS:

"THE TERRITORIAL WATERS BETWEEN THE HIGH WATER MARKS AND THE 3-MILE MARINE BOUNDARIES SURROUNDING THE ISLANDS OF ROSE, TUTUILA AND GUAM, IN THE PACIFIC OCEAN, ARE HEREBY ESTABLISHED AND RESERVED AS NAVAL DEFENSIVE SEA AREAS FOR PURPOSES OF NATIONAL DEFENSE,... AND THE AIRSPACE'S OVER THE SAID TERRITORIAL WATERS AND ISLANDS ARE HEREBY SET APART AND RESERVED AS NAVAL AIRSPACE RESERVATIONS FOR THE PURPOSE OF NATIONAL DEFENSE..."⁸⁷

IN ORDER TO ASSIST SUBSEQUENT ENFORCEMENT OF THE "SECURITY CLEARANCE" PROGRAM, THE NAVY PROCEEDED TO ADOPT REGULATIONS SUCH AS THE FOLLOWING, WHICH WAS NOT ISSUED TO THE GENERAL PUBLIC:

"COMPLIANCE WITH LAWS AND REGULATIONS: ALL PERSONS, VESSELS AND AIRCRAFT ENTERING THE GUAM ISLAND

⁸⁶ Stevens, Russell I., "Guam, Birth of a Territory", p. 93.

⁸⁷ Executive Order No. 8683.

NAVAL DEFENSIVE SECTOR AREA OR THE GUAM ISLAND AIRSPACE RESERVATION, WHETHER OR NOT VIOLATION OF EXECUTIVE ORDER NO. 8683... SHALL BE GOVERNED BY SUCH REGULATIONS AND RESTRICTIONS UPON THEIR CONDUCT AND MOVEMENTS AS MAY BE ESTABLISHED BY THE COMMANDER, UNITED STATES NAVAL FORCES MARIANAS, WHETHER BY GENERAL REGULATIONS OR BY SPECIAL INSTRUCTION IN ANY CASE."⁸⁸ [EMPHASIS ADDED]

BARRETT AND FERENZ SAW THE FOREGOING REGULATION AS CLEARLY PURPORTING TO ESTABLISH MARTIAL LAW ON GUAM: "CIVILIANS ARE UNDER MARTIAL LAW WHENEVER AN EXECUTIVE ORDER AUTHORIZES A MILITARY COMMANDER TO PRESCRIBE RULES OF ACTION AND MAKE LAW GOVERNING CIVILIAN IN MILITARY AREAS SET UP IN DOMESTIC TERRITORIES UPON THE SOLE STANDARD OF MILITARY NECESSITY (OCHIKUBO V. TONESTEEL, 60 F. SUPP. 916, 292 (S.D. CAL. 1945))."⁸⁹

OF EQUAL SIGNIFICANCE WITH THE LEGAL AND POLITICAL ASPECT OF THE "SECURITY CLEARANCE" PROGRAM WAS THE ZEALOUS MANNER IN WHICH NAVAL AUTHORITIES PROCEEDED WITH IMPLEMENTATION.

"THE REGULATIONS HAVE BEEN VIGOROUSLY ENFORCED BY THE NAVY. ALL PERSONS DESIRING TO COME TO GUAM WHO ARE NOT WITHIN CERTAIN EXCLUDED CATEGORIES ARE REQUIRED TO OBTAIN A SECURITY CLEARANCE FROM THE SECRETARY OF THE NAVY OR HIS SUBORDINATES BEFORE THEY ARE PERMITTED TO ENTER. A PERSON COMING TO GUAM FOR THE FIRST TIME FILES THE APPLICATION DIRECTLY OR INDIRECTLY WITH THE CHIEF OF NAVAL OPERATIONS...APPLICATIONS ARE REQUIRED TO ITEMIZE IN DETAIL ALL PLACES OF RESIDENCE AND EMPLOYMENT FOR THE PAST 10 YEARS (OPNAV INSTRUCTION 5500. 11B, P. 22; 32 C.F.R. 761.3 (B))."⁹⁰ [EMPHASIS ADDED]

⁸⁸ 32 C.F.R. § 761.21.

⁸⁹ Barrett and Ferenz, p. 2.

⁹⁰ Barrett and Ferenz, pp. 4 and 19.

"THE SECURITY PROGRAM REQUIRES EVERY PERSON PROPOSING ENTRY INTO GUAM TO SUBMIT AN APPLICATION TO THE NAVY FOR A SECURITY CLEARANCE. HIS RECORD IS CHECKED AND, IF HIS ENTRY HAS NAVAL APPROVAL, HE RECEIVES A SECURITY CLEARANCE WHICH MUST BE IN HIS POSSESSION UPON ARRIVAL. AIRLINES AND STEAMERLINES WILL NOT ISSUE TICKETS TO GUAM IN THE ABSENCE OF CLEARANCES. OFF-ISLANDERS MUST SUBMIT APPLICATIONS TO THE CHIEF OF NAVAL OPERATIONS IN WASHINGTON, D.C., CLEARANCE FOR OFF-ISLANDERS USUALLY REQUIRES SEVERAL WEEKS. THERE IS NO ADMINISTRATIVE HEARING ON ANY PHASE OF THE PROGRAM. DECISIONS OF CINCPACFLT AND CNO ARE FINAL. ALL REASONS FOR DENIAL ARE SECRET, AND ARE NOT IN ANY CASE DIVULGED TO THE APPLICANT."⁹¹ [EMPHASIS ADDED]

"ENFORCEMENT OF THE NAVAL SECURITY PROGRAM IS NOT DIFFICULT INASMUCH AS THE ONLY PERMISSIBLE WAYS TO ENTER GUAM ARE THROUGH NAVAL RESERVATIONS. APRA HARBOR IS THE ONLY SEA PORT, AND IT IS WITHIN THE CONFINES OF THE NAVAL STATION. PERSONS ENTERING GUAM BY WAY OF AIR CARRIER ARE REQUIRED TO LAND AT THE NAVAL AIR STATION. THERE ARE NO CIVILIAN AIRPORT FACILITIES ON GUAM. TO INSURE THAT PERSONS ENTERING GUAM HAVE THE REQUIRED ENTRY CLEARANCE DOCUMENTS, THE NAVY HAS ORDERED CIVILIAN TRANSPORTATION AGENCIES TO REQUIRE THESE DOCUMENTS BEFORE ALLOWING PROSPECTIVE PASSENGERS TO PURCHASE A TICKET. THIS IS TRUE OF BOTH OF THE AIRLINES AND THE STEADY SHIP LINES. THE CARRIERS HAVE COMPLIED WITH THE ORDERS OF THE NAVY, WHICH CONTENTS THAT THE CARRIERS ARE 'FULLY RESPONSIBLE FOR RESTRICTING THE ACTIVITIES OF THE PASSENGERS IN THEIR CUSTODY SO AS NOT TO PERMIT VIOLATION OF ENTRY CLEARANCE REQUIREMENTS' (LETTER FROM REAR ADMIRAL W.B. AMMON, COMMANDER UNITED STATES NAVAL FORCES MARIANAS, TO G. SELWYN, MANAGER, PAN AMERICAN WORLD AIRWAYS, SEPTEMBER 6, 1956)."⁹² [EMPHASIS ADDED]

WHILE THE DISCUSSION IN THIS MEMORANDUM WILL NOT REVIEW DETAIL THE NUMEROUS LEGAL ARGUMENTS RAISED AGAINST THE EXISTENCE THE "SECURITY CLEARANCE" PROGRAM PER SE, SOME

⁹¹ Stevens, *supra*, p. 94.

⁹² Barrett and Ferenz, p. 6.

OF THE JUSTIFICATION SUGGESTED BY THE NAVY OVER THE DECADE, WHICH WERE MANY AND DIVERSE SIGNIFICANTLY INCLUDED THE FOLLOWING (CITED IN BARRETT AND FERENZ P. 11):

“1.) THE CLEARANCE PROGRAM WAS NECESSITATED BY THE KOREAN WAR”. THIS OF COURSE FAILS TO EXPLAIN THE CONTINUATION OF THE PROGRAM AFTER CESSATION OF HOSTILITIES.

2.) "CIVILIANS ONLY COME TO GUAM FOR THE PURPOSE OF MAKING AS MUCH MONEY AS POSSIBLE FROM THE SALARIES OF MILITARY AND GOVERNMENT EMPLOYEES". (LETTER FROM COMMANDER EDWARD L. BEACH, NAVAL AIDE TO THE PRESIDENT, TO F.L. MOYLAN, SEPTEMBER 20, 1956). PARTICULARLY AFTER THE PASSAGE OF ORGANIC ACT, THE PRESENCE ON GUAM OF CIVILIAN BUSINESSMEN WAS CLEARLY NOT INTENDED TO BE A CONCERN OF THE UNITED STATES NAVY.

3.) "GUAM IS AN IMPORTANT UNITED STATES NAVAL BASE, THUS WARRANTING THE MEASURES AUTHORIZED BY EXECUTIVE ORDER NO. 8683". (LETTER FROM SECRETARY OF THE INTERIOR DOUGLAS MACKAY TO G.M. O'KEEFE, JUNE, JUNE 8, 1953). PEARL HARBOR IS ALSO A NAVAL DEFENSIVE SEA AREA, BUT NO CLEARANCE IS NECESSARY TO ENTER THE ISLAND OF OAHU, WHICH IS NO MORE THAN TWICE THE SIZE OF GUAM WITH ALMOST AS GREAT A PERCENTAGE OCCUPIED BY MILITARY RESERVATIONS.

4.) THE SECURITY CLEARANCE PROGRAM IS NECESSARY TO ENABLE THE NAVY TO ASSIST THE LOCAL GOVERNMENT IN KEEPING THE "RIFF RAFF" OUT OF GUAM⁹³ .” ⁹⁴

WHILE THE LATTER JUSTIFICATION CERTAINLY SUGGESTS SWEEPING SOCIAL IMPLICATIONS WITH RESPECT TO CONTROL OVER THE NATIVE POPULATION, ONE SPECIFIC RESULT WHICH WAS CLEARLY EVIDENT WAS THE ARBITRARY EXERCISE OF THE POWER TO FORCE

⁹³ United States Naval Officer quoted in Bauer, "American Guam Off-Limits to Americans", Portland Oregonian, August 4, 1957, p. 42.

⁹⁴ Barrett and Ferenz, p. 11.

REPATRIATION OF ALIENS, PARTICULARLY TO THE PHILIPPINES, WITHOUT LAWFUL AUTHORITY. ONE EXPLANATION FOR THE POLICY OF REVOKING AN ALIEN'S CLEARANCE GIVEN BY NAVAL SPOKESMEN WAS THAT THE NAVY FAVORED "KEEPING GUAM FOR THE GUAMANIAN," ON THE GROUNDS THAT IT WAS NOT IN THE BEST INTERESTS OF GUAM TO ALLOW A BUILD-UP OF ALIENS QUALIFIED TO BECOME PERMANENT RESIDENTS.

" THE UNITED STATES NAVY 'DOES NOT FAVOR THE ENTRY' OF FILIPINOS TO GUAM 'FOR THE PURPOSE OF SETTLING PERMANENTLY' BECAUSE UNITED STATES NAVY POLICY IS 'TO KEEP GUAM FOR THE GUAMANIAN', REAR ADMIRAL WILLIAM B. AMMON, COMMANDER OF THE UNITED STATES NAVAL FORCES MARIANAS, SAID. IN REPLY TO A QUESTION AS TO WHY THE NAVY FROWNS UPON ANY EFFORT OF FILIPINO TO SETTLE PERMANENTLY ON GUAM, HE SAID 'NAVY POLICY IS TO KEEP GUAM FOR GUAMANIAN, THEREFORE, IT DOES NOT LOOK WITH FAVOR ON THE ENTRY OF ANY FOREIGNER TO GUAM FOR THE PURPOSE OF SETTLING PERMANENTLY.'" (ABCEDE, "GUAM POLICY EXPLAINED," MANILA TIMES. OCTOBER 12, 1956, P.2, COL. 1).⁹⁵ [EMPHASIS ADDED]

"DESPITE THE ENACTMENT OF THE ORGANIC ACT OF GUAM, ESTABLISHING CIVILIAN AUTHORITY, A UNITED STATES NAVY PAPER CURTAIN REMAINS TO THIS DAY. NAVAL INTELLIGENCE HAS BEEN INTENSIFYING EFFORTS TO FEND OFF FOREIGNERS AND UNWANTED AMERICANS." (ABCEDE, "FILIPINOS IN GUAM", MANILA SUNDAY CHRONICLE, JULY 26, 1959, P. 16, COL. 3).⁹⁶

"IF A RETURN CLEARANCE IS DENIED, A RESIDENT APPLICANT MUST EITHER SELL OUT AND DEPART PERMANENTLY OR RESIGN HIMSELF TO AN INDEFINITE STAY IN GUAM. IF THE APPLICANT IS MARRIED TO AN ALIEN, THE ALIEN HUSBAND OR WIFE, AS THE CASE MAY BE, CANNOT OBTAIN RE-ENTRY CLEARANCE EVEN THOUGH THE CITIZEN SPOUSE CAN. THE ALIEN SPOUSE MUST DEPART PERMANENTLY OR STAY HOME WHILE THE CITIZEN SPOUSE IS GONE. AS IN THE CASE OF CITIZENS WHO HAVE BEEN DENIED RE-ENTRY, IF AN ALIEN DEPARTS GUAM, HE

⁹⁵ Barrett and Ferenz, p. 17.

⁹⁶ Barrett and Ferenz, pp. 17 and 18.

CANNOT RETURN UNLESS HE HAS OBTAINED CLEARANCE. DENIAL IN SUCH INSTANCES IS PURSUANT TO NAVY POLICY, ...WHICH HAS NO RELATIONSHIP WITH THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, NOR ANY LAW OR REGULATION RELATING TO IMMIGRATION."⁹⁷

REGARDLESS OF THE STATUS OF INDIVIDUALS AFFECTED, WHETHER THEY WERE MERELY ALIEN LABORERS OR FULL UNITED STATES CITIZENS, THE NAVY'S IMPLEMENTATION OF ITS "SECURITY CLEARANCE" PROGRAM RAISED AT THE VERY LEAST MAJOR CONSTITUTIONAL QUESTIONS RESPECTING DENIAL OF PROCEDURAL DUE PROCESS; EQUAL PROTECTION OF THE LAW; RIGHT TO TRAVEL, AND EXCEEDING THE AUTHORITY OF AN EXECUTIVE ORDER PROBABLY VOID ON ITS FACE.⁹⁸ HOWEVER, TO THE CIVILIAN POPULATION OF GUAM DURING THE 1950'S THESE ISSUES HAD RELATIVELY LITTLE IMMEDIATE IMPACT AS COMPARED TO SOCIAL AND ECONOMIC DISRUPTION CAUSED BY THE NAVY'S ZEALOUS ENFORCEMENT OF "ENTRY CLEARANCE" REQUIREMENTS.

SOCIAL/ECONOMIC IMPACT OF SECURITY CLEARANCE PROGRAM,
1950-1962.

AS PREVIOUSLY DISCUSSED, IMMEDIATELY FOLLOWING REOCCUPATION IN 1944 THE NAVAL GOVERNMENT ADOPTED A POLICY TO RESTRICT FREE ENTERPRISE ON GUAM, NOT ONLY WITH RESPECT TO PROHIBITING NON-GUAMANIAN FROM DOING BUSINESS ON THE ISLAND, BUT ALSO RESTRICTING THE DAY-TO-DAY COMMERCIAL ACTIVITY ALLOWED TO THE FEW GUAMANIAN ENTREPRENEURS.

"PRIOR TO AND IMMEDIATELY FOLLOWING THE SECOND
WORLD WAR THE ECONOMY DEPENDED UPON THE NAVY, IN

⁹⁷ Stevens, *supra*, pp. 94-95.

⁹⁸ Barrett and Ferenz (see generally), pp. 8 through 24.

WHICH WAS VESTED COMPLETE POWER AND SUPERVISION OVER THE AFFAIRS OF GUAM. THE NAVY DICTATED ALL ECONOMIC TERMS. IT BROUGHT ALL IMPORTS INTO THE ISLAND, AND TOOK ALL EXPORTS OUT. IT COMPLETELY CONTROLLED THE TRAVEL OF PERSONS TO AND FROM GUAM. DEVELOPMENT OF LOCAL BUSINESS WAS DIRECTLY DEPENDENT UPON THE SANCTION AND APPROVAL OF THE NAVY. 'OUTSIDERS' WERE NOT ALLOWED TO ENGAGE IN BUSINESS, AND FOLLOWING THE WAR UNTIL 1950, STATESIDERS WERE ALLOWED TO ESTABLISH BUSINESSES ONLY IF INTEREST THEREIN WERE OWNED BY GUAMANIAN. THERE WAS NO INCENTIVE FOR OUTSIDE CAPITAL TO COME TO GUAM, AND NO POSSIBILITY OF PROFITS FOR OUTSIDERS. LOCAL MERCHANTS WERE NURTURED AND ASSISTED BY THE NAVY, AND WERE ENABLED TO MAKE PROFITS ONLY BECAUSE THEY HAD THE BLESSING AND APPROVAL OF THE APPROPRIATE NAVAL OFFICIALS. THERE HAVE BEEN THOSE WHO CHALLENGED THE CONTENTION THAT GUAM SHOULD BE PERMITTED TO DEVELOP FREELY AS ANY TERRITORY. IT IS BETTER, THEY HAVE SAID, THAT GUAM SHOULD REMAIN NO MORE THAN A MILITARY BASE, TOTALLY DEPENDENT UPON THE STRONG ARM OF THE FEDERAL GOVERNMENT."⁹⁹ [EMPHASIS ADDED]

"THE NAVY DEPARTMENT DURING IT ADMINISTRATION OF GUAM HAS NEVER THOUGHT IN TERMS AN AMERICAN STANDARD OF LIVING. POSTWAR WAGES FOR GUAMANIAN HAVE PURPOSELY BEEN KEPT LOW IN ORDER THAT THE NATIVES WOULD NOT BECOME ACCUSTOMED TO A STANDARD OF LIVING WHICH WOULD NOT BE MAINTAINED OVER A PERIOD OF TIME."¹⁰⁰

IN ADDITION TO THE NAVY'S HISTORY OF ECONOMIC CONTROL OVER THE ISLAND, THE EFFECTS OF WHICH CONTINUED EVEN AFTER THE ENACTMENT OF THE ORGANIC ACT, THE LACK OF SEPARATE AND COMPARABLE CIVILIAN FACILITIES IN SUCH AREAS AS TRANSPORTATION AND UTILITIES RESULTED IN AN EXTENSION OF DEPENDENCY UPON THE MILITARY BY THE NATIVE POPULATION DURING THE 1950'S:

⁹⁹ Stevens, *supra*, p. 119-128.

¹⁰⁰ Zenor, Michael, "United States Naval Government & Administration of Guam," August, 1949, p. 223.

"THE FACTOR WHICH MILITATES AGAINST THE IDEA OF GUAM'S BEING A 'FREE PORT' IS THE STATUS OF GUAM'S ONLY HARBOR. APRA HARBOR IN ITS ENTIRETY, TOGETHER WITH ITS ENVIRONS, IS A MILITARY RESERVATION UNDER CONTROL OF THE NAVY. NOT ONLY IS AMERICAN TRAFFIC IN AND OUT OF THE HARBOR CLOSELY SCRUTINIZED AND REGULATED BY THE NAVY, BUT ALSO GUAM IS A CLOSED PORT WITH RESPECT TO VESSELS AND AIRCRAFT OF FOREIGN NATIONS...NEARLY ALL COMMERCIAL POWER ON GUAM IS SUPPLIED BY THE NAVY. HOWEVER, THE NAVY FEELS THAT A CONSIDERABLE PORTION OF ITS PLANT CAPACITY MUST BE RESERVED FOR POTENTIAL MILITARY NEEDS, WITH THE RESULT THAT POWER FOR CIVILIAN USE IS RESTRICTED AND RATIONED. EVERY APPLICATION FOR POWER IS CAREFULLY SCREENED."¹⁰¹ [EMPHASIS ADDED]

IT WAS IN THE CONTEXT OF SUCH EXISTING RESTRICTIONS UPON COMMERCIAL ACTIVITY THAT THE SO-CALLED "SECURITY CLEARANCE" PROGRAM WAS INSTITUTED IN 1950, WITH THE RESULT THAT ESSENTIALLY IMPLICIT BURDENS UPON CIVILIAN BUSINESSMEN BECAME OUTRIGHT PROHIBITIONS:

"[UNDER THE SECURITY CLEARANCE PROGRAM] CITIZENS AND ALIENS ALIKE HAVE BEEN DEPRIVED OF LIBERTY AND PROPERTY [WITH OUT DUE PROCESS OF LAW]. JOSEPH SICILIANO, A LOCAL BUSINESSMAN, SOMEHOW INCURRED THE ENMITY OF THE NAVY AND HAS BEEN EXCLUDED FROM GUAM AND TOLD NEVER TO RETURN. THE ACTUAL REASONS ARE KNOWN TO NO ONE BUT THE NAVY. SICILIANO'S SUBSTANTIAL BUSINESS INTERESTS IN GUAM HAVE DIMINISHED OR VANISHED DUE TO HIS PROLONGED ABSENCE."¹⁰²

"SO LONG AS FREEDOM OF MOVEMENT IS PROHIBITED, NO SOUND BUSINESSMAN WILL INVEST A LARGE AMOUNT OF MONEY. THOUSANDS OF BUSINESSMEN PASS THROUGH GUAM EACH YEAR. THE TERRITORY HAS DEFINITE ECONOMIC POSSIBILITIES, BUT THEY ARE NOT SEEN BY SUCH BUSINESSMEN. MANY OF THEM DO NOT LEARN OF THE POSSIBILITIES UNTIL ON THEIR WAY FROM

¹⁰¹ Stevens, *supra*, p. 123 and 128.

¹⁰² Barrett and Ferenz, p. 24.

THE STATES DURING THE AIR APPROACH. IT IS THEN TOO LATE TO OBTAIN A SECURITY CLEARANCE, AND THE TRAVELERS MUST CONTINUE ON THEIR WAY. THERE HAVE BEEN MANY INSTANCES WHEN PROPOSED TRIPS TO GUAM WERE CANCELED BY BUSINESSMEN IN THE STATES WHEN THEY LEARNED OF THE DELAY AND THE INCONVENIENCE OCCASIONED BY THE SECURITY CLEARANCE PROGRAM."¹⁰³

THE FACT THAT THE "SECURITY CLEARANCE" PROGRAM DETERRED MANY INDIVIDUAL BUSINESSMEN FROM INVESTING IN GUAM CANNOT BE DISPUTED; IN ADDITION, HOWEVER, IT WAS CLEAR THAT THE ECONOMY OF GUAM WAS BEING DIRECTLY HELD BACK AND REPRESSED DURING THE 1950'S AS A RESULT OF THESE DETERRENTS.

"[AS STATED IN S.REP. NO. 2109, 81ST CONGRESS, SECOND SESSION (1950)] 'GIVEN A PERIOD OF PEACE, THE GROWTH OF GUAM AS A TRANSPORTATION AND COMMERCIAL CENTER FOR AMERICAN INTERESTS ON THE FAR EAST SEEMS ALMOST A FOREGONE CONCLUSION'...THE BUSINESS COMMUNITY ON GUAM, HOWEVER, IS AGREED THAT THE SECURITY CLEARANCE REQUIREMENT HAS SERIOUSLY HAMPERED GUAM'S ECONOMIC DEVELOPMENT, PARTICULARLY AS TO TOURIST BUSINESS. THERE ARE NO PUBLIC HOTELS ON GUAM, ALTHOUGH THOUSANDS OF TOURISTS TRANSIT THE ISLAND ANNUALLY. NAVY RED TAPE DISCOURAGE STOPOVERS."¹⁰⁴ [EMPHASIS ADDED]

"LONG-RANGE PROGRESS AND DEVELOPMENT WILL NOT BE POSSIBLE IN THE ABSENCE OF A SOUND ECONOMIC PROGRAM ON THE PART OF THE GOVERNMENT, AND SO LONG AS THE PRESENT SECURITY PROGRAM IS CONTINUED...IT IS DOUBTFUL WHETHER A HOTEL WILL BE CONSTRUCTED SO LONG AS THE SECURITY CLEARANCE PROGRAM REMAINS IN EFFECT. IF AIR PASSENGERS WERE FREE TO STOP ON GUAM IN ROUTE TO THE ORIENT, A SUBSTANTIAL IMPETUS WOULD BE PROVIDED TO THE LOCAL ECONOMY."¹⁰⁵

¹⁰³ Stevens, supra, p. 126.

¹⁰⁴ Barrett and Ferenz, p. 4 and 5.

¹⁰⁵ Stevens, supra, p. 125.

"THE REQUIREMENTS OF THE NAVY FOR A SPECIAL ENTRY AUTHORIZATION BEFORE ONE CAN VISIT THE ISLAND DOES NOT ENCOURAGE POTENTIAL VISITORS. INVESTMENT IN EXTENSIVE TOURIST FACILITIES ON THE ISLAND IS THEREFORE BELIEVED TO BE A POOR RISK UNDER THESE CIRCUMSTANCES."¹⁰⁶

WHETHER UNDER THE CIRCUMSTANCES THE CIVILIAN SECTOR COULD HAVE TAKEN ACTION CHALLENGING CONTINUATION OF SECURITY CLEARANCE RESTRICTIONS IS PROBLEMATIC. CLEARLY, GEOGRAPHICAL REMOTENESS BETWEEN GUAM AND THE SOURCES OF AUTHORITY (DEPARTMENT OF THE NAVY) AND JUDICIAL REVIEW (THE SUPREME COURT) IN WASHINGTON, D.C., WAS A PRACTICAL AND FINANCIAL BARRIER TO SUCH ACTION; ADDITIONALLY, THE TRADITION OF NOT CHALLENGING AN EXERCISE OF NAVAL AUTHORITY, BRIEFLY DISCUSSED, SUPRA, WAS SURELY A FACTOR. THAT GUAMANIAN WERE UNHAPPY WITH THE UNJUSTIFIED EXTENSION OF NAVY CONTROL OVER THE ISLAND BEYOND THE EFFECTIVE DATE OF THE ORGANIC ACT, WHICH WAS TO HAVE SYMBOLIZED THE ULTIMATE INDEPENDENCE OF GUAM FROM MILITARY DOMINATION, WAS NEVERTHELESS BEYOND QUESTION.

"A RESTLESS SPIRIT IS STIRRING IN AMERICA'S NEWEST TERRITORY. GUAM'S 34,000 NATIVE RESIDENTS WANT TO DEVELOP AN ECONOMY NOT ROOTED IN THE MILITARY. THE MOST WIDESPREAD GRIEVANCE IS THE TIGHT SECURITY CHECKS THE NAVY REQUIRES OF EVERY PERSON, INCLUDING UNITED STATES CITIZENS, ENTERING THE ISLAND. 'IT IS THE PRINCIPAL DETERRENT TO ESTABLISHING A SOUND ECONOMY,' SAYS THE CHAMBER OF COMMERCE. 'IT IS KEEPING OUT LEGITIMATE FREE ENTERPRISE. IT IS VIOLENTLY OPPOSED TO OUR PRINCIPLES OF DEMOCRACY'."¹⁰⁷ [EMPHASIS ADDED]

¹⁰⁶ Stanford Research Institute, "Guam: Its Economy and Development Opportunities", 1959, p. 130.

¹⁰⁷ "Spirit Stirring on Guam", Baltimore Evening Sun, November 15, 1956, p. 6.

CONCLUSION.

THE "SECURITY CLEARANCE" PROGRAM WAS CONTINUED ON GUAM BY THE NAVY DEPARTMENT UNTIL AUGUST 23, 1962, NOTWITHSTANDING THE LIKELIHOOD OF ITS UNCONSTITUTIONALITY AND THE OBVIOUS SEVERE NEGATIVE IMPACT IT CONTINUED TO HAVE ON THE ISLAND, BOTH SOCIALLY AND ECONOMICALLY. WHILE THE PROGRAM'S RAMIFICATIONS UPON THE LIVES OF THE NATIVE POPULATION DURING THE 1950'S WERE PROFOUND AND READILY APPARENT, QUESTIONS REMAINED UNANSWERED, EVEN AFTER 1962, AS TO THE NAVY'S MOTIVATIONS IN SUCH AN UNWARRANTED ATTEMPT TO EXTEND ITS HISTORICAL DOMINATION OVER GUAM, EVEN AFTER PASSAGE OF THE ORGANIC ACT. POSSIBLY FIVE DECADES OF ABSOLUTE AUTHORITY OVER NATIVE AFFAIRS MADE IMMEDIATE DIVESTMENT OF MILITARY PREROGATIVE DIFFICULT FOR THE NAVY TO ACCEPT. PROBABLY A BETTER EXPLANATION, HOWEVER, WAS SUGGESTED IN 1960 BY BARRETT AND FERENZ IN THE CONCLUSION OF "PEACETIME MARTIAL LAW ON GUAM".

"IN A SPEECH BEFORE THE MULTNOMAH COUNTY BAR ASSOCIATION IN PORTLAND, OREGON, IN AUGUST, 1957, JUDGE J. FRANK MCLAUGHLIN OF THE UNITED STATES DISTRICT COURT OF HAWAII SPOKE OUT AGAINST THE LEGALITY OF THE GUAM SECURITY CLEARANCE. HIS SPEECH WAS COMMENTED UPON IN AN EDITORIAL IN THE PORTLAND OREGONIAN:

'THERE WERE PROBABLY FEW LAWYERS IN JUDGE MCLAUGHLIN'S AUDIENCE WHO WOULD WANT TO UNDERTAKE TO JUSTIFY LEGALLY THE U.S. ADMINISTRATION'S HIGH HAND IN GUAM. THE SECURITY REGULATIONS ARE, ACCORDING TO THE NAVY, BASED ON AN ORDER ISSUED BY PRESIDENT FRANKLIN D. ROOSEVELT...IT IS NOT CLEAR WHY GUAM SHOULD BE THE MOST STRINGENTLY GUARDED OF ALL U.S. TERRITORIES...[FOR] THE SCARS OF WAR HAVE DISAPPEARED FROM GUAM. BUT U.S. TOURISTS ARE NOT LIKELY SOON TO EXPLORE ITS CHARMS. THE U.S. NAVY

DOESN'T WANT TO BE BOTHERED. IN FACT, A NAVAL SPOKESMAN HAS BEEN HEARD TO TAKE CREDIT FOR KEEPING ALL SORTS OF "RIFFRAFF" OUT OF GUAM UNDER COVER OF THE SECURITY PROGRAM.'

ONE CAN ONLY CONCLUDE THAT THE UNITED STATES NAVY IS INTENTIONALLY ENFORCING THE NAVAL SECURITY CLEARANCE WHILE REALIZING AT THE SAME TIME THAT IT IS UNSUPPORTED BY STATUTE AND IS UNCONSTITUTIONAL. THE WORDS OF JUDGE MCLAUGHLIN ARE AGAIN APPROPRIATE, THOUGH HE WAS COMMENTING UPON THE FACT THAT THE ARMY CONTINUED MARTIAL LAW ON HAWAII LONG AFTER IT WAS NECESSARY. HE SAID:

YES, "THEY DID IT." THEY DID IT INTENTIONALLY. THEY DID IT WITH DESIGN AFORETHOUGHT. THEY DID IT IN KNOWING DISREGARD OF THE CONSTITUTION. THEY DID IT BECAUSE HAWAII IS NOT A STATE. THEY DID IT BECAUSE THEY DID NOT HAVE FAITH THAT AMERICANISM TRANSCENDS RACE, CLASS AND CREED.'"¹⁰⁸

¹⁰⁸ Barrett and Ferenz, pp. 25-26.

VI.
HISTORY
VS
UNITED STATES COMMITMENTS

THE ISSUES INHERENT TO THE RIGHTS OF THE PEOPLE OF GUAM CANNOT BE REDUCED AND LIMITED TO THE PARAMETERS OF A 'COLONIAL BEAUTY CONTEST' OR A COMPARATIVE ANALYSIS AGAINST SITUATIONS ELSEWHERE.

SUCH RIGHTS MUST BE CONSIDERED AGAINST THE FRAMEWORK OF DEMOCRATIC PRINCIPLES AND INTERNATIONAL CONVENTIONS ON DECOLONIZATION, AS OPPOSED TO THE CONSTRAINING FRAMEWORK OF COLONIAL STRUCTURES. THOUGH ADMITTEDLY A PHILOSOPHICAL ARGUMENT, AND NOT REFLECTIVE OF THE REAL WORLD, I OFFER THAT THE BASIC DEMOCRATIC RIGHTS OF A PEOPLE SHOULD NOT ONLY ACCRUE PROPORTIONALLY TO THEIR ABILITY TO FORCIBLY DEFEND THEM. IF AMERICA'S PARTICIPATION IN INTERNATIONAL INSTITUTIONS CAN DEFEND THE RIGHTS OF OTHERS, IS IT SO INCONCEIVABLE THAT CHAMORROS BE EXTENDED THE SAME CONSIDERATIONS AND PROTECTIONS; FOR THE SAME BASIC REASONS?

THE FIRST CLEAR STATEMENT OF POLICY BY THE NAVY RELATIVE TO THE PROTECTION OF CHAMORRO LANDS, WAS MADE BY THE SECRETARY OF THE NAVY IN 1933:

"THE GENERAL POLICY OF THE NAVAL GOVERNMENT IS TO GUARD THEM FROM EXPLOITATION BY OUTSIDERS AND PROTECT THEIR LANDS."¹⁰⁹ [EMPHASIS ADDED]

¹⁰⁹ Secretary of the Navy, Claude A. Swanson, Letter to Senate Committee considering Bill 1450, 75th Congress, First Session, 1937.

THE UNITED STATES COMMITMENT IN 1946, PURSUANT TO ARTICLE 73 OF THE UNITED NATIONS CHARTER, TO THE RIGHT AND EVENTUAL EXERCISE OF CHAMORRO SELF-DETERMINATION, AND PROMISED PROTECTIONS FOR THE INTERIM PERIOD, MUST BE THE YARDSTICK FOR THE MEASURE OF WHAT IS DETERMINED TO BE AN EQUITABLE RESOLUTION OF GUAM'S LAND RIGHTS ISSUE:

"BY LAW, IT IS NOT POSSIBLE FOR ANY LANDOWNER TO ALIENATE LAND TO A NON-GUAMANIAN WITHOUT APPROVAL OF THE NAVAL GOVERNOR. THIS IS PART OF THE U.S. POLICY OF 'GUAM FOR THE GUAMANIAN' WHICH IS INTENDED TO AVOID EXPLOITATION OF THE INHABITANTS BY OUTSIDERS."¹¹⁰
[EMPHASIS ADDED]

"TRANSFER OF REAL PROPERTY ON GUAM IS CAREFULLY CONTROLLED BY THE NAVAL GOVERNOR UNDER THE LAW . . . LEASE OF REAL PROPERTY TO NON-GUAMANIAN FOR ANY PERIOD EXCEEDING FIVE YEARS IS ALSO PROHIBITED."¹¹¹

"THE POLICY OF THE NAVY DEPARTMENT WITH RESPECT TO THE PROTECTION OF THE ECONOMIC INTERESTS OF LOCAL INHABITANTS OF GUAM IS SET FORTH IN CNO LTR SERIAL NO. 14P22 OF 15 JANUARY 1948 . . . THE NAVY DEPARTMENT IS ALSO TO GRANT, WITHHOLD, OR CANCEL PERMISSION TO ENGAGE IN ENTERPRISES THAT ARE DETRIMENTAL TO THE PUBLIC INTEREST OR INIMICAL TO THE INTEREST OF LOCAL INHABITANTS . . ."¹¹²
[EMPHASIS ADDED]

". . . THE POLICY OF THE NAVY DEPARTMENT IS TO PREVENT THE ENTRANCE OF PRIVATE ENTERPRISES UNTIL SUCH TIME AS THE GUAMANIAN ECONOMY HAS BEEN REHABILITATED BY PAYMENT OF GUAMANIAN SETTLEMENTS, LAND ALLOCATIONS, AND RESTORATION OF CIVILIAN FACILITIES TO THE POINT WHERE THE

¹¹⁰ "Report to United Nations", Department of the Navy, 1946, submitted pursuant to Charter obligation, Article 73.

¹¹¹ "Report to United Nations", Department of the Navy, 1947, submitted pursuant to Charter obligation, Article 73.

¹¹² Letter from Secretary of the Navy Andrews, January 29, 1948, pp. 1-2.

PEOPLE HAVE THEIR GOVERNMENT ON AN EQUITABLE BASIS."¹¹³
[EMPHASIS ADDED].

THE STATED COMMITMENTS OF PROTECTING CHAMORRO REAL PROPERTY RESOURCES, PROVIDING REHABILITATION BY THE PAYMENT OF SETTLEMENTS, DEVELOPING A CHAMORRO DRIVEN ECONOMY, RESTORE CIVILIAN FACILITIES, AND PROVIDING SELF-GOVERNMENT ON AN EQUITABLE BASIS, WERE NEVER REALIZED. QUITE TO THE CONTRARY, THE NAVAL GOVERNMENT INSTITUTED POLICIES WHICH WOULD ACTUALLY RETARD RECOVERY AND DEVELOPMENT WITH THE IMPLEMENTATION OF THE "WAGE SCALES AND ECONOMIC POLICY" MEMORANDUM. THIS POLICY ESTABLISHED A MULTIPLE LEVEL WAGE SCALE, FOR THE SAME ACTIVITIES, BUT DIFFERENTIATED ON THE BASIS OF RACE. THE NAVY JUSTIFIED THIS ACTION AS A MECHANISM FOR THE CONTROL OF INFLATION:

"THE NAVAL GOVERNMENT DESIRES TO AVOID INFLATIONARY REACTIONS WHICH HAVE BEEN PREVALENT ELSEWHERE . . . IT IS EVIDENT THAT THE GUAMANIAN COST OF LIVING REFLECTS STATESIDE CONDITIONS AND IS FAR ABOVE NORMAL OR DESIRED LEVEL FOR THE ISLAND . . . THE NAVAL GOVERNMENT WILL CONTINUE ITS DAY-TO-DAY JOB OF ECONOMIC SURVEY IN ITS ENTIRETY . . . "¹¹⁴

IRONICALLY, THIS SAME SITUATION OF ECONOMIC CONTROL WAS JUSTIFIED, BEFORE THE UNITED NATIONS IN THE 1947 REPORT, AS A MECHANISM TO STABILIZE THE ECONOMY, PRESUMABLY, SO AS NOT TO INTERFERE WITH THE EVENTUAL EXERCISE OF SELF-DETERMINATION - AN EXERCISE, ONE MIGHT ADD, WHICH THE DEPARTMENT OF DEFENSE AND INTERIOR BITTERLY OPPOSE TODAY.

¹¹³ News Release by Navy Department, reported by United Press International, dateline Washington, D.C., December 19, 1948.

¹¹⁴ Naval Governor of Guam, "Memorandum to the Guamanian People", December 28, 1946

CHAMORRO COMPLIANCE WITH THE "WAGE SCALES AND ECONOMIC POLICY" WAS ASSURED BY GENERAL ORDER NO. 14-44:

"WHILE THERE IS PLENTY OF WORK AVAILABLE FOR THE GUAMANIAN PEOPLE, THE TYPES OF EMPLOYMENT, CONDITIONS OF WORK, WAGE RATES, NUMBER OF HOURS, DISTRIBUTION OF WHOLESALE AND RETAIL BUSINESSES, WHOLESALE AND RETAIL PRICES, ECT., ARE COMPLETELY CONTROLLED BY THE GOVERNMENT . . . ONCE A NATIVE TAKES A JOB HE CANNOT QUIT OF HIS OWN FREE WILL AND ABSENTEEISM IS PUNISHED BY FINE OR IMPRISONMENT."¹¹⁵ [EMPHASIS ADDED]

THE SPANISH AND JAPANESE HAD MADE IT QUITE CLEAR THAT 'LAWS' ARE NOT TO BE CHALLENGED. THIS 'RESPECT' FOR THE LAW WAS FULLY APPRECIATED BY THE NAVAL GOVERNMENT:

"ALL CLASSES ARE DOCILE, STAND IN GREAT AWE OF THE LAW AND MANIFEST THE GREATEST RESPECT FOR ITS HUMBLEST OFFICER. NO THREAT OF PERSONAL VIOLENCE MAY MOVE A STUBBORN CHAMORRO, BUT A MENTION OF THE LAW WILL END ALL OPPOSITION AND MAKE HIM A WILLING PRISONER, IF NOT A DOER. THE GOVERNOR, OR "Y MAGALEJE", AS HE IS KNOWN, IS TO HIM THE PERSONIFICATION OF POWER."¹¹⁶ [EMPHASIS ADDED]

¹¹⁵ (Thompson, Laura, citing Roy E. James, USNR, "Military Government: Guam", Far Eastern Survey, Volume 15, No. 18, 1946, p. 275.

¹¹⁶ "Strategic Study of Guam ONI-99", Office of Chief of Naval Operations, Division of Naval Intelligence, February, 1944.

VII. JUDICIAL DUE PROCESS REVISITED

1950 - 1995.

THE INITIAL MILITARY LEASEHOLD TAKING OF THE 1940'S WERE CONVERTED TO TAKING IN FEE IN THE DISTRICT COURT OF GUAM IN THE EARLY 1950'S, WITHOUT ADDITIONAL COMPENSATION. THE TAKINGS WERE JUDICIALLY REVISITED FROM 1977 THROUGH THE EARLY 1990'S, PROVIDED, HOWEVER, THAT CLAIMANTS MUST PROVE THAT, "LESS THAN FAIR MARKET WAS PAID AS A RESULT OF (1) DURESS, UNFAIR INFLUENCE OR OTHER UNCONSCIONABLE ACTIONS OR (2) UNFAIR AND INEQUITABLE ACTIONS OF THE UNITED STATES."¹¹⁷

DURING THESE PROCEEDINGS, IT WAS THE COURT OPINION OF THE COURT, BASED UPON INTENT PROVIDED IN THE CONGRESSIONAL RECORD, THAT THE SECURITY CLEARANCE RESTRICTIONS WERE NOT TO BE CONSIDERED A SUFFICIENT DEMONSTRATION OF UNFAIR INFLUENCE OR INEQUITABLE ACTIONS BY THE UNITED STATES. ALTHOUGH A CLEAR DOMINANT/DEPENDENT RELATIONSHIP WAS DEMONSTRATED TO HAVE EXISTED FROM 1898 THROUGH 1963¹¹⁸, IT WAS FURTHER OPINIONED, THAT, "A FIDUCIARY OR TRUST RELATIONSHIP DOES NOT EXIST BETWEEN THE UNITED STATES AND THE GUAMANIAN PEOPLE . . ." [SINCE] ". . . GUAM WAS CEDED TO THE UNITED STATES BY SPAIN THROUGH THE TREATY OF PARIS. IT IS NOT A TREATY WITH THE GUAMANIAN PEOPLE."¹¹⁹ SUBSEQUENTLY, MARKET AWARDS

¹¹⁷ U.S. P.L.. 95-134 (Title II, Section 204)

¹¹⁸ In the Matter of Guam Land cases Filed Under the Provisions of the Omnibus Territories Act of 1977 and which were Subject to Option 3 Elections, No. C-78-0044 MF ET AL.

¹¹⁹ Response to Plaintiffs' Motion *In Limine* and supporting Memorandum Regarding the Existence and Effect of the Fiduciary Relationship between Guam and the United States (December 19, 1988); see also footnote 119.

DETERMINED FAIR IN 1986 WERE HELD TO THE BENCHMARK YEAR OF 1953.

EVEN WHEN CUMULATIVELY CONSIDERED, COMPENSATION AWARDED TO DATE NEVER CLOSED THE GAP BETWEEN THE LAND LOST AND THE ABILITY TO REPLACE IT. THUS, THE PROFOUND AND LASTING EFFECTS REALIZED UNDERMINE THEIR 1995 ABILITY TO EQUITABLY PARTICIPATE IN GUAM'S ECONOMY. THE INABILITY TO ACCOMPLISH THE REPLACEMENT OF LANDS TAKEN REMAINS TODAY AS THE LEADING CAUSE OF TENSIONS. THOUGH MOST FAMILIES WOULD PREFER THE DIRECT RETURN OF THEIR ORIGINAL LANDS, THE LEGITIMATE ABILITY TO REPLACE THEM WOULD SUBSTANTIALLY REDUCE THE SEVERITY OF DISPLACEMENT WITHIN THEIR HOMELAND.

IX

CONCLUSION

SOURCE: "ABNORMAL SOCIO-ECONOMIC INFLUENCES"

DID THE UNITED STATES HAVE A FIDUCIARY DUTY, OR OTHERWISE, TO PROTECT THE INTERESTS OF NATIVE CHAMORROS FROM WHOM REAL PROPERTY WAS ACQUIRED AFTER THE WAR AND, IF SO, CAN BREACH OF SUCH DUTY BE INFERRED FROM THE GOVERNMENT'S ACTIONS DURING THIS PERIOD? IT IS DIFFICULT TODAY TO PROJECT THE FEELINGS OF GRATITUDE AND PATRIOTISM WHICH SPRUNG FROM THE WARTIME EMOTIONS PREVAILING SO INTENSELY DURING THE YEARS FOLLOWING LIBERATION FROM THE JAPANESE; HOWEVER, THE FACT THAT SUCH DEEP FEELINGS EXISTED DOES NOT NEGATE THE BASIC QUESTION WHICH HAS BEEN POSED, BOTH BY HISTORY AND BY EXPRESS LEGISLATIVE MANDATE FROM THE UNITED STATES CONGRESS: WERE THE NATIVES OF GUAM SUFFICIENTLY STRONG, INDEPENDENT AND WELL-ADVISED DURING THE LAND ACQUISITION PROGRAM TO NEGOTIATE AND BARGAIN AT ARMS-LENGTH WITH REPRESENTATIVES OF THE UNITED STATES GOVERNMENT, OR WERE THEY AT THAT TIME PHYSICALLY, MENTALLY, ECONOMICALLY AND CULTURALLY IN A STATE OF DEPENDENCE UPON THE VERY GOVERNMENT SEEKING TO BECOME THEIR ADVERSARY IN A TRANSACTION OF MAJOR BUSINESS COMPLEXITY AND LEGAL SIGNIFICANCE?

IT IS SUBMITTED THAT THE LATTER CHARACTERIZATION IS FAR CLOSER TO THE TRUTH; THE ACTIONS AND ADMINISTRATIVE MEASURES, AS WELL AS THE OMISSIONS, OF THE UNITED STATES GOVERNMENT IN PURSUING ITS LAND ACQUISITION PROGRAM ON GUAM, FLEW IN THE FACE OF FIDUCIARY RESPONSIBILITY AND, BY ANY REASONABLE LEGAL STANDARD, INVOLVED AN EXERCISE OF "UNFAIR INFLUENCE". WHETHER SOME OF THESE FAILURES, SUCH AS DELAY IN

APPROPRIATIONS FROM WASHINGTON IN SUPPORT OF THE REHABILITATION PROGRAM, COULD BE CONSIDERED REASONABLY EXCUSED OR CHARACTERIZED AS UNAVOIDABLE CONSEQUENCES OF THE POST-WAR ERA, IS NOT RELEVANT TO THE NARROW QUESTION OF ASCERTAINING THE STATUS OF THE NATIVES OF GUAM AND THEIR RELATION TO THE GOVERNMENT. IT SHOULD PERHAPS BE NOTED NEVERTHELESS THAT OTHER METHODS AND PROCEDURES THAN THOSE ADOPTED MIGHT HAVE BEEN MORE PRODUCTIVE AND DESIRABLE: LARGER AND SPEEDIER REMEDIAL APPROPRIATIONS; AVAILABILITY OF EXPERT PROFESSIONAL ASSISTANCE TO THE NATIVES IN ADVERSARY PROCEEDINGS; GREATER ACCOUNTABILITY ON THE PART OF THE MILITARY IN JUSTIFYING ACQUISITIONS; AND A MORE CAREFUL AND REALISTICALLY-TIMED RESOLUTION OF THE CRUCIAL ISSUE OF LAND VALUATIONS.

VIEWING THIS PERIOD TODAY FROM THE ARMCHAIR OF HISTORY PRESENTS NUMEROUS INESCAPABLE CONCLUSIONS, MANY OF WHICH HAVE BEEN DISCUSSED IN THE COURSE OF THIS TESTIMONY. AT THE VERY LEAST, IT CAN BE SAID THAT THE ERA OF DOMINATION/DEPENDENCE EXEMPLIFIED BY THE UNITED STATES' ADMINISTRATION OF GUAM PRIOR TO THE REMOVAL OF MILITARY SECURITY RESTRICTIONS IN 1962, WAS ONE OF PROFOUND CONSEQUENCES.

RECALLING THE WORDS OF THE HOPKINS COMMITTEE FROM 1947 EFFECTIVELY ILLUSTRATES THE FOUNDATION OF ANY HISTORICAL JUDGMENT OF THESE EVENTS.:

"ON GUAM, THE WAR BROUGHT WIDESPREAD DESTRUCTION, BUT OVER AND BEYOND THIS, IT BROUGHT DEATH

TO MANY, BRUTALITIES TO MORE, AND RUTHLESS OPPRESSION TO ALL, OVER A LONG PERIOD. NOW MONTHS AFTER CESSATION OF HOSTILITIES THE GUAMANIAN FIND THEMSELVES, BECAUSE OF THE STRATEGIC POSITION OF THEIR ISLAND, OUTNUMBERED IN POPULATION BY MILITARY FORCES OF THE ARMY, NAVY, AND MARINES. THEY ARE DISPOSSESSED OF HOMES AND LANDS WHICH HAVE BEEN DESTROYED OR TAKEN FROM THEM, AND THEY ARE WITHOUT ADEQUATE UNDERSTANDING OF PROCESSES BY WHICH TO SECURE REPLACEMENT OF COMPENSATION.... THERE IS NO LACK OF KNOWLEDGE ON THE PART OF THE NAVY AS TO WHAT OUGHT TO BE DONE... ONLY SO CAN JUSTICE BE DONE TO A VALIANT GROUP OF AMERICANS WHO AT GREAT COST TO THEMSELVES REMAINED STEADFASTLY LOYAL DURING THE WAR, BUT MANY OF WHOM STILL LACK HOUSING TO REPLACE THAT DESTROYED BY OUR BOMBS AND SHELLS, OR STILL LACK LAND FOR SUBSISTENCE TO REPLACE THAT TAKEN FROM THEM FOR MILITARY USES. IT WOULD SEEM TO YOUR COMMITTEE THAT IN SO SPECIAL A CASE AS THIS OUR GOVERNMENT COULD WELL BE VERY GENEROUS IN METHOD OF DISTRIBUTING ITS RELIEF, AS WELL AS GENEROUS IN THE AMOUNT AWARDED. IT HAS BEEN NEITHER."¹²⁰

BRACRT.TES

¹²⁰ Hopkins Committee, "Report on Civil Government of Guam & American Samoa", March 25, 1947, p. 15-16.

Document Separator

Wayne Army & Associates, Inc.
The Watergate, Suite 600, 2600 Virginia Avenue, N.W., Washington, D.C. 20037
(202) 333-2919 Fax: (202) 338-5950

Legislative & Government Relations
National Security & International Affairs

TELECOPIER TRANSMITTAL FORM

TO: Name: Eric Lindenbaum
Fax Phone #: 703-696-0550

FROM: Wayne Army/Leland Bettis
DATE: June 2, 1995

Number of pages (including cover sheet): 31



Eric,

Attached is the info on Piti Power point we received from GPA last night. It includes Ernst & Young's evaluation of GPA's performance on the criterion for 1993. 1994 is not out yet. Also included is Guam's and Navy's proposals and agreements to expedite the transfer of assets, and a signed document between Navy and GPA agreeing that all issues between them have been resolved.

If this is not enough to resolve people's concerns, please give us a call.

Thanks.

Wayne Leland
Wayne/Leland

Evaluation of GPA's

Performance Against

Financial, Management and

Service Criteria for FY

Ending September 30, 1993

U.S. Department of the Interior

January 1994

EXECUTIVE SUMMARY

We have completed our review of GPA's performance against financial, management and service criteria for the fiscal year ended September 30, 1993. The purpose of the evaluation is to assess GPA's actual performance against standards, supporting standards and indicators in the areas of:

- Management
- Generation
- Transmission and Distribution
- Dispatch Control Center
- Finance.

The Customer Service Agreement incorporates the performance standards as a vehicle to trigger turnover of Island Wide Power System (IWPS) responsibility to GPA when GPA meets the standards or Ernst & Young recommends turnover (referred to herein as a positive recommendation) and the recommendation is accepted by Navy. Exhibit I contains a comparative summary of standards met and not met by area.

MANAGEMENT

GPA met all the performance standards in 1993 for the management area. Their performance in the management area is reinforced with a positive recommendation that GPA is ready to assume management responsibility for the IWPS. GPA has the planning and management infrastructure, organization, and key personnel in place to assimilate, with appropriate transition planning, the Navy portion of the IWPS.

GENERATION

GPA met six of the eight standards for generation. GPA met the very important planning reliability standard of 1 day in 10 years with the power plants recently completed and committed. As anticipated, GPA did not meet the operating reliability standard primarily due to insufficiency of generating reserves early in the year and "startup" problems as new plants were brought on line. An electrical system would normally be insulated from problems with new

Exhibit I

Executive Summary
Performance Against Standards

Management	<u>1992</u>	<u>1993</u>
Met	4	5
Partially Met	1	0
Not Met	0	0
Generation		
Met	7	6
Not Met	1	2
Transmission and Distribution		
Met	3	4
Not Met	2	1
Dispatch Control		
Met	5	4
Not Met	0	1
Finance		
Met	0	2
Not Met	5	3

plants because of insufficiency of reserves and placement of new generators, these problems adversely affected reliability through most of 1993. As a result of experience with the new units and changes in transmission configuration, it is expected that operating reliability will meet the performance standard in 1994. The other generation standard not met was Standard 4 related to the forced outage rate. The forced outage rate on Cabras #2, after adjustment by Ernst & Young to correct or reflect, exceeded the 15% target. The high forced outage rate is a direct result of deferred maintenance over the last several years. This problem should be alleviated in 1994 with the scheduled boiler overhaul.

The deficiencies in operating reliability during 1993 precluded a positive recommendation with respect to generation. We continue to believe that GPA is well qualified to operate and maintain Navy's generating plant as part of the IWPS and again recommend that this be considered as a transitional step. Such an arrangement has been in effect for two decades for the Navy Tanguisson unit. In addition to being a positive transitional step, it would better equip GPA to deal with the power plant cost issue that is further discussed on page VI-18.

TRANSMISSION AND DISTRIBUTION

GPA met four of the five transmission and distribution standards. They did not meet Standard 1, which requires that voltage delivery on distribution feeders should be within plus/minus 5% of the prescribed voltage. This standard was missed on one phase of one of GPA's 30 feeders. GPA was aware of the problem and has planned reconfiguration during 1994 to correct it. GPA's performance in the transmission and distribution area continues to be very good. Loss of load outage statistics continue to be very good and GPA is monitoring circuits and reconfiguring them to permit growth. We believe GPA has the management and technical resources to assume IWPS responsibility for transmission and substations and has demonstrated consistent performance to support this conclusion.

DISPATCH CONTROL CENTER

GPA met four of the five dispatch control center standards. The standard not met measures the outage duration of loss of load incidents on the transmission system. The standard is an average duration of less than 15 minutes. GPA's actual performance during 1993 was an average duration of about 18 minutes as compared to 13.8 minutes in 1992. A single event with over a 5-hour duration caused the deterioration in 1993 performance. A trip during testing of a substation at a construction site interrupted power supply to the site. Arguably, testing of new

facilities to remote locations should be excluded from our measurement of performance against standards. But for this event, GPA would have met all dispatch control center standards.

FINANCE

GPA met two of the five finance standards. Actual performance against those standards not met was reasonable when compared to the performance of a group of "comparable" municipal utilities. For two standards not met, GPA's current year performance exceeded the standard or current year performance of the "comparable" group. The remaining standard not met in 1993 is margin management (Standard 3). GPA's margin performance ratios continue to decline even though coverages and profitability have improved. GPA is able to operate at relatively low margins while producing acceptable coverages and profitability. Failure to meet the margin standard must be balanced with GPA's financial performance in other areas in ensuring access to capital markets.

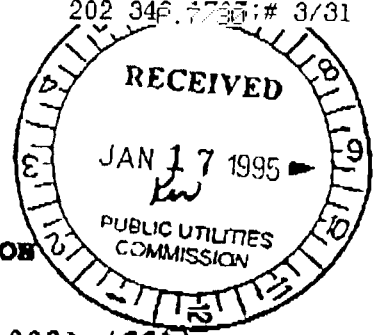
GPA completed two very successful revenue bond financings in the last year. They raised \$258 million at an average interest rate of less than 6.25%. The interest rates paid were generally comparable to A-rated municipal securities. The money raised will fund the fast track generation program, the first base load unit, and a new energy management system. Additional borrowings are not anticipated for 2 to 3 years unless the second base load plant is accelerated. The borrowings demonstrate an ability to access capital markets to support GPA's need for capital. The Guam legislature and PUC have supported capital access with timely approval. The PUC has also approved rate increases in December 1991 and January 1993 to provide revenue support for the bond issues. GPA's demonstrated access to capital markets is a critical element in forming our conclusion with respect to the financial standards. We have concluded that GPA is ready to assume financial responsibility for the IWPS.

OVERALL CONCLUSION

GPA met all standards in the management area. We have concluded that GPA is ready for IWPS responsibility for transmission and distribution; dispatch control, and finance (a positive recommendation). Generation is the single area where GPA did not meet the standards and we were unable to reach a positive recommendation. As discussed above, we believe that the generation deficiencies are being addressed such that the standards can be met in 1994. Without prejudging, we believe it is reasonable to expect that GPA will meet the standards in 1994.

**ATTACHED IS PROPOSED AMMENDMENT II
TO THE CSA WITH GPA'S PUC TESTIMONY**

THE 3RD WHERAS AND SECTION 5 OF THE AMENDMENT WERE PROPOSED BY NAVY
SECTIONS 6 AND 7 ARE ALOS VERY IMPORTANT



**BEFORE THE PUBLIC UTILITIES COMMISSION
FOR THE TERRITORY OF GUAM**

APPLICATION OF THE GUAM) DOCKET NO. 89-002A (CSA)
POWER AUTHORITY FOR APPROVAL)
OF CUSTOMER SERVICE AGREEMENT)
WITH U.S. NAVY)

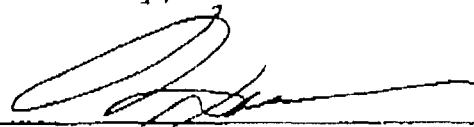
Attached hereto for approval by the Commission, pursuant to the provisions of Public Law No. 21-112, Section 4, is proposed Amendment No. II to the Utility Service Contract otherwise known as the Customer Service Agreement ("CSA") between the United States of America and the Guam Power Authority ("GPA"), as amended. Also attached is the supporting testimony of Raymond C. Camacho, General Manager of GPA and a letter, Ser OOC/355 dated January 11, 1995 to Mr. Camacho from G.M. Craft, Captain, CEC U.S. Navy, Commanding Officer of the U.S. Navy Public Works Center, Guam.

In order that the purposes of this amendment may be effectuated at the earliest possible date, that is, the Navy's Joint Use Assets involved be transferred to GPA, expeditious review and approval by the Commission is requested, preferably not later than February, 1995.

Any questions with regard to this request may be directed to Mr. Oliver Wood, Special Projects Engineer, GPA.

DATED this 16th day of January, 1995.

CARLSMITH BALL WICHMAN
MURRAY CASE & ICHIKI


Philip D. Isaac
Attorneys for Applicant
Guam Power Authority

Rec'd 1125, 950117
w. L. Rose

**AMENDMENT II
TO CUSTOMER AGREEMENT
(CONTRACT NUMBER N62742-89-C-0201)
BETWEEN
THE GUAM POWER AUTHORITY
AND
THE UNITED STATES OF AMERICA**

This Amendment to the Customer Agreement ("Agreement") is entered into by and between the Guam Power Authority ("GPA") and the United States of America through its instrument the Department of the Navy ("Navy") pursuant to Section 15.1 of the Agreement.

RECITALS

WHEREAS, Section 111 of Public Law 100-202 authorizes the Navy to transfer to GPA, Navy owned electric power generation, transmission and distribution facilities and equipment specified in Table 3 of the Agreement; and

WHEREAS, such transfer may be made when GPA meets all performance standards listed in the August, 1986 independent third party plan, (which standards are contained in Appendix "A" to the Agreement) or other performance standards mutually agreed upon by GPA and Navy; and

WHEREAS, the independent third party evaluation for fiscal year 1993 concluded that all but one of the performance standards were met; and

WHEREAS, GPA and Navy recognize that the environmental remedial actions required by section 3.10 of the Agreement (added by Amendment I) and any other applicable federal law may be a lengthy process, thereby delaying the final transfer of Navy owned real property; and

WHEREAS, at the termination of the interim period, GPA may be incapable of assuming some of the services currently provided by Navy under section 3.5 of the Agreement.

NOW THEREFORE, the parties agree that the Agreement should be amended as follows:

1. A new subsection will be added to section 3.3 to read:
"3.3.1 GPA will assume all rights and duties of ownership of the joint use real property assets upon termination of the interim period and will pay no fee therefore, reserving unto Navy the right to continued use of easements, licenses, accesses, and other property transfer documents. Real estate documents such as deeds and easements which are necessary to convey title to Navy-owned joint use assets will be prepared and executed upon their certification in accordance with section 3.10 and as soon as practicable after the termination of the interim period."

2. Section 3.2 is amended to read:
"3.2 At the termination of the interim period, Navy has no further obligation to provide the interim period services to the IWPS as described under this Article. Upon written agreement between the parties, Navy may agree to continue to provide individual services as listed under section 3.5 until GPA is capable of providing them independently."

3. Section 3.8 will be amended to read:
"3.8 At the termination of the interim period, Navy has no further obligation to provide the interim period services to the IWPS as described under this Article."

Upon written agreement between the parties, Navy may agree to continue to provide individual services as listed under section 3.5 until GPA is capable of providing them independently."

4. Section 7.4 is amended by deleting "7.4.3" and inserting "7.4.4" in the first paragraph.
5. A new subsection 7.4.4 is added as follows :

7.4.4 Navy and GPA mutually agree that GPA assume responsibility for the IWPS whether or not all the performance standards have been met under the following conditions: That GPA fully complies with a substantial number of the performance standards contained in Appendix A; That GPA substantially complies with the remaining performance standards; and, that the termination of the interim period is in the best interests of Navy and GPA considering the present and the future ability of GPA to operate the IWPS.
6. Table 3 is amended to add the following:
 27. The land designated as the Apra Heights Substation property.
 28. The land and easements used by the Cabras-Agana 115 kv transmission lines.
7. Add a new subsection to Article 9

"9.7 In addition to the 13.8 kv facilities to be transferred in accordance with Article 9.6, GPA and Navy mutually agree to transfer from time-to-time other Navy electrical power facilities the Navy considers excess to their needs and GPA agrees are useful to its customers.
8. All other provisions of the Agreement shall remain in force and effect to the extent

modified by this amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date of the last signature on this agreement.

GUAM POWER AUTHORITY

UNITED STATES OF AMERICA

By: _____

Chairman of the Board of Directors
Guam Power Authority

Date: _____

By: _____

D.J. NASH, RADM, CEC, USN
Commander, Pacific Division,
Naval Facilities Engineering
Command
Contracting Officer

Date: _____

EXHIBIT RCC

GUAM POWER AUTHORITY

TESTIMONY OF

RAYMOND C. CAMACHO

AMENDMENT II TO CUSTOMER SERVICE AGREEMENT

JANUARY 1995

DOCKET NO. 89-002A

I. QUALIFICATIONS

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Q. PLEASE STATE YOUR NAME, YOUR POSITION AND YOUR QUALIFICATIONS.

A. My name is Raymond C. Camacho. I am the General Manager of the Guam Power Authority, having been appointed to this position in October of 1993. Prior to that time I served as Assistant General Manager - Operations at GPA between June and September of 1993. I received my Bachelor of Science degree in Electrical Engineering, with a Power Systems Specialty, from the University of Missouri in 1977. I worked at the San Diego Gas & Electric Company as an Operations Engineer from 1977 to 1980. I worked at the Pacific Gas and Electric Company from 1980 to 1993 as a Power Contracts Negotiator and In various management positions engaged in business and strategic planning. I am a registered Professional Engineer - Electrical in the State of California.

II. PURPOSE OF TESTIMONY

1

2

3

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

5 A. The purpose of my testimony in this proceeding is to provide supporting
6 information to GPA's request to approve Amendment II to the Customer Service
7 Agreement.

8

9 Q. WHAT IS THE PURPOSE OF SECTION 1 OF AMENDMENT II?

10 A. Section 1 of Amendment II was proposed by Navy to allow virtually all rights of
11 ownership to be conveyed at the end of the Interim Period. The concern
12 addressed by this section was that the baseline environmental survey and any
13 cleanup required by it would prevent transfer of some of the properties at the end
14 of the Interim Period.

15

16 Q. DOES THIS PROCEDURE HAVE ANY PRECEDENCE THAT YOU ARE AWARE
17 OF?

18 A. Yes, this is the same procedure that is being used to expedite the closure of
19 Guam's Naval Air Station which is scheduled to take place on March 31, 1995.
20 This procedure allows GovGuam to use the land while Navy completes the
21 environmental baseline survey and cleanup. Without this provision, GovGuam
22 would have to wait until the cleanup is completed before being able to make use

1 of this property.

2

3 Q. WHAT IS THE PURPOSE OF SECTION 2 OF AMENDMENT II?

4 A. Section 2 of Amendment II is a safety net for GPA and Navy. Since the CSA does
5 not provide for services that Navy currently provides to be continued after the
6 Interim Period, it is possible that GPA could be unable to provide them. This
7 section, therefore, allows Navy to continue to provide these services.

8

9 Q. WHAT IF GPA CHOOSES TO PROVIDE THESE SERVICES?

10 A. The ability of GPA to provide these services or to contract them out is not
11 impaired by this section. Those provisions which are currently in the CSA are not
12 affected by this change. It is simply to allow that Navy may continue to provide
13 these services should GPA be unable for some time to provide them either
14 internally or through contracting.

15

16 Q. WHAT IS THE PURPOSE OF SECTION 3 OF AMENDMENT II?

17 A. Section 3 of Amendment II is a safety net for GPA and Navy. Since the CSA does
18 not provide for services that Navy currently provides to be continued after the
19 Interim Period, it is possible that GPA could be unable to provide them. This
20 section, therefore, allows Navy to continue to provide these services.

1 Q. WHAT IF GPA CHOOSES TO PROVIDE THESE SERVICES?

2 A. The ability of GPA to provide these services or to contract them out is not
3 impaired by this section. Those provisions which are currently in the CSA are not
4 affected by this change. It is simply to allow Navy to continue to provide these
5 services should GPA be unable for some time to provide them either internally or
6 through contracting.

7

8 Q. WHAT IS THE PURPOSE OF SECTION 4 OF AMENDMENT II?

9 A. Section 4 allows Article 7.4.4 to be added as a means of terminating the Interim
10 Period of the CSA.

11

12 Q. WHAT IS THE PURPOSE OF SECTION 5 OF AMENDMENT II?

13 A. Section 5 has been added to provide a more relaxed standard for terminating the
14 Interim Period of the CSA than currently exists. Subsection 7.4.1 requires that
15 GPA meet all the performance standards. The proposed new subsection would
16 relax this requirement to substantial compliance as opposed to complete. As can
17 be seen in the cover letter by Captain Craft, it is Navy's intention to recommend
18 that this happen as soon as the approval to Amendment II is complete.

1 Q. WHAT IS THE PURPOSE OF SECTION 6 OF AMENDMENT II?

2 A. Section 6 is proposed to include certain areas where Navy does not have
3 electrical facilities but owns land on which GPA does have electrical facilities to
4 insure that these lands and/or easements are transferred to GPA. While it is
5 possible that these would be covered under existing language, GPA wants to
6 ensure that there is no question about them.

7
8 Q. WHAT IS THE PURPOSE OF SECTION 7 OF AMENDMENT II?

9 A. The CSA as currently written lists all facilities specifically listed in Tables 3 and 4
10 to be transferred to GPA. It could be read to prohibit further transfers of facilities
11 other than those specifically identified. Navy has recently stated that they are
12 looking toward going to an "islands of power" concept. Under this concept,
13 additional electrical facilities outside the bases would then be available for transfer
14 to GPA to the ultimate benefit of GPA's customers. It is quite possible that other
15 similar situations will occur in the future. This section would allow for these
16 transfers without additional Federal legislation.

17
18 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

19 A. Yes it does.



DEPARTMENT OF THE NAVY
U.S. NAVY PUBLIC WORKS CENTER
PSC 435, BOX 195
FPO AP 96540-2937

IN REPLY REFER TO:

Ser 00C/355
11 January 1995


Raymond C. Camacho
General Manager
Guam Power Authority
P.O. Box 2977
Agana, Guam 96910

Re: AMENDMENT TO CUSTOMER AGREEMENT

Dear Mr. Camacho:

Enclosed is the proposed Amendment to the Customer Agreement creating a fourth option for turnover of Navy owned joint-use electrical power assets. Once it has been signed by the Chairman of the Board of GPA, it will be forwarded to the Contracting Officer, RADM Nash for execution. The Amendment incorporates the agreed upon changes discussed during our several meetings. As I have stated on numerous occasions, once the Amendment is enacted it is my intent to immediately recommend through the chain of command to the deciding official, the Secretary of the Navy, that a determination be made that the provisions of article 7.4.4 of the Customer Agreement have been met and that an end to the interim period should be declared. Turnover of assets will then follow the procedures and timeframes outlined in the Customer Agreement.

The above reasoning is based upon GPA's current structure and performance. Therefore, time is of the essence in executing and approving this Amendment. If you wish to discuss this issue further, please call me at 339-5100.


G. M. CRAFT
CAPT, CEC, USN
Commanding Officer

"SAFETY FIRST"

ATTACHED ARE 4 TABLES

1. POINTS OF POWER DELIVERY TO NAVY
2. ASSETS TO BE RETAINED BY NAVY
3. NAVY GENERATION AND TRANSMISSION ASSETS
ASSETS TO BE TRANSFERRED TO GPA
4. NAVY DISTRIBUTION ASSETS TO BE
TRANSFERRED TO GPA

NOTE: ALL ASSETS IN TABLES 3 AND 4 SHOULD BE TRANSFERRED TOGETHER

27 Jan 89

TABLE 1GPA Points of Delivery to Navy

1. Alpha/Bravo Wharf - Line side X206 disconnect switch
2. YFP-14 Power Barge - Bus side X205 disconnect switch
3. Transformer 23 at Radio Barrigada Sub - Bus side 34.5 kV disconnect switch
4. Transformer 24 at Radio Barrigada Sub - Bus side 34.5 kV disconnect switch
5. Transformer 14 at Harbo Sub - Bus side 34.5 kV disconnect switch
6. Transformer 15 at Andersen Air Force Base - Bus side 34.5 kV disconnect switch
7. Transformer 16 at Andersen Air Force Base - Bus side 34.5 kV disconnect switch
8. Transformer 47 at NCS Sub - Line side 34.5 kV disconnect/fuse
9. Transformer 22 at Harmon Sub - Bus side X-83 disconnect switch
10. Transformer 21 at Harmon Sub - Bus side X-85 disconnect switch
11. Transformer 44 at Harmon Sub - Bus side X-94 disconnect switch *
12. Transformer 9 at Agana Sub - Bus side X-48 disconnect switch
13. Transformer 11 at Orote Substation - Bus side 34.5 kV disconnect switch
14. Transformer 12 at Orote Substation - Bus side 34.5 kV disconnect switch
15. Transformer 132 at Cold Storage Substation - Line side 34.5 kV disconnect swi
16. Transformer 48 at Wilson Homes - Line side 34.5 kV disconnect switch
17. Transformer 7 at Piti Substation - Bus side X-7 disconnect switch *
18. Transformer 8 at Piti Substation - Bus side 34.5 kV disconnect switch
19. Transformer 110 at Potts Junction - Line side 34.5 kV disconnect/fuse
20. Transformer 6 at YFP-10 Substation - Bus side 34.5 kV disconnect switch
21. Breaker X34 at Orote Substation, Victor Wharf - Bus side X34 disconnect switc
22. P44 riser poles LC-60 and LC-69 at NCS housing **

* To be revised when transferred to GPA

** Service at 13.8 kV

NOTE: Billing adjustments, depending upon switch positions and distribution circuit configuration, will be required.

27 Jan 89

TABLE 2

Distribution, Emergency and Stand-by Facilities to be Retained by Navy

1. All on-base 4.16 kV, 13.8 kV and 34.5 kV distribution feeder/circuit breakers, lines, and associated buses and equipment, relaying, metering, control systems and miscellaneous equipment.
2. Breaker and Line P1 to Asan Water Pump Station
3. Breaker and Line P2 to Naval Station
4. Line P4 to Navy DCC
5. Breaker and Line P6 to COMNAVMAR -
6. Breaker and Line P134 to Apra Heights and NAVMAG
7. Breaker and Line P135 to Naval Station
8. Breaker and Line P13 to Camp Covington
9. Line P6 lateral to Agana VORTAC (on Nimitz Hill)
10. Breaker and Line P138 to Naval Hospital
11. Breaker and Line P26 to Naval Hospital
12. Breaker and Line P27 to NAS
13. Breaker and Line P30 to NAS
14. Breakers and Line P142/102 NCS Barrigada/NAS
15. Breakers and Line P140/P103 NCS Barrigada/NAS
16. Breaker P46 at Harmon
17. Breaker and Line P112/P48 to NCS and Ritidian
18. Breaker P111 at Harmon
19. Breaker and Line P67 to Mt. Santa Rosa
20. Breaker and Line P54 to AF Wells in Marbo Annex
21. P-54 line section from Andersen AFB main gate to Potts Junction
22. Breaker and Line P52 to NCS Barrigada
23. New underbuilt 13.8 kV East side Rt. 1 Harmon to Andersen
24. Step down 34.5 kV transformers

T-6	T-14	T-23	T-43	T-49
T-8	T-15	T-24	T-44 NAVSTA	T-110
T-9	T-16	T-40	T-45	T-132
T-11	T-21	T-41	T-47	
T-12	T-22	T-42	T-48	
25. Agana Power Plant *
26. Orote Power Plant *

* Agana and Orote Power Plants will be made available to serve the Island-wide Power System on a priority basis and will be counted as generation capacity available to GPA to meet the required one day in ten years loss of load probability (LOLP) planning criteria.

27 Jan 89

TABLE 3Navy Joint Use Generation and Transmission Facilities

1. Breakers 1 through 5, 8 through 14 and 20 through 24 at Piti
2. Breakers 201, 202 and 204 at YFP-10 Substa
3. Breakers 30, 31, 32 and 35 at Orote
4. Transmission line between breakers 20 and 202
5. Transmission line between breakers 35 and 201
6. Transmission line between breakers 21 and 31
7. Transmission line between breakers 23 and 43
8. Transmission line between breakers 24 and 40
9. Transmission line between breakers 45 and SW. 34-12
10. Breakers 40, 41, 42, 43, 45, 46, 47 and 49 at Agana
11. Transmission line between breakers 41 and 81
12. Transmission line between breakers 42 and 80
13. Breakers 80, 81, 82, 84, 86, and 87 at Harmon
14. Transmission line between breakers 73 and 87
15. Breakers 70, 71, 72 and 73 at Andersen Air Force Base
16. Transmission line between breakers 82 and 70
17. Transmission line between breaker 55 and SW. 34-12
18. Transmission line between breakers 56 and 65
19. Transmission line between breakers 66 and 71
20. Breakers 55, 56 and 58 at Radio Barrigada
21. Breakers 65 and 66 at Marbo
22. Breakers 100 and 101 at Tanguisson
23. Transmission line between breakers 86 and 101
24. Piti Power Plant
25. Tanguisson Unit No. 1
26. New Gas Turbine Plant and its 34.5-13.8 kV Substation at Marbo (proposed)

27 Jan 89

TABLE 4Navy 13.8 kV Distribution and 34.5 kV Assets To Be Transferred To GPA

(Effective when GPA and Navy rearrange and construct distribution feeders and circuits as shown in Appendix F).

1. Piti step down transformer T-7 (34.5/13.8 kV; 10,500 kVA). Breaker X-7, T-7 bus, 13.8 kV breakers P-3, P-4, P-7 and one spare breaker.
2. Harmon transformer T44 (34.5 kV/13.8 kV; 7,000 kVA). Breaker X-94, Breaker P-44, Feeder P-44 and associated equipment.
3. A stepdown transformer (34.5 kV/13.8 kV; 6,250 kVA) and two breakers to be installed at Marbo substation.
4. Feeder line P-1 from Piti substation to Cabras Island (section North to Asan to be retained by Navy).
5. Feeder line P-7 in total.
6. Feeder line P-29 (any line sections not previously transferred).
7. Feeder line P-31 (any line sections not previously transferred).
8. Feeder Line P-46 in total.
9. Feeder line P-47 from two unnumbered poles south of pole DH-17 North to pole DH-128 (any line sections not previously transferred).
10. Feeder line P-53/P47 (any line section not previously transferred).
11. Feeder line P-54 from pole MC-29 through pole MC-143/PQ178 (any line section not previously transferred). Line section from MC-143/PQ178 to Potts Junction is retained by Navy.
12. Feeder line P-111 in total.
13. The line section of P-137 from pole KC-55 to pole KC-98.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (referred to hereinafter as the "Agreement") is made and entered into this 30th day of May, 1995, by and between the UNITED STATES OF AMERICA, through its lawful Agent, the Commanding Officer, United States Navy, Public Works Center, Guam, Marianas (referred to hereinafter as "Navy") and the GUAM POWER AUTHORITY (referred to hereinafter as "GPA"), an autonomous agency of the Government of Guam, both of whom may be referred to hereinafter as a "Party", or in a collective sense, as the "Parties" to this Agreement;

WITNESSETH

WHEREAS the Parties entered into an agreement dated the 5th day of October, 1972, concerning the provision of electric power and energy to Department of Defense installations on Guam and civilian retail and commercial consumers also located on Guam through the joint dedication of assets and expenditures; and

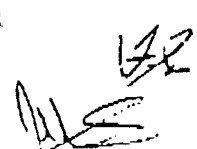
WHEREAS said agreement has come to be known by the Parties as the "Power Pool Agreement" or "PPA"; and

WHEREAS the PPA has been modified several times since its inception by Amendments duly entered into and executed by the Parties; and

WHEREAS the PPA was superseded by another agreement executed between the Parties during 1989 and approved by the Public Utilities Commission of Guam during 1991, entitled the Customer Agreement; and

WHEREAS the PPA provided for and set forth the manner in which the Parties were to jointly and individually utilize their respective electric power production and transmission assets to produce electric power and energy for consumption by the customers or consumers of the respective Parties, and the methodology by which the Parties were to receive compensation from the other Party as consideration for that Party's dedication of its electric power production and transmission assets to the joint production and distribution of electric power; and

WHEREAS during the effective period of the PPA, prior to, and following the implementation of the Customer Agreement referenced above, various disputes have arisen between the Parties concerning the invoicing methodology set forth in the Agreement, the propriety of including certain charges in the invoices actually rendered from



one Party to the other, and the omission, both inadvertent or in response to objection voiced by the other Party, to have included certain charges in said invoices; and

WHEREAS GPA submitted a document to Navy entitled Claim of Guam Power Authority for Equitable Adjustment by Way of Compensation Under Power Pool Agreement (referred to hereinafter as the "REA"), executed by GPA on 21 December 1994 and received by Navy on 23 December 1994, which set forth, inter alia, GPA's request to be compensated in resolution of the various invoicing disputes and other issues raised by GPA; and

WHEREAS subsequent to the receipt by Navy of the REA, the Parties have entered into numerous discussions concerning the invoicing disputes and other issues raised by GPA in the REA and certain invoicing disputes and other issues raised by Navy in response to the REA; and

WHEREAS the Parties are mutually desirous of reaching a full and final accounting and settlement of all claims for compensation arising with regard to the performance by each Party of their respective obligations as same were set forth in, or undertaken with respect to the PPA;

NOW, THEREFORE, in consideration of the foregoing recitals, the premises and covenants herein contained, and other good, lawful and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Navy and GPA hereby agree for themselves and for their respective successors and assigns, as follows:

1. GPA, by written verification previously furnished by GPA to Navy, has represented that it is entering into this Agreement with the authority to fully bind itself and the Government of Guam to the terms hereof, and GPA expressly recognizes that Navy is relying on this representation of authority vested in GPA to settle all invoicing disputes and other issues as an inducement to enter into this Agreement. GPA further represents that it has the legal authority to enter into this Agreement, for the purposes set forth herein, and by doing so, is not acting in violation of any law, statute, regulation or authority of the Territory of Guam, or of the United States.

2. The recitals set forth above in this Agreement are an integral part of this Agreement and shall have the same contractual significance as any other language set forth herein or as would normally be afforded any language contained in a lawful contract.

3. The Parties hereby covenant, warrant and represent that i) each is fully familiar with the invoicing disputes and other issues the subject of this Agreement, ii) each has had the opportunity to consult with legal counsel of their own choosing concerning this Agreement and the invoice disputes and other issues the subject of

this Agreement, and that each Party is in fact represented by legal counsel with respect to these issues as of the date of execution of this Agreement, and that iii) neither Party has relied upon any statements of fact, representations or promises of the other Party other than that which is expressly contained herein or referred to herein.


4. Should either Party incur any expense, including reasonable attorney's fees, in connection with any action or proceeding instituted by any Party hereto by reason of any default, or alleged default hereunder by the other Party, the prevailing Party in such action or proceeding shall be entitled to recover its expenses, including reasonable attorney's fees from the other Party.

5. This Agreement shall be interpreted in accordance with applicable Federal law, to include the manner of determination of which State law should apply, if any, should the interpretation or enforcement of this Agreement be the subject of any judicial action or proceeding.

6. Should any clause, phrase, provision or portion of this Agreement, or the application thereof to any entity, person or circumstance, be held to be invalid or unenforceable under applicable law, such determination shall not affect, impair or render invalid or unenforceable the remainder of this Agreement, nor any other clause, phrase, provision or portion hereof, nor shall said determination affect the application of any clause, phrase, provision or portion hereof to other entities, persons or circumstances, it being the express intent of the Parties that in lieu of any such clause, phrase, provision or portion of this Agreement which is found to be invalid or unenforceable, there be substituted as part of this Agreement a clause, phrase, provision or portion as similar in terms and effect to such invalid or unenforceable clause, phrase, provision or portion as may be possible and be valid and enforceable.

7. In any construction and interpretation of any part of this Agreement, the rule of contract construction that a document is to be construed most strictly against the party that prepared the same shall not be applied, it being agreed that the Parties hereto have participated in the preparation of the final form of this Agreement; by comments furnished or actual drafting of the terms contained herein.

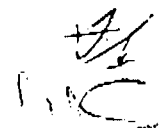
8. The failure of either Party to seek redress for violation, or to insist upon the strict performance, of any covenant or condition of this Agreement by the other Party shall not be deemed a waiver by the non-breaching Party of such violation, or prevent a subsequent act by the other Party which would originally have constituted a violation of this Agreement from being considered a breach of this Agreement.



9. In accordance with Navy fiscal guidelines and requirements as set forth in the Navy Comptroller Manual, as soon as possible following the execution of this Agreement by the Parties (said period expected to be no more than Thirty (30) days following the execution of this Agreement by the Parties), Navy shall cause to be paid to GPA the sum of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00) in full and final settlement of any and all claims of GPA against Navy, its successors and assigns, employees, officers, agents and any entity acting through or for Navy, arising from or related to the provision of electric power and energy by the Parties pursuant to and in accordance with the PPA. Upon GPA's receipt of said payment from Navy, in full and final settlement of all issues as described above, both Parties shall immediately cause all outstanding invoices rendered or issued to the other Party, and claims for compensation, or financial issues, asserted or assertable against the other Party, to be irrevocably cancelled and considered fully paid or forever discharged, as same have arisen or were, or are, in any manner related to that Party's performance or the other Party's performance during all periods that the Parties operated under the purview of the PPA.

IN CONSIDERATION OF, and contingent upon, the foregoing payment of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, GPA hereby releases, agrees to hold harmless and forever discharges Navy (which includes the Government of the United States and all Instrumentalities and Departments thereof), its employees, officers, agents, representatives, beneficiaries, successors or assigns from any and all claims, demands, actions, or causes of action, contractual in nature or in tort, both legal and equitable, known or unknown, that GPA (and through GPA, the Government of Guam and its Instrumentalities and Departments), its employees, officers, agents, representatives, beneficiaries, successors or assigns may now have, or may in the future acquire, against Navy for compensation, contribution, damages, or other relief arising from or related to the provision by the Parties, or either one of them, of electric power and energy, to include the acquisition and installation of assets or expenditures made to effect same, during the effective dates of the PPA.

IN CONSIDERATION OF the release and discharge of Navy by GPA of all claims, demands, actions, or causes or action, contractual in nature or in tort, both legal and equitable, known or unknown, that GPA may now have, or hereafter acquire, with respect to the performance of the Parties under the terms of the PPA and the provision of electric power and energy by each of the Parties during the effective period of the PPA, Navy hereby releases, agrees to hold harmless and forever discharges GPA (including the Government of Guam, its Instrumentalities and Departments), its employees, officers, agents, representatives, beneficiaries, successors, or assigns from any and all claims, demands, actions,



or causes of action, contractual in nature or in tort, both legal and equitable, known or unknown, that Navy, its employees, officers, agents, representatives, beneficiaries, successors or assigns may now have, or hereafter acquire against GPA for compensation, contribution, damages, or other relief arising from or related to the provision by the Parties, or either one of them, of electric power or energy, to include the acquisition and installation of assets or expenditures made to effect same, during the effective dates of the PPA.

THIS RELEASE contains the entire agreement between the Parties hereto, and the terms of this Agreement are contractual and not a mere recital.

WE, THE UNDERSIGNED, further state that we have carefully read the foregoing Agreement and are aware of the contents thereof, and we execute this Agreement as our own free act and deed.

IN WITNESS WHEREOF, NAVY and GPA have caused this Agreement to be executed and sealed on the dates so indicated:

THE UNITED STATES OF AMERICA (by its lawful Agent, the Department of Navy, Public Works Center, Guam, Marianas):

By : [Signature] (Seal)
Typed: GARY M. CRAFT
Title: Commanding Officer, PWC

Date: 5/30/95

Attest: [Signature]
Typed : ROY M. MACGREGOR
Title : Business Manager

GUAM POWER AUTHORITY:

By : [Signature] (Seal)
Typed : A. J. "Sonny" Shelton
Title : Acting General Manager

Date: 5/30/95

Attest: [Signature]
Typed : Kristina L. Baird
Title : Legal Counsel

[Handwritten Signature]

IN CONCURRENCE WITH THE FOREGOING AND ADOPTING SAME FOR ITSELF, THE UNDERSIGNED MEMBER OF THE BOARD OF DIRECTORS OF THE GUAM POWER AUTHORITY EXECUTES THIS AGREEMENT ON BEHALF OF SAID BOARD:

BOARD OF DIRECTORS OF THE GUAM POWER AUTHORITY

By : [Signature] (Seal) Date: MAY 30, 1995
Typed: Frank S. N. Shimizu
Title: Chairman, Board of Directors
(Member Board of Directors)

Attest: [Signature]
Typed : EDUARDO R. ILAD
Title : VICE CHAIRMAN, BOARD OF DIRECTORS

[Handwritten mark]



GUAM POWER AUTHORITY
P. O. BOX 2977, AGANA, GUAM, USA 96910

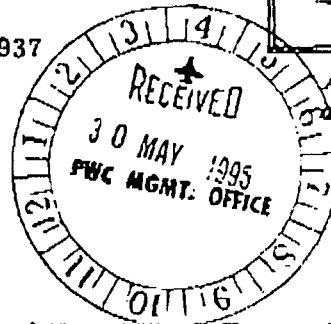
2050

DATE: MAY 30, 1995

INVOICE

TO: U.S. NAVY PWC
FPO SAN FRANCISCO, CO 96630-2937
ATTENTION: CAPT. CRAFT

J.O. No.:	_____
S.O. No.:	_____
G.P.A. INV. No.:	_____
OTHER INFO:	<u>POWER POOL</u> <u>AGREEMENT</u>



All informations above must appear on all documents pertaining to this invoice.

ARTICLES OR SERVICES	QTY.	UNIT	PRICE	AMOUNT
CHARGES FOR: FINAL SETTLEMENT OF ALL CLAIMS PURSUANT TO THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE DATED MAY 30, 1995 (ATTACHED)				\$3,750,00 00
TOTAL AMOUNT				\$3,750,000.00

Remittance in payment here of should be sent to:

GUAM POWER AUTHORITY
POST OFFICE BOX 2977
AGANA, GUAM 96910

I certify that the above bill is correct and just and that payment has not been received.

A. J. "SONNY" SHELTON

TITLE: GENERAL MANAGER

Document Separator

DEFENSE BASE CLOSURE & REALIGNMENT COMMISSION
1700 NORTH MOORE STREET, SUITE 1425
ARLINGTON, VIRGINIA 22209
(703) 696-0504

MEMORANDUM OF MEETING

DATE: 13 Mar 1995

TIME: 1030

MEETING WITH: Guam Congressional Rep Underwood

SUBJECT: Guam Recommendations

PARTICIPANTS: Commissioner Steele, Commissioner Al Cornella, David Lyles, Alex Yellin, Liz King, Eric Lindenbaum

Name/Title/Phone Number:

Commission Staff:

David Lyles, Staff Director
Charles Smith, Executive Director/Special Assistant
Madelyn Creedon, General Counsel
Chris Goode, Director of Administration
Cece Carman, Director of Congressional and Intergovernmental Affairs
Ben Borden, Director of Review & Analysis
Ed Brown, Army Team Leader
Alex Yellin, Navy Team Leader
Frank Cirillo, Air Force Team Leader
Bob Cook, Interagency Issues Team Leader
Jim Owsley, Cross Service Team Leader

MEETING PURPOSE:

Rep. Underwood voiced concerns about the following

- (a) Magnitude of the job loss in Guam if the recommendation is approved "as is."
- (b) Loss of training for civilian personnel at SRF Guam.
- (c) No "Collaborative agreement" between the Navy and Guam for re-using the facilities at Guam while it is maintained in a lay-

up status.

(d) Not having enough time to prepare for the regional meeting in Guam 29 MAR 95. He desired time at the regional hearing to be held at San Francisco.

(e) In light of no adequate land compensation for land taken by the US government going back to World War II, this will seem like one more example of Guam's "reliability" being exploited.

(f) Any waterfront that may be returned to Guam will probably be earthquake damaged property.

(g) The Power Plant which is supposed to be turned over to Guam is non-efficient and not being maintained.

(h) The timing of the commission visit may seem ill planned by the populace as several of the civilian "Navy BRAC officials" will be attending BRAC training in Corpus Christi (actually it is in Dallas) during the visit. This may seem like the officials are not taking the visit seriously.

(i) The moving of NAVMAG Guam to Anderson AFB. was not seriously investigated by the Navy.

(j) It is unfair to compare Guam SRF to Yosoka, Japan because the Japanese facility receives Japanese government funds. This is just one example where Guam falls into limbo by not being a foreign country but also not being part of the United States proper.

(k) Most importantly, Guam feels it's reliability to the US is being exploited. If they were not so reliable then maybe they would receive more compensation for their land use than they are presently.

* Denotes individual responsible for completing the memorandum

DEFENSE BASE CLOSURE & REALIGNMENT COMMISSION
1700 NORTH MOORE STREET, SUITE 1425
ARLINGTON, VIRGINIA 22209
(703) 696-0504

424
CMEW

MEMORANDUM OF MEETING

DATE: March 13, 1995

TIME: 10:30

MEETING WITH: The Honorable Robert Underwood

SUBJECT: Guam Military Installations

PARTICIPANTS:

Name/Title/Phone Number:

Rep. Robert Underwood; Delegate, Guam
Terry Schroeder; Administrative Assistant, Rep. Underwood
John Whitt; Legislative Director; Rep. Underwood

Commission Representatives:

Al Cornella, Commissioner
Wendi Steele, Commissioner
David Lyles, Staff Director
Alex Yellin, Navy Team Leader
Elizabeth King, Counsel

MEETING PURPOSE:

John in
Underwoods
office

GUAM - Meeting w/ Rep Underwood

SR7 → graduating apprentice class
closing of

top leaders will be in Corpus Christi week well be there
↳ civilian workers at Ship Repair Facilities

- thought there would be regional hearing w/ field
hearing

- wants regional hearing in Guam

- wants another space in CA - 15 & 30 minutes

- taking hit compared to CA

- were territory - demerits for some reasons, foreign for other

- we're being considered demerits base for
closing

- but militarily were foreign base

- we get negative end for both

- ~~was~~ now closing us down but keeping
land "just in case"

∴ we're denied economics of
either having pow there or
using assets of infrastructure

argue: DOW should fund collaborative ventures w/
Guam + DOD or w/ private K

"7/7 advantage"

↳ 7 hrs flight time
7 days sailing

- no one will call for ~~the~~ total rejection of DOD
recommendation

- will say we recognize changed world situations
but haven't taken into acct concerns
of people in uniform - like Adm Madley

- after battle for Guam - US took 2/3 island
~~and~~ only appeal = will let
no compensation

- still trying to deal w/ it

- Everything done at Naval Mag could be moved to Andersen ^{via} _{Veris}

- ~~the~~ Guam's only fresh water lake
↳ DOW is in water bay on Guam

Guam may want that

Port facilities

↳ Navy owns 80%

20% civil

yet ships → 80% civilian

- DOW also hasn't been repairing earthquake damage

- SEALS want major million project

↳ no secret

↳ exactly type of activity you wouldn't

have in China → wouldn't be allowed

Q: What is current status of power switch

↳ DOW was supposed to handle it was

but - deteriorated w/ earthquake

- supposed to be upgraded w/ million project

↳ in '50s - it was logical 'cause DOW was using most of power

- not now - should get ~~out~~ of power utility by

TC w/ CAPT WINDS

3/21/95

TOPIC: Reversion in Guam

→ You need statutory authority to create reversion

- Both Oakland + piece of Long Beach
Huenemecla had reversions
in title when communities
gave land

"reversion premature til we figure out
what we're keeping"

↳ Better Q is:

What
actually
do you
need

Q to SINCPAC:

"What will our footprint be in Guam if
all DOD recommendations are instituted?"

perhaps better language would be

"return only infrastructure which is necessary
to mission + give rest back to people"

- CALL RearAdm Brennan when return
to get scoop on who is right + what is B. J.

NOTES FOR GUAM

- Big Q likely to be:

o What can commission do?

- give substantial deviation spiel

- look at 3 things in statute that we can change w/o making it an add + what we can't ~~do to~~ w/o it becoming an add

- Keep track that everyone is sworn in

- Keep track of public hearing sheet

- ~~Can~~ Motions

↳ can do procedural - can't do substantive → no grounds

3/29 MEETING w/ COMNAVSTAR

~~Q: ASST~~ - Using private shipyard

233 "not to interfere w/ Naval activities"

Q: What if private ship in drydock

A: We could get in there

But there is going to be a cost A that

→ will it overrule ←?

Brewer: If we do this is path we want to take - but someone has to make offer

- Because Gov Guam is under Organic Act + Dept of Interior

"we can treat them like an another federal agency"

SR7

Philippines = 90 Munday

HI = 700 Munday

Guam = 190 Munday

→ Pt It is cheaper to do stuff here than HI

Q on fuel sum. Where is A7 going to get their fuel.

Title 10? — what is the rest of this cite

↳ Can only bring ships in for voyages repair
— no repair availability
↳ for this law Guam is a port of call

— Optimal = 8

CCS scenario: What if you can't look at Taiwan, Japan, Korea — where do you go?

A: We have nowhere to go

A75

↳ must keep 1 in person out at all time

* *

→ 1 in person

if they lower interest

to buy back paper
profit.¹⁶⁰ Inflation¹⁶¹
ough bond sales¹⁶²
though this prob-
nonprofits allow
e debt. Finally,
orthiness. Thus,
but rather must

that debtors,
transaction.
iations and
be achieved
or develop-
e nonprof-
negotiating
ing loans
Yet the
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The Political Relationship Between the United States and Pacific Islands Entities: The Path to Self-Government in the Northern Mariana Islands, Palau, and Guam

Lizabeth A. McKibben*

INTRODUCTION

The United States traditionally acquired territory by conquest or treaty, as empowered under the foreign affairs power of the United States Constitution.¹ The property would be held and governed under the so-called "territorial clause."² The clause gives Congress nearly unfettered power to manage and dispose of such property.

Until the turn of the century, territorial status was created as a temporary one while the property was prepared for statehood. As the United States began to expand overseas by acquiring islands in the Pacific and Caribbean, however, the "territorial incorporation" doctrine developed to restrict the ultimate achievement of statehood in certain cases. Under this doctrine the United States has continued to hold Guam, the Virgin Islands, and American Samoa indefinitely under the territorial clause, has permitted Puerto Rico to become a commonwealth, and has granted the Philippines independence. After the Second World War, the United States acquired from the United Nations Japan's supervisory interest in certain Pacific islands constituting most of Micronesia. The instrument by which it acquired this interest was the Trusteeship Agreement, a bilateral contract between the United States and the United Nations Security Council. The Agreement designated the islands as the Trust Territory of the

* Member, Bar Associations of the Commonwealth of the Northern Mariana Islands and the District of Columbia; J.D. 1981, University of San Francisco; B.A. 1978, University of Vermont. Gratitude is extended to Dennis C. Kerwin for his contribution in the editing of this Article.

1. United States v. Hucksabee, 83 U.S. (16 Wall.) 414 (1872).

2. U.S. CONST. art. IV, § 3, cl. 2.

Pacific Islands and named the United States as its administering authority.³

Under the Trusteeship Agreement, together with a United Nations

mandate, the United States undertook to assist the Micronesian entities

to achieve self-government or independence. As the trust never became

a territory of the United States, it was not governed under the terri-

torial clause. The terms of the trusteeship were discarded instead by

the United Nations Charter and the Trusteeship Agreement, which

was entered into under the treaty-making power of the United States.

In the more than forty years since the trust was established, the

United States has been given a mandate to assist these island nations

in establishing a political identity. The result has been the creation of

four separate entities peppered in the vast Pacific Ocean: the Com-

monwealth of the Northern Mariana Islands, the Federated States of

Micronesia, the Republic of the Marshall Islands, and the Republic

of Palau.⁴ Each entity has negotiated or is in the process of negotiating

a close, sui generis political relationship with the United States that

is more intimate than the relations the United States has with foreign

states.⁵

Although the lengthy process of establishing political relations in

the Pacific appears to be nearing an end, fundamental disagreements

with the United States may indefinitely forestall final resolution of

some of the islands' status. Palauan representatives have negotiated a

Compact of Free Association which the citizenry of Palau has refused

to approve. The dispute has arisen over a provision permitting the

United States safe passage for nuclear weapons, a right which the

United States will not forgo. Developments toward a permanent re-

lationship have thus reached an impasse. The Northern Marianas'

disagreement with the United States stems from interpretation of its

negotiated and approved agreement. Although the Northern Marianas

has been guaranteed self-government, the United States has taken

steps to control internal matters, leading the Northern Marianas to

3. The Trust Territory of the Pacific Islands, spread over approximately three million square miles of the Pacific Ocean from latitude 1 degree to 20 degrees north and from longitude 130 degrees to 170 degrees east, comprises more than 2100 islands in three major archipelagos: the Caroline, Mariana, and Marshall Islands. The Trust Territory encompasses most of Micronesia, which means literally "little islands." Only 94 islands are usually inhabited. See J. COURTER, THE PACIFIC DEPENDENCIES OR THE U.S. 162-63 (1957); D. NEVIN, THE AMERICAN TOUCH IN MICRONESIA at 43-44 (1977); Armstrong, *The Emergence of the Micronesian into the International Community: A Study of the Creation of a New International Entity*, 5 BROOKLYN J. INT'L L. 207, 210 (1979).
4. "Palau" is English for what is referred to in the Palauan language as "Belau." Comment, *Republic of Palau*, 11 SURFOLK TRANSACT L.J. 533 & n. (1987).
5. Fleming v. Dept. of Pub. Safety, Northern Mariana Islands, 837 F.2d 401, 404 (9th Cir. 1988). The U.S., for example, retains power in the area of defense and foreign affairs; the U.S. dollar is the official currency; and inhabitants of the islands enjoy immigration privileges.

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appeal both in United States courts and to the United Nations Security Council. As a further consequence, an indigenous rights group has launched a self-government movement in Guam.

This Article describes the political relationship of these Pacific island entities with the United States and discusses the current conflicts in Palau, the Northern Marianas, and Guam. An analysis of the territorial clause and the evolution of territorial status is first presented, and then contrasted with the United States' unique relationship with the Trust Territory and its subdivisions. The current controversies presented against that backdrop compel the conclusion that the United States, desirous principally of safeguarding its military interests, has disregarded its obligations to the peoples of these island groups.

I. THE TERRITORIAL CLAUSE OF THE UNITED STATES CONSTITUTION AND THE EVOLUTION OF TERRITORIES

Under the territorial clause of the United States Constitution, Congress is empowered "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."⁶ Until the turn of the last century Congress used this power to govern territory or property until its admission into the Union as a state.⁷

More recently, however, the territorial clause has become a vehicle for either holding property in perpetuity or granting it independence.⁸

6. *United States v. Huckabee*, 83 U.S. (16 Wall.) 414 (1872).

7. U.S. CONST. art. IV, § 3, cl. 1.

8. The Philippines and the Canal Zone stand as examples of former territories that were fully discharged from U.S. control. The Philippines was acquired along with Guam after the Spanish-American War and maintained in a subservient status identical to that of Guam. Unlike Guam, however, the people demanded and were granted independence in 1946. *Philippine Independence Act*, 48 U.S.C. §§ 1221-1226, 22 U.S.C. §§ 1391-1394. Congress passed the Act in 1934, but it was not until 1946 that the presidential proclamation granting independence occurred. Sovereignty was returned concomitant with the grant of independence. See *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 692 (1945).

Similarly, the people of Panama demanded renegotiation of their relationship with the U.S. with respect to the Canal Zone, achieving greater autonomy over it as a result. Unlike the Philippines, the Canal Zone never "belonged" to the U.S., but was subject only to a perpetual easement in the land. *Government of the Canal Zone v. Pinto*, 590 F.2d 1344, 1351 (5th Cir. 1979).

At the time of passage of the Panama Canal Treaty of 1977, great debate nevertheless ensued over whether the Canal Zone had been held under the territorial clause. Constitutional scholars on both sides of the question testified before congressional committees. Bell & Foy, *The President, the Congress, and the Panama Canal: An Essay on the Powers of the Executive and Legislative Branches in the Field of Foreign Affairs*, 16 GA. INT'L & COMP. L. REV. 607, 642 nn.144-45 (1986). Several members of Congress eventually brought suit in order to challenge the President's authority to cede control over the territory. On appeal, the U.S. Court of Appeals for the District of Columbia Circuit assumed without deciding that the zone had in fact been held under the territorial clause, holding nonetheless that the President could transfer it to a foreign power by means of a self-executing treaty. *Edwards v. Carter*, 580 F.2d 1055, 1064 (D.C. Cir. (per curiam), cert. denied, 436 U.S. 907 (1978).

Territory? held under the territorial clause belongs to the United States; it is subject to nearly unfettered congressional and executive control.¹⁰ This power to act as both federal government and local legislature is nearly unchecked. As the Supreme Court wrote in *Sims v. Sims*: "In the Territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and state, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State."¹¹ Unlike the states, which have been endowed with a degree of sovereignty that cannot be touched by the federal government, territories are completely subservient to federal power.¹² Moreover, territorial inhabitants do not enjoy the right to vote in federal elections,¹³ nor are they permitted any representation in Congress except at the discretion of Congress.¹⁴ In addition, Congress may unilaterally revoke any rights it bestows.¹⁵

9. The term "territory" used in the context of the territorial clause is a term of art and must be contrasted with its use in a generic sense. The U.S. Supreme Court in *Downes v. United States* distinguished between the words "free territory" and "a territory" of the U.S.: "The former merely designates a particular part or parts of the earth's surface—the imperially extensive real estate holdings of the nation; the latter is a governmental subdivision which happened to be called a 'territory,' but which quite as well could have been called a 'colony' or a 'province.'" "The Territories," it was said in *National Bank v. County of Yankton*, 101 U.S. 129, 133, 25 L. Ed. 1046, 1047, "are but political subdivisions of the outlying dominion of the United States."¹⁶

10. The executive's power, derived from the foreign affairs power and the power of the commander-in-chief, is as broad as the plenary power granted Congress. *American Ins. Co. v. Canter*, 26 U.S. (1 Pet.) 511, 542-43 (1828); *National Bank v. County of Yankton*, 101 U.S. 129, 132-33 (1880).
11. 175 U.S. 162, 168 (1899).
12. The U.S. Constitution limits federal authority vis-à-vis the states in two respects: equal treatment (U.S. CONST. art. I, § 9, cl. 6; art. IV, § 1; art. IV, § 2, cl. 1 & 2; art. IV, § 4) and residual state powers. The tenth amendment provides: "The powers not delegated to the U.S. by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people." Once a territory is admitted as a state, it acquires the right to internal sovereignty (Texas v. White, 74 U.S. (7 Wall.) 700, 725 (1868)) and stands on equal footing with all the other states. *United States v. Texas*, 339 U.S. 707, 715-20 (1950); *United States v. Utah*, 283 U.S. 64, 75 (1931). A state's sovereignty is supreme in its own sphere unless preempted by a concurrent grant of power to and exercise of that power by the federal government. *Waite v. Dowley*, 94 U.S. 527, 532-33 (1876).
13. In the federal system, the right to vote for the President arises not from national but from state citizenship; the Constitution provides that electors from each state shall vote for the President. U.S. CONST. art. II, § 1, cl. 3; Attorney Gen. of Guam v. U.S., 738 F.2d 1017, 1019 (9th Cir. 1984), cert. denied, 469 U.S. 1209 (1985) (no constitutional violation when citizens do not have right to vote for President).
14. The territories of the Virgin Islands, Guam, and American Samoa currently elect a delegate to Washington, D.C., who has power to vote in limited House committees but has no floor vote.
15. In *Downes v. Bidwell*, 182 U.S. 244, 289-90 (1901), the Court stated that the territories alike of representative government, as well as to establish or change local government in Constitution conferred on Congress the right to deprive incorporated and unincorporated territories at its discretion.

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This virtually unlimited congressional power was intended for only temporary use, at a time when territorial status was viewed as a transitional stage to independence or statehood.¹⁶ It was assumed that equality with other states would eventually be conferred, and federal powers correspondingly limited. The Northwest Ordinance set forth the evolutionary stages culminating in statehood.¹⁷ Even as recently as 1933, the Supreme Court embraced the concept that a territory was "destined for admission as a state," and that the congressionally created territorial government was "necessarily limited to the period of pupillage."¹⁸

This view of the inevitability of statehood was discarded when the United States began to acquire new and distant overseas possessions. Beginning with the so-called "Insular Cases" around the turn of the century, the concept of territory took on a new character. Fear of the consequences of annexing "distant ocean communities of a different origin and language from those of our continental people"¹⁹ led Justice White to create the theory of "territorial incorporation," which for the first time differentiated between territories that were and territories that were not destined for eventual admission as states.²⁰

Residents of incorporated territories were extended the full spectrum of constitutional rights awarded to United States citizens.²¹ By con-

16. *McAllister v. United States*, 141 U.S. 174, 187-88 (1891); *see also* *Downes v. Bidwell*, 182 U.S. 244, 293 (1901) (White, J., concurring); *Talbot v. U.S. Federalism: The States and the Territories*, 28 Am. U.L. Rev. 449, 451, 454-56 (1979).
James Monroe wrote that when a territory became equal in population to the original thirteen colonies, it was to be admitted to the union. *See* Solomon, *The Guam Constitutional Commission of 1977*, 19 Va. J. Int'l L. 725, 740 (1979). Further, the jurisdiction in the Constitution of the territorial clause just after the new states clause indicates that territorial status was intended to be only a transitory condition; either statehood would be conferred or the property "disposed of." *See* U.S. CONST. art. IV, § 3. The court in *Edwards v. Carter*, 580 F.2d 1055 (D.C. Cir.) (per curiam), *cert. denied*, 436 U.S. 907 (1978), interpreted the new states clause and the debates at the constitutional convention as demonstrating that article IV, clause 3, in its entirety was intended to outline the role of the federal government in admitting new states.
17. Three stages were envisioned: (1) the territory would be governed by a congressionally designated governor and other federally appointed executive and judicial officials; (2) a local legislative body would be created, a permanent constitutional drafted, and a nonvoting delegate allowed in Congress; and (3) full self-government and statehood would be granted. Northwest Territory Ordinance of 1787, *full text and in Act of August 7, 1789*, ch. 8, § 1 Stat. 50.
18. *O'Donoghue v. United States*, 289 U.S. 516, 537 (1933).
19. *Balzac v. Porto Rico*, 258 U.S. 298, 311 (1922); *see also* Solomon, *The Guam Constitutional Commission of 1977*, 19 Va. J. Int'l L. 723, 740-41 (1979); Coudert, *The Evolution of the Doctrine of Territorial Incorporation*, 26 COLUM. L. REV. 823, 827-28, 832 (1926).
20. *Downes v. Bidwell*, 182 U.S. 244 (1901). The doctrine of territorial incorporation, with its relative limits on constitutional rights, was first introduced in Justice White's concurring opinion in *Downes v. Bidwell*, 182 U.S. 282-83, 294 (1901), and accepted by a unanimous Court in *Balzac v. Porto Rico*, 258 U.S. 298, 303 (1922).
21. The term of art for the application of the Constitution to incorporated territories "of its own force" without the necessity of legislation is *ex proprio vigore*. This is known as the extension doctrine. Coudert, *supra* note 19, at 827. The doctrine seems to have made its first historical appearance in 1849, when Senator John C. Calhoun argued for the extension to the territories

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trast, inhabitants of unincorporated territories would be guaranteed the protection only of the "fundamental provisions" of the Constitution, not those "artificial or remedial rights, which are peculiar to our own system of jurisprudence."²² Owing in part to the acceptance of this theory, there are no incorporated territories awaiting statehood today.²³

The United States now governs three unincorporated territories under its plenary powers. At the turn of the last century, foreign governments relinquished to the United States full rights in Guam,²⁴ the Virgin Islands,²⁵ and American Samoa²⁶ under separate treaties of cession, none of which provided for eventual incorporation. The United States first administered the territories under military control.²⁷ It then enacted Organic Acts whereby Guam and the Virgin Islands

of the right to own slaves as then conferred by the Constitution. The issue arose when the territories of California and New Mexico were acquired from Mexico, which prohibited slavery. Calhoun argued that simultaneous with the ratification of the treaty between Mexico and the U.S., all remnants of Mexican authority were dissolved and replaced by the sovereignty and governance of the U.S. Constitution. See Barsalt, *The Origin of the Theory of the Extension of the Constitution to the Territories Ex Proprio Vigore*, 12 PHILIPPINE L.J. 481, 486 (1933).

22. *Downes v. Bidwell*, 182 U.S. 244, 282-83, 294 (1901) (White, J., concurring); see also Laughlin, *The Application of the Constitution in U.S. Territories: American Samoa, a Case Study*, 7 SAMOAN PAC. L.J. 3 (1981). Certain constitutional provisions have been held to extend to unincorporated territories. See, e.g., *Examining Bd. v. Flores de Otero*, 426 U.S. 572, 600 (1976) (equal protection); *Downes v. Bidwell*, 182 U.S. at 277 (*ex post facto* prohibition and first amendment rights).

Other constitutional provisions have specifically been held not to so apply. See, e.g., *Balzac v. Porto Rico*, 258 U.S. 298, 309-11 (1922) (procedural due process of jury trial in civil or criminal cases); *Ocampo v. United States*, 234 U.S. 91, 100-01 (1914) (preliminary hearing and indictment by a grand jury); *Dorr v. United States*, 195 U.S. 138 (1904) (jury trial); *Hatchett v. Guam*, 212 F.2d 767, 769 (9th Cir.), cert. dismissed, 348 U.S. 801 (1954) (indictment by grand jury or trial by petit jury); *Acord Pugh v. United States*, 212 F.2d 761, 762 (9th Cir. 1954). The deprivation of rights to the inhabitants of unincorporated territories has been said to be a necessity of governing foreign and distant lands. *Glidden Co. v. Zdanok*, 370 U.S. 530, 546 (1962). Whether this rationale is justifiable today in light of modern systems of communications is open to question.

23. Incorporation occurs either by congressional approval of a treaty of cession, which provides for eventual annexation (*Rasmussen v. United States*, 197 U.S. 516 (1905)), or by some other congressional act. See, e.g., Act of April 30, 1900, 31 Stat. 141 (annexation of Hawaiian islands by statute).

24. In the Treaty of Peace (Treaty of Paris of 1898), 30 Stat. 1754, T.S. No. 343, Spain ceded Puerto Rico and Guam to the U.S.

25. The Virgin Islands were ceded to the U.S. by the King of Denmark in the Treaty for Cession of Danish West Indies, Aug. 4, 1916, 39 Stat. 1706, T.S. No. 629.

26. In the case of American Samoa, the island chiefs ceded the territory to the U.S. in two separate documents, the Treaty of Cession of Tutuilla and Aunuu, April 17, 1900, and the Treaty of the Cession of Manu'a Islands, July 16, 1904.

27. Congress provided military governments or municipal governments under an Organic Act because the territory was generally far enough away that Washington could not effectively "rule" it. *Examining Bd. v. Flores de Otero*, 426 U.S. 572, 597 n.28 (1976); see also *United States v. Borja*, 191 F. Supp. 563, 566 (D. Guam 1961).

were organized as territories referred to the Department of

The Organic Acts, which of the affected territories by legislatures and defined the permitted territorial inhabitants provided for an elected government involvement, and permitted territory in congressional community so created, Congress returned to enact even legislation not enjoy vis-à-vis the states. authority of the foreign affairs orders in a wide range of are

Although American Samoa tion was likewise transferred inhabitants were made American send a delegate to Congress.³

By allowing Congress to determine territorial incorporation doctrine to their attainment of state perpetuity, guaranteeing their

28. Organic Act of Guam, 48 U.S.C. Virgin Islands, 48 U.S.C. §§ 1541-164

29. The Supreme Court held in *Nath* have reserved power to amend acts of the a power is an incident of sovereignty, an

The organic law of a Territory takes the local government. It is obligatory is supreme, and for the purposes of the powers of the people of the United implication reserved in the prohibition 101 U.S. 129, 132-33 (1880).

30. U.S. CONST. art. II, § 2.

31. An organic act was never enacted if infirmities that would be raised by codify; as hereditary leadership and communal property, at 104-05.

32. In 1929 Congress ratified the treaty over to the President until Congress could of the American Constitution to American Samoa the President by executive order transferred the Department of the Interior. J. COULTI

33. U.S. nationals are citizens, and the United States." 228 U.S.C. §§ 1101(a)(29 of citizenship while traveling and for immigrants to vote in U.S. elections. 3 G. HACKWORTH (1947).

34. 48 U.S.C. §§ 1731-1735 (1987).

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territories would be guaranteed provisions" of the Constitutions, which are peculiar to our part to the acceptance of territories awaiting statehood

the unincorporated territories of the last century, foreign states full rights in Guam,²⁴ and²⁶ under separate treaties of eventual incorporation. The territories under military control.²⁷ Guam and the Virgin Islands

institution. The issue arose when the treaty between Mexico and the United States was replaced by the sovereignty and independence of the United States. See *White, J., concurring; see also White, J., dissenting*; *American Samoa, a Case Study*, 7 *Journal of International Law* 481, 486 (1933). (1901) (White, J., concurring); *see also* *White, J., dissenting*; *American Samoa, a Case Study*, 7 *Journal of International Law* 481, 486 (1933). Provisions have been held to extend to Flores de Otero, 426 U.S. 572, 600 (1975), and at 277 (*ex post facto* prohibition and

held not to so apply. See, e.g., *Balzac v. United States*, 100-01 (1914) (preliminary hearing denied); *United States v. White*, 195 U.S. 138 (1904) (jury trial); *United States v. White*, 348 U.S. 801 (1954) (indictment); *United States v. White*, 212 F.2d 761, 762 (1954) (United States, 212 F.2d 761, 762). Rights of unincorporated territories have been held to extend to lands. *Glidden Co. v. Zdanok*, 370 U.S. 528 (1962) (today in light of modern systems of

of a treaty of cession, which provides for the territory. U.S. 516 (1905)), or by some other means. U.S. 141 (annexation of Hawaiian islands

30 Stat. 1754, T.S. No. 343, Spain

King of Denmark in the Treaty for the Cession of the Territory of the Virgin Islands, T.S. No. 629.

ceded the territory to the U.S. in two treaties. *United States v. White*, 212 F.2d 761, 762 (1954) (April 17, 1900, and the

territorial governments under an Organic Act. *United States v. White*, 212 F.2d 761, 762 (1954) (April 17, 1900, and the Organic Act at Washington could not effectively be applied. 212 F.2d 761, 762 (1954); *see also* *United States v. White*, 212 F.2d 761, 762 (1954)

were organized as territories.²⁸ Their administration was finally transferred to the Department of Interior.

The Organic Acts, which derived their power not from the people of the affected territories but from congressional action, created local legislatures and defined the parameters of their authority. The Acts permitted territorial inhabitants to become United States citizens, provided for an elected governor, limited day-to-day congressional involvement, and permitted an elected delegate to represent the territory in congressional committees. Despite the appearance of autonomy so created, Congress retained unilateral power to amend the Acts and to enact even legislation of a purely local nature,²⁹ a power it does not enjoy vis-à-vis the states. Further, the President, under the broad authority of the foreign affairs and war powers, may issue executive orders in a wide range of areas.³⁰

Although American Samoa remained unorganized,³¹ its administration was likewise transferred to the Department of Interior,³² its inhabitants were made American nationals,³³ and it was allowed to send a delegate to Congress.³⁴

By allowing Congress to deny incorporation to territories, the territorial incorporation doctrine has created an insurmountable obstacle to their attainment of statehood. Congress can hold territories in perpetuity, guaranteeing their inhabitants only limited constitutional

28. Organic Act of Guam, 48 U.S.C. §§ 1421-1428 (1987); Revised Organic Act of the Virgin Islands, 48 U.S.C. §§ 1541-1645 (1987).

29. The Supreme Court held in *National Bank v. County of Yankton* that Congress need not have reserved power to amend acts of the territorial legislature in the organic act, because "[s]uch a power is an incident of sovereignty, and continues until granted away." The Court wrote:

The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the territorial authorities; but Congress is supreme, and for the purposes of this department of its governmental authority has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution.

101 U.S. 129, 132-33 (1880).

30. U.S. CONST. art. II, § 2.

31. An organic act was never enacted for American Samoa in order to avoid the constitutional infirmities that would be raised by codifying certain aspects of traditional Samoan culture, such as hereditary leadership and communal property, under U.S. law. See J. COULTER, *supra* note 3, at 104-05.

32. In 1929 Congress ratified the treaties with Samoa, the power to control it being turned over to the President until Congress could provide for government there. Note, *The Application of the American Constitution to American Samoa*, 9 J. INT'L L. & ECON. 327-28 (1974). In 1951 the President by executive order transferred the administration from the Navy Department to the Department of the Interior. J. COULTER, *supra* note 3, at 101.

33. U.S. nationals are citizens, and those noncitizens who owe "permanent allegiance to the United States." 228 U.S.C. § 1101(a)(29), 1408 (1970). Noncitizen nationals enjoy the rights of citizenship while traveling and for immigration purposes. They are not, however, permitted to vote in U.S. elections. 3 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW, §§ 221, 240 (1947).

34. 48 U.S.C. §§ 1731-1735 (1987).

rights, with no reciprocal federal responsibility to move them into statehood.³⁵ This permanent "holding pattern" distorts the original meaning of the territorial clause and may further the exploitation of the territories at the expense of their development.³⁶

Anticolonial sentiment after the Second World War made further foreign expansion unacceptable.³⁷ At the same time, however, the United States was in possession of the area, so that practically speaking the United Nations' choice of the United States to administer the Trust Territory of the Pacific Islands was a foregone conclusion. The United States' formal powers there derive from a Trusteeship Agreement with the United Nations, a treaty entered into pursuant to the treaty-making power of the United States Constitution. As administering authority the United States can govern the property without owning it. It is on this basis that the United States has worked to negotiate political relations with the different island groups that constitute the Trust Territory.

II. THE TRUST TERRITORY OF THE PACIFIC ISLANDS AND ITS RELATIONSHIP WITH THE UNITED STATES

The United States became administering authority of the Trust Territory of the Pacific Islands after its defeat of the former trustee, Japan, in the Second World War.³⁸ The United Nations' predecessor in interest, the League of Nations, had entrusted the Japanese with

35. Justice Harlan in his dissenting opinion in *Doune v. Bidwell* criticized the majority's interpretation of the far-reaching effect of the territorial clause:

The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces—the people inhabiting them to enjoy only such rights as Congress chooses to accord to them—is wholly inconsistent with the spirit and genius as well as with the words of the Constitution.

182 U.S. 244, 380 (1901); see also Branch, *The Constitution of the Northern Mariana Islands: Does a Different Cultural Setting Justify Different Constitutional Standards?*, 9 DEN. J. INT'L L. & POL'Y 35, 39-46 (1980).

36. The distinguishing corporate characteristic of the present territories is that they are not likely to become states in the near future. The current territories, therefore, are poorly served by a constitutional approach based on an evolutionary process toward statehood. Their delay or diversion from progress toward statehood, the standard goal of territorial evolution in the past, is due not only to size and distance but also to cultural and racial differences.

Leibowitz, *supra* note 16, at 451-52.

37. C. HEINE, *MICRONESIA AT THE CROSSROADS* 4 (1974).

38. The history of the Trust Territory of the Pacific Islands has been exhaustively discussed in academic works. For background discussion, see, e.g., Hitayasu, *The Process of Self-Determination and Micronesia's Future Political Status Under International Law*, 9 U. HAWAII L. REV. 487 (1987); Comment, *International Law and Dependent Territories: The Case of Micronesia*, 50 TEMP. L.Q. 58 (1976).

Micronesia as a Class C Territory. In direct contravention of the Charter for military purposes and for the Pacific Islands, and a base for

The United States Congress in 1947 appointed it as the Trust Territory of the Pacific Islands. Although the United States is not a member of the United Nations, with the administering authority, this is the United States' physical occupation.

In 1947, by executive order,³⁹ the United States

39. The League of Nations' mandate system provided that those nations released from the League should be granted national independence. F. WALTON MOORE, *THE LEAGUE OF NATIONS* 186 (1986). Member nations served as trustees of the former German colony to Japan, the "Mandate for the Pacific Islands." The Mandate was classified as an integral part of its territory. The Mandate's provisions were reserved for small centers of civilization or geographical areas that were believed to be least capable of self-government. See also Comment, *supra* note 36, at 451-52; *a Trusteeship*, 18 N.Y.L.F. 139, 140 (1947).

The United Nations Charter established the Trusteeship System but, drawing from the League of Nations, it created specific guarantees to the inhabitants of the Trust Territory. It created the Trusteeship Council. *Id.* arts. 86-91.

40. During the United Nations Trusteeship Council, the U.S. argued that Japan had forfeited all rights it had under the League of Nations. See also 2 U.N. SCOR (113th mtg.) 10, where the author suggests that if the United Nations responded to Japan's demands for such use, it should be prohibited. See also United Nations in 1935, so, arguably, Japan fortified Micronesia. N. MELLETT, *THE TRUST TERRITORY OF THE PACIFIC ISLANDS* 41.

41. E. POMEROY, *PACIFIC OCEAN TERRITORIES* note 3, at 63, 67.

42. Although Japan withdrew control over Micronesia. But by the United Nations. A question remains whether divestiture was a result of operation. If divestiture was a result of operation, the United Nations can terminate a trusteeship. The United Nations considered the issue, it decided. See also 2 U.N. SCOR at 471-72, 473.

43. H.R.J. Res. 233, 80th Cong. No. 9875, 3 C.F.R. 658 (1947).

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Micronesia as a Class C Mandate at the close of the First World War.³⁹
In direct contravention of its charge,⁴⁰ Japan used the islands for
military purposes and developed outposts in Saipan and Rota, Mariana
Islands, and a base for its Pacific fleet in Truk, Caroline Islands.⁴¹

The United States challenge to the Japanese occupation in Micro-
nesia exacted a high price in both money and lives; its success an-
nointed it as the presumed successor to Japan's interest in the area.
Although the United States formally ceded the conquered territory to
the United Nations, which reinstated the United States as adminis-
tering authority, this result was a foregone conclusion of the United
States' physical occupation of the islands.⁴²

In 1947, by executive agreement and with the approval of Con-
gress,⁴³ the United States entered into the Trusteeship Agreement

39. The League of Nations' mandate system was created to provide "good government" for those nations released from foreign domination after the First World War, but incapable of national independence. F. WALTERS, *A HISTORY OF THE LEAGUE OF NATIONS* 42 (reprinted 1986). Member nations served as trustees. In 1919 the League of Nations gave Micronesia (a former German colony) to Japan, which was to serve as "Mandatory" for the purpose of providing "tutelage." The Mandate was classified as "Class C," which allowed Japan to govern the islands as an integral part of its territory, subject to the interests of the indigenous peoples. Class C mandates were reserved for small, sparsely populated territories that were either remote from centers of civilization or geographically contiguous to the administering authority and thus believed to be least capable of self-government. LEAGUE OF NATIONS COVENANT art. 22, para. 6; see also Comment, *supra* note 38, at 70-71; Note, *A Macrostudy of Micronesia: The Ending of a Trusteeship*, 18 N.Y.L.F. 139, 142-43 (1972).

The United Nations Charter continued the mandate system in the form of the Trusteeship System but, drawing from the League's experiences, excluded the class system and included specific guarantees to the inhabitants and goals for the trustees. U.N. CHARTER art. 76. Finally, it created the Trusteeship Council, whose articulated function it was to oversee the trusteeships. *Id.* arts. 86-91.

40. During the United Nations Security Council discussion of the draft trusteeship agreement, the U.S. argued that Japan had breached its trust agreement with the United Nations, and, thus, forfeited all rights it had under its agreement. 2 U.N. SCOR (116th mtg.) at 472 (1947); see also 2 U.N. SCOR (113th mtg.) at 408 (1947). But see Comment, *supra* note 38, at 72, where the author suggests that it was not so much that Japan misused its trust as that the United Nations responded to Japan's use of the trust for military purposes by prospectively prohibiting such use. It should be noted also that Japan had withdrawn from the League of Nations in 1935, so, arguably, Japan was not under the aegis of the United Nations at the time it fortified Micronesia. N. MELLER, *THE CONGRESS OF MICRONESIA* 14 (1969).

41. E. POMEROY, *PACIFIC OUTPOST* 105-07, 121, 163 (1951); see also D. NEVIN, *supra* note 3, at 65, 67.

42. Although Japan withdrew from the League of Nations in 1935, it did not relinquish control over Micronesia. But by the end of the Second World War, Japan had lost its mandate over the islands. A question remains whether this occurred by conquest or by operation of law. If divesture was a result of operation of law, then credence is lent to the proposition that the United Nations can terminate a trust for breach of a trust agreement. Although the United Nations considered the issue, it did not resolve it. Comment, *supra* note 38, at 58, 61 n.19, citing 2 U.N. SCOR at 471-72, 475-78, 654-57 (1947).

43. H.R.J. Res. 233, 80th Cong., 1st Sess., 93 CONG. REC. 8731 (1947); Exec. Order No. 9875, 3 C.F.R. 658 (1947).

with the United Nations.⁴⁴ The President's authority over foreign affairs, which derives from the executive treaty-making power in the United States Constitution, provided the source of power.⁴⁵ Together with the United Nations Charter,⁴⁶ the Trusteeship Agreement, which is an international treaty and a bilateral contract between the United States and the Security Council,⁴⁷ declares the terms of the trusteeship.⁴⁸ The Trusteeship Agreement obligated the United States to provide for the jurisdiction of economic, political, and social advancement and to promote its progressive development toward self-government or independence.⁴⁹ The international community will retain its supervisory authority over the trusteeship until the administering authority has fulfilled its responsibilities to the trust.⁵⁰

44. Trusteeship Agreement for the Former Japanese Mandated Islands, approved by the United Nations Security Council, Apr. 2-July 18, 1947, 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189 [hereinafter Trusteeship Agreement].

45. U.S. CONST. art. II, § 2, cl. 2, *in vitro* *United States*, where the federal Court of Claims distinguished the territorial clause when it wrote: "The United States has not administered the Trust Territory under the authority conferred in Article IV, section 3, concerning regulation by Congress of territories or other property belonging to the United States." 6 Cl. Ct. 441, 456 (1949).

46. The United Nations Charter established the trusteeship system and set forth its basic objectives in article 76. These objectives include efforts to improve international peace and security; to promote the political, social, and educational advancement of the inhabitants of the trust territories; to encourage respect for human rights; and to ensure equal treatment in social, economic, and commercial matters for all Member States.

47. U.S. Representatives on the Security Council Warren R. Austin in 1947 stated during the debates on the Trusteeship Agreement:

The United States wishes to record its view that the draft trusteeship agreement is in the nature of a bilateral contract between the United States, on the one hand, and the Security Council, which is one party to this agreement, on the other. . . . [I]t is the Charter that defines the duties, the powers, and the responsibilities of the Security Council.

48. U.S. SCOP (116th Cong. Rec. at 476 (1947)); see also *Trust Territory of the Pacific Islands v. Franklin Mint Corp.*, 466 U.S. 243, 253 (1984) (A treaty is in the nature of a contract between nations).

49. Trusteeship Agreement, *supra* note 44, at art. 6, § 1.

50. *Trust Territory of the Pacific Islands v. Franklin Mint Corp.*, 466 U.S. 243, 253 (1984) (A treaty is in the nature of a contract between nations).

51. The U.S.'s demand for strategic trust designation was the result of internal compromise between two factions—the military, which believed that the area should be annexed, and anti-annexationists in the Department of State. C. HEINE, *JAPAN* note 37, at 4; Weighing heavily in the decision was the fact that the United States had given up its rights to the area once before, allowing more of Micronesia to be sold after the Spanish-American War, only to regain it during the second World War at the cost of many lives. J. COULTER, *JAPAN* note 3, at 173.

52. Ten other territories were placed in the Trusteeship System between 1946 and 1950, none of which was made a strategic trust. J. COULTER, *JAPAN* note 3, at 174 (1957); Clark, *supra* note 30, at 2-3.

53. Approximately 3400 American died in the battle of Saipan alone; 11,000 were wounded in fighting that lasted for weeks. D. NEVIN, *JAPAN* note 3, at 68, 70; *in vivo* Armstrong, *supra* note 3, at 211-12.

54. Trusteeship Agreement, *supra* note 44, at art. 1.

55. In fact, the U.S. actively used the area for strategic purposes. It restricted whole island populations from the Marshall Islands and used those islands for nuclear testing. Further, the U.S. appropriated the entire north end of Saipan in the Marianas, where it operated a highly classified training ground for Nationalist Chinese guerrillas. J. COULTER, *JAPAN* note 3, at 174; N. MELLES, *JAPAN* note 40, at 17.

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The United States demanded that the Trust Territory be designated a strategic area under the supervision of the United Nations Security Council.⁵¹ This was unprecedented.⁵² Nevertheless, the United States, in fact, paid such an enormous price,⁵³ persuaded the United Nations to include the designation in the Trusteeship Agreement.⁵⁴ The effect of this concession was twofold. First, it gave the United States substantial authority in the area.⁵⁵ Second, it vested control of a responsible choice through informed and democratic processes.⁵⁶ G.A. Res. 1541 Annex (Principles VIII & IX), 15 U.N. GAOR Supp. (No. 16) at 30, U.N. Doc. A/4664 (1960). Thereafter in 1960, the General Assembly passed two declarations within a day of each other, declaring first that no status short of independence would be permitted (*Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1960)); and second that retaining any one of the three trustees generally established in Resolution 742 would constitute a "full measure of self-government." G.A. Res. 1541, 15 U.N. GAOR Supp. (No. 16) at 29, U.N. Doc. A/4684 (1960). Although Resolution 1541 was by no means identical to Resolution 742, it, like 742, permitted self-government to be satisfied in one of three ways, each with varying degrees of control by the governing authority.

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the trust in the Security Council, where the United States could exercise its veto power, thus depriving the General Assembly of its oversight function. To this day, any changes in the trusteeship relationship, including termination of the trusteeship, remain subject to Security Council approval.⁵⁶ In further promotion of its foreign affairs and defense goals,⁵⁷ the United States argued for and succeeded in obtaining independent veto power over alterations, amendment, or termination of the trusteeship, thus placing it on equal footing with the Security Council in that respect.⁵⁸

Throughout the administration of the Trust Territory, sovereignty remained in the Micronesian entities.⁵⁹ The United States could gain no more sovereignty over the islands than Japan had itself enjoyed, and Japan had not been sovereign. The Trusteeship Agreement thus could not transfer territory or possession to the United States. Several United States cases underscore the impossibility of United States sovereignty over the region.⁶⁰ The most that the United States had

56. Neither the United Nations Charter nor the Trusteeship Agreement specifically set forth the manner in which termination of the trusteeship shall occur. The nonstrategic trust were terminated pursuant to General Assembly resolutions. 1 WHITEMAN, DIGEST OF INTERNATIONAL LAW, §§ 44-45 at 896-899. But the Trust Territory of the Pacific Islands, as a strategic trust, is excepted from General Assembly powers and governed by the Security Council. U.N. CHARTER art. 85, para. 1. Additionally, the Trusteeship Agreement itself provides so-called "veto" power over any alterations to the Agreement. Trusteeship Agreement, *supra* note 44, at art. 15. Termination of the Trust Territory of the Pacific Islands will therefore occur when the Trust, the Security Council, and the U.S. concur. For a discussion of President Reagan's attempt unilaterally to terminate the Trusteeship as to all members except Palau, see *infra* note 106 and sources cited.

57. See also *infra* notes 72-75 and accompanying text.

58. Trusteeship Agreement, *supra* note 44, at art. 15.

59. In light of the fact that Micronesia is occupied and governed by the U.S., one court has characterized the sovereignty of the people as dormant, awaiting recognition of their new state before it will be revived. *Morgan Guaranty Trust Co. v. Republic of Palau*, 639 F. Supp. 706, 714, 715 (S.D.N.Y. 1986) (quoting I. BROWNLI, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 182 (3d ed. 1979)); accord Comment, *Reconciling Independence and Security: The Long-Term Status of the Trust Territory of the Pacific Islands*, 4 PAC. BASIN L.J. 210, 220 (1985). Some Micronesian sovereignty, however, was revived earlier in order to permit the Micronesians to negotiate their future status on their own behalf. *Id.* at 222.

60. *United States v. Covington*, 783 F.2d 1052, 1055 (9th Cir. 1985), *cert. denied*, 479 U.S. 831 (1986); *Northern Mariana Islands v. Atalig*, 723 F.2d 682, 684 (9th Cir.), *cert. denied* 467 U.S. 1244 (1984); *People of Saipan v. United States Dep't of Interior*, 502 F.2d 90, 95 (9th Cir. 1974); see also RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 24 comment a (1965), which makes clear that a trustee state acquires no sovereignty over trust property and its inhabitants: "Territory under the trusteeship system pursuant to Chapter XII of the Charter of the United Nations, June 26, 1945, § 1031, T.S. No. 993, is not territory of the trustee state. Although the trustee state is not the sovereign of the trust territory, its powers include the power to prescribe and to enforce rules of law in the territory." By way of illustration, the Restatement refers to the Trusteeship Agreement for the islands in the former Japanese Mandate and explains that the "powers of the trustee are not completely discretionary. They are exercised subject to the relevant provisions of the Charter of the United Nations and of the Trusteeship Agreement." *Id.* illustration 1.

gained was "qualified sovereignty" to take actions necessary to promote the progressive development of Trust Territory inhabitants toward self-determination,⁶¹ while remaining answerable to its principal, the United Nations.⁶² The United States itself took this position during its original negotiations with the Security Council.⁶³

The United States did little during the first fifteen years of its stewardship to fulfill its obligations to the inhabitants of the Trust Territory, and in fact was accused of treating the inhabitants with "benign neglect."⁶⁴ Not until formally criticized by a United Nations visiting mission in 1961⁶⁵ was the United States jolted into action.⁶⁶ In direct response to the mission's recommendations and with an eye toward establishing a permanent relationship with the island entities,

61. *Sablan Constr. Co. v. Trust Territory of the Pacific Islands*, 526 F. Supp. 135, 140 (D. N.Mar.I. 1981).

The use of U.S. currency and stamps in the Trust Territory is not evidence of sovereignty; they are used for the convenience of the administrator. R. TRUMBULL, PARADISE IN TRUST 66 (1959).

62. *Northern Mariana Islands v. Atalig*, 723 F.2d 682, 684-85 (9th Cir.), *cert. denied* 467 U.S. 1244 (1984); *Gale v. Andrus*, 643 F.2d 826, 830 (D.C. Cir. 1980) ("[t]he real authority over the islands remains in the United Nations"). But see *People of Saipan v. United States Dep't of Interior*, 356 F. Supp. 643, 653 (D. Haw. 1973) (the U.S. may exercise full sovereign power "although technically sovereignty resides elsewhere").

63. During the United Nations Security Council discussion of the draft trusteeship agreement, the U.S. took the position that because Japan had never had sovereignty over Micronesia, U.S. sovereignty would be restricted:

Japan never did have sovereignty over these islands and that so far as the trusteeship is concerned, any interest of the status quo trust was represented by the predecessor of the United Nations, namely, the League of Nations, and, as the successors of the League of Nations, it is in our hands. If there is any entity which can properly represent that aspect of the life of these islands, it is the United Nations.

2 U.N. SCOR (116th mtg.) at 471-72 (1947) (emphasis added); see also 2 U.N. SCOR (113th mtg.) at 408 (1947), where the U.S. stated that the former Japanese mandated islands "never belonged to Japan, but were a part of the League of Nations mandate system."

Similarly, in response to the proposal from the representative of the U.S.S.R. to eliminate the phrase "as an integral part of the United States" from the draft trust agreement, the U.S. representative explained that "[i]t does not mean the extension of United States sovereignty over the territory, but in fact it means precisely the opposite." 2 U.N. SCOR (116th mtg.) at 473 (1947); see also *Morgan Guaranty Trust Co. v. Republic of Palau*, 639 F. Supp. 706, 715 (S.D.N.Y. 1986) ("the United States disclaimed sovereignty . . . from the inception of the Trusteeship").

64. *Mink, Micronesia: Our Bungled Trust*, 6 TEX. INT'L L.F. 181, 184-85 (1971); see also J. COULTER, *supra* note 3, at 205-06; C. HEINE, *supra* note 37, at 21; D. NEVIN, *supra* note 3, at 23.

65. The 1961 Report of the United Nations Visiting Mission to Micronesia was the first formally to criticize the U.S.'s administration of the territory. In response, the United Nations sent a survey mission to Micronesia to report and make recommendations "on the political, economic, and social problems of Micronesia." 37, 38 (2nd. RIDING at 37-38/11).

66. The U.S. assisted in creating an Inter-District Micronesia Conference, which allowed representatives from the various islands to meet with those from the U.S. to discuss their needs. The meetings occurred in 1949, 1953, 1956, and annually thereafter until 1963. N. MELLER, *supra* note 40, at 182-87.

1. United States v. Hucksabee, 83 U.S. (16 Wall.) 414 (1872).
 2. U.S. Const. art. IV, § 3, cl. 2.

tion, the United States offered to make Micronesia a territory pursuant to the territorial clause.⁷² The Congress of Micronesia rejected this offer, as it did the following year's offer of commonwealth status,⁷⁴ in favor of free association. Free association would provide a maximum amount of self-government along with some funding and military protection from the United States.⁷⁵

Lumped with the other Micronesian islands by historical accident, the Marianas chose to disassociate themselves from the Congress of Micronesia. The Marianas had become more Americanized, both in terms of political culture⁷⁶ and material amenities,⁷⁷ than the other groups in the Trust Territory. Desirous of a closer relationship with the United States than free association would allow, the Marianas in 1972 began negotiations with the United States toward commonwealth status. Although the United States was criticized for contributing to the fragmentation of the Trust Territory by participating in such discussions,⁷⁸ it defended its actions as responsive to the desires of the people of the Marianas.⁷⁹

increase U.S. financial aid. Metcalf, *Micronesia and Free Association: Can Federalism Save Them?*, 7 *Int'l L.J.* 162, 165 (1974). According to one author, "Many observers have concluded that the rapid U.S. modernization program, begun in the early 1960s, was deliberate." *Id.*, at 179, 191.

73. OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS, ROUND I, (Sept. 30-Oct. 17, 1969, Washington, D.C.) SUMMARY RECORD, 1-2 (1976); WILLIAMS & SIEMER, *The Constitution of the Northern Mariana Islands: Constitutional Principles and Innovation in a Pacific Setting*, 65 *Geo. L.J.* 1373, 1377 n.18 (1977) (the draft Organic Act presented by the U.S. would have made Micronesia an unincorporated territory, like Guam or the Virgin Islands).

74. The Congress of Micronesia rejected the offer of commonwealth status because, like the Trust Territory, it would have conferred U.S. hegemony over the Marianas. Green, *Termination of the U.S. Pacific Island Trusteeship*, 9 *Texas Int'l L.J.* 175, 176 (1974); *supra* note 37, at 126.

75. Armstrong, *supra* note 3, at 214-16. The concept of "free association" was first raised as a possibility in 1933, as a consequence of United Nations General Assembly Resolution 748, which terminated the U.S.'s responsibility to transmit information with respect to Puerto Rico upon the mutual agreement of the two states that Puerto Rico would become a commonwealth of the U.S. The commonwealth relationship was described in Spanish as *estado libre asociado*, which translated literally means "free associated state." G.A. Res. 748, 8 U.N. GAOR Supp. (No. 17) at 25, U.N. Doc. A/2630 (1953); Clark, *supra* note 30, at 41.

76. Evidence of this is the presentation by the Marianas Delegation to the Congress of Micronesia of a dissenting petition and request for separate talks. Green, *supra* note 74, at 180; *supra* note 37, at 174.

77. One author has suggested that the Northern Marianas' exposure to the largesse of the American military in Guam may have influenced its desire for a closer relationship with the Trust Territory had it not been administered by the Navy until 1951, when it was transferred to the Department of Interior. Under the Navy administration, the "people of Micronesia became accustomed to a new life-style, a style where everything was handed out free." C. HEINE, *supra* note 37, at 5.

78. The separate negotiation was criticized as an effort to divide and conquer. "Statement issued by the permanent Mission of the Union of Soviet Socialist Republics to the United Nations (Mar. 6, 1979), U.N. Doc. A/34/1009, S13147, at 2 (1979); *supra* note 37, at 174.

79. Williams & Siemer, *supra* note 37, at 1378-79.

Congress significantly increased appropriations for the Trust Territory⁸⁰ and, in 1964, created the Congress of Micronesia.⁸¹ Every bill passed by the Congress was nevertheless subject to the veto of a High Commissioner installed by the United States. That veto could be overridden by Congress, and ultimately by the United States Secretary of the Interior.⁸²

In 1967 the United States Congress established a Future Political Status Commission to identify and report on the political options for Micronesia.⁸³ The Commission submitted two reports. The first, in 1968, discussed alternatives without making a recommendation. The second, in 1969, recommended that Micronesia become self-governing and associate freely with the United States or, in the alternative, that it become independent.⁸⁴

The United States, however, had already committed itself to bringing the Trust Territory into a permanent relationship with the United States.⁸⁵ In 1969, notwithstanding the Commission's recommendations of each island nation. Sec. Order No. 3027, 43 Fed. Reg. 49, 858-59 (1978).

80. The Congress consisted of representatives from Yap, Chuuk, the Marshall Islands, Pohnpei, the Marianas, and Palau. It was established by the Secretary of the Interior, Sec. Order No. 2882, 29 Fed. Reg. 13,613 (1964). In 1978 the Department of the Interior dissolved the Congress of Micronesia and transferred its limited legislative authority to the elected assemblers of each island nation. Sec. Order No. 3027, 43 Fed. Reg. 49, 858-59 (1978).

81. *Morgan Guaranty Trust Co. v. Republic of Palau*, 639 F. Supp. 706, 708 (S.D.N.Y. 1986).

82. C. HEINE, *supra* note 37, at 55. The Commission began a "decolonization" process in response to the "unhappy promise" by the U.S. *Id.* at 106.

83. ARMSTRONG, *supra* note 3, at 214-15 & n.24 (1979) (citing FUTURE POLITICAL STATUS COMMISSION, INTERIM REPORT TO THE CONGRESS OF MICRONESIA AND FUTURE POLITICAL STATUS COMMISSION, REPORT TO THE CONGRESS OF MICRONESIA 8, 44-49 (1969), *unpublished in S. Rep. No. 433, 94th Cong., 1st Sess. 26-36 (1975)*).

84. The Kennedy administration began seeking to control Micronesia more permanently. The U.S. has reportedly cited the strategic advantages of the area as the reason for its continued interest in it. S. Rep. No. 596, 94th Cong., 2d Sess. 8, 16, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS 448, 453, 463; HEINING, *supra* note 37, at 196 U.S. COMM. ON ENERGY AND NATURAL RESOURCES, 98th Cong., 2d Sess. 118-22, 135-39 (1984). But see MINORITY VIEWS OF THE ARMED SERVICES COMMITTEE, S. REP. NO. 596, 94th Cong., 2d Sess. 19, 20-23 *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS 466, 467-70 (the Marianas is not well suited to serve as a base for United States strategic forces in the Pacific and Asia.). The increased U.S. involvement in Vietnam made the strategic value of Micronesia more immediately appealing. D. NEVIN, *supra* note 3, at 110-11.

85. U.S. representatives who met with the Micronesian Future Political Status Commission repeatedly advocated some sort of association with the U.S. "Almost every one of these government witnesses failed, perhaps deliberately, to mention independence as a possible choice or a realistic alternative that could be considered by the commission. Some form of association with the U.S. was always the predominant theme." C. HEINE, *supra* note 37, at 58. Whatever the manner in which the U.S. chose to insure that the islanders remained loyal was to that the islanders would not be given up. D. NEVIN, *supra* note 3, at 74.

The result of the negotiations was the Covenant to Establish a Commonwealth⁸⁰ of the Northern Mariana Islands⁸¹ in Political Union with the United States of America.⁸² The Covenant alone dictates the terms of the relationship between the Northern Mariana Islands and the United States.⁸³ It reaffirmed the Northern Marianas' right to self-government as established by the United Nations Charter and the Trusteeship Agreement, while granting the United States limited sovereignty in the islands in order to protect its strategic interests.⁸⁴ Because the Northern Marianas remained part of a trust territory, the United States enjoyed no sovereign power there until the Northern Marianas yielded foreign affairs, defense, and certain other specific rights pursuant to the terms of the Covenant.⁸⁵

The Covenant is an executive agreement under United States law, authorized by the executive recognition power and the President's power as Commander-in-Chief of the armed forces.⁸⁶ The Covenant

80. "Commonwealth" is not a technical term of public law but merely designates a political state with a republican frame of government. It does not connote any particular set of rights to its inhabitants. BLACK'S LAW DICTIONARY 252 (5th ed. 1979). The determinative factor seems to be the status in which the territory was held before being granted commonwealth status.

The importance of this determination is exemplified in the current debate over the status of Puerto Rico. Unlike the Northern Marianas, Puerto Rico was at one time held as a territory of the U.S. under the territorial clause. Because the U.S. once exercised complete sovereignty in Puerto Rico, it arguably continues to enjoy greater residual sovereignty there than that to which it is entitled in the Northern Marianas. Applicability of the United States Constitution & Federal Laws to Puerto Rico, 110 F.R.D. 449 (1985) (1st Cir. Panel Discussion). *See also* United States v. Quinones, 758 F.2d 40, 42 (1st Cir. 1985); *Alcoa Steamship Co. v. Perra*, 295 F. Supp. 187, 196-97 (D.P.R. 1968).

81. The name "Northern Mariana Islands" was chosen in order to distinguish the islands from Guam, which is also part of the Marianas. There is no "Southern Mariana Islands."

82. Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, reprinted in Pub. L. No. 94-241, 90 Stat. 263 (1976) (hereinafter *Covenant*).

83. Unlike a treaty, which may be terminated unilaterally by either party, the Covenant is mutually enforceable in U.S. courts. *Id.* art. 9, § 903. Moreover, the Covenant is unalterable without mutual consent and must be analyzed in contract terms. *Id.* art. 1, § 103; *see also* *Perry v. U.S.*, 294 U.S. 330, 352 (1935) ("When the United States, with constitutional authority, makes contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments.")

84. *Covenant*, *supra* note 82, at art. 1, §§ 101, 103, 104.

85. *See id.* arts. V (applicability of federal laws), VI (revenue and taxation), VIII (property). It must again be stressed that sovereignty at all times remained in the Micronesian entities, even though they were not independent. The Marianas did not grant all their sovereignty to the U.S. through the Covenant, only to have the U.S. grant back some limited internal rights. Rather, they remained sovereign at all times, granting to the U.S. only those limited rights articulated in the Covenant. Not until the Trusteeship Agreement is lawfully terminated will the U.S. acquire any long-term interest in the islands. *Covenant* art. IX, § 1003.

86. *United States v. Curtiss-Wright Corp.*, 299 U.S. 304, 319 (1936) (the President is the "sole organ" of the U.S. in the conduct of foreign affairs); *Missouri v. Holland*, 252 U.S. 416 (1920) (Congress has the power to enact legislation to carry out U.S. obligations under international agreements). *See generally* E. BYRD, TREATIES AND EXECUTIVE AGREEMENTS IN THE UNITED STATES (1960).

was submitted for approval to Congress in the form of a joint resolution,⁸⁷ and to the people of the Marianas in a voting plebiscite.⁸⁸ These actions represented only the final steps in the approval process; they did not themselves create the agreement, which had already been established pursuant to the United Nations Charter and the Trusteeship Agreement.⁸⁹

The remaining archipelagos split into three separate groups.⁹⁰ Negotiations between the United States and the Congress of Micronesia led to the formulation of the Hilo Principles, which governed the free association relationships between the two parties.⁹¹ Then, as compacts of free association were constructed, constitutions were drafted and submitted to the island electorates. In 1978 the Marshall Islands and Palau rejected a constitution that would have bound them with the rest of Micronesia as the Federated States of Micronesia (FSM). Rather, each developed its own constitution, establishing itself as a republic.⁹²

The compact negotiations, which were concluded in the early 1980's, yielded two versions—one with the Federated States of Micronesia and the Marshall Islands,⁹³ the other with Palau.⁹⁴ The Com-

87. H.R.J. Res. 549, 94th Cong., 1st Sess. (1975); 48 U.S.C. § 1681 (1987) (historical and statutory notes).

88. The voters of the Marianas were offered the option of approving or disapproving commonwealth status as set forth in the Covenant. By an overwhelming majority of 78.8%, they voted to approve it. S. REP. NO. 96, 94th Cong., 2d Sess. 3 (1976), reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 448, 452.

89. The codification of the Covenant in the Act of March 24, 1976, Pub. L. No. 94-241, 90 Stat. 263 (1976), amended by 97 Stat. 1461 (1983) and 100 Stat. 840 (1986) did not create the Covenant but simply made its terms enforceable against the U.S. as domestic legislation. In the joint resolution ratifying the Covenant, Congress acknowledged that the Covenant was "in accordance with the trusteeship agreement and the Charter of the United Nations." H.R.J. Res. 549, 94th Cong., 1st Sess. (1975).

90. *See generally* Armstrong & Hills, *The Negotiations for the Future Political Status of Micronesia (1980-1984)*, 78 AM. J. INT'L L. 484 (1984).

91. *Clark, supra* note 50, at 13. The Hilo Principles addressed such issues as free association between the U.S. and the island groups, U.S. security and defense of the island groups, and U.S. economic assistance to the island groups. Hilo Principles, reprinted in 72 AM. J. INT'L L. 882-83 (1978).

92. S. REP. NO. 403, 99th Cong., 2d Sess. 24, reprinted in 1986 U.S. CODE CONG. & ADMIN. NEWS 6207, 6208.

93. The final version of the Compact of Free Association between the government of the U.S. and the governments of the Federated States of Micronesia and the Republic of the Marshall Islands, reprinted in Pub. L. No. 99-239, 99 Stat. 1770 (1985), amended by Pub. L. No. 99-396, 100 Stat. 844 (1986); and Pub. L. No. 99-638, Title I, § 103, 104(c), 100 Stat. 3672, 3675, 3676 (1986) (hereinafter *FSM and Marshall Islands Compact*) was signed by the negotiating parties on October 1, 1982, and June 23, 1983, respectively. H.R. REP. NO. 188, 99th Cong., 1st Sess. 3-4, reprinted in 1985 U.S. CODE CONG. & ADMIN. NEWS 2746, 2748-49.

94. Negotiations with Palau were concluded on August 26, 1982, with the signing of a Compact of Free Association Between the Government of the U.S. and the Government of Palau, reprinted in Pub. L. No. 99-638, Title II, § 201, 100 Stat. 3672 (1986) (hereinafter *Palau Compact*). H.R. REP. NO. 188, 99th Cong., 1st Sess. 3, reprinted in 1985 U.S. CODE CONG. & ADMIN. NEWS 2746, 2748.

pacts are treaties in the form of joint congressional-executive agreements. Each Compact is a unilateral agreement with the United States, permitting the United States exclusive use of the entity for military purposes in exchange for federal funding, programs, use of United States currency, immigration privileges, federal processing of applications for air services, United States transportation of mail internationally and within Micronesia, and other benefits.⁹⁵ The defense and security responsibilities of the United States will last for a minimum of fifty years, as will United States funding.⁹⁶ Each Micronesian state retains full internal and external sovereignty, except in the areas of security and defense matters, which are negotiated in separate security agreements.

With the exception of Palau,⁹⁷ each political entity has approved its Compact.⁹⁸ After the Federated States of Micronesia and the Marshall Islands approved their Compact, it was submitted to the United States Congress, which adjusted the funding arrangements and then enacted it as law.⁹⁹ Although Congress approved the Palau Compact as a matter of domestic law,¹⁰⁰ the United States will continue as administering authority of the entire Trust Territory until Palau's voters have ratified their Compact.¹⁰¹

Ironically, although the Micronesian entities could not agree among themselves on the details of a relationship with the United States, they negotiated fundamentally similar agreements. A basic principle underlying both the Covenant and the Compacts is the reservation of the right to self-government over internal affairs. Further, each entity accepted federal funding and programs, and permitted a continued United States military presence in exchange for defense protection.

95. S. REP. NO. 403, 99th Cong., 2d Sess., 26-28, 36-50, reprinted in 1986 U.S. CODE CONG. & ADMIN. NEWS 6207, 6210-12, 6220-34; see also Isenberg, *Reconciling Independence and Security: The Long-Term Status of the Trust Territory of the Pacific Islands*, 4 UCLA PAC. BASIN L.J. 210, 225-35 (1985).

96. S. REP. NO. 403, 99th Cong., 2d Sess. 42, reprinted in 1986 U.S. CODE CONG. & ADMIN. NEWS 6207, 6226.

97. See *infra* notes 107-124 and accompanying text.

98. In June 1983 the people of the Federated States of Micronesia approved their Compact with a majority of 79%. In September 1983 the people of the Marshall Islands approved the same Compact with a majority of 58%. S. REP. NO. 403, 99th Cong., 2d Sess. 24-25, reprinted in 1986 U.S. CODE CONG. & ADMIN. NEWS 6207, 6208-09; H.R. REP. NO. 188, 99th Cong., 1st Sess. 4, reprinted in 1985 U.S. CODE CONG. & ADMIN. NEWS 2746, 2749.

99. S. REP. NO. 403, 99th Cong., 2d Sess. 25, reprinted in 1986 U.S. CODE CONG. & ADMIN. NEWS 6207, 6209. The House and Senate approved the final version in December 1983 as H.R.J. Res. 187. The President signed it into domestic law on January 14, 1986. On May 28, 1986, the U.S. presented the Compact to the United Nations Trusteeship Council, which approved it the following day. By proclamation dated November 3, 1986, the President declared the Compact to be in effect. Pub. L. No. 99-239, 99 Stat. 1770 (1985), amended by Pub. L. No. 99-396, § 20(a), 100 Stat. 837, 844 (1986) and Pub. L. No. 99-638, Title I §§ 103, 104(c), 100 Stat. 3675, 3676 (1986).

100. Pub. L. No. 99-638, 100 Stat. 3672 (1986).

101. See *supra* note 56, *infra* notes 106-107 and sources cited.

Finally, United States citizenship or its essential benefits was bestowed upon the applicable residents of all of the islands.¹⁰²

The principal differences between the Covenant and the Compacts lie in the degree of foreign affairs power given to the United States and in the longevity of the agreements. Under the Covenant, the Northern Mariana Islands gave outright to the United States the right and authority to conduct its foreign affairs and entered into a permanent relationship with it.

The Compacts, by contrast, are limited in duration and reserve to the respective Micronesian entities the right to conduct foreign affairs in their own name. This right is however limited by the obligation to conform all affairs to international law and to consult with the United States on all foreign affairs matters.¹⁰³ Consequently, during the simultaneous lives of the agreements, the real difference lies in the degree of power the United States holds over foreign affairs.

To date, relations between the United States and some entities in the Pacific remain unresolved. The Federated States of Micronesia and the Marshall Islands¹⁰⁴ enjoy a reasonably stable relationship with the United States. As the next section discusses, however, the Palauan electorate has not approved its agreement with the United States. In addition, the United States has provoked disagreement with the Northern Marianas by asserting that the territorial clause can dictate the terms of that Covenant. Finally, Guam is renegotiating its relations

102. Although Northern Mariana residents are entitled to U.S. citizenship under several sets of circumstances (Covenant, *supra* note 82, at art. III), that status does not entitle them to participate in the federal electoral process. The Compacts create a similar effect in that the privileges of entry and immigration into the U.S. (FSM and Marshall Islands Compact, *supra* note 93, at art. IV, § 141; Palau Compact, *supra* note 94, at art. IV, § 141) and consular services abroad (FSM and Marshall Islands Compact, *supra* note 93, at art. II, § 126; Palau Compact, *supra* note 94, at art. IV, § 128) enjoyed by citizens are extended to Micronesian residents without permitting them a voice in the government. Certainly, some long-term benefits of citizenship not available under the Compacts may accrue to those under the Covenant, e.g., the right to vote after establishing residency in the U.S. These benefits are, however, collateral to the essentially similar political relationships created by the Covenant and the Compacts.

103. FSM and Marshall Islands Compact, *supra* note 93, at art. II, §§ 121, 123; Palau Compact, *supra* note 94, art. I, §§ 121, 123.

104. In recent years, residents of the Marshall Islands brought suit against the U.S. government, seeking compensation for damages caused as a result of U.S. use of the islands for nuclear testing, and the premature authorization by the U.S. for the return of the islanders to their native habitat. Suit was brought under the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2674, and under the Tucker Act, 28 U.S.C. §§ 1491(a)(1) in the U.S. Court of Claims. *Juda v. United States*, 6 Cl. Ct. 441 (1984), 13 Cl. Ct. 667 (1987); *Nirol v. United States*, 7 Cl. Ct. 45 (1985), 13 Cl. Ct. 691 (1987); *Peter v. United States*, 6 Cl. Ct. 768 (1984). Although the actions had been instituted prior to the effective day of the Compact in 1986, once the Compact went into effect the U.S. successfully moved to dismiss the actions as nonjusticiable political questions. The Compact purported to settle the plaintiffs' claims by a separate agreement of espousal between the governments. Plaintiffs appealed the lower court decision, but before it could be decided, the matter was settled by an act of federal legislation. Pub. L. No. 100-446 (Sept. 27, 1988).

with the United States in an effort to establish itself as a commonwealth.

III. CURRENT CONTROVERSIES IN THE PACIFIC

The future of most of the United States-affiliated Pacific island entities remains uncertain. Although each member of the Trust Territory of the Pacific Islands has negotiated an agreement with the United States to establish a de facto independent political relationship,¹⁰⁵ each must remain under the supervision of both the United States and the Security Council¹⁰⁶ until the Compact with Palau has been approved by that republic's voters.¹⁰⁷ While awaiting approval, the United States has also met with resistance to its interpretation of the Northern Marianas' Compact, throwing that entire document into question. Finally, the United States now faces an increasingly restive movement demanding self-government in Guam. As a result, a final resolution of the United States' relations with these Pacific territories is not in sight.

A. The Republic of Palau

Palauan voters have repeatedly failed to accord the Palau Compact popular approval, and thus to establish a permanent relationship with the United States. The focus of the controversy is the provision allowing the United States to transport nuclear or other hazardous material

105. See Morgan Guaranty Trust Co. v. Republic of Palau, 639 F. Supp. 706 (S.D.N.Y. 1986), which concluded, *inter alia*, that Palau's Compact established a de facto political relationship "merely" Palau forward to free association before the structure of the old Trusteeship is dismantled." *Id.* at 713. Because the other island group—the Northern Marianas, the Republic of the Marshall Islands, and the Federated States of Micronesia—have approved their agreements with the U.S., they, too, can be assumed to have established de facto political relations, even though the true as a whole has not been terminated.
106. On November 3, 1986, President Ronald Reagan issued a Presidential Proclamation terminating the Trusteeship for the Northern Marianas, the Marshall Islands and the Federated States of Micronesia, and the Republic of the Northern Marianas, the Federated States of Micronesia, and the Commonwealth of the Northern Mariana Islands, No. 5564, 3 C.F.R. 146 (1986). His proclamation activated article X, section 1002, of the Compact, which makes unreviewable the President's termination of the agreement. District of the Northern Marianas Islands, which refused to consider the issue. It opined, however, "that there may be merit to plaintiff's argument that unilateral termination is contrary to the Charter." *Shok v. U.S.*, No. 87-0015, *mem.*, at 12 (D. N. Mar. I, Jan. 25, 1988). Other sources support this well-established principle. See, e.g., U.N. Charter art. 83, para. 1; Morgan Guaranty Trust Co. v. Republic of Palau, 639 F. Supp. 706, 716 (S.D.N.Y. 1986); International Status of South-West Africa, I.C.J. Rep. 128 (1970); Armstrong & Hills, *supra* note 90, at 689, 690. The Palau Compact must survive a three-part approval process before taking effect: (1) The Palau people must approve the Compact "in accordance with its constitutional processes"; (2) the Palau government must approve the Compact in a referendum; and (3) the U.S. Government must approve the Compact "in accordance with its constitutional processes." Palau Compact, *supra* note 94, at tit. IV, art. I, § 411.

Palau has been the subject of controversy since the constitutional convention. The first draft, which required that treaties concerning nuclear and other hazardous materials receive 75% popular approval, was approved by 92% of the voters. The referendum, however, was effectively nullified by the Palau Legislature, which heeded U.S. demands that the section be removed and repealed by the Palau Convention's enabling legislation. A second draft of the constitution without the subject section was submitted to the voters in October 1979 and received only 31% approval. The first draft was then resubmitted and submitted to a third plebiscite in July 1980 and received 78% approval. It became law on January 1, 1981. Comment, *supra* note 4, at 339-41.
109. The faction in favor of passage of the Compact was for many years led by Leasuan Sa'ali, who was Chief Negotiator for Palau on political status talks with the U.S., Palauan Ambassador to the U.S., Senator, and, from October 1983 until August 1988, when he committed suicide, President of Palau. This faction has allegedly resorted to acts of violence and corruption in order to achieve approval of the Compact. Statement of U.S. Representative Ron de Lugo on H.R.J. Res. 597, The Palau Compact of Free Association Implementation Act, in the U.S. House of Representatives, at 15-18 (Oct. 6, 1988) [hereinafter de Lugo Statement] (copy on file with author).
110. On February 10, 1983, Palauans were asked to approve the Compact and the provisions identical to those approved in the Marshall Islands and the Federated States of Micronesia. Sixty-two percent approved of the Compact and only 33% approved of the separate section. A second plebiscite was held on September 4, 1984, on this version of the Compact and it achieved an overall 67% approval.
The Compact was then changed to omit the provision allowing the U.S. to store hazardous materials while still permitting the operation of nuclear-capable or -propelled craft within the jurisdiction without Palauan acknowledgment. This current version has been subjected to plebiscites on February 21, 1986, December 2, 1986, June 30, 1987, and August 21, 1987, with respective rates of approval of 72%, 66%, 68%, and 73%. S. Rep. No. 403, 99th Cong., 2d Sess., 29 HARY. INT'L J. 149 (1988); Comment, *supra* note 4, at 342-43.
111. Mimicking the prohibited language in the Palau Constitution, the U.S. agreed not to use, test, store, or dispose of nuclear weapons in Palau. S. Rep. No. 403, 99th Cong., 2d Sess., 25 HARY. INT'L J. 149 (1988); Comment, *supra* note 4, at 324.

eral or local.¹⁵⁰ Similarly, the se is to elevate the Covenant d, to the extent enumerated, e United States Constitution,

supporting self-government ed Nations Charter and the esolution ratifying the Cove- ns of the Trusteeship Agree- wed and accepted the Cove- s of self-government.

rthern Marianas' form of self- in that enjoyed by the states. n of any sort is evidence that grate the Northern Marianas ates to include the Northern our giving it congressional the fifth amendment of the however, because the federal o control internal matters in

government in the Northern en the United States and the cy cannot be reconciled with ion's territorial clause. The ical fact that the Northern rritory under the territorial o that clause would directly o effect self-government, in- ministering authority. Until

with the other in all cases. Although ss an issue and the court will construe es are in direct conflict and the last in 1962); *Whitney v. Robertson*, 124 U.S. power to enact such laws is authorized

e to "promote the development of the or independence as may be appropriate ed." Trusteeship Agreement, *supra* note

5 U.S. 621 (1969); *Baker v. Carr*, 369 U.S. 171 (1962); *Fundamental Rights*, 15 ARIZ. L. REV.

Marianas the right to self-government, re for the elected officials who have the 82, at art. I, § 103.

the courts or the United Nations authoritatively interpret the Cove- nant, however, the parties will continue to take divergent positions on the right of the United States to control internal affairs in the Northern Marianas.

C. Guam

In direct response to the self-determination promised to the other Micronesian entities, a commonwealth movement has gained momen- tum in Guam.¹⁵⁴ For more than ninety years, the United States has governed Guam under its plenary power. Although Guamanians have regularly demanded more sovereignty, they have gained little in the way of self-government or federal representation. Nevertheless, within the past twenty years they have observed the members of the Trust Territory in their negotiations with the United States and have wit- nessed the political gains promised them. With their eyes opened to these expanded options, Guamanians have in recent years made a concerted effort to achieve additional autonomy.

For more than fifty years, Guam was governed by the United States Department of the Navy, where President McKinley placed it by executive order two weeks after the treaty of peace with Spain was signed. Except during the period of Japanese occupation from Decem- ber 1941 to August 1944, Guam remained under Navy governorship without any congressional control. In 1949, after a dispute between the Navy governor and the Guam Legislature, President Truman appointed a civilian governor and transferred the administration from the Navy to the Department of the Interior, where it remains today. Finally in 1950, Congress organized the territory by enacting an Organic Act. Congress retains exclusive authority to amend the Act.¹⁵⁵

Guamanians have periodically demanded more autonomy from the United States, but have gained little. In 1901 a group of Guamanians petitioned the United States requesting the formation of a permanent civilian government. The petition was sent to the Senate with the naval governor's approval. Although a bill embracing the petitioners' request passed the Senate in 1903, the House blocked the action.¹⁵⁶ In 1925 and in 1933 Guamanians unsuccessfully petitioned Congress and the President, respectively, for United States citizenship.¹⁵⁷ In

154. Solomon, *supra* note 19, at 743.

155. *Id.* at 731-33, 737-38.

156. *Id.* at 723, 733-34 (citing Thompson, *Guam and Its People*, 8 *STUD. PACIFIC* 71 (1947)); *see also* A. LIEBOWITZ, *COLONIAL EMANCIPATION IN THE PACIFIC AND THE CARIBBEAN* 109 (1976).

157. In 1925 the Guam Congress asked 11 U.S. congressmen visiting Guam to consider a petition for citizenship. The congressmen took no action on it. In 1933 nearly 2000 Chamorro leaders petitioned President Roosevelt for citizenship. A citizenship bill was introduced in Congress in 1935 but was not voted out of committee. Solomon, *supra* note 19, at 735.

1931 the United States naval governor created the first elected Guam Congress, but two years later the electorate refused to fill twelve seats because the congress had only advisory power.¹⁵⁸ In 1937 the Guam Congress unanimously petitioned the United States Congress for citizenship, even though a similar bill had been defeated the previous year.¹⁵⁹

It would take nearly fifty years after annexation for Guam to receive its first autonomous powers. After the Second World War Guamanians again sought citizenship and a civilian government. The Navy governor, reserving emergency powers, granted them the right to enact local laws subject to his veto. The governor's veto could be overridden by the Guam Legislature, whose override could in turn be vetoed by the Secretary of the Navy.¹⁶⁰ The President of the United States retained final veto power.

Enactment of the Organic Act in 1950 conferred citizenship and provided a basic local government structure including an elected legislature to enact laws of "local application."¹⁶¹ Still, however, Guamanians did not have a right to vote or representation in the United States Congress.

Guam continued to press for political control. After being refused representation in Congress, the Guam Legislature created its own elective office in Washington, D.C., in 1964. Essentially an elected lobbyist, the representative had no powers or duties recognized by the United States. Later, in 1970, the Organic Act was amended to permit an elected governor and to remove the President's final veto. In 1972 the Act was amended to permit Guam to elect a nonvoting member of the House of Representatives.¹⁶² Guamanians demanded the right to draft their own constitution, which they were granted in 1976.¹⁶³ As a harbinger of the troubles Guamanians were to face in gaining sovereignty, the United States Supreme Court dissolved the Guam Supreme Court on the eve of the constitutional convention. The High

158. *Id.* at 734.
159. *Id.* at 735. The Department of the Navy had opposed the bill on the ground that Guamanians had "not reached the state of development commensurate with the personal independence, obligations, and responsibilities of U.S. citizenship." A. LEBOWITZ, *supra* note 156, at 111.
160. Solomon, *supra* note 19, at 737; *see also* J. COLTIER, *supra* note 3, at 149-52.
161. 48 U.S.C. § 1423a; 8 U.S.C. § 1407 (1986). The enactment of an organic act and the establishment of local government was seen by some at the time as a step toward "complete self-government." J. COLTIER, *supra* note 3, at 127.
162. 48 U.S.C. §§ 1711-1715 (1986).
163. In 1969 the first constitutional convention convened to draft a local constitution, which was submitted to the federal government. No action was taken on it. *See* Guam Draft Commissionwealth Act 9 (Proposed Draft Feb. 1988) (copy on file with author). The next approach was considerable debate, Guam received. Solomon, *supra* note 19, at 743-48.

Court declared that the Guam Supreme Court, which had been established by the Guam Legislature in 1976, lacked jurisdiction because the Organic Act which established the appellate system did not provide for a supreme court.¹⁶⁴ After considerable bipartisan compromise, a draft constitution was submitted to the electorate in 1979 but failed to attain the necessary approval.¹⁶⁵ The myriad theories propounded to explain the defeat at the time evidenced Guamanians' lack of a common goal for their future.¹⁶⁶

Less than two years after the defeat of the draft constitution, the Legislature established the Commission on Self-Determination for Guam to ascertain the type of political relationship the populace desired to have with the United States. After an education campaign, a plebiscite was held in which the voters were presented with the options of statehood, commonwealth status, incorporated territory, the status quo, free association, or independence. Statehood and commonwealth status were preferred, with the greatest support for the latter.¹⁶⁷

The commonwealth movement has been propelled primarily by the Chamorro population's desire for political recognition. Their complaints fall into four categories: (1) United States immigration policies that permit persons from Pacific Rim states—primarily, the Philippines—to enter the United States as Guam and become United States citizens, thereby increasing Guam's population and diluting the Chamorro strength; (2) loss of Chamorro economic control following the change from an agrarian subsistence economy to a monetary economy

164. *Guam v. Olsen*, 431 U.S. 193 (1977). The issue arose when Olsen appealed his criminal conviction from the Superior Court to the U.S. District Court. His appeal was dismissed on the ground that appellate jurisdiction had been transferred from the District Court to the Guam Supreme Court. The decision of the U.S. Court of Appeals for the Ninth Circuit, which the U.S. Supreme Court affirmed in a five-to-four decision, held that the Organic Act did not authorize the transfer of district court appellate jurisdiction over litigation that may present federal questions to a local court. Justice Marshall, in a dissenting opinion joined by Justices Stewart, Rehnquist, and Stevens, criticized the majority for destroying "a significant part of the system of self-government established by some 85,000 American citizens through their freely elected legislature." *Id.* at 205.

165. Solomon, *supra* note 19, at 802.
166. Some explained the defeat as a public outcry against a document which did not go far enough to elevate Guamanians' status. Others thought the constitution should be more pro-American. Still others were too confused to form any opinion. *Id.* at 802; *see also* Guam's Quest for Commonwealth Status: Implications for the U.S. Virgin Islands, Address by Franklin J. Arco Quitugua, speaker of the 19th Guam Legislature, at St. Croix, U.S. Virgin Islands (Dec. 9, 1988), at 7-8 [hereinafter Quitugua Address] (copy on file with author). The Commission on Self-Determination for Guam asserts that the constitution was not ratified "because of an emerging consensus that a local constitution should not be written until Guam's political relationship with the U.S. is first addressed and clarified." Guam Draft Commissionwealth Act, *supra* note 153, at 9-10.
167. Quitugua Address, *supra* note 166, at 8-9. Quitugua opined that statehood was rejected as unattractive, commonwealth status was selected because it "was a more pragmatic choice." *Id.* at 9; *see also* Guam Draft Commissionwealth Act, *supra* note 153, at 10.

in which Chamorros compete less effectively; (3) the retention by the United States of one-third of the surface area of the island for military purposes; and (4) a reemerging cultural awareness among younger Chamorros.¹⁶⁸

The Commission on Self-Determination prepared a Draft Commonwealth Act for submission to the United States Congress. The Act would give the United States sovereignty over Guam, and Guam the right of self-government; recognize the right of self-determination of the Chamorro people; and establish a republican form of government.¹⁶⁹ Since 1982 the Commission has been working with members of Congress to develop a proposal for self-government that would gain congressional approval.¹⁷⁰ The House Committee on Interior and Insular Affairs reviewed the final Draft Commonwealth Act and incorporated certain changes at members' requests. But the Commission placed great importance on the eventual transfer of political power to the Chamorro population and would not alter the provisions intended to lead to that result.¹⁷¹

In August 1987 the Draft Commonwealth Act was presented to the public in a plebiscite. With a 39% turn-out, voters approved by a margin ranging from 51% to 55% all the articles except those concerning Chamorro self-determination and Guam immigration controls. The Commission reworded the failed sections without changing their general purpose and submitted them in a second plebiscite the following November.¹⁷² This time, 54% of the electorate turned out and the Act passed; 55% approved the sections concerning Chamorro self-determination and 59% approved the portion concerning immigration controls.

The Commission presented the ratified Act to both the House and the Senate, which introduced bills in the spring of 1988 to make Guam a commonwealth of the United States.¹⁷³ The congressional

168. Quitugua Address, *supra* note 166, at 9-14.

169. The Draft Act was in many respects modelled after the Northern Marianas Covenant. The Commission on Self-Determination for Guam also acknowledged that the provision prohibiting the dumping or storage of chemical or nuclear waste was modelled after those in the Compact of the Federated States of Micronesia and the Marshall Islands. Guam Draft Commonwealth Act, *supra* note 163, at 33.

170. Quitugua Address, *supra* note 166, at 14-18.

171. *Id.* at 16-19.

172. Some observers believed that well-organized Filipino residents had voted as a block to defeat those sections that would have affected them most directly. In response to this perceived Filipino power block, the article pertaining to Chamorro self-determination was drafted, albeit inartfully, to provide "legally admitted aliens permanently residing in Guam" the protection of "the rights and privileges under the first sentence of the Fourteenth Amendment of the U.S. Constitution." The privileges and immunities clause of the fourteenth amendment is actually located in the second sentence. U.S. CONST. amend. XIV, § 2.

173. Guam has attempted to avoid the problems that Puerto Rico encountered with the U.S. in the interpretation of its commonwealth agreement, when Puerto Ricans were forced to renegotiate for the autonomy that some believed the U.S. had already ceded to them.

session expired, however, before any action was taken. The Act was reintroduced as H.R. 98, a gesture symbolic of the 1898 Treaty of Paris that annexed Guam to the United States. As of the date of publication, it is still awaiting action.

The Commission's drive for passage of the Act has been forceful and calculated to succeed, taking a grassroots approach designed to please Guam's possessor.¹⁷⁴ The group approached both political parties in the 1988 United States national elections in order to request inclusion of the commonwealth question in their platforms. The Democrats, although declining to include a specific reference to Guam, did express a generalized desire for self-determination in all territories. The Republicans specifically endorsed commonwealth status for Guam in the platform.

After the Republican victory, Manuel Lujan, who was very active in the commonwealth movement, was appointed Secretary of the Interior. In that capacity he met with Guam representatives and issued a report to Congress on the Act.¹⁷⁵ In the report the administration supported the creation of a commonwealth under United States sovereignty and the reservation of certain privileges for the Chamorros, but could not support a separate Chamorro vote or the requirement that Guam consent before federal law would apply there.¹⁷⁶

CONCLUSION

Since the Second World War, the United States has negotiated or has been in the process of negotiating new relations with the peoples of its Pacific island territories. In so doing, it is bound by the United Nations Charter to take account of the political aspirations of the islands' peoples: those in the United Nations Trust Territory of the Pacific Islands, which joined the "American family" through the treaty-making powers and the necessary and proper clause of the United

174. Quitugua Address, *supra* note 166, at 23-26.

175. FEDERAL INTERAGENCY TASK FORCE REPORT TO CONGRESS ON COMMONWEALTH STATUS FOR GUAM (Aug. 1, 1989) (copy on file with author).

176. If the U.S. fails to negotiate a commonwealth relationship with Guam, it may find itself facing demands either for full incorporation into the Union, or for a status less dependent upon the U.S. See Quitugua Address, *supra* note 166, at 26. Guam has adequate grounds for making such demands. As discussed at text accompanying notes 16-18, *supra*, the U.S. Constitution intended territorial status to be transitional, not perpetual.

Guam could also opt to involve the United Nations as an arbitrator. By acceding to the United Nations Charter, the U.S. has obligated itself to develop self-government in its territories: its achievement of this goal is subject to the supervision of the international community. U.N. CHARTER, arts. 73, 74. Until recently, Guamanians were reluctant to jeopardize their discussions with the U.S. by involving the United Nations in this process. In 1989, however, they notified the Oversight Committee on Non-Self-Governing Territories of their efforts to negotiate with the U.S. for self-government. If the two parties cannot reach agreement, Guam may request the active involvement of the international community.

States Constitution; and those in traditional territories such as Guam, which were assimilated via the territorial clause.

Although the United States has adequately discharged its obligations to the portions of the Trust Territory of the Pacific Islands comprising the Federated States of Micronesia and the Republic of the Marshall Islands, it continues to reject the particular aspirations of Palau and the Northern Marianas. Although the people of Palau have refused in repeated plebiscites to accede to certain United States military demands, the United States will not accept their position and has withheld finalizing an agreement with the island.

Meanwhile, the United States is attempting to reinterpret its signed Covenant with the Northern Marianas, arguing that the Commonwealth, which as a United Nations Trust Territory does not constitute a possession of the United States, is nevertheless subservient to the United States Congress under the territorial clause. The potential implications of this radical reinterpretation of the United States' responsibilities as an administering authority are twofold. The United States may be making the claim that it never actually ceded sovereignty in the territory to the United Nations at the end of World War II. Alternatively, while recognizing its cession of sovereignty, the United States may nevertheless be taking the position that the islanders somehow renounced the sovereignty over internal affairs granted them by the United Nations in the process of concluding their commonwealth agreement with the United States. Such an interpretation would run directly counter to the precept that that sovereignty is irrevocable under the United Nations Charter. The implications of either interpretation could profoundly destabilize other trust territory-administering authority relationships.

Although the United States has been an active presence in the Trust Territory of the Pacific Islands for the past two generations, it has no enduring rights in the region. Its efforts to dominate the island groups may lead them to adopt a more confrontational stance as their economic dependence on the United States decreases. In order to avoid such an outcome, the United States should respond to the consistent demands of each group's cohesive leadership in accordance with its responsibilities under the United Nations Charter.

The position with respect to Guam is somewhat different, as the United Nations' oversight power there is more attenuated. Guam, which has been held as the spoils of war for nearly 100 years, is embroiled today in a struggle for greater autonomy. But commonwealth status, the choice its leaders seem most enamored of at the moment, would offer the island the fewest guarantees of true autonomy, given that it would arguably remain, like Puerto Rico, under

the plenary authority of Congress. These plenary powers were originally conceived of as a transitional phase to the granting of the full panoply of rights and privileges associated with statehood. Guam would do better by its citizens to seek either the full complement of constitutional guarantees associated with statehood, or full independence.

Questions concerning Closures and Realignment in Guam

MSC Ships/HC-5

(For the Navy): We understand that the senior leadership in the Navy has had discussions with Governor Gutierrez and Congressman Underwood from Guam concerning the MSC ships and their helicopter squadron, HC-5. We also heard that you and the delegation from Guam are in essential agreement as to a change in the recommendation that will be a win-win position for both parties. It appears to us that the decision to locate the MSC ships and HC-5 at a particular location is not a decision that depends on whether a particular base is closed or not, and neither unit has more than 300 civilian personnel.

Consequently, would it be acceptable to you if the Commission made no decision as to the final location of the MSC ships and HC-5 and recommended that any such decision be made by the Navy at some time in the future when the leadership of the Navy found it necessary?

The Addition of GLUP-94 Lands to the Base Closure Recommendations

(For the Navy): We are interested in helping ease the process of transferring excess Federal land in Guam to the Government of Guam.

We understand that there are some 4,000 acres of Navy land included in a report known as GLUP-94 that the Navy has declared to be excess to their needs. Also, we understand that there is no disagreement within the Navy as to the recommendations of this report.

Would the Navy have any objection if this Commission included in its report recommendations to transfer those Navy lands in the GLUP-94 report to the Government of Guam under the procedures of the Base Closure Act?

Public Works Center

(For the Navy): As you are aware, this Commission added the Public Works Center in Guam to its list of facilities for consideration with a recommendation to look at turning the PWC into a PWD, or to turn it from a "Center" into a "Department."

Can I assume that you still stand by your earlier recommendation to leave the Public Works Center as it is?

Questions concerning Closures and Realignments in Guam

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Can I assume that you still stand by your earlier recommendation to leave the Public Works Center as it is?

Base Closures & Realignment in Guam

June 12, 1995

1. **The Navy's principal base closure and realignment recommendations** are:
 - **Close the SRF.**
 - **Disestablish the FISC.**
 - **Realign the Naval Activities.**
 - Those activities will be converted into private sector facilities by GovGuam.
 - All facilities, land, piers, and buildings in the closed SRF, disestablished FISC and realigned Naval Activities to be conveyed "through long-term leases, outright transfers, or any other mutually agreeable arrangement ... so as to stimulate local economic growth.... (R. Pirie, 1995)"

2. **Do not, however, decide now on the final location for the MSC ships & HC-5.**
 - **Allow the Navy, with real operational input, to decide later where to put the MSC ships and the helos (HC-5).**
 - **Do not tie the hands of the Fleet Commanders.**
 - It is consistent with the operational needs of the Navy.
 - It strengthens the strategic uses of Guam.

3. **Direct DOD to delay closure & realignment initiation until the end of the mandatory two-year period.**
 - Allows for Guam and the Navy to better plan and coordinate base reuse.
 - Allows Guam time to develop private sector business for Economic Revitalization.
 - Guam needs the time to develop private offsets to the largest DOD reduction on 1995 List.

4. **Add to the list for closure those facilities the Navy/DOD/USAF plans to transfer under the Guam Land Use Plan (GLUP) of 1994.**
 - 4,000 acres of excess Navy property
 - Piti Power Plant (with modernized power generators)

5. **Add the Officer Housing at the former Naval Air Station.**
 - It is now redundant to the Navy's needs with the current closures.
 - It is the prime developable commercial parcel at the international airport.

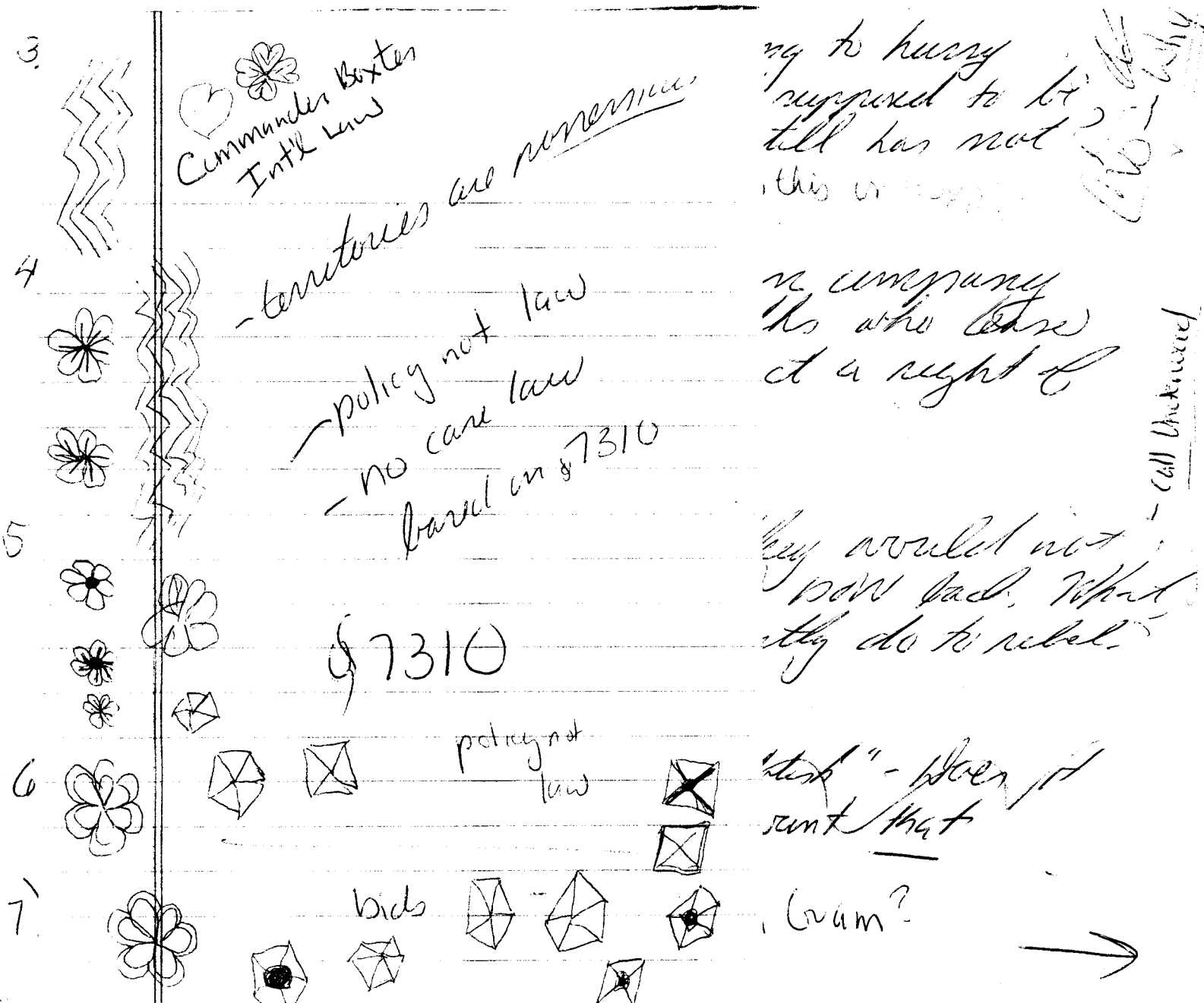
6. **Allow the PWC to remain a "Center" and not become a "Department."**
 - PWC serves more than one "master:" the Navy, the Air Force & the USCG
 - PWC serves more than one "master" within the Navy
 - Naval Activities
 - The Communications Command
 - The Construction Battalion
 - The Fuel Farm

7. **Provide "Findings" in the BRAC Report that give guidance to DOD to help address long-term problems in Guam; e.g.,**
 - combining the two separate water utility systems.
 - returning additional excess military lands.
 - consolidating the two separate magazines.

QUESTIONS FROM GUAM

→) Get interpretation from Title 10 re: Guam considered "possession" or like foreign shipping and our ships can do no more than repairs
 (likely) (maybe small anchors?)

2) What is effect of Payne Amendment on Guam's ability to take land if "direct" + not "disestablished"



1) Title 10 § 7309

↳ Get directive

Madelyn — called Winn
— called SASC

2) First excess to DOD + Get govt

3) 7

4) Leave goes to community
Community able to

must be
FMV

if never a transfer, then DOD
can leave under DRBCRC or Title 10
↳ under BRAC → no # of years
— Title 10 = 5yr limit unless get
exception

— no limits on who leaves

Q: You leave to Guam, Guam leave to
Japan

↳ procurement laws

- very difficult to k w/ foreign entities
esp w/ classified

↳ goes around to foreign shipping and

all this → ^{net} GLCIS

Output

SECNAV SWAGI ADV STAFF (INT'L LAW SECTION)
LCDR PETE PADOZZO
697-9161
(IS WORKING ISSUE)

DAVE GAIL 604-0212 HD COUNSEL ASIA
PASSED IT TO
↓

BILL MULZAHN
NAVSEA COUNSEL
602-1776 x101 (MSK)

MEMORANDUM

DATE: May 8, 1995

TO: Commissioner Cornella &
Counselor King

FROM: Wayne

RE: Guam Briefing at DoI

CC: David Lyles &
Madelyn Creedon

Commissioner Cornella/Liz

You're all set for the Guam pow-wow at Interior this Thursday, 11 MAY, at 10:00am. Briefing will be in the main DoI building, room 4312. Interior high rollers attending are:

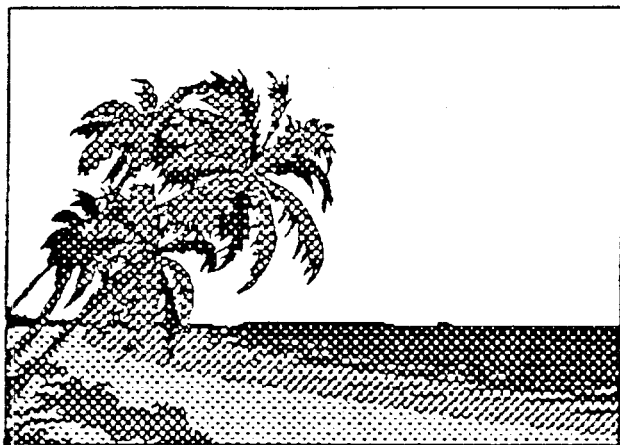
Al Stayman	Acting ASI for Policy
Danny Aranzi	Deputy ASI for Policy
Mark Langerman	Chief of Staff (also a former Navy guy once stationed on Guam)
Frank Quimby	Territorial and International Affairs (my State contact tells me Frank is THE expert on Guam stuff)

Frank Quimby is brokering this thing from the DoI perspective. He's been very forthcoming on accommodating us. My take is you'll get what you need. Recommend you talk via telephone with the State guy after this meeting to see if he can help--if so, we can set up a brief from State.

Plz don't hesitate to give me a shout if I can do anything else.

Wayne

OTIA FAX



**Territorial and International
Affairs**
U.S. Department of the Interior
1849 C St. N.W.
Washington, DC 20240

Phone: (202) 208-4822

Fax : (202) 208-3390

Number of pages (including cover sheet): Cover + 12

Message sent to fax Number: _____

To: Wayne Purser

Agency: _____

Telephone number: _____

Message from: Frank Quinby

Telephone number: _____

COMMENTS:

GUAM

General

Guam is the largest and southernmost island in the Mariana Archipelago. It is located 3,700 miles west-southwest of Honolulu; 1,500 miles east of Manila; and 1,500 miles south-southeast of Tokyo. The population is 133,000. A person born in Guam is a U.S. citizen.

History

In 1521, Ferdinand Magellan reached the southernmost Mariana Islands during his circumnavigation of the globe. General Miguel Legaspi claimed Guam and other Mariana Islands for Spain in 1565. Spanish colonization commenced in 1668. The Chamorro population then was estimated at 50,000 throughout the Mariana Archipelago. However, introduced diseases and the Spanish-Chamorro wars decimated the Chamorro race, reducing the number of inhabitants to fewer than 2,000 by 1700. Guam served as a way station for the Acapulco-to-Manila galleon trade from 1668 to 1815. The Spanish regime ended in 1898 when American forces took Guam during the Spanish-American War. Spain later sold the rest of its Micronesian islands, including the Marianas, Carolines, Palau, and Marshalls, to Germany.

From 1899 to 1941, Guam was under U.S. Naval Administration. At the outbreak of World War II, the Japanese seized Guam and occupied the island for two and a half years. American forces recaptured Guam in July 1944, and the U.S. Naval Administration resumed responsibility when peace returned. In 1950, the U.S. Government enacted the Guam Organic Act, conferring U.S. citizenship on the people of Guam and establishing local self-government. Under the Organic Act of 1950, the Secretary of the Interior assumed administrative responsibility for Guam, formerly vested in the Secretary of the Navy.

Political Status

Currently, Guam is an unincorporated, organized territory of the United States. It is "unincorporated" because not all provisions of the U.S. Constitution apply to the territory. Guam is an "organized" territory because the Organic Act of 1950 organized the government much as a constitution would.

The Guam Organic Act currently provides a republican form of government with locally-elected executive and legislative branches and an appointed judicial branch. Guam also has an elected representative to Congress -- a Delegate in the House of Representatives.

Seeking to improve its current political status, the Guam Commission on Self Determination has drafted a proposed Guam Commonwealth Act, which was approved in two 1987 plebiscites. In February 1988, the document was submitted to the Congress for its consideration and was introduced in four consecutive Congresses--the 100th through the 104th.

Government

Guam's governmental structure is very much like a state government with a governor, legislature, and local judiciary. The executive branch is comprised of a popularly elected governor and lieutenant governor each serving a four-year term. The current Governor is the Honorable Carl T. C. Gutierrez.

The judicial system includes a territorial court and a U.S. District Court. The U.S. District Court handles U.S. constitutional questions and other Federal cases. Appeals are channeled through the Ninth Circuit Court of Appeals in San Francisco and from there to the U.S. Supreme Court. The legislative branch is a 21-member unicameral legislature whose members, called Senators, are elected every two years.

The Member of Congress from Guam (currently the Honorable Robert A. Underwood) possesses the same powers and privileges as Representatives from the several States, with the exception of voting on the House floor.

Economy

Guam's economy is based principally on tourism and federal expenditures (mostly military). Guam's annual operating budget for Fiscal Year 1992 was \$630.6 million, of which \$493 million came from local revenues, \$73 million from federal program grants, and \$64.6 million from OTIA (which included \$62.5 million in tax cover-overs).

Current Issues

Commonwealth Status: HR 1056, the Guam Commonwealth Bill, is under discussion in the Administration which may submit recommendations on the measure to the Congress. Discussions on alternative approaches and language for the bill have been conducted since 1988, and the Secretary is currently seeking a replacement for Michael Heyman as the Administration's Special Representative on Guam commonwealth.

Compact Impact Reimbursement: The Government of Guam seeks greater financial reimbursement from the U.S. Government for costs incurred as a result of increased migration to Guam from the freely associated states under the terms of the compacts. The President's Fiscal Year 1996 budget proposes \$4.6 million for compact impact.

Excess Federal Land: The Government of Guam seeks transfer of additional excess Federal land and property to assist the island's economic development. A bill to transfer about 5,000 acres is expected to be introduced in the 104th Congress. The 103rd Congress enacted legislation which transferred about 3,200 acres of excess Defense property. The Government of Guam opposes efforts by Fish and Wildlife Service to establish wildlife refuges on Guam, in connection with the turnover of excess Federal lands, arguing the properties should not be encumbered with these Federal restrictions, but instead transferred to the local government for economic development.

Chapter 4

GUAM

4.1 GUAM

Guam is a United States territory with a locally-elected government. The people of Guam elect a Governor, who serves a four-year term, 21 senators who serve two-year terms in a unicameral legislature, and a Delegate to Congress, who also serves a two-year term. The people of Guam became U.S. citizens in 1950 when the Congress enacted the Guam Organic Act, which established institutions of local government and made Guam an organized territory. Guam is an unincorporated territory because not all provisions of the Constitution apply to the island.

The local judicial system is made up of a Superior Court and a Supreme Court led by judges appointed by the Governor. Local judges are subject to confirmation by the voters every six years. A U.S. District Court for Guam is headed by a District Court Judge appointed by the President.

Guam consists of a single island of approximately 212 square miles. It is located 3,700 miles west-southwest of Honolulu. The population of Guam in 1993 was estimated at about 142,000.

4.2 Political Status Developments and Federal Relations

In November, 1993, in response to a request from the Guam Commission on Self-Determination, Secretary of the Interior Bruce Babbitt, with the concurrence of President Clinton, appointed J. Michael Heyman as the Administration's Special Representative for Guam Commonwealth issues. The announcement followed an Administration review of Guam's Draft Commonwealth Bill and previous federal task force reports on the measure. Mr. Heyman, a professor of law and former chancellor of the University of California at Berkeley, is Counselor to the Secretary. Mr. Heyman commenced discussions with Guam Governor Joseph F. Ada and other Guam representatives in December, 1993. Mr. Heyman's goal is to make recommendations on Guam's commonwealth proposal to the White House. The Administration's comments and recommendations on the bill will then be sent to the Congress.

Two previous U.S. administrations submitted reports to Congress on Guam's draft Commonwealth Bill. The reports generally supported a commonwealth status and greater self-government for Guam, but expressed concerns and reservations with provisions which those Administrations held were incompatible with

commonwealth status under U.S. sovereignty. Guam leaders strenuously objected to both reports, asserting that federal officials failed to understand, appreciate, or fairly consider Guam's status proposal and that the final report had reneged on earlier agreements. The Commonwealth Bill was drawn up by the Commission and adopted by Guam voters in 1987 referendum. Earlier referendums had selected U.S. commonwealth status, statehood and independence, as the preferred option.

Other significant issues in federal relations with Guam in 1993 and early 1994 concerned the transfer of excess federal land to the local government, the proposed use of federal and Guam land for environmental preservation, and the future use and disposition of U.S. military bases on the island.

Handwritten notes:
 9/16/94
 11/11/94

An amended version of the Guam Excess Lands Bill, H.R. 21, revised to address Administration and Congressional concerns, passed the House by unanimous consent in January, 1994. On March 4, 1994, the Senate Energy and Natural Resources Committee adopted the measure by a favorable vote and sent the measure to the Senate Floor. The bill had been introduced in March, 1991, by Guam Delegate Robert Underwood. The legislation would transfer 3,200 acres of land previously declared excess by the Department of Defense to the Government of Guam.

On January 18 and 19, 1994, federal and Guam leaders met once in the first of three meetings of a Land Conference proposed by Delegate Underwood. The Conference is a forum to develop resolutions to several interrelated federal land issues on Guam. The conference heard former owners of land now held by the Government express frustration and anger at federal land policies and processes. Also discussed were the closing of Naval Air Station, a proposed National Wildlife Refuge, and an on-going assessment by the Department of Defense (DOD) of future land needs in Guam.

At the conference, Governor Ada requested that the U.S. declare excess and transfer cost-free to the Government of Guam an additional 27,000 acres of DOD land. DOD currently holds 45,000 acres on the island. Mr. Stanley Roth, DOD Deputy Assistant Secretary for East Asia and the Pacific, informed Guam leaders that DOD's 1994 Guam Land Use Plan (GLUP'94) was continuing and that the DOD planned to release a preliminary estimate within a few months.

On April 4, DOD representatives informed Guam leaders that the GLUP'94 survey had a preliminary estimate of 8,100 acres of excess lands that could be transferred to the Government of Guam. That total included about 2,000 acres now occupied by the Naval Air Station/Agana (NAS). That base had been slated for closure by a Defense Realignment and Base Closure Commission recommendation in September, 1993. NAS aviation missions

being transferred to Guam's Andersen Air Force Base or other DOD bases on the U.S. west coast. Some are being disbanded. The NAS facility is scheduled to be transferred to Guam by mid-1995.

The Government of Guam and the U.S. Fish and Wildlife Service (FWS) continued discussions in the first quarter of 1994 aimed at establishing a National Wildlife Refuge on Guam. The refuge is the result of several years of effort by the DOI to address concerns of Guam leaders and Guam and national environmental groups for preservation of several endangered bird species on the island. However, Delegate Underwood, Governor Ada, and landowners with property in or near the proposed refuge have expressed opposition to the proposal. Of particular concern is the transfer of a 370-acre former Naval Facility property - Ritidian Point - from DOD to the FWS for use as a keystone of the refuge. FWS and Guam leaders were working to find a mutually satisfactory solution to the problem by evaluating a proposal to transfer title to the property to the Guam Government if the land is used for the proposed refuge.

4.3 Current Economic Conditions

Guam's economic growth, which has been driven primarily by Japanese tourism and U.S. defense spending, slowed in 1993 because of world recession and natural disasters. In particular, the Japanese recession, an August, 1992 typhoon, and an August 8, 1993 earthquake depressed tourism, while continued U.S. defense cutbacks lowered overall defense spending on the island.

Visitor arrivals were down 11 percent in calendar 1993 from the previous year, 876,742 to 784,018. Japanese visitors were down 19 percent from 1992, but that decline was partly offset by significant increases in arrivals from Taiwan (up 89 percent to 23,562) and the Republic of Korea (up 75 percent to 68,602). These increases resulted from the establishment of direct air service between Guam and Taiwan/South Korea, tourism promotion in those markets by the Guam Visitors Bureau, and the inclusion of South Korea and Taiwan in the Guam Visa Waiver Program.

Moreover, tourism figures for the last quarter of 1993 showed an upturn in visitor arrivals and brisker than expected tourism business in the first quarter of 1994, including a record 109,187 tourists in February, led Guam business leaders to believe a recovery in that sector had begun.

Guam's economy had been growing at double digit rates throughout the late 1980s and early 1990s. During that period, Guam generated new highs in employment, per capita income, bank loans, and in the value of building permits. The Guam government reported FY93 local revenues totalled about \$561.5 million, up from FY92's \$555.5 million. (FY91, \$525 million and FY90, \$450

million). The FY93 total represented more than a doubling of locally generated revenues since 1987. Guam's gross business receipts reached \$4.5 billion in 1991 and 1992.

Guam is a remarkably changed place since the mid-1980's. The economy was formerly dominated by the government sector. The driving forces behind Guam's new growth are outside investment, primarily from Japan, and its continuing popularity as a tourist destination. Japanese real estate development in Guam peaked in 1990, when Japan invested \$1.1 billion. That figure placed Guam behind only Hawaii, California and New York in Japanese investment in the United States. By 1991, Japanese investment in Guam had declined 45% to approximately \$600 million, and as a result of further declines in the Japanese economy, Japanese investment in Guam continued to slow in 1992 and the first half of 1993.

Private sector analysts see a strong likelihood of continued growth in Guam despite the recent dip in Japanese investment. After the brief and shallow decline of 1992/1993, tourism should continue to flourish for the remainder of the 1990s. Tourism is likely to remain strong due to Japan's proximity to Guam and the rapid growth of other Asian tourist markets.

Guam's economic expansion has also raised local investment capacity to record highs. Guam's newly increased ability to generate capital from local sources will be important in sustaining the island's growth. Bank deposits on Guam have grown 78 percent since 1987, and 15 percent between 1990 and 1992. (1987: \$831.8 M; 1990: \$1276.7 M; 1991: \$1483.1 M; 1992: \$1382.5 M.) Bank loans have increased more dramatically, more than tripling since 1987. Bank loans in 1992 stood at \$2,142.5 M and a preliminary estimate for 1993 placed the total at \$1,956.3.

The most remarkable aspect of Guam's economic performance has been the creation of jobs. The number of private sector jobs in Guam increased nearly 62 percent between 1987 and 1991, from 24,000 to 43,077. As measured through household surveys, total employment in calendar 1993 stood at 68,200.

Since the mid-1980s, job creation has outpaced growth in the work force. A beneficial result of this is low unemployment, but it is apparent that much of the growth in employment is the result of multiple job holdings. Guam has become dependent upon an immigration of labor from Pacific Rim countries through the H-2 program and from Micronesians immigrating under the provisions of the Compact of Free Association allowing unrestricted entry into the U.S. These additions to the labor force from outside Guam are essential to economic growth but have increased demands for local government services as the laborers adjust to Guam's cultural and social modes.

Tourism remains the driving force of Guam's economy. In FY92 the hotel occupancy tax generated \$18.2 million, a 200% increase compared to \$5.7 million in 1987. The 1993 figure dipped to \$14.6 million. Nearly 85 percent of Guam's tourists are from Japan, although interest by visitors from Taiwan, Korea, Hong Kong, and other Pacific areas is increasing. The number of hotel rooms on Guam increased from 3,864 to 6,218 from 1987 to 1992. Available rooms dropped to 4,927 in August, 1993 as a result of the August 8 earthquake. Most of the 1,524 lost rooms should be regained through the reopening of several damaged hotels and the completion of other hotel construction in 1994. The only impediments to growth in Guam's tourism sector are the impact of economic recession upon the Japanese market and the difficulties of acquiring and training sufficient employees to meet international resort standards.

The government sector, including federal spending, remains a major economic force on Guam. The Government of Guam estimates that total federal expenditures in FY91 reached \$715 million, inclusive of military expenditures, federal grants, and payments to individuals, etc. Federal grants and assistance to the local government totalled about \$75 million in FY92 and about \$79 million in FY91. The Government of Guam reported its FY92 combined fund expenditures at \$537 million, up slightly from 1991's \$527 million. The projected total for FY93 also is \$537 million. The Government of Guam's employment totaled 12,708 persons in 1992, or 18 percent of Guam's total employment. The government's preliminary estimate for 1993 placed that total at 13,940. Federal employment on the island stood at 7,680 in 1993, for a combined 1993 total - local and federal government - of 21,620 or about a third of the jobs on island.

The residents of Guam have seen many improvements in the island's standard of living over the last several years. Guam's economic success, however, has its less beneficial aspects. During the boom years, inflation on Guam had been higher than in the U.S. Mainland, and rents and land prices are much higher than in most mainland communities. Inflation was 14 percent in 1991, but moderated to about 7 percent in 1992 and by 1993 was down to about 2 percent.

4.4 Government Administration

The Government of Guam is able to hire and maintain a qualified professional work force throughout the levels of its government. Its ability to deliver services continues to improve. It maintains adequate systems of tax and revenue collections, although some Federal agencies believe its rate structures and enforcement capabilities could be significantly increased. Its political processes, while accommodating local conditions and traditions, do not appear to differ substantially from those of

other similarly sized U.S. communities.

An issue that remains to be addressed by the Government of Guam is the development of a local government audit capability. The government has not yet established an office of an independent auditor. In addition, the Government has not developed a sufficient capability to fully implement the requirements of the Single Audit Act. Audit coverage in Guam is limited to the audits by the Department of the Interior's Inspector General and coverage by contracted private CPA firms. The Government often does not respond in a timely manner to the findings and recommendations of either.

4.5 Infrastructure

Earthquake Damage

As a result of the August 8, 1993 earthquake, public buildings, roads, bridges, and utilities suffered about \$40 million in damage. Most of the cost to repair the damage or replace the facilities was covered by private insurance or federal emergency assistance. A Presidential disaster declaration was not needed and, therefore, was not requested by the Governor.

Public roads and bridges received about \$14 million in damage. Those costs were covered by U.S. Department of Transportation Emergency Recovery Funds. Public utilities, the hospital, and airport received about \$14 million in damage which was covered by private insurance. Government office buildings received about \$1.8 million in damage. Of the 36 public school facilities, 23 received slight damage and were repaired at a cost of \$426,000.

Commercial buildings received about \$113 million in damage while private residences sustained an estimated \$4 million in damages.

Water System

Approximately 74 percent of the water produced on Guam is provided by the Public Utility Agency of Guam (PUAG). The remainder is produced by the Air Force and Navy installations on Guam. The Guam government's water sources are groundwater and surface water (Ugum River). The Navy water source is a surface reservoir (Fena Lake) in the southern part of the island.

The PUAG water originates primarily in an aquifer known as the northern lens, which is tapped by 94 active wells. According to the PUAG Well Monitoring Report, about 26 million gallons per day (MGD) are currently pumped from the northern lens. The \$12 million Ugum River project at the southern end of the island, completed a few years ago, added an additional 1 to 2 MGD of potable water to Guam's daily supply.

Since 1990 over 300 water leaks on the distribution system have been identified and repaired. The program has saved an estimated 6 million gallons per day. Despite the success, the Water Facilities Master Plan indicates that 30 to 40 percent of daily water production is unaccounted for. Leakage and un-metered use account for much of the total loss.

The Government of Guam has completed or initiated \$91 million in new water projects to bring adequate water supplies to the island.

As a result of the August 8 earthquake, the Governor ordered a \$10 million emergency program to install generators at approximately 146 facilities, which water wells, water booster pumps, sewage pump stations, and wastewater treatment plants. This work is currently proceeding under private contract, but it is being administered by the Guam Power Authority (GPA) since GPA will maintain the facilities after completion of the installations. In the aftermath of the earthquake, major water leaks were repaired immediately and a follow-up contract for a leak detection program for the entire water system is approximately 25 percent complete. The leak detection program is being paid for by funds appropriated by the Guam Legislature.

A Geographical Information System (GIS), the cost for which OTIA is sharing under the Operations and Maintenance Improvement Program, is currently underway for both GPA and the PUAG. As-built drawings and plans for existing utility facilities are being digitized for input into the GIS by both agencies, as well as the Department of Public Works, the Guam Telephone Authority, and others. When completed, the GIS will provide computerized base maps of the island infrastructure which will be an invaluable tool for the Government of Guam in managing growth so that the impacts of development on infrastructure and annual recurring maintenance and repairs costs can be properly planned, budgeted, and executed.

The OMIP Team continues to recommend the formation of an independent Guam Water and Sewer Authority, to incorporate the functions of the PUAG and place the operation and maintenance of Guam water and sewer activities on a more business-like basis. Under this concept, the PUAG would be strengthened by becoming an independent authority with a Board of Directors setting policy for the utilities and appointing a General Manager to operate and administer the water and sewer systems. The Board of Directors would have the authority to set rates, establish its own personnel rules, financial systems, and purchasing procedures.

Sewer System

Improvements have been made in the operation of the wastewater utility during the past year. The North District (ND) and the

Agana sewage treatment plants (STP) are about to be released from Administrative Orders issued by the U.S. EPA for not complying with NPDES discharge standards. The transfer of Tumon Bay sewage to the ND plant and the completion of the ND STP rehabilitation have facilitated this change. PUAG has also reached agreement with the U.S. Navy in regard to the relocation of the Agat STP and the joint outfall has been designed and will be put out for bid in the near future. The plant will provide 20 MGD of secondary treatment capacity. The new Agat STP will phase out the Agat STP and the Port treatment facility will be phased out and the effluent pumped to the Agana STP.

The Umatac/Merizo treatment facility which involves land disposal continues under an Administrative Order due to runoff entering the adjacent stream. An inflow/infiltration rehabilitation contract is out for bid which should help mitigate this problem. The Inarajan STP on the southeast side of the island was damaged by last year's typhoons and it is currently in the process of rehabilitation.

Guam has initiated over \$39 million in wastewater projects using local and U.S. EPA funding sources.

Solid Waste Disposal

A number of positive developments have occurred during the past year with regard to solid waste management. Key to these changes is the presence of a manager in charge of solid waste operations. The existing solid waste landfill at Ordot is now being operated more professionally. Waste is covered on a daily basis, the fill has been terraced, the waste stream is now being segregated to remove vehicle tires, scrap metal, aluminum cans, and cardboard. A contractor has also been hired to operate a tire-shredding facility at the landfill, and new legislation requires all cardboard to be bailed prior to delivery to the site. Waste-stream analyses conducted for the Guam government are being used as a guide to reduce waste volume. The Government of Guam has previously received U.S. EPA approval to use a site at Malojloj for the disposal of construction debris and yard waste. The items were banned from disposal at the Ordot landfill and Dededo transfer station in February, 1993.

However, the Ordot site remains under an Administrative Order by the U.S. EPA. Guam has submitted to the EPA a feasibility study of four alternative schemes for interim expansion of the Ordot landfill. Although federal funding totalling \$2.7 million was provided in FY88 and FY89 to expand the Ordot landfill, to date, Guam has been unable to meet the Congressional mandate conditioning use of the funds upon the enactment of user fees.

In addition, a baseline study for a new site near Apra has also been submitted to the EPA. This new site is on land owned by the

Guam government and a new landfill at that location is expected to be privately operated. The establishment of a new site remains of primary importance because of the depleted capacity at the Ordot landfill site, the remaining useful life of which, without expansion, is now estimated to be approximately one year.

Power Generation and Distribution

The Guam Power Authority (GPA), an autonomous agency of the Government of Guam, has the responsibility to provide electricity throughout the island. Total power consumption in 1991 was 862.4 million kilowatt hours (KWH). The average KWH per customer increased from 11,127 in 1990 to 12,064 in 1991, an increase of 8 percent. Average annual residential power cost per customer in 1991 was \$1070.40.

The tremendous pace of development on Guam has put a strain on existing power facilities. The island suffered serious inconveniences because of brownouts and load shifting over the past two years. GPA has listed power generating increases of 178 megawatts to be put on line by the end of the decade. Included in the roster is a 23 MW unit recently installed, and a 16 MW unit to be installed by the Navy. GPA installed two 23 MW units in 1993, and plans to install a 23 MW unit in 1994, and additional 35 MW slow speed diesel units in 1995 and 1998.

Roads

The estimated length of the road network on Guam was approximately 975 miles at the end of 1992. Of that total, 420 miles of roads are classified as non-public roads. Many of these roads are located on federal government installations located throughout Guam. Of the 550 miles of public road, approximately 144 miles are the primary network (this includes some secondary roads); about half of this mileage is classified as urban roads. There are about 222 miles of streets and 123 miles of local or collector roads. The primary network is paved. In the case of the streets and local roads, 330.3 (80 percent) are paved and the remaining 83 miles (20 percent) are unpaved. There are 27 bridges in the road system.

The Guam 2010 Highway Master Plan calls for capital investments in the primary road and highway system estimated to cost \$470 million over the next 18 years. A large portion of the funding to construct and maintain these highway improvements will come from bond issues backed by fuel taxes and vehicle registration fees which are allocated to the Department of Public Works (DPW).

Maintenance of the road system is currently divided among the Highway Maintenance and Construction Section of the DPW, the Rapid Response Office, and some Mayors. For this reason, the OMIP Fourth Year Review Report for Guam recommends the creation

of a Highway Management System within the DPW to better manage highway construction and maintenance.

In response, DPW authorities have recently submitted an application for maintenance assistance funds to hire a consultant to develop a comprehensive Highway Management System which includes an Information System, Planning and Programming Management, Design/Specification/Contracts Management/Construction Management, Operational Systems and Maintenance Management System.

Airport

The A.B. Won Pat Guam International Air Terminal and surrounding facilities are administered by the Guam Airport Authority (GAA). The airport facilities are first-rate, but the growth in passenger arrivals and cargo warrants increasing the capacity of the facilities. Guam has recently expanded its airport aprons to alleviate the problems of aircraft waiting in the taxiways.

The GAA hopes to triple the size of the airport with an ambitious \$253 million program to construct a new terminal at the eastern end of the existing facility. Terminal enlargement would increase the number of passenger gates to seventeen. The scheduled closing of the Guam Naval Air Station in 1995 will provide additional acreage and facilities for expansion of the airport operations. NAS, which owns the airport's runways, was ordered closed by the Base Realignment and Closure Commission in August, 1993. DOD is planning on relocating NAS missions.

Guam authorities expect passenger traffic to reach 3.6 million passengers by 1995. About 2.4 million passengers are expected to use the facility this year. The facility now handles some 1500 flights a month. The airport is a regional aviation hub and base of operations for Continental Micronesia's (the regional carrier) fleet.

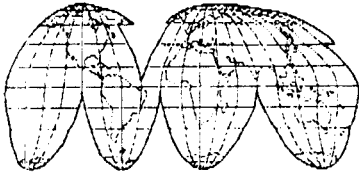
Seaport

The Port Authority of Guam (PAG) administers the commercial port facilities at Apra Harbor. PAG is a public corporation and autonomous agency of the Government of Guam. Guam's port is a major transshipment center of the Western Pacific and is equipped to move containerized, unitized, break-bulk, and tuna cargo efficiently. The port has in recent years seen an average increase of 23 percent in cargo growth. The PAG is expanding its container yard and is planning to spend \$100 million in reconstruction activities through the year 2005.

Public Buildings

The Government of Guam has the ability to acquire and maintain an adequate stock of public facilities. The Government has a lengthy list of capital improvements encompassing high schools, fire stations, youth centers and recreation facilities. The increase in local revenues directly attributable to Guam's economic boom has allowed the Government to fund these projects from its own resources.

FAX TRANSMITTAL



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
INTERNATIONAL LAW DIVISION

26 April 1995

From: Commander Gary D. Baxter, JAGC, U.S. Navy
Head, International Programs

To: Mr. Eric Lindenbaum
Defense Base Closure Realignment Commission

Subj: 10 U.S.C. §§7309, 7310

1. Attached please find copies of statutes as discussed.

GARY D. BAXTER

This transmission consists of 3 pages, including this cover sheet.

Office phone (secure and unclassified) - (703) 697-9161
Office FAX (secure and unclassified) - (703) 695-8073
DSN prefix: 227

ny vessel stricken from the vessel, to—

or possession of the United States or political subdivision

fit entity.

CONDITION SATISFACTORY TO transfer of a vessel under subsection (a) may be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) in accordance with applicable provisions of law, but only after—

FACTORY TO the Secretary.

TO UNITED STATES.—Any transfer under this section shall be made at no cost to

make the transfer is sent to

n of Congress have expired notice is sent to Congress.

the continuity of a session of the Congress sine die is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 30-day period.

. 89-848, § 1(10), 79 Stat. 1311; Nov. 8, 1985, P.L. 101-189, § 1618, 103 Stat. 1602; Nov. 30, 1993, P.L. 107 Stat. 1709.

Vessel Register: use for

Navy may use for experiments the Naval Vessel Register

ng a vessel for an experiment (a), the Secretary shall make such arrangements as are practicable.

the stripping of a vessel is limited to appropriations for services needed for such excess of amounts needed for the general fund

val vessel that is in excess of 10 years of age may not be

sale, lease, grant, loan, or other disposition of that vessel under subsection (a), 1974. A lease or loan shall be made only in accordance with the Export Control Act (22

U.S.C. 2796 et seq.) or chapter 2 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et seq.).

(b) OTHER VESSELS.—(1) A naval vessel not subject to subsection (a) may be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) in accordance with applicable provisions of law, but only after—

(A) the Secretary of the Navy notifies the Committees on Armed Services of the Senate and House of Representatives in writing of the proposed disposition; and

(B) 30 days of continuous session of Congress have expired following the date on which such notice is sent to those committees.

(2) For purposes of paragraph (1)(B), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 30-day period.

(Aug. 10, 1956, ch. 1041, 70A Stat. 452; Aug. 5, 1974, P.L. 93-366, § 702, 88 Stat. 405; Oct. 6, 1976, P.L. 94-467, § 2, 90 Stat. 1938; Dec. 12, 1980, P.L. 96-513, § 513(28), 94 Stat. 2933; Aug. 8, 1985, P.L. 99-83, § 122, 99 Stat. 204; Nov. 5, 1990, P.L. 101-510, 1484(b)(4), 104 Stat. 1710; revised in its entirety P.L. 103-160, § 824(b), Nov. 30, 1993, 107 Stat. 1709.)

§ 7308. Chief of Naval Operations: certification required for disposal of combatant vessels

Notwithstanding any other provision of law, no combatant vessel of the Navy may be sold, transferred, or otherwise disposed of unless the Chief of Naval Operations certifies that it is not essential to the defense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 463; Dec. 12, 1980, P.L. 96-513, § 513(29), 94 Stat. 2933; Sept. 29, 1988, P.L. 100-456, § 1234(a), 102 Stat. 2059; Nov. 5, 1990, P.L. 101-510, 1427, 104 Stat. 1685; revised in its entirety P.L. 103-160, § 824(b), Nov. 30, 1993, 107 Stat. 1710.)

§ 7309. Construction of vessels in foreign shipyards: prohibition

(a) PROHIBITION.—Except as provided in subsection (b), no vessel to be constructed for any of the armed forces, and no major component of the hull or superstructure of any such vessel, may be constructed in a foreign shipyard.

(b) PRESIDENTIAL WAIVER FOR NATIONAL SECURITY INTEREST.—(1) The President may authorize exceptions to the prohibition in subsection (a) when the President determines that it is in the national security interest of the United States to do so.

(2) The President shall transmit notice to Congress of any such determination, and no contract may be made pursuant to the exception authorized until the end of the 30-day period beginning on the date on which the notice of the determination is received by Congress.

(c) EXCEPTION FOR INFLATABLE BOATS.—An inflatable boat or a rigid inflatable boat, as defined by the Secretary of the Navy, is not a vessel for the purpose of the restriction in subsection (a).

(Added P.L. 97-252, § 1127(a), Sept. 8, 1982, 96 Stat. 758, and amended P.L. 98-478, § 101(h) [§ 9096], Oct. 12, 1984, 98 Stat. 1941; P.L. 99-145, § 1303(a)(24)(A), Nov. 8, 1986, 99 Stat. 740; P.L. 100-180, § 1103, Dec. 4, 1987, 101 Stat. 1148; P.L. 100-456, § 1224, Sept. 29, 1988, 102 Stat. 2054; P.L. 101-189, § 1622(c)(8), Nov. 29, 1989, 103 Stat. 1604; P.L. 102-190, § 1017, Dec. 5, 1991, 105 Stat. 1459; P.L. 102-484, § 1012, Oct. 23, 1992, 106 Stat. 2483; revised in its entirety P.L. 103-160, § 824(b), Nov. 30, 1993, 107 Stat. 1710.)

§ 7310. Overhaul, repair, etc. of vessels in foreign shipyards: restrictions

(a) **VESSELS WITH HOMEPORT IN UNITED STATES.**—A naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) the homeport of which is in the United States may not be overhauled, repaired, or maintained in a shipyard outside the United States, other than in the case of voyage repairs.

(b) **VESSEL CHANGING HOMEPORTS.**—(1) In the case of a naval vessel the homeport of which is not in the United States (or a territory of the United States), the Secretary of the Navy may not during the 15-month period preceding the planned reassignment of the vessel to a homeport in the United States (or a territory of the United States) begin any work for the overhaul, repair, or maintenance of the vessel that is scheduled to be for a period of more than six months.

(2) In the case of a naval vessel the homeport of which is in the United States (or a territory of the United States), the Secretary of the Navy shall during the 15-month period preceding the planned reassignment of the vessel to a homeport not in the United States (or a territory of the United States) perform in the United States (or a territory of the United States) any work for the overhaul, repair, or maintenance of the vessel that is scheduled—

(A) to begin during the 15-month period; and

(B) to be for a period of more than six months.

(Added P.L. 97-285, § 1(48)(A), Oct. 12, 1982, 96 Stat. 1268; revised in its entirety and amended P.L. 103-160, §§ 367, 824(b), Nov. 30, 1993, 107 Stat. 1632, 1710.)

§ 7311. Repair or maintenance of naval vessels: handling of hazardous waste

(a) **CONTRACTUAL PROVISIONS.**—The Secretary of the Navy shall ensure that each contract entered into for work on a naval vessel (other than new construction) includes the following provisions:

(1) **IDENTIFICATION OF HAZARDOUS WASTES.**—A provision in which the Navy identifies the types and amounts of hazardous wastes that are required to be removed by the contractor from the vessel, or that are expected to be generated, during the performance of work under the contract, with such identification by the Navy to be in a form sufficient to enable the contractor to comply with Federal and State laws and regulations on the removal, handling, storage, transportation, or disposal of hazardous waste.

(2) **COMPENSATION.**—A provision specifying that the contractor shall be compensated under the contract for work performed by the contractor for duties of the contractor specified under paragraph (3).

(3) **STATEMENT OF WORK.**—A provision specifying the responsibilities of the Navy and of the contractor, respectively, for the removal (including the handling, storage, transportation, and disposal) of hazardous wastes.

(4) **ACCOUNTABILITY FOR HAZARDOUS WASTES.**—(A) A provision specifying the following:

(i) In any case in which the Navy is the sole generator of hazardous waste that is removed, handled, stored,

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 7308, Act Aug. 10, 1956, c. 1041, 70A Stat. 453, as amended Dec. 12, 1980, Pub.L. 96-513, Title V, § 513(29), 94 Stat. 2933; Sept. 29, 1988, Pub.L. 100-456, Div. A, Title XII, § 1234(a)(6), 102 Stat. 2059; Nov. 5, 1990, Pub.L. 101-510, Div. A, Title XIV, § 1427, 104 Stat. 1685, relating to transfers by gift or otherwise of obsolete or condemned vessels of the

Navy or any captured vessels, was repealed by Pub.L. 103-160, Div. A, Title VIII, § 824(b), Nov. 30, 1993, 107 Stat. 1708. See section 7309 of this title.

Legislative History

For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

CODE OF FEDERAL REGULATIONS

Disposition of property, see 32 CFR 736.1.

§ 7309. Construction of vessels in foreign shipyards: prohibition

(a) **Prohibition.**—Except as provided in subsection (b), no vessel to be constructed for any of the armed forces, and no major component of the hull or superstructure of any such vessel, may be constructed in a foreign shipyard.

(b) **Presidential waiver for national security interest.**—(1) The President may authorize exceptions to the prohibition in subsection (a) when the President determines that it is in the national security interest of the United States to do so.

(2) The President shall transmit notice to Congress of any such determination, and no contract may be made pursuant to the exception authorized until the end of the 30-day period beginning on the date on which the notice of the determination is received by Congress.

(c) **Exception for inflatable boats.**—An inflatable boat or a rigid inflatable boat, as defined by the Secretary of the Navy, is not a vessel for the purpose of the restriction in subsection (a).

(Added Pub.L. 103-160, Div. A, Title VIII, § 824(b), Nov. 30, 1993, 107 Stat. 1710.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 7309, added Pub.L. 97-252, Title XI, § 1127(a), Sept. 8, 1982, 96 Stat. 758, and amended Pub.L. 98-473, Title I, § 101(h), Oct. 12, 1984, 98 Stat. 1941; Pub.L. 99-145, Title XIII, § 1303(a)(24)(A), Nov. 8, 1985, 99 Stat. 740; Pub.L. 100-180, Div. A, Title XI, § 1103, Dec. 4, 1987, 101 Stat. 1146; Pub.L. 100-456, Div. A, Title XII, § 1224(a), (b)(1), Sept. 29, 1988, 102 Stat. 2054; Pub.L. 101-189, Div. A, Title XVI, § 1622(c)(8), Nov. 29, 1989, 103 Stat. 1604; Pub.L. 102-190, Div. A, Title X, § 1017, Dec. 5, 1991, 105 Stat. 1459; Pub.L. 102-484, Div. A, Title X, § 1012, Oct. 23, 1992, 106 Stat. 2483, was repealed by Pub.L. 103-160, Div. A, Title VIII, § 824(b), Nov. 30, 1993, 107 Stat. 1708. Provisions of subsections (a), (b), and (d) of such prior section 7309 were substantially similar to the provisions of this section. For provisions substantially similar to subsections (c) and (e) of such prior section 7309, see section 7310 of this title.

Delegation of Functions

For provisions that for vessels, and for any major component of the hull or superstructure

of vessels to be constructed or repaired for any of the armed forces, the Secretary of Defense is designated and empowered, with authority to redelegate, and without the approval, ratification, or other action by the President, to exercise the authority vested in the President by subsec. (b) of this section, to authorize exceptions to the prohibition in subsec. (a) of this section, such exceptions to be based on a determination that it is in the national security interest of the United States to authorize an exception, with the Secretary of Defense to transmit notice of any such determination to the Congress, as required by subsec. (b) of this section, see Ex.Ord. No. 12765, June 11, 1991, 56 F.R. 27401, set out as a note under section 113 of this title.

Legislative History

For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

LIBRARY REFERENCES

Armed Services § 29.

C.J.S. Armed Services § 23.

§ 7310. Overhaul, repair, etc. of vessels in foreign shipyards: restrictions

(a) **Vessels with homeport in United States.**—A naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) the homeport of which is in the

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HISTORICAL AND STATUTORY NOTES

United States may not be overhauled, repaired, or maintained in a shipyard outside the United States, other than in the case of voyage repairs.

(b) **Vessel changing homeports.**—(1) In the case of a naval vessel the homeport of which is not in the United States (or a territory of the United States), the Secretary of the Navy may not during the 15-month period preceding the planned reassignment of the vessel to a homeport in the United States (or a territory of the United States) begin any work for the overhaul, repair, or maintenance of the vessel that is scheduled to be for a period of more than six months.

(2) In the case of a naval vessel the homeport of which is in the United States (or a territory of the United States), the Secretary of the Navy shall during the 15-month period preceding the planned reassignment of the vessel to a homeport not in the United States (or a territory of the United States) perform in the United States (or a territory of the United States) any work for the overhaul, repair, or maintenance of the vessel that is scheduled—

(A) to begin during the 15-month period; and

(B) to be for a period of more than six months.

Added Pub.L. 103-160, Div. A, Title VIII, § 824(b), Nov. 30, 1993, 107 Stat. 1710, and amended Pub.L. 103-160, Div. A, Title III, § 367, Nov. 30, 1993, 107 Stat. 1632.)

LEGISLATIVE HISTORY

Pub.L. 103-160, Div. A, Title VIII, § 824(b), Nov. 30, 1993, 107 Stat. 1710, and amended Pub.L. 103-160, Div. A, Title III, § 367, Nov. 30, 1993, 107 Stat. 1632.)

HISTORICAL AND STATUTORY NOTES

of vessels to be constructed or repaired for any of the armed forces, the Secretary of Defense is designated and empowered, with authority to redelegate, and without the approval, ratification, or other action by the President, to exercise the authority vested in the President by subsec. (b) of this section, to authorize exceptions to the prohibition in subsec. (a) of this section, such exceptions to be based on a determination that it is in the national security interest of the United States to authorize an exception, with the Secretary of Defense to transmit notice of any such determination to the Congress, as required by subsec. (b) of this section, see Ex.Ord. No. 12765, June 11, 1991, 56 F.R. 27401, set out as a note under section 113 of this title.

For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

HISTORICAL AND STATUTORY NOTES

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LEGISLATIVE HISTORY

For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

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LEGISLATIVE HISTORY

For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

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For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

7311. Repair or maintenance of naval vessels: handling of hazardous waste

(a) **Contractual provisions.**—The Secretary of the Navy shall ensure that each contract entered into for work on a naval vessel (other than new construction) includes the following provisions:

(1) **Identification of hazardous wastes.**—A provision in which the Navy identifies the types and amounts of hazardous wastes that are required to be removed by the contractor from the vessel, or that are expected to be generated, during the performance of work under the contract, with such identification by the Navy to be in a form sufficient to enable the contractor to comply with Federal and State laws and regulations on the removal, handling, storage, transportation, or disposal of hazardous waste.

(2) **Compensation.**—A provision specifying that the contractor shall be compensated under the contract for work performed by the contractor for duties of the contractor specified under paragraph (3).

(3) **Statement of work.**—A provision specifying the responsibilities of the Navy and of the contractor, respectively, for the removal (including the handling, storage, transportation, and disposal) of hazardous wastes.

(4) **Accountability for hazardous wastes.**—(A) A provision specifying the following:

(i) In any case in which the Navy is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the Navy pursuant to applicable law.

(ii) In any case in which the contractor is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation,

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GUAM

LOAD: February 20, 1995

GENERAL INFORMATION

Capital: Agana

Location: The unincorporated US territory of Guam is the largest and southernmost of the Mariana Islands. Situated in the western Pacific, Guam is approximately 3,300 miles west of Hawaii and 1,350 miles south of Japan.

Currency: 100 cents = 1 US dollar weights and measures are sometimes utilized.

AREA: 209 square miles

POPULATION: 121,000 (1993 estimate (1993 estimate (1980) (1991) (1985) (1979) (1986) (1991)

CULTURE

Ethnic Composition: Chamorro (Micronesian) - 47%; Filipino - 25%; Caucasian - 10%; other - 18%.

Religion: Roman Catholic - 98%; other - 2%.

Language: English is the official language, but Japanese and Chamorro (the local language) are also spoken.

Education: Illiteracy: 4%. In 1989, there were 24 primary schools and 11 secondary schools. In 1991, there were 17,029 primary school students and 13,047 secondary school students. There is one university and one community college.

manufactured goods. manufacturing - 4.1%; construction - 10.2%; trade - 18.3%; transportation and communication - 5.2%; commerce - 4.5%; community, social, and personal services - 17.6%; other - 36.6%. sugarcane. major industry. temperature

of 81 degrees F. The average annual rainfall is about 80 inches. Washington's Birthday), Mar 1 (Guam Discovery), May 24 (Memorial Day), Jul 4 (US Independence Day), Sep 7 (Labor Day), Nov 25 (Thanksgiving Day), Dec 25 (Christmas). beaches, mountainous scenery, and duty-free shopping. The Tarzan Falls and the annual summertime Merizo Water Festival are also popular tourist attractions. (1991) (1990) Cargo loaded (short tons): 95,900; unloaded (short tons): 197,311.

(1989) 1,581. (1989) pop.: 735. (1989) 157. (1989) (1989) Spanish-American War in 1998, Guam is a self-governing unincorporated US territory under the jurisdiction of the Interior Department. On Aug 8, 1987, Guamanians approved a measure asking Congress to give Guam greater autonomy by designating it as an American Commonwealth. If Congress approves the measure, the Commonwealth Act would replace the 1950 Organic Act as the island's framework for government.

GOVERNMENT

Constitution: Guam is administered under the Organic Act of 1950, which granted the island limited self-government and gave its residents US citizenship. Guamanians cannot vote in national elections, but they have been able to send a non-voting delegate to the US House of Representatives since 1973. The delegate, who is elected to a two-year term, is permitted to vote on all aspects of congressional decision making except the final passage of a bill. Lieutenant Governor, who are popularly elected to 4-year terms. There are 48 executive departments whose heads are appointed by the Governor with the approval of the legislature. to pass laws on local matters, such as taxation and fiscal appropriations. Members are elected to two-year terms. judicial system. Lesser

KCWD (c) 1995 ABC-Clio, Inc. GUAM

courts include Probate, Domestic, Juvenile, Traffic, and Small Claims. One District Court judge is appointed by the US President, while Superior Court judges are appointed to 8-year terms by the Governor. headed by elected district commissioners. vote.

Chief Government Officials:

Governor: Joseph ADA - since January 1985.

Lieutenant Governor: Frank BLAS - since January 1985. Party, each modeled on the US parties of the same name. Gov. Joseph Ada is the leader of the Republican Party. won 11 seats and Republicans won 10.

10TH PROFILE of Level 1 printed in FULL format.

1994 U. S. Central Intelligence Agency
The World Factbook

February 16, 1994

LENGTH: 3480 words

COUNTRY: GUAM

GEOGRAPHY:

Location: in the North Pacific Ocean, 5,955 km west-southwest of Honolulu, about three-quarters of the way between Hawaii and the Philippines

Map references: Oceania

Area:

total area: 541.3 km²

land area: 541.3 km²

comparative area: slightly more than three times the size of Washington, DC

Land boundaries: 0 km

Coastline: 125.5 km

contiguous zone: 24 nm

continental shelf: 200 m or depth of exploitation

exclusive economic zone: 200 nm

territorial sea: 12 nm

International disputes: none

Climate: tropical marine; generally warm and humid, moderated by northeast trade winds; dry season from January to June, rainy season from July to December; little seasonal temperature variation

Terrain: volcanic origin, surrounded by coral reefs; relatively flat coralline limestone plateau (source of most fresh water) with steep coastal cliffs and narrow coastal plains in north, low-rising hills in center, mountains in south

Natural resources: fishing (largely undeveloped), tourism (especially from Japan)

Land use:

arable land: 11%

permanent crops: 11%

1994 The World Factbook, February 16, 1994

meadows and pastures: 15%

forest and woodland: 18%

other: 45%

Irrigated land: NA km2

Environment: frequent squalls during rainy season; subject to relatively rare, but potentially very destructive typhoons (especially in August) Note: largest and southernmost island in the Mariana Islands archipelago; strategic location in western North Pacific Ocean

PEOPLE:

Population: 145,935 (July 1993 est.)

Population growth rate: 2.53% (1993 est.)

Birth rate: 26.16 births/1,000 population (1993 est.)

Death rate: 3.86 deaths/1,000 population (1993 est.)

Net migration rate: 3 migrant(s)/1,000 population (1993 est.)

Infant mortality rate: 15.17 deaths/1,000 live births (1993 est.)

Life expectancy at birth:

total population: 74.29 years

male: 72.42 years

female: 76.13 years (1993 est.)

Total fertility rate: 2.44 children born/woman (1993 est.)

Nationality:

noun: Guamanian(s)

adjective: Guamanian

Ethnic divisions: Chamorro 47%, Filipino 25%, Caucasian 10%, Chinese, Japanese, Korean, and other 18%

Religions: Roman Catholic 98%, other 2%

Languages: English, Chamorro, Japanese

Literacy: age 15 and over can read and write (1980)

total population: 96%

1994 The World Factbook, February 16, 1994

male: 96%

female: 96%

Labor force: 46,930 (1990)

by occupation: federal and territorial government 40%, private 60% (trade 18%, services 15.6%, construction 13.8%, other 12.6%) (1990)

GOVERNMENT:

Names:

conventional long form: Territory of Guam

conventional short form: Guam

Digraph: GQ

Type: organized, unincorporated territory of the US with policy relations between Guam and the US under the jurisdiction of the Office of Territorial and International Affairs, US Department of the Interior

Capital: Agana

Administrative divisions: none (territory of the US)

Independence: none (territory of the US)

Constitution: Organic Act of 1 August 1950

Legal system: modeled on US; federal laws apply

National holiday: Guam Discovery Day (first Monday in March); Liberation Day, 21 July

Political parties and leaders: Democratic Party (controls the legislature); Republican Party (party of the Governor)

Suffrage: 18 years of age; universal; US citizens, but do not vote in US presidential elections

Elections:

Governor: last held on 6 November 1990 (next to be held NA November 1994); results - Joseph F. ADA reelected

Legislature: last held on 9 November 1992 (next to be held NA November 1994); results - percent of vote by party NA; seats - (21 total) Democratic 14, Republican 7

US House of Representatives: last held 9 November 1992 (next to be held NA November 1994); Guam elects one delegate; results - Robert UNDERWOOD was elected a delegate; seats - (1 total) Democrat 1

1994 The World Factbook, February 16, 1994

Executive branch: US president, governor, lieutenant governor, Cabinet

Legislative branch: unicameral Legislature

Judicial branch: Federal District Court, Territorial Superior Court

Leaders:

Chief of State: President William Jefferson CLINTON (since 20 January 1993);
Vice President Albert GORE, Jr. (since 20 January 1993)

Head of Government: Governor Joseph A. ADA (since November 1986); Lieutenant
Governor Frank F. BLAS (since NA)

Member of: ESCAP (associate), IOC, SPC

Diplomatic representation in US: none (territory of the US)

Flag: territorial flag is dark blue with a narrow red border on all four sides; centered is a red-bordered, pointed, vertical ellipse containing a beach scene, outrigger canoe with sail, and a palm tree with the word GUAM superimposed in bold red letters; US flag is the national flag

ECONOMY:

Overview: The economy depends mainly on US military spending and on revenues from tourism. Over the past 20 years the tourist industry has grown rapidly, creating a construction boom for new hotels and the expansion of older ones. Visitors numbered about 900,000 in 1992. About 60% of the labor force works for private sector and the rest for government. Most food and industrial goods imported, with about 75% from the US.

National product: GNP - purchasing power equivalent - \$2 billion (1991 est.)

National product real growth rate: NA%

National product per capita: \$14,000 (1991 est.)

Inflation rate (consumer prices): 4% (1992 est.)

Unemployment rate: 2% (1992 est.)

Budget: revenues \$525 million; expenditures \$395 million, including capital expenditures of A

Exports: \$34 million (f.o.b., 1984)

commodities: mostly transshipments of refined petroleum products, construction materials, fish, food and beverage products

partners: US 25%, Trust Territory of the Pacific Islands 63%, other 12%

Imports: \$493 million (c.i.f., 1984)

commodities: petroleum and petroleum products, food, manufactured goods

1994 The World Factbook, February 16, 1994

partners: US 23%, Japan 19%, other 58%

External debt: A

Industrial production: growth rate NA%

Electricity: 500,000 kW capacity; 2,300 million kWh produced, 16,300 kWh per capita (1990)

Industries: US military, tourism, construction, transshipment services, concrete products, printing and publishing, food processing, textiles

Agriculture: relatively undeveloped with most food imported; fruits, vegetables, eggs, pork, poultry, beef, copra

Economic aid: although Guam receives no foreign aid, it does receive large transfer payments from the general revenues of the US Federal Treasury into which Guamanians pay no income or excise taxes; under the provisions of a special law of Congress, the Guamanian Treasury, rather than the US Treasury, receives federal income taxes paid by military and civilian Federal employees stationed in Guam

Currency: US currency is used

Fiscal year: 1 October - 30 September

COMMUNICATIONS:

ways: 674 km all-weather roads

Ports: Apra Harbor

Airports:

total: 5

usable: 4

with permanent-surface runways: 3

with runways over 3,659 m: 0

with runways 2,440-3,659 m: 3

with runways 1,200-2,439 m: 0

Telecommunications: 26,317 telephones (1989); broadcast stations - 3 AM, 3 FM, 3 TV; 2 Pacific Ocean INTELSAT ground stations

Defense forces Note: defense is the responsibility of the US

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POPULAR NAME ACTS

This table lists the principal laws included in Title 48, designated as they are popularly known, and shows the classification of each within the title.

Popular Name	Sections
Alaska Omnibus Act	prec. 21 note
Alaska Statehood Act	prec. 21 note
Alaskan Statehood Enabling Act	prec. 21 note
Butler Act	733a, 741, 741a, 745, 751, 872
Compact of Free Association Act of 1985	1681 note
Compact of Free Association Between the United States and the Government of Palau	1681 note
Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America	1681 note
Foraker Act	See Puerto Rico Civil Code
Guam Development Fund Act of 1968	1421 note, 1428 to 1428e
Guam Elective Governor Act	1421 note, 1421a to 1421d, 1421f, 1422, 1422 note, 1422a to 1422c, 1423b, 1423h, 1423i
Guano Islands Act	1411 to 1419
Hawaii Admission Act	prec. 491 note
Hawaii Omnibus Act	prec. 491 note
Hawaii State Admissions Act	prec. 491 note
Hawaii Statehood Act	prec. 491 note
Jones Act	See Puerto Rican Federal Relations Act
1964 Amendments to the Alaska Omnibus Act	prec. 21 note
Omnibus Territories Act of 1977	1421i, 1424c, 1428, 1469a, 1574, 1575; 1681 notes
Organic Act of Guam	1421, 1421 notes, 1421a to 1421f, 1421g to 1421k-1, 1422 to 1422d, 1423 to 1423k, 1424 to 1424b

Note 1

islands which may have been determined by the President to appertain to the United States. *Jones v. U.S., Md.* 1890, 11 S.Ct. 80, 137 U.S. 202, 34 L.Ed. 691. See, also, *Smith v. U.S., Md.* 1890, 11 S.Ct. 88, 137 U.S. 224, 34 L.Ed. 700.

§ 1418. Employment of land and naval forces in protection of rights

The President is authorized, at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer or of his widow, heir, executor, administrator, or assigns.

(R.S. § 5577.)

HISTORICAL AND STATUTORY NOTES

Codifications

R.S. § 5577 derived from Act Aug. 18, 1856, c. 164, § 5, 11 Stat. 120.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1419. Right to abandon islands

Nothing in this chapter contained shall be construed as obliging the United States to retain possession of the islands, rocks, or keys, after the guano shall have been removed from the same.

(R.S. § 5578.)

HISTORICAL AND STATUTORY NOTES

Codifications

R.S. § 5578 derived from Act Aug. 18, 1856, c. 164, § 4, 11 Stat. 120.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

CHAPTER 8A—GUAM

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| 1421b. | Bill of rights. |
| 1421c. | Certain laws continued in force; modification or repeal of laws. |
| 1421d. | Salaries and allowances of officers and employees. |
| 1421e. | Duty on articles. |
| 1421f. | Title to property transferred. |
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| | (b) Other property not reserved. |
| | (c) Secretary of the Interior; sale or lease. |
| 1421f-1. | Acknowledgement of deeds. |
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- 1423f. Qualifications of members.
- 1423g. Vacancies.
- 1423h. Regular and special sessions.
- 1423i. Approval of bills.
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- 1423k. Right of petition.
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(a) District Court of Guam; local courts.
(b) Jurisdiction.
(c) Original jurisdiction.

Ch. 8A GUAM

Sec.

- 1424-1. Local courts; composition; appellate court; jurisdiction; practice and procedure; qualifications and duties of judges.
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HISTORICAL AND STATUTORY NOTES

Constitutions for Virgin Islands and Guam; Establishment; Congressional Authorization

Authorization for the peoples of the Virgin Islands and Guam to call consti-

tutional conventions to draft constitutions for local self-government, see Pub.L. 94-584, Oct. 21, 1976, 90 Stat. 2899, set out as a note preceding section 1541 of this title.

CROSS REFERENCES

Representation in Congress by delegate from Guam to House of Representatives, see 48 USCA § 1711 et seq.

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WESTLAW supplements U.S.C.A. electronically and is useful for additional research. Enter a citation in INSTA-CITE for display of parallel citations and case history. Enter a constitution, statute or rule citation in a case law database for cases of interest.

Example query for United States Constitution: (first +6 amendment) + religion

Example query for INSTA-CITE: 790 F.2d 978

Example query for statute: 42 +4 1983

SUBCHAPTER I—GENERAL PROVISIONS

§ 1421. Territory included under name Guam

The territory ceded to the United States in accordance with the provisions of the Treaty of Peace between the United States and Spain, signed at Paris, December 10, 1898, and proclaimed April 11, 1899, and known as the island of Guam in the Marianas Islands, shall continue to be known as Guam.

(Aug. 1, 1950, c. 512, § 2, 64 Stat. 384.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1950 Act. The purpose of H.R. 7273, as amended, is to provide, in compliance with their wish, a civil government in the American pattern for the inhabitants of Guam, a Pacific island which has been under the jurisdiction of this country for more than half a century. Guam came under the American flag by virtue of the Treaty of Paris at the end of the

Spanish-American War in 1898 (30 Stat. 1754). Up to and including the present, all the powers of government have been exercised under two Presidential Executive orders, issued by President McKinley in 1898 and by President Truman in 1949, and a series of intervening administrative orders of United States naval governors.

* * * * *

This bill is reported in the belief that the time has come for the Congress to pass an organic act permitting the people of Guam to govern themselves. The measure has the support of the Departments of Defense, State, Navy, Justice, and Interior, as well as that of the President of the United States.

It establishes democratic local government for the island, and guarantees human freedoms under the authority of the Congress rather than the executive branch. American citizenship would be conferred on the approximately 27,000 native Guamanians who gave such valiant proof of their loyalty to the United States and American traditions in two world wars, including 4 years of enemy occupation by the Japanese armed forces. A bill of rights is provided; a representative local government formed in the American tradition; an independent judiciary created, administering a system of law based on local needs and local traditions, all within the American framework of fundamental fairness and equality; and the scope of executive authority is defined and limited. Senate Report No. 2109.

Effective Date; Continuation of Federal Administration

1950 Act. Section 34 of Act Aug. 1, 1950, provided that on the 21st day of July 1950, the authority and powers conferred by this chapter would come into force, and authorized the President, for a period not to exceed one year from Aug. 1, 1950, to continue the administration of Guam in all or in some respects as provided by law, Executive order, or local regulation in force on Aug. 1, 1950. It further authorized the President in his discretion to place in operation all or some of the provisions of this chapter if practicable before the expiration of the period of one year.

Short Title

1968 Amendments. Pub.L. 90-601, § 1, Oct. 17, 1968, 82 Stat. 1172, provided that: "This Act [enacting sections 1428 to 1428e of this title] may be cited as the 'Guam Development Fund Act of 1968'."

Pub.L. 90-497, § 14, Sept. 11, 1968, 82 Stat. 848, provided that: "This Act [enacting section 1422d of this title and

section 335 of Title 10, Armed Forces, amending sections 1421a, 1421b, 1421c, 1421d, 1421f, 1422, 1422a, 1422b, 1422c, 1423b, 1423h, and 1423i of this title, and enacting provisions set out as notes under this section and section 1422 of this title] may be cited as the 'Guam Elective Governor Act'."

1950 Act. Section 1 of Act Aug. 1, 1950 provided that: "This Act [enacting this chapter and amending section 703 of Title 8, Aliens and Nationality] may be cited as the 'Organic Act of Guam'."

Analysis of Capital Infrastructure; Needs of Guam for 1985 to 1990 Timeframe; Report to Congress; Contents

Pub.L. 95-348, § 1(a)(6), Aug. 18, 1978, 92 Stat. 487, provided that the Secretary prepare and transmit to the Congress not later than July 1, 1979, an analysis of the capital infrastructure needs of Guam for the 1985 to 1990 timeframe.

Guam and Virgin Islands; Applicability of Laws Referred to in Section 502(a)(1) of Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America

Laws referred to in section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America shall be applicable to the territories of Guam and the Virgin Islands on the same terms and conditions as such laws are applied to the Northern Mariana Islands, see section 403 of Pub.L. 95-134, set out as a note under section 1681 of this title.

Political Union Between Territory of Guam and Commonwealth of Northern Mariana Islands, Effect on Rights and Entitlements

In event of political union between Guam and the Commonwealth of the Northern Mariana Islands, there shall be no diminution of rights or entitlements, nor any adverse effects on any funds authorized or appropriated, see Pub.L. 96-597, Title VI, § 602, Dec. 24, 1980, 94 Stat. 3480, set out as a note under section 1681 of this title.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 10077

Sept. 7, 1949, 14 F.R. 5533, as amended by Ex.Ord. No. 10137, June 30, 1950, 15 F.R. 4241

TRANSFER OF ADMINISTRATION OF GUAM

WHEREAS the Island of Guam was placed under the control of the Department of the Navy by Executive Order No. 108-A of December 23, 1898; and

WHEREAS a committee composed of the Secretaries of State, War, the Navy, and the Interior recommended on June 18, 1947, that administrative responsibility for the Island of Guam be transferred to a civilian agency of the Government at the earliest practicable date as determined by the President; and

WHEREAS plans for the orderly transfer of administrative responsibility for the Island of Guam from the Secretary of the Navy to the Secretary of the Interior are embodied in a memorandum of understanding between the Department of the Navy and the Department of the Interior, approved by me on August 10, 1949, and it is the view of the two departments, as expressed in that memorandum, that such transfer should take effect on July 1, 1950; and

WHEREAS the transfer of administration of the Island of Guam from the Secretary of the Navy to the Secretary of the Interior, effective July 1, 1950, appears to be in the public interest:

NOW, THEREFORE, by virtue of the authority vested in me as President of

the United States, it is ordered as follows:

1. The administration of the Island of Guam is hereby transferred from the Secretary of the Navy to the Secretary of the Interior, such transfer to become effective on August 1, 1950.

2. The Department of the Navy and the Department of the Interior shall proceed with the plans for the transfer of the administration of the Island of Guam as embodied in the above mentioned memorandum of understanding between the two departments.

3. When the transfer of administration made by this order becomes effective, the Secretary of the Interior shall take such action as may be necessary and appropriate, and in harmony with applicable law, for the administration of civil government on the Island of Guam.

4. The executive departments and agencies of the Government are authorized and directed to cooperate with the Departments of the Navy and Interior in the effectuation of the provisions of this order.

5. The said Executive Order No. 108-A of December 23, 1898, is revoked, effective August 1, 1950.

HARRY S. TRUMAN

CROSS REFERENCES

Conveyance of submerged lands to government of Guam, see 48 USCA § 1701 et seq.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. Waters of Guam

The Guam Legislature has power to legislate with respect to waters adjacent to Guam. *U.S. v. Borja*, D.C. Guam 1961, 191 F.Supp. 563.

Acquisition by United States of Guam from Spain under treaty necessarily included three-mile-wide belt of sea around Guam. *U.S. v. Angcog*, D.C. Guam 1961, 190 F.Supp. 696.

§ 1421a. Unincorporated territory; capital; powers of government; suits against government; type of government; supervision

Guam is declared to be an unincorporated territory of the United States and the capital and seat of government thereof shall be located at the city of Agana, Guam. The government of Guam shall have the powers set forth in this chapter, shall have power to sue by such name, and, with the consent of the legislature evidenced by enacted law, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the government of Guam of any of its lawful powers. The government of Guam shall consist of three branches, executive, legislative, and judicial, and its relations with the Federal Government in all matters not the program responsibility of another Federal department or agency, shall be under the general administrative supervision of the Secretary of the Interior.

(Aug. 1, 1950, c. 512, § 3, 64 Stat. 384; Sept. 21, 1959, Pub.L. 86-316, 73 Stat. 588; Sept. 11, 1968, Pub.L. 90-497, § 12(a), 82 Stat. 847.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1959 Act. Senate Report No. 969, see 1959 U.S. Code Cong. and Adm. News, p. 2659.

1968 Act. House Report No. 1521, see 1968 U.S. Code Cong. and Adm. News, p. 3564.

Amendments

1968 Amendment. Pub.L. 90-497 substituted provisions that all matters concerning Guam which are not the program responsibility of other Federal departments or agencies be under the general administrative supervision of the Secretary of the Interior for provisions that the general administrative supervision of matters concerning Guam be un-

der the head of such civilian department or agency of the government of the United States as the President might direct.

1959 Amendment. Pub.L. 86-316 permitted government of Guam, with consent of legislature, to be sued.

Effective Dates

1968 Act. Amendment by Pub.L. 90-497 necessary to authorize the holding of an election for Governor and Lieutenant Governor on November 3, 1970, effective January 1, 1970, and all other amendments unless otherwise provided effective January 4, 1971, see section 13 of Pub.L. 90-497, set out as a note under section 1422 of this title.

LIBRARY REFERENCES

American Digest System

Actions by or against territories, see Territories ⇨32.

Encyclopedias

Consent to be sued as necessary to action against territory, see C.J.S. Territories § 38.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Construction with other laws 1
Powers conferred by Congress 2
Suits against Government 3

1. Construction with other laws

Commerce in Guam is commerce "in any Territory of the United States" as phrase is used in section 1 of Title 9 and section 1 of Title 9 is accordingly applicable in Guam. *Kanazawa Limited v. Sound, Unlimited, C.A.Guam 1971, 440 F.2d 1239.*

2. Powers conferred by Congress

Since Guam is not incorporated territory of the United States its government has only those powers conferred by Con-

gress. *Rodriguez v. Gaylord, D.C.Hawaii 1977, 429 F.Supp. 797.*

3. Suits against Government

Guam was immune from liability for injuries allegedly sustained when plaintiffs were allegedly threatened, grabbed and pushed by a Guam police officer. *Munoz v. Government of Guam, C.A. Guam 1980, 625 F.2d 257.*

Where Government of Guam was established by this section, even if this section provided that government could be sued, territorial government so created was immune from suit without government's consent. *Crain v. Government of Guam, D.C.Guam 1951, 97 F.Supp. 433, affirmed 195 F.2d 414.*

§ 1421b. Bill of rights

(a) No law shall be enacted in Guam respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of their grievances.

(b) No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

(c) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

(d) No person shall be subject for the same offense to be twice put in jeopardy of punishment; nor shall he be compelled in any criminal case to be a witness against himself.

(e) No person shall be deprived of life, liberty, or property without due process of law.

(f) Private property shall not be taken for public use without just compensation.

(g) In all criminal prosecutions the accused shall have the right to a speedy and public trial; to be informed of the nature and cause of the accusation and to have a copy thereof; to be confronted with the witnesses against him; to have compulsory process for obtain-

ing witnesses in his favor, and to have the assistance of counsel for his defense.

(h) Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(i) Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in Guam.

(j) No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

(k) No person shall be imprisoned for debt.

(l) The privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion or imminent danger thereof, the public safety shall require it.

(m) No qualification with respect to property, income, political opinion, or any other matter apart from citizenship, civil capacity, and residence shall be imposed upon any voter.

(n) No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied.

(o) No person shall be convicted of treason against the United States unless on the testimony of two witnesses to the same overt act, or on confession in open court.

(p) No public money or property shall ever be appropriated, supplied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such.

(q) The employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited.

(r) There shall be compulsory education for all children, between the ages of six and sixteen years.

(s) No religious test shall ever be required as a qualification to any office or public trust under the government of Guam.

(t) No person who advocates, or who aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of Guam or of the United States shall be qualified to hold any public office of trust or profit under the government of Guam.

(u) The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.

All laws enacted by Congress with respect to Guam and all laws enacted by the territorial legislature of Guam which are inconsistent with the provisions of this subsection are repealed to the extent of such inconsistency.

(Aug. 1, 1950, c. 512, § 5, 64 Stat. 385; Sept. 11, 1968, Pub.L. 90-497, § 10, 82 Stat. 847.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1968 Act. House Report No. 1521, see 1968 U.S. Code Cong. and Adm. News, p. 3564.

Amendments

1968 Amendment. Subsec. (u). Pub.L. 90-497 added subsec. (u).

Effective Dates

1968 Act. Section 10 of Pub.L. 90-497 provided in part that the amendment of this section by section 10 of Pub.L. 90-497 was effective on the date of enactment of Pub.L. 90-497, which was approved on September 11, 1968.

CROSS REFERENCES

Advocating overthrow of government, see 18 USCA § 2385.

LIBRARY REFERENCES

American Digest System

Application of Constitution of United States to territories, see Territories ⇐1.
Operation of organic Act of territory, see Territories ⇐15.

Encyclopedias

Extension to territory of certain provisions of federal Constitution by "bill of rights" in organic Act, see C.J.S. Territories § 17.
Provisions of federal Constitution made applicable to territory by "bill of rights," see C.J.S. Territories § 6.

Texts and Treatises

Diversity jurisdiction, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3603.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Commerce power 2
Due process 3
Equal protection 4
Grand jury indictment 5

Jurisdiction 7
Jury trial 6
Retroactive effect 1

1. Retroactive effect

The attempted amendment of this chapter, so as to declare right to prosecution by indictment at time of commission of crime charged inapplicable to district court of Guam until made applicable thereto by Guam Legislature, could not operate retroactively to confer on such court jurisdiction, which it lacked at time of conviction for infamous crime against nature, to try such case on information, without indictment by grand jury. Pennington v. Government of Guam. C.A.Guam 1955, 228 F.2d 892.

2. Commerce power

The commerce clause, Art. 1, § 8, cl. 3, of the United States Constitution, has not been extended to Guam. Sakamoto v. Duty Free Shoppers, Ltd., D.C.Guam 1983, 613 F.Supp. 381, affirmed 764 F.2d 1285, certiorari denied 106 S.Ct. 1457, 89 L.Ed.2d 715.

3. Due process

Felony-murder rule contained in Guam Penal Code is not violative of due process as removing connection between moral culpability and criminal liability inasmuch as statutory scheme in defining murder as the unlawful killing of a human being, with malice aforethought, and providing that malice applies when circumstances attending killing show an abandoned and malignant heart has never required a preformed malicious intent to kill to sustain a felony-murder conviction. People of Territory of Guam v. Root, C.A.Guam 1975, 524 F.2d 195, certiorari denied 96 S.Ct. 861, 423 U.S. 1076, 47 L.Ed.2d 86.

Decision of Secretary of Health, Education and Welfare not to hold hearing with regard to claim for disability insurance benefits in territory of Guam and Secretary's requirement that claimant pay his own expenses and expenses of witnesses to travel 3,300 miles to Hawaii if claimant desired hearing constituted denial of claimant's constitutional right to a hearing particularly where it would have been beneficial for claimant to have testified and to have presented testimony of his physician at hearing.

Sampayan v. Mathews, D.C.Guam 1976, 417 F.Supp. 60.

4. Equal protection

Amendment to sections 21003, 21503(4), and 21553 of the Guam Government Code, reducing the charges for utility services furnished to nonprofit educational facilities, churches and publicly owned hospitals and which, in net effect, placed the burden of providing half of their electric power requirements upon ordinary consumers of electric power, arbitrarily and capriciously discriminated against ordinary consumers, thereby violating provision of this section that "No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied." Guam Power Authority v. Bishop of Guam, D.C.Guam 1974, 383 F.Supp. 476.

5. Grand jury indictment

Fact that Guam Elective Governor Act extended U.S.C.A.Const. Amend. 5 to Guam constitution did not make grand jury indictment mandatory in prosecution of infamous crimes by territorial government and did not repeal statute providing that all offenses shall be prosecuted by information unless otherwise determined by legislature. People of Territory of Guam v. Inglett, C.A.Guam 1969, 417 F.2d 123.

6. Jury trial

In Guam, which is an unincorporated territory of the United States, there is no constitutional right to an indictment by a grand jury nor to a trial by jury, and therefore there can be a trial on an information without a jury. U.S. v. Seagraves, D.C.Guam 1951, 100 F.Supp. 424.

7. Jurisdiction

Congress by extending privileges and immunities clauses of Federal Constitution to Guam did not authorize Guam district court to exercise federal diversity jurisdiction. Chase Manhattan Bank (Nat. Ass'n) v. South Acres Development Co., U.S.Guam 1978, 98 S.Ct. 544, 434 U.S. 236, 54 L.Ed.2d 501.

§ 1421c. Certain laws continued in force; modification or repeal of laws

(a) The laws of Guam in force on August 1, 1950, except as amended by this chapter, are continued in force, subject to modification or repeal by the Congress of the United States or the Legislature of Guam, and all laws of Guam inconsistent with the provisions of this chapter are repealed to the extent of such inconsistency.

(b) Repealed. Pub.L. 90-497, § 7, Sept. 11, 1968, 82 Stat. 847. (Aug. 1, 1950, c. 512, § 25, 64 Stat. 390; Sept. 11, 1968, Pub.L. 90-497, § 7, 82 Stat. 847.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. House Report No. 1521, see 1968 U.S. Code Cong. and Adm. News, p. 3564.

Amendments

1968 Amendment. Subsec. (b). Pub.L. 90-497 repealed subsec. (b) which prohibited the application to Guam of laws of the United States not specifically made applicable to Guam and estab-

lished a commission to determine which laws were applicable to Guam and which were not.

Effective Dates

1968 Act. Section 7 of Pub.L. 90-497 provided in part that the amendment by Pub.L. 90-497 is effective on the date of enactment of Pub.L. 90-497, which was approved Sept. 11, 1968.

CROSS REFERENCES

Acknowledgment of deeds, see 48 USCA § 1421f-1.
 Fair Labor Standards Act, application to Guam, see 29 USCA § 213.
 National Bank Act, application to Guam, see 12 USCA § 41.
 Park programs, state as including Guam, see 16 USCA § 17n.

LIBRARY REFERENCES

American Digest System

Application and operation in territories of Acts of Congress, see Territories

Encyclopedias

Conflict of territorial law with Acts of Congress, see C.J.S. Territories § 25.
 Organic Act providing for continuance of laws and practices at time organic Act is enacted, see C.J.S. Territories § 17.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. Consistency with federal law

Guam Gov.Code, § 12303 prohibiting use of dynamite or other explosives to take or kill fish in Guam waters is not inconsistent with this chapter, any other acts of Congress, United States Constitu-

tion or any presidential executive order, and is valid as to waters adjacent to Guam, including those adjacent to Naval Communication Station below low-water mark. U.S. v. Borja, D.C.Guam 1961, 191 F.Supp. 563.

§ 1421d. Salaries and allowances of officers and employees

The salaries and travel allowances of the Governor, Lieutenant Governor, the heads of the executive departments, other officers and employees of the government of Guam, and the members of the legislature, shall be paid by the government of Guam at rates prescribed by the laws of Guam.

(Aug. 1, 1950, c. 512, § 26, 64 Stat. 391; Aug. 1, 1956, c. 852, § 21, 70 Stat. 911; July 30, 1965, Pub.L. 89-100, 79 Stat. 424; Sept. 11, 1968, Pub.L. 90-497, § 9, 82 Stat. 847.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1965 Act. Senate Report No. 466, see 1965 U.S. Code Cong. and Adm. News p. 2391.

1968 Act. House Report No. 1521, see 1968 U.S. Code Cong. and Adm. News, p. 3564.

Amendments

1968 Amendment. Subsec. (c). Pub.L. 90-497, § 9(a), repealed subsec. (c) which provided for the payment of transportation expenses by the United States of all officers and employees of the government of Guam if their homes were outside Guam.

Pub.L. 90-497, § 9(b), removed subsection designations and substituted provisions that the Government of Guam pay the salaries and travel expenses of the Governor, Lieutenant Governor, heads of executive departments, members of the legislature, and government officers and employees at rates prescribed by the laws of Guam for provisions setting the salary for the Governor and Secretary of Guam and allowing for the payment of transportation expenses and salaries of certain officers and employees by the United States.

1965 Amendment. Subsec. (e). Pub.L. 89-100 substituted provisions empowering the government of Guam to fix and pay legislative salaries and expenses for provisions which specifically fixed a sum of \$15 per day to be paid each member for every day the legislature is in session payable out of Congressional appropriations and which required all other expenses to be paid by the government of Guam.

1956 Amendment. Subsec. (a). Act Aug. 1, 1956, substituted "the Governor of the Virgin Islands in the Executive Pay Act of 1949, as heretofore or hereafter amended," for "Governors of Territories and possessions in the Executive Pay Act of 1949, but not to exceed \$13,125."

Effective Dates

1968 Act. Section 9(a) of Pub.L. 90-497 provided in part that the repeal of subsec. (c) of this section by section 9(a) of Pub.L. 90-497 is effective on the date of enactment of Pub.L. 90-497, which was approved Sept. 11, 1968.

Section 9(b) of Pub.L. 90-497 provided in part that the amendment by section 9(b) of Pub.L. 90-497 is effective Jan. 4, 1971.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. Persons or entities entitled to maintain action

Where United States was, under provisions of this section, responsible for transportation and housing expenses of certain officers and employees of the territory of Guam, Congress had failed

to appropriate funds for the expense after fiscal year 1953 and territory of Guam had paid such expenses, claim against United States to recover funds expended by territory was one claim, indivisible, belonging only to the territory and none other than the territory was

Note 1

empowered to assert it. *Salas v. U.S.*,
C.A.Guam 1967, 384 F.2d 922.

§ 1421e. Duty on articles

All articles coming into the United States from Guam shall be subject to or exempt from duty as provided for in section 1301a of Title 19.

(Aug. 1, 1950, c. 512, § 27, 64 Stat. 392; Sept. 1, 1954, c. 1213, Title IV, § 402(b), 68 Stat. 1140.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1954 Act. Senate Report No. 2326, see
1954 U.S. Code Cong. and Adm. News, p.
3900.

References in Text

Section 1301a of Title 19, referred to
in text, was repealed by Pub.L. 87-456,
Title III, § 301(a), May 24, 1962, 76 Stat.
75.

Amendments

1954 Amendment. Act Sept. 1, 1954,
subjected Guam to the general provision
for importations from insular posses-

sions contained in section 1301a of Title
19, Customs Duties.

Effective Dates

1954 Act. Section 601 of Act Sept. 1,
1954, 68 Stat. 1141, provided that: "Tit-
les II, III, IV, and VI of this Act [enact-
ing section 1301a of Title 19, Customs
Duties, amending sections 1421e and
1644 of this title and sections 160,
161(a), 1001 (par. 1559), and 1201 (par.
1615(g)) of Title 19] shall be effective on
and after the thirtieth day following the
date of the enactment of this Act [Sept.
1, 1954]".

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1421f. Title to property transferred

(a) Property employed by naval government of Guam

The title to all property, real and personal, owned by the United States and employed by the naval government of Guam in the administration of the civil affairs of the inhabitants of Guam, including automotive and other equipment, tools and machinery, water and sewerage facilities, bus lines and other utilities, hospitals, schools, and other buildings, shall be transferred to the government of Guam within ninety days after August 1, 1950.

(b) Other property not reserved

All other property, real and personal, owned by the United States in Guam, not reserved by the President of the United States within ninety days after August 1, 1950, is placed under the control of the government of Guam, to be administered for the benefit of the people of Guam, and the legislature shall have authority, subject to such limitations as may be imposed upon its acts by this chapter or

subsequent Act of the Congress, to legislate with respect to such property, real and personal, in such manner as it may deem desirable.

(c) Secretary of the Interior; sale or lease

All property owned by the United States in Guam, the title to which is not transferred to the government of Guam by subsection (a) of this section, or which is not placed under the control of the government of Guam by subsection (b) of this section, is transferred to the administrative supervision of the Secretary of the Interior, except as the President may from time to time otherwise prescribe: *Provided*, That the Secretary of the Interior shall be authorized to lease or to sell, on such terms as he may deem in the public interest, any property, real and personal, of the United States under his administrative supervision in Guam not needed for public purposes.

(Aug. 1, 1950, c. 512, § 28, 64 Stat. 392; Sept. 11, 1968, Pub.L. 90-497, § 12(b), 82 Stat. 848.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. House Report No. 1521, see
1968 U.S. Code Cong. and Adm. News, p.
3564.

Amendments

1968 Amendment. Subsec. (c).
Pub.L. 90-497 substituted "the Secretary
of the Interior" for "the head of the
department or agency designated by the
President under section 1421a of this
title" in the main body of subsec. (c) and
"the Secretary of the Interior" for "the

head of such department or agency" in
the proviso.

Effective Dates

1968 Act. Amendment of section by
Pub.L. 90-497 necessary to authorize the
holding of an election for Governor and
Lieutenant Governor on Nov. 3, 1970,
effective Jan. 1, 1970, and all other
amendments unless otherwise provided
effective Jan. 4, 1971, see section 13 of
Pub.L. 90-497, set out as a note under
section 1422 of this title.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 10178

Oct. 30, 1950, 15 F.R. 7313

RESERVATION OF PROPERTY IN GUAM FOR USE OF UNITED STATES

WHEREAS section 28 of the Organic
Act of Guam, approved August 1, 1950
(Public Law 630, 81st Congress), reads:
"(a) The title to all property, real and
personal, owned by the United States
and employed by the naval government
of Guam in the administration of the
civil affairs of the inhabitants of Guam,
including automotive and other equip-
ment, tools and machinery, water and
sewerage facilities, bus lines and other
utilities, hospitals, schools, and other
buildings, shall be transferred to the

government of Guam within ninety days
after the date of enactment of this Act.

"(b) All other property, real and per-
sonal, owned by the United States in
Guam, not reserved by the President of
the United States within ninety days af-
ter the date of enactment of this Act, is
hereby placed under the control of the
government of Guam, to be adminis-
tered for the benefit of the people of
Guam, and the legislature shall have au-
thority, subject to such limitations as
may be imposed upon its acts by this Act

or subsequent Act of the Congress, to legislate with respect to such property, real and personal, in such manner as it may deem desirable.

"(c) All property owned by the United States in Guam, the title to which is not transferred to the government of Guam by subsection (a) hereof, or which is not placed under the control of the government of Guam by subsection (b) hereof, is transferred to the administrative supervision of the head of the department or agency designated by the President under section 3 of this Act, except as the President may from time to time otherwise prescribe: *Provided*, That the head of such department or agency shall be authorized to lease or to sell, on such terms as he may deem in the public interest, any property, real and personal, of the United States under his administrative supervision in Guam not needed for public purposes."

WHEREAS certain hereinafter-described real and personal property of the United States in Guam is required for the respective uses of the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Coast Guard, and it has been mutually agreed that the Department of the Navy shall act on behalf of the Department of the Army, the Department of the Air Force, and the Coast Guard with respect to their requirements as to such property;

WHEREAS certain other hereinafter-described real property of the United States in Guam has been selected by the Secretary of the Navy for transfer or sale pursuant to the act of November 15, 1945, 59 Stat. 584, to persons in replace-

ment of lands acquired for military or naval purposes in Guam, and such property should remain available for disposition by the Secretary of the Interior in his discretion under section 28(c) of the said Organic Act of Guam; and

WHEREAS certain other hereinafter-described personal property of the United States in Guam should remain available for the respective needs of the Department of the Army, the Department of the Navy, the Department of the Air Force, the Coast Guard, and other agencies of the United States:

NOW THEREFORE, by virtue of the authority vested in me by the said section 28 of the Organic Act of Guam, [this section], and as President of the United States, it is ordered as follows:

1. The following-described real and personal property of the United States in Guam is hereby reserved to the United States and placed under the control and jurisdiction of the Secretary of the Navy: *Provided*, That the Secretary of the Navy shall transfer such portions of such property to the Department of the Army, the Department of the Air Force, and the Coast Guard as may be required for their respective purposes:

(a) All of that real property in Guam situated within the perimeter areas defined in the following-designated condemnation proceedings in the Superior Court of Guam, being the same property quitclaimed by the Naval Government of Guam to the United States of America by deed dated July 31, 1950, and filed for record with the Land Registrar of Guam on August 4, 1950 (Presentation No 22063):

Condemnation proceedings Civil No.	Perimeter area	Facility
	<i>Acres</i>	
2-48	4,566.757	North Field.
5-48	9.372	Mt. Santa Rosa Water Reservoir and Supply Lines.
6-48	5.990	Mt. Santa Rosa-Marbo Water Lines.
7-48	5.990	Tumon Maui Well Site.
2-49	4,803.000	Naval Ammunition Depot.
3-49	44.651	Primary Transmission Line.
4-49	12.169	Mt. Santa Rosa-Marbo Water Line Easement.

Condemnation proceedings Civil No.	Perimeter area	Facility
	<i>Acres</i>	
5-49	6,332.000	Apra Harbor Reservation.
2-50	6.450	Aceorp Tunnel.
3-50	35.391	Camp Dealy.
4-50	0.637	Tumon Bay Recreation Area Utility Lines.
5-50	24.914	Agana Springs.
6-50	41.360	Asan Point Tank Farm.
7-50	85.032	Asan Point Housing.
8-50	137.393	Medical Center.
9-50	45.630	Agafa Gumas.
10-50	4,798.682	Naval Communication Station.
11-50	11.726	Nimitz Beach.
12-50	800.443	Command Center.
13-50	4,901.100	Tarague Natural Wells.
14-50	5.945	Agana Diesel Electric Generating Plant.
15-50	23.708	Mt. Santa Rosa Haul Road, Water Reservoir and Supply Lines, VHF Relay Station, Mt. Santa Rosa-Marbo Water Line.
16-50	4,562.107	Northwest Air Force Base.
18-50	60.480	Marbo Base Command Area—Sewage Disposal.
19-50	21.695	Loran Station Cocos Island.
20-50	15.322	Av-Gas Tank Farm #12.
21-50	1,820.148	Proposed Boundary of NAS Agana, Housing Area #7.
22-50	37.519	C. A. A. Site (Area #90).
23-50	3.575	Tumon Maui Well (Water Tunnel).
24-50	49.277	Tumon Bay Recreation Area (Road and AV-Gas Fuel Line Parcel #1).
25-50	0.208	Utility Easement from Rt. #1 to Rt. #6 (Coontz Junction).
26-50	65.300	Tumon Bay Recreation Area (Area #78).
27-50	2,497.400	Marbo Base Command.
28-50	0.918	Mt. Tenjo VHF Station Site.
29-50	285.237	Sasa Valley Tank Farm (Area #26).
30-50	17.793	Sub Transmission System Piti Steam Plant to Command Center.
31-50	28.888	Route #1 (Marine Drive) (Portion).
32-50	94.000	Sub Transmission System (34 KV Line) Piti Steam Plant to Agana Diesel Plant and POL System Sasa Valley Tank Farm to NAS Agana.
33-50	953.000	Harmon Air Force Base.
34-50	2,922.000	Radio Barrigada.
35-50	25.000	AACS Radio Range (Area #30).
36-50	37.000	Water Line Apra Heights Reservoir to Fena Pump Station and Av-Gas Fuel System.

(b) The road system and utilities systems described in the said deed between the Naval Government of Guam and the United States of America dated July 31, 1950.

(c) The following-described areas: Mount Lam Lam Light; Rear Range Light; Mount Aluton Light; Area Number 35 Culverts; Mount Santa Rosa Light; 36 acres of Camp Witek; Adelup Reservoir; Tripartite Seismograph Station Site, Land Unit M, Section 2, Land Square 20; the Power Sub-station located on Lot 266, Municipality of Agat adjacent to Erskine Drive, City of Agat.

(d) Lots 2285-5 and 2306-1 in Barrigada.

(e) All personal property relating to or used in connection with any of the above-described real property.

2. The following-described real property of the United States in Guam is hereby reserved to the United States and transferred to the administrative supervision of the Secretary of the Interior, and shall be available for disposition by the Secretary of the Interior in his discretion under section 28(c) of the said

Organic Act of Guam [subsection (c) of this section]:

All of those lands which have been selected by the Secretary of the Navy for transfer or sale pursuant to the act of November 15, 1945, 59 Stat. 584, to persons in replacement of lands acquired for military or naval purposes in Guam, a list and description of such lands being on file in the Department of the Navy.

3. In addition to the personal property described in paragraph 1(e) hereof, there is hereby reserved to the United States all personal property of the United States in Guam, except that which is transferred to the government of Guam by or pursuant to section 28(a) of the Organic Act of Guam [subsection (a) of this section], which on the date of this order [Oct. 30, 1950] is in the custody or control of the Department of the Army, the Department of the Navy, the Department of the Air Force, the Coast Guard, or any other department or agency of the United States; and all such personal property shall remain in the custody and control of the department or agency having custody and control thereof on the date of this order [Oct. 30, 1950].

HARRY S. TRUMAN

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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1. Waters of Guam

The waters immediately adjacent to Naval Communication Station in Guam, and below low-water mark, are outside exclusive jurisdiction of United States and are a proper subject of legislation by Guam Legislature. *U.S. v. Borja*, D.C. Guam 1961, 191 F.Supp. 563.

2. Conditions on sale

The Guam Legislature is part of the "Government of Guam," within meaning of this chapter and, as such, can put appropriate lawful conditions on any request by the Governor to the Secretary of the Interior to sell, lease or otherwise dispose of lands transferred by the United States to Guam. *Bordallo v. Camacho*, C.A.Guam 1973, 475 F.2d 712.

§ 1421f-1. Acknowledgment of deeds

Deeds and other instruments affecting land situate in the District of Columbia or any Territory of the United States may be acknowledged in the islands of Guam and Samoa or in the Canal Zone before any notary public or judge, appointed therein by proper authority, or by any officer therein who has ex officio the powers of a notary public: *Provided*, That the certificate by such notary in

Guam, Samoa, or the Canal Zone, as the case may be, shall be accompanied by the certificate of the governor or acting governor of such place to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since the 1st day of January, 1905, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified.

(June 28, 1906, c. 3585, 34 Stat. 552.)

HISTORICAL AND STATUTORY NOTES

References in Text

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Section is also classified to section 1663 of this title.

Section was formerly classified to sections 1358 and 1432 of this title.

Codifications

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

Section is also set out in D.C. Code, § 45-605.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1421g. Establishment and maintenance of public bodies and offices

(a) Public health services

Subject to the laws of Guam, the Governor shall establish, maintain, and operate public-health services in Guam, including hospitals, dispensaries, and quarantine stations, at such places in Guam as may be necessary, and he shall promulgate quarantine and sanitary regulations for the protection of Guam against the importation and spread of disease.

(b) Public educational system

The Government of Guam shall provide an adequate public educational system of Guam, and to that end shall establish, maintain, and operate public schools according to the laws of Guam.

(c) Office of Public Prosecutor; Office of Public Auditor

The Government of Guam may by law establish an Office of Public Prosecutor and an Office of Public Auditor. The Public Prosecutor and Public Auditor may be removed as provided by the laws of Guam.

(Aug. 1, 1950, c. 512, § 29, 64 Stat. 392; Aug. 27, 1986, Pub.L. 99-396, §§ 5, 13(a), 100 Stat. 839, 842.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1986 Act. Senate Report No. 99-236, see 1986 U.S.Code Cong. and Adm. News, p. 1843.

Amendments
1986 Amendment. Subsec. (b). Pub.L. 99-396, § 5, substituted "Government of Guam" for "Governor".

Pub.L. 99-396, § 13(a)(1), substituted "according to the laws of Guam" for "at such places in Guam as may be necessary".

Subsec. (c). Pub.L. 99-396, § 13(a)(2), added subsec. (c).

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. **Exclusiveness of jurisdiction**

Section of Guam Organic Act which provides governor shall provide adequate public education system for Guam does not give governor authority over

school system exclusive of any other concurrent legislative authority. *Brown v. Civil Service Com'n, C.A.9 (Guam) 1987, 818 F.2d 706.*

§ 1421h. Duties, taxes, and fees; proceeds collected to constitute fund for benefit of Guam; prerequisites, amount, etc., remitted prior to commencement of next fiscal year

All customs duties and Federal income taxes derived from Guam, the proceeds of all taxes collected under the internal-revenue laws of the United States on articles produced in Guam and transported to the United States, its Territories, or possessions, or consumed in Guam, and the proceeds of any other taxes which may be levied by the Congress on the inhabitants of Guam (including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilians and military employees of the United States, or their survivors, who are residents of, or who are domiciled in, Guam), and all quarantine, passport, immigration, and naturalization fees collected in Guam shall be covered into the treasury of Guam and held in account for the government of Guam, and shall be expended for the benefit and government of Guam in accordance with the annual budgets; except that nothing in this chapter shall be construed to apply to any tax imposed by chapter 2 or 21 of Title 26. Beginning as soon as the government of Guam enacts legislation establishing a fiscal year commencing on October 1 and ending on September 30, the Secretary of the Treasury, prior to the commencement of any fiscal year, shall remit to the government of Guam the amount of duties, taxes, and fees which the governor of Guam, with the concurrence of the government comptroller of Guam, has estimated will be collected in or derived from Guam under this section during the next fiscal year, except for

those sums covered directly upon collection into the treasury of Guam. The Secretary of the Treasury shall deduct from or add to the amounts so remitted the difference between the amount of duties, taxes, and fees actually collected during the prior fiscal year and the amount of such duties, taxes, and fees as estimated and remitted at the beginning of that prior fiscal year, including any deductions which may be required as a result of the operation of Public Law 94-395 (90 Stat. 1199) or Public Law 88-170, as amended (82 Stat. 863).

(Aug. 1, 1950, c. 512, § 30, 64 Stat. 392; Sept. 13, 1960, Pub.L. 86-778, Title I, § 103(u), 74 Stat. 941; Aug. 18, 1978, Pub.L. 95-348, § 1(c), 92 Stat. 488; Oct. 5, 1984, Pub.L. 98-454, Title VI, § 601(h), 98 Stat. 1736.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1960 Act. Senate Report No. 1856, see 1960 U.S.Code Cong. and Adm. News, p. 3608.

1984 Act. House Report No. 98-784, see 1984 U.S. Code Cong. and Adm. News, p. 2908.

References in Text

The internal-revenue laws of the United States, referred to in text, are classified generally to Title 26, Internal Revenue Code.

Pub.L. 94-395 (90 Stat. 1199), referred to in text, was enacted Sept. 3, 1976, and amended section 1423a of this title.

Pub.L. 88-170, as amended (82 Stat. 863), referred to in text, is Pub.L. 88-170, Nov. 4, 1963, 77 Stat. 302, as amended by Pub.L. 90-511, Sept. 24, 1968, 82 Stat. 863, which is not classified to the Code.

Amendments

1984 Amendment. Pub.L. 98-454 added "(including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilians and military employees of the United States, or their survivors, who are residents of, or who are domiciled in, Guam)" after "inhabitants of Guam" in the first sentence.

1978 Amendment. Pub.L. 95-348 added provisions relating to authorization, amount, computation, etc., of remittance, prior to commencement of any fiscal year, of duties, taxes, and fees to be collected in or derived from Guam under this section during that next fiscal year.

1960 Amendment. Pub.L. 86-778 inserted clause providing that nothing in this chapter shall be construed to apply to any tax imposed by chapter 2 or 21 of Title 26.

CROSS REFERENCES

- Administration and collection of taxes in possessions generally, see 26 USCA § 7651.
- Payment to Guam of proceeds of tax collected on coconut and palm oil, see 26 USCA § 7653.
- Power of legislature of Guam, etc., see 48 USCA § 1423a.

LIBRARY REFERENCES

American Digest System

Disposition of proceeds of income tax, see Taxation ⇨1104.

Encyclopedias

Right of government of Guam to proceeds of income tax collected from inhabitant of Guam, see C.J.S. Taxation § 1110(1).

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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1. Purpose

Under section 1421 et seq. of this title, Congress intended employees who earn income for personal services in Guam to pay income tax imposed by provisions of Act into the territorial treasury to sustain the local government of the island. *Lamkin v. Brown & Root, Inc.*, C.A. Guam 1956, 233 F.2d 320.

2. Withholding of taxes

Where corporate employer of taxpayer in Guam withheld income-tax payments and paid them to Acting Treasurer of Guam under this section, providing that

federal income taxes derived from Guam shall be covered into the treasury of Guam and held in account for that government, and section 1421i of this title, providing that income-tax laws in force in the United States and those which hereafter may be enacted shall be in force in Guam, and the United States construed these sections as establishing territorial tax to be administered by officials of Guam, taxpayer could not be heard to say that tax should be returned to him in order that it be paid to United States and returned to Guam treasury from which it was taken. *Laguana v. Ansell*, D.C. Guam 1952, 102 F.Supp. 919, affirmed 212 F.2d 207, certiorari denied 75 S.Ct. 51, 348 U.S. 830, 99 L.Ed. 654.

§ 1421i. Income tax**(a) Applicability of Federal laws; separate tax**

The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam: *Provided*, That notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam.

(b) Guam Territorial income tax

The income-tax laws in force in Guam pursuant to subsection (a) of this section shall be deemed to impose a separate Territorial income tax, payable to the government of Guam, which tax is designated the "Guam Territorial income tax".

(c) Enforcement of tax

The administration and enforcement of the Guam Territorial income tax shall be performed by or under the supervision of the Governor. Any function needful to the administration and enforcement of the income-tax laws in force in Guam pursuant to subsection (a) of this section shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly, or indirectly by one or more redelegations of authority) to perform such function.

(d) "Income-tax laws" defined; administration and enforcement; rules and regulations

(1) The income-tax laws in force in Guam pursuant to subsection (a) of this section include but are not limited to the following provisions of the Internal Revenue Code of 1954, where not manifestly inapplicable or incompatible with the intent of this section: Subtitle A [26 U.S.C.A. § 1 et seq.] (not including chapter 2 [26 U.S.C.A. § 1401 et seq.] and section 931 [26 U.S.C.A. § 931]); chapters 24 and 25 of subtitle C [26 U.S.C.A. §§ 3401 et seq. and 3501 et seq.], with reference to the collection of income tax at source on wages; and all provisions of subtitle F [26 U.S.C.A. § 6001 et seq.] which apply to the income tax, including provisions as to crimes, other offenses, and forfeitures contained in chapter 75 [26 U.S.C.A. § 7201 et seq.]. For the period after 1950 and prior to the effective date of the repeal of any provision of the Internal Revenue Code of 1939 which corresponds to one or more of those provisions of the Internal Revenue Code of 1954 which are included in the income-tax laws in force in Guam pursuant to subsection (a) of this section, such income-tax laws include but are not limited to such provisions of the Internal Revenue Code of 1939.

(2) The Governor or his delegate shall have the same administrative and enforcement powers and remedies with regard to the Guam Territorial income tax as the Secretary of the Treasury, and other United States officials of the executive branch, have with respect to the United States income tax. Needful rules and regulations not inconsistent with the regulations prescribed under section 7654(e) of the Internal Revenue Code of 1954 [26 U.S.C.A. § 7654(e)] for enforcement of the Guam Territorial income tax shall be prescribed by the Governor. The Governor or his delegate shall have authority to issue, from time to time, in whole or in part, the text of the income-tax laws in force in Guam pursuant to subsection (a) of this section.

(e) Substitution of terms

In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, except where it is manifestly otherwise required, the applicable provisions of the Internal Revenue Codes of 1954 and 1939, shall be read so as to substitute "Guam" for "United States", "Governor or his delegate" for "Secretary or his delegate", "Governor or his delegate" for "Commissioner of Internal Revenue" and "Collector of Internal Revenue", "District Court of Guam" for "district court" and with other changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effect the intent of this section.

(f) Criminal offenses; prosecution

Any act or failure to act with respect to the Guam Territorial income tax which constitutes a criminal offense under chapter 75 of subtitle F of the Internal Revenue Code of 1954 [26 U.S.C.A. § 7201 et seq.], or the corresponding provisions of the Internal Revenue Code of 1939, as included in the income-tax laws in force in Guam pursuant to subsection (a) of this section, shall be an offense against the government of Guam and may be prosecuted in the name of the government of Guam by the appropriate officers thereof.

(g) Liens

The government of Guam shall have a lien with respect to the Guam Territorial income tax in the same manner and with the same effect, and subject to the same conditions, as the United States has a lien with respect to the United States income tax. Such lien in respect of the Guam Territorial income tax shall be enforceable in the name of and by the government of Guam. Where filing of a notice of lien is prescribed by the income-tax laws in force in Guam pursuant to subsection (a) of this section, such notice shall be filed in the Office of the Clerk of the District Court of Guam.

(h) Jurisdiction of District Court; suits for recovery or collection of taxes; payment of judgment

(1) Notwithstanding any provision of section 1424 of this title or any other provision of law to the contrary, the District Court of Guam shall have exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and civil, regardless of the degree of the offense or of the amount involved, with respect to the Guam Territorial income tax.

(2) Suits for the recovery of any Guam Territorial income tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, under the income-tax laws in force in Guam, pursuant to subsection (a) of this section, may, regardless of the amount of claim, be maintained against the government of Guam subject to the same statutory requirements as are applicable to suits for the recovery of such amounts maintained against the United States in the United States district courts with respect to the United States income tax. When any judgment against the government of Guam under this paragraph has become final, the Governor shall order the payment of such judgments out of any unencumbered funds in the treasury of Guam.

(3) Execution shall not issue against the Governor or any officer or employee of the government of Guam on a final judgment in any proceeding against him for any acts or for the recovery of money exacted by or paid to him and subsequently paid into the treasury of Guam, in performing his official duties under the income-tax laws in force in Guam pursuant to subsection (a) of this section, if the court certifies that—

(A) probable cause existed; or

(B) such officer or employee acted under the directions of the Governor or his delegate.

When such certificate has been issued, the Governor shall order the payment of such judgment out of any unencumbered funds in the treasury of Guam.

(4) A civil action for the collection of the Guam Territorial income tax, together with fines, penalties, and forfeitures, or for the recovery of any erroneous refund of such tax, may be brought in the name of and by the government of Guam in the District Court of Guam or in any district court of the United States or in any court having the jurisdiction of a district court of the United States.

(5) The jurisdiction conferred upon the District Court of Guam by this subsection shall not be subject to transfer to any other court by the legislature, notwithstanding section 1424(a) of this title.

(Aug. 1, 1950, c. 512, § 31, 64 Stat. 392; Aug. 20, 1958, Pub.L. 85-688, § 1, 72 Stat. 681; Oct. 31, 1972, Pub.L. 92-606, § 1(d), 86 Stat. 1497; Oct. 15, 1977, Pub.L. 95-134, Title II, § 203(c), 91 Stat. 1162.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1958 Act. Senate Report No. 2176, see 1958 U.S. Code Cong. and Adm. News, p. 3647.

1972 Act. House Report No. 92-1479, see 1972 U.S. Code Cong. and Adm. News, p. 5401.

1977 Act. Senate Report No. 95-332, see 1977 U.S. Code Cong. and Adm. News, p. 3000.

References in Text

The income tax laws, referred to in text, are classified generally to Title 26, Internal Revenue Code.

The Internal Revenue Code of 1954, referred to in subssecs. (d) to (f), is classified generally to Title 26. The Internal Revenue Code of 1954 was redesignated as the Internal Revenue Code of 1986, with any reference to either the Internal Revenue Code of 1954 or the Internal

Revenue Code of 1986 deemed to include a reference to the other, pursuant to Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, set out as a note preceding section 1 of Title 26.

The Internal Revenue Code of 1939, referred to in subssecs. (d)(1), (e), and (f), was generally repealed by section 7851 of the Internal Revenue Code of 1954, Title 26. For table of comparisons of the 1939 Code to the 1954 Code, see Table I following the last section of Title 26, Internal Revenue Code. See also section 7852(b) of Title 26, Internal Revenue Code, for provision that references in any other law to a provision of the 1939 Code, unless expressly incompatible with the intent thereof, shall be deemed a reference to the corresponding provision of the 1954 Code.

Subtitle A (not including chapter 2 and section 931) and chapters 24 and 25 of

subtitle C, referred to in subsec. (d)(1), and subtitle F and chapter 75, referred to in subsecs. (d)(1) and (f), mean subtitle A (section 1 et seq.), chapter 2 (section 1401 et seq.) of subtitle A, chapters 24 (section 3401 et seq.) and 25 (section 3501 et seq.) of subtitle C, subtitle F (section 6001 et seq.) and chapter 75 (section 7201 et seq.) of subtitle F, respectively, of Title 26.

Amendments

1977 Amendment. Subsec. (a). Pub.L. 95-134 added provision that the Legislature of Guam may levy a separate tax on taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam.

1972 Amendment. Subsec. (d)(2). Pub.L. 92-606 substituted "Needful rules and regulations not inconsistent with the regulations prescribed under section 7654(e) of the Internal Revenue Code of 1954" for "Needful rules and regulations".

1958 Amendment. Pub.L. 85-688 designated existing provisions as subsec. (a), and added subsecs. (b) to (h).

Effective Dates

1972 Act. Amendment by Pub.L. 92-606 applicable with respect to taxable years beginning after Dec. 31, 1972, see section 2 of Pub.L. 92-606, set out in part as a note under section 935 of Title 26, Internal Revenue Code.

1950 Act. Section became effective Jan. 1, 1951 by provision of Ex.Ord.No. 10211, Feb. 6, 1951, 16 F.R. 1167.

Ratification of Assessments and Collections Made Before August 20, 1958

Section 2 of Pub.L. 85-688 provided that income taxes assessed prior to Aug. 20, 1958, by the authorities of the government of Guam pursuant to, or under color of, this section, the collection of such taxes, and all acts done to effectuate such assessment and collection were legalized, ratified and confirmed as fully, to all intents and purposes, as if subsecs. (b) to (h) of this section, had then been in full force and effect.

CROSS REFERENCES

All provisions of laws of United States applicable to assessment and collection of taxes imposed by Internal Revenue Code as applicable to possessions, see 26 USCA § 7651.

Articles, goods, wares, or merchandise going into Guam as exempt from payment of any tax imposed by internal revenue laws of United States, see 26 USCA § 7653.

Coordination of United States and territorial individual income taxes, see 26 USCA § 7654.

LIBRARY REFERENCES

American Digest System

Federal income tax and income from sources within possessions, see Internal Revenue ¶4121.

Power of territories to tax, see Taxation ¶19.

Encyclopedias

Application of Internal Revenue Code, see C.J.S. Territories § 6.

Enforcement of territorial income tax of Guam, see C.J.S. Taxation § 1107. Guam and income taxes, see C.J.S. Internal Revenue, § 440.

Power of territories to tax, see C.J.S. Taxation § 4.

Statute as creating separate tax for Guam, see C.J.S. Taxation § 1089.

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1. Constitutionality

This section ratifying assessments and collection of income taxes by the government of Guam was not unconstitutional on theory that it was retroactive and thus violative of due process. *Jennings v. U.S.*, 1958, 168 F.Supp. 781, 144 Ct.Cl. 28.

2. Construction

Any deviation from the intended dual structure by substantive revision of basic scheme of the Internal Revenue Code as applied to Guam must be left to Congress and court may not adopt a construction inconsistent with this section simply because it considers result more equitable. *Sayre & Co. v. Riddell*, C.A. Guam 1968, 395 F.2d 407.

3. Purpose

Congress intended that Guam should apply the Internal Revenue Code with deletions prescribed by provisions of this section to persons and income within its territories just as United States applies code to persons and income within its territory. *Sayre & Co. v. Riddell*, C.A. Guam 1968, 395 F.2d 407.

This section, read as whole, exhibited intent to apply to Guam substantive provisions of income tax laws of the United States (with specified exceptions), except where manifestly inapplicable or incompatible with intent of that section, and any adaptation of United States Internal Revenue Code which could not be so justified would not be authorized. *Government of Guam v. Koster*, C.A. Guam 1966, 362 F.2d 248.

When Congress created territorial income tax for Guam, Congress intended that such tax should be assessed and collected on same basis as federal income taxes. *Government of Guam v.*

Kaanehe, D.C.Guam 1954, 124 F.Supp. 15.

4. Rules and regulations

Modification in scope of tax effected by redefinition of "gross income" to exclude income not derived or earned in Guam went to substance and not to administration or collection and was not within authority impliedly conferred upon Guam officials to make needful rules and regulations for enforcement of Guam Territorial income tax. *Government of Guam v. Koster*, C.A.Guam, 1966, 362 F.2d 248.

5. Equal protection

A territory of the United States is entitled to great flexibility in fashioning classifications for purpose of taxation so long as such classifications do not violate equal protection. *Flores v. Government of Guam*, C.A.Guam 1971, 444 F.2d 284.

6. Taxable year

Where, as part of the Organic Act of Guam, section 1421 et seq. of this title, Congress provided that the income tax laws enforced in the United States and those which might thereafter be enacted should be likewise enforced in Guam, and such provision became effective as of January 1, 1951, calendar year 1950 was not a "taxable year" within meaning of the Federal Income Tax Laws which, by reference, became Guam Income Tax Laws, and, therefore Guam taxpayer was not entitled to carry forward 1950 loss for income tax purposes in returns for subsequent years. *Pacific Wholesalers, Inc. v. Mangerich*, D.C.Guam, 1957, 147 F.Supp. 867.

7. Sources of income within United States

Section 932 of Title 26 which provides that any individual who is a citizen of any possession of the United States, but not otherwise a citizen of United States, and who is not a resident of the United States shall be subject to taxation only as to income derived from sources within the United States is not a valid part of the Guamanian territorial income tax laws. *Flores v. Government of Guam*, C.A.Guam 1971, 444 F.2d 284.

For purposes of Guam income tax, which is an adaptation of federal income tax laws, a domestic corporation must be deemed as one created or organized in

Note 7

Guam when applying Internal Revenue Code provision imposing 30% tax on gross income received from sources within United States by a foreign corporation. *Sayre & Co. v. Riddell, C.A. Guam 1968, 395 F.2d 407.*

This section and section 1421h of this title were intended to impose full burden of income taxation, measured by the federal tax, in territory of Guam, and taxpayer in Guam would not be entitled to benefit of provisions in the federal income tax laws, sections 251 and 252 of Title 26, granting exemptions from taxation on income derived from sources within possession of the United States. *Laguana v. Ansell, D.C.Guam 1952, 102 F.Supp. 919, affirmed 212 F.2d 207, certiorari denied 75 S.Ct. 51, 348 U.S. 830, 99 L.Ed. 654.*

8. Deductions from income

Interest and commissions received by Hawaii corporation from a Guam sole proprietorship whose payments were deductible business expenses were subject to the 30% tax imposed by Guam on gross income received by a foreign corporation. *Sayre & Co. v. Riddell, C.A. Guam 1968, 395 F.2d 407.*

9. Collection or enforcement

Complaint by citizens of Territory of Guam to recover income taxes assertedly illegally collected was insufficient, in view of section 1421 et seq. of this title, which imposes a separate territorial income tax to be enforced by the proper officials of the government of Guam. *Phelan v. Taitano, C.A.Guam 1956, 233 F.2d 117.*

This section providing that the income tax laws in force in the United States shall be likewise in force in Guam, imposes a separate territorial income tax to be enforced by the proper officials of the government of Guam. *Wilson v. Kennedy, C.A.Guam 1956, 232 F.2d 153.*

This section, providing that income tax laws in force in United States should be likewise in force in Guam, made the Internal Revenue Code of the United States a territorial tax law of Guam, to be enforced by Guamanian officials. *Government of Guam v. Kaanehe, D.C. Guam 1956, 137 F.Supp. 189.*

This section and section 1421h of this title, providing that federal income taxes derived from Guam shall be covered into

the treasury of Guam and held in account for government of Guam, and shall be expended for benefit and government of Guam in accordance with annual budgets, and providing that the income-tax laws in force in the United States and those which may hereafter be enacted shall be in force in Guam, impose a territorial tax to be collected by the proper officials of the government of Guam. *Laguana v. Ansell, D.C.Guam 1952, 102 F.Supp. 919, affirmed 212 F.2d 207, certiorari denied 75 S.Ct. 51, 348 U.S. 830, 99 L.Ed. 654.*

This section creates tax liability of taxpayer on Guam on same basis as if taxpayer were resident in continental United States and Government of Guam is entitled to such tax regardless of which government collects it. *Crain v. Government of Guam, D.C.Guam 1951, 97 F.Supp. 433, affirmed 195 F.2d 414.*

10. Time of payment

Under this section making federal income tax applicable in Territory, Guam was obliged to give, so far as it could, same rights to "dally" to one paying taxes in Guam as he would have had on mainland. *Bromberg v. Ingling, C.A. Guam 1962, 300 F.2d 859.*

11. Failure to pay collected tax

Where taxi dance hall operator had withheld from his employees, and had duly reported, but had failed to pay income tax to Guam Treasury, he had not committed offense of grand theft, in nature of embezzlement, under Guam Penal Code, §§ 490a, 506, even though section 3661 of Title 26, created trust relationship, since such Guam Penal Code provision was not included within Title 26. *Government of Guam v. Kaanehe, D.C.Guam 1954, 124 F.Supp. 15.*

12. Notice of deficiency

Even though Guam taxpayers had, on January 20, 1958, no right anywhere to review without payment of income tax, they were nevertheless entitled to same notice before assessment as if they had right to Tax Court or Tax Court type of review, and assessment made simultaneously with announcement of deficiency was void. *Bromberg v. Ingling, C.A. Guam 1962, 300 F.2d 859.*

13. Recovery of taxes

Where income taxes assessed and collected by the government of Guam on

Income received by construction workers employed by private employers engaged in performance of federal construction contracts on Guam was collected by the territorial government of Guam and went into the treasury of Guam for use in meeting governmental needs of the territory pursuant to taxes imposed upon plaintiff under a separate territorial tax law, and not under federal income tax laws of the United States, suit for recovery of such taxes could be brought only against the government of Guam, not against the United States. *Jennings v. U.S., 1958, 168 F.Supp. 781, 144 Ct.Cl. 28.*

14. Three-judge court

Suit to enjoin tax officials of the territorial government of Guam from enforcing applicable provisions of United States Revenue Code, section 1 et seq. of Title 26, for assessment and collection of territorial income tax imposed by this chapter and for a judgment declaring that such officials had no authority with reference to income tax laws of the United States did not raise such a substantial question as to constitutionality of this section, declaring income tax laws of United States in force in the territory, as would justify convening a three-judge court, particularly where such court would be without jurisdiction to consider the question of injunction under allegations of complaint. *Holbrook v. Taitano, D.C.Guam 1954, 125 F.Supp. 14.*

15. Jurisdiction of district court

District Court of Guam had jurisdiction of suit to redetermine deficiencies assessed under territorial income tax law. *Forbes v. Maddox, C.A.Guam 1964, 339 F.2d 387.*

§ 1421j. Authorization of appropriations

There are authorized to be appropriated annually by the Congress of the United States such sums as may be necessary and appropriate to carry out the provisions and purposes of this chapter.

(Aug. 1, 1950, c. 512, § 32, 64 Stat. 392.)

HISTORICAL AND STATUTORY NOTES

Elimination of General Fund Deficits of Guam and Virgin Islands
For authorization of appropriations for assistance to the governments of Guam and the Virgin Islands in elimina-

tion of general fund deficits, see Pub.L. 96-597, Title VI, § 607, Dec. 24, 1980, 94 Stat. 3483, set out as a note under section 1641 of this title.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1421k. Designation of naval or military reservations; closed port

Nothing contained in this chapter shall be construed as limiting the authority of the President to designate parts of Guam as naval or military reservations, nor to restrict his authority to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations.

(Aug. 1, 1950, c. 512, § 33, 64 Stat. 393.)

CROSS REFERENCES

Conveyance of submerged lands to government of Guam, see 48 USCA § 1701 et seq.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS**1. Construction with Executive Orders**

This chapter, providing government for Guam did not by implication repeal Ex.Ord. No. 8683 reserving territorial waters between extreme high-water marks and three-mile boundaries sur-

rounding Guam as naval defensive area and providing that no person, unless on public vessel of United States, shall enter area. U.S. v. Angcog, D.C.Guam 1961, 190 F.Supp. 696.

§ 1421k-1. Delegate from Guam to United States House of Representatives; clerk hire allowance and transportation expenses

Notwithstanding any other provision of law, the clerk hire allowance and the transportation expenses subject to reimbursement under Federal law of the Delegate from Guam to the United States House of Representatives shall each be the same as allowed for Members of the United States House of Representatives.

(Aug. 1, 1950, c. 512, § 35, as added May 27, 1975, Pub.L. 94-26, § 1, 89 Stat. 94.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1975 Act. The purpose of H.R. 4269 is to amend the Organic Act of Guam and the Revised Organic Act of the Virgin Islands to provide that the clerk hire allowance and the transportation ex-

penses subject to reimbursement under Federal law of the Delegate from Guam and the Delegate from the Virgin Islands shall be the same as allowed for Members of the U.S. House of Representa-

The legislation in the 92d Congress which created the positions of Virgin Islands Delegate and Guam Delegate authorized for these Delegates 60 percent of the clerk hire allowance provided to Members and to the Resident Commissioner of Puerto Rico. Similarly, it authorized the Delegates only four annual round trips between Washington and their home districts, whereas Members and the Resident Commissioner of Puerto Rico are allowed 36 round trips in each Congress.

In practice, the limited clerk hire allowance has proved inadequate for a variety of reasons, including the fact that because of their isolated and insular locations, the governments of Guam and the Virgin Islands rely more heavily on the offices of their congressional representatives in their Federal relationships than do State and local governments of the mainland. Additionally, since neither Guam nor the Virgin Islands has representation in the U.S. Senate, the

Delegates' staffs must review legislation as it proceeds in the Senate as well as in the House of Representatives. In addition to the routine congressional functions, the workload in the offices of the island Delegates must include specialized monitoring of complex legislation in alien affairs, taxation, maritime matters, trade, and, in the case of Guam, military installation policy and planning.

The representation envisioned by the Congress with the creation of the Delegate positions has been impeded also by the existing restriction on travel allowances. In order that the residents of Guam and the Virgin Islands become familiar with the functioning of their recently acquired democratic representation, there is a need for frequent meetings with constituents that at least equals the needs in the congressional districts that have had a traditional voice in Federal affairs for a century or more. Senate Report No. 94-140.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1421l. Repealed. June 27, 1952, c. 477, § 403(a)(42), 66 Stat. 280

HISTORICAL AND STATUTORY NOTES

Section, Act Oct. 14, 1940, c. 876, § 206, as added Aug. 1, 1950, c. 512, § 4(a), 64 Stat. 384, granted United

States citizenship to persons born or living on Guam on or after Apr. 11, 1899.

§ 1421m. Repealed. Pub.L. 91-513, Title III, § 1101(a)(8), Oct. 27, 1970, 84 Stat. 1292

HISTORICAL AND STATUTORY NOTES

Section, Act Aug. 1, 1956, c. 852, § 15, 70 Stat. 910, prohibited the production, manufacture, compounding, possession, sale, dispensation, administration, or transportation of marihuana in Guam. See section 801 et seq. of Title 21, Food and Drugs. Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

Oct. 26, 1970, see section 1105(a) of Pub.L. 91-513, set out as a note under section 951 of Title 21, Food and Drugs.

Savings Provisions

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunction proceedings commenced, prior to the effective date of repeal of this section by section 1101 of Pub.L. 91-513 not to be affected or abated by reason thereof, see section 1103 of

Effective Date of Repeal

Repeal effective on the first day of the seventh calendar month that begins after

Pub.L. 91-513, set out as a note under section 171 of Title 21, Food and Drugs.

§ 1421n. Applicability of Federal copyright laws

The laws of the United States relating to copyrights, and to the enforcement of rights arising thereunder, shall have the same force and effect in Guam as in the continental United States.

(Aug. 1, 1956, c. 852, § 24, 70 Stat. 911.)

HISTORICAL AND STATUTORY NOTES

References in Text

The laws of the United States relating to copyrights, referred to in text, are classified generally to Title 17, Copyrights.

Codifications

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1421o. Federal assistance for fire control, watershed protection, and reforestation

The Secretary of Agriculture is authorized to provide financial and technical assistance to Guam for improving fire control, watershed protection and reforestation, consistent with existing laws, administered by the Secretary of Agriculture, which are applicable to the continental United States. The program authorized by this section shall be developed in cooperation with the territorial government of Guam and shall be covered by a memorandum of understanding agreed to by the territorial government and the Department. The Secretary may also utilize the agencies, facilities, and employees of the Department, and may cooperate with other public agencies and with private organizations and individuals in Guam and elsewhere.

(Pub.L. 93-421, § 1, Sept. 19, 1974, 88 Stat. 1154.)

HISTORICAL AND STATUTORY NOTES

Codifications

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1421p. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of section 1421o of this title. Sums appropriated in pursuance of sections 1421o and 1421p of this title may be allocated to such agencies of the Department as are concerned with the administration of the program in Guam.

(Pub.L. 93-421, § 2, Sept. 19, 1974, 88 Stat. 1154.)

HISTORICAL AND STATUTORY NOTES

Codifications

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1421q. Applicability of Federal laws

The laws of the United States which are made applicable to the Northern Mariana Islands by the provisions of section 502(a)(1) of H.J.Res. 549, as approved by the House of Representatives and the Senate, except for section 228 of Title II [42 U.S.C.A. § 428] and Title XVI of the Social Security Act [42 U.S.C.A. § 1381 et seq.] as it applies to the several States and the Micronesia Claims Act [50 App. U.S.C.A. § 2018 et seq.] as it applies to the Trust Territory of the Pacific Islands, shall be made applicable to Guam on the same terms and conditions as such laws are applied to the Northern Mariana Islands.

(Pub.L. 94-255, § 2, Apr. 1, 1976, 90 Stat. 300.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 502(a)(1) of H.J.Res. 549, referred to in text, is section 502(a)(1) of Pub.L. 94-241, Mar. 24, 1976, 90 Stat. 263, which is set out as a note under section 1681 of this title.

The Social Security Act, referred to in text, is Act Aug. 14, 1935, c. 531, 49 Stat. 620, as amended. Title XVI of the Social Security Act is classified generally to subchapter XVI (section 1381 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classifica-

tion of this Act to the Code, see section 1305 of Title 42 and Tables volume.

The Micronesia Claims Act, referred to in text, probably means the Micronesian Claims Act of 1971, Pub. L. 92-39, July 1, 1971, 85 Stat. 92, as amended, which was classified generally to section 2018 et seq. of Title 50, App., War and National Defense, and which was omitted from the Code as terminated Aug. 3, 1976.

Codifications

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

SUBCHAPTER II—THE EXECUTIVE BRANCH

§ 1422. Governor and Lieutenant Governor; term of office; qualifications; powers and duties; annual report to Congress

The executive power of Guam shall be vested in an executive officer whose official title shall be the "Governor of Guam". The Governor of Guam, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices. If no candidates receive a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes cast. The first election for Governor and Lieutenant Governor shall be held on November 3, 1970. Thereafter, beginning with the year 1974, the Governor and Lieutenant Governor shall be elected every four years at the general election. The Governor and Lieutenant Governor shall hold office for a term of four years and until their successors are elected and qualified.

No person who has been elected Governor for two full successive terms shall again be eligible to hold that office until one full term has intervened.

The term of the elected Governor and Lieutenant Governor shall commence on the first Monday of January following the date of election.

No person shall be eligible for election to the office of Governor or Lieutenant Governor unless he is an eligible voter and has been for five consecutive years immediately preceding the election a citizen of the United States and a bona fide resident of Guam and will be, at the time of taking office, at least thirty years of age. The Governor shall maintain his official residence in Guam during his incumbency.

The Governor shall have general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam. He may grant pardons and reprieves and remit fines and forfeitures for offenses against local laws. He may veto any legislation as provided in this

chapter. He shall appoint, and may remove, all officers and employees of the executive branch of the government of Guam, except as otherwise provided in this or any other Act of Congress, or under the laws of Guam, and shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Guam and the laws of the United States applicable in Guam. Whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, he may summon the posse comitatus or call out the militia or request assistance of the senior military or naval commander of the Armed Forces of the United States in Guam, which may be given at the discretion of such commander if not disruptive of, or inconsistent with, his Federal responsibilities. He may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, proclaim the island, insofar as it is under the jurisdiction of the government of Guam, to be under martial law. The members of the legislature shall meet forthwith on their own initiative and may, by a two-thirds vote, revoke such proclamation.

The Governor shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress. The Governor shall transmit the comprehensive annual financial report to the Inspector General of the Department of the Interior who shall audit it and report his findings to the Congress. The Governor shall also make such other reports at such other times as may be required by the Congress or under applicable Federal law. He shall also submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken or contemplated on Federal audit recommendations within sixty days after the issuance date of the audit report. He shall have the power to issue executive orders and regulations not in conflict with any applicable law. He may recommend bills to the legislature and give expression to his views on any matter before that body.

There is hereby established the office of Lieutenant Governor of Guam. The Lieutenant Governor shall have such executive powers

and perform such duties as may be assigned to him by the Governor or prescribed by this chapter or under the laws of Guam.

(Aug. 1, 1950, c. 512, § 6, 64 Stat. 386; Sept. 11, 1968, Pub.L. 90-497, § 1, 82 Stat. 842; Oct. 19, 1982, Pub.L. 97-357, Title I, § 104(a), 96 Stat. 1705.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1968 Act. House Report No. 1521, see 1968 U.S. Code Cong. and Adm. News, p. 3564.

1982 Act. Senate Report No. 97-372, see 1982 U.S. Code Cong. and Adm. News, p. 3278.

Amendments

1982 Amendment. Pub.L. 97-357, in sixth undesignated paragraph, substituted provisions relating to the preparation, etc., of a comprehensive annual financial report to be submitted to the Congress, the Secretary of the Interior, and the Inspector General of the Department of the Interior, preparation of other reports as required by Congress or applicable Federal law, and submittal of a written statement of actions taken or contemplated on Federal audit recommendations for provisions relating to an annual report of transactions of the Guam government to the Secretary of the Interior for transmittal to Congress and such

other reports as required by Congress or applicable Federal law.

1968 Amendment. Pub.L. 90-497 established the office of Lieutenant Governor of Guam, provided for the popular election of the Governor and Lieutenant Governor, declared persons elected for two full successive terms as Governor ineligible to serve again until the lapse of a full intervening term, set out the qualifications of eligibility for Governor and Lieutenant Governor, and restated the powers and duties of the office of Governor.

Effective Dates

1968 Act. Section 13 of Pub.L. 90-497 provided that: "Those provisions necessary to authorize the holding of an election for Governor and Lieutenant Governor on November 3, 1970, shall be effective on January 1, 1970. All other provisions of this Act [see Short Title of 1968 Amendment note set out under section 1421 of this title], unless otherwise expressly provided herein, shall be effective January 4, 1971."

CROSS REFERENCES

Conveyance of submerged lands to government of Guam, see 48 USCA § 1701 et seq.

Report on administration of this subchapter to be included in annual report to Congress by Governor, see 48 USCA § 1428d.

LIBRARY REFERENCES

American Digest System

Governor of territory, see Territories ¶22.

Encyclopedias

Governor of territory, see C.J.S. Territories § 29.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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1. Agencies or instrumentalities of government

Guam Visitors Bureau was not an agency or instrumentality of the Government and therefore statutory section governing membership on Bureau's board did not conflict with Section 6 of the Organic Act [Organic Act of Guam, § 6, 48 U.S.C.A. § 1422] by infringing on Governor's responsibility to control all agencies and instrumentalities of the Government of Guam. *Bordallo v. Reyes*, C.A.9 (Guam) 1985, 763 F.2d 1098.

2. Appropriations or budget

Governor of Guam may not, by vetoing appropriations to government departments, reinstate previous year's appropriations, nor may he selectively veto words, phrases and conditions in bill containing several items of appropriation. *Thirteenth Guam Legislature v. Bordallo*, D.C.Guam 1977, 430 F.Supp. 405, affirmed 588 F.2d 265.

3. Collection of taxes

The enactment by Congress of section 1421i of this title creating the territorial income tax in Guam and the provision therein to the effect that the tax be collected and used for the government of Guam, included the implied provision, that such government was a proper enforcement agency. *Wilson v. Kennedy*, C.A.Guam 1956, 232 F.2d 153.

4. Curfews

Executive orders of governor of Guam instituting curfews after passage of typhoon were unconstitutional. *Gayle v. Governor of Guam*, D.C.Guam 1976, 414 F.Supp. 636.

§ 1422a. Removal of Governor, Lieutenant Governor, or member of legislature; referendum election

(a) The people of Guam shall have the right of initiative and referendum, to be exercised under conditions and procedures specified in the laws of Guam.

(b) Any Governor, Lieutenant Governor, or member of the legislature of Guam may be removed from office by a referendum

election in which at least two-thirds of the number of persons voting for such official in the last preceding general election at which such official was elected vote in favor of recall and in which those so voting constitute a majority of all those participating in such referendum election. The referendum election shall be initiated by the legislature of Guam following (a) a two-thirds vote of the members of the legislature in favor of a referendum, or (b) petition for such a referendum to the legislature by registered voters equal in number to at least 50 per centum of the whole number of votes cast at the last general election at which such official was elected preceding the filing of the petition.

(Aug. 1, 1950, c. 512, § 7, 64 Stat. 387; Sept. 11, 1968, Pub.L. 90-497, § 2, 82 Stat. 844; Oct. 19, 1982, Pub.L. 97-357, Title I, § 101, 96 Stat. 1705.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1968 Act. House Report No. 1521, see 1968 U.S. Code Cong. and Adm. News, p. 3564.

1982 Act. Senate Report No. 97-372, see 1982 U.S. Code Cong. and Adm. News, p. 3278.

Amendments

1982 Amendment. Subsec. (a). Pub.L. 97-357 added subsec. (a).

Subsec. (b). Pub.L. 97-357 redesignated existing provisions as subsec. (b), and in subsec. (b) as so redesignated, added provisions relating to the removal of a Lieutenant Governor or member of the legislature of Guam.

1968 Amendment. Pub.L. 90-497 substituted provisions for the removal of the Governor of Guam through a referendum election for provisions for the appointment, tenure, powers, and duties of the Secretary of Guam.

Effective Dates

1968 Act. Amendment by Pub.L. 90-497 necessary to authorize the holding of an election for Governor and Lieutenant Governor on Nov. 3, 1970, effective Jan. 1, 1970, and all other amendments unless otherwise provided effective Jan. 4, 1971, see section 13 of Pub.L. 90-497, set out as a note under section 1422 of this title.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1422b. Vacancy in office of Governor or Lieutenant Governor

(a) Temporary disability or temporary absence of Governor

In case of the temporary disability or temporary absence of the Governor, the Lieutenant Governor shall have the powers of the Governor.

(b) Permanent vacancy in office of Governor

In case of a permanent vacancy in the office of Governor, arising by reason of the death, resignation, removal by recall, or permanent disability of the Governor, or the death, resignation, or permanent disability of a Governor-elect, or for any other reason, the

Lieutenant Governor or Lieutenant Governor-elect shall become the Governor, to hold office for the unexpired term and until he or his successor shall have been duly elected and qualified at the next regular election for Governor.

(c) Temporary disability or temporary absence of Lieutenant Governor

In case of the temporary disability or temporary absence of the Lieutenant Governor, or during any period when the Lieutenant Governor is acting as Governor, the speaker of the Guam Legislature shall act as Lieutenant Governor.

(d) Permanent vacancy in office of Lieutenant Governor

In case of a permanent vacancy in the office of Lieutenant Governor, arising by reason of the death, resignation, or permanent disability of the Lieutenant Governor, or because the Lieutenant Governor or Lieutenant Governor-elect has succeeded to the office of Governor, the Governor shall appoint a new Lieutenant Governor, with the advice and consent of the legislature, to hold office for the unexpired term and until he or his successor shall have been duly elected and qualified at the next regular election for Lieutenant Governor.

(e) Temporary disability or temporary absence of both Governor and Lieutenant Governor

In case of the temporary disability or temporary absence of both the Governor and the Lieutenant Governor, the powers of the Governor shall be exercised, as Acting Governor, by such person as the laws of Guam may prescribe. In case of a permanent vacancy in the offices of both the Governor and Lieutenant Governor, the office of Governor shall be filled for the unexpired term in the manner prescribed by the laws of Guam.

(f) Additional compensation

No additional compensation shall be paid to any person acting as Governor or Lieutenant Governor who does not also assume the office of Governor or Lieutenant Governor under the provisions of this chapter.

(Aug. 1, 1950, c. 512, § 8, 64 Stat. 387; Mar. 16, 1962, Pub.L. 87-419, § 1, 76 Stat. 34; Sept. 11, 1968, Pub.L. 90-497, § 3, 82 Stat. 844.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1962 Act. Senate Report No. 1222, see 1962 U.S. Code Cong. and Adm. News, p. 1530.

1968 Act. House Report No. 1521, see 1968 U.S. Code Cong. and Adm. News, p. 3564.

Amendments

1968 Amendment. Subsec. (a). Pub.L. 90-497 designated existing provisions as subsec. (a) and in subsec. (a) as so designated, substituted provisions that the Lieutenant Governor have the pow-

ers of the Governor in the event of the temporary disability or temporary absence of the Governor for provisions authorizing the appointed department head to designate an acting Governor in the case of a vacancy or temporary absence of both the Governor and the Secretary of Guam.

Subsecs. (b) to (f). Pub.L. 90-497 added subsecs. (b) to (f).

1962 Amendment. Pub.L. 87-419 provided for appointment of an acting secretary under certain conditions, pre-

scribed the powers of such secretary and proscribed additional compensation for an acting Governor or acting secretary.

Effective Dates

1968 Act. Amendment by Pub.L. 90-497 necessary to authorize the holding of an election for Governor and Lieutenant Governor on November 3, 1970, effective Jan. 1, 1970, and all other amendments unless otherwise provided effective Jan. 4, 1971, see section 13 of Pub.L. 90-497, set out as a note under section 1422 of this title.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1422c. Executive agencies and instrumentalities

(a) Appointment of heads; establishment of merit system; Civil Service Commission; removal of Commission members

The Governor shall, except as otherwise provided in this chapter or the laws of Guam, appoint, by and with the advice and consent of the legislature, all heads of executive agencies and instrumentalities. The legislature shall establish a merit system and, as far as practicable, appointments and promotions shall be made in accordance with such merit system. The Government of Guam may by law establish a Civil Service Commission to administer the merit system. Members of the commission may be removed as provided by the laws of Guam.

(b) Powers and duties of officer

All officers shall have such powers and duties as may be conferred or imposed on them by law or by executive regulation of the Governor not inconsistent with any law.

(c) Reorganization

The Governor shall, from time to time, examine the organization of the executive branch of the government of Guam, and shall determine and carry out such changes therein as are necessary to promote effective management and to execute faithfully the purposes of this chapter and the laws of Guam.

(d) Continuation in office of incumbents

All persons holding office in Guam on August 1, 1950 may, except as otherwise provided in this chapter, continue to hold their respective offices until their successors are appointed and qualified.

(Aug. 1, 1950, c. 512, § 9, 64 Stat. 387; Sept. 11, 1968, Pub.L. 90-497, § 4, 82 Stat. 845; Aug. 27, 1986, Pub.L. 99-396, § 18(a), 100 Stat. 843.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1968 Act. House Report No. 1521, see 1968 U.S. Code Cong. and Adm. News, p. 3564.

1986 Act. Senate Report No. 99-236, see 1986 U.S. Code Cong. and Adm. News, p. 1843.

Amendments

1986 Amendment. Subsec. (a). Pub.L. 99-396 added provisions authorizing the establishment of a Civil Service Commission and the removal of Commission members as provided by the laws of Guam.

1968 Amendment. Subsec. (a). Pub.L. 90-497, § 4(a), struck out requirement that, in making appointments, preference be given persons of Guamanian ancestry and that opportunities for higher education and use of service training facilities be provided to

qualified persons of Guamanian ancestry.

Subsec. (b). Pub.L. 90-497, § 4(b), struck out provision authorizing the Governor to appoint or remove any officer whose appointment or removal is not otherwise provided for.

Effective Dates

1968 Act. Section 4(a) of Pub.L. 90-497 provided in part that the amendment of subsec. (a) by section 4(a) of Pub.L. 90-497 was effective on the date of enactment of Pub.L. 90-497, which was approved Sept. 11, 1968.

Amendment by Pub.L. 90-497 necessary to authorize the holding of an election for Governor and Lieutenant Governor on Nov. 3, 1970, effective Jan. 1, 1970, and all other amendments unless otherwise provided effective Jan. 4, 1971, see section 13 of Pub.L. 90-497, set out as a note under section 1422 of this title.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

I. Dismissal from employment

Guam District Court's determination that the Guam Visitors Bureau was a nonprofit organization and not a public entity was tenable and not manifestly erroneous and, thus, employee of the

Bureau was not a public employee entitled to protection from patronage dismissals. *Laguana v. Guam Visitors Bureau* its Bd. of Directors, C.A.Guam 1984, 725 F.2d 519.

§ 1422d. Transfer of functions from government comptroller for Guam to Inspector General, Department of the Interior

(a) Functions, powers and duties transferred

The following functions, powers, and duties heretofore vested in the government comptroller for Guam are hereby transferred to the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the government of Guam:

(1) The authority to audit all accounts pertaining to the revenue and receipts of the government of Guam, and of funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the government of Guam

including those pertaining to trust funds held by the government of Guam.

(2) The authority to report to the Secretary of the Interior and the Governor of Guam all failures to collect amounts due the government, and expenditures of funds or uses of property which are irregular or not pursuant to law.

(b) Scope of authority transferred

The authority granted in paragraph (a) of this section shall extend to all activities of the government of Guam, and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act of 1978 (92 Stat. 1101), as amended.

(c) Transfer of personnel, assets, etc., of office of government comptroller for Guam to Office of Inspector General, Department of the Interior

In order to carry out the provisions of this section, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the office of the government comptroller for Guam related to its audit function are hereby transferred to the Office of Inspector General, Department of the Interior.

(Aug. 1, 1950, c. 512, § 9-A, as added Oct. 19, 1982, Pub.L. 97-357, Title I, § 104(b), 96 Stat. 1706.)

Revision Notes and Legislative Reports
1982 Act. Senate Report No. 97-372, see 1982 U.S.Code Cong. and Adm.News, p. 3278.

References in Text

The Inspector General Act of 1978 (92 Stat. 1101), as amended, referred to in subsec. (b), is Pub.L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in Appendix 3 to Title 5, Government Organization and Employees.

Prior Provisions

A prior section 1422d, Act Aug. 1, 1950, c. 512, § 9-A, as added Sept. 11, 1968, Pub.L. 90-497, § 5, 82 Stat. 845, and amended Oct. 15, 1977, Pub.L. 95-134, Title II, § 203(a), 91 Stat. 1161, which related to the creation, auditing function and reporting duty of the office of a government comptroller for Guam, was repealed by Pub.L. 97-357, Title I, § 104(b), 96 Stat. 1706.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

SUBCHAPTER III—THE LEGISLATURE

§ 1423. Legislature of Guam

(a) Unicameral nature; power

The legislative power and authority of Guam shall be vested in a legislature, consisting of a single house, to be designated the "Legislature of Guam", herein referred to as the legislature.

(b) Size of legislature; prohibition against denial of equal protection; at large and district representation

The legislature shall be composed of not to exceed twenty-one members, to be known as senators, elected at large, or elected from legislative districts, or elected in part at large and in part from legislative districts, as the laws of Guam may direct: *Provided*, That any districting and any apportionment pursuant to this authorization and provided for by the laws of Guam shall not deny to any person in Guam the equal protection of the laws: *And provided further*, That in any elections to the legislature, every elector shall be permitted to vote for the whole number of at-large candidates to be elected, and every elector residing in a legislative district shall be permitted to vote for the whole number of candidates to be elected within that district.

(c) Reapportionment; Federal census base

Any districting and related apportionment pursuant to this section shall be based upon the then most recent Federal population census of Guam, and any such districting and apportionment shall be reexamined following each successive Federal population census of Guam and shall be modified, if necessary, to be consistent with that census.

(d) Timing of biennial elections

General elections to the legislature shall be held on the Tuesday next after the first Monday in November, biennially in even-numbered years. The legislature in all respects shall be organized and shall sit according to the laws of Guam.

(Aug. 1, 1950, c. 512, § 10, 64 Stat. 387; Sept. 2, 1966, Pub.L. 89-552, § 1, 80 Stat. 375; Dec. 8, 1983, Pub.L. 98-213, § 5(b), 97 Stat. 1460.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1966 Act. Senate Report No. 1420, see 1966 U.S.Code Cong. and Adm.News, p. 2671.

1983 Act. House Report No. 98-174, see 1983 U.S. Code Cong. and Adm. News, p. 2210.

Amendments

1983 Amendment. Subsec. (c). Pub.L. 98-213 substituted "Any" for "The laws of Guam shall not alter the manner in which members of the legislature are to be elected as provided in subsection (b) of this section more often than at ten-year intervals: *Provided*, That any".

1966 Amendment. Pub.L. 89-552 authorized the election of senators in whole or in part from legislative districts if the laws of Guam so directed, provided that the legislators be called senators, prohibited any districting or apportionment which denied equal protection of the laws to any person in Guam, required that electors be permitted to vote for the whole number of candidates to be elected both within his district and at large, prohibited reapportionment oftener than at 10-year intervals, and required that any redistricting be based upon the latest federal census.

Amendment of Laws of Guam to Conform to Changes Made by Pub.L. 89-552.

Section 2 of Pub.L. 89-552 provided that: "As soon as practicable after enactment of this Act [Sept. 2, 1966], and subject to the conditions and requirements of section 10 of the Organic Act of Guam, as amended by section 1 hereof

[this section] the laws of Guam shall be amended to make provision for the manner of the election of members of the legislature. Until the laws of Guam shall make such provision, the method of electing the legislature shall remain as it is upon the date of enactment of this Act [Sept. 2, 1966]."

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS**1. Delegation of power**

Delegation by Guam legislature to governor of power to amend statutory schedules under the Controlled Substances Act does not violate provision of Guam's Organic Act vesting legislative

power and authority in the Guam legislature. *People of Territory of Guam v. Fegurgur, C.A.9 (Guam) 1986, 800 F.2d 1470, certiorari denied 107 S.Ct. 1570, 94 L.Ed.2d 762.*

§ 1423a. Power of legislature; limitation on indebtedness of Guam; bond issues; guarantees for purchase by Federal Financing Bank of Guam Power Authority bonds or other obligations; interest rates; default

The legislative power of Guam shall extend to all subjects of legislation of local application not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam. Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: *Provided, however,* That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section. All bonds issued by the government of Guam or by its authority shall be exempt, as to principal and interest, from taxation by the Government of the United States or by the government of Guam, or by any State or Territory or any political subdivision thereof, or by the District of Columbia. The Secretary of the Interior (hereafter in this section referred to as "Secretary") is authorized to guarantee for purchase by the Federal Financing Bank bonds or other obligations of the Guam Power Authority

maturing on or before December 31, 1978, which shall be issued in order to refinance short-term notes due or existing on June 1, 1976 and other indebtedness not evidenced by bonds or notes in an aggregate amount of not more than \$36 million, and such bank, in addition to its other powers, is authorized to purchase, receive or otherwise acquire these same. The interest rate on obligations purchased by the Federal Financing Bank shall be not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 per centum, plus 1 per centum per annum. The Secretary, with the concurrence of the Secretary of the Treasury, may extend the guarantee provision of the previous sentence until December 31, 1980. The Secretary, upon determining that the Guam Power Authority is unable to refinance on reasonable terms the obligations purchased by the Federal Financing Bank under the fifth sentence of this section by December 31, 1980, may, with the concurrence of the Secretary of the Treasury, guarantee for purchase by the Federal Financing Bank; and such bank is authorized to purchase, obligations of the Guam Power Authority issued to refinance the principal amount of the obligations guaranteed under the fifth sentence of this section. The obligations that refinance such principal amount shall mature not later than December 31, 1990, and shall bear interest at a rate determined in accordance with section 2285 of Title 12. At the request of the Board of Directors of the Guam Power Authority for a second refinancing agreement and conditioned on the approval of the Government of Guam pursuant to the law of Guam, and conditioned on the establishment of an independent rate-making authority by the Government of Guam, the Secretary may guarantee for purchase by the Federal Financing Bank, on or before December 31, 1984, according to an agreement that shall provide for—

(a) substantially equal semiannual installments of principal and interest;

(b) maturity of obligations no later than December 31, 2004;

(c) authority for the Secretary, should there be a violation of a provision of this legislation, or covenants or stipulations contained in the refinancing document and after giving sixty days notice of such violation to the Guam Power Authority and the Governor of Guam, to dismiss members of the Board of Directors or the general manager of the Guam Power Authority, and (1) appoint in their place members or a general manager who shall serve at the pleasure of the Secretary, or (2) contract for the management of the Guam Power Authority; and

(d) an annual simple interest rate of seven per centum; and

the Federal Financing Bank shall purchase such Guam Power Authority obligations if such Guam Power Authority obligations are issued to refinance the principal amount scheduled to mature on December 31, 1990. Should such second refinancing occur, (1) the independent rate-making authority to be established by the Government of Guam, or in its absence, the Board of Directors of the Guam Power Authority, shall establish rates sufficient to satisfy all financial obligations and future capital investment needs of the Guam Power Authority that shall be consistent with generally accepted rate-making practices of public utilities, and (2) the Government of Guam shall not modify the requirements of such refinancing agreement without agreement of the Secretary. There are authorized to be appropriated to the Secretary of the Interior for payment to the Federal Financing Bank such sums as are necessary to pay (1) the repurchase payment required under the fifth paragraph of the December 31, 1980, note from the Guam Power Authority to the Federal Financing Bank and any subsequent repurchase payments required under the second refinancing agreement, and (2) the interest rate differential between the seven per centum to be paid by the Guam Power Authority and the second refinancing agreement and the interest rate that would otherwise be determined in accordance with the above cited section 2285 of Title 12. Should the Guam Power Authority fail to pay in full any installment of interest or principal when due on the bonds or other obligations guaranteed under this section, the Secretary of the Treasury, upon notice from the Secretary shall deduct and pay to the Federal Financing Bank or the Secretary, according to their respective interests, such unpaid amounts from sums collected and payable pursuant to section 1421h of this title. Notwithstanding any other provision of law, Acts making appropriations may provide for the withholding of any payments from the United States to the government of Guam which may be or may become due pursuant to any law and offset the amount of such withheld payments against any claim the United States may have against the government of Guam or the Guam Power Authority pursuant to this guarantee. For the purpose of this chapter, under section 3713(a) of Title 31 the term "person" includes the government of Guam and the Guam Power Authority. The Secretary may place such stipulations as he deems appropriate on the bonds or other obligations he guarantees.

(Aug. 1, 1950, c. 512, § 11, 64 Stat. 387; Sept. 3, 1976, Pub.L. 94-395, 90 Stat. 1199; Mar. 12, 1980, Pub.L. 96-205, Title III, § 303, 94 Stat. 88; Sept. 13, 1982, Pub.L. 97-258, § 4(b), 96 Stat. 1067; Oct. 5, 1984, Pub.L. 98-454, Title II, § 203, 98 Stat. 1733.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1976 Act. Senate Report No. 94-1155, see 1976 U.S. Code Cong. and Adm. News, p. 2111.

1980 Act. Senate Report No. 96-467, see 1980 U.S. Code Cong. and Adm. News, p. 135.

1984 Act. House Report No. 98-784, see 1984 U.S. Code Cong. and Adm. News, p. 2908.

Codifications

"Section 3713(a) of Title 31" was substituted in text for "section 3466 of the Revised Statutes (31 U.S.C. 191)" on authority of Pub.L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Amendments

1984 Amendment. Pub.L. 98-454 added provisions relating to authority of Secretary to guarantee for purchase by

the Federal Financing Bank, obligations of the Guam Power Authority to be used for a second refinancing of the principal amount due to mature on December 31, 1990.

1980 Amendment. Pub.L. 96-205 substituted provisions relating to guarantees by the Secretary of the purchase by the Federal Financing Bank of the refinancing obligations of the Guam Power Authority where such refinancing obligations remain outstanding by Dec. 31, 1990, for provisions relating to payment of interest and default on maturity of guaranteed bonds or other obligations issued prior to Dec. 31, 1980.

1976 Amendment. Pub.L. 94-395 added provisions relating to authority of Secretary of the Interior to guarantee for purchase by the Federal Financing Bank bonds or other obligations of the Guam Power Authority maturing on or before Dec. 31, 1978.

LIBRARY REFERENCES

American Digest System

Legislative power and exercise thereof, see Territories ⇨20.

Power to legislate with respect to waters off of Guam, see C.J.S. Navigable Waters § 10.

Validity of territorial statutes, see Statutes ⇨53 to 56.

Encyclopedias

Power to control and regulate navigable waters, see Navigable Waters ⇨2.

Validity of territorial statutes, see C.J.S. Territories § 25.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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 Budget 2
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Guam Legislature's power to legislate is prescribed and limited by this chapter, by other acts of Congress and by provisions of United States Constitution. U.S. v. Borja, D.C. Guam 1961, 191 F. Supp. 563.

2. Appropriations or budget

It is within Guam Legislature's power to pass appropriations with retroactive effect, and, in interim, emergency payments can be provided. Thirteenth Guam Legislature v. Bordallo, D.C. Guam 1977, 430 F. Supp. 405, affirmed 588 F.2d 265.

1. Limitations on power generally

Since Guam is not incorporated territory of the United States its government has only those powers conferred by Congress. Rodriguez v. Gaylord, D.C. Hawaii 1977, 429 F. Supp. 797.

3. Bonds or public indebtedness

Where repayment of bonds issued by Guam telephone authority constituted charge against gross revenues of authority rather than net revenues, and in event that authority's gross revenues were insufficient to cover bond repayment, government of Guam was committed to pay authority any deficiencies in bond reserve fund from general tax revenues, issuance of such bonds by authority with contingent backing by government of Guam constituted "public indebtedness." *Guam Tel. Authority v. Rivera*, D.C. Guam 1976, 416 F.Supp. 283.

4. Court creation

This chapter is clear in providing that the Guam legislature has the power to create courts of original jurisdiction and to establish such procedures for those courts as it deems desirable. *Sanchez v. Supreme Court of Guam*, D.C. Guam 1975, 416 F.Supp. 1.

5. Naval Defensive Sea Area

Any enactment of Guam Legislature inconsistent with Ex.Ord. No. 8683, as amended by Ex.Ord. Nos. 8729, 10341, establishing Guam Island Naval Defensive Sea Area would be invalid. *U.S. v. Borja*, D.C. Guam 1961, 191 F.Supp. 563.

6. Naval Communication Station

The power of Guam Legislature to legislate with respect to territorial waters of Guam, including those adjoining Naval Communication Station, is shared with

United States Congress. *U.S. v. Borja*, D.C. Guam 1961, 191 F.Supp. 563.

7. Taxation

Abatement and rebatement tax provisions enacted by the Guam Territorial Legislature, specifically, abatement of local property taxes, rebatement of portion of corporate income taxes and rebate of income taxes on dividends paid by qualifying corporations, are not violative of this section since legislative goal of encouraging the establishment and expansion of business and industry provided reasonable support for creation of meaningful classifications favoring qualifying corporations. *Ramsey v. Chaco*, C.A. Guam 1977, 549 F.2d 1335.

Provision of Government Code, Guam, § 19700, conferring on District Court of Guam jurisdiction to redetermine deficiencies assessed under territorial income tax law was lawful exercise of power vested by Congress in Guam Legislature. *Forbes v. Maddox*, C.A. Guam 1964, 339 F.2d 387.

Government Code Guam §§ 19541.01, 19541.0101 and 19541.0104 imposing a gross receipts tax on the business of selling tangible personalty is invalid because discriminatory because giving a local manufacturer or producer selling directly for export a competitive tax advantage over sellers for export who are neither manufacturers nor producers and as in violation of the legislative powers conferred by this section. *Ambros, Inc. v. Maddox*, D.C. Guam 1962, 203 F.Supp. 934.

§ 1423b. Selection and qualification of members; officers; rules and regulations; quorum

The legislature shall be the judge of the selection and qualification of its own members. It shall choose from its members its own officers, determine its rules and procedure, not inconsistent with this chapter, and keep a journal. The quorum of the legislature shall consist of eleven of its members. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays.

(Aug. 1, 1950, c. 512, § 12, 64 Stat. 388; Sept. 11, 1968, Pub.L. 90-497, § 6(b), 82 Stat. 846.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. House Report No. 1521, see 1968 U.S. Code Cong. and Adm. News, p. 3564.

Amendments

1968 Amendment. Pub.L. 90-497 added a quorum requirement, provided that a quorum of the legislature consist of eleven of its members, and made the

presence of a quorum requisite to the passage of a law.

Effective Dates

1968 Act. Section 6(b) of Pub.L. 90-497 provided in part that the amendment by of Pub.L. 90-497 is effective on the date of enactment of Pub.L. 90-497, which was approved Sept. 11, 1968.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1423c. Privileges of members

(a) The members of the legislature shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the legislature and in going to and returning from the same.

(b) No member of the legislature shall be held to answer before any tribunal other than the legislature itself for any speech or debate in the legislature.

(Aug. 1, 1950, c. 512, § 13, 64 Stat. 388.)

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1423d. Oath of office

Every member of the legislature and all officers of the government of Guam shall take the following oath or affirmation:

"I solemnly swear (or affirm) in the presence of Almighty God that I will well and faithfully support the Constitution of the United States, the laws of the United States applicable to Guam and the laws of Guam, and that I will conscientiously and impartially discharge my duties as a member of the Guam Legislature (or as an officer of the government of Guam)."

(Aug. 1, 1950, c. 512, § 14, 64 Stat. 388.)

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1423e. Prohibition against acceptance of salary increases or newly created offices

No member of the legislature shall, during the term for which he was elected or during the year following the expiration of such term, be appointed to any office which has been created, or the salary or emoluments of which have been increased during such term.

(Aug. 1, 1950, c. 512, § 15, 64 Stat. 388.)

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1423f. Qualifications of members

No person shall sit in the legislature who is not a citizen of the United States, who has not attained the age of twenty-five years and who has not been domiciled in Guam for at least five years immediately preceding the sitting of the legislature in which he seeks to qualify as a member, or who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights.

(Aug. 1, 1950, c. 512, § 16, 64 Stat. 388.)

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1423g. Vacancies

Vacancies occurring in the legislature shall be filled as the legislature shall provide, except that no person filling a vacancy shall hold office longer than for the remainder of the term for which his predecessor was elected.

(Aug. 1, 1950, c. 512, § 17, 64 Stat. 388.)

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1423h. Regular and special sessions

Regular sessions of the legislature shall be held annually, commencing on the second Monday in January (unless the legislature shall by law fix a different date), and shall continue for such term as the legislature may provide. The Governor may call special

sessions of the legislature at any time when, in his opinion, the public interest may require it. No legislation shall be considered at any special session other than that specified in the call therefor or in any special message by the Governor to the legislature while in such session. All sessions of the legislature shall be open to the public.

(Aug. 1, 1950, c. 512, § 18, 64 Stat. 388; Sept. 11, 1968, Pub.L. 90-497, § 6(a), 82 Stat. 846.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. House Report No. 1521, see 1968 U.S.Code Cong. and Adm.News, p. 3564.

on the length of special sessions of the legislature.

Effective Dates

Amendments

1968 Amendment. Pub.L. 90-497 removed 60-day limitation on the length of regular sessions and 14-day limitation

1968 Act. Section 6(a) of Pub.L. 90-497 provided in part that the amendment by Pub.L. 90-497 is effective on the date of enactment of Pub.L. 90-497, which was approved Sept. 11, 1968.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1423i. Approval of bills

Every bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If he does not return it within such period, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law. When a bill is returned by the Governor to the legislature with his objections, the legislature shall enter his objections at large on its journal and, upon motion of a member of the legislature, proceed to reconsider the bill. If, after such reconsideration, two-thirds of all the members of the legislature pass the bill, it shall be a law. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts, or portions of the bill. In such a case he shall append to the bill, at the time of signing it, a statement of the items, or parts or portions thereof, to which he objects, and the items, or parts or portions thereof, so objected to shall not take effect. All laws enacted by the legislature shall be reported by the Governor to the head of the department or

agency designated by the President under section 1421a of this title. The Congress of the United States reserves the power and authority to annul the same.

(Aug. 1, 1950, c. 512, § 19, 64 Stat. 389; Sept. 11, 1968, Pub.L. 90-497, § 8, 82 Stat. 847; Jan. 2, 1975, Pub.L. 93-608, § 1(14), 88 Stat. 1969.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1968 Act. House Report No. 1521, see 1968 U.S.Code Cong. and Adm.News, p. 3564.

1975 Act. Senate Report No. 93-1332, see 1975 U.S.Code Cong. and Adm.News, p. 7159.

Amendments

1975 Amendment. Pub.L. 93-608 struck out requirement that reports be transmitted to Congress by the Secretary concerned.

1968 Amendment. Pub.L. 90-497, § 8(a), eliminated the President's authority to veto territorial legislation referred by the Governor after such legislation had been passed by the legislature over the Governor's veto.

Pub.L. 90-497, § 8(b), eliminated the provision that, if Congress did not annul laws passed by the legislature and re-

ported to Congress within one year of the date of its receipt by Congress, such laws were deemed to have been approved by Congress.

Effective Dates

1968 Act. Section 8(b) of Pub.L. 90-497 provided in part that the amendment by section 8(b) of Pub.L. 90-497 is effective on the date of enactment of Pub.L. 90-497, which was approved Sept. 11, 1968.

Amendment of section by Pub.L. 90-497 necessary to authorize the holding of an election for Governor and Lieutenant Governor on Nov. 3, 1970, effective Jan. 1, 1970, and all other amendments unless otherwise provided effective Jan. 4, 1971, see section 13 of Pub.L. 90-497, set out as a note under section 1422 of this title.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Mandamus 2

Veto 1

1. Veto

This section gives Guamanian Legislature the power to override Governor's item veto of individual appropriations. Thirteenth Guam Legislature v. Bordallo, C.A.Guam 1978, 588 F.2d 265.

Where Guam legislature before departing on six-week recess failed to designate officer to receive messages from Governor and did not provide for the receipt, filing, routing and safekeeping of messages that might be delivered to legislature during recess, Governor who did not sign bill which was passed prior to

and which was delivered to him during recess or return it within ten days prescribed by law but sent message to someone connected with legislature stating that he was unable to return it within prescribed time had right to exercise "pocket veto" of bill. Bordallo v. Camacho, C.A.Guam 1975, 520 F.2d 763.

2. Mandamus

Duty of the Governor of Guam to report to the Secretary of the Interior all laws enacted by the Guam Legislature is a nondiscretionary ministerial duty, the performance of which can properly be mandated by a court. Bordallo v. Camacho, D.C.Guam 1973, 416 F.Supp. 83, affirmed 520 F.2d 763.

§ 1423j. Authorization of appropriations

(a) Appropriations, except as otherwise provided in this chapter, and except such appropriations as shall be made from time to time by the Congress of the United States, shall be made by the legislature.

(b) If at the termination of any fiscal year the legislature shall have failed to pass appropriation bills providing for payments of the necessary current expenses of the government and meeting its legal obligations for the ensuing fiscal year, then the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated, item by item.

(c) All appropriations made prior to August 1, 1950 shall be available to the government of Guam.

(Aug. 1, 1950, c. 512, § 20, 64 Stat. 389.)

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

1. Veto

Governor of Guam may not, by vetoing appropriations to government departments, reinstate previous year's appropriations, nor may he selectively veto

words, phrases and conditions in bill containing several items of appropriation. Thirteenth Guam Legislature v. Bordallo, D.C.Guam 1977, 430 F.Supp. 405, affirmed 588 F.2d 265.

§ 1423k. Right of petition

The legislature or any person or group of persons in Guam shall have the unrestricted right of petition. It shall be the duty of all officers of the government to receive and without delay to act upon or forward, as the case may require, any such petition.

(Aug. 1, 1950, c. 512, § 21, 64 Stat. 389.)

CROSS REFERENCES

Petition for redress of grievances, see USCA Const. Amend. 1.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1423l. Purchases

The Territorial and local governments of Guam are authorized to make purchases through the General Services Administration.

(Oct. 30, 1986, Pub.L. 99-591, Title I, § 101(h) [Title I, § 100], 100 Stat. 3341-258.)

HISTORICAL AND STATUTORY NOTES

Codifications

Section was enacted as part of the appropriation Act cited as the credit to this section, and not as part of the Organic Act of Guam which comprises this chapter.

Section, as it relates to the Virgin Islands and American Samoa, and the Trust Territory of the Pacific Islands, is classified to sections 1401f, 1665, and 1682, respectively, of this title.

Similar Provisions

Similar provisions were contained in the following prior appropriation Acts:

Oct. 18, 1986, Pub.L. 99-500, Title I, § 101(h) [Title I, § 100], 100 Stat. 1783-258.

Dec. 19, 1985, Pub.L. 99-190, § 101(d) [Title I, § 100], 99 Stat. 1224, 1238.

Oct. 12, 1984, Pub.L. 98-473, Title I, § 101(c), 98 Stat. 1837, 1851.

Nov. 4, 1983, Pub.L. 98-146, Title I, § 100, 97 Stat. 931.

Dec. 30, 1982, Pub.L. 97-394, Title I, § 100, 96 Stat. 1979.

Dec. 23, 1981, Pub.L. 97-100, Title I, § 100, 95 Stat. 1401.

Dec. 12, 1980, Pub.L. 96-514, Title I, § 100, 94 Stat. 2969.

Nov. 27, 1979, Pub.L. 96-126, Title I, § 100, 93 Stat. 965.

Oct. 17, 1978, Pub.L. 95-465, Title I, § 100, 92 Stat. 1289.

July 26, 1977, Pub.L. 95-74, Title I, § 100, 91 Stat. 295.

July 31, 1976, Pub.L. 94-373, Title I, § 100, 90 Stat. 1052.

Dec. 23, 1975, Pub.L. 94-165, Title I, § 100, 89 Stat. 987.

Aug. 31, 1974, Pub.L. 93-404, Title I, § 100, 88 Stat. 812.

Oct. 4, 1973, Pub.L. 93-120, Title I, § 100, 87 Stat. 433.

Aug. 10, 1972, Pub.L. 92-369, Title I, § 100, 86 Stat. 512.

Aug. 10, 1971, Pub.L. 92-76, Title I, § 100, 85 Stat. 233.

July 31, 1970, Pub.L. 91-361, Title I, § 100, 84 Stat. 673.

Oct. 29, 1969, Pub.L. 91-98, Title I, § 100, 83 Stat. 151.

July 26, 1968, Pub.L. 90-425, Title I, § 100, 82 Stat. 430.

June 24, 1967, Pub.L. 90-28, Title I, § 100, 81 Stat. 63.

May 31, 1966, Pub.L. 89-435, Title I, § 100, 80 Stat. 174.

June 28, 1965, Pub.L. 89-52, Title I, § 100, 79 Stat. 179.

July 7, 1964, Pub.L. 88-356, Title I, § 100, 78 Stat. 278.

July 26, 1963, Pub.L. 88-79, Title I, § 100, 77 Stat. 102.

Aug. 9, 1962, Pub.L. 87-578, Title I, § 100, 76 Stat. 339.

Aug. 3, 1961, Pub.L. 87-122, Title I, § 100, 75 Stat. 250.

May 13, 1960, Pub.L. 86-455, Title I, § 100, 74 Stat. 112.

June 23, 1959, Pub.L. 86-60, Title I, § 100, 73 Stat. 101.

June 4, 1958, Pub.L. 85-439, Title I, § 100, 72 Stat. 163.

July 1, 1957, Pub.L. 85-77, Title I, § 1, 71 Stat. 265.

June 13, 1956, c. 380, Title I, § 101, 70 Stat. 264.

June 16, 1955, c. 147, Title I, § 1, 69 Stat. 149.

July 1, 1954, c. 446, Title I, § 101, 68 Stat. 372.

July 31, 1953, c. 298, Title I, § 1, 67 Stat. 273.

July 9, 1952, c. 597, Title I, § 101, 66 Stat. 457.

Aug. 31, 1951, c. 375, Title I, § 101, 65 Stat. 263.

Sept. 6, 1950, c. 896, ch. VII, Title I, § 101, 64 Stat. 694.

SUBCHAPTER IV—THE JUDICIARY

§ 1424. District Court of Guam; local courts; jurisdiction**(a) District Court of Guam; local courts**

The judicial authority of Guam shall be vested in a court of record established by Congress, designated the "District Court of Guam," and such local court or courts as may have been or shall hereafter be established by the laws of Guam in conformity with section 1424-1 of this title.

(b) Jurisdiction

The District Court of Guam shall have the jurisdiction of a district court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of Title 28, and that of a bankruptcy court of the United States.

(c) Original jurisdiction

In addition to the jurisdiction described in subsection (b) of this section, the District Court of Guam shall have original jurisdiction in all other causes in Guam, jurisdiction over which is not then vested by the legislature in another court or other courts established by it. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by the laws of Guam for the purpose of determining the requirements of indictment by grand jury or trial by jury.

(Aug. 1, 1950, c. 512, § 22, 64 Stat. 389; Aug. 27, 1954, c. 1017, § 1, 68 Stat. 882; June 4, 1958, Pub.L. 85-444, §§ 1, 2, 72 Stat. 178, 179; Nov. 6, 1978, Pub.L. 95-598, Title III, § 335, 92 Stat. 2680; Oct. 5, 1984, Pub.L. 98-454, Title VIII, §§ 801, 803, Title X, § 1001, 98 Stat. 1741, 1743, 1745.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1958 Act. Senate Report No. 1582, see 1958 U.S. Code Cong. and Adm. News, p. 2623.

1978 Act. Senate Report No. 95-989, House Report No. 95-595, see 1978 U.S. Code Cong. and Adm. News, p. 5787.

1984 Act. House Report No. 98-784, see 1984 U.S. Code Cong. and Adm. News, p. 2908.

Amendments

1984 Amendment. Pub.L. 98-454 deleted language directing that no provisions of any rules which authorized or required trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information be appli-

cable to the District Court of Guam unless and until made so applicable by laws enacted by the Legislature of Guam, repealed that portion of section 1 of the Act of Aug. 27, 1954, which had inserted such language originally, and transferred out of this section into sections 1424-1 to 1424-4, with amendments, the remaining provisions formerly set out in this section relating to the creation, jurisdiction, and rules governing procedure in the Guam judicial system.

1978 Amendment. Subsec. (a). Pub.L. 95-598, § 335(a), extended jurisdiction of District Court of Guam to include jurisdiction of a bankruptcy court.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

Subsec. (b). Pub.L. 95-598, § 335(b), substituted "section 2075 of Title 28, in cases under Title 11" for "section 53 of Title 11, in bankruptcy cases".

1958 Amendment. Subsec. (a). Pub.L. 85-444, provided that the District Court of Guam shall have jurisdiction in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy, and inserted the paragraph requiring appeals to the District Court to be heard and determined by an appellate division.

1954 Amendment. Subsec. (b). Act Aug. 27, 1954 added provisions making it clear that trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall not be required in the District Court of Guam until so required by laws enacted by the Legislature of Guam; and defining the terms "attorney for the government", and "United States attorney", as used in the Federal Rules of Criminal Procedure, when applicable to cases arising under the laws of Guam.

Effective Dates

1984 Act. Section 1005 of Pub.L. 98-454 provided that: "Titles VII, VIII, IX, and X of this Act [enacting sections 1424-1 to 1424-4, 1493 and 1613a of this title, repealing section 1400 of this title, amending sections 1424, 1424b, 1561, 1611, 1612, 1613, 1614, 1615, 1617, 1694, and 1694a to 1694c of this title and enacting provisions set out as notes under section 1424b, 1612 and 1614 of this title and section 373 of Title 28, Judiciary and Judicial Procedure] shall become ef-

fective on the ninetieth day following their enactment [Oct. 5, 1984]."

1978 Act. Section 402(e) of Pub.L. 95-598, which provided a prospective effective date for the amendment of subsec. (a) of this section by section 335(a) of Pub.L. 95-598, was repealed by section 1001 of Pub.L. 98-454.

Amendment of subsec. (b) of this section by section 335(b) of Pub.L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub.L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

1954 Act. Section 2 of Act Aug. 27, 1954 provided that the amendment of subsec. (b) by section 1 of that Act should be deemed to be in effect as of August 1, 1950.

Separability of Provisions

Section 4 of Act Aug. 27, 1954 provided: "If any particular provision of this Act [which amended this section, and which enacted other provisions set out as notes under this section], or the application thereof to any person or circumstances, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

Nonreversal of Convictions Prior to August 27, 1954

Section 3 of Act Aug. 27, 1954 provided: "No conviction of a defendant in a criminal proceeding in the District Court of Guam heretofore had shall be reversed or set aside on the ground that the defendant was not indicted by a grand jury or tried by a petit jury."

CROSS REFERENCES

Definitions, see 28 USCA § 1869.
Income tax, see 48 USCA § 1421i.

LIBRARY REFERENCES

American Digest System

Courts of particular territories, see Federal Courts ⇨1023.

Encyclopedias

Courts of Guam, see C.J.S. Federal Courts § 317.

Texts and Treatises

Applicability of Federal Rules of Civil Procedure to district courts, see Wright & Miller, Federal Practice and Procedure: Civil § 1012.

Applicability of Federal Rules of Criminal Procedure to District Court of Guam, see Wright, Federal Practice and Procedure: Criminal 2d § 872.

Declaratory judgments, see Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2755.

Jurisdiction of District Court of Guam, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d §§ 3508, 3528.

Jurisdiction of specialized courts, see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 4106.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

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1. Constitutionality

Amendment of this section, insofar as it purports to provide that right of prosecution by indictment as it exists at time crime is committed shall not be applicable to District Court of Guam until made so applicable by Guam legislature is an *ex post facto* law and is invalid. *Putty v. U.S.*, C.A.Guam 1955, 220 F.2d 473, certiorari denied 76 S.Ct. 46, 350 U.S. 821, 100 L.Ed. 734.

2. Construction

In respect to statutory provision giving the District Court of Guam original jurisdiction of causes "arising under the Constitution, treaties, and laws of the United States," the "arising under" language should be interpreted in a manner that is guided more by the practicalities of judicial administration pertaining to the Territory of Guam than by the dry, literal

force of its language. *Pador v. Mata-nane*, C.A.Guam 1981, 653 F.2d 1277.

3. Transfer of jurisdiction

Under this section conferring upon district court of Guam jurisdiction of a district court of the United States "in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it," such clause was not applicable to case in view of transfer, by legislature in 1974, of jurisdiction of all cases arising under laws of Guam from district court to local courts. *Chase Manhattan Bank (Nat. Ass'n) v. South Acres Development Co.*, Guam 1978, 98 S.Ct. 544, 434 U.S. 236, 54 L.Ed.2d 501.

4. Removal of actions

Nonresident sued in Guam Island Court could remove case to District Court of Guam. *Jones & Guerrero Co., Inc. v. Sealift Pac.*, C.A.Guam 1977, 554 F.2d 984.

5. Indictment or information

The district court of Guam had no jurisdiction to try case on information charging infamous crime against nature, without indictment by grand jury. *Pennington v. Government of Guam*, C.A. Guam 1955, 228 F.2d 892.

This section makes applicable to Guam rule 7, Federal Rules of Criminal Procedure, 18 U.S.C.A. creating the right to an indictment, and defendant who is accused of involuntary manslaughter, under Guam law, has right to indictment. *Mafnas v. Government of Guam*, C.A.Guam, 1955, 228 F.2d 283.

In view of subsection (b) of this section, providing that rules promulgated and made effective by Supreme Court of United States pursuant to 18 U.S.C.A. Sections 3771 and 3772 in criminal cases shall apply to the District Court of Guam and to appeals therefrom, and in view of Rule 7(a) of the Rules of Criminal Procedure providing that an offense, which

may be punished by imprisonment for term exceeding one year or at hard labor, shall be prosecuted by indictment or, if indictment is waived, by information, one charged with stealing property of the United States in Guam is required to be indicted by a grand jury, in absence of waiver. *Pugh v. U.S.*, C.A.Guam 1954, 212 F.2d 761.

The Saylor act, set out as a note under this section, by which Congress has prohibited a district court of Guam from setting aside a conviction because of lack of indictment, is within the authority of congress. *U.S. v. Sakamoto*, D.C. Guam 1956, 145 F.Supp. 90.

6. Jury trial

The Federal Constitution does not require a jury trial in actions in the District Court of Guam. *American Pac. Dairy Products, Inc. v. Siciliano*, C.A. Guam 1956, 235 F.2d 74.

U.S.C.A.Const. Amend. 6 requiring trial by jury in all criminal prosecutions is not applicable to Guam because such Island has been declared an unincorporated territory of the United States. *Hatchett v. Government of Guam*, C.A. Guam 1954, 212 F.2d 767, certiorari dismissed 75 S.Ct. 17, 348 U.S. 801, 99 L.Ed. 633.

7. Contempt

District Court of Guam erred in using provisions of Code of Civil Procedure of Guam relating to contempt as applicable law in court's determination that defense attorney was in contempt, in view of this section specifically stating that District Court of Guam was to follow Federal Rules of Criminal Procedure. *Phelan v. People of Territory of Guam*, C.A.Guam 1968, 394 F.2d 293.

8. Original jurisdiction

District court of Guam, which has original and exclusive jurisdiction of all cases arising under the Constitution, treaties and laws of the United States, also has original jurisdiction of all other causes in Guam that have not been transferred to other local courts, and appellate jurisdiction to extent that legislature may determine. *Schenck v. Government of Guam*, C.A.Guam 1979, 609 F.2d 387.

9. Criminal jurisdiction

Jurisdiction to hear criminal cases involving violations of federal law has by

this section been conferred on the district court of Guam, even though that provision was subsequently amended to remove an inadvertent limitation on the court's civil jurisdiction; the fact that, with the amendment, one clause of this section expressly refers to civil matters did not compel a construction that the amendment stripped the court of its previously existing criminal jurisdiction. *U.S. v. Santos*, C.A.Guam 1980, 623 F.2d 75.

10. In personam jurisdiction

In action involving demand for more than \$2000 for injuries sustained in fall down stairs of club located upon Naval reservation of the United States on Guam, and organized for purpose of providing recreation to enlisted members of armed forces and other authorized patrons and guests, the District Court of Guam had jurisdiction over individual defendants who operated the club, and, under Federal Tort Claims Act, section 1346 and 2671 et seq. of Title 28, over the United States. *Brandt v. U.S.*, D.C. Guam 1953, 110 F.Supp. 627.

11. Diversity jurisdiction

Congress has not authorized district court of Guam to exercise federal diversity jurisdiction. *Chase Manhattan Bank (Nat. Ass'n) v. South Acres Development Co.*, Guam 1978, 98 S.Ct. 544, 434 U.S. 236, 54 L.Ed.2d 501.

12. Subject matter jurisdiction

Under this section, providing that the District Court of Guam shall have, in all causes arising under United States law, "jurisdiction" of a district court of the United States, quoted word means jurisdiction of the subject matter. *Hatchett v. Government of Guam*, C.A.Guam 1954, 212 F.2d 767, certiorari dismissed 75 S.Ct. 17, 348 U.S. 801, 99 L.Ed. 633.

The word "jurisdiction" as used in this section providing that District Court of Guam shall have, in all causes arising under the laws of United States, the "jurisdiction" of a District Court of the United States as such court is defined in said section, refers merely to jurisdiction of the subject matter, and not jurisdiction within meaning of rule that District Court of United States may lose jurisdiction if and when it denies an accused person rights which he has under the Constitution. *Pugh v. U.S.*, C.A.Guam 1954, 212 F.2d 761.

13. Appellate jurisdiction

Grant of jurisdiction to district court of Guam did not deny Guam litigants access to Article III courts for appellate review of local court decisions. *Chase Manhattan Bank (Nat. Ass'n) v. South Acres Development Co.*, Guam 1978, 98 S.Ct. 544, 434 U.S. 236, 54 L.Ed.2d 501.

Provision of this section that the District Court of Guam shall have such appellate jurisdiction as the Guam Legislature may determine did not authorize the Guam Legislature to divest the District Court's appellate jurisdiction to hear appeals from local Guam courts and to transfer that jurisdiction to the newly created Guam Supreme Court but, rather, empowered the Legislature to "determine" that jurisdiction only in the sense of the selection of what should constitute appealable causes. *Guam v. Olsen*, Guam 1977, 97 S.Ct. 1774, 431 U.S. 195, 52 L.Ed.2d 250.

Guam Legislature lacks power to authorize government appeals from judgments of District Court of Guam. People of the Territory of Guam v. Okada, C.A.Guam 1982, 694 F.2d 565, amended and rehearing denied 715 F.2d 1347, certiorari denied 105 S.Ct. 441, 469 U.S. 1021, 83 L.Ed.2d 367.

Under section of Organic Act of Guam, section 1421 et seq. of this title, which vested judicial authority of Guam in District Court of Guam and "in such court or courts as may have been or may hereafter be established by the laws of Guam," legislature of Guam had authority to eliminate appellate jurisdiction of district court as to local, nonfederal questions, and to transfer that jurisdiction to a court created by the legislature. *Agana Bay Development Co. (Hong Kong) Ltd. v. Supreme Court of Guam*, C.A.Guam 1976, 529 F.2d 952.

Appellate Division of District Court of Guam has no jurisdiction except to hear appeals from Island Court of Guam to District Court of Guam. In re Webster, C.A.Guam 1966, 363 F.2d 837.

Attempt of the legislature of Guam to create a Supreme Court of Guam to which all appeals would be directed was inconsistent with the appellate scheme set forth under this chapter and was null and void. *Sanchez v. Supreme Court of Guam*, D.C.Guam 1975, 416 F.Supp. 1.

The Appellate Division of the District Court of Guam has jurisdiction of appeals from decisions of the Island Court of Guam in criminal cases. *Eiban v. Government of Guam*, D.C.Guam 1953, 115 F.Supp. 519.

14. Habeas corpus

Petitioner for writ of habeas corpus following a judgment of conviction entered by the Superior Court of Guam, which was affirmed by the Appellate Division of the District Court of Guam and by the Ninth Circuit Court of Appeals, was required to exhaust the territorial remedies available to him before the District Court of Guam entertained his petition. *Pador v. Matanane*, C.A.Guam 1981, 653 F.2d 1277.

15. Attorney disciplinary proceedings

Disbarment or suspension of attorneys practicing law in Guam is vested exclusively in District Court of Guam, consisting of single judge. In re Webster, C.A. Guam 1966, 363 F.2d 837.

16. Constitutional actions

Assertion of a constitutional right by way of a collateral attack upon a criminal conviction is no more the assertion of a cause "arising under" the Constitution within the meaning of this section giving original jurisdiction to the District Court of Guam than would be the assertion of the same right in the course of a criminal proceeding before the Superior Court of Guam. *Pador v. Matanane*, C.A.Guam 1981, 653 F.2d 1277.

17. Foreign actions

Federal District Court of Guam did not have jurisdiction of action brought against United States by high bidder for obsolete government ammunition for alleged wrongful acts of defendants, who allegedly furnished false information to person at United States air base in Philippines charged with responsibility of awarding contract, since action was one "arising in a foreign country". *Pedersen v. U.S.*, D.C.Guam 1961, 191 F.Supp. 95.

18. Public contracts

Federal District Court of Guam had jurisdiction over action by highest bidder for obsolete government ammunition for wrongful acts of defendants in furnishing false information to person in Philippines charged with responsibility of awarding contract, which was award-

ed to one of defendants, who was a lower bidder. *Pedersen v. U.S.*, D.C.Guam 1961, 191 F.Supp. 95.

19. Real property actions

The District Court of Guam and not the island court had exclusive jurisdiction over equitable action to quiet title to real property. *Look v. Government of Guam*, C.A.Guam 1974, 497 F.2d 699.

20. Tax actions

District Court of Guam had jurisdiction of suit to determine deficiencies assessed under territorial income tax law. *Forbes v. Maddox*, C.A.Guam 1964, 339 F.2d 387.

Where citizens of Guam brought action in District Court of Guam for recovery of allegedly illegally collected territorial income taxes, and to permanently enjoin enforcement of territorial income tax law, district court had jurisdiction to determine sufficiency of complaint; and dismissal of action, though proper, should not have been based on ground

of want of jurisdiction of subject matter. *Phelan v. Taitano*, C.A.Guam 1956, 233 F.2d 117.

21. Island courts—Generally

Guam Code of Civil Procedure provision giving Guam Island Court original jurisdiction of all cases at law where value of property involved does not amount to more than \$2,000 did not serve to also give the Island Court jurisdiction of the equitable action of partition even when the value of the property was less than \$2,000. *Tabor v. Ulloa*, C.A.Guam 1963, 323 F.2d 823.

22. — Supreme Court of Guam

Guam legislature could create a Supreme Court of Guam to perform the limited, nonappellate function of dealing with objections to authority of special prosecutor raised by a motion to dismiss the indictment. *Sanchez v. Supreme Court of Guam*, D.C.Guam 1975, 416 F.Supp. 1.

§ 1424-1. Local courts; composition; appellate court; jurisdiction; practice and procedure; qualifications and duties of judges

(a) Composition; establishment of appellate court

The local courts of Guam shall consist of such trial court or courts as may have been or may hereafter be established by the laws of Guam. On or after the effective date of this Act, the legislature of Guam may in its discretion establish an appellate court.

(b) Jurisdiction

The legislature may vest in the local courts jurisdiction over all causes in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam by section 1424(b) of this title.

(c) Practice and procedure; qualifications and duties of judges

The practice and procedure in the local courts and the qualifications and duties of the judges thereof shall be governed by the laws of Guam and the rules of those courts.

(Aug. 1, 1950, c. 512, § 22A, as added Oct. 5, 1984, Pub.L. 98-454, Title VIII, § 801, 98 Stat. 1742.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1984 Act. House Report No. 98-784, see 1984 U.S. Code Cong. and Adm. News, p. 2908.

References in Text

The effective date of this Act, referred to in subsec. (a) is the effective date of

Title VIII of Pub.L. 98-454, which is 90 days after Oct. 5, 1984.

Effective Dates

1984 Act. Section effective on the ninetieth day following Oct. 5, 1984, see section 1005 of Pub.L. 98-454 set out as a note under section 1424 of this title.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1424-2. Relations between courts of United States and courts of Guam; review by United States Court of Appeals for Ninth Circuit; reports to Congress; rules

The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: *Provided*, That for the first fifteen years following the establishment of the appellate court authorized by section 1424-1(a) of this title, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had. The Judicial Council of the Ninth Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.¹

(Aug. 1, 1950, c. 512, § 22B, as added Oct. 5, 1984, Pub.L. 98-454, Title VIII, § 801, 98 Stat. 1742.)

¹ So in original. Probably should be "section".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1984 Act. House Report No. 98-784, see 1984 U.S. Code Cong. and Adm. News, p. 2908.

Effective Dates

1984 Act. Section effective on the ninetieth day following Oct. 5, 1984, see

section 1005 of Pub.L. 98-454 set out as a note under section 1424 of this title.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1424-3. Appellate jurisdiction of District Court; procedure; review by United States Court of Appeals for Ninth Circuit; rules; appeals to appellate court

(a) Appellate jurisdiction of District Court

Prior to the establishment of the appellate court authorized by section 1424-1(a) of this title, the District Court of Guam shall have such appellate jurisdiction over the local courts of Guam as the legislature may determine: *Provided*, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this chapter, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of Guam or of any orders or regulations issued or actions taken by the executive branch of the government of Guam with the Constitution, treaties, or laws of the United States, including this chapter, or any authority exercised thereunder by an officer or agency of the United States.

(b) Appellate division of District Court; quorum; presiding judge; designation of judges; decisions

Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The district judge shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division of any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time pursuant to section 1424b of this title: *Provided*, That no more than one of them may be a judge of a court of record of Guam. The concurrence of two judges shall be necessary to any decision of the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

(c) United States Court of Appeals for Ninth Circuit; jurisdiction; appeals; rules

The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division of the district court. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

(d) Appeals to appellate court; effect on district court

Upon the establishment of the appellate court provided for in section 1424-1(a) of this title all appeals from the decisions of the local courts not previously taken must be taken to the appellate court. The establishment of that appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division of the district court on such appeals may be reviewed in the United States Court of Appeals for the Ninth Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.

(Aug. 1, 1950, c. 512, § 22C, as added Oct. 5, 1984, Pub.L. 98-454, Title VIII, § 801, 98 Stat. 1742.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1984 Act. House Report No. 98-784, see 1984 U.S.Code Cong. and Adm.News, p. 2908.

section 1005 of Pub.L. 98-454 set out as a note under section 1424 of this title.

Effective Dates

1984 Act. Section effective on the ninetieth day following Oct. 5, 1984, see

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Mandamus 1 Standard of review 2

1. Mandamus

Panel of appellate division of district court of Guam was required to consider mandamus petition challenging assignment of criminal cases by presiding judge of superior court; presiding judge of appellate division could not unilaterally dispose of mandamus petition on

merits. *Cruz v. Abbate*, C.A.9 (Guam) 1987, 812 F.2d 571.

2. Standard of review

Court of Appeals must affirm decisions of the Appellate Division of the District Court of Guam on matters of local law, if they are based upon tenable theory and are not manifestly erroneous. *Hair v. Pangilinan*, C.A.9 (Guam) 1987, 816 F.2d 1341.

§ 1424-4. Criminal offenses; procedure; definitions

Where appropriate, the provisions of part II of Title 18 and of Title 28, and notwithstanding the provision in rule 54(a) Federal Rules of Criminal Procedure relating to the prosecution of criminal offenses on Guam by information, the rules of practice and procedure heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to Titles 11, 18, and 28, shall apply to the District Court of Guam and appeals therefrom; except that the terms, "Attorney for the government" and "United States attorney", as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, including the Guam Territorial income tax, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

(Aug. 1, 1950, c. 512, § 22D, as added Oct. 5, 1984, Pub.L. 98-454, Title VIII, § 801, 98 Stat. 1743.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1984 Act. House Report No. 98-784, see 1984 U.S.Code Cong. and Adm.News, p. 2908.

References in Text

The Federal Rules of Criminal Procedure, referred to in text, are set out in Title 18, Crimes and Criminal Procedure.

Effective Dates

1984 Act. Section effective on the ninetieth day following Oct. 5, 1984, see section 1005 of Pub.L. 98-454 set out as an Effective Date of 1984 Amendment note under section 1424 of this title.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1424a. Repealed. Oct. 31, 1951, c. 655, § 56(e), 65 Stat. 729**HISTORICAL AND STATUTORY NOTES**

Section, Act Aug. 1, 1950, c. 512, § 23, 64 Stat. 390, related to appeals from the District Court of Guam to the United States Court of Appeals for the Ninth Circuit, and to the United States Supreme Court. See sections 41, 1252, 1291, 1292 and 1294 of Title 28, Judiciary and Judicial Procedure.

Savings Provisions

Subsec. (1) of section 56 of Act Oct. 31, 1951 provided that the repeal by section 56 of Act Oct. 31, 1951, shall not affect any rights or liabilities existing hereunder on the effective date of that repeal (Oct. 31, 1951).

§ 1424b. Judge of District Court; appointment, tenure, removal and compensation; appointment of United States attorney and marshal

(a) The President shall, by and with the advice and consent of the Senate, appoint a judge for the District Court of Guam who shall

hold office for the term of ten years and until his successor is chosen and qualified unless sooner removed by the President for cause. The judge shall receive a salary payable by the United States which shall be at the rate prescribed for judges of the United States district courts.

The Chief Judge of the Ninth Judicial Circuit of the United States may assign a judge of a local court of record or a judge of the High Court of the Trust Territory of the Pacific Islands or a circuit or district judge of the ninth circuit or a recalled senior judge of the District Court of Guam or of the District Court for the Northern Mariana Islands, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge in the District Court of Guam whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the court.

(b) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney and United States marshal for Guam to whose offices the provisions of chapters 35 and 37 of Title 28, respectively, shall apply.

(Aug. 1, 1950, c. 512, § 24, 64 Stat. 390; Oct. 31, 1951, c. 655, § 55(a), 65 Stat. 728; June 4, 1958, Pub.L. 85-444, § 3, 72 Stat. 179; Oct. 5, 1984, Pub.L. 98-454, Title VIII, § 802, 98 Stat. 1743.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1951 Act. Senate Report No. 1020, see 1951 U.S.Code Cong. and Adm.Service, p. 2578.

1958 Act. Senate Report No. 1582, see 1958 U.S.Code Cong. and Adm.News, p. 2623.

1984 Act. House Report No. 98-784, see 1984 U.S.Code Cong. and Adm.News, p. 2908.

Codifications

In subsec. (b), "chapters 35 and 37 of Title 28" was substituted for "chapters 31 and 33 of Title 28" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 4(c) of which revised Part II of Title 28, Judiciary and Judicial Procedure.

Amendments

1984 Amendment. Subsec. (a). Pub.L. 98-454, § 802(a) to (c), substituted "for a term of ten years" for "for a term of eight years" in the first paragraph, substituted "a local court of

record" for "the Island Court of Guam", before "or a judge of the High Court", in the second paragraph, and added "or a recalled senior judge of the District Court of Guam or of the District Court of the Northern Mariana Islands" after "ninth circuit" in the second paragraph.

Subsec. (b). Pub.L. 98-454, § 802(d) substituted "35" and "37" for "31" and "33" respectively.

Subsec. (c). Pub.L. 98-454, § 802(e) struck out subsec. (c) which provided that chapters 43 and 49 of Title 28 shall apply to the District Court of Guam.

1958 Amendment. Subsec. (a). Pub.L. 85-444, increased the term of office from four to eight years, to substitute provisions requiring the salary of the judge to be at the rate prescribed for judges of the United States district courts for provisions which required the salary of the judge to be the same as the salary of the Governor of Guam, and to insert provisions permitting the Chief Judge of

the Ninth Circuit to make temporary assignments.

1951 Amendment. Subsec. (a). Act Oct. 31, 1951, in second sentence, struck out ", and shall be entitled to the benefits of retirement provided in section 373 of Title 28".

Subsec. (c). Act Oct. 31, 1951, struck out references to chapters 21, 41 and 57 of Title 28.

Effective Dates

1984 Act. Amendments by Pub.L. 98-454 effective on the ninetieth day following Oct. 5, 1984, see section 1005 of Pub.L. 98-454 set out as a note under section 1424 of this title.

Extension of Term of District Judges; Applicability; Effective Date

Section 1004 of Pub.L. 98-454 provided that: "The provisions of sections 706(a), 802(a), and 901(a) of this Act [amending section 1614(a) of this title, subsection (b) of this section and section 1694(b)(1) of this title] extending the terms of district court judges of the Virgin Islands, Guam, and the Northern Mariana Islands, respectfully, from eight to ten years shall be applicable to the judges of those courts holding office on the effective date of this Act [90 days after Oct. 5, 1984]."

CROSS REFERENCES

Compensation of district court judges, see 28 USCA § 135.

Court officers and employees, general provisions applicable to, see 28 USCA § 951 et seq.

General provisions applicable to courts and judges, see 28 USCA § 451 et seq.; 48 USCA § 1424.

Provisions relating to Administrative Office of United States Courts, applicability to District Court of Guam, see 28 USCA § 610.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1424c. Review of claims respecting land on Guam

(a) Jurisdiction

Notwithstanding any law or court decision to the contrary, the District Court of Guam is hereby granted authority and jurisdiction to review claims of persons, their heirs or legatees, from whom interests in land on Guam were acquired other than through judicial condemnation proceedings, in which the issue of compensation was adjudicated in a contested trial in the District Court of Guam, by the United States between July 21, 1944, and August 23, 1963, and to award fair compensation in those cases where it is determined that less than fair market value was paid as a result of (1) duress, unfair influence, or other unconscionable actions, or (2) unfair, unjust, and inequitable actions of the United States.

(b) Acquisitions effected through condemnation proceedings

Land acquisitions effected through judicial condemnation proceedings in which the issue of compensation was adjudicated in a contested trial in the District Court of Guam, shall remain res judicata and shall not be subject to review hereunder.

(c) Fair compensation

Fair compensation for purposes of this Act is defined as such additional amounts as are necessary to effect payment of fair market value at the time of acquisition, if it is determined that, as a result of duress, unfair influence, or other unconscionable actions, fair market value was not paid.

(d) Employment of special masters or judges

The District Court of Guam may employ and utilize the services of such special masters or judges as are necessary to carry out the intent and purposes hereof.

(e) Awards

Awards made hereunder shall be judgments against the United States.

(f) Limitation on attorney's fees; violation; penalty

Attorney's fees paid by claimants to counsel representing them may not exceed 5 per centum of any additional award. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both. A reasonable attorney's fee may be awarded in appropriate cases.

(g) Availability of documents, records, and writings to court

All agencies and departments of the United States Government shall, upon request, deliver to the court any documents, records, and writings which are pertinent to any claim under review.

(Pub.L. 95-134, Title II, § 204, Oct. 15, 1977, 91 Stat. 1162; Pub.L. 96-205, Title III, § 301(a), Mar. 12, 1980, 94 Stat. 87.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1977 Act. The House provision directed the Secretary to review, determine, and pay claims arising from U.S. land acquisitions in Guam immediately after the Second World War. The committee disapproves of this procedure for the following reasons:

(a) At base, the issue is the constitutional question of just compensation for federal acquisitions. This is a singularly inappropriate issue for the executive branch to determine since it made the acquisitions; and

(b) the records, such as may exist, and other information pertinent to this inquiry, would be in the Department of Defense not in the Department of the Interior.

Accordingly the committee has granted jurisdiction to the district court of Guam to review the claims of any aggrieved individual with certain limitations. The committee believes that the subject matter of this issue is one peculiarly within the expertise of the judiciary and that any affirmative verdicts should stand as judgments against the

United States without the necessity of additional authorizations and the uncertainty of appropriations.

The committee wishes to make clear, however, that those individuals who received payment for their land in judicial condemnation proceedings have had their day in court; their judgments shall remain *res judicata* and the district court will not have jurisdiction to review their awards.

The committee is aware of the nature of the complaints from Guam and wishes to make clear the basis for any recovery. Any individual, in order to recover, must prove that he received less than fair value for his land as a direct result of fraud, duress, or other unconscionable actions by the United States. It is not sufficient to prove that a more skilled negotiation could have reached a higher selling price. Nor is it sufficient to prove that the seller accepted a lower price than he could have otherwise obtained because the market was depressed at that particular time, or he needed money, or similar reasons. It is not sufficient merely to show he made a bad bargain, but rather that the bargain was the result of some action by the United States which is "unconscionable". The committee has deliberately used the word "unconscionable" to expand and soften the rigid requirements of fraud and duress to include any actions, promises, appeals, or other activities which would amount to an unfair advantage.

The committee is aware that it will be difficult to satisfy strict rules of evidence and accordingly has authorized the court to appoint special masters as the interests of justice require. The committee expects that evidentiary rules will be flexible enough to allow justice to be done in these proceedings.

The committee notes that a 5 percent attorney's fee has been placed on this section. The committee wishes to emphasize that the 5 percent is the maximum fee and is not to be evaded by "nonlegal costs", "voluntary contribu-

tions", "miscellaneous expenses" or other evasions of the committee's intent. The committee has provided that, subject to the 5-percent limitation, the court may award attorney's fees in appropriate cases.

Finally, the committee wishes to emphasize that the United States is to make its records and documents available to claimants since the U.S. agency files are the repository of most of the relevant information. Senate Report No. 95-332.

1980 Act. Senate Report No. 96-467, see 1980 U.S.Code Cong. and Adm.News, p. 135.

References in Text

This Act, referred to in subsec. (c), is Pub.L. 95-134, Oct. 15, 1977, 91 Stat. 1159, as amended, popularly known as the Omnibus Territories Act of 1977, which enacted sections 1424c and 1469a of this title, amended sections 1421i, 1422d, 1428, 1574, 1575, 1599, and 1681b of this title, enacted provisions set out as notes under section 1681 of this title, section 7651 of Title 26, Internal Revenue Code, and section 1457 of Title 43, Public Lands, and amended provisions set out as a note under section 1681 of this title. For complete classification of this Act to the Code, see Tables volume.

Codifications

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

Amendments

1980 Amendment. Subsec. (c). Pub.L. 96-205 struck out provisions prohibiting allowance of interest on additional amounts of award.

Commencement of Civil Actions Before April 1, 1982

Section 301(b) of Pub.L. 96-205, provided that: "Any civil action under section 204 of the Omnibus Territories Act of 1977 (91 Stat. 1162) [this section] shall be barred unless it is commenced not later than April 1, 1982."

NOTES OF DECISIONS

Jury trial 1 Res judicata 2

1. Jury trial

It was within district court's authority to order jury trial on issue of just compensation in proceeding under this section governing review of claims respecting land acquired by United States on Guam. *Franquez v. U.S.*, C.A.Guam 1979, 604 F.2d 1239.

2. Res judicata

Where plaintiffs' predecessors in interest never made court appearance in condemnation proceedings, where, although predecessors in interest were notified that condemnation proceedings had been filed, no notice of trial date was ever given them, and where predecessors in interest therefore were never given

customary warning that in event they did not answer, proceedings would take place without them, action alleging that lands owned by plaintiffs' predecessors in interest had been condemned for less than fair market value was not barred by this section, which expressly bars review of judicial condemnation following "a contested trial in the District Court of Guam." *Limtiaco v. U. S.*, C.A.Guam 1982, 675 F.2d 1069.

Prior judicial condemnation judgments in which issue of compensation for land taken by United States was adjudicated in contested trial in the district of Guam remained *res judicata* and could be reopened under this section governing review of claim respecting land on Guam. *Franquez v. U.S.*, C.A. Guam 1979, 604 F.2d 1239.

SUBCHAPTER V—PUBLIC HOUSING AND URBAN RENEWAL

§ 1425. Mortgage insurance on housing projects or property; conditions and limitations

If the Secretary of Housing and Urban Development finds that, because of higher costs prevailing in Guam, it is not feasible to construct dwellings or manufactured home courts or parks on property located in Guam without sacrifice of sound standards of construction, design, or livability, within the limitations as to maximum or maxima mortgage amounts provided in this Act [12 U.S.C.A. § 1701 et seq.], the Secretary may, by regulations or otherwise, prescribe, with respect to dollar amount, a higher maximum or maxima for the principal obligation of mortgages insured under this Act covering property located in Guam in such amounts as he shall find necessary to compensate for such higher costs but not to exceed, in any event, the maximum or maxima otherwise applicable (including increased mortgage amounts in geographical areas where cost levels so require) by more than one-half thereof. No mortgage with respect to a project or property in Guam shall be accepted for insurance under this Act unless the Secretary finds that the project or property is an acceptable risk, giving consideration to the acute housing shortage in Guam: *Provided*, That any such mortgage may be insured or accepted for insurance without regard to any requirement in any other section of this Act that the Secretary find the project or property to be economically sound or an acceptable risk. Notwithstanding any of the provisions of this Act

United States without the necessity of additional authorizations and the uncertainty of appropriations.

The committee wishes to make clear, however, that those individuals who received payment for their land in judicial condemnation proceedings have had their day in court; their judgments shall remain *res judicata* and the district court will not have jurisdiction to review their awards.

The committee is aware of the nature of the complaints from Guam and wishes to make clear the basis for any recovery. Any individual, in order to recover, must prove that he received less than fair value for his land as a direct result of fraud, duress, or other unconscionable actions by the United States. It is not sufficient to prove that a more skilled negotiation could have reached a higher selling price. Nor is it sufficient to prove that the seller accepted a lower price than he could have otherwise obtained because the market was depressed at that particular time, or he needed money, or similar reasons. It is not sufficient merely to show he made a bad bargain, but rather that the bargain was the result of some action by the United States which is "unconscionable". The committee has deliberately used the word "unconscionable" to expand and soften the rigid requirements of fraud and duress to include any actions, promises, appeals, or other activities which would amount to an unfair advantage.

The committee is aware that it will be difficult to satisfy strict rules of evidence and accordingly has authorized the court to appoint special masters as the interests of justice require. The committee expects that evidentiary rules will be flexible enough to allow justice to be done in these proceedings.

The committee notes that a 5 percent attorney's fee has been placed on this section. The committee wishes to emphasize that the 5 percent is the maximum fee and is not to be evaded by "nonlegal costs", "voluntary contribu-

tions", "miscellaneous expenses", or evasions of the committee. The committee has provided a subject to the 5-percent limitation, and may award attorney's fees in appropriate cases.

Finally, the committee wishes to emphasize that the United States has its records and documents available to claimants since the U.S. agency is the repository of most of the information. Senate Report No.

1980 Act. Senate Report No. 1000, 96 Stat. 1350, 1982 U.S. Code Cong. and Ad. Rep. p. 135.

References in Text

This Act, referred to in subsequent sections, is Pub.L. 95-134, Oct. 15, 1977, 91 Stat. 1159, as amended, popularly known as the Omnibus Territories Act, which enacted sections 1424c through 1424j of this title, amended sections 1422d, 1428, 1574, 1575, 1599, and 1600 of this title, enacted provisions set out as notes under section 1681 of this title, section 7651 of Title 26, Internal Revenue Code, and section 1457 of Title 48, Public Lands, and amended provisions set out as a note under section 1424c of this title. For complete classification of this Act to the Code, see Tables.

Codifications

Section was not enacted as part of the Organic Act of Guam which is the basis for this chapter.

Amendments

1980 Amendment. See Pub.L. 96-205 struck out provisions prohibiting allowance of interest on the award of additional amounts of award.

Commencement of Civil Actions

April 1, 1982
Section 301(b) of Pub.L. 96-205 provided that: "Any civil action under section 204 of the Omnibus Territories Act of 1977 (91 Stat. 1162) [this section] shall be barred unless it is commenced not later than April 1, 1982."

NOTES OF DECISIONS

1
2
The district court's authority to review a trial on issue of just compensation in proceeding under this section is not barred by the requirement of review of claims respecting lands acquired by United States on Guam. *Franquez v. U.S.*, C.A.Guam 1979, 604 F.2d 1239.

3
The district court's authority to review a trial on issue of just compensation in proceeding under this section is not barred by the requirement of review of claims respecting lands acquired by United States on Guam. *Franquez v. U.S.*, C.A.Guam 1979, 604 F.2d 1239.

customary warning that in event they did not answer, proceedings would take place without them, action alleging that lands owned by plaintiffs' predecessors in interest had been condemned for less than fair market value was not barred by this section, which expressly bars review of judicial condemnation following "a contested trial in the District Court of Guam." *Limtiaco v. U. S.*, C.A.Guam 1982, 675 F.2d 1069.

Prior judicial condemnation judgments in which issue of compensation for land taken by United States was adjudicated in contested trial in the district of Guam remained *res judicata* and could be reopened under this section governing review of claim respecting land on Guam. *Franquez v. U.S.*, C.A.Guam 1979, 604 F.2d 1239.

CHAPTER V—PUBLIC HOUSING AND URBAN RENEWAL

5. Mortgage insurance on housing projects or property; conditions and limitations

Secretary of Housing and Urban Development finds that, because of higher costs prevailing in Guam, it is not feasible to construct dwellings or manufactured home courts or parks on Guam located in Guam without sacrifice of sound standards of construction, design, or livability, within the limitations as to maximum mortgage amounts provided in this Act [12 U.S.C. 1701 et seq.], the Secretary may, by regulations or otherwise, with respect to dollar amount, a higher maximum or otherwise for the principal obligation of mortgages insured under this Act covering property located in Guam in such amounts as he may find necessary to compensate for such higher costs but not to exceed, in any event, the maximum or maxima otherwise applicable under this Act (increased mortgage amounts in geographical areas where cost levels so require) by more than one-half thereof. No mortgage with respect to a project or property in Guam shall be eligible for insurance under this Act unless the Secretary finds that the project or property is an acceptable risk, giving consideration to the housing shortage in Guam: *Provided*, That any such mortgage may be insured or accepted for insurance without regard to the requirement in any other section of this Act that the Secretary find the project or property to be economically sound or an acceptable risk. Notwithstanding any of the provisions of this Act

or any other law, the Government of Guam or any agency or instrumentality thereof shall be eligible as mortgagor or mortgagee, as the case may be, for any of the purposes of mortgage insurance under the provisions of this Act. Upon application by the mortgagee (1) where the mortgagor is regulated or restricted pursuant to the last sentence of this section or (2) where the Government of Guam or any agency or instrumentality thereof is the mortgagor or mortgagee, for the insurance of a mortgage under any provisions of this Act, the Secretary is authorized to insure the mortgage (including advances thereon where otherwise authorized), and to make commitments for the insuring of any such mortgages prior to the date of their execution or disbursement thereon, under such provisions (and this section) without regard to any requirement that the mortgagor shall be the owner and occupant of the property or shall have paid a prescribed amount on account of such property. Without limiting the authority of the Secretary under any other provision of law, the Secretary is authorized, with respect to any mortgagor in such case, to require the mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Secretary determines advisable to provide reasonable rentals and sales prices and a reasonable return on the investment.

(June 27, 1934, c. 847, Title II, § 214, as added Apr. 23, 1949, c. 89, § 2(a), 63 Stat. 57, and amended Sept. 1, 1951, c. 378, Title VI, § 606, 65 Stat. 315; July 14, 1952, c. 723, § 10(a)(3), 66 Stat. 603; June 30, 1953, c. 170, § 25(a), (c), 67 Stat. 128; June 25, 1959, Pub.L. 86-70, § 10(c), 73 Stat. 142; Sept. 23, 1959, Pub.L. 86-372, Title I, § 106, 73 Stat. 657; May 25, 1967, Pub.L. 90-19, § 1(a)(2), (3), 81 Stat. 17; Dec. 24, 1969, Pub.L. 91-152, Title IV, § 418(e), 83 Stat. 402; Oct. 8, 1980, Pub.L. 96-399, Title III, § 308(c)(1), 94 Stat. 1640; Oct. 17, 1984, Pub.L. 98-479, Title II, § 204(a)(4)(A), (B), 98 Stat. 2232.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in text, is Act June 27, 1934, c. 847, 48 Stat. 1246, as amended, known as the National Housing Act, which is classified principally to chapter 13 (section 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables volume.

Codifications

Section is comprised of section 214 of Act June 27, 1934, as added by section 2(a) of Act Apr. 23, 1949. Similar provisions relating to Alaska and Hawaii were classified to sections 484d and 723 of this title, and the section, in its complete

form, embracing Alaska, Guam, and Hawaii, is classified to section 1715d of Title 12, Banks and Banking.

Section was not enacted as part of the Organic Act of Guam, which comprises this chapter.

Amendments

1984 Amendment. Pub.L. 98-479 substituted "Notwithstanding" for "Nowithstanding" at the beginning of the third sentence.

1980 Amendment. Pub.L. 96-399 substituted reference to manufactured home for reference to mobile home.

1967 Amendment. Pub.L. 90-19 substituted "Secretary of Housing and Ur-

ban Development" for "Federal Housing Commissioner" and "Secretary" for "Commissioner" wherever appearing, respectively.

1953 Amendment. Act June 30, 1953, § 25(c), substituted, in fourth sentence, "Upon application by the mortgagee (1) where the mortgagor is regulated or restricted pursuant to the last sentence of this section or (2) for "Upon application

by the mortgagee,"; and added sentence beginning "Without limiting the authority".

1952 Amendment. Act July 14, 1952, made the provisions applicable to Guam and inserted "or maxima" following "maximum".

1951 Amendment. Act Sept. 1, 1951 substituted "one-half" for "one-third" in first sentence.

LIBRARY REFERENCES

Administrative Law

Nondiscrimination in federally assisted programs of Interior Department, see 43 C.F.R. § 17.1 et seq.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1425a. Legislative authority to create authorities; appointment of members; powers of authorities

The Legislature of Guam may by law grant to a public corporate authority, existing or to be created by or under such law, powers to undertake urban renewal and housing activities in Guam. Such legislature may by law provide for the appointment, terms of office, or removal of the members of such authority and for the powers of such authority, including authority to accept whatever benefits the Federal Government may make available, and to do all things, to exercise any and all powers, and to assume and fulfill any and all obligations, duties, responsibilities, and requirements, including but not limited to those relating to planning or zoning, necessary or desirable for receiving such Federal assistance, except that such authority shall not be given any power of taxation, nor any power to pledge the faith and credit of the territory of Guam for any loan whatever.

(Pub.L. 88-171, § 1, Nov. 4, 1963, 77 Stat. 304.)

HISTORICAL AND STATUTORY NOTES

Codifications

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1425b. Issuance of notes, bonds, and obligations

The Legislature of Guam may by law authorize such authority, any provision of the Organic Act of Guam [48 U.S.C.A. § 1421 et seq.], or any other Act of Congress to the contrary notwithstanding, to borrow money and to issue notes, bonds, and other obligations of such character and maturity, with such security, and in such manner as the legislature may provide. Such notes, bonds, and other obligations shall not be a debt of the United States, or of Guam other than such authority, nor constitute a debt, indebtedness, or the borrowing of money within the meaning of any limitation or restriction on the issuance of notes, bonds, or other obligations contained in any laws of the United States applicable to Guam or to any agency thereof.

(Pub.L. 88-171, § 2, Nov. 4, 1963, 77 Stat. 304.)

HISTORICAL AND STATUTORY NOTES**References in Text**

The Organic Act of Guam, referred to in text, is Act Aug. 1, 1950, c. 512, 64 Stat. 384, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see

Short Title note set out under section 1421 of this title and Tables volume.

Codifications

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1425c. Authorization of loans, conveyances, etc.

The Legislature of Guam may by law assist such authority by furnishing, or authorizing the furnishing of, cash donations, loans, conveyances of real and personal property, facilities, and services, and otherwise, and may by law take other action in aid of urban renewal or housing or related activities.

(Pub.L. 88-171, § 3, Nov. 4, 1963, 77 Stat. 304.)

HISTORICAL AND STATUTORY NOTES**Codifications**

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1425d. Ratification of prior act

Each and every part of Public Law 6-135, approved December 18, 1962, heretofore enacted by the Legislature of Guam dealing with any part of the subject matter of sections 1425a to 1425e of this title and not inconsistent therewith is ratified and confirmed.

(Pub.L. 88-171, § 4, Nov. 4, 1963, 77 Stat. 304.)

HISTORICAL AND STATUTORY NOTES**Codifications**

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1425e. Additional powers

Powers granted herein shall be in addition to, and not in derogation of, any powers granted by other law to, or for the benefit or assistance of, any public corporate authority.

(Pub.L. 88-171, § 5, Nov. 4, 1963, 77 Stat. 304.)

HISTORICAL AND STATUTORY NOTES**Codifications**

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1426. Repealed. Aug. 2, 1954, c. 649, Title II, § 205, 68 Stat. 622**HISTORICAL AND STATUTORY NOTES**

Section, Acts Apr. 23, 1949, c. 89, § 2(b), 63 Stat. 58; June 30, 1953, c. 170, § 25(b), 67 Stat. 128, related to purchase of insured mortgage loans by the Federal National Mortgage Association, with

respect to property in Guam. Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

SUBCHAPTER VI—GUAM DEVELOPMENT FUND

§ 1428. Authorization of appropriations

(a) For the purpose of promoting economic development in the territory of Guam, there is authorized to be appropriated to the Secretary of the Interior to be paid to the government of Guam for the purposes of this subchapter the sum of \$5,000,000.

(b) In addition to the appropriations authorized in subsection (a) of this section, \$1,000,000 is authorized to be appropriated to the Secretary of the Interior to be paid to the government of Guam annually for five fiscal years commencing in fiscal year 1978 to carry out the purposes of this subchapter.

(Pub.L. 90-601, § 2, Oct. 17, 1968, 82 Stat. 1172; Pub.L. 95-134, Title II, § 202, Oct. 15, 1977, 91 Stat. 1161.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. The purpose of H.R. 15151, as amended, is to promote economic development in the territory of Guam through the establishment of a capital loan and guarantee fund to encourage the development of private enterprise and industry on Guam. To accomplish this purpose H.R. 15151, as amended, authorizes the appropriation of \$5 million to be paid to the government of Guam and expended for economic development loans and loan guarantees.

* * * * *

The long-term investment capital needed for economic development on Guam can be made available through the assistance proposed in this legislation. H.R. 15151, as amended, will authorize the appropriation of \$5 million to be made available to the government of Guam for use as an economic development fund. However, prior to the receipt of the money, the government of Guam must

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1428a. Submission of plan for use of funds; contents of plan; term, interest rate, and premium charge of loan

Prior to receiving any funds pursuant to this subchapter the government of Guam shall submit to the Secretary of the Interior a plan for the use of such funds which meets the requirements of this section and is approved by the Secretary. The plan shall designate an agency or agencies of such government as the agency or agencies for the administration of the plan and shall set forth the policies and procedures to be followed in furthering the economic development of Guam through a program which shall include and make provision for loans and loan guarantees to promote the development of private enterprise and private industry in Guam through a revolving fund for such purposes: Provided, That the term of any loan made pursuant to the plan shall not exceed twenty-five years; that such loans shall bear interest (exclusive of premium charges for insurance, and service charges, if any) at such rate per annum as is determined to be reasonable and as approved by the Secretary, but in no event less than a rate equal to the average yield on outstanding marketable obligations of the United States as of the last day of the month preceding the date of the loan, adjusted to the nearest one-eighth of 1 per centum, which rate shall be determined by the Secretary of the Treasury upon the request of the authorized agency or agencies of the government of Guam; and that premium charges for the insurance and guarantee of loans shall be commensurate, in the judgment of the agency or agencies administering the fund, with expenses and risks covered.

(Pub.L. 90-601, § 3, Oct. 17, 1968, 82 Stat. 1172.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. See Revision Notes and Legislative Reports note set out under section 1428 of this title.

Codifications
Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1428b. Prerequisite for loan or loan guarantee; maximum participation in available funds; reserves for loan guarantees

No loan or loan guarantee shall be made under this subchapter to any applicant who does not satisfy the agency or agencies adminis-

tering the plan that financing is otherwise unavailable on reasonable terms and conditions. The maximum participation in the funds made available under section 1428 of this title shall be limited (a) so that not more than 25 per centum of the funds actually appropriated by the Congress may be devoted to any single project (b) to 90 per centum of loan guarantee, and (c) with respect to all loans, to that degree of participation prudent under the circumstances of individual loans but directly related to the minimum essential participation necessary to accomplish the purposes of this subchapter: *Provided*, That, with respect to loan guarantees, the reserves maintained by the agency or agencies for the guarantees shall not be less than 25 per centum of the guarantee.

(Pub.L. 90-601, § 4, Oct. 17, 1968, 82 Stat. 1172.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. See Revision Notes and Legislative Reports note set out under section 1428 of this title.

Codifications
Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1428c. Accounting procedures

The plan provided for in section 1428a of this title shall set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement, repayment, and accounting for such funds.

(Pub. L. 90-601, § 5, Oct. 17, 1968, 82 Stat. 1172.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. See Revision Notes and Legislative Reports note set out under section 1428 of this title.

Codifications
Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1428d. Report for inclusion in annual report by Governor

The Governor of Guam shall include in the annual report to Congress required pursuant to section 1422 of this title a report on the administration of this subchapter.

(Pub.L. 90-601, § 6, Oct. 17, 1968, 82 Stat. 1173; Pub.L. 96-470, Title II, § 206(c), Oct. 19, 1980, 94 Stat. 2244.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. See Revision Notes and Legislative Reports note set out under section 1428 of this title.

1980 Act. House Report No. 1268, see 1980 U.S.Code Cong. and Adm.News, p. 4675.

Codifications

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

Amendments

1980 Amendment. Pub.L. 96-470 substituted provision requiring the Governor of Guam to include in his report to Congress under section 1422 of this title a report on the administration of this subchapter for provision requiring the Governor of Guam to make an annual report to the Secretary of the Interior on administration of this subchapter, copies of which were to be forwarded to the Speaker of the House of Representatives and the President of the Senate.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 1428e. Audit of books and records of agency, or agencies, administering loan funds

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to the books, documents, papers, and records of the agency, or agencies, of the government of Guam administering the plan that are pertinent to the funds received under this subchapter.

(Pub. L. 90-601, § 7, Oct. 17, 1968, 82 Stat. 1173.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1968 Act. See Revision Notes and Legislative Reports note set out under section 1428 of this title.

Codifications
Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

quirements associated with utilization of such assistance.

“(c) Termination date.—Subsection (a) shall not be effective after the last day of the 3-year

period beginning on the date of the enactment of this Act [Nov. 23, 1990]; except that the Secretary shall complete construction of any project commenced under subsection (a) before such day.”

§ 1405q. Laws continued in force until modified; patent, trade mark, and copyright laws extended to Virgin Islands; jurisdiction of district court

CROSS REFERENCES

Provisions of this subchapter not inconsistent with § 1541 et seq. of this title as continued in force and effect, see 48 USCA § 1574.

§ 1406m. Short title

CROSS REFERENCES

Provisions of this subchapter not inconsistent with § 1541 et seq. of this title as continued in force and effect, see 48 USCA § 1574.

SUBCHAPTER IV—PUBLIC HOUSING

§ 1408c. Grants-in-aid by Federal government

NOTES OF DECISIONS

Disbursement of funds 1

1. Disbursement of funds

When disbursement of federal funds is left to discretion of local government, formal procurement procedures required for public contracts by Organic Act may follow such funds; policy

concerns underlying Organic Act regarding fiscal mismanagement, unauthorized expenditures and executive encroachment on legislature apply with equal force to federal funds which are to be disbursed at discretion of local government as they do to local funds to be disbursed at discretion of local government. *Smith v. Department of Educ., D.Virgin Islands 1990, 751 F.Supp. 70, affirmed 942 F.2d 199.*

CHAPTER 8A—GUAM

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
1421q-1. Applicability of laws referred to in section 502(a)(1) of Covenant to

Sec.
Establish a Commonwealth of the Northern Mariana Islands.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1421a. Unincorporated territory; capital; powers of government; suits against government; type of government; supervision

NOTES OF DECISIONS

3. Suits against Government

Remand was necessary for determination whether Guam police officers acted in good faith in making arrests and whether officers were entitled to qualified immunity in arrestees' § 1983 action; district court had erroneously decided that Guam's sovereign immunity protected officers. *Ngiraingas v. Sanchez, C.A.9 (Guam) 1988, 858 F.2d 1368, affirmed 110 S.Ct. 1737, 495 U.S. 182, 109 L.Ed.2d 163.*

Immunity provision of Organic Act of Guam

against Guam police officers in their individual capacities. *Ngiraingas v. Sanchez, C.A.9 (Guam) 1988, 849 F.2d 372.*

Territory of Guam did not enjoy immunity from injunctive relief based on either Eleventh Amendment or Organic Act of Guam in case seeking injunction to preclude officials from enforcing abortion statute. *Guam Soc. of Obstetricians and Gynecologists v. Ada, D.Guam 1990, 776 F.Supp. 1422.*

§ 1421b. Bill of rights

NOTES OF DECISIONS

2. Commerce power

Sakamoto v. Duty Free Shoppers, Ltd., 613 F.Supp. 381 [main volume] certiorari denied 106 S.Ct. 1457, 475 U.S. 1081, 89 L.Ed.2d 715.

3. Due process

Mink Amendment expressly extended to Guam due process clause of Fourteenth Amend-

ment, upon which holding of United States Supreme Court *Roe v. Wade* decision was founded, and thus, *Roe v. Wade* applied to Guam as it applied to states. *Guam Soc. of Obstetricians and Gynecologists v. Ada, C.A.9 (Guam) 1992, 962 F.2d 1366.*

§ 1421g. Establishment and maintenance of public bodies and offices

NOTES OF DECISIONS

Appointment of school board members 2
Exclusiveness of jurisdiction 1
Retroactive effect ½

clear indication of congressional intent that amendment have retroactive effect. *Nelson v. Ada, C.A.9 (Guam) 1989, 878 F.2d 277.*

½. Retroactive effect

Amendment to Organic Act of Guam, requiring that “government” rather than “governor” of Guam provide educational system, did not retroactively validate Guam's statute allowing for elected school board system rather than one having members appointed by governor, absent

2. Appointment of school board members

Organic Act of Guam, which vested in governor ultimate authority for establishing public education system, required that school board members be appointed by governor and that they could not lawfully be selected by any other body or process. *Nelson v. Ada, C.A.9 (Guam) 1989, 878 F.2d 277.*

§ 1421i. Income tax

NOTES OF DECISIONS

Limitations period 11a

11a. Limitations period

The rule that date of filing of S corporation's informational return starts three-year statute of limitations for corporate-related adjustments to shareholders' individual return is applicable to independently administered tax jurisdictions such as Guam and the Commonwealth of Northern Mariana Islands. *Holmes v. Director of the*

Dept. of Revenue and Taxation, Government of Guam, C.A.9 (Guam) 1991, 937 F.2d 481.

15. Jurisdiction of district court

Hotel's claim for rebate of territorial income taxes based on qualifying certificate issued by Guam economic development authority was matter involving territorial tax, rather than contract dispute and, thus, Federal District Court of Guam had exclusive jurisdiction. *Government of Guam v. Superior Court of Guam, C.A.9 (Guam) 1993, 998 F.2d 754.*

§ 1421q-1. Applicability of laws referred to in section 502(a)(1) of Covenant to Establish a Commonwealth of the Northern Mariana Islands

Effective on the date when section 502 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by joint resolution approved on March 24, 1976 (90 Stat. 263) goes into force those laws which are referred to in section 502(a)(1) of said Covenant, except for any laws administered by the Social Security Administration, except for medicaid which is now administered by the Health Care Financing Administration, and except the Micronesian Claims Act of 1971 (85 Stat. 96) [50 App. U.S.C.A § 2018 et seq.] shall be applicable to the territories of Guam and the Virgin Islands on the same terms and conditions as such laws are applied to the Northern Mariana Islands.

(Pub.L. 95-134, Title IV, § 402, Oct. 15, 1977, 91 Stat. 1163; Pub.L. 95-135, § 1, Oct. 15, 1977, 91 Stat. 1166.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Covenant, referred to in text, is the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, which is set

and effect at eleven o'clock on the morning of January 9, 1978, Northern Mariana Islands local time. See section 2 of Proclamation No. 4534, set out as a note under section 1801 of this title.

The Micronesian Claims Act of 1971, referred to in text, is the Micronesian Claims Act of 1971, 85 Stat.

to section 2018 et seq. of Title 50, App., War and National Defense, and which was omitted from the Code as terminated Aug. 3, 1976.

Codifications

Section was formerly classified as a note under section 1681 of this title.

Section was not enacted as part of the Organic Act of Guam which comprises this chapter.

Amendments

1977 Amendments. Pub.L. 95-135, § 1, amended section generally. Prior to amendment section read as follows: "Effective on October 15, 1977, those laws, except for any laws administered by the Social Security Administration and except for medicaid which is now administered by the Health Care Financing Administration, which are referred to in section 502(a)(1) (except for the reference to the Micronesian Claims Act of 1971 (85 Stat. 96)) of the

Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by joint resolution approved on March 24, 1976 (90 Stat. 263), and 502(a)(2) of said Covenant shall be applicable to the territories of Guam and the Virgin Islands on the same terms and conditions as such laws are applied to the Commonwealth of the Northern Mariana Islands."

Effective Dates

1977 Acts. Section 2 of Pub.L. 95-135, Oct. 15, 1977, 91 Stat. 1166, provided that: "This amendatory joint resolution [amending this section] shall be effective as of the approval of said Act entitled 'To authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes' (enrolled bill H.R. 6550, Ninety-fifth Congress, first session) (Pub.L. 95-134, approved Oct. 15, 1977)."

SUBCHAPTER III—THE LEGISLATURE

§ 1423. Legislature of Guam

NOTES OF DECISIONS

1. Delegation of power

People of Territory of Guam v. Fegurgur, 800 F.2d 1470 [main volume] certiorari denied 107 S.Ct. 1570, 480 U.S. 932, 94 L.Ed.2d 762.

§ 1423J. Purchases

The Territorial and local governments of Guam are authorized to make purchases through the General Services Administration.

(Oct. 5, 1992, Pub.L. 102-381, Title I, 106 Stat. 1392.)

HISTORICAL AND STATUTORY NOTES

Similar Provisions

Similar provisions were contained in the following prior appropriation Acts:

Nov. 13, 1991, Pub.L. 102-154, Title I, 105 Stat. 1007.

Nov. 5, 1990, Pub.L. 101-512, Title I, 104 Stat. 1932.

Oct. 23, 1989, Pub.L. 101-121, Title I, 103 Stat. 716.

Sept. 27, 1988, Pub.L. 100-446, Title I, 102 Stat. 1797.

Dec. 22, 1987, Pub.L. 100-202, § 101(g) [Title I], 101 Stat. 1329-231.

Oct. 30, 1986, Pub.L. 99-591, Title I, § 101(h) [Title I, § 100], 100 Stat. 3341-258.

CROSS REFERENCES

Authority of Governments of Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to make purchases

through the General Services Administration, see 48 USCA § 1469e.

SUBCHAPTER IV—THE JUDICIARY

§ 1424. District Court of Guam; local courts; jurisdiction

NOTES OF DECISIONS

9. Criminal jurisdiction

Guam; District Court of Guam can act both as federal district court and local territorial appel-

§ 1424-2. Relations between courts of United States and courts of Guam; review by United States Court of Appeals for Ninth Circuit; reports to Congress; rules

The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: *Provided*, That for the first fifteen years following the establishment of the appellate court authorized by section 1424-1(a) of this title, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had. The Judicial Council of the Ninth Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.¹

(As amended Nov. 2, 1994, Pub.L. 103-437, § 17(a)(1), 108 Stat. 4595.)

¹ So in original. Probably should be "section".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103-779, see 1994 U.S. Code Cong. and Adm. News, p. 3639.

Change of Name

Committee on Interior and Insular Affairs of the House of Representatives changed to Com-

mittee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

§ 1424-3. Appellate jurisdiction of District Court; procedure; review by United States Court of Appeals for Ninth Circuit; rules; appeals to appellate court

NOTES OF DECISIONS

Final decisions 5
Interlocutory review 4
Scope of review 3

2. Standard of review

Defendants' failure to object to use of nonstatutory reasonable doubt instruction required review by Appellate Division of District of Guam for plain error rather than reversible error, where objection would not have been futile. People of Territory of Guam v. Borja, C.A.9 (Guam) 1992, 983 F.2d 914.

Deferential standard of review is not to be applied to the construction of local law by the Appellate Division of the District Court of Guam; strict de novo standard of review is proper. People of Territory of Guam v. Yang, C.A.9 (Guam) 1988, 850 F.2d 507.

3. Scope of review

Court of Appeals has jurisdiction to review decision by appellate division of district court of Guam that it had no jurisdiction over interlocutory appeal from denial of motion to dismiss indictment. People of Territory of Guam v.

for the District of Guam, where the Appellate Division had determined that if automobile owner did not know that operator was unlicensed, unlicensed driver exclusion in automobile policy would be invalid as violation of Guam public policy and where the Appellate Division had remanded for determination of whether owner knew operator was unlicensed; validity of unlicensed driver exclusion clauses was not of such importance as to command immediate review, and review would be available after remand. Kiaaina v. Jackson, C.A.9 (Guam) 1988, 851 F.2d 287.

4. Interlocutory review

District court of Guam sitting as appellate division did not have jurisdiction over interlocutory appeal from Superior Court's denial of motion to dismiss indictment for insufficient evidence. People of Territory of Guam v. Quezada, C.A.9 (Guam) 1990, 905 F.2d 263.

Court of Appeals would not conduct interlocutory review of order of the Appellate Division of the District Court of Guam refusing to disqualify plaintiff's counsel on basis of her husband's representation of clients with directly adverse inter-

Note 5

5. Final decisions

Orders of the Guam Appellate Division reversing convictions and remanding for new trials on the merits were final and appealable; Guam

would not have the right to appeal defendants' acquittals on retrial. People of Territory of Guam v. Borja, C.A.9 (Guam) 1992, 983 F.2d 914.

§ 1424c. Review of claims respecting land on Guam

HISTORICAL AND STATUTORY NOTES

Treatment of Certain Awards by District Court of Guam

Pub.L. 100-647, Title VI, § 6140, Nov. 10, 1988, 102 Stat. 3724, provided that: "For purposes of the internal revenue laws of the United States and Guam, gross income shall not include

any amount received pursuant to any claim over which the District Court of Guam has jurisdiction by reason of section 204 of Public Law 95-134 [this section] (commonly referred to as the Omnibus Territories Act of 1977). This section shall be effective for taxable years beginning after December 31, 1985."

SUBCHAPTER V—PUBLIC HOUSING AND URBAN RENEWAL

§ 1425. Omitted

HISTORICAL AND STATUTORY NOTES

Codifications

Section, Act June 27, 1934, c. 847, Title II, § 214, as added Apr. 23, 1949, c. 89, § 2(a), 63

Stat. 57, and amended, related to insurance on mortgages in Guam. See section 1715d of Title 12, Banks and Banking.

CHAPTER 10—TERRITORIAL PROVISIONS OF A GENERAL NATURE

Sec. 1469e.	Insular Government purchases.	Sec.	(f) Palau.
1494a.	Annual reports to Congress. (a) In general. (b) Transmission date.	1494c.	Drug Enforcement Agency personnel assignments.
1494b.	Enforcement and administration in insular areas. (a) to (e) [See main volume for text].		

§ 1469b. Auditing of transactions of Territorial and local governments

All financial transactions of the Territorial and local governments herein provided for, including such transactions of all agencies or instrumentalities established or utilized by such governments, may be audited by the General Accounting Office, at its discretion, in accordance with chapter 35 of Title 31.

(Pub.L. 103-332, Title I, Sept. 30, 1994, 108 Stat. 2515.)

HISTORICAL AND STATUTORY NOTES

Similar Provisions

Similar provisions were contained in the following prior Appropriations Acts:

Pub.L. 103-188, Title I, Nov. 11, 1993, 107 Stat. 1394.

Pub.L. 102-381, Title I, Oct. 5, 1992, 106 Stat. 1392.

Pub.L. 102-154, Title I, Nov. 13, 1991, 105 Stat. 1007.

Pub.L. 101-512, Title I, Nov. 5, 1990, 104 Stat. 1932.

Pub.L. 101-121, Title I, Oct. 23, 1989, 103 Stat. 716.

Pub.L. 100-446, Title I, Sept. 27, 1988, 102 Stat. 1797.

Pub.L. 100-202, § 101(g) [Title I], Dec. 22, 1987, 101 Stat. 1323-251.

Pub.L. 99-591, Title I, § 101(h), [Title I, § 100], Oct. 30, 1986, 100 Stat. 3341-258.

§ 1469d. General technical assistance

[See main volume for text of (a) and (b)]

the Trust Territory of the Pacific Islands, the Virgin Islands, and American Samoa (hereinafter called the territories). Notwithstanding any other provision of law, the Secretary of Agriculture is authorized to waive or modify any statutory requirements relating to the provision of assistance under such programs when he deems it necessary in order to adapt the programs to the needs of the respective territory: *Provided*, That not less than sixty days prior to extending any program pursuant to this section or waiving or modifying any statutory requirement pursuant to this section, the Secretary of Agriculture shall notify the Committee on Agriculture and the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate of his proposed action together with an explanation of why his action is necessary and the anticipated benefits to each territory affected. Such programs shall be carried out in cooperation with the respective governments of the territories and shall be covered by a memorandum of understanding between the respective territorial government and the Department of Agriculture. Any sums appropriated pursuant to this paragraph shall be allocated to the agencies of the Department of Agriculture concerned with the administration of programs in the territories.

[See main volume for text of (d)]

(As amended Pub.L. 103-437, § 17(a)(2), Nov. 2, 1994, 108 Stat. 4595.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report No. 103-779, see 1994 U.S. Code Cong. and Adm. News, p. 3639.

Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

Change of Name

Committee on Interior and Insular Affairs of the House of Representatives changed to Com-

§ 1469e. Insular Government purchases

The Governments of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands are authorized to make purchases through the General Services Administration.

(Pub.L. 102-247, Title III, § 302, Feb. 24, 1992, 106 Stat. 38.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Act. Senate Report No. 102-243, see 1992 U.S. Code Cong. and Adm. News, p. 44.

§ 1492. Energy resources of Caribbean and Pacific insular areas

[See main volume for text of (a) to (f)]

(g) Financial assistance

(1) The Secretary of Energy may grant financial assistance, not to exceed \$2,000,000 annually, to insular area governments or private sector persons working in cooperation with insular area governments to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy measures which reduce the dependency of the insular areas on imported fuels, improve the quality of the environment, and promote development in the insular areas.

(2) Any applicant for financial assistance under this subsection must evidence coordination and cooperation with, and support from, the affected local energy institutions.

(3) In determining the amount of financial assistance to be provided for a proposed project, the Secretary shall consider—

(A) whether the measure will reduce the relative dependence of the insular area on imported fuels;

(B) the ease and costs of operation and maintenance of any facilities contemplated as a part of the project;

Memorandum

5 May 1995

18000
MARK
Brought to closure
Kri. We -
good job - please
file Mark N433

From: N433E

To: N43

Via: N433

Has seen

Subject: Redefinition of Guam as a U. S. Territory

1. With regards the subject legislative action by Mr. Underwood, the draft language was passed to CINCPACFLT and ASN (RDA) for comment. Legally, as a territory, Guam would be exempted from Title 10 limitations of Voyage Repairs only.

2. The ASN (RDA) position (verbal from Mr. Brian Persons) was that this action would not be opposed. He felt this was a legislative issue that, if anything, offered the Navy greater flexibility.

3. The CINCPACFLT position (attached), approved by RADM Coyle, paralleled the ASN (RDA) view, supporting the proposal. CINCPACFLT notes, however, that Mr. Underwood's statement that repair work for which Guam was not eligible for was sent to other foreign SRFs is not accurate.

4. N433E COMMENT: This could, possibly, undermine the BRAC recommendation to close SRF-Guam, due the additional flexibility in scheduling repairs. I raised this with both CINCPACFLT and ASN (RDA); neither agreed. Therefore, based on ASN (RDA) and CINCPACFLT positions, recommend N43 support subject legislative proposition.



Very Respectfully

M.A. Stearns

M. A. STEARNS

OPTIONAL FORM 10 (7-93)

FAX TRANSMITTAL

of pages **3**

To ERIC LINDENBAUM	From CDR BROWN T.H N4324
Dept/Agency BRAC	Phone # 703-693-4761
Fax # 703-696-0550	Fax # 703-693-0075

NSN 7540-01-317 7308 5010-105 GENERAL SERVICES ADMINISTRATION

05/05/95

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ENSC READINESS

FORM 100-101 1001-101-101 1001-101-101

693-0075

Capt Harris

693-0656

Help!

OPTIONAL FORM NO. 10 (7-90)

FAX TRANSMITTAL

of Pages: 1

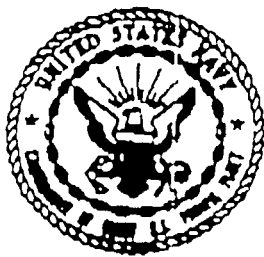
To: RADM TWYLA	From: Capt Harris
Dist/Agency: N-42	Phone: 693-6
Fax #: 693-0075	Fax #: 693-0656

FORM 100-101-117-7088 1001-101 GENERAL SERVICES ADMINISTRATION

Firth, I would like to seek a change in language of the U.S. Code, 10 U.S.C. 101(a)(3), in which Guam is incorrectly defined as a "possession" rather than a "territory." Because of this inaccuracy, naval ship repair work is unfairly diverted from the Ship Repair Facility (SRF) on Guam to foreign SRPs.

As you may know, the Secretary of Defense recommended to close SRF-Guam as part of the 1995 round of base closures. As the Base Closure and Realignment Commission (BRAC) considers these recommendations, the Government of Guam has proposed a collaborative arrangement with the Navy that would enable the Navy to have access to repairs at the facility, but at the same time allow for privatization. Under this arrangement, the Navy would retain access to SRF-Guam for the purposes of repair. Correcting the definition of Guam in order to more accurately reflect Guam's status as a U.S. territory would potentially bring SRF-Guam repair work that is now diverted to foreign SRPs.

Pitt



COMMANDER-IN-CHIEF
UNITED STATES PACIFIC FLEET
SHIP MAINTENANCE PLANS AND POLICY OFFICER, BOX 4311
PEARL HARBOR, HI 96880-7000

OFFICE 808-471-0444
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SECURE FACSIMILE 808-474-7808
DDN MAILBOX 431@CPF-EMH.CPF.NAVY.MIL



Number of Pages including transmittal sheet 1 DATE/TIME: 5 MAY 1995

From: Name: CDR J. R. EXELL
Code: CPF 431
Phone: 808-471-0444

To: Name: CDR Mark Stearns
Code: OP-433E
Phone: 703-895-4783, FAX 703-814-8558

Subj: RESPONSE ON TITLE 10 LANGUAGE PROPOSAL RE GUAM

Remarks: 1. The following comments are provided in response to your requested input on Congressman Underwood's proposal/initiative to change the current Title 10 wording to reflect Guam as a territory vice a possession:

- Initiative is supported by CINCPACFLT. Removing current repair limitations on the repair facility for U.S. homeporters (currently only mission and safety essential repairs) affords USN (now) and possible future private operations added repair flexibility.

- The wording of the proposal is inaccurate where it states that currently some work is unfairly diverted from the SRF to foreign SRPs. Work that does not meet Title 10 limitations is not accomplished by any foreign shipyard (including SRF Guam as defined by Title 10 language) and must be deferred for U.S. accomplishment.

Respectfully,

A handwritten signature in cursive script, appearing to read "A. R. Exell".

Base Closures & Realignments in Guam

June 12, 1995

1. The Navy's principal base closure and realignment recommendations are:
 - **Close the SRF.**
 - **Disestablish the FISC.**
 - **Realign the Naval Activities.**
 - Those activities will be converted into private sector facilities by GovGuam.
 - All facilities, land, piers, and buildings in the closed SRF, disestablished FISC and realigned Naval Activities to be conveyed "through long-term leases, outright transfers, or any other mutually agreeable arrangement ... so as to stimulate local economic growth.... (R. Pirie, 1995)"
2. Do not, however, decide now on the final location for the MSC ships & HC-5.
 - Allow the Navy, with real operational input, to decide later where to put the MSC ships and the helos (HC-5).
 - Do not tie the hands of the Fleet Commanders.
 - It is consistent with the operational needs of the Navy.
 - It strengthens the strategic uses of Guam.
3. Direct DOD to delay closure & realignment initiation until the end of the mandatory two-year period.
 - Allows for Guam and the Navy to better plan and coordinate base reuse.
 - Allows Guam time to develop private sector business for Economic Revitalization.
 - Guam needs the time to develop private offsets to the largest DOD reduction on 1995 List.
4. Add to the list for closure those facilities the Navy/DOD/USAF plans to transfer under the Guam Land Use Plan (GLUP) of 1994.
 - 4,000 acres of excess Navy property
 - Piti Power Plant (with modernized power generators)
5. Add the Officer Housing at the former Naval Air Station.
 - It is now redundant to the Navy's needs with the current closures.
 - It is the prime developable commercial parcel at the international airport.
6. Allow the PWC to remain a "Center" and not become a "Department."
 - PWC serves more than one "master:" the Navy, the Air Force & the USCG
 - PWC serves more than one "master" within the Navy
 - Naval Activities
 - The Communications Command
 - The Construction Battalion
 - The Fuel Farm
7. Provide "Findings" in the BRAC Report that give guidance to DOD to help address long-term problems in Guam; e.g.,
 - combining the two separate water utility systems.
 - returning additional excess military lands.
 - consolidating the two separate magazines.

Document Separator

APR 21 1995

3/30/95

96	193	529	17	118
77%	77%	72%	77%	73%
248	735	22	161	
Ships	CVA Air	Bases	Personnel	

Adm: Thanks we have a good relationship w/ Adm

It's a much different world
Most supporters of RAC

US: Did RAC # come through here?
A: Yes - we certified them

- only changes we now have # of people

- Adm Bouer is architect of JMWL # in Adm of
want to dry dock

COYLE: Did not anticipate having any skills out there
if we had to surge up we'd bring skills
in from HI

Historical precedent

- we've managed up + down after
WWII, Korea, Vietnam + more Cold War
w/ regard to skills

- Typical apprentice program = 4 years
 - ↳ we're going to build up long term
- Mothbally is last attractive alternative
 - want to come up w/ agreements from Guam
- could sign up w/ "intend to pursue"
 - "win/win/win"

Q: Singapore - to
 A: ↳ we

★

THG 10

↳ restricted from doing work in foreign shipyards unless than emergency

↳ Guam is considered a foreign shipyard

- Facilities in ~~Japan~~^{Guam} worse than ~~Guam~~^{Japan}

2: "We don't need excess, we need access"

"Looking at world as we see it today we are strategically comfortable w/ BRAC"

Q: Harbur?

A: We'll look for ways for outleaves that will allow max access & reuse
- Explosive ~~area~~ may be a bit of a problem

→ Who is the atty on the reuse?

↳ Bottom Line: They don't know footprints

Q: Fuel

DOD can't k out fuel
Defense Supply Center can k out

"Fuel fun should stay under DOD control"
- doesn't mean Warty controls

AC: Naval Mag - strategic importance?

- Need ^{ward} foreign deployed stocks

AC: HC-5

A: No requirement for SAR so DoD not looking at it + doesn't care

Q: Recommendation chamber

A: ~~we're~~ Thinking have another to send out there

QAC: SR7

↳ we want subsidize it
- they only have capacity for 35%

Q: What will footprint be

A: We support Navy decision

Q: Meteorological centers

A: Can be copied

- Japan satellite has been capable for






1 mo

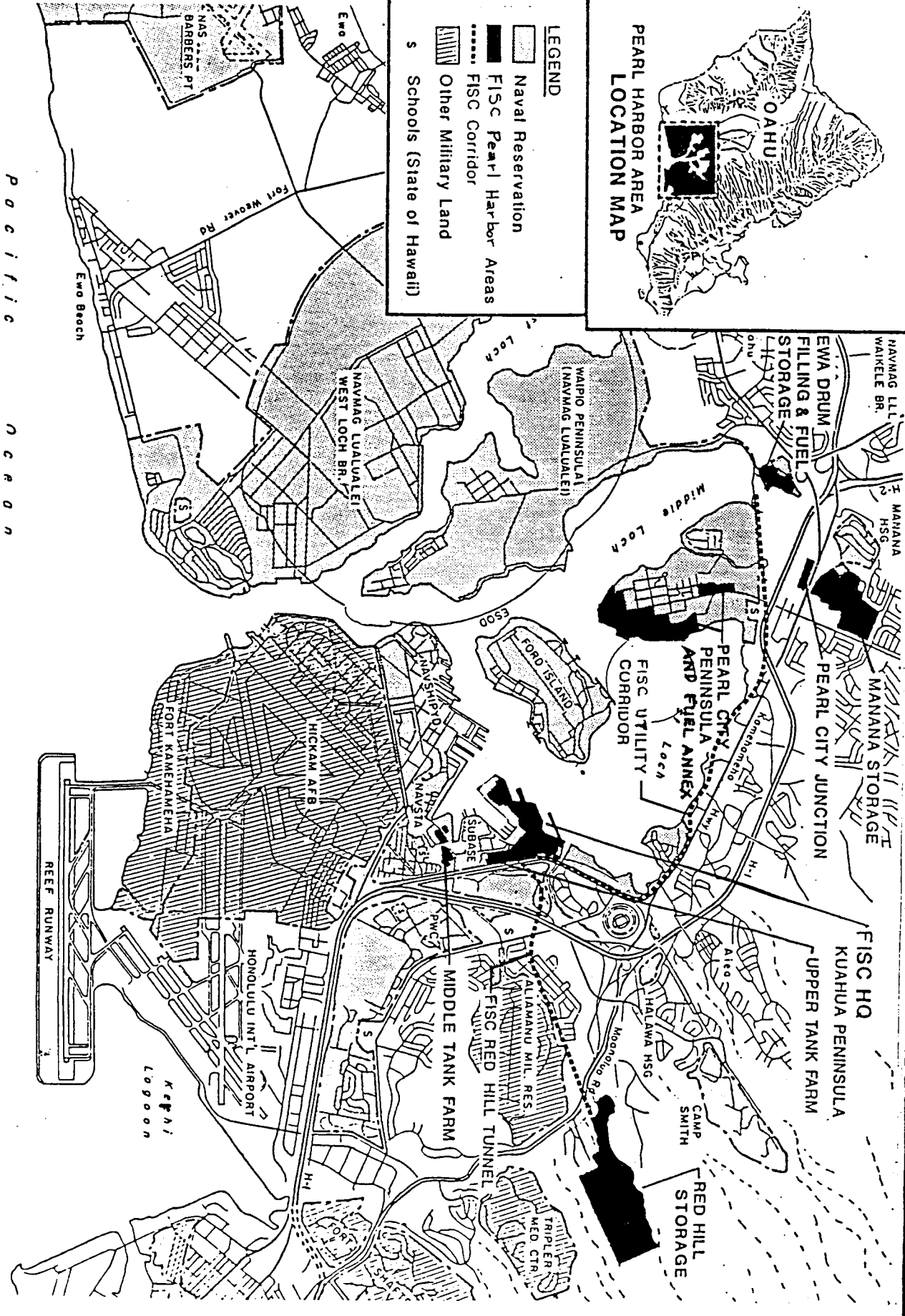
- Russia soon

PEARL HARBOR AREA
LOCATION MAP



LEGEND

-  Naval Reservation
-  FISC Pearl Harbor Areas
-  FISC Corridor
-  Other Military Land
-  Schools (State of Hawaii)



LOCATION MAP

Pearl Harbor



III. MISSION AREAS, PRODUCTS AND CUSTOMERS

MISSION AREAS:

We provide supplies and services in five primary mission areas:

1. Supply Support
2. Procurement and Contracting
3. Transportation and Terminal Service
4. Fuel Support
5. Personal Property Transportation



Our PRODUCTS:

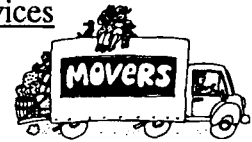
Supplies

Provisions
Repair Parts
Consumables
Fuel
Construction Material
Office Products
Industrial Material
Medical Supplies



Logistics Support Services

Contracting
Small Purchasing
Ocean and Air Cargo Handling
Transshipment
Packing & Preservation
Local Delivery
Fuel Analysis and Testing
Personal Property Counseling
and Traffic Management



Our CUSTOMERS:

Naval and Other Military Operating Forces and Supporting Commands

Navy Ships

Maintenance Commands
- Pearl Harbor Naval Shipyard
- Submarine Base Pearl Harbor
- Public Works Center (PWC)
- Shore Intermediate
Maintenance Activity (SIMA)



Naval Magazine Lualualei

Naval Computer & Telecommunication
Area Master Station (NCTAMS) EastPac

Naval Station Pearl Harbor

Naval Air Station Barbers Point

25th Infantry Division

Marine Corps Air Station Kaneohe

U.S. Army Support Command Hawaii

Coast Guard Commands in Hawaii

Marine Air Logistics Squadron 24

15th Air Base Wing

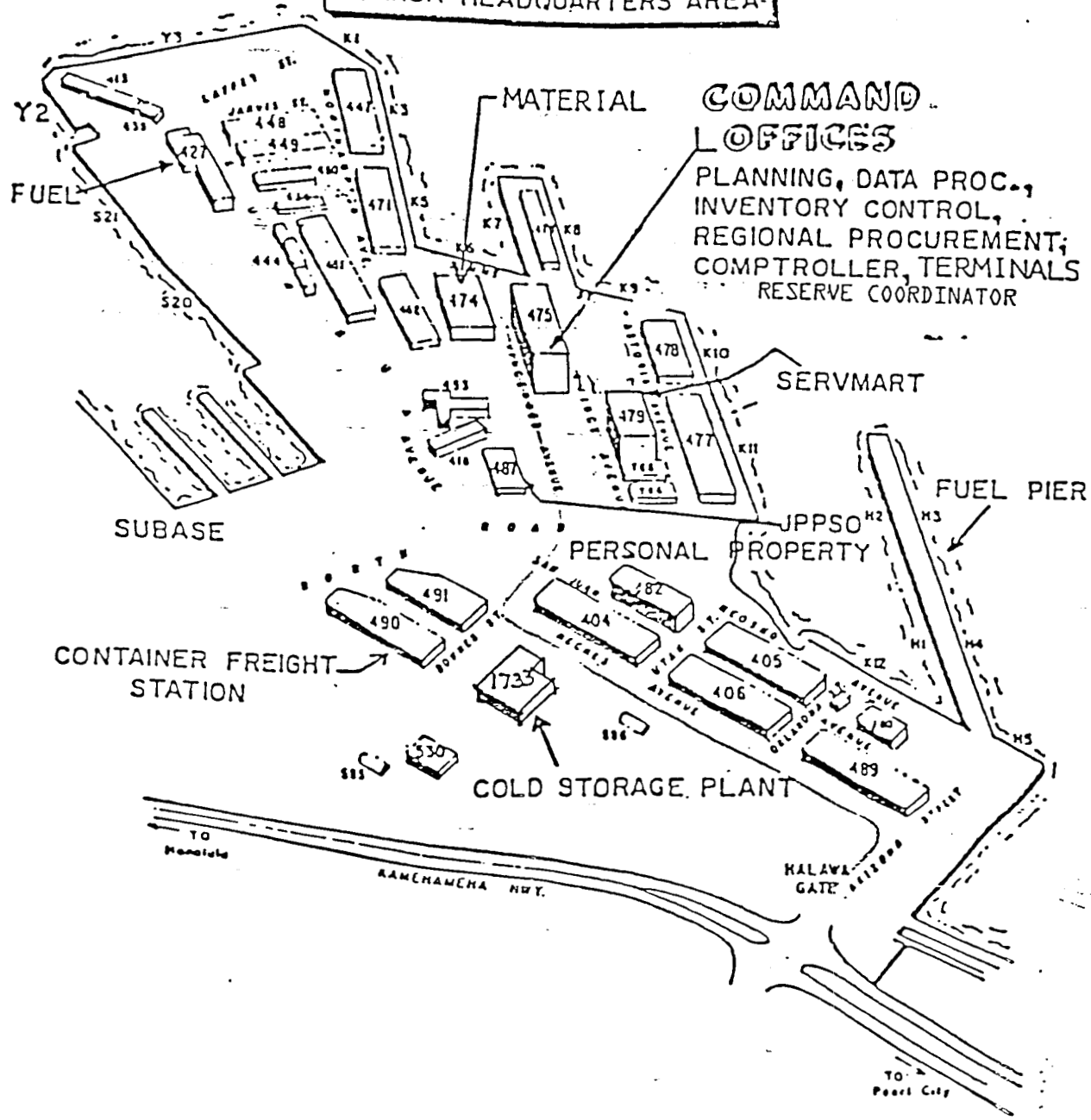
Over 400 other commands

Individual Servicemembers and
their families (A, N, AF, MC)



MAP of NSC PEARL

U.S. NAVAL SUPPLY CENTER
 PEARL HARBOR, HAWAII
 KUAHUA HEADQUARTERS AREA



Document Separator



DEPARTMENT OF THE NAVY
 PACIFIC DIVISION
 NAVAL FACILITIES ENGINEERING COMMAND
 (MAKALAPA, HI)
 PEARL HARBOR, HAWAII 96860-7300

11010.1
 Ser 2048/28-3
 08 APR 1994

From: Commander, Pacific Division, Naval Facilities Engineering Command

Subj: GUAM LAND USE PLAN 1994 (GLUP '94) UPDATE

Encl: (1) Subject Briefing Booklet, April 1994

1. The Washington level briefings for the subject study have been completed. A copy of the brief is forwarded as enclosure (1) for your information and use.

2. The draft of the Guam Land Use Plan Update is scheduled for distribution in June 1994.

AIR FORCE

via Ichinose, at DSN 474-5913 or

J. L. Busekrus

J. L. BUSEKRUS
 By direction

* Northwest Field	1853
* Andersen Main Gate	45
MT St Rora	1
Potts Junction	22
Tumon Tank Farm/ Australian Cable Heavy	24
-25 * Andersen South	1450
-92 * AA7B Barrigada	310

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 COMMARFORPAC
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 NISEWEST ACT Pearl Harbor (Code 320)
 SOCPAC
 COMSUBPAC

3699 tot



DEPARTMENT OF THE NAVY
PACIFIC DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
(MAKALAPA, HI)
PEARL HARBOR HAWAII 96860-7300

11010.1
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3. PACNAVFACENGCOM point of contact is Mr. David Ichinose, at DSN 474-5913 or commercial (808) 474-5913.

J. L. BUSEKRUS
By direction

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COMSUBPAC

GLUP 94

GUAM LAND USE PLAN UPDATE

APRIL 1994

Prepared by: Pacific Division
Naval Facilities Engineering Command

Prepared for: CINCPACFLT/PACAF

BRIEFING BOOKLET

A PLAN FOR DEPARTMENT OF DEFENSE REAL ESTATE ON GUAM

EXECUTIVE SUMMARY

In mid-1993, USCINCPAC requested that Air Force and Navy services review their land holdings on Guam and develop a master plan for Department of Defense (DOD) land use on the island. USCINCPAC designated the Navy, through the Pacific Division, Naval Facilities Engineering Command (PACNAVFACENGCOM), as executive agent for the land use plan.

The Guam Land Use Plan Update, or GLUP 94, is an update of a previous land use plan prepared by PACNAVFACENGCOM in September 1977. The intent of GLUP 94 is to provide the following:

- Develop a rationale for military landholdings based on foreseeable mission taskings and force levels.
- Develop a comprehensive plan for all DOD land requirements on Guam which considers combined service use of real property where feasible.
- Identify opportunities for functional consolidations and joint use arrangements, and address environmental considerations that affect land use.
- Address specific functional requirements identified by the services.

GLUP 94 identifies over 7,600 acres of land considered to be releasable, and another 450 acres as potentially releasable, for a total of over 8,100 acres. Obtaining development controls is recommended for approximately 130 acres. These recommendations represent an 18 percent reduction in the DOD footprint on Guam, and a one-fourth overall reduction if previous GLUP parcels (HR 2144) are included. Viewed differently, DOD land ownership would be reduced from a current one-third of all land on Guam, to about one-fourth.

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Implementation Costs & Timeframe	26
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Releasable Parcel Maps	A-3

INTRODUCTION

- Purpose of this briefing is to present the findings and recommendations for the Guam Land Use Plan, reached in consultation with the Guam Military Land Use Working Group.
- This briefing was provided to the Guam Military Land Use Working Group on 18 February 1994. It has been modified slightly to reflect final recommendations from the Working Group, as well as minor comments provided by subsequent briefings to CINCPACFLT and PACAF.
- During the week of 14 March 1994, briefs were presented in Washington D.C. to staffs of HQ USAF, SAF, OPNAV, ASN, JCS J4, J5, and DOD (RSA/FMRA). The Guam Federal Interagency Working Group (FIWG) was briefed on 21 March 1994.
- Governor Ada, Congressman Underwood, Lieutenant Blaz, and Guam Senator Santos were briefed on Guam on 30 March 1994.

CHART: AGENDA

- We will be discussing the items listed on this chart during today's brief.

AGENDA

- Methodology/Schedule
- Objectives
- Study Area
- Force Structure
- Long Range Concept
- Islandwide Functional Analysis
- Releasable Lands
- Releasable Submerged Lands
- Islandwide Releasable Summary
- Briefing Schedule

CHART: METHODOLOGY/SCHEDULE

- Chart indicates the overall schedule for the Guam Land Use Plan project.

METHODOLOGY/SCHEDULE

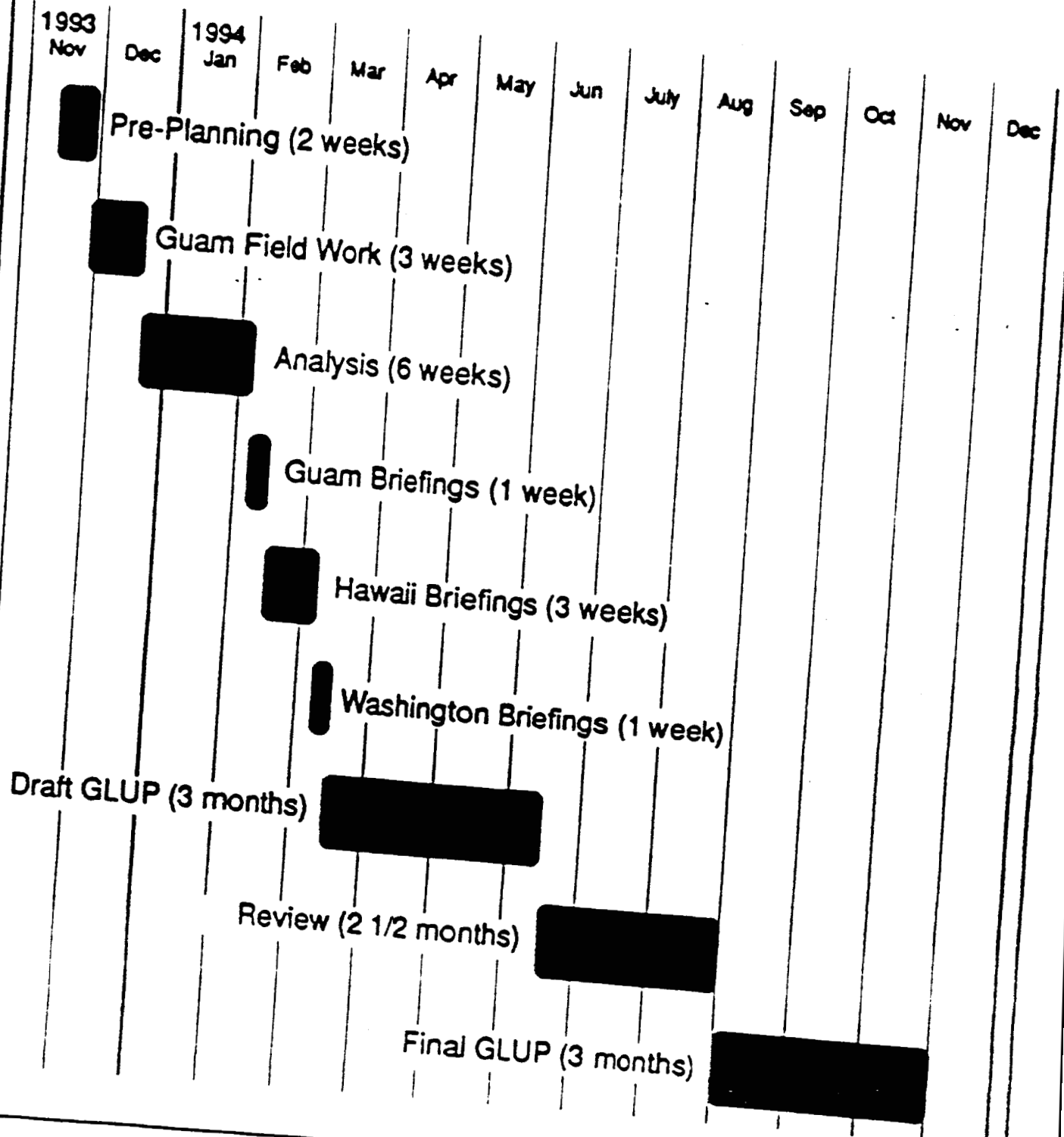


CHART: OBJECTIVES

- This chart provides the primary objectives of our work effort.

OBJECTIVES

- Identify land requirements to support missions over next 10 to 15 years.
- Develop Island-wide land use plan to optimize joint-use/functional consolidation.
- Identify lands for potential acquisition, exchange or release in support of land use plan recommendations.

CHART: STUDY AREA

- Island of Guam consists of approximately 212 square miles. It is 30 miles long, and ranges in width from 4 to 12 miles.
- DOD property on Guam, approximately 44,800 acres (24,500 ac Navy, 20,300 ac Air Force), comprises about 33 percent of all lands on Guam. This includes 3,200 acres of land previously identified for release, which were not considered available for further DOD use.

is this GCP '77

STUDY AREA

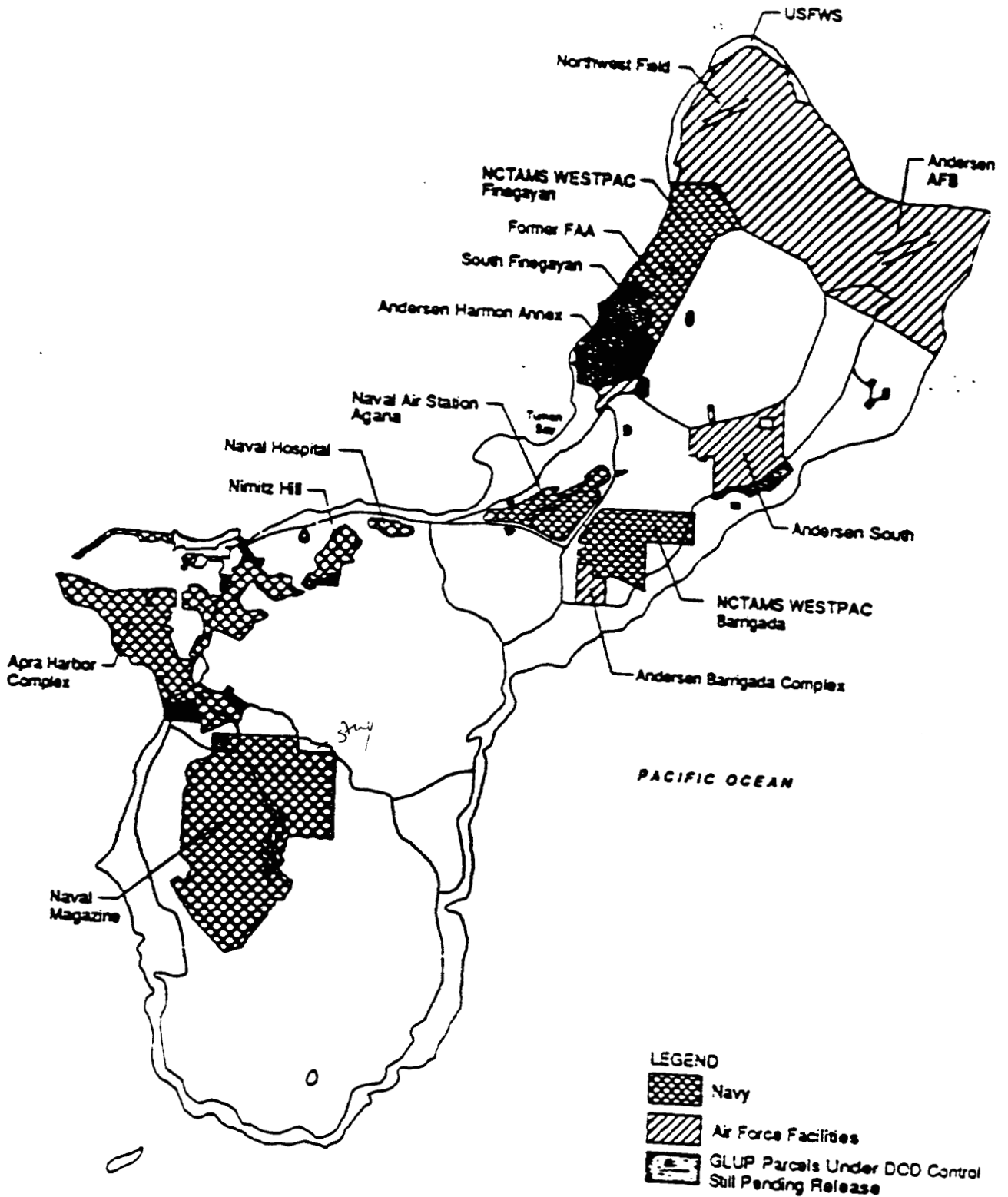


CHART: FORCE STRUCTURE

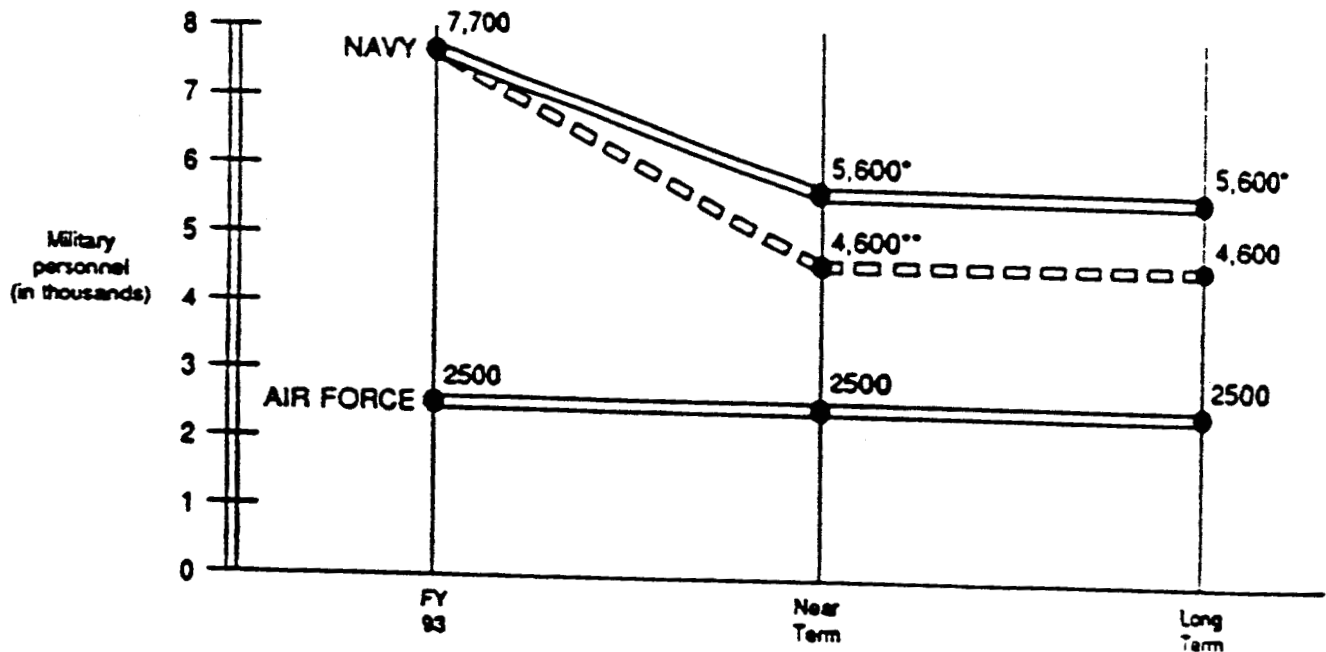
- **Air Force current loading is 2,500 pn, with no change anticipated for near term or long term. In addition, a contingency loading must be accommodated. Air Force direction was to use the land use footprint to support the contingency mission since it would determine land requirements on Guam.**
- **Navy current authorized loading is 7,700 pn. Near term reductions will result in a loading of 5,600 pn. This would decrease to approximately 4,600 pn if squadrons including VQ-1 and VQ-5 are relocated off-island to bases other than Andersen AFB on Guam. Navy personnel loading is currently under study and these figures are preliminary projections.**
- **No change anticipated for Air Force and Navy in long term (no rollback requirements).**
- **Although the Marines do not have an active presence on Guam, personnel from the 31st MEU in Okinawa, in addition to other transient units, do conduct training exercises on the island. Some increase of training is projected for the near term.**
- **Other trainers on Guam, including the National Guard and Reserves, project no change from current operating levels.**

GUAM FORCE STRUCTURE

	<u>Current</u>	<u>Near Term</u>	<u>Long Term</u>
AIR FORCE	Peacetime + OP Plan	No Change	No Change
NAVY	Peacetime	Reduction: - Close NAS - AFSs to MSC	No Change

ADDITIONAL TRAINING REQUIREMENTS:

MARINES - Special Ops	Peacetime	Increase	No Change
NAT. GUARD - Air/Army	Peacetime	No Change	No Change
RESERVES - MP - Infantry - Combat Engineers	Peacetime	No Change	No Change



* Loading with VQ-1, VQ-5 and misc. aviation support.

** Loading without VQ-1, VQ-5 and misc. aviation support.

CHART: DOD LONG RANGE LAND USE CONCEPT

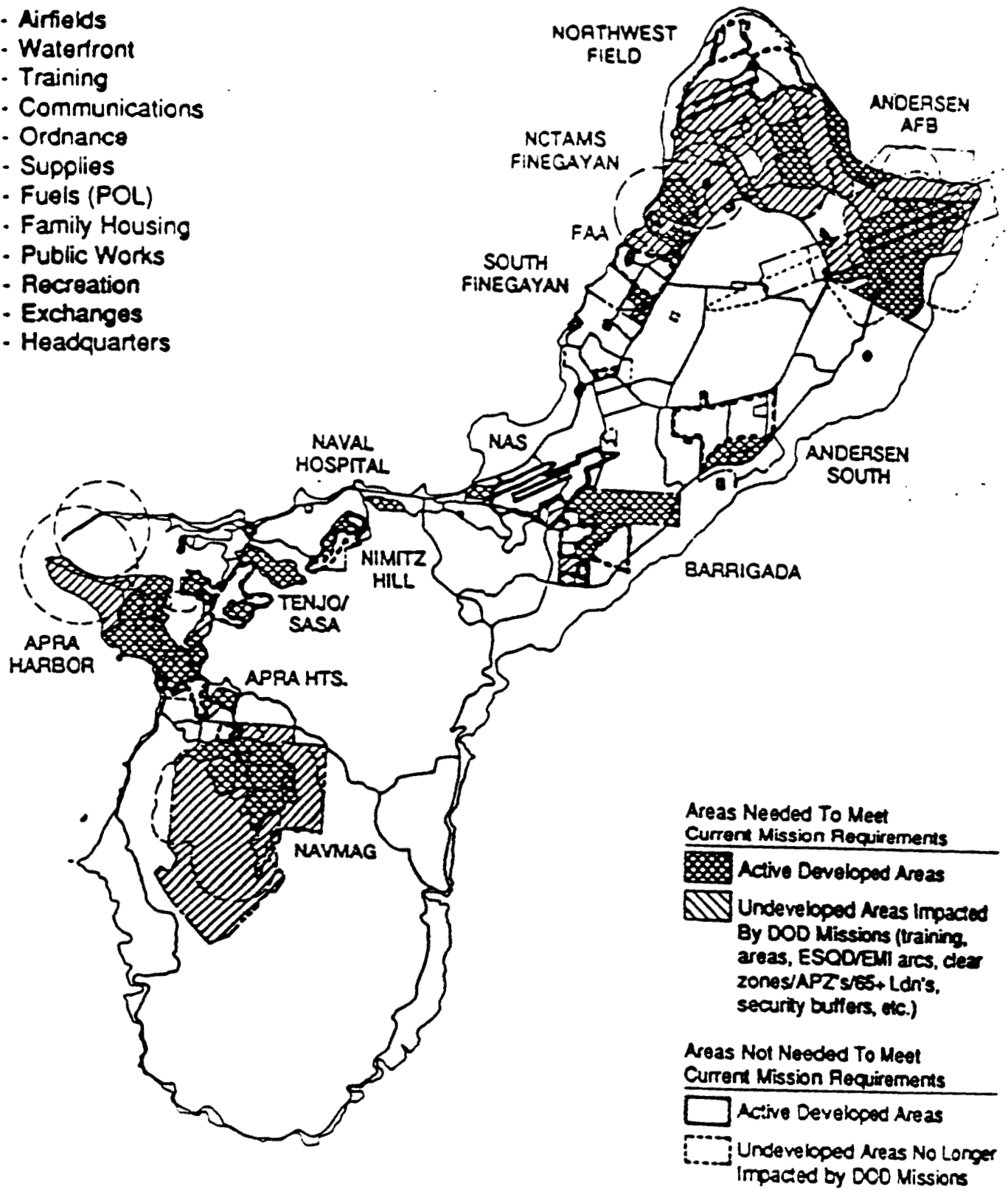
- **Considered consolidation of DOD activities in northern and southern areas of the island. Uses within the central area were studied to determine whether functions could be consolidated or jointly used.**
- **The central area is considered to be the most desired by GOVGUAM due to proximity to the employment centers and ease of development.**
- **Consistent with CINCPACFLT plans to reduce the Navy's footprint on Guam.**

CHART: ISLANDWIDE FUNCTIONAL ANALYSIS



- **Chart summarizes the analyses which were conducted for the various functional areas such as ordnance, family housing, communications, POL, utilities, training, etc.**
- **Chart identifies land areas required to meet current mission requirements, including currently developed areas, in addition to undeveloped areas which are impacted by DOD missions (i.e., training areas, explosives safety arcs, electromagnetic interference/hazard arcs, aircraft safety zones, security buffers, and etc.).**
- **Chart also identifies developed and undeveloped land areas no longer needed to meet current mission requirements. It shows graphically how the study was consistent with the Long Range Concept discussed previously.**

FUNCTIONS



- Airfields
- Waterfront
- Training
- Communications
- Ordnance
- Supplies
- Fuels (POL)
- Family Housing
- Public Works
- Recreation
- Exchanges
- Headquarters



Areas Needed To Meet
Current Mission Requirements

-  Active Developed Areas
-  Undeveloped Areas Impacted By DOD Missions (training, areas, ESQD/EMI arcs, clear zones/APZ's/65+ Ldn's, security buffers, etc.)

Areas Not Needed To Meet
Current Mission Requirements

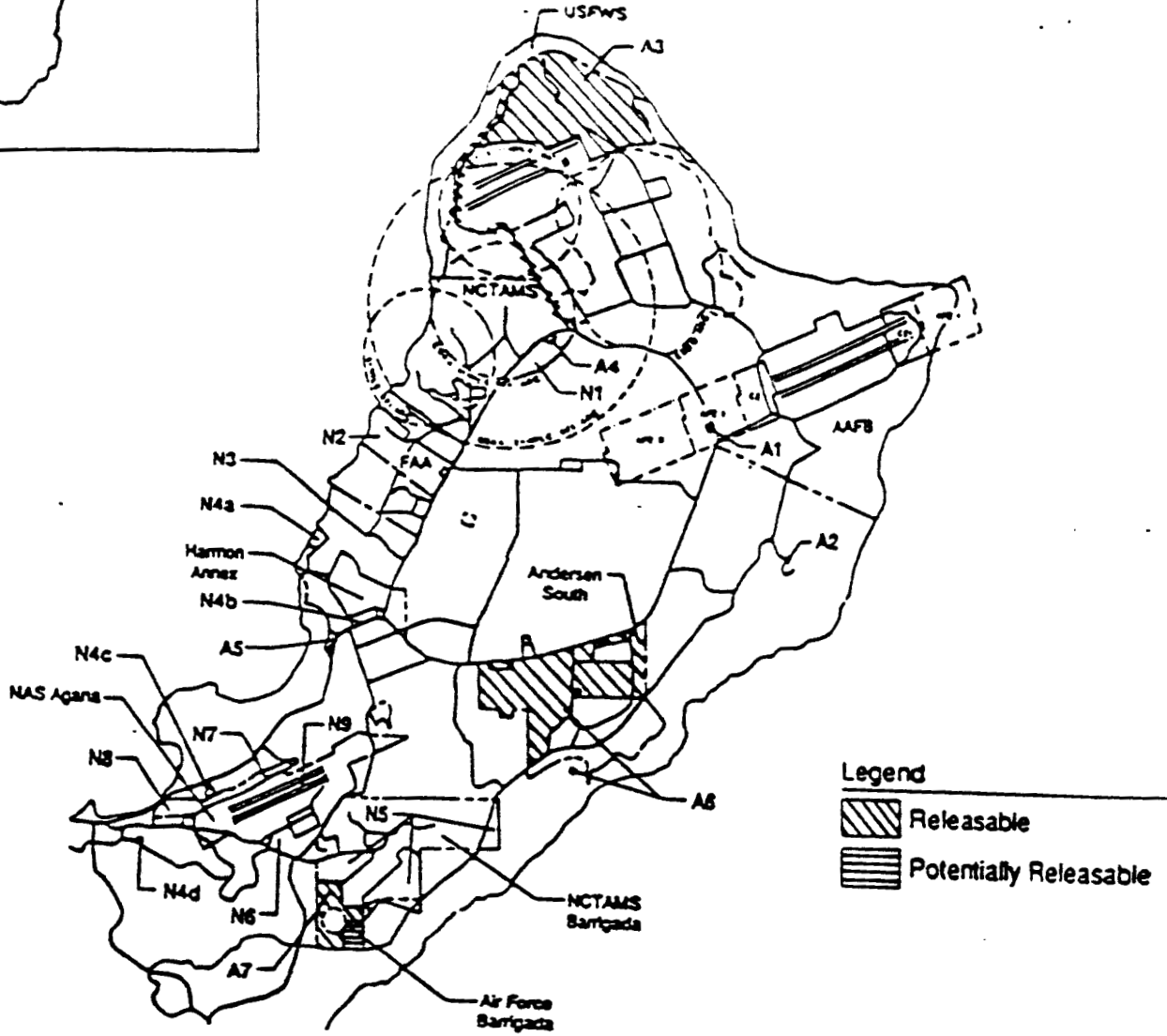
-  Active Developed Areas
-  Undeveloped Areas No Longer Impacted by DOD Missions

3/31/94



CHART: AIR FORCE RELEASABLE PARCELS

- Recommendations for the release of Air Force property are summarized in this chart. Major releases involve the Northwest Field and Andersen South areas. There is a total of 3,705 acs. considered to be releasable or potentially releasable (3,588 acs. releasable and 117 acs. potentially releasable).
- Detailed maps on each parcel are provided in the appendix.



Northwest Field (A3)	1,853 Ac.
Andersen South (A6)	1,450
AAFB Barrigada (A7)	310
Others (A1,2,4,5)	92
TOTAL	3,705 Ac.

3/31/84

**AIR FORCE RELEASABLE PARCELS
GUAM LAND USE PLAN**

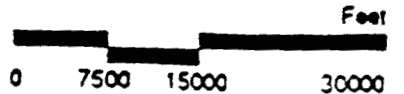
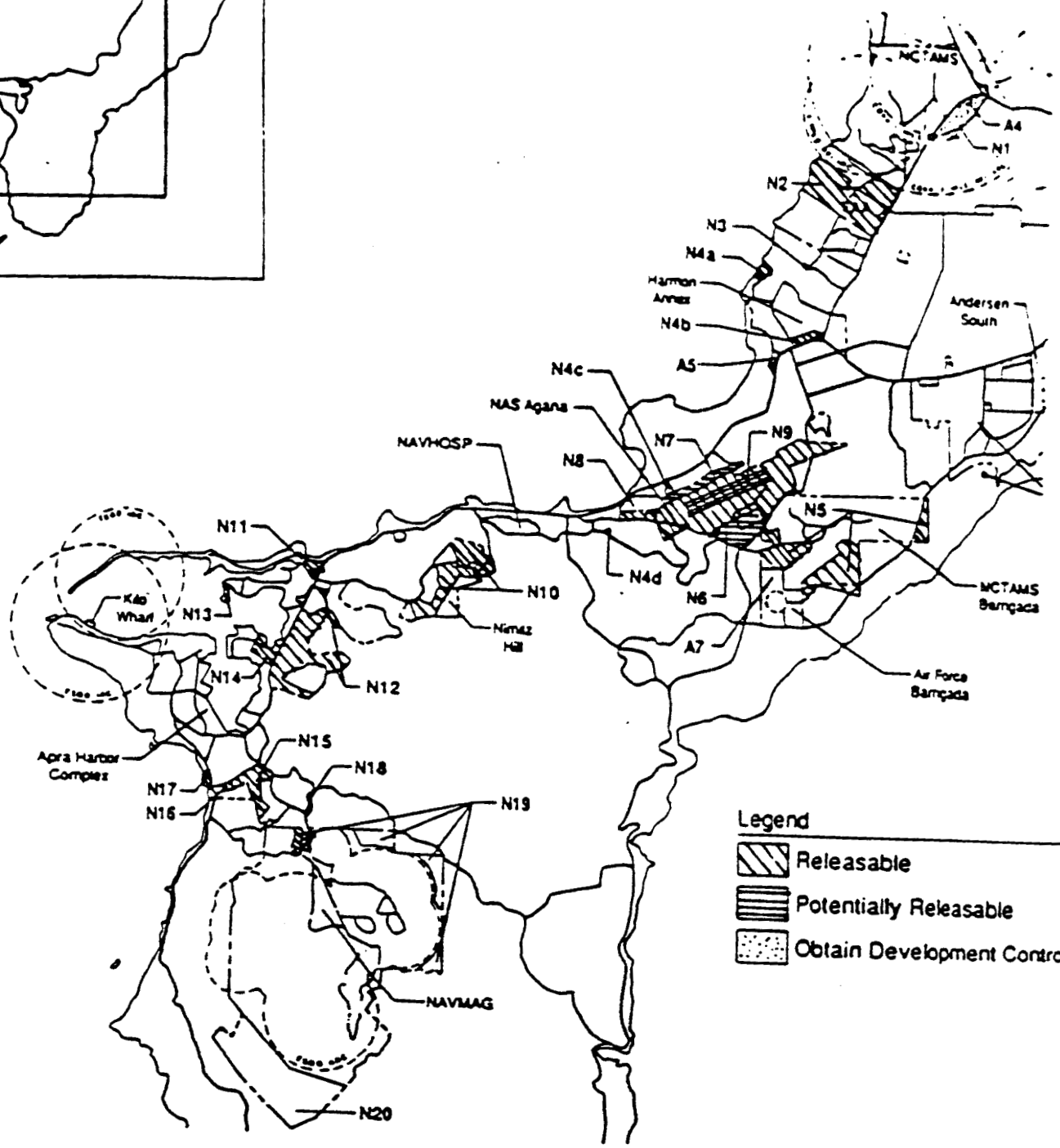


CHART: NAVY RELEASABLE PARCELS

- Recommendations for the release of Navy property are summarized in this chart. There is a total of 4,418 acs. considered to be releasable or potentially releasable (4,085 acs. releasable and 333 acs. potentially releasable).
- Obtain development controls on 133 acs. of privately-owned land to protect the CDAA mission.



Legend

- Releasable
- Potentially Releasable
- Obtain Development Controls

FAA (N2)	698 Ac. ✓	NAS (N6,7) ✓	305 Ac.
NCTAMS Barrigada (N5)	715 ✓	Polaris Point (N14)	82 ✓
NAS (N9)	1,400 ✓	Apra Heights (N15-18) ✓	169
Nimitz Hill (N10)	295	NAVMAG (N19)	102 ✓
Sasa/Tenjo (N12)	568	Others (N3,4,11,13)	84
		TOTAL	4,418 Ac.

3/31/94

NAVY RELEASABLE PARCELS
GUAM LAND USE PLAN

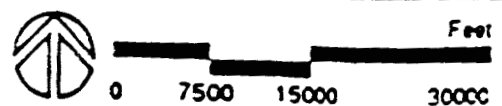


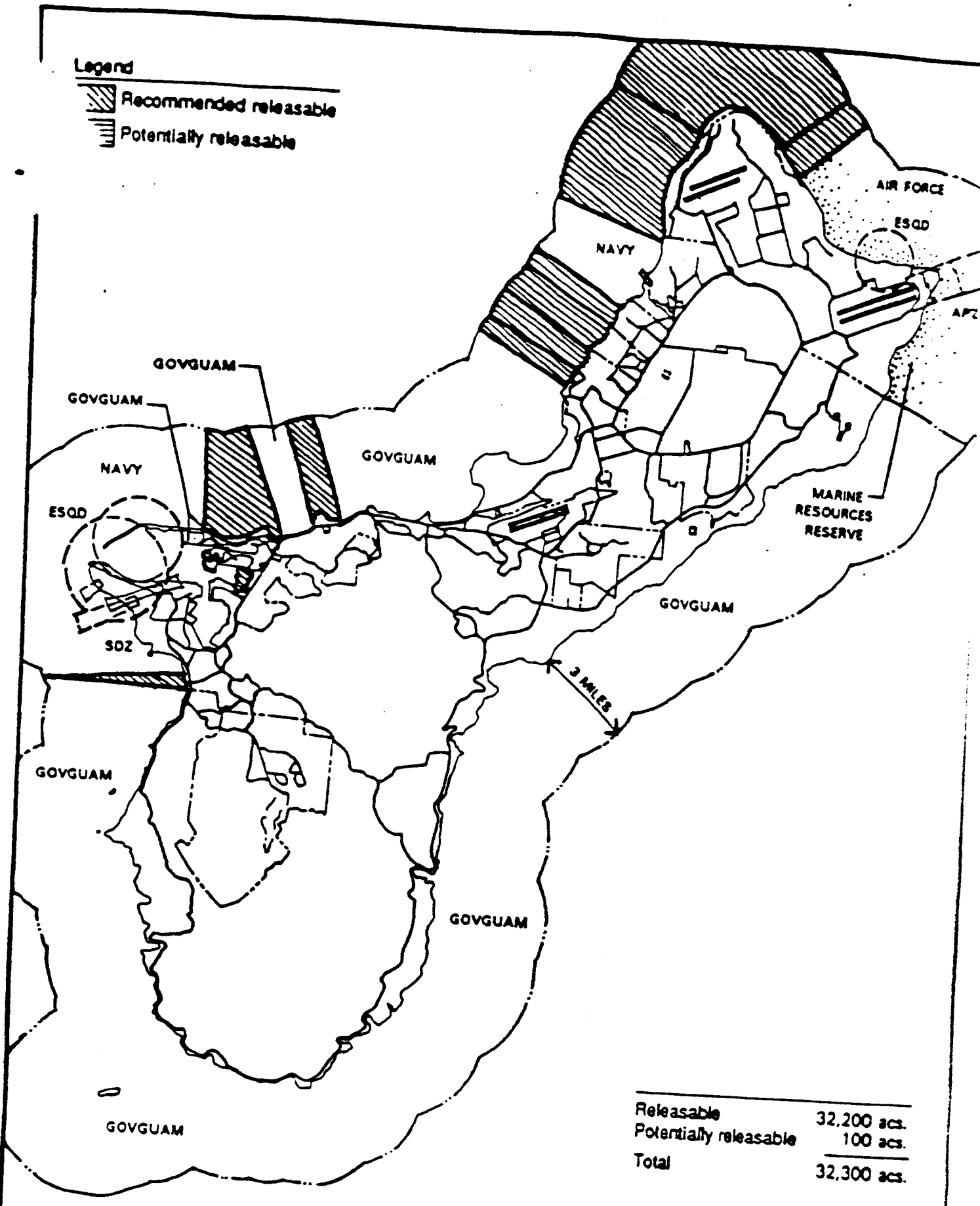


CHART: RELEASABLE SUBMERGED LANDS

- DOD owns portions of submerged lands off of fast lands for a distance of 3 miles from the shoreline.
- Study recommends:
 - Retaining submerged lands off DOD-owned fast lands.
 - Releasing submerged lands off non-DOD lands and lands proposed for release.

Legend

-  Recommended releasable
-  Potentially releasable



Releasable	32,200 acs.
Potentially releasable	100 acs.
Total	32,300 acs.

3/31/94




**RELEASABLE SUBMERGED LANDS
GUAM LAND USE PLAN**

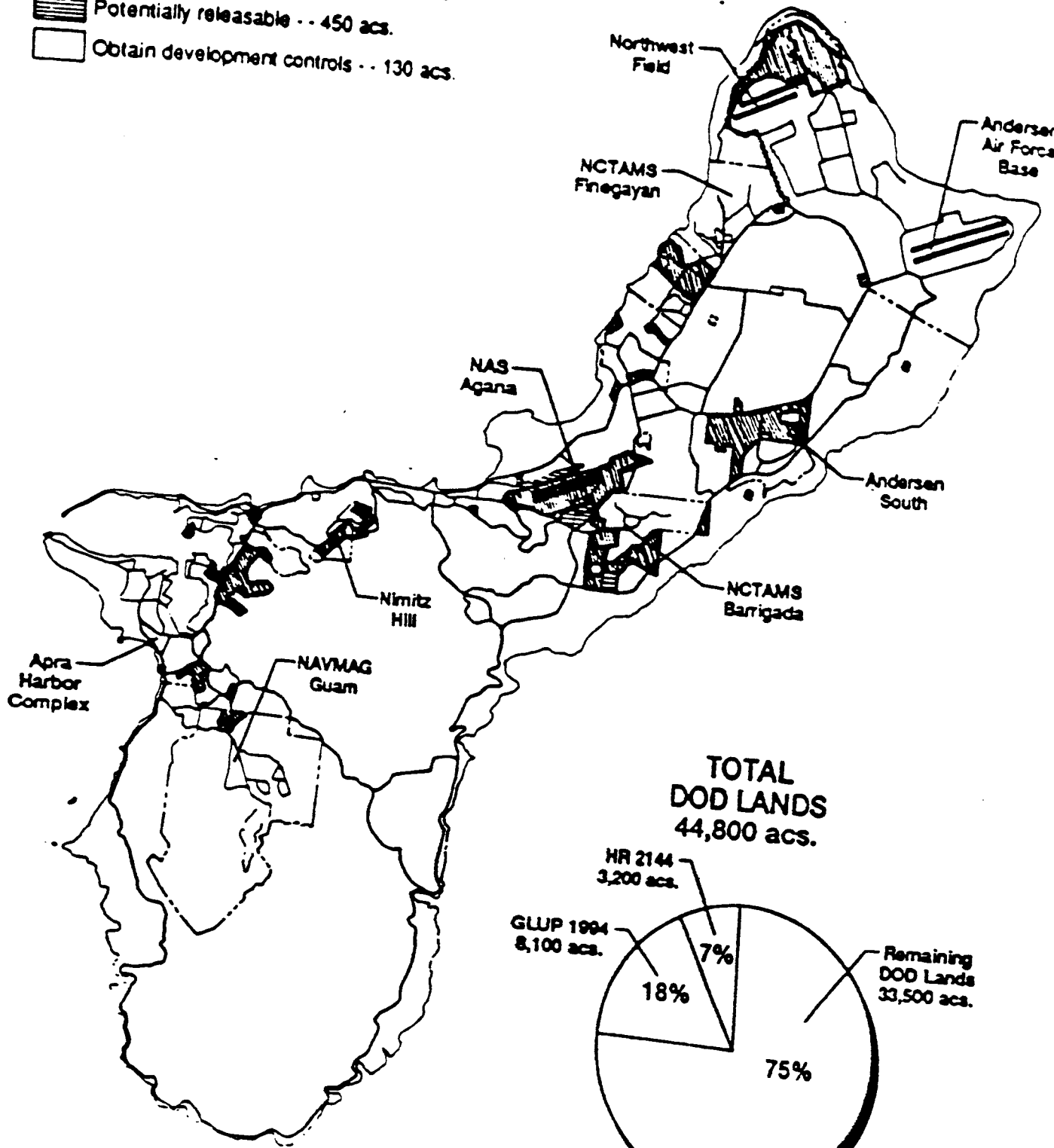


CHART: ISLANDWIDE SUMMARY

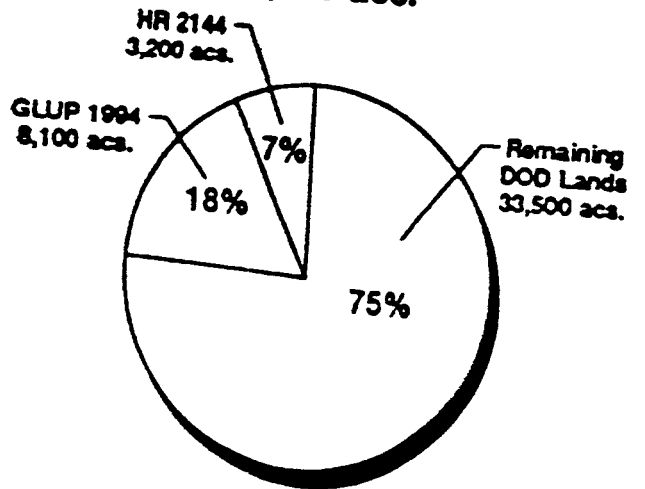
- **Chart identifies a total of 7,670 acs. considered to be releasable, and another 450 acs. of potentially releasable land. Obtaining development controls is recommended for 130 acs.**
- **Represents an 18 percent reduction in the DOD footprint on Guam, and a one fourth overall reduction if previous GLUP parcels (per HR 2144) are included.**
- **DOD needs to retain ownership of approximately 33,500 acres to satisfy current and projected mission requirements.**

Legend

-  Recommended releasable -- 7,670 acs.
-  Potentially releasable -- 450 acs.
-  Obtain development controls -- 130 acs.



TOTAL DOD LANDS
44,800 acs.



ISLANDWIDE SUMMARY
GUAM LAND USE PLAN

3/31/84



CHART: BRIEFING SCHEDULE

- Chart indicates the briefing schedule in Hawaii, Washington D.C., and Guam.

BRIEFING SCHEDULE

Agency

Date

In Hawaii:

- PACAF 2 March 94
- CINCPACFLT 10 March 94
- USCINCPAC 11 March 94

In Washington D.C.:

- CNO Reps 14 March 94
- HQ Air Force Reps 14 March 94
- JCS Reps 18 March 94
- DOD 18 March 94
- DOI (Asst. Sec. Turner) 21 March 94

In Guam:

- Del. Underwood 30 March 94
- Gov. Ada 30 March 94

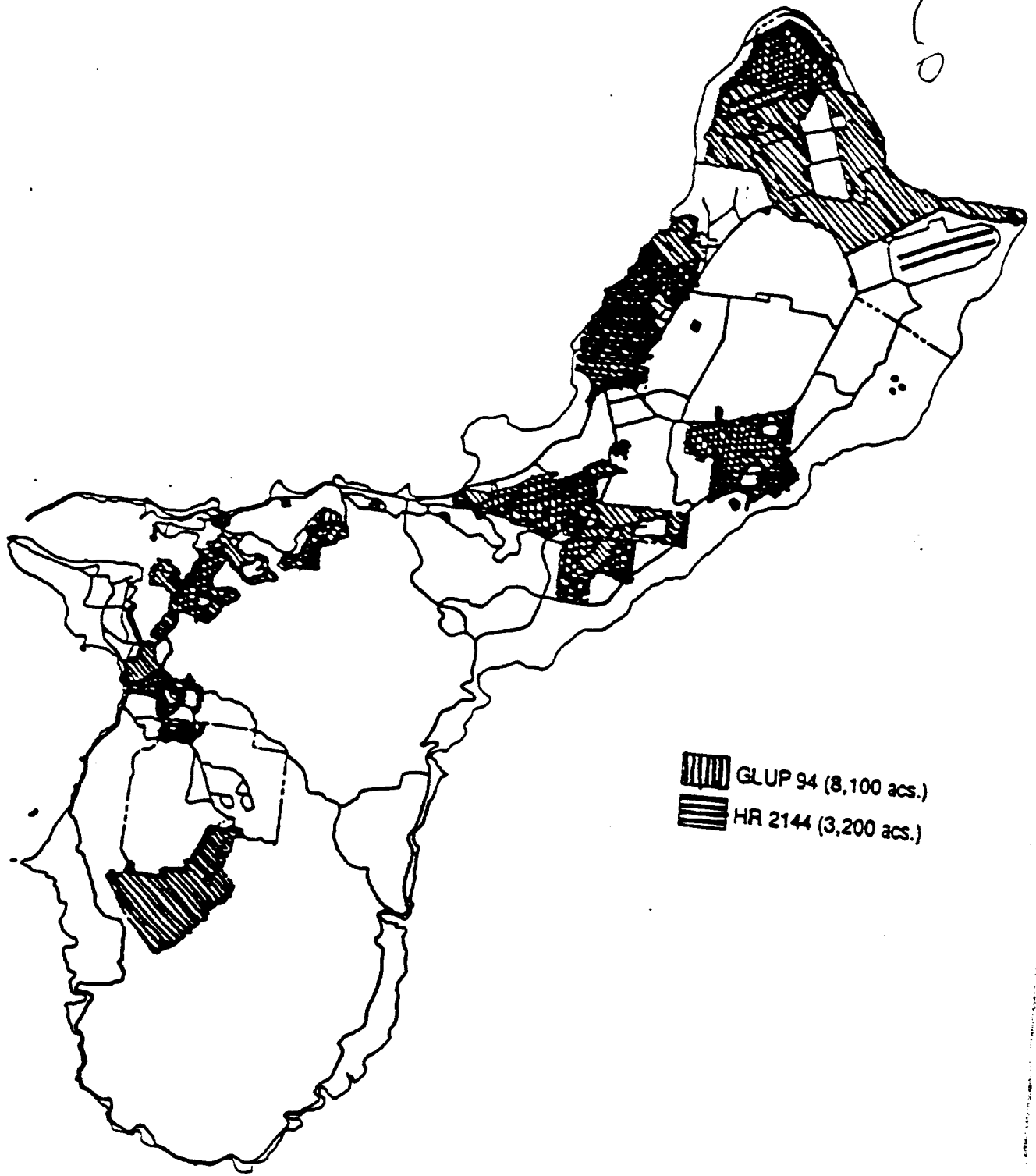
CHART: IMPLEMENTATION COSTS & TIMEFRAME

- There are costs associated with the release of any DOD property. The chart indicates major tasks that must be performed prior to release of excess property, and gives an estimated cost and timeframe (if available) for these tasks.



IMPLEMENTATION COSTS & TIMEFRAME

- Environmental Baseline Surveys \$2.5 - \$3 million
1 - 2 years
- Environmental Documentation (EA/EIS following baseline survey)
--either GSA or Navy/Air Force cost \$100,000 - 500,000
1 - 2 years
- Property Descriptions \$150,000 - \$300,000
--Boundaries 1 - 2 years
--Easement Reservations
- Caretaker Responsibilities ?? \$
--Housing ?? years
--Land
- Mitigation (clean-up, cultural resource surveys, etc.) ?

APPENDIX



 Immediate Return (25,900 acs.)

 GLUP 94 (8,100 acs.)
 HR 2144 (3,200 acs.)

TEAM GUAM PROPOSED RELEASABLE LANDS
GUAM LAND USE PLAN

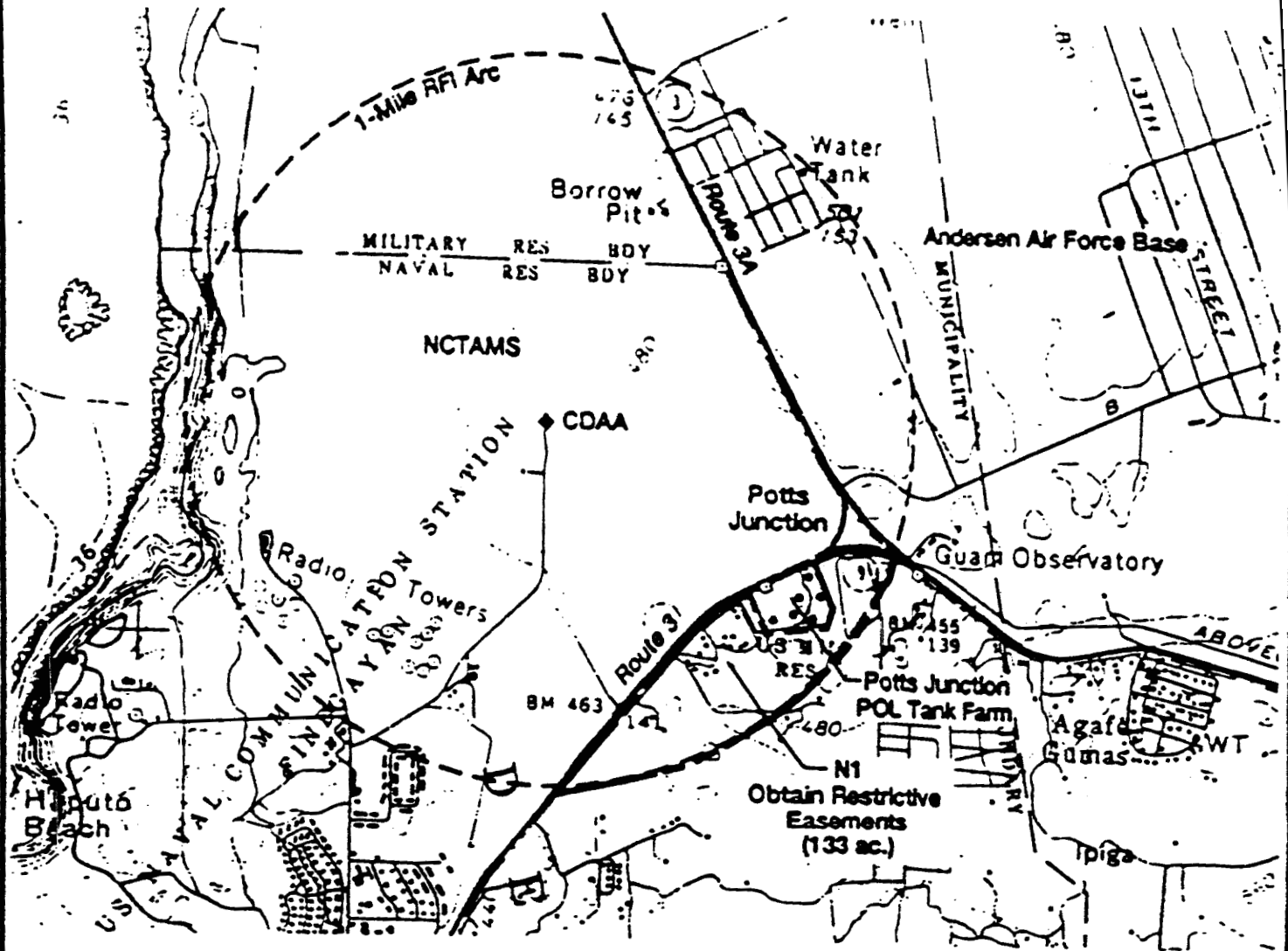


SITE N1: CDAA RFI AREA- 133 ACRES

*Not on list
The Navy
Owned*

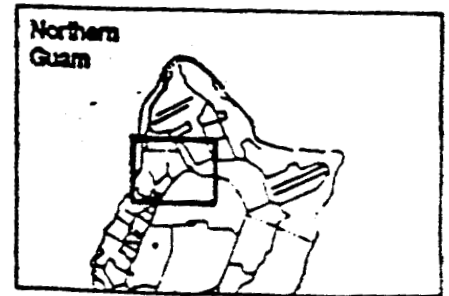
JUSTIFICATION FOR ACQUISITION OF RESTRICTIVE EASEMENTS :

- Needed to prevent development and operation of incompatible uses within CDAA Arc

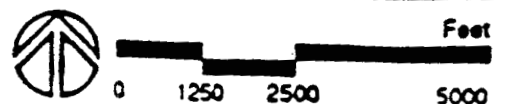


CONDITIONS OF AQUISITION:

- Obtain restrictive covenants on land to prohibit development and operation of incompatible uses within CDAA arc.



3/31/84

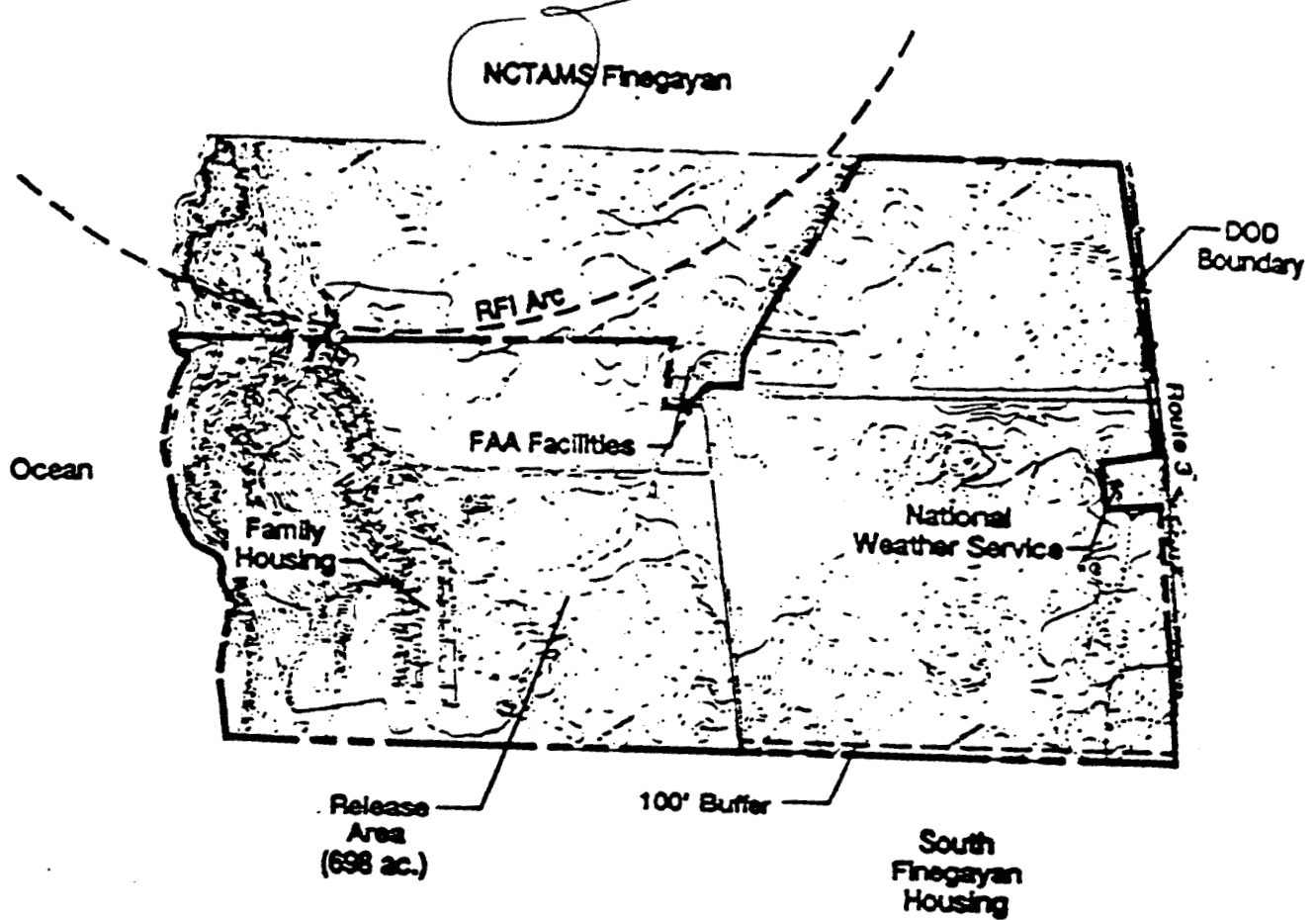


SITE N2: FORMER FAA PARCEL- 698 ACRES

*Noty
owner
net on
102*

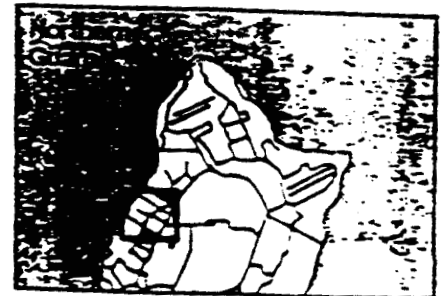
JUSTIFICATION FOR RELEASE:

- Retain land within RFI arc from Marbock/Classic Wizard Facilities at NCTAMS.
- Retain land under FAA facilities (PWC currently utilizing portion of warehouse).
- Retain land under National Weather Service facilities until NWS can acquire it or no longer needs it.
- Housing no longer needed to meet FY99 base loading requirements.
- No anticipated future DOD need for land.

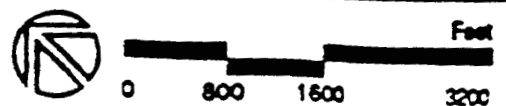


CONDITIONS OF RELEASE:

- Provide 100' buffer along southern boundary adjacent to South Finegayan housing.
- Retain utility and access easements.



3/1/94

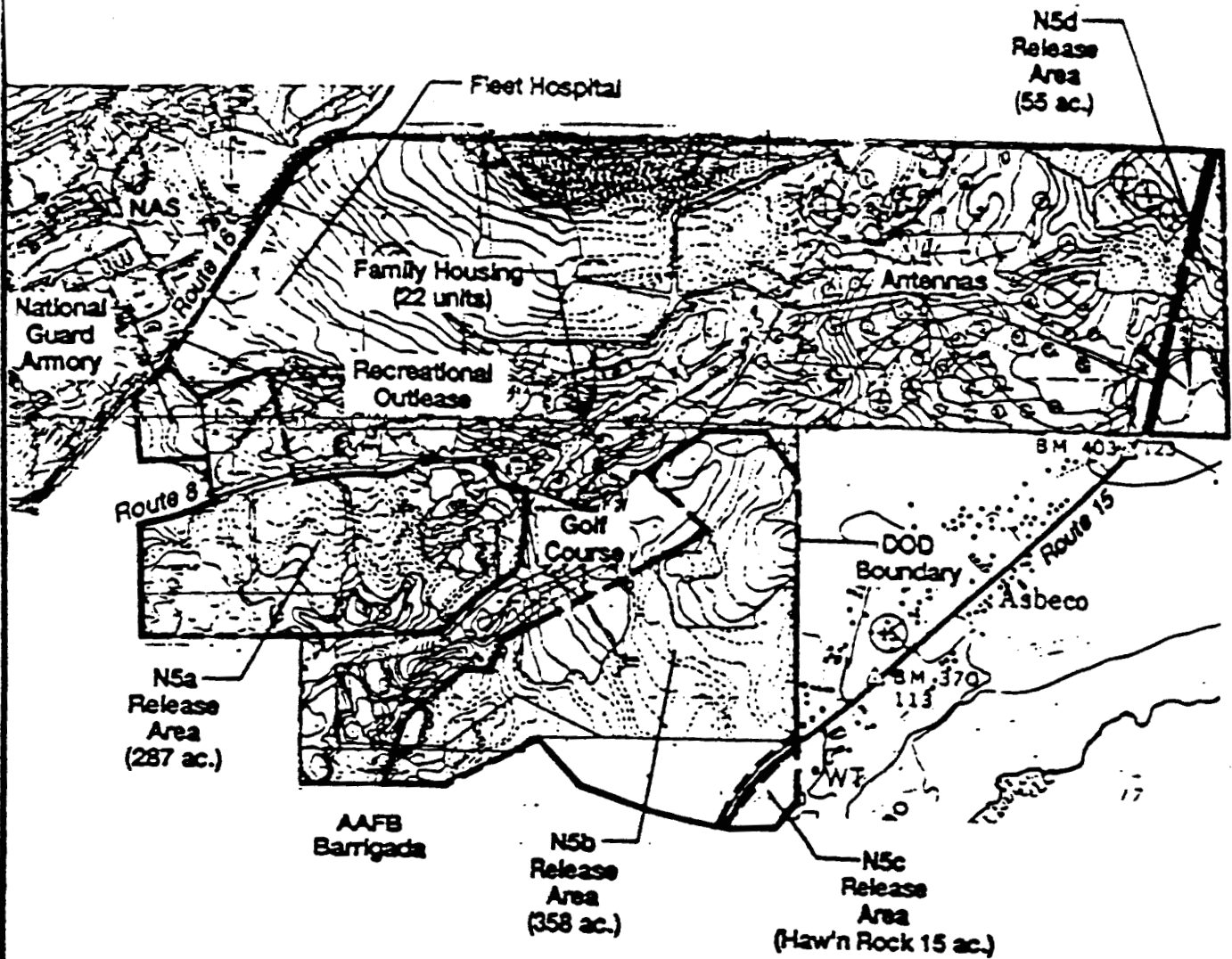


Naval command net on 15L

SITE N5: NCTAMS BARRIGADA- 715 ACRES

JUSTIFICATION FOR RELEASE:

- Retain antenna fields and related facilities, family housing, utilities and golf course
- Remaining land no longer used for NCTAMS communications operations
- No other future DOD need for land

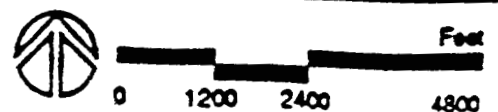


CONDITIONS OF RELEASE:

- Replace warehouse across Route 15
- Restrict height of development on released parcels to eliminate potential impact on NEXRAD operations



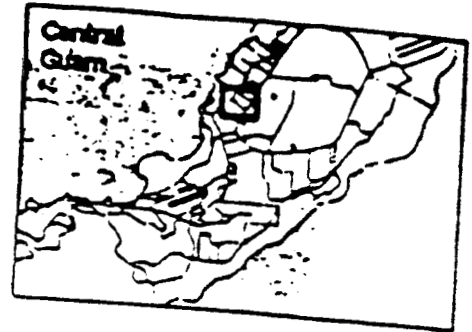
3/11/94



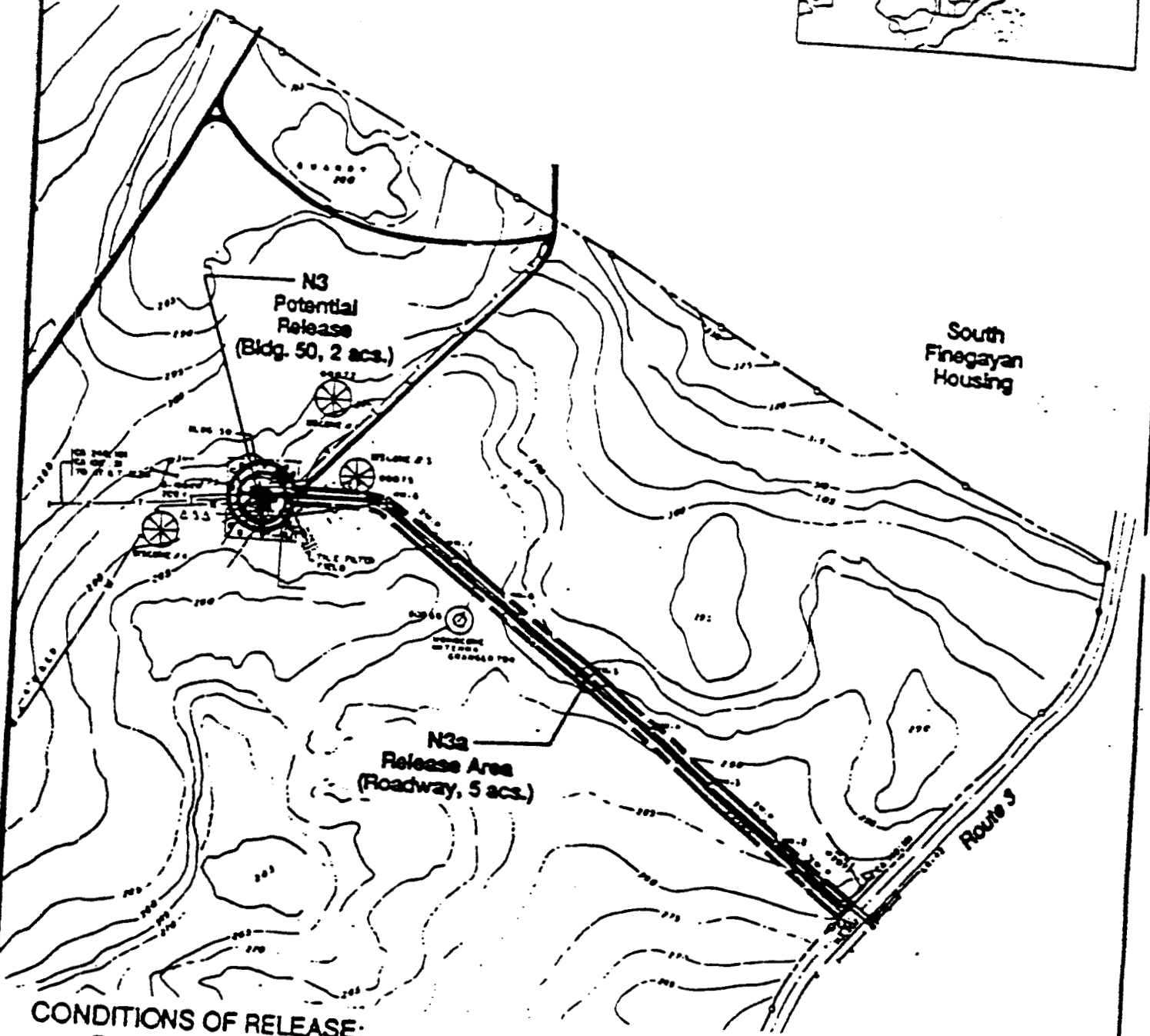
SITE N3: HARMON ANNEX- 7 ACRES

JUSTIFICATION FOR RELEASE:

- Site is surrounded by previous GLUP parcel
- No anticipated future DOD need for land
- Potential release of Bldg. 50 site if replacement facility can be provided

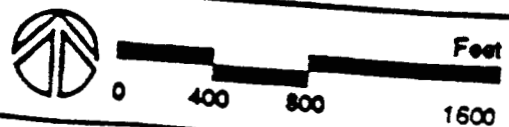


7
0



CONDITIONS OF RELEASE:

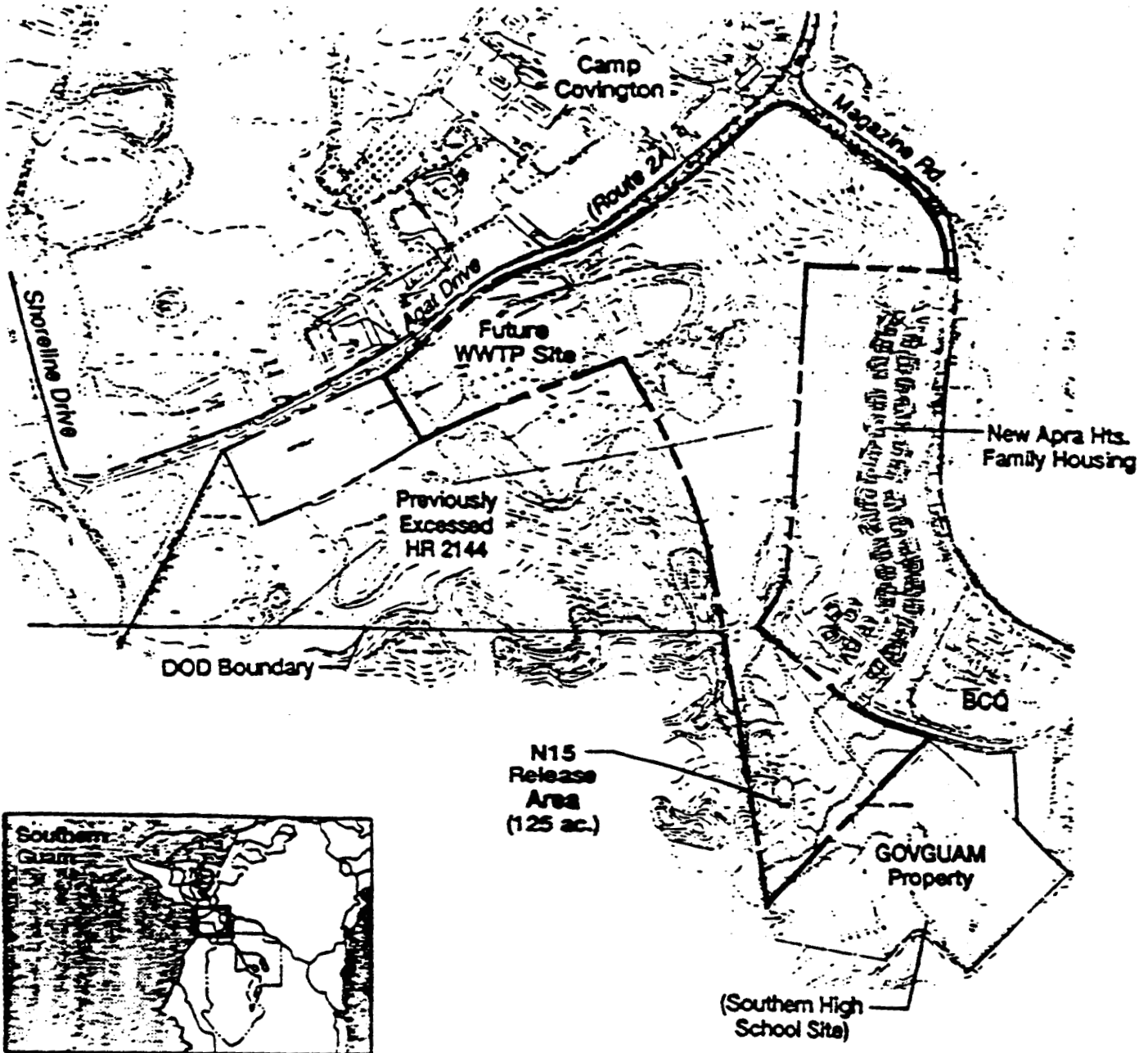
- Retain access easement to Bldg. 50 until replacement facility is provided



TE N15: NEW APRA HEIGHTS- 125 ACRES

CLASSIFICATION FOR RELEASE:

- Retain New Apra Heights housing and Bachelor Civilian Quarters (BCQ).
- Anticipated future DOD need for remaining undeveloped land.
- Adjacent to previous GLUP parcel and land for future GOV GUAM wastewater facility.



CONDITIONS OF RELEASE:

- Retain utility easements to service New Apra housing area.

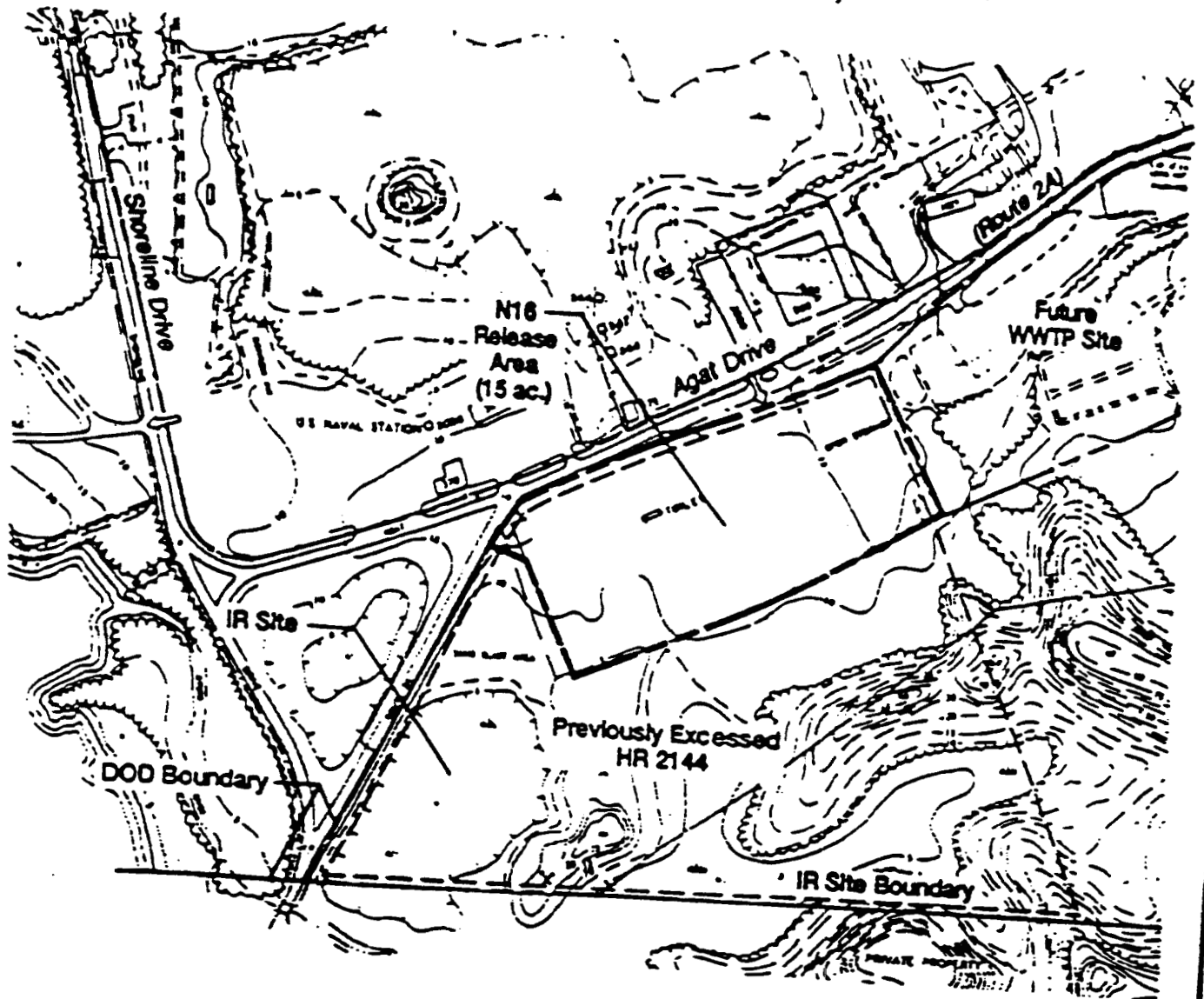
3/1/94



SITE N16: ROUTE 2A- 15 ACRES

JUSTIFICATION FOR RELEASE:

- No anticipated future DOD need for land.
- Adjacent to previous GLUP parcel and land for future wastewater facility.



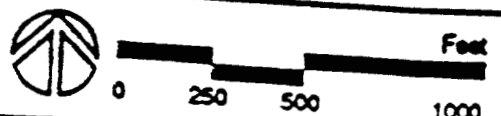
CONDITIONS OF RELEASE:

- Navy completes IR clean-up.



3/31/84

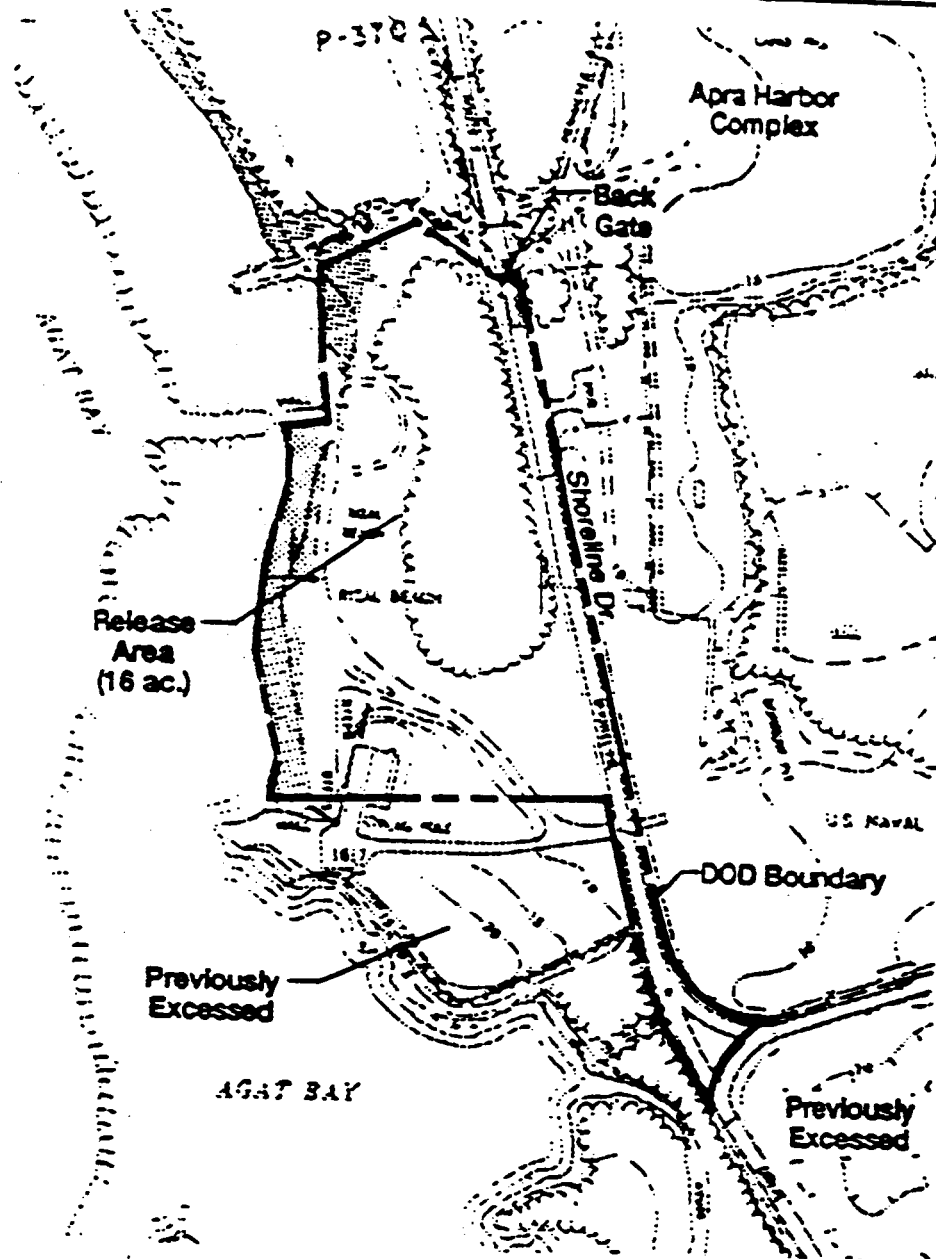
ROUTE 2A/APRA HTS.
GUAM LAND USE PLAN



SITE N17: RIZAL BEACH- 16 ACRES

JUSTIFICATION FOR RELEASE:

- No anticipated future DOD need for land.
- Outside of Apra Harbor Complex main compound.
- Adjacent to other previous GLUP parcels.
- Land currently licensed to GOVGUAM.



CONDITIONS OF RELEASE:

- Retain access and utility easements.

3/1/94

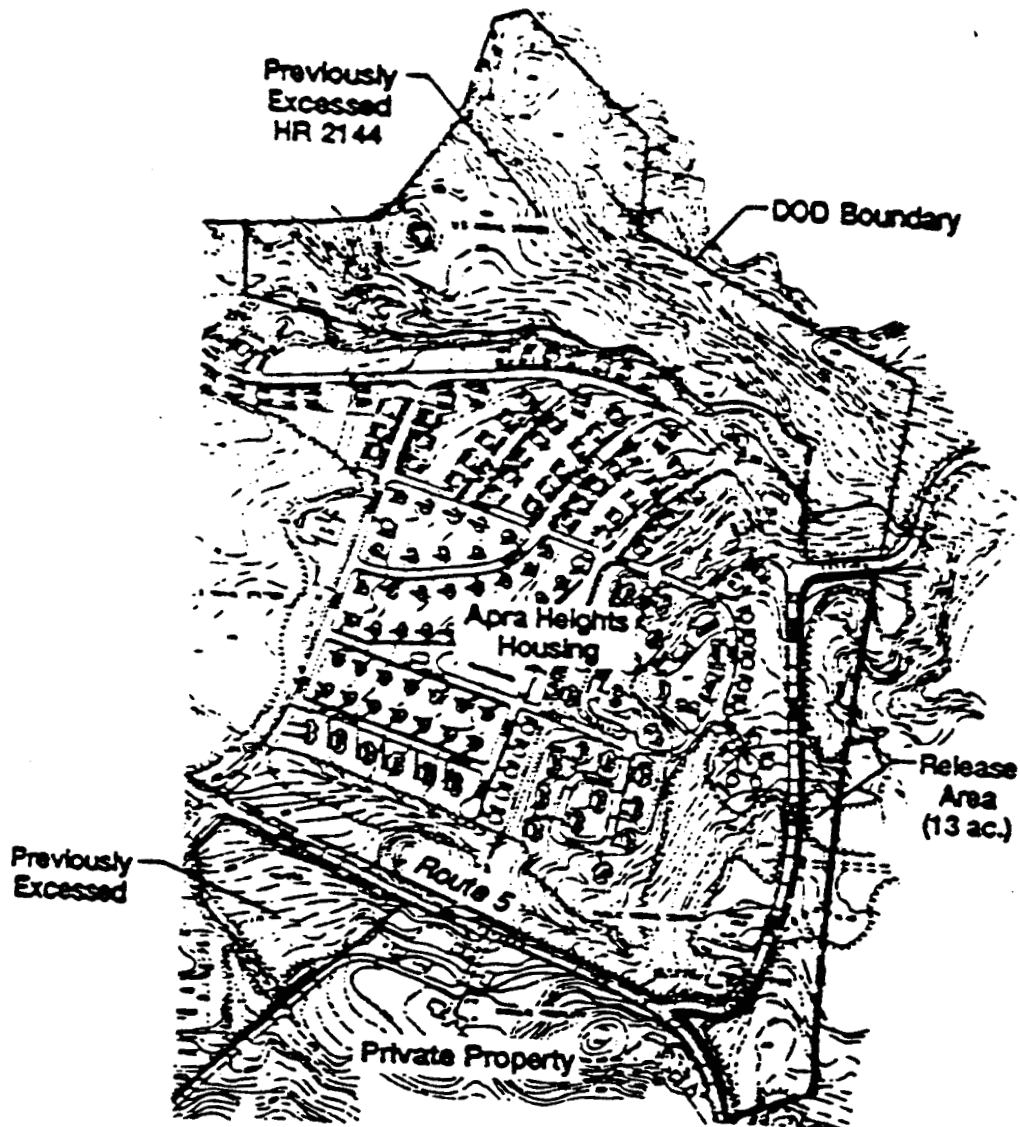
RIZAL BEACH
GUAM LAND USE PLAN



SITE N18: OLD APRA HEIGHTS- 13 ACRES

JUSTIFICATION FOR RELEASE:

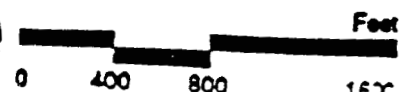
- No anticipated future DOD need for land.



CONDITIONS OF RELEASE:

- None.

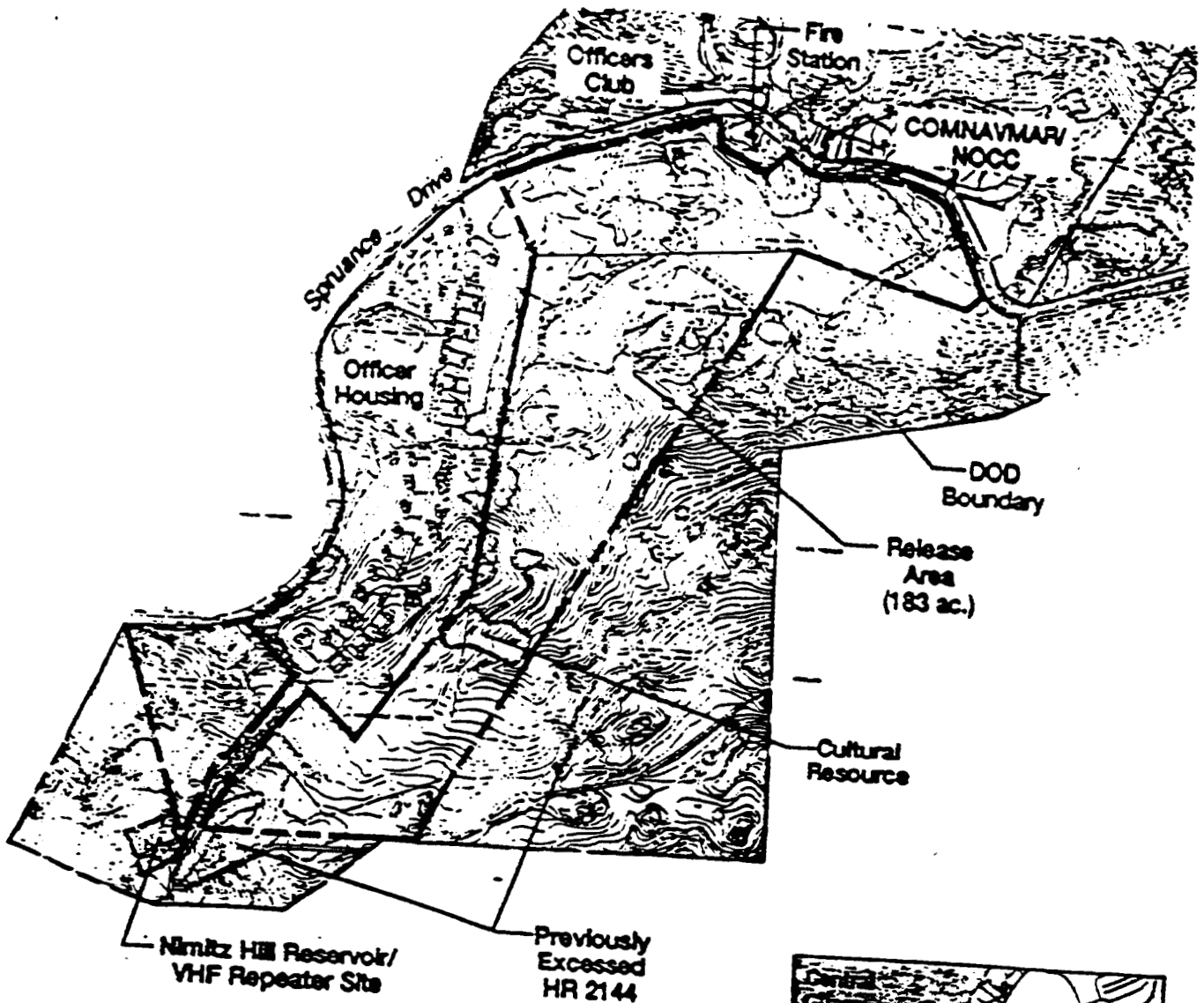
3/1/84



SITE N10b: NIMITZ HILL VACANT LANDS- 183 ACRES

JUSTIFICATION FOR RELEASE:

- Retain fire station for protection of remaining DOD facilities.
- Retain officers housing which is needed to meet FY99 base loading requirements.
- Retain Nimitz Hill Reservoir and adjacent comm. facilities.
- Other lands no longer needed for future housing expansion or other anticipated DOD requirements.



CONDITIONS OF RELEASE:

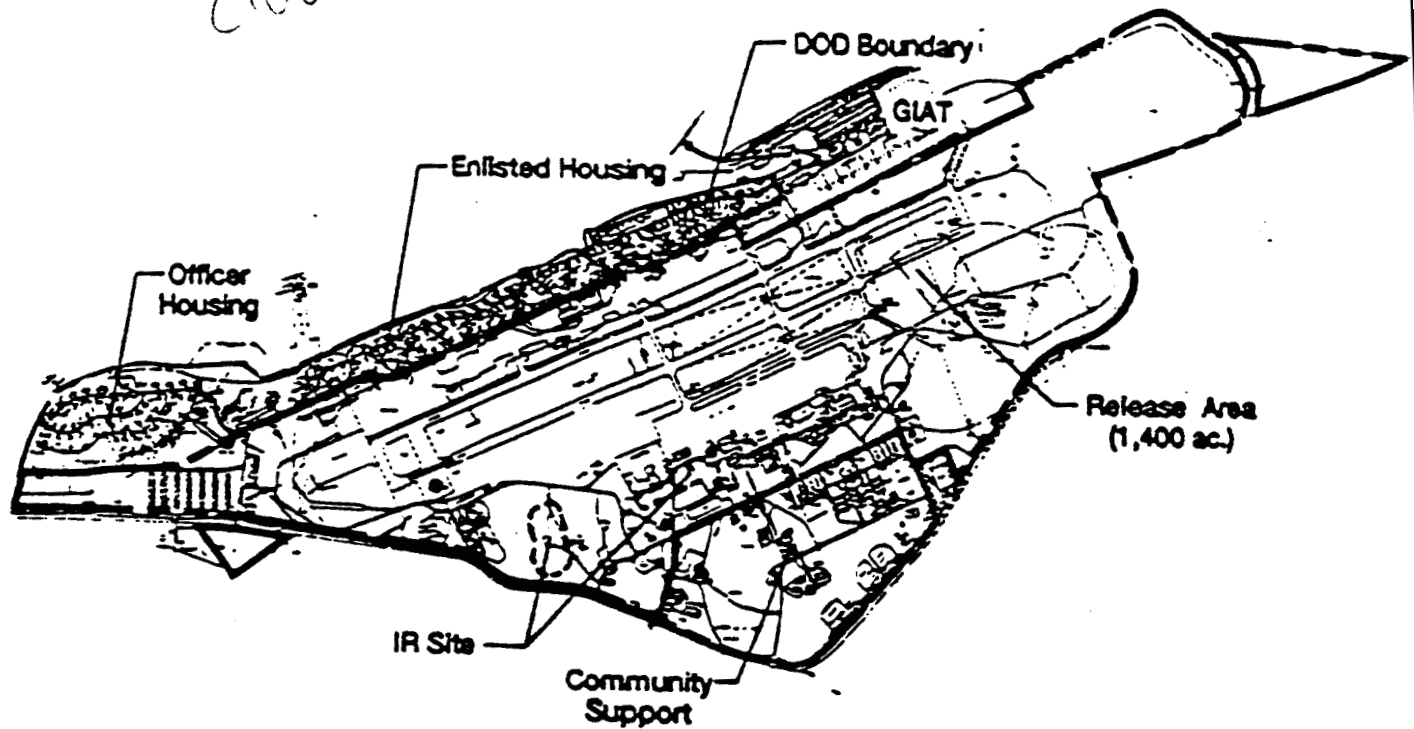
- Retain easements (including access to Nimitz Hill Reservoir and POL lines) for DOD owned and operated facilities to be provided.

SITE N9: NAS OPS AREA- 1,400 ACRES

JUSTIFICATION FOR RELEASE:

- NAS identified for closure under BRAC.
- Air operations to relocate to Andersen AFB.
- Housing and support areas to be retained to support relocated personnel.

*double check
terminal area?*



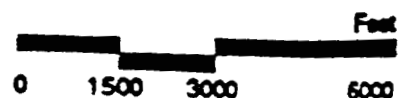
CONDITIONS OF RELEASE:

- Maintain easements for DOD owned and operated utilities.
- Require sound and aircraft safety barriers adjacent to family housing areas. (Note: Not required if site N7 released.)
- Navy complete IR clean-up.



3/31/84

NAS OPERATIONS AREA
GUAM LAND USE PLAN

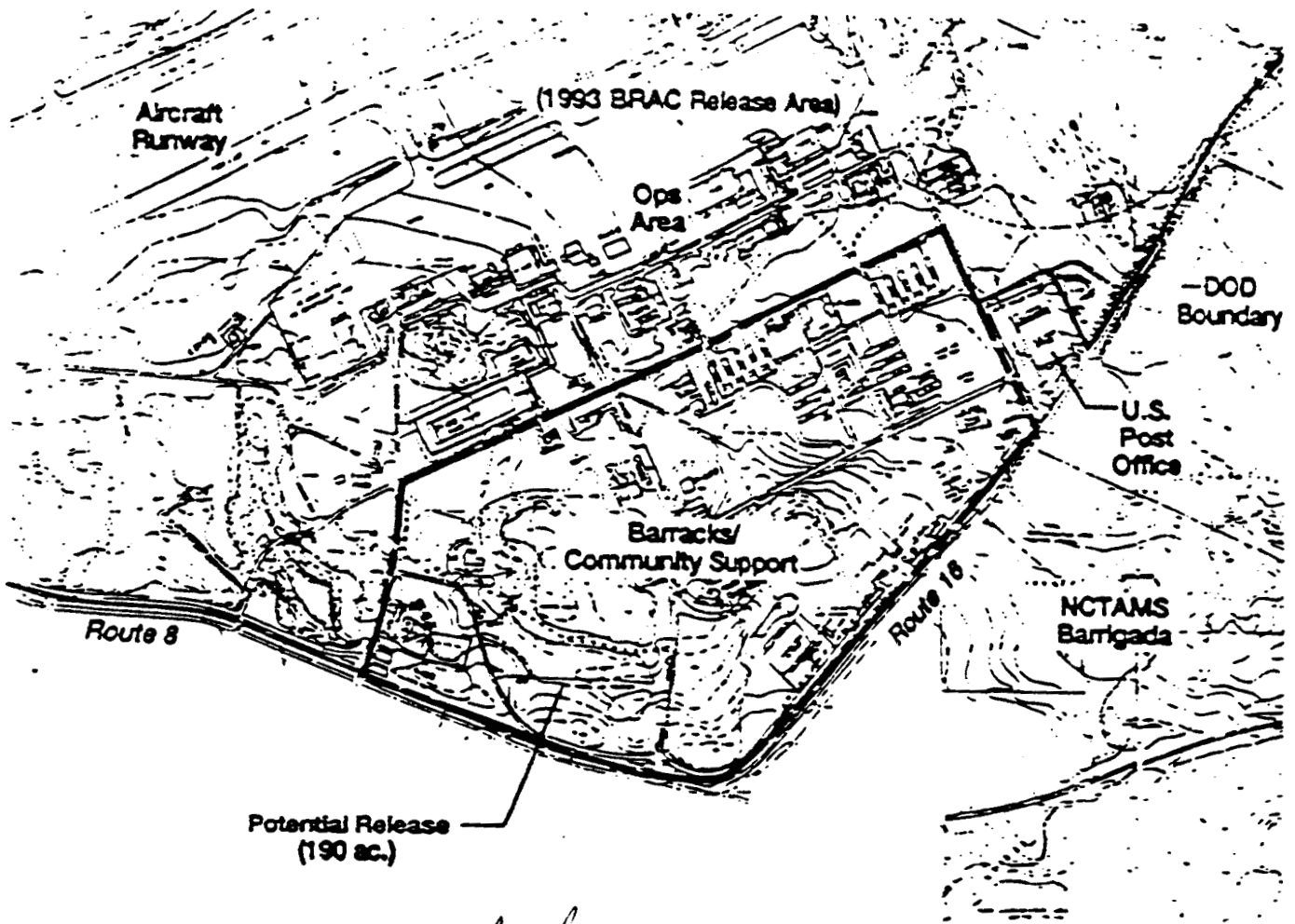


SITE N6: NAS BARRACKS/COMMUNITY SUPPORT- 190 ACRES

JUSTIFICATION FOR RELEASE:

- Potentially releasable if air squadrons reduced.
- Not contiguous with other major DOD land holdings in north and south.
- No anticipated future DOD need for land.

?



check double check tunnel over?



CONDITIONS OF RELEASE:

- Maintain easements for DOD owned and operated utilities.
- Navy complete IR clean-up.

3/1/94

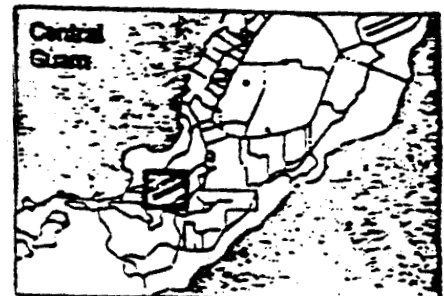
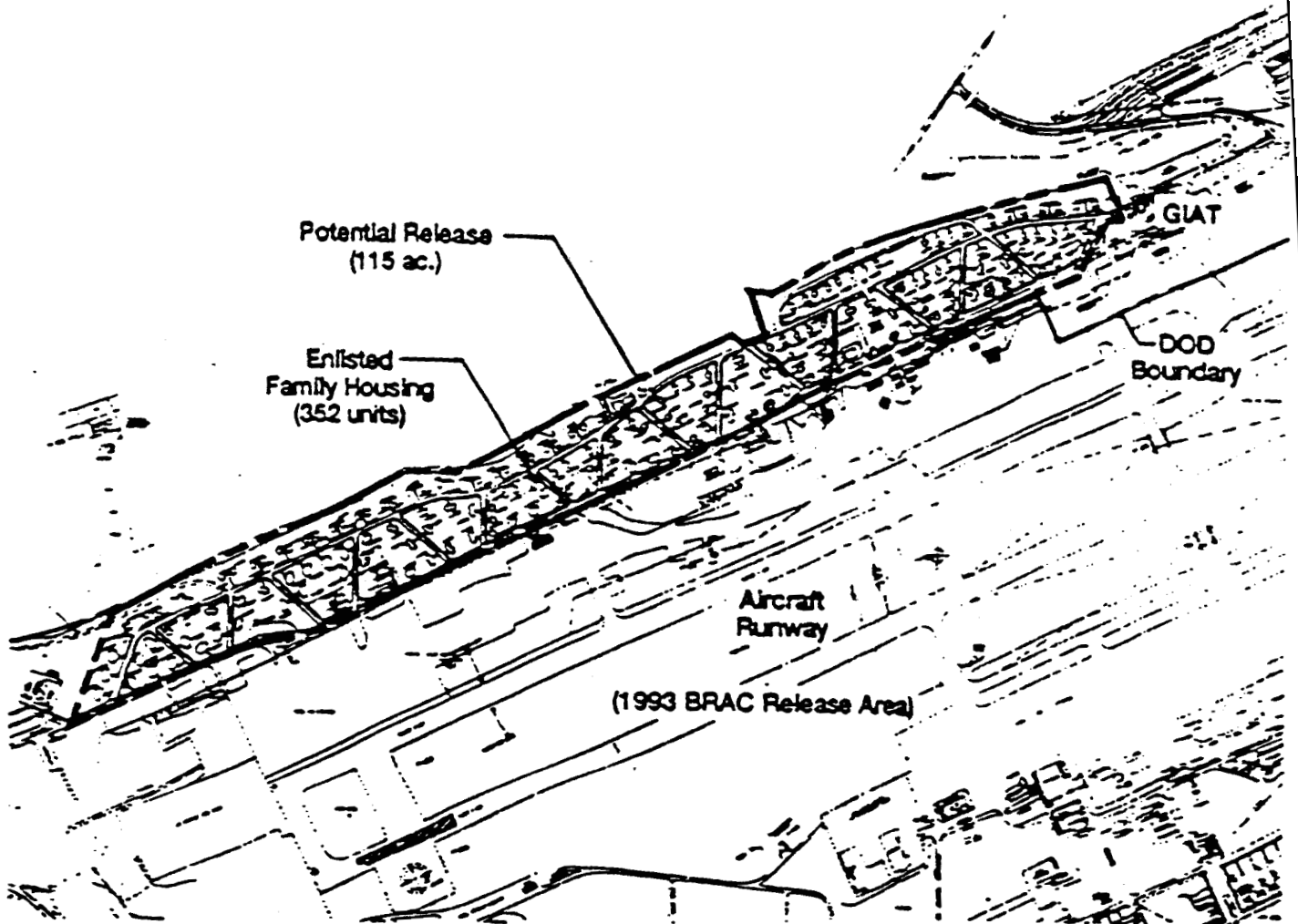


SITE N7: NAS ENLISTED HOUSING- 115 ACRES

JUSTIFICATION FOR RELEASE:

- Potentially releasable if air squadrons reduced.
- Not contiguous with other major DOD land holdings in north and south.
- No anticipated future DOD need for land.

Double check - turned over?



CONDITIONS OF RELEASE:

- Verify housing is not required to support projected base loading.
- Maintain easements for DOD owned & operated utilities.

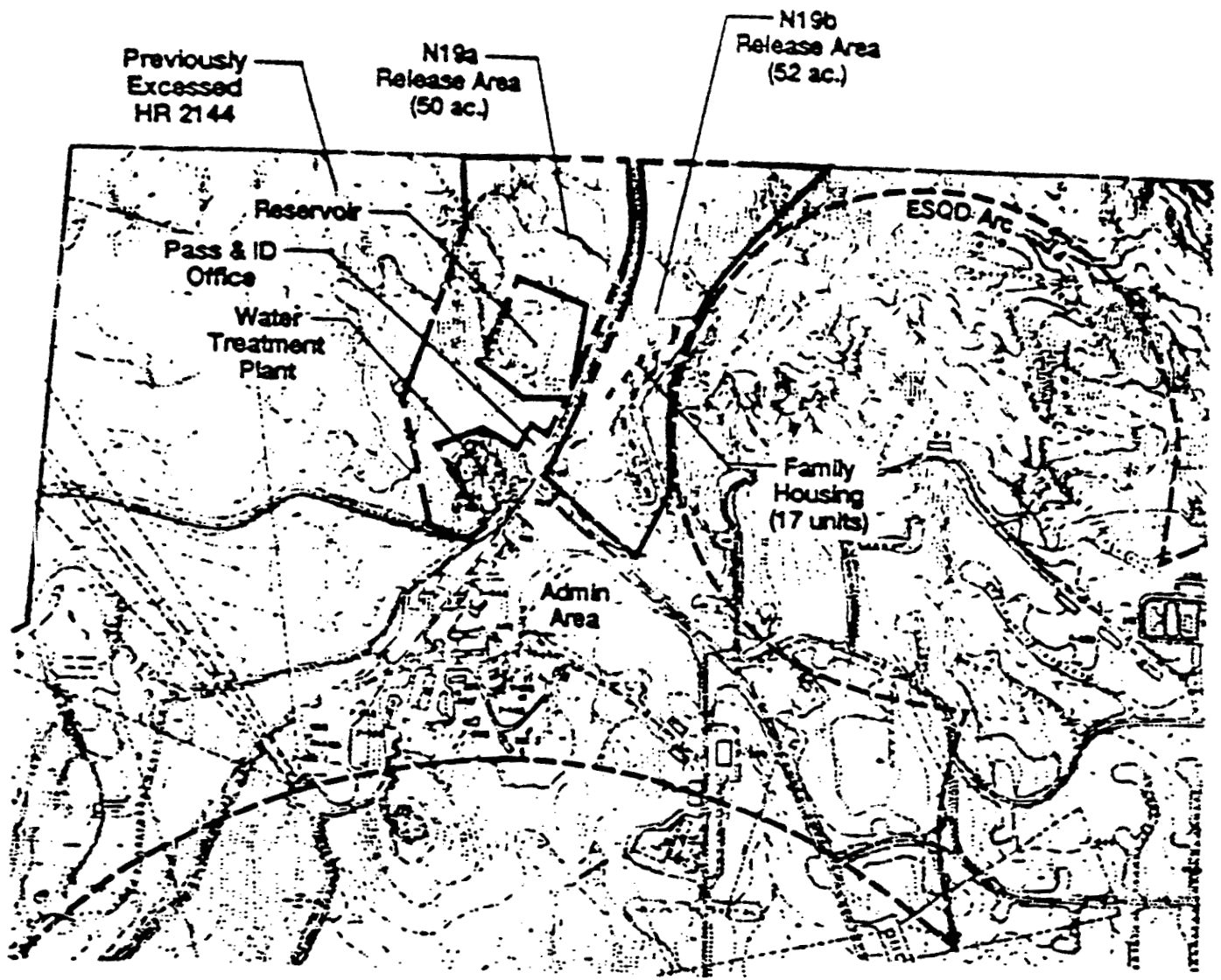
3/1/94

SITE N19: NAVMAG NORTH PARCELS- 102 ACRES

Naval Activities

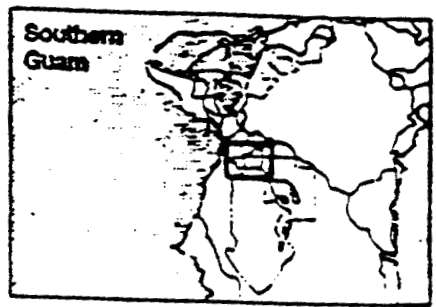
JUSTIFICATION FOR RELEASE:

- Retain lands within ESOD arcs and Lost River watershed for training and watershed protection.
- Family housing not required to meet FY99 base loading requirements.
- No other anticipated future DOD need for releasable land.

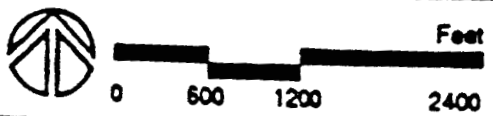


CONDITIONS OF RELEASE:

- Construct fence line around treatment plant, reservoir and behind family housing area.
- Retain utility easements.
- Retain access easement to reservoir behind (east) family housing area.



3/1/94

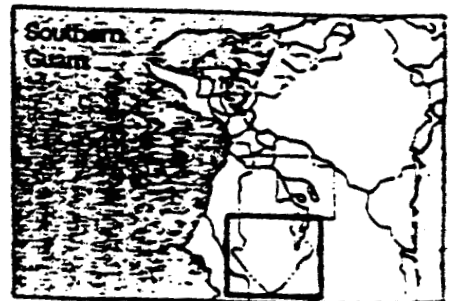
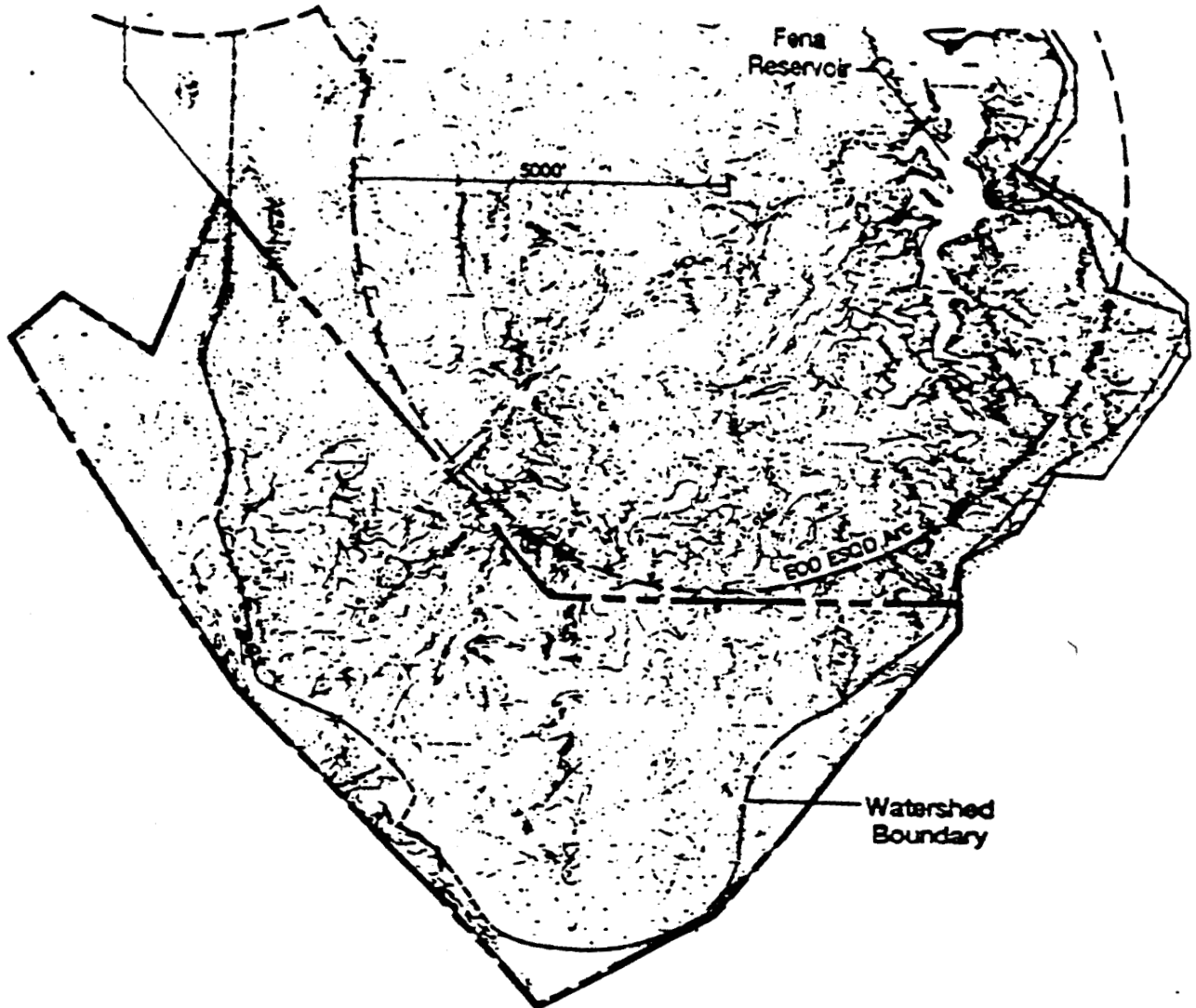


Naval
act

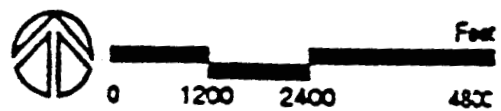
SITE N20: NAVMAG FENA WATERSHED- 1,100 ACRES

JUSTIFICATION FOR RETENTION:

- Land required to protect watershed/water resources, and to support training requirements.
- Potential joint use for hunting.



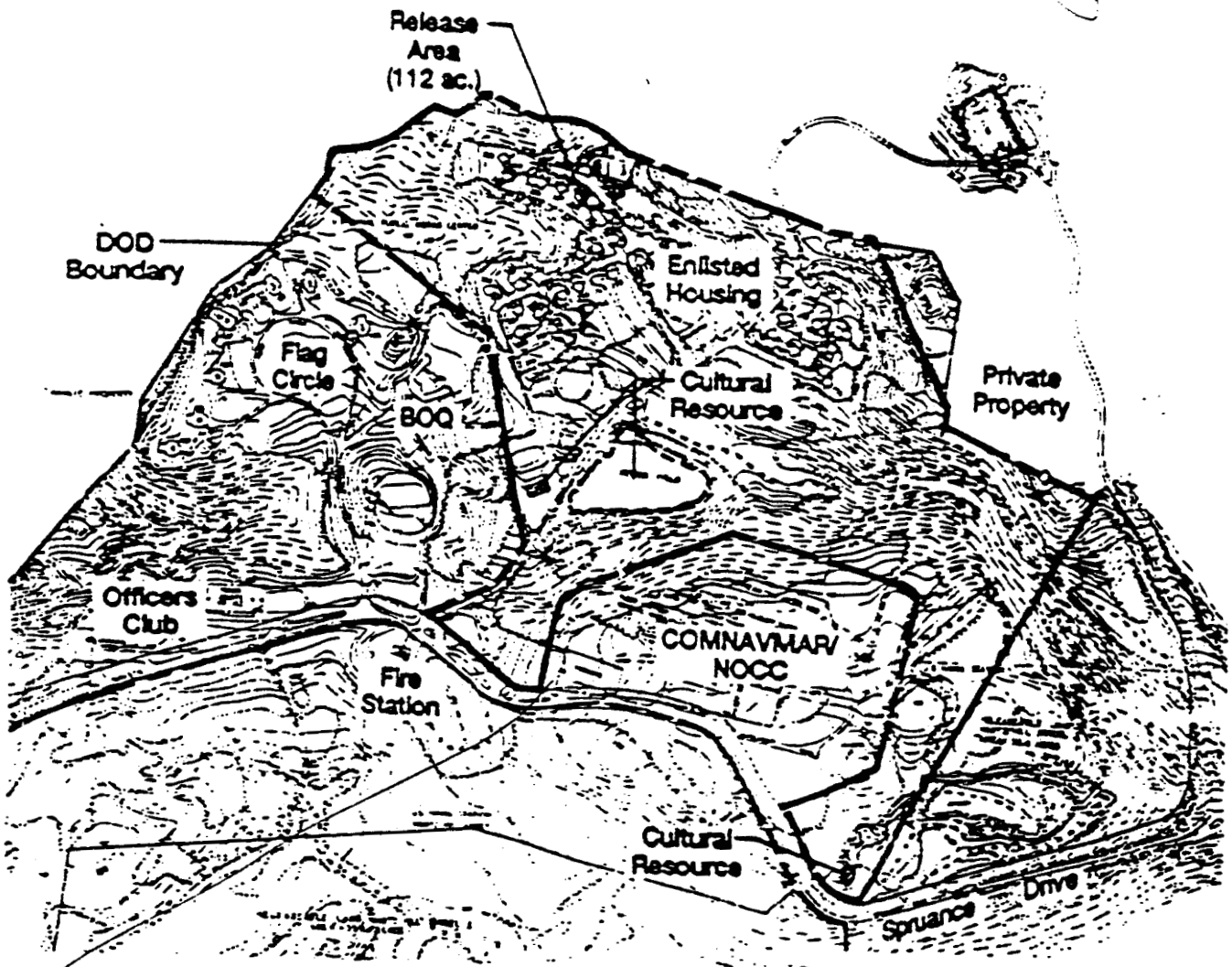
3/31/94



SITE N10a: NIMITZ HILL ENLISTED HOUSING- 112 ACRES

JUSTIFICATION FOR RELEASE:

- Retain COMNAVMAR/NOCC and Flag Circle, BOQ and Officers' Club, as no replacement facilities currently exist.
- Enlisted housing no longer needed to meet FY99 base loading requirements.
- No anticipated future DOD need for land.



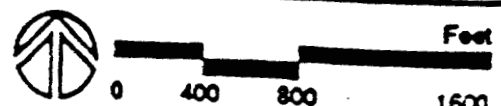
*Cent data says going away
- follow there saying it is*

CONDITIONS OF RELEASE:

- Retain easements for DOD owned and operated utilities.
- Retain access road easement.



3/11/94

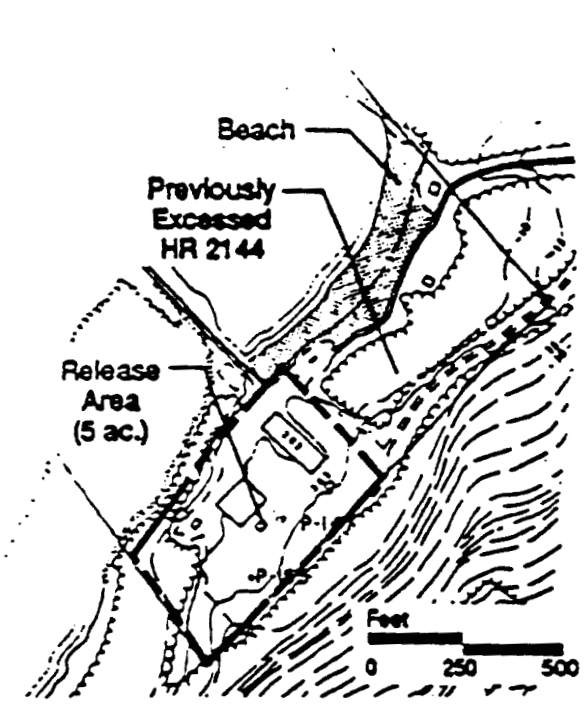


SITES N4a, N4c, & N4d: NAVY UTILITY PARCELS- 13 ACRES

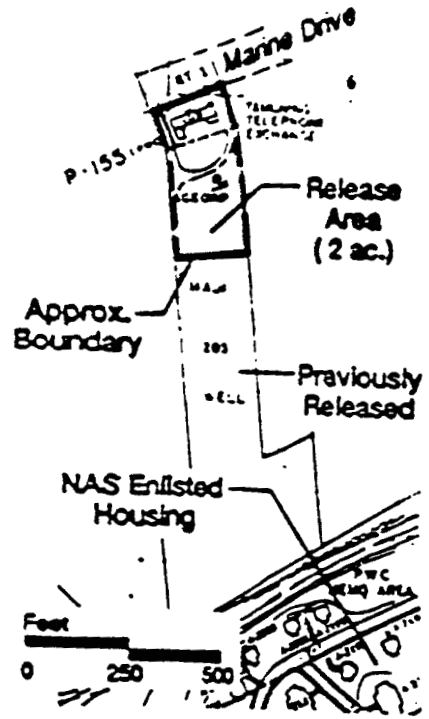
PWC

JUSTIFICATION FOR RELEASE:

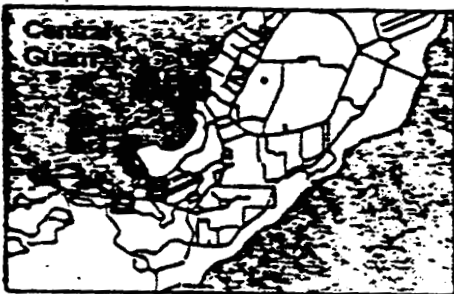
- Navy to transfer operation of electrical system to GPA in accordance with Customer Service Agreement.
- Upgrading and consolidation of telephone facilities in other locations removes the requirement for facilities at Tamuning.



SITE N4a-TANGUISSON POWER PLANT

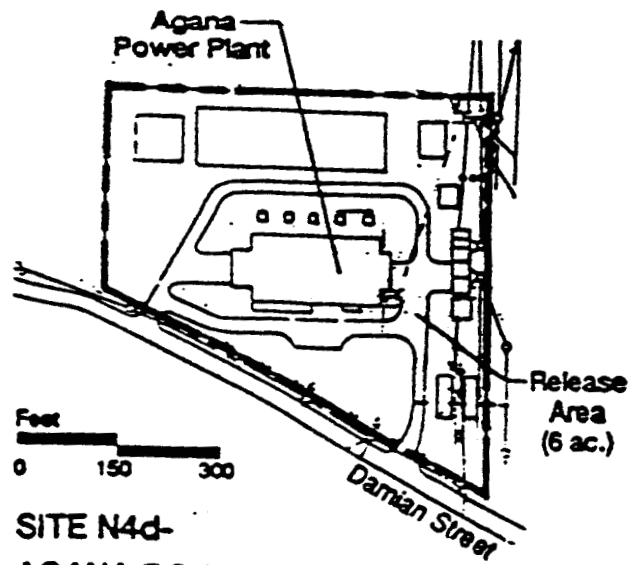


SITE N4c-TAMUNING TELEPHONE EXCHANGE



CONDITIONS OF RELEASE:

- Retain access easement to cable lines.
- Retain telephone cable hut at Tamuning.



SITE N4d-AGANA POWER PLANT

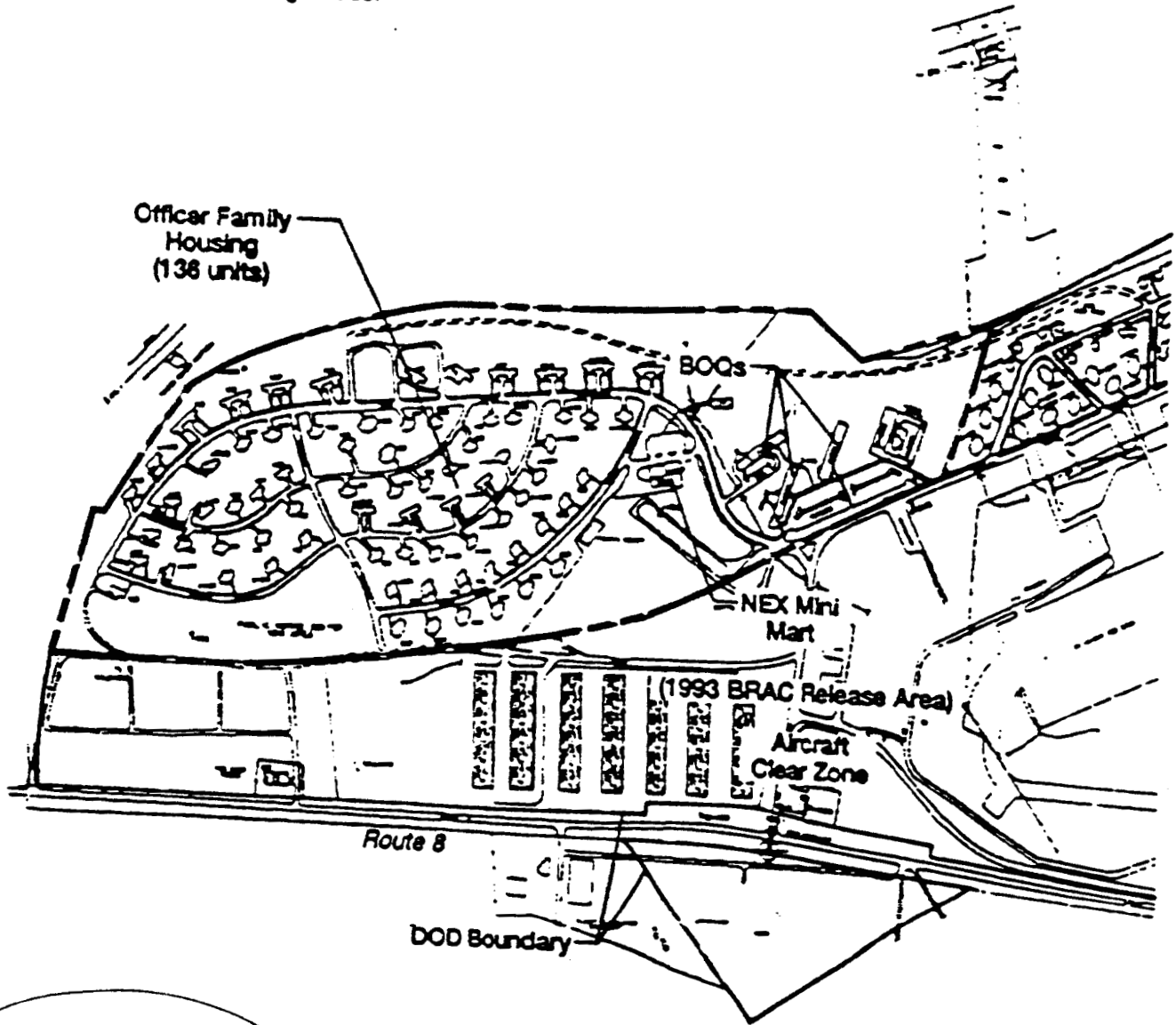
3/31/84



SITE N8: NAS OFFICERS HOUSING- 100 ACRES

JUSTIFICATION FOR RETENTION:

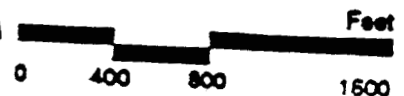
- Retain to meet housing needs.



PWC



3/1/94

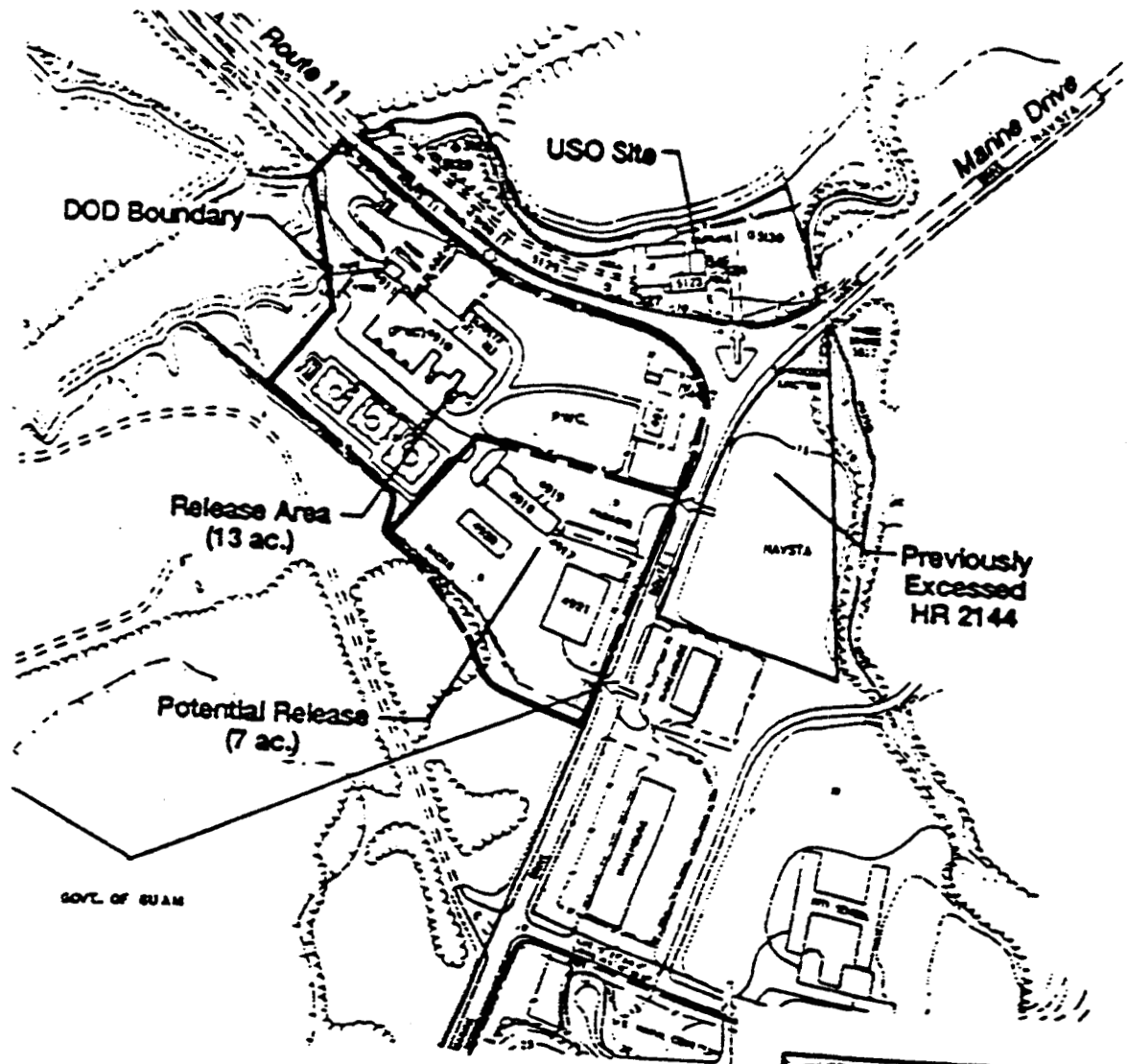


SITE N11: PITI POWER PLANT- 20 ACRES

PWC

JUSTIFICATION FOR RELEASE:

- Navy to transfer operation of electrical system to GPA in accordance with Customer Service Agreement.
- Not contiguous with other major DOD land holdings in the south.
- No anticipated future DOD need for land.



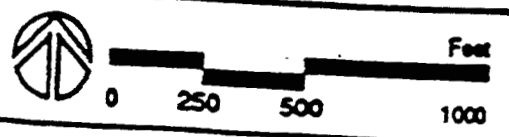
CONDITIONS OF RELEASE:

- Relocate PWC uses in Bldgs. 4918, 4920, and 4921.



3/1/84

PITI POWER PLANT
GUAM LAND USE PLAN

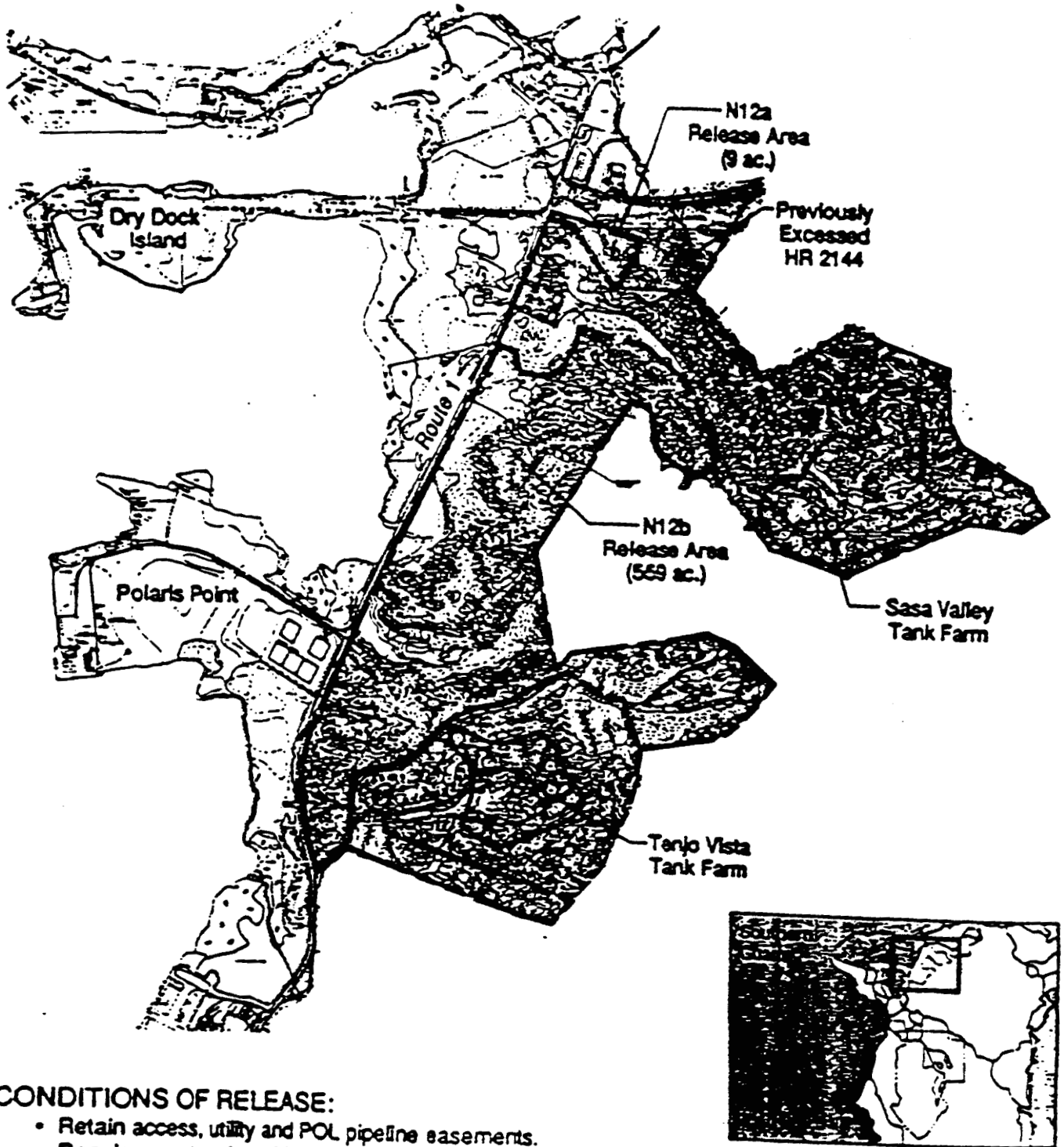


SITE N12: SASA VALLEY/TENJO VISTA- 568 ACRES

FISC

JUSTIFICATION FOR RELEASE:

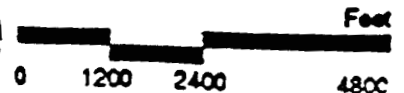
- Retain tank farms and buffers.
- Remaining land not used/needed by FISC for POL operations.



CONDITIONS OF RELEASE:

- Retain access, utility and POL pipeline easements.
- Require construction of fences around tank areas.

3/31/84

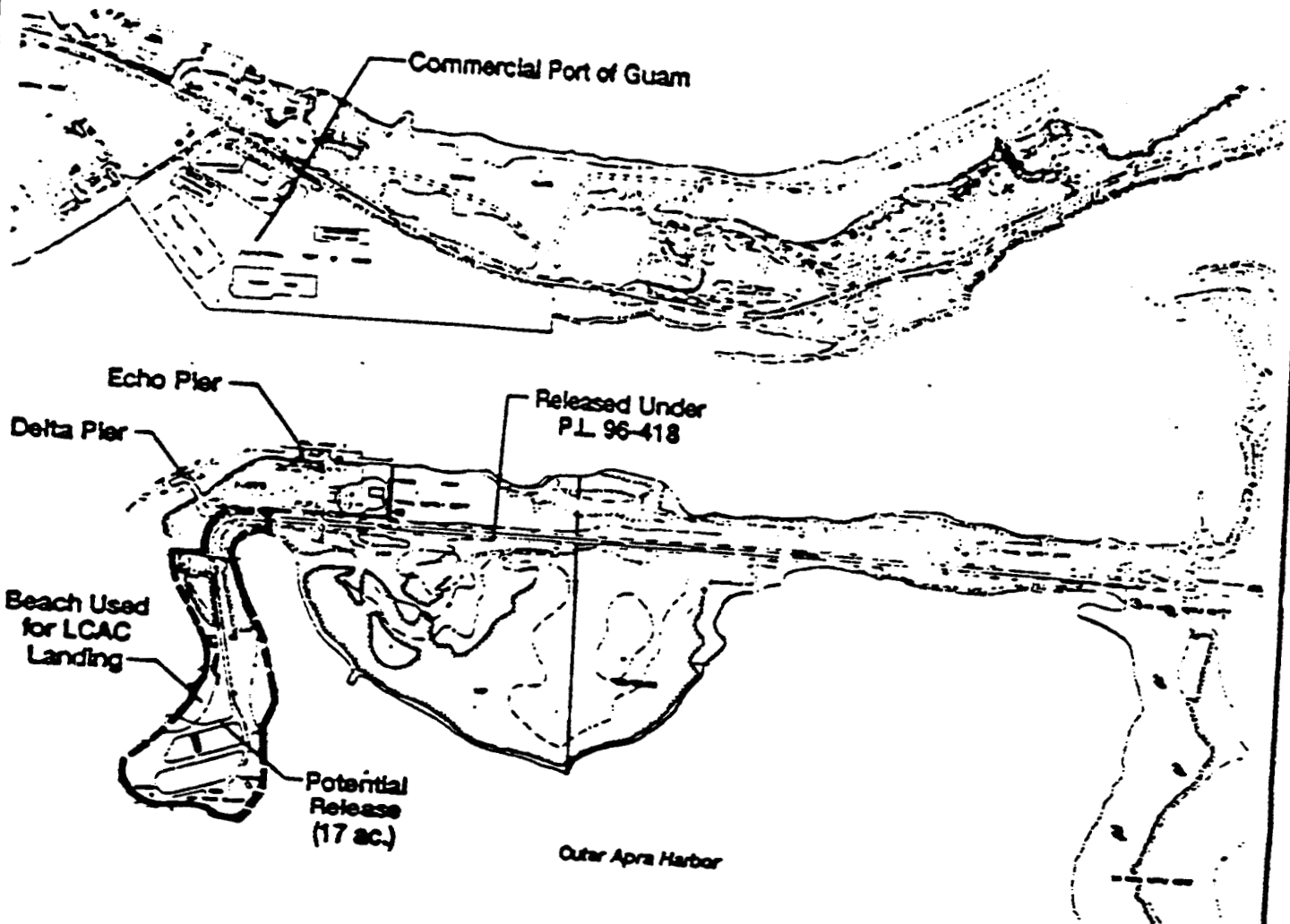


SITE N13: DRYDOCK ISLAND- 17 ACRES

JUSTIFICATION FOR RELEASE:

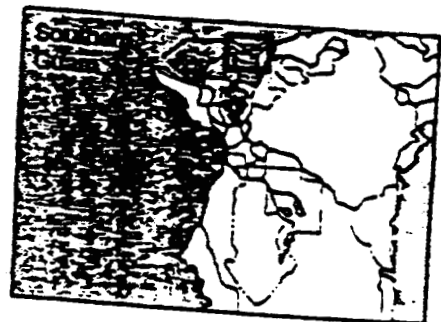
- Retain Delta & Echo Piers for POL operations.
- Land only releasable if alternative LCAC landing site can be located.
- No other anticipated future DOD need for land.
- Contiguous with other previously released land.

7 ISC or SRZ

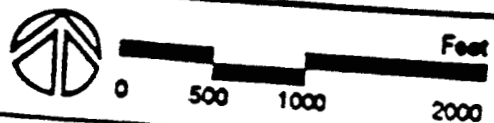


CONDITIONS OF RELEASE:

- Locate alternative landing beach or retain the right to land LCACs, LCMs, etc. with advance notification.



3/1/94

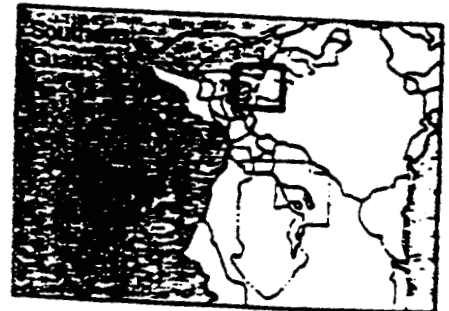
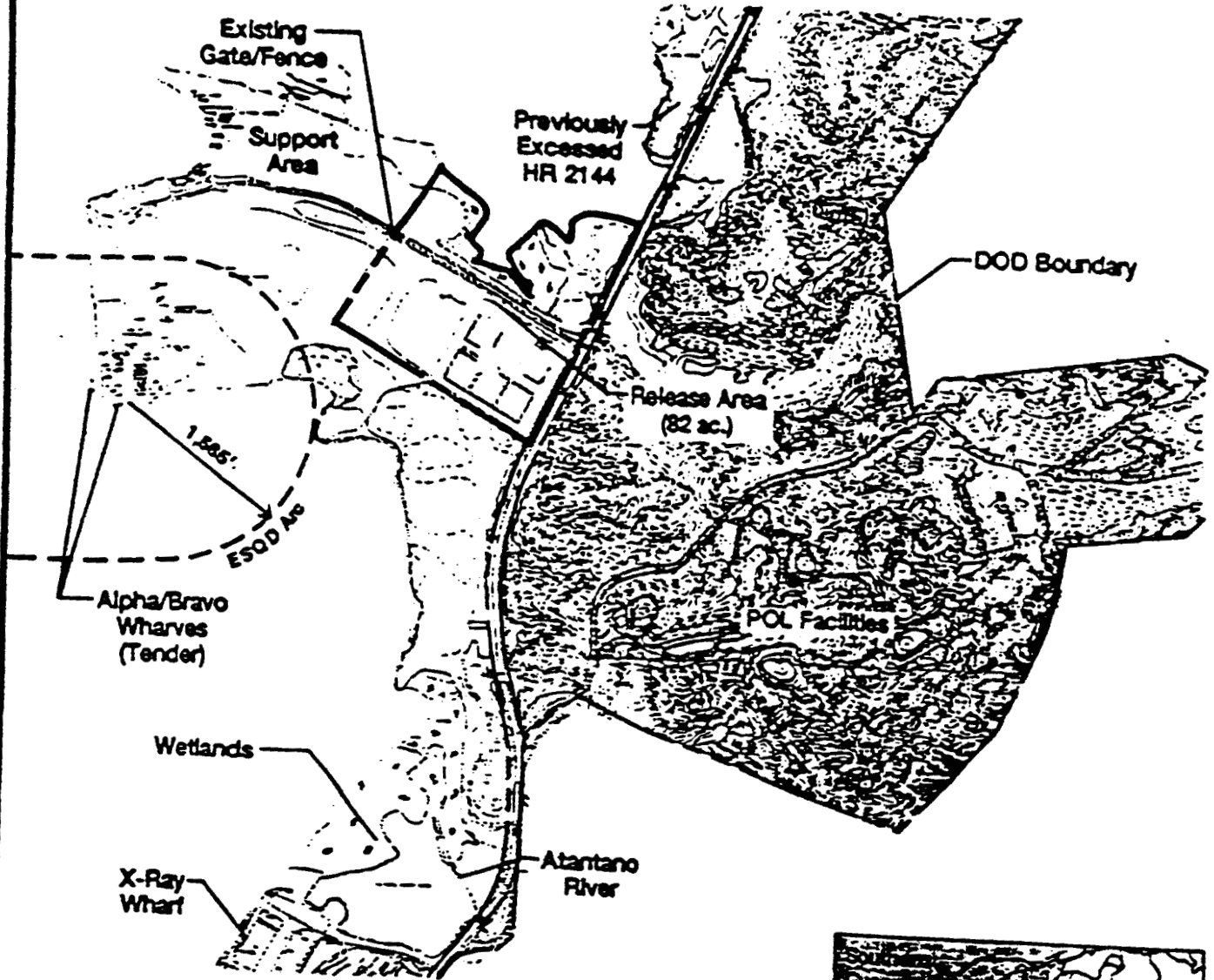


SITE N14: POLARIS POINT- 82 ACRES

*Naval activities
but not scheduled
for future
release*

JUSTIFICATION FOR RELEASE:

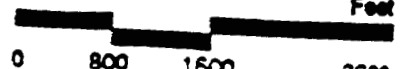
- Retain southern and western portions for tender operations and to maintain security of Inner Harbor.
- Area outside gate/fence is unused by DOD.
- No additional DOD requirements identified for area.



CONDITIONS OF RELEASE:

- Retain access and utility easements to Polaris Point facilities.

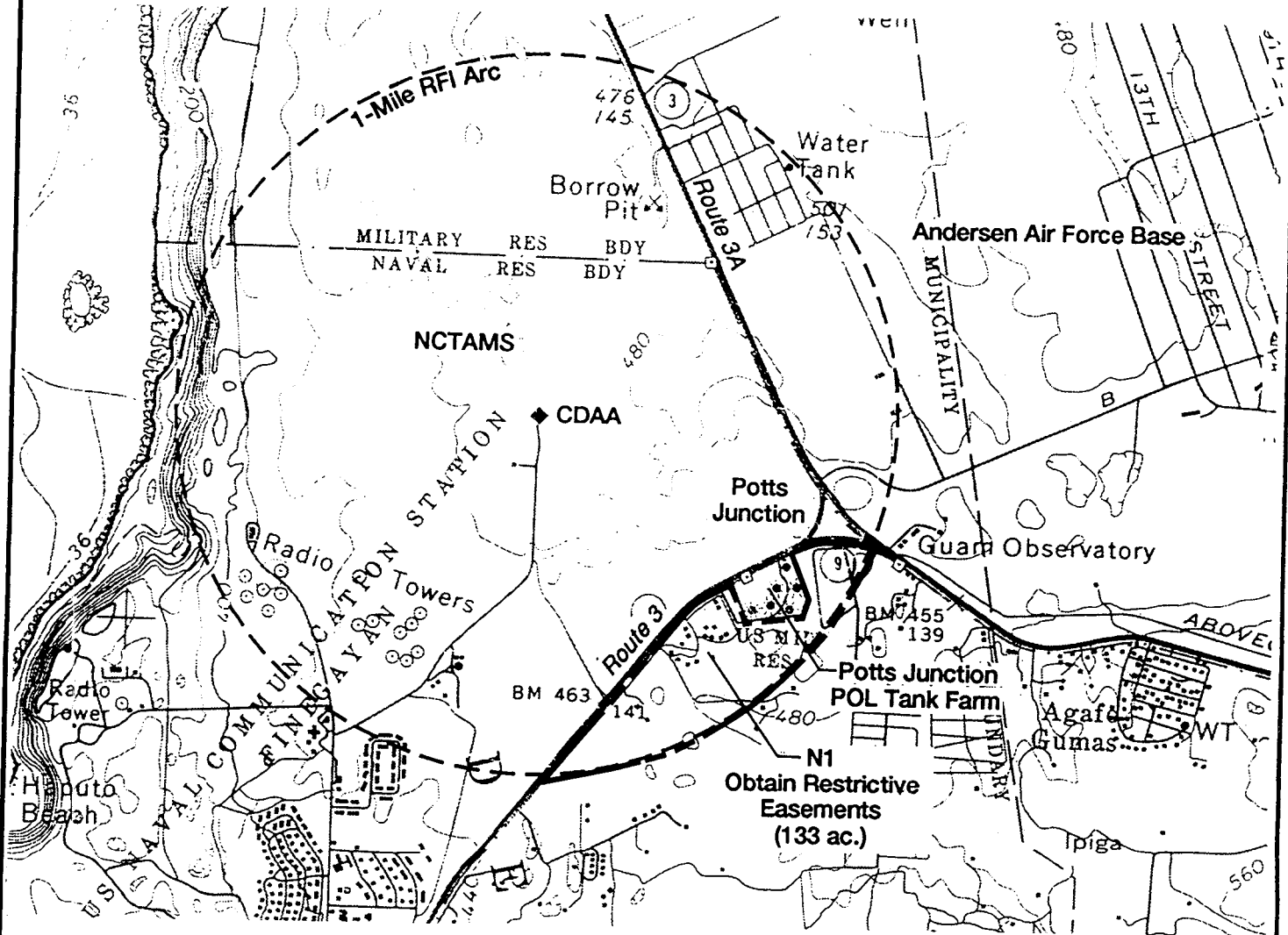
3/31/84



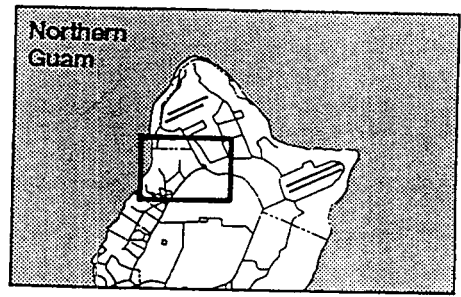
SITE N1: CDAА RFI AREA- 133 ACRES

JUSTIFICATION FOR ACQUISITION OF RESTRICTIVE EASEMENTS :

- Needed to prevent development and operation of incompatible uses within CDAА Arc



N1 Obtain Restrictive Easements (133 ac.)

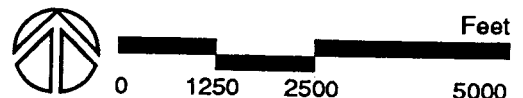


CONDITIONS OF AQUISITION:

- Obtain restrictive covenants on land to prohibit development and operation of incompatible uses within CDAА arc.

Private ly owned. Not for BRACC consideration

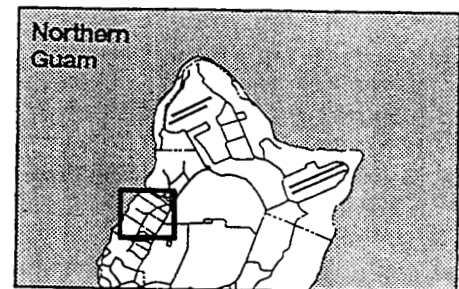
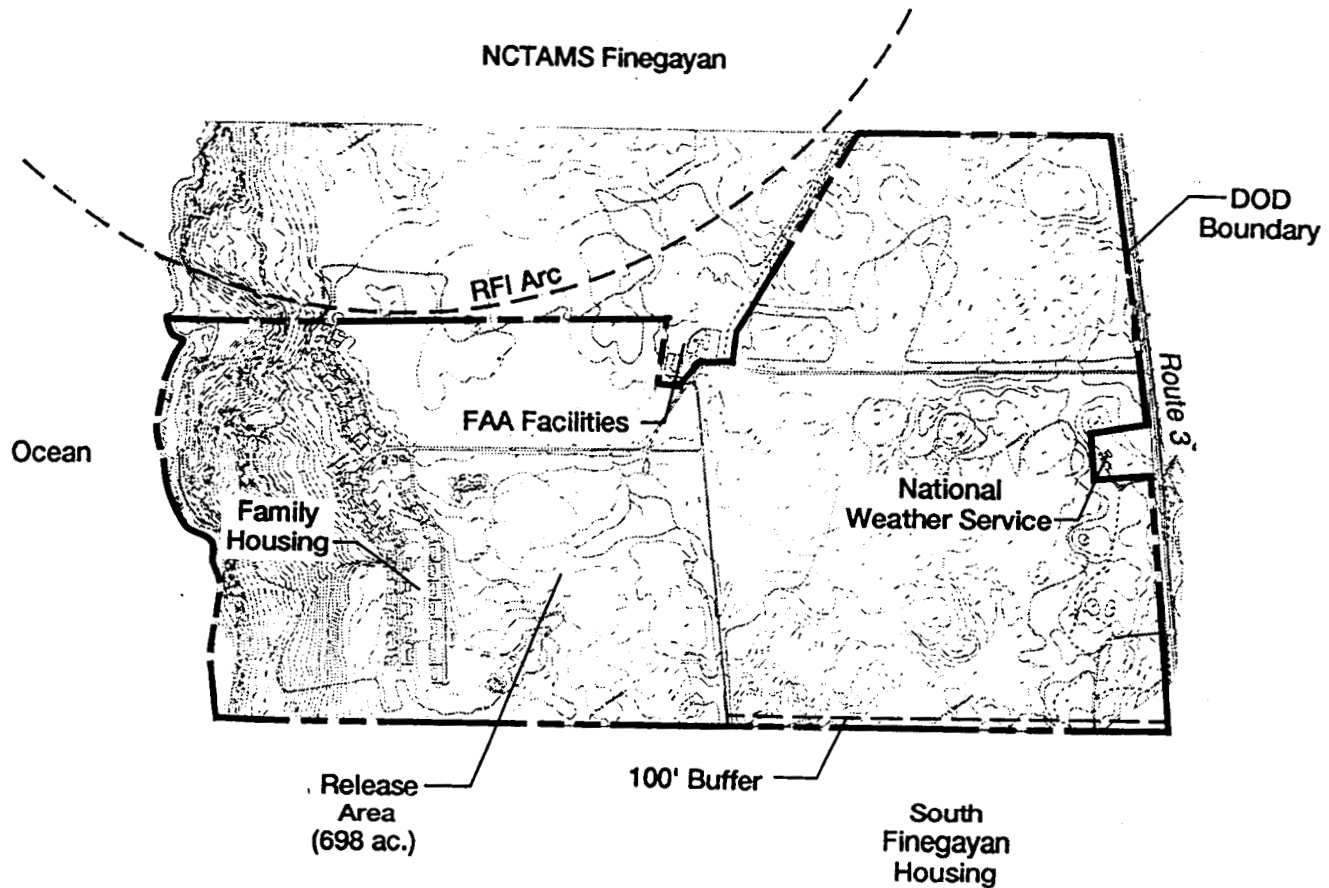
CDAА RFI AREA
GUAM LAND USE PLAN



SITE N2: FORMER FAA PARCEL- 698 ACRES

JUSTIFICATION FOR RELEASE:

- Retain land within RFI arc from Marlock/Classic Wizard Facilities at NCTAMS.
- Retain land under FAA facilities (PWC currently utilizing portion of warehouse).
- Retain land under National Weather Service facilities until NWS can acquire it or no longer needs it.
- Housing no longer needed to meet FY99 base loading requirements.
- No anticipated future DOD need for land.

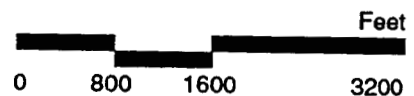


CONDITIONS OF RELEASE:

- Provide 100' buffer along southern boundary adjacent to South Finegayan housing.
- Retain utility and access easements.

Owned by PWC GUAM

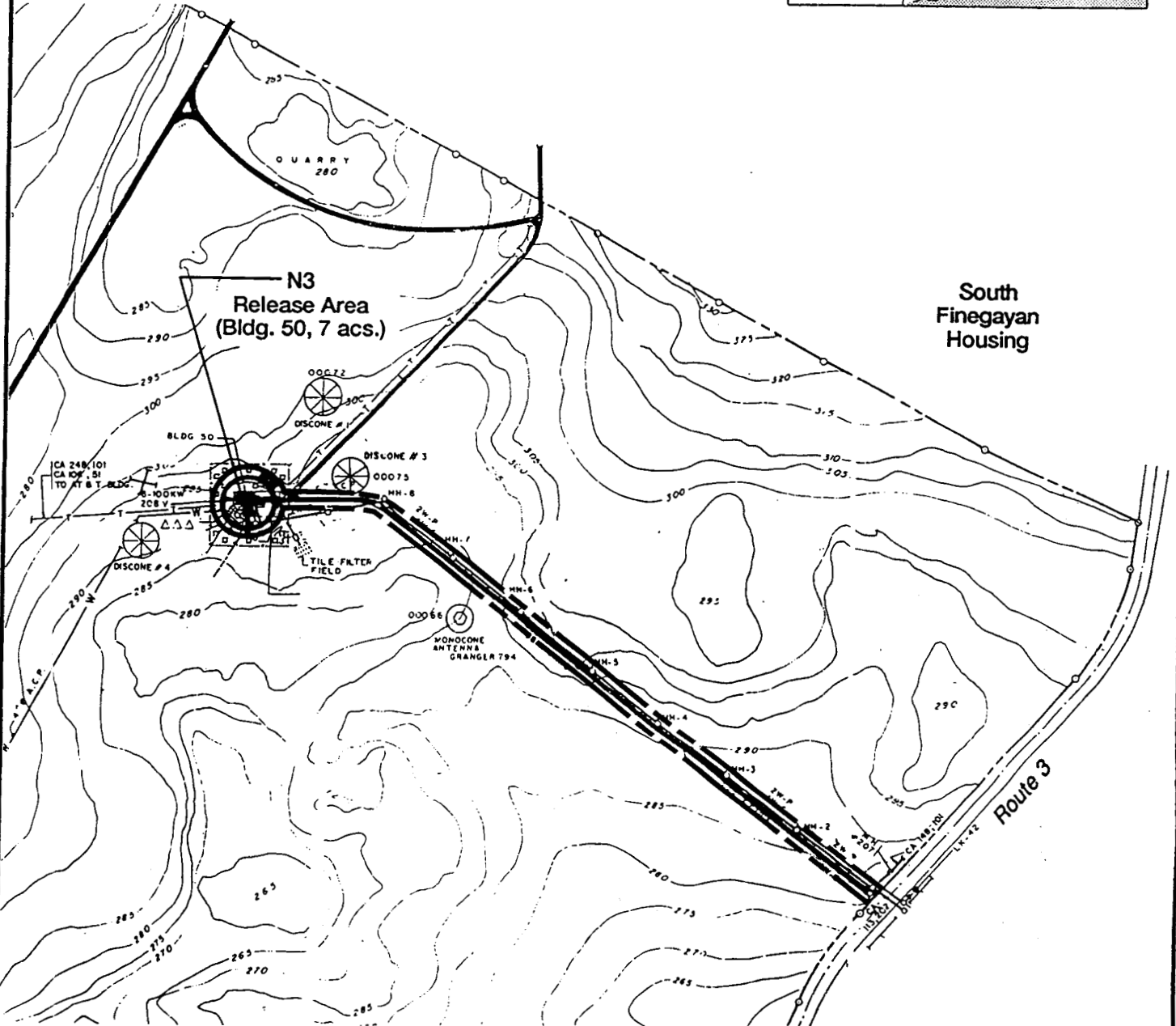
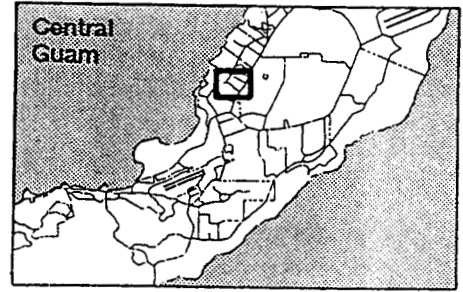
FAA PARCEL
GUAM LAND USE PLAN



SITE N3: HARMON ANNEX- 7 ACRES

JUSTIFICATION FOR RELEASE:

- Site is surrounded by previous GLUP parcel.
- No anticipated future DOD need for land.
- Bldg. 50 no longer needed by NPPS.

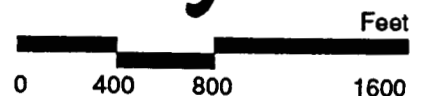


CONDITIONS OF RELEASE:

- Navy complete clean-up of hazardous materials in Bldg. 50.

Owned by Navy Publication & Printing Service

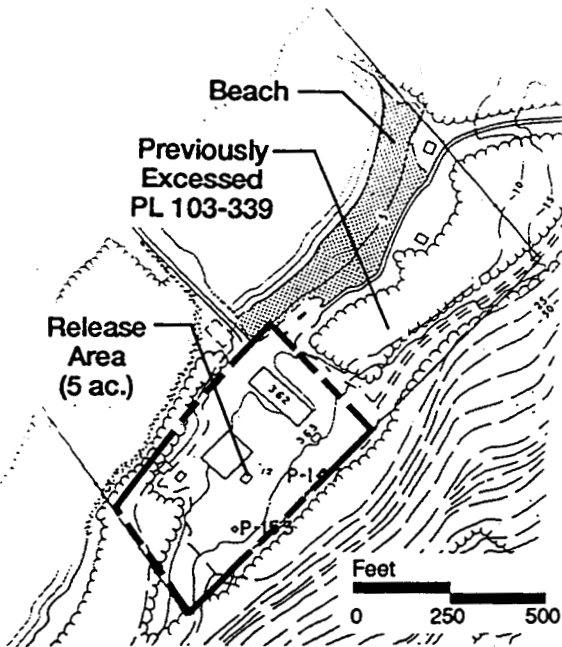
HARMON ANNEX
GUAM LAND USE PLAN



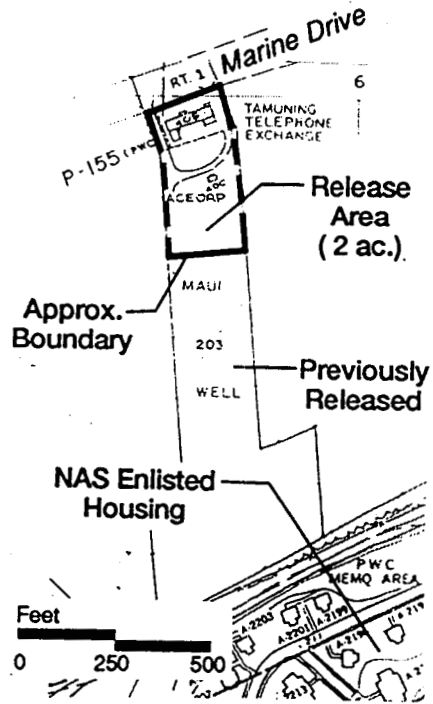
SITES N4a, N4c, & N4d: NAVY UTILITY PARCELS- 13 ACRES

JUSTIFICATION FOR RELEASE:

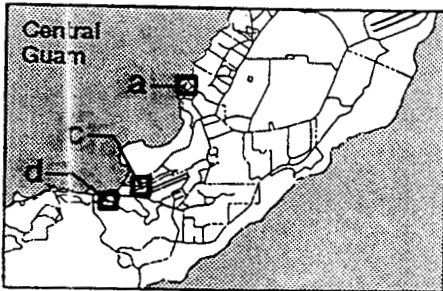
- Navy to transfer operation of electrical system to GPA in accordance with Customer Service Agreement.
- Upgrading and consolidation of telephone facilities in other locations removes the requirement for facilities at Tamuning.



SITE N4a-TANGUISSON POWER PLANT

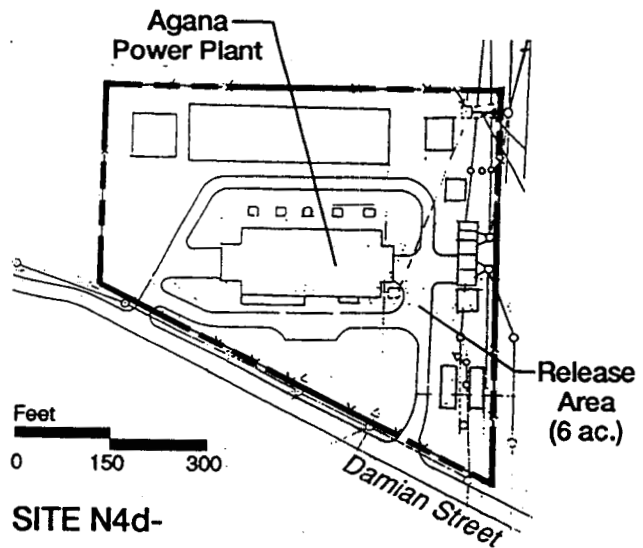


SITE N4c-TAMUNING TELEPHONE EXCHANGE



CONDITIONS OF RELEASE:

- Retain access easement to cable lines.
- Retain telephone cable hut at Tamuning.



SITE N4d-AGANA POWER PLANT

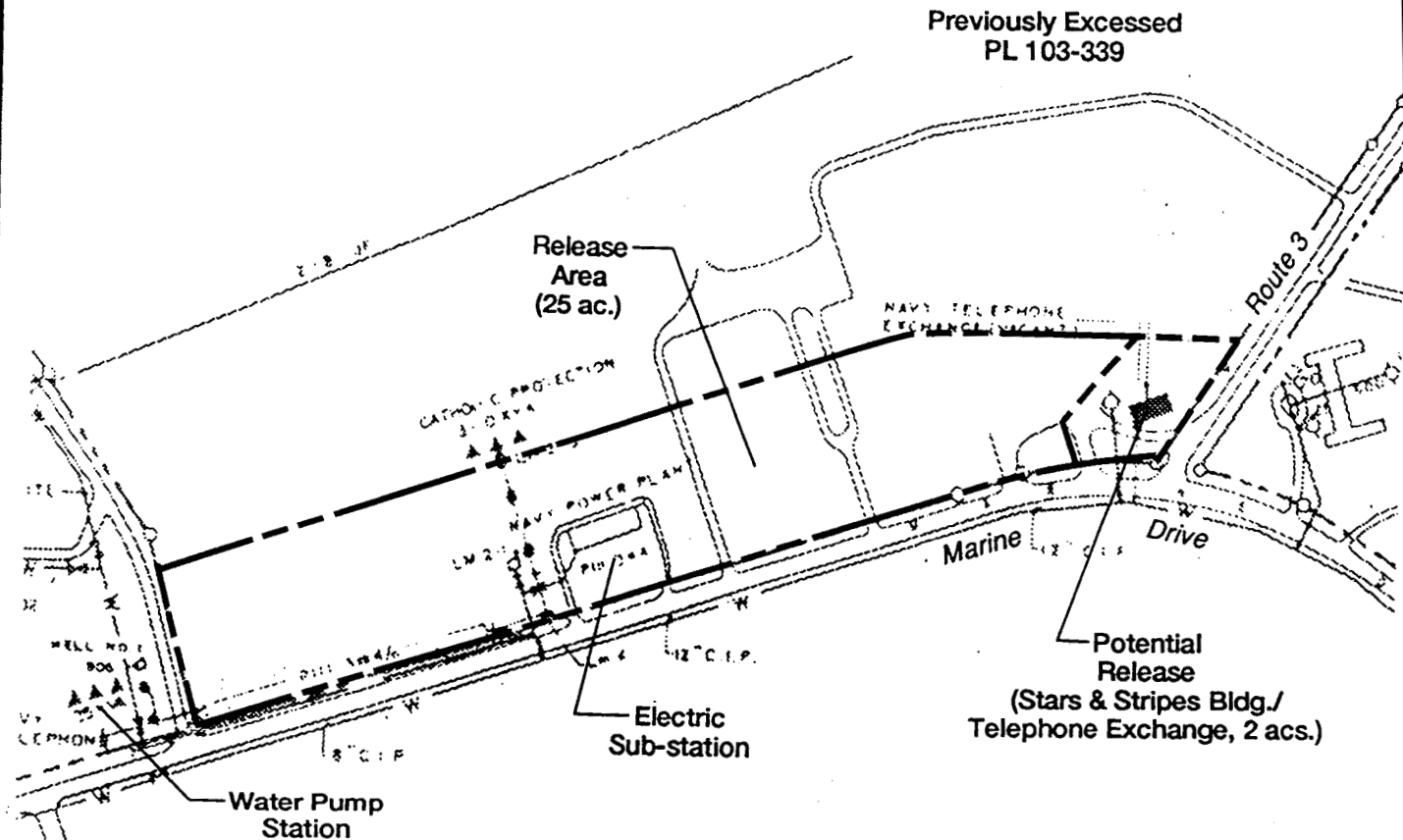
Owned by PWC, Gu



SITE N4b: MARINE DRIVE- 27 ACRES

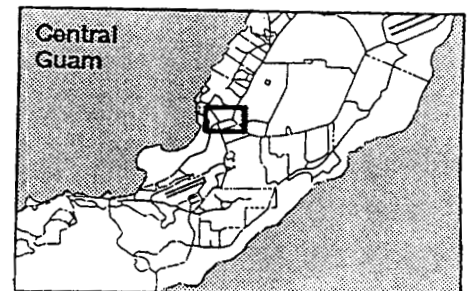
JUSTIFICATION FOR RELEASE:

- Site is adjacent to previous GLUP parcel.
- Navy to transfer operation of electrical equipment to GPA in accordance with customer service agreement.
- No anticipated DOD need for land.
- Potential release of Stars & Stripes building if replacement facility can be provided.



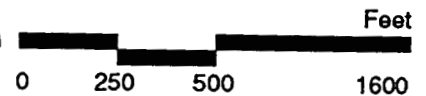
CONDITIONS OF RELEASE:

- Retain utility easements for water, POL and other DOD operations.
- Retain telephone cable hut on Stars & Stripes site.



Owned by PWC, Gu

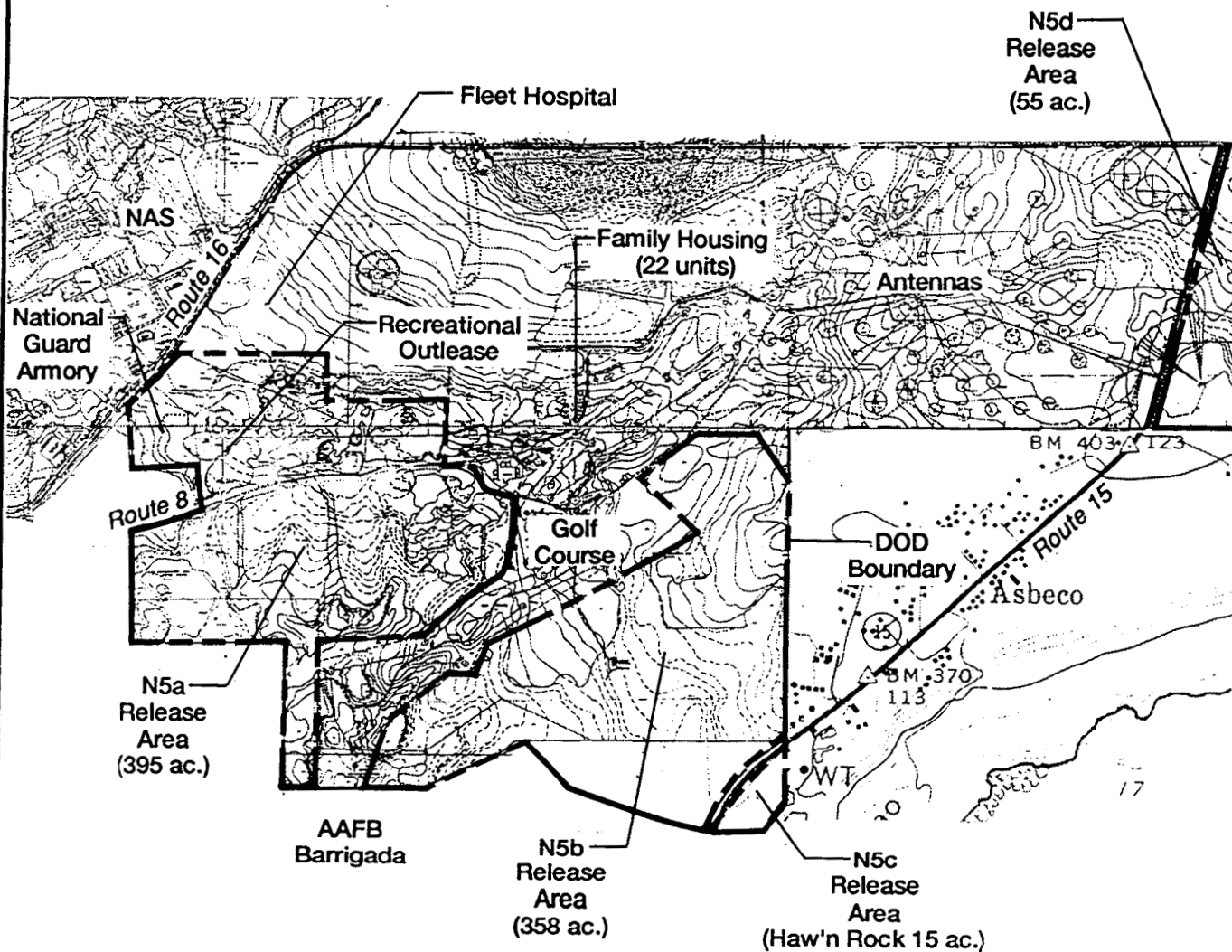
MARINE DRIVE
GUAM LAND USE PLAN



SITE N5: NCTAMS BARRIGADA- 823 ACRES

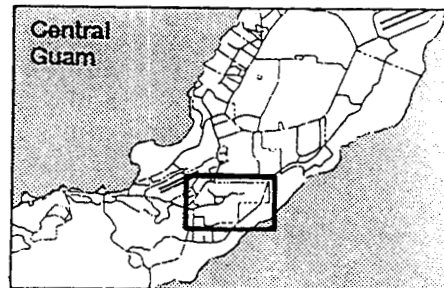
JUSTIFICATION FOR RELEASE:

- Retain antenna fields and related facilities, family housing, utilities and golf course
- Remaining land no longer used for NCTAMS communications operations
- No other future DOD need for land



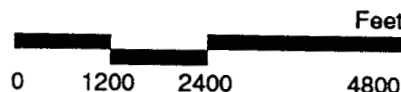
CONDITIONS OF RELEASE:

- Replace warehouse across Route 15
- Restrict height of development on released parcels to eliminate potential impact on NEXRAD operations
- New fence lines would require proper grounding



Owned by NCTAMS

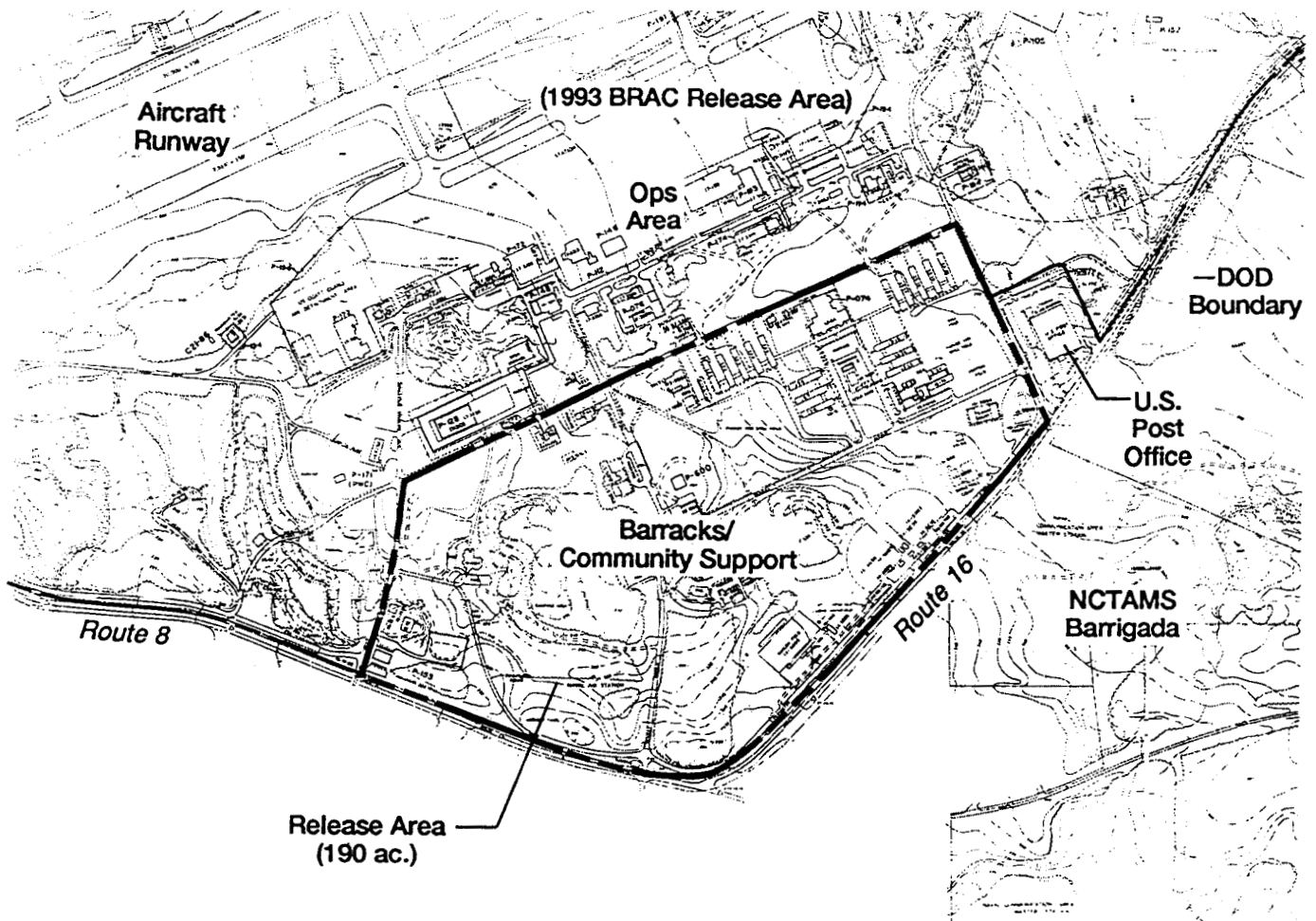
**NCTAMS BARRIGADA
GUAM LAND USE PLAN**



SITE N6: NAS BARRACKS/COMMUNITY SUPPORT- 190 ACRES

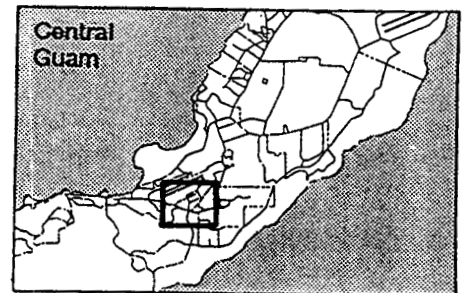
JUSTIFICATION FOR RELEASE:

- Air squadrons VQ-1 and VQ-5 to be relocated off Guam.
- Not contiguous with other major DOD land holdings in north and south.
- No anticipated future DOD need for land.



CONDITIONS OF RELEASE:

- Maintain easements for DOD owned and operated utilities.
- Navy complete IR clean-up.



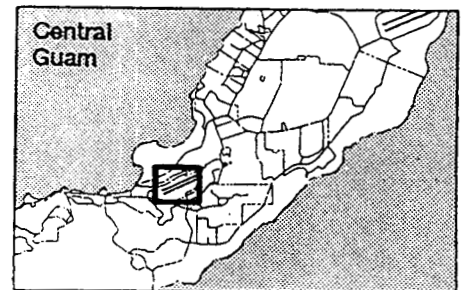
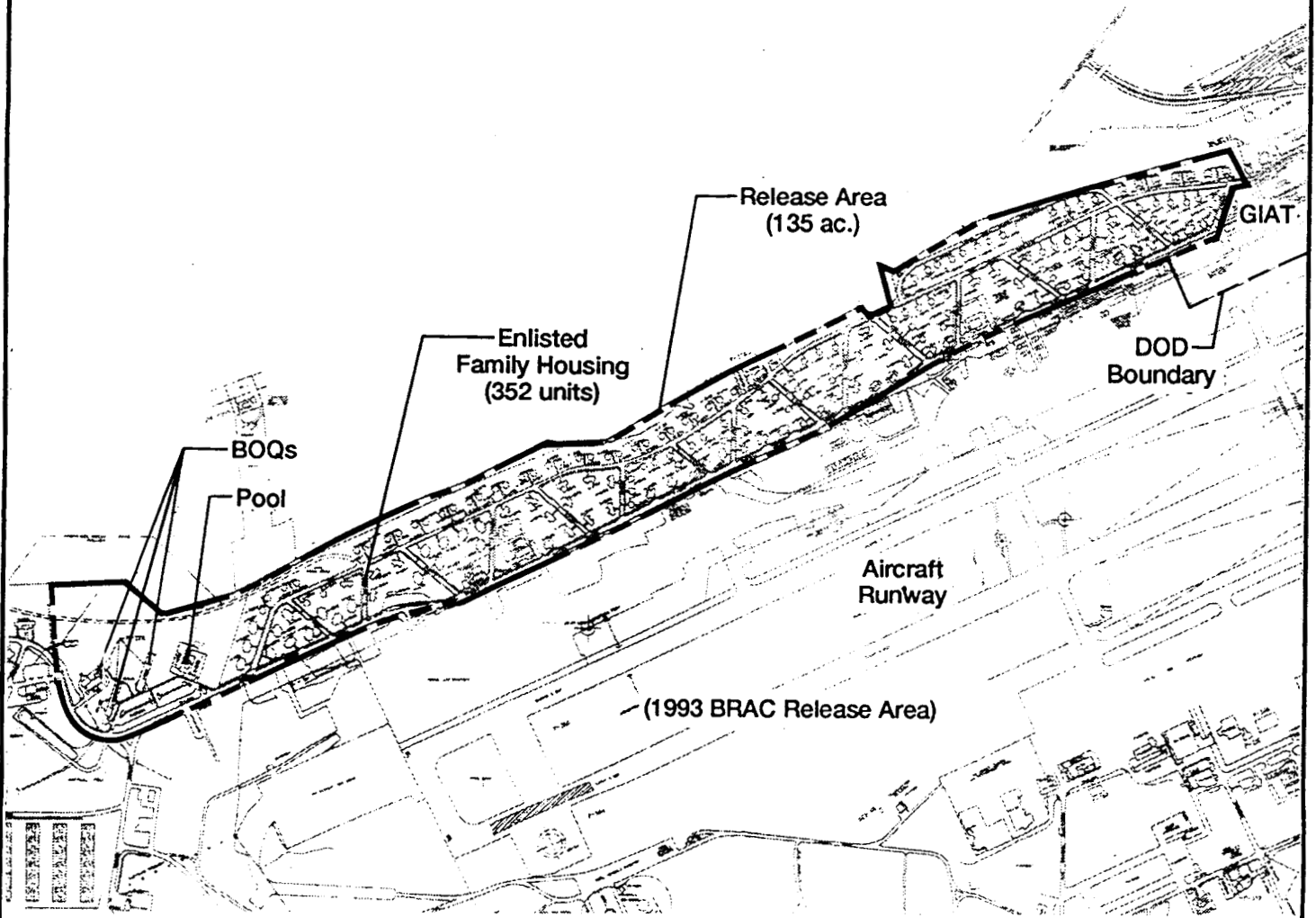
Owned by NAS: Being processed for transfer to
NAS BARRACKS/SUPPORT *Guam under BRAC 93*
GUAM LAND USE PLAN



SITE N7: NAS ENLISTED HOUSING- 135 ACRES

JUSTIFICATION FOR RELEASE:

- Air squadrons VQ-1 and VQ-5 to be relocated off Guam.
- Not contiguous with other major DOD land holdings in north and south.
- No anticipated future DOD need for land.



CONDITIONS OF RELEASE:

- Maintain easements for DOD owned & operated utilities.

Owned by PWC/NAS : Being processed for transfer to gov GUAM BRAC 93

NAS/ENLISTED FAMILY HOUSING
GUAM LAND USE PLAN

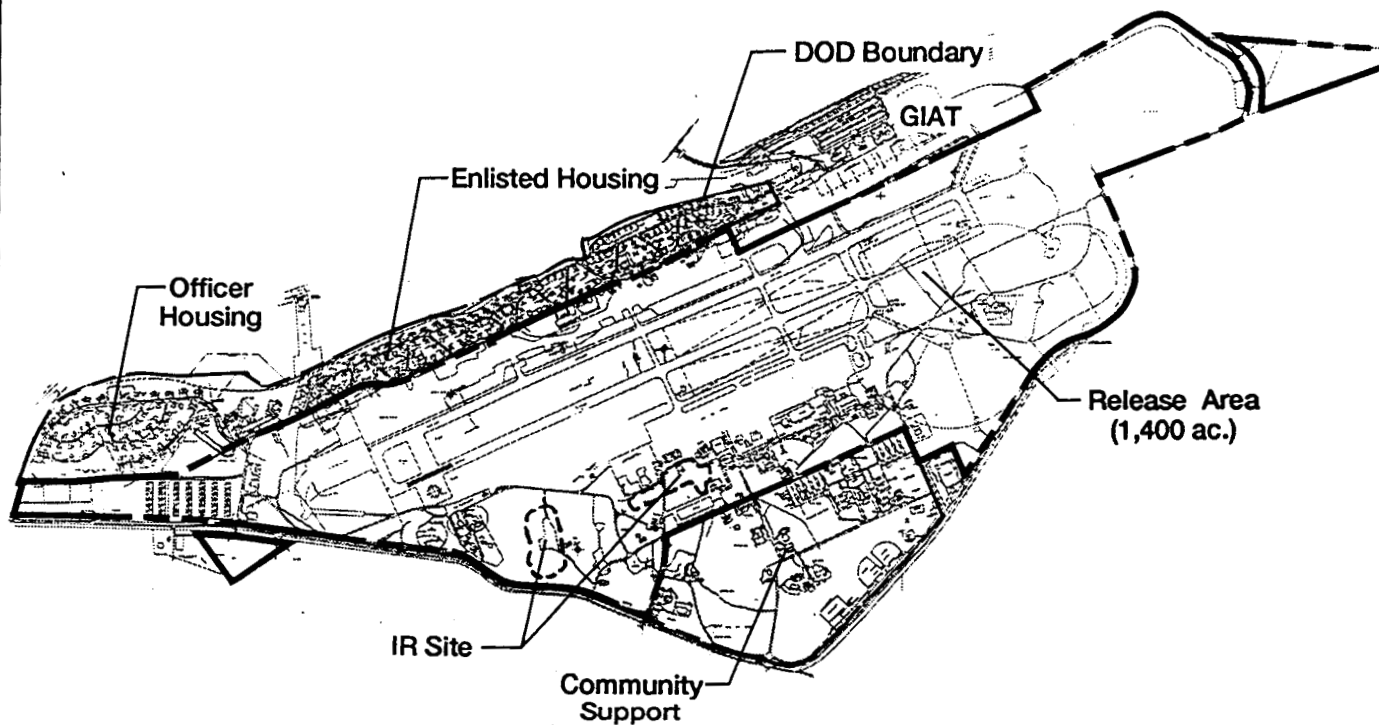


0 600 1200 2400

SITE N9: NAS OPS AREA- 1,400 ACRES

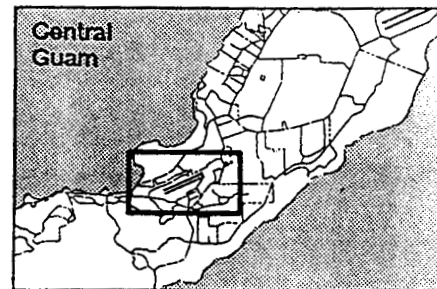
JUSTIFICATION FOR RELEASE:

- NAS identified for closure under BRAC.
- Air operations to relocate to Andersen AFB.
- Housing and support areas to be retained to support relocated personnel.



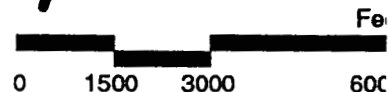
CONDITIONS OF RELEASE:

- Maintain easements for DOD owned and operated utilities.
- Require sound and aircraft safety barriers adjacent to family housing areas. (Note: Not required if site N7 released.)
- Navy complete IR clean-up.



closed per BRAC 93: controlled by GovGuam

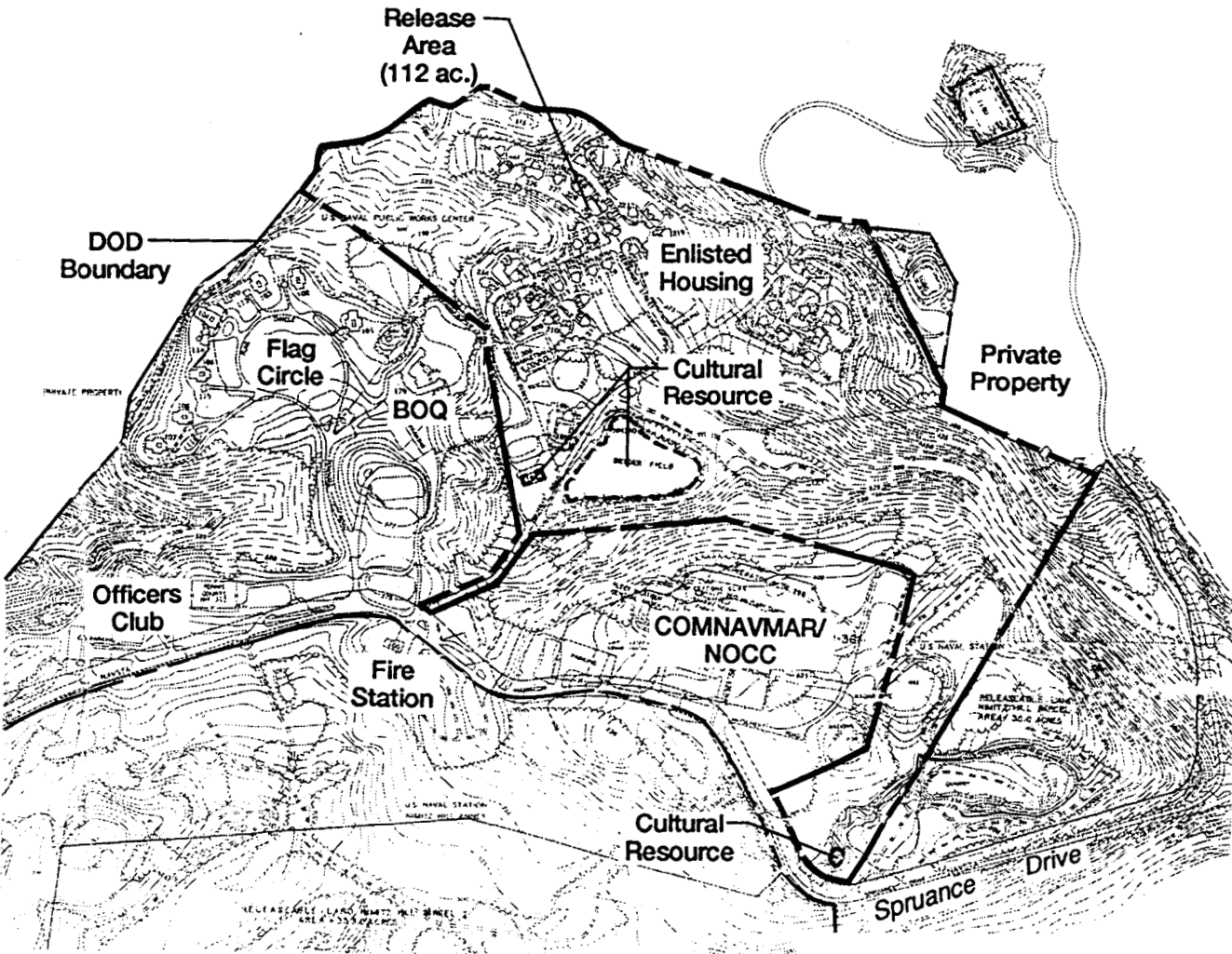
**NAS OPERATIONS AREA
GUAM LAND USE PLAN**



SITE N10a: NIMITZ HILL ENLISTED HOUSING- 120 ACRES

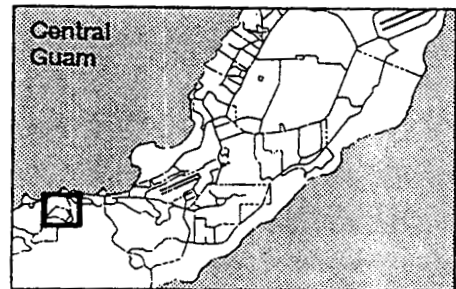
JUSTIFICATION FOR RELEASE:

- Retain COMNAVMAR/NOCC and Flag Circle, BOQ and Officers' Club, as no replacement facilities currently exist.
- Enlisted housing no longer needed to meet FY99 base loading requirements.
- No anticipated future DOD need for land.



CONDITIONS OF RELEASE:

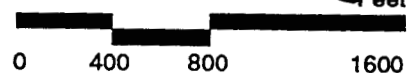
- Retain easements for DOD owned and operated utilities.
- Retain access road easement.
- Construct fencing along joint boundary with COMNAVMAR/NOCC parcel.



Owned by Nav Acts: PWC owns Enlisted hsg.

NIMITZ HILL ENLISTED HOUSING

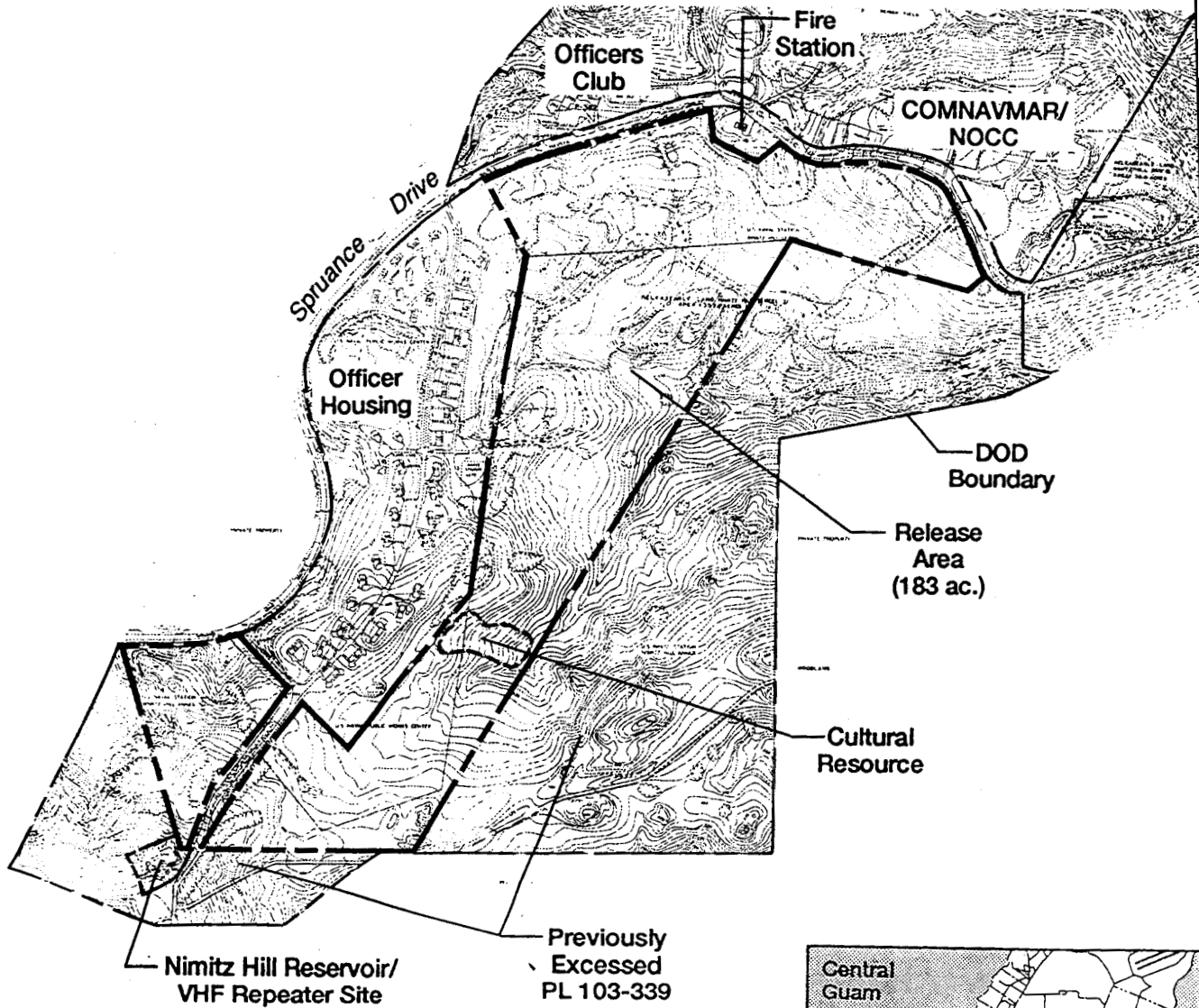
GUAM LAND USE PLAN



SITE N10b: NIMITZ HILL VACANT LANDS- 183 ACRES

JUSTIFICATION FOR RELEASE:

- Retain fire station for protection of remaining DOD facilities.
- Retain officers housing which is needed to meet FY99 base loading requirements.
- Retain Nimitz Hill Reservoir and adjacent comm. facilities.
- Other lands no longer needed for future housing expansion or other anticipated DOD requirements.

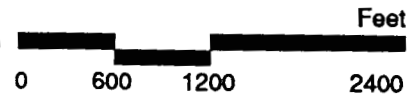


CONDITIONS OF RELEASE:

- Retain easements (including access to Nimitz Hill Reservoir and POL lines) for DOD owned and operated facilities to be provided.

Owned by Nav Acts

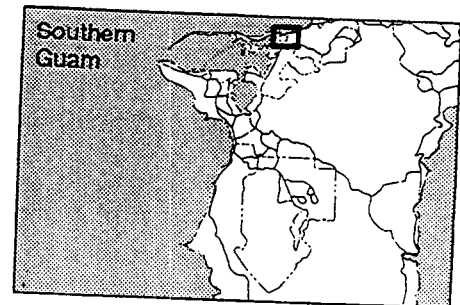
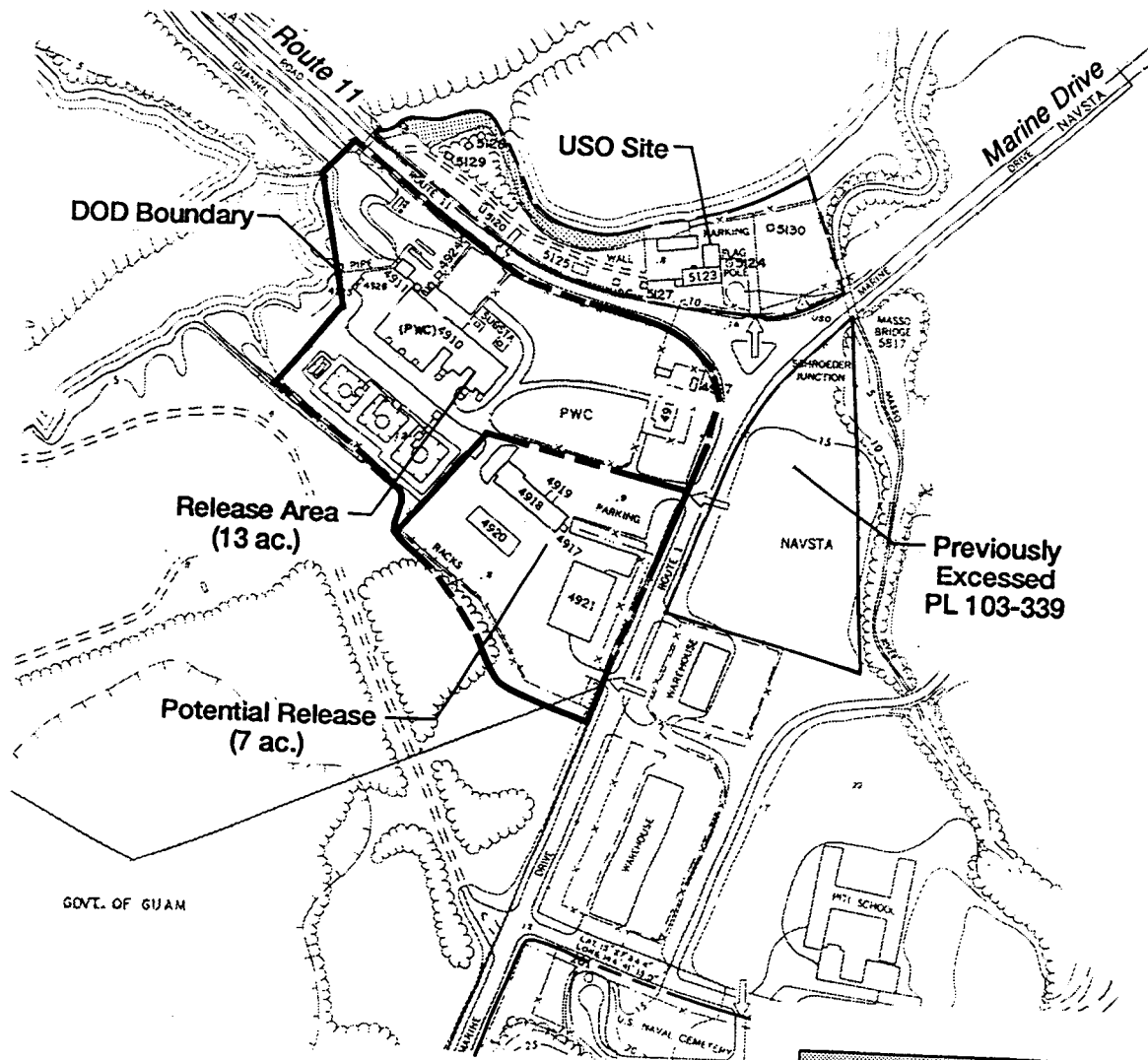
NIMITZ HILL VACANT LANDS
GUAM LAND USE PLAN



SITE N11: PITI POWER PLANT- 20 ACRES

JUSTIFICATION FOR RELEASE:

- Navy to transfer operation of electrical system to GPA in accordance with Customer Service Agreement.
- Not contiguous with other major DOD land holdings in the south.
- No anticipated future DOD need for land.

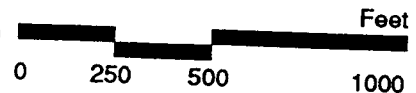


CONDITIONS OF RELEASE:

- Relocate PWC uses in Bldgs. 4918, 4920, and 4921.

Owned by PWC Gu

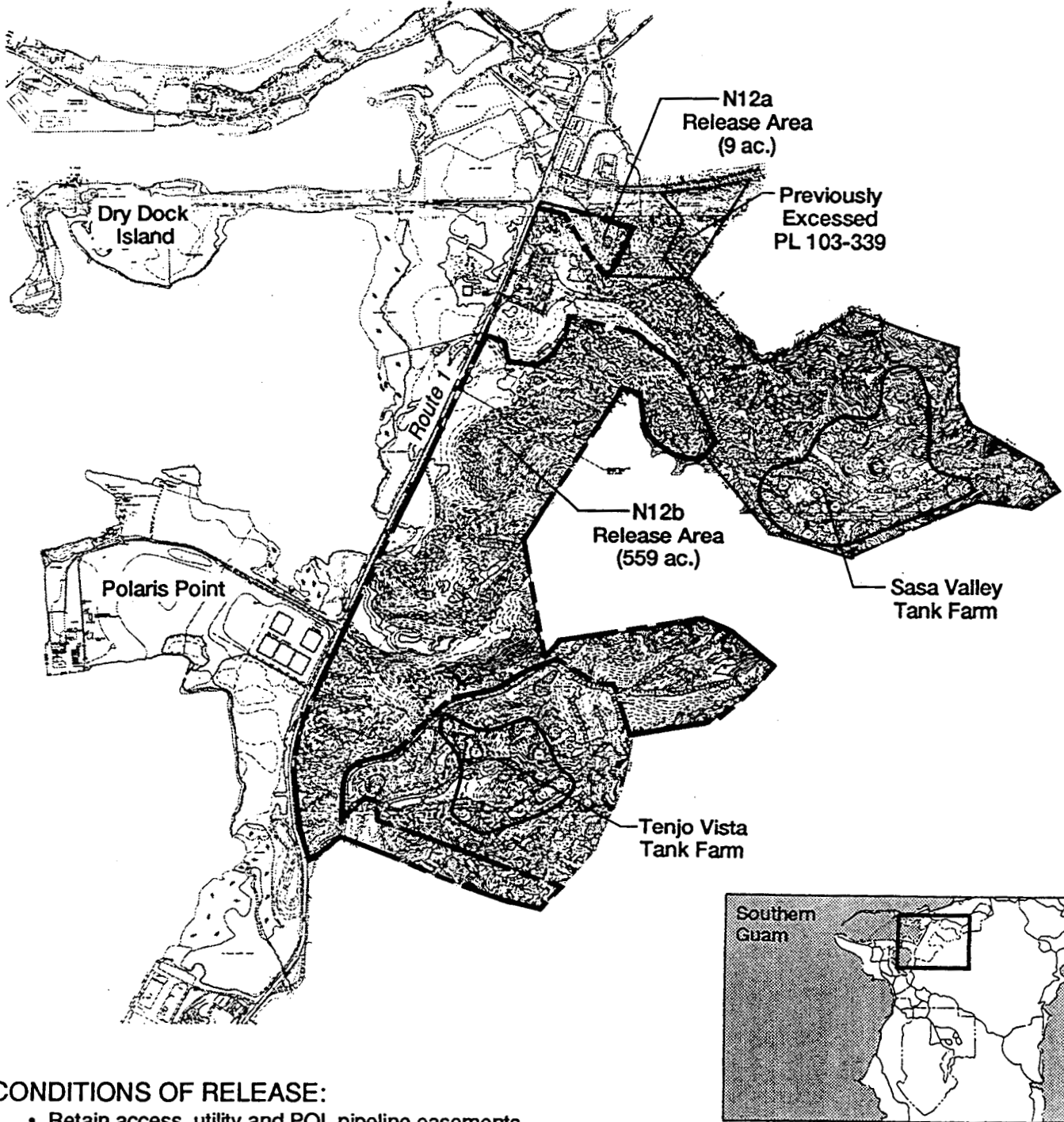
**PITI POWER PLANT
GUAM LAND USE PLAN**



SITE N12: SASA VALLEY/TENJO VISTA- 568 ACRES

JUSTIFICATION FOR RELEASE:

- Retain tank farms and buffers.
- Remaining land not used/needed by FISC for POL operations.

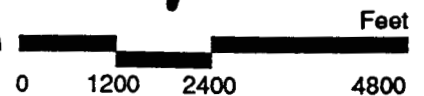


CONDITIONS OF RELEASE:

- Retain access, utility and POL pipeline easements.
- Require construction of fences around tank areas.

Owned by FISC ; portion owned by NavActs

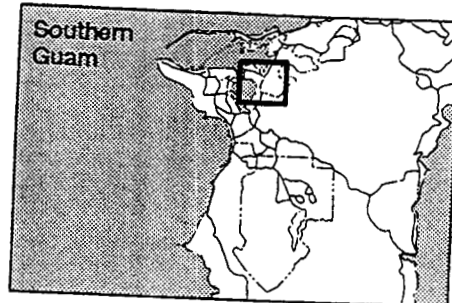
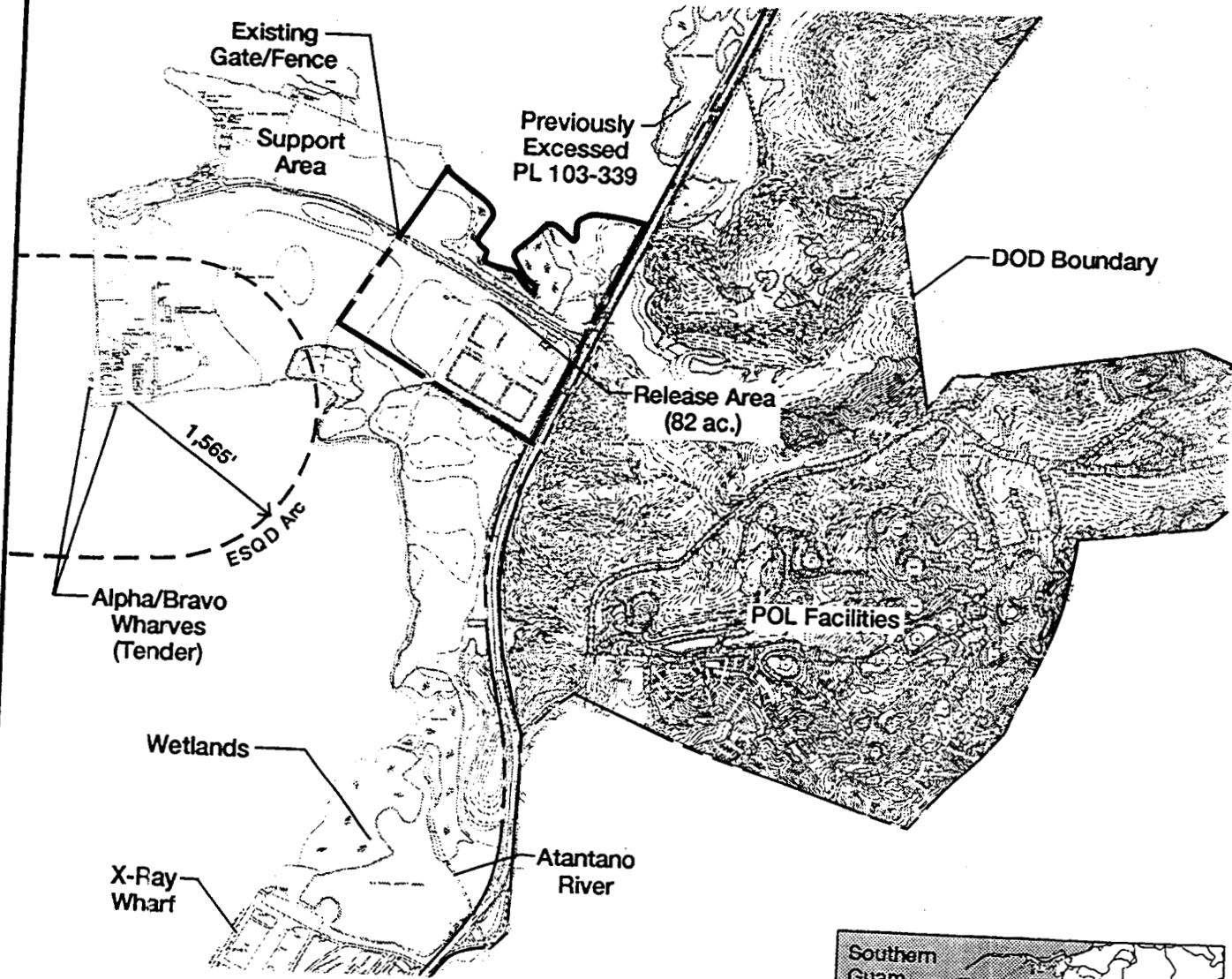
**SASA/TENJO VISTA
GUAM LAND USE PLAN**



SITE N14: POLARIS POINT- 82 ACRES

JUSTIFICATION FOR RELEASE:

- Retain southern and western portions for tender operations and to maintain security of Inner Harbor.
- Area outside gate/fence is unused by DOD.
- No additional DOD requirements identified for area.

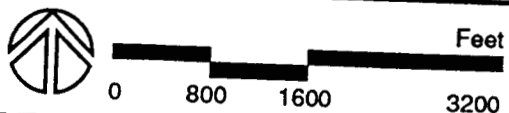


CONDITIONS OF RELEASE:

- Retain access and utility easements to Polaris Point facilities.
- Construct fencing along joint boundary with Navy.

Owned by Nav Acts

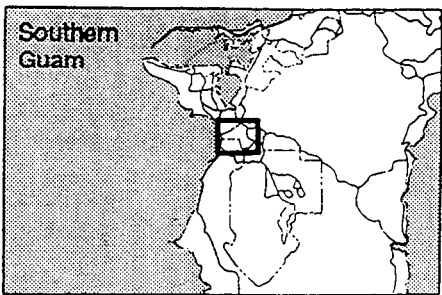
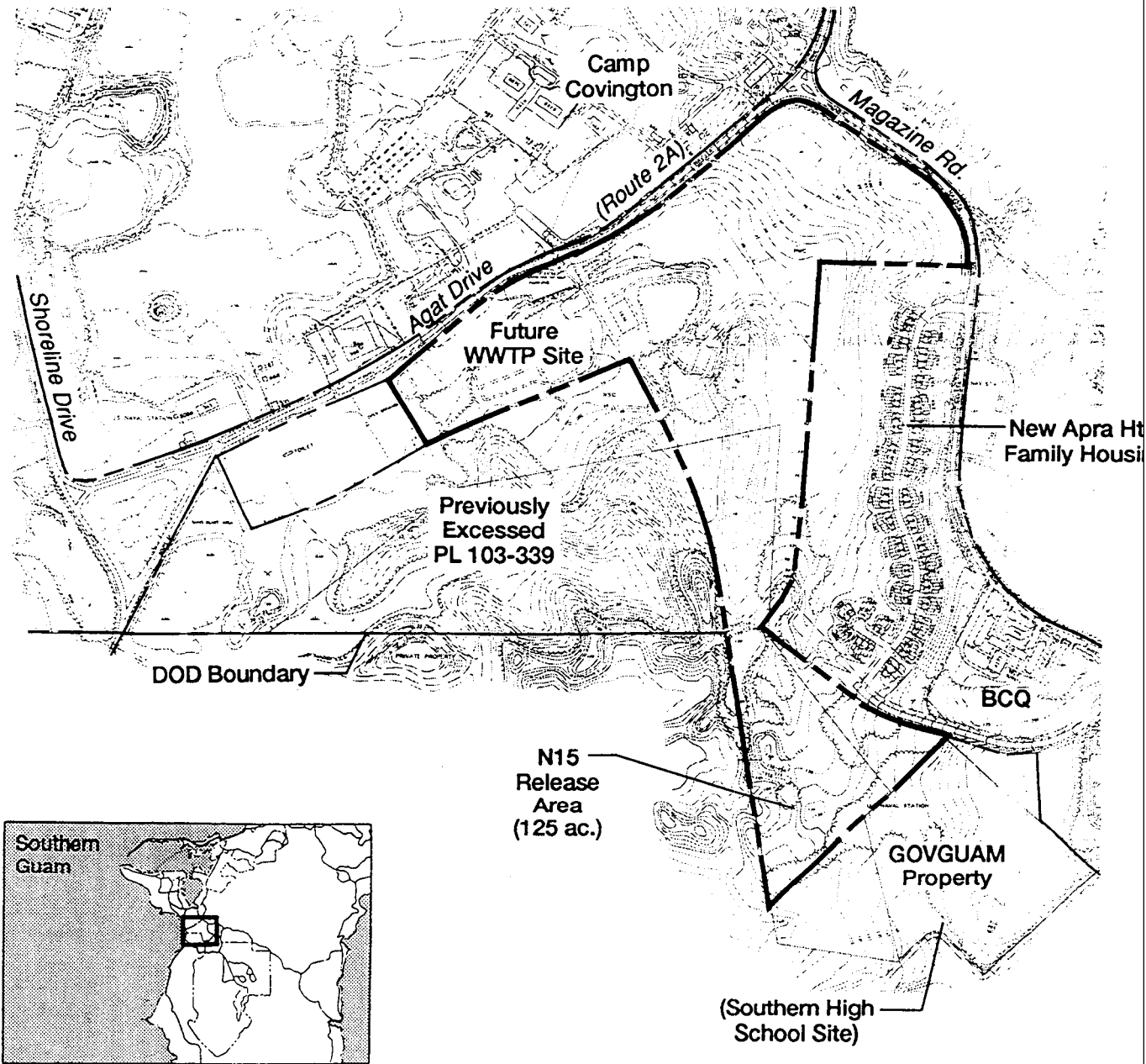
**POLARIS POINT
GUAM LAND USE PLAN**



SITE N15: NEW APRA HEIGHTS- 125 ACRES

JUSTIFICATION FOR RELEASE:

- Retain New Apra Heights housing and Bachelor Civilian Quarters (BCQ).
- No anticipated future DOD need for remaining undeveloped land.
- Adjacent to previous GLUP parcel and land for future GOVGUAM wastewater facility.



CONDITIONS OF RELEASE:

- Retain utility easements to service New Apra housing area.

Owned by Nav Acts

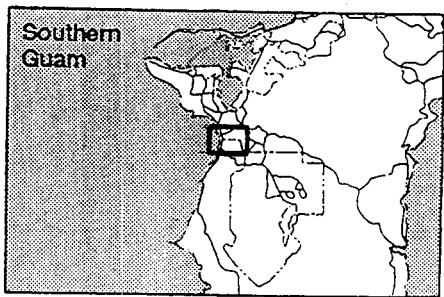
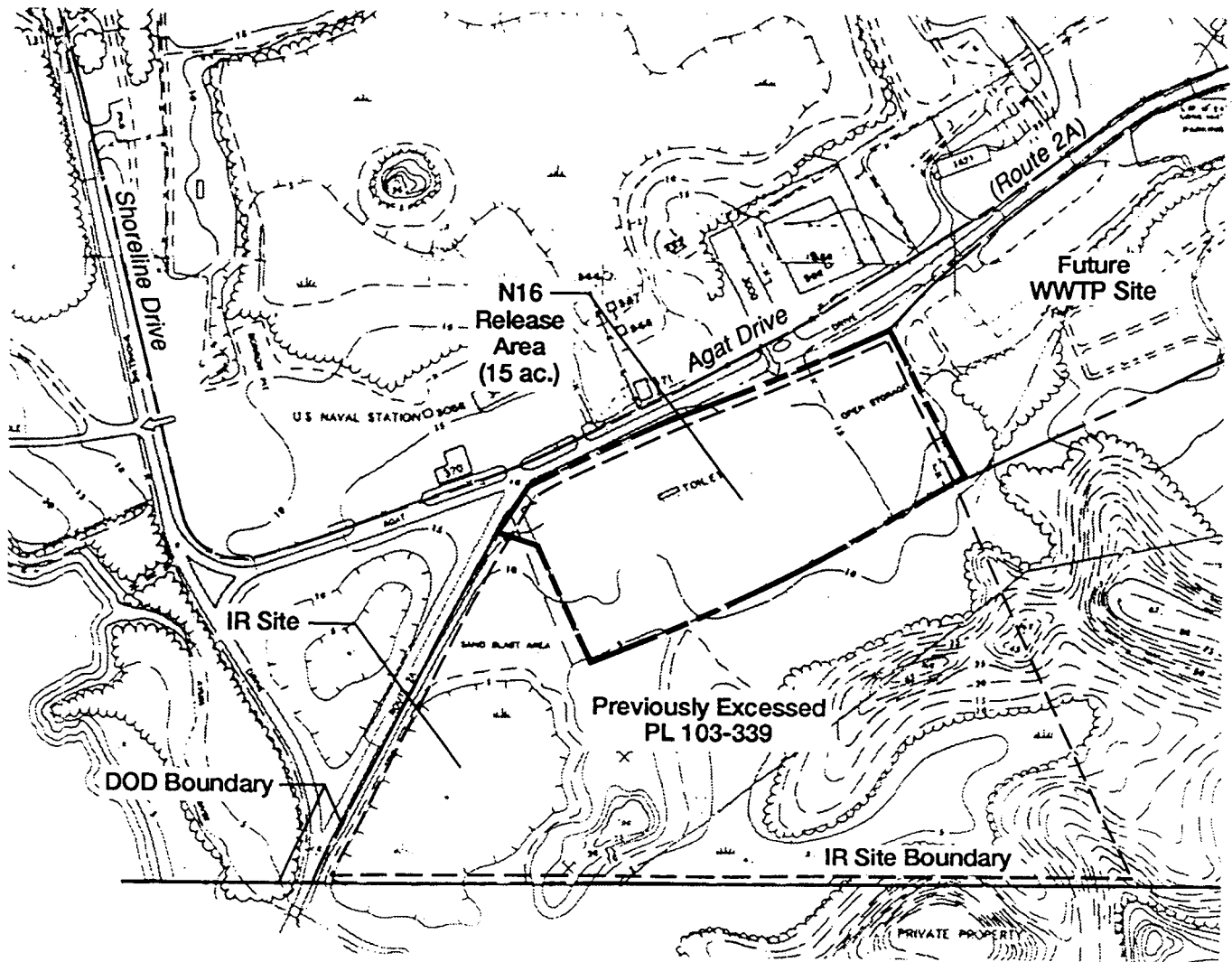
NEW APRA HEIGHTS
GUAM LAND USE PLAN



SITE N16: ROUTE 2A- 15 ACRES

JUSTIFICATION FOR RELEASE:

- No anticipated future DOD need for land.
- Adjacent to previous GLUP parcel and land for future wastewater facility.

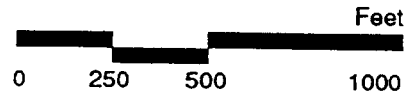


CONDITIONS OF RELEASE:

- Navy completes IR clean-up.

Owned by Nav Acts

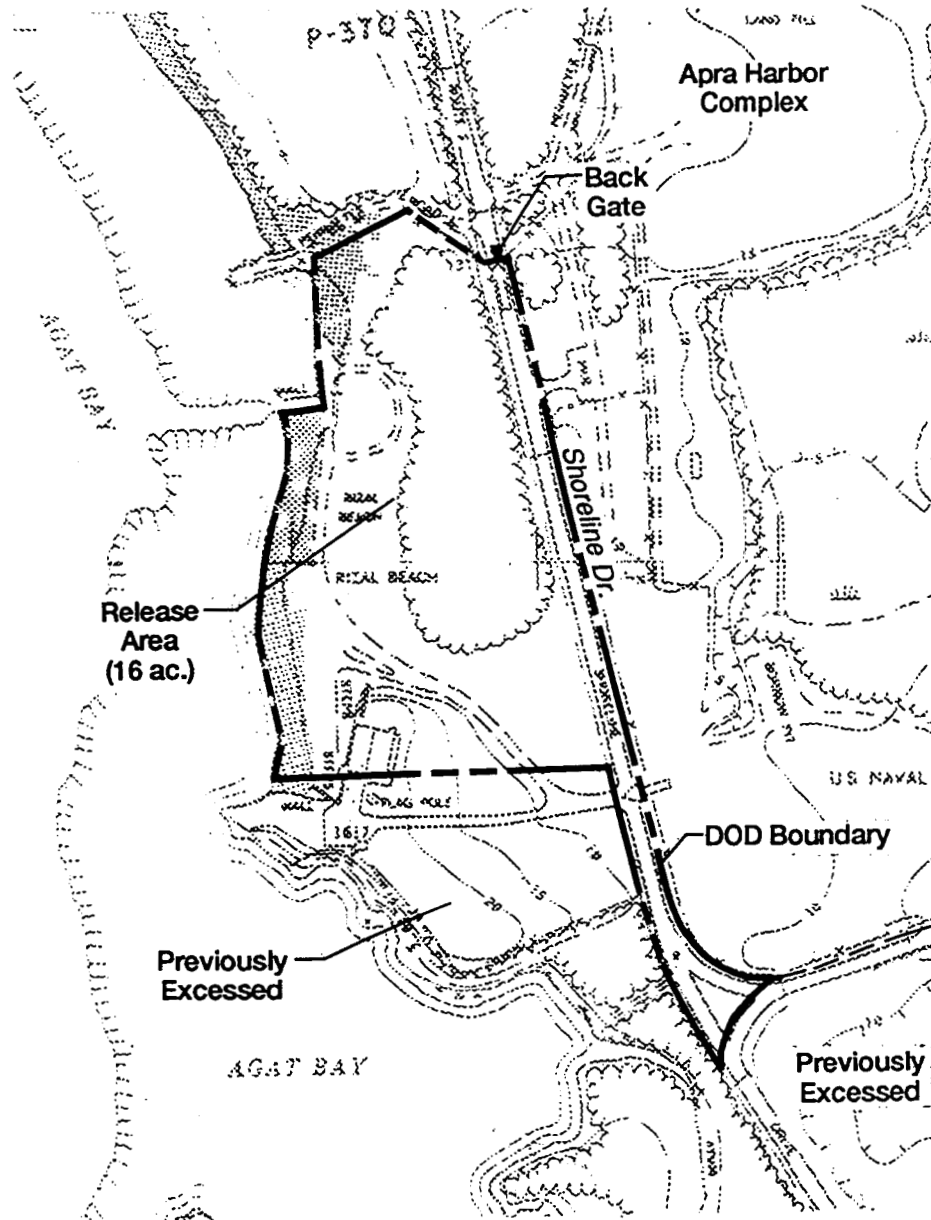
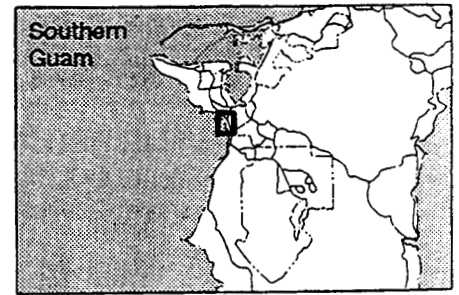
**ROUTE 2A/APRA HTS.
GUAM LAND USE PLAN**



SITE N17: RIZAL BEACH- 16 ACRES

JUSTIFICATION FOR RELEASE:

- No anticipated future DOD need for land.
- Outside of Apra Harbor Complex main compound.
- Adjacent to other previous GLUP parcels.
- Land currently licensed to GOVGUAM.



CONDITIONS OF RELEASE:

- Retain access and utility easements.

owned by NavActs

RIZAL BEACH

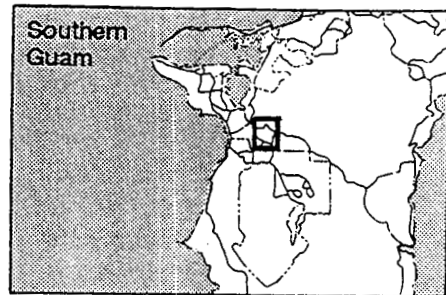
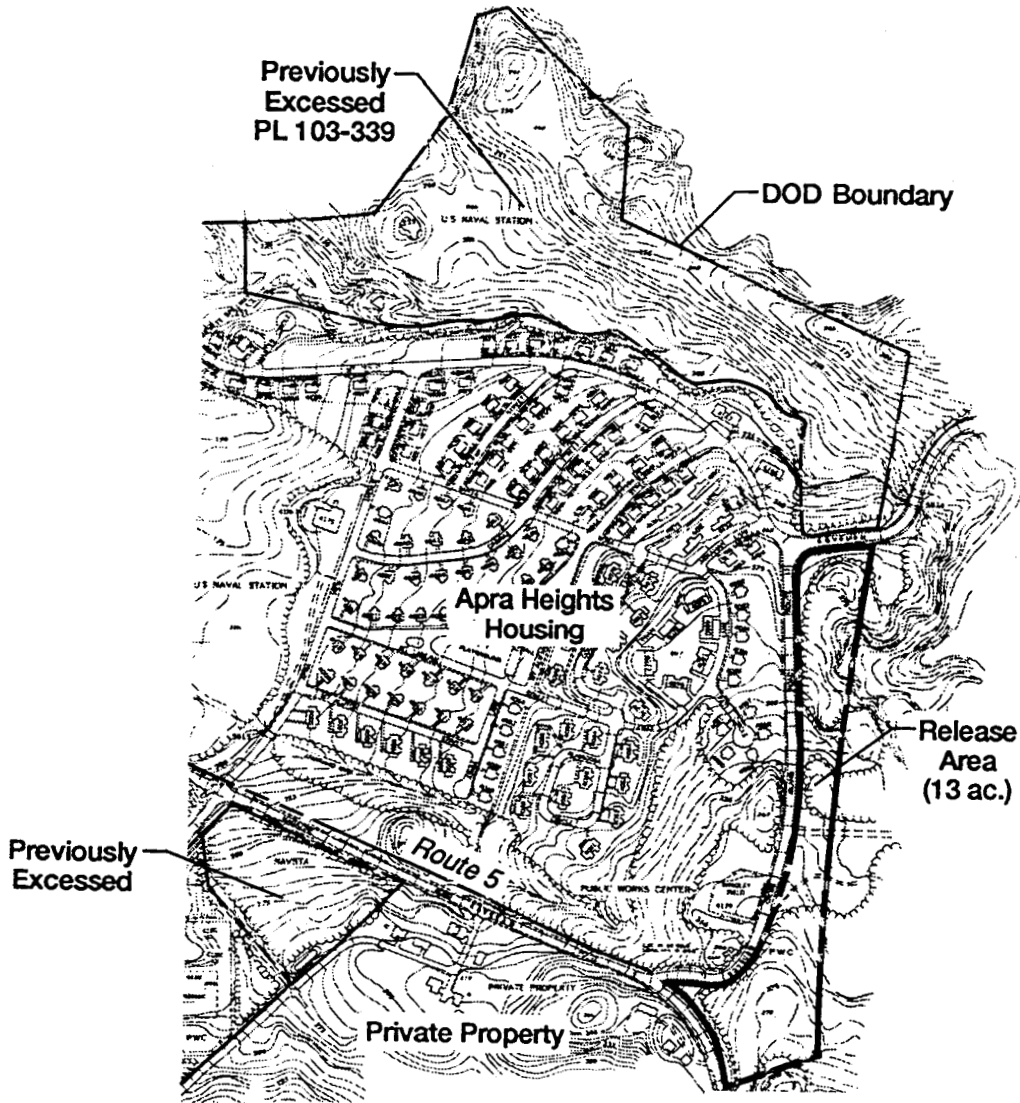
GUAM LAND USE PLAN



SITE N18: OLD APRA HEIGHTS- 13 ACRES

JUSTIFICATION FOR RELEASE:

- No anticipated future DOD need for land.

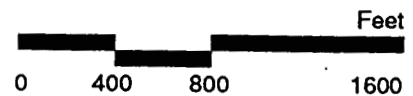


CONDITIONS OF RELEASE:

- None.

Owned by PWC, Guam

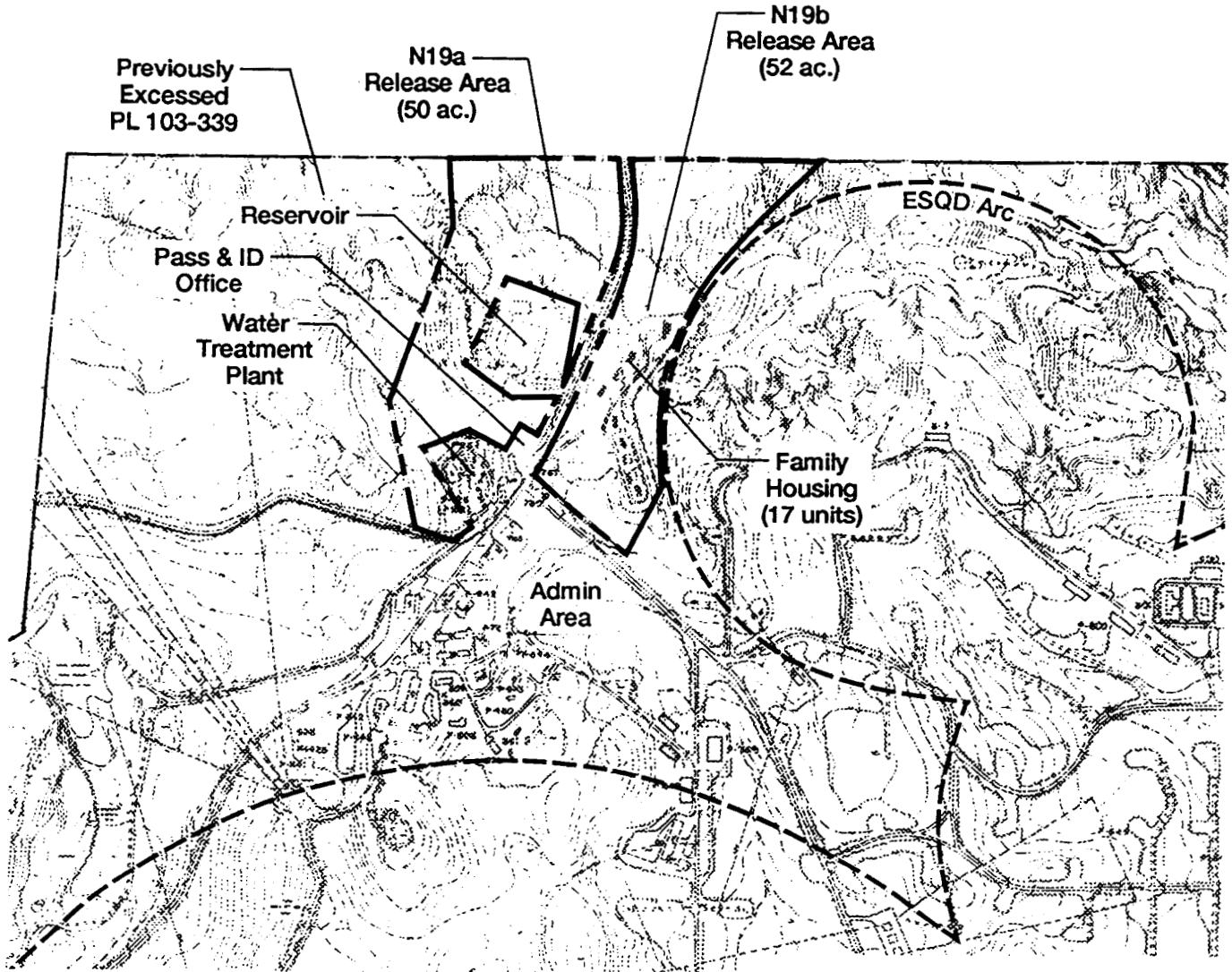
**OLD APRA HEIGHTS
GUAM LAND USE PLAN**



SITE N19: NAVACTS ORDNANCE ANNEX NORTH PARCELS- 102 ACRES

JUSTIFICATION FOR RELEASE:

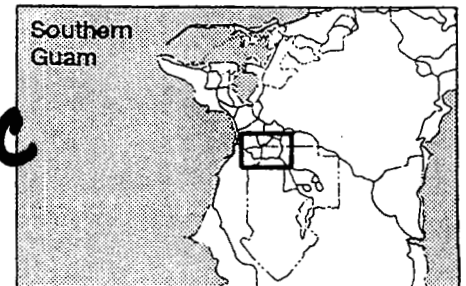
- Retain lands within ESQD arcs and Lost River watershed for training and watershed protection.
- Family housing not required to meet FY99 base loading requirements.
- No other anticipated future DOD need for releasable land.



owned by Nav Acts: Family housing owned by PWC

CONDITIONS OF RELEASE:

- Construct fence line around treatment plant, reservoir and behind family housing area.
- Retain utility easements.
- Retain access easement to reservoir behind (east) family housing area.



Document Separator

THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

EXECUTIVE CORRESPONDENCE TRACKING SYSTEM (ECTS) # 950617-18

FROM: NEMFAKOS, CHARLES D	TO:
TITLE: VICE CHAIRMAN	TITLE: SPECIAL ASS-CHIEF OF STAFF
ORGANIZATION: BS EC	ORGANIZATION: AIR FORCE - REALIGN & TRANSITION
INSTALLATION (s) DISCUSSED: AGAWA	

OFFICE OF THE CHAIRMAN	FYI	ACTION	INIT	COMMISSION MEMBERS	FYI	ACTION	INIT
CHAIRMAN DIXON				COMMISSIONER CORNELLA			
STAFF DIRECTOR	✓			COMMISSIONER COX			
EXECUTIVE DIRECTOR	✓			COMMISSIONER DAVIS			
GENERAL COUNSEL	✓			COMMISSIONER KLING			
MILITARY EXECUTIVE				COMMISSIONER MONTOYA			
				COMMISSIONER ROBLES			
DIR./CONGRESSIONAL LIAISON				COMMISSIONER STEELE			
DIR./COMMUNICATIONS				REVIEW AND ANALYSIS			
				DIRECTOR OF R & A	✓		
EXECUTIVE SECRETARIAT				ARMY TEAM LEADER			
				NAVY TEAM LEADER	✓		
DIRECTOR OF ADMINISTRATION				AIR FORCE TEAM LEADER			
CHIEF FINANCIAL OFFICER				INTERAGENCY TEAM LEADER	✓		
DIRECTOR OF TRAVEL				CROSS SERVICE TEAM LEADER			
DIR./INFORMATION SERVICES							

TYPE OF ACTION REQUIRED

Prepare Reply for Chairman's Signature	Prepare Reply for Commissioner's Signature
Prepare Reply for Staff Director's Signature	Prepare Direct Response
ACTION: Offer Comments and/or Suggestions	✓ FYI

Subject/Remarks:

SEE NO VALUE IN PROPOSAL TO INCLUDE LANGUAGE IN NAS, AGAWA REDIRECT RELATING TO EXCESSING OF AF HOUSING AT ANDERSON AFB

Due Date: _____	Routing Date: <u>950617</u>	Date Originated: <u>950605</u>	Mail Date: _____
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DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

Please refer to this number
when responding 950617-18

MM-0806-F16
BSAT/AR
5 June 1995

MEMORANDUM FOR THE SPECIAL ASSISTANT TO THE CHIEF OF STAFF OF THE
AIR FORCE FOR REALIGNMENT AND TRANSITION

Subj: POTENTIAL ANDERSON AFB EXCESS HOUSING


Ref: (a) Your memorandum of 23 May 95, same subject

In response to your request in the reference for the Department of the Navy's thoughts on including language in the Naval Air Station Agana, Guam redirect relating to excessing of Air Force housing at Anderson Air Force Base, we see no value in such a proposal, and are not inclined to support it.

Under the base closure process, the only time we include language relating to family housing assets is when we are closing a base but wish to retain the housing to support military personnel who may be remaining in the area after the base closes. An example of such language is the BRAC-93 NAS Agana recommendation, in which the Commission recommended retaining housing at NAS Agana necessary to support Navy personnel who relocated to Andersen AFB. In the absence of such language, the family housing owned by a base would close along with the base.

When a base is not closing, as in the case of Andersen AFB, determination of housing requirements is a function of the normal real estate management program. If the Air Force determines that there is no longer a requirement for Andersen South housing units, or any other facilities, whether because of independent Navy actions or otherwise, it has the ability to excess that property, with no need to utilize the base closure process. Furthermore, the Navy is not inclined to put itself in a position where an argument could be made that disposal of Air Force housing is their financial responsibility.

I appreciate the pressure that PACAF's desires to dispose of this property may be placing on you. However, I believe it is wholly inappropriate for the Department of the Navy to be involved in satisfying these desires, particularly in a recommendation dealing with a closing Navy base. If I can be of any further assistance, please don't hesitate to contact me.


CHARLES P. NEMPAKOS
Vice Chairman
Base Structure Evaluation Committee

MM-0806-F16

*** MASTER DOCUMENT ***
DO NOT REMOVE FROM FILES

THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

EXECUTIVE CORRESPONDENCE TRACKING SYSTEM (ECTS) # 950616-31

FROM: XXXXXXXXXX	TO: LYLES, DAVID
TITLE:	TITLE: STAFF DIRECTOR
ORGANIZATION: AF/RT	ORGANIZATION: DBCRC
INSTALLATION (s) DISCUSSED: WAS AGAWA, GUAM	

OFFICE OF THE CHAIRMAN	FYI	ACTION	INT	COMMISSION MEMBERS	FYI	ACTION	INT
CHAIRMAN DIXON				COMMISSIONER CORNELLA			
STAFF DIRECTOR	✓			COMMISSIONER COX			
EXECUTIVE DIRECTOR	✓			COMMISSIONER DAVIS			
GENERAL COUNSEL	✓			COMMISSIONER KLING			
MILITARY EXECUTIVE				COMMISSIONER MONTOYA			
				COMMISSIONER ROBLES			
DIR./CONGRESSIONAL LIAISON				COMMISSIONER STEELE			
DIR./COMMUNICATIONS				REVIEW AND ANALYSIS			
				DIRECTOR OF R & A	✓		
EXECUTIVE SECRETARIAT				ARMY TEAM LEADER			
				NAVY TEAM LEADER			
DIRECTOR OF ADMINISTRATION				AIR FORCE TEAM LEADER	✓		
CHIEF FINANCIAL OFFICER				INTERAGENCY TEAM LEADER	✓		
DIRECTOR OF TRAVEL				CROSS SERVICE TEAM LEADER			
DIR./INFORMATION SERVICES							

TYPE OF ACTION REQUIRED

<input type="checkbox"/> Prepare Reply for Chairman's Signature	<input type="checkbox"/> Prepare Reply for Commissioner's Signature
<input type="checkbox"/> Prepare Reply for Staff Director's Signature	<input type="checkbox"/> Prepare Direct Response
<input checked="" type="checkbox"/> ACTION: Offer Comments and/or Suggestions	<input type="checkbox"/> FYI

Subject/Remarks:

REQUESTING DBCRC ADD ANDERSEN SOUTH HOUSING AREA TO REALIGNMENT OF WAS AGAWA.

Due Date: _____	Routing Date: <u>950616</u>	Date Originated: <u>950616</u>	Mail Date: _____
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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE



16 JUN 1995

Please refer to this number:
when responding 950616-31

MEMORANDUM FOR Defense Base Closure and Realignment Commission
(Mr. David Lyles)

FROM: AF/RT
1670 Air Force Pentagon
Washington DC 20330-1670

SUBJECT: Addition of Andersen South Housing Area to Realignment of Naval Air
Station Agana, Guam

Request the addition of Andersen South housing area to the realignment of Naval Air Station Agana, Guam. The BRAC 95 plan calls for relocation of the Navy HC-5 unit to Kaneohe Hawaii and the deactivation of the Navy Public Works Center (PWC) Guam.

The Air Force has hosted Navy flying units at Andersen AFB and provided housing support for Navy families beginning with the Navy VRC-50 carrier logistic resupply unit and now the Navy HC-5 helicopter unit. Andersen South family housing capacity has been required to support the family load of these Navy missions. Additionally, PWC has provided significant change of occupancy maintenance work on a reimbursable basis that the Air Force and on-island contractors could not perform. Therefore, the 360 unit Andersen South family housing area will be excess to Air Force needs due to BRAC 95 Navy realignments.

The table below shows the estimated net savings by consolidating housing operations on Andersen's main base:

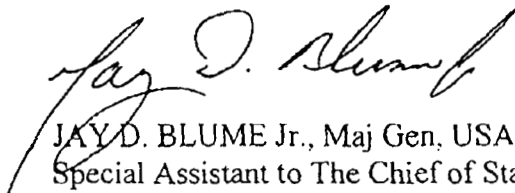
	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>
Total Savings	\$1.86M	\$2.17M	\$2.18M	\$2.18M	\$2.19M
Caretaker Cost*	\$.5M	\$.5M	\$.5M	-	-
Environmental Costs**	\$.08M	\$.75M	-	-	-
Net Savings	\$1.28M	\$1.47M	\$1.68M	\$2.18M	\$2.19M

* Caretaker costs are for minimal maintenance of units and grounds until transfer occurs.

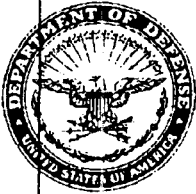
** Environmental costs are for EBS, EIAP, and potential remediation requirements.

There are no Installation Restoration Program (IRP) sites at Andersen South housing.

The Commander Naval Forces Marianas (COMNAVMAR) is the Joint Forces authority for land use on Guam and has developed a comprehensive Guam Land Use Plan (GLUP). COMNAVMAR supports our initiative to include Andersen South housing as part of BRAC 95. We believe adding Andersen South to the BRAC 95 plan is the best way to support the Air Base and the people of Guam.



JAY D. BLUME Jr., Maj Gen, USAF
Special Assistant to The Chief of Staff
for Base Realignment and Transition



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE



16 JUN 1995

MEMORANDUM FOR Defense Base Closure and Realignment Commission
(Mr. David Lyles)

FROM: AF/RT
1670 Air Force Pentagon
Washington DC 20330-1670

SUBJECT: Addition of Andersen South Housing Area to Realignment of Naval Air
Station Agana, Guam

Request the addition of Andersen South housing area to the realignment of Naval Air Station Agana, Guam. The BRAC 95 plan calls for relocation of the Navy HC-5 unit to Kaneohe Hawaii and the deactivation of the Navy Public Works Center (PWC) Guam.

The Air Force has hosted Navy flying units at Andersen AFB and provided housing support for Navy families beginning with the Navy VRC-50 carrier logistic resupply unit and now the Navy HC-5 helicopter unit. Andersen South family housing capacity has been required to support the family load of these Navy missions. Additionally, PWC has provided significant change of occupancy maintenance work on a reimbursable basis that the Air Force and on-island contractors could not perform. Therefore, the 360 unit Andersen South family housing area will be excess to Air Force needs due to BRAC 95 Navy realignments.

The table below shows the estimated net savings by consolidating housing operations on Andersen's main base:

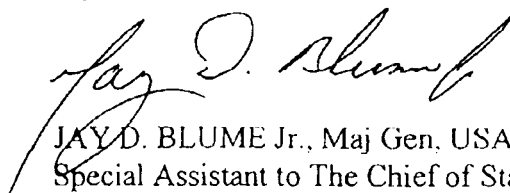
	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>
Total Savings	\$1.86M	\$2.17M	\$2.18M	\$2.18M	\$2.19M
Caretaker Cost*	\$.5M	\$.5M	\$.5M	-	-
Environmental Costs**	\$.08M	\$.75M	-	-	-
Net Savings	\$1.28M	\$1.47M	\$1.68M	\$2.18M	\$2.19M

* Caretaker costs are for minimal maintenance of units and grounds until transfer occurs.

** Environmental costs are for EBS, EIAP, and potential remediation requirements.

There are no Installation Restoration Program (IRP) sites at Andersen South housing.

The Commander Naval Forces Marianas (COMNAVMAR) is the Joint Forces authority for land use on Guam and has developed a comprehensive Guam Land Use Plan (GLUP). COMNAVMAR supports our initiative to include Andersen South housing as part of BRAC 95. We believe adding Andersen South to the BRAC 95 plan is the best way to support the Air Base and the people of Guam.



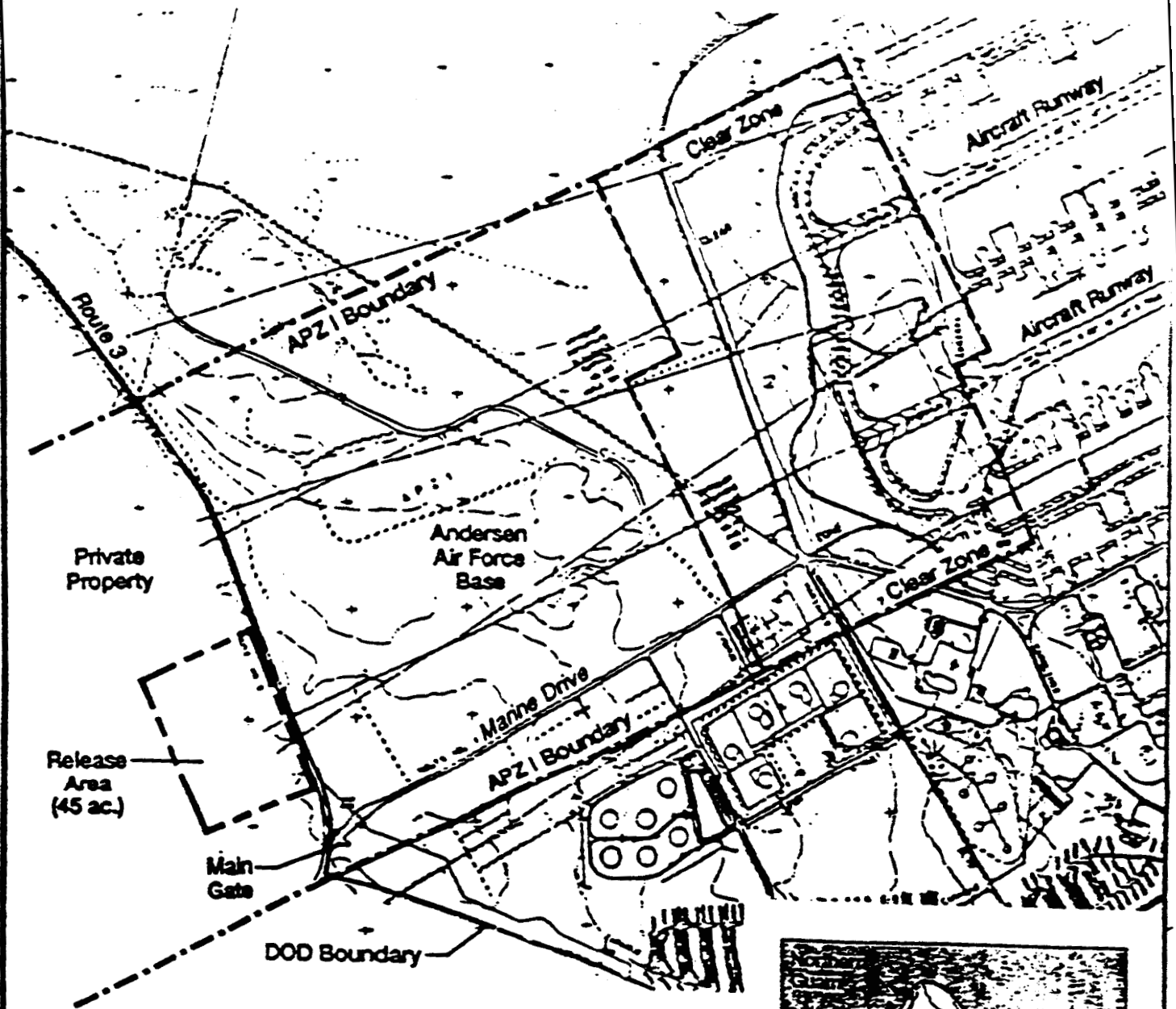
JAY D. BLUME Jr., Maj Gen, USAF
Special Assistant to The Chief of Staff
for Base Realignment and Transition

SITE A1: ANDERSEN MAIN GATE- 45 ACRES

A7

JUSTIFICATION FOR RELEASE:

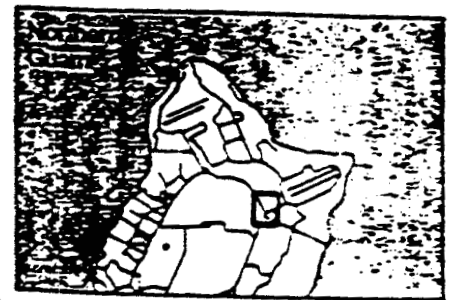
- No anticipated future DOD need for land (entire area exceeds 85 Ldn noise levels).
- Outside of AAFB main compound.



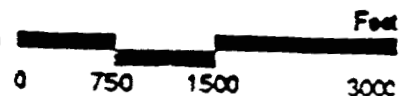
CONDITIONS OF RELEASE:

- Land uses such as residential, light manufacturing, petroleum production, retail, medical facilities, and sports arenas are prohibited in the Accident Potential Zone (APZ) I.

(Note: Complete transfer of property from DOI to AF prior to release.)



3/31/94

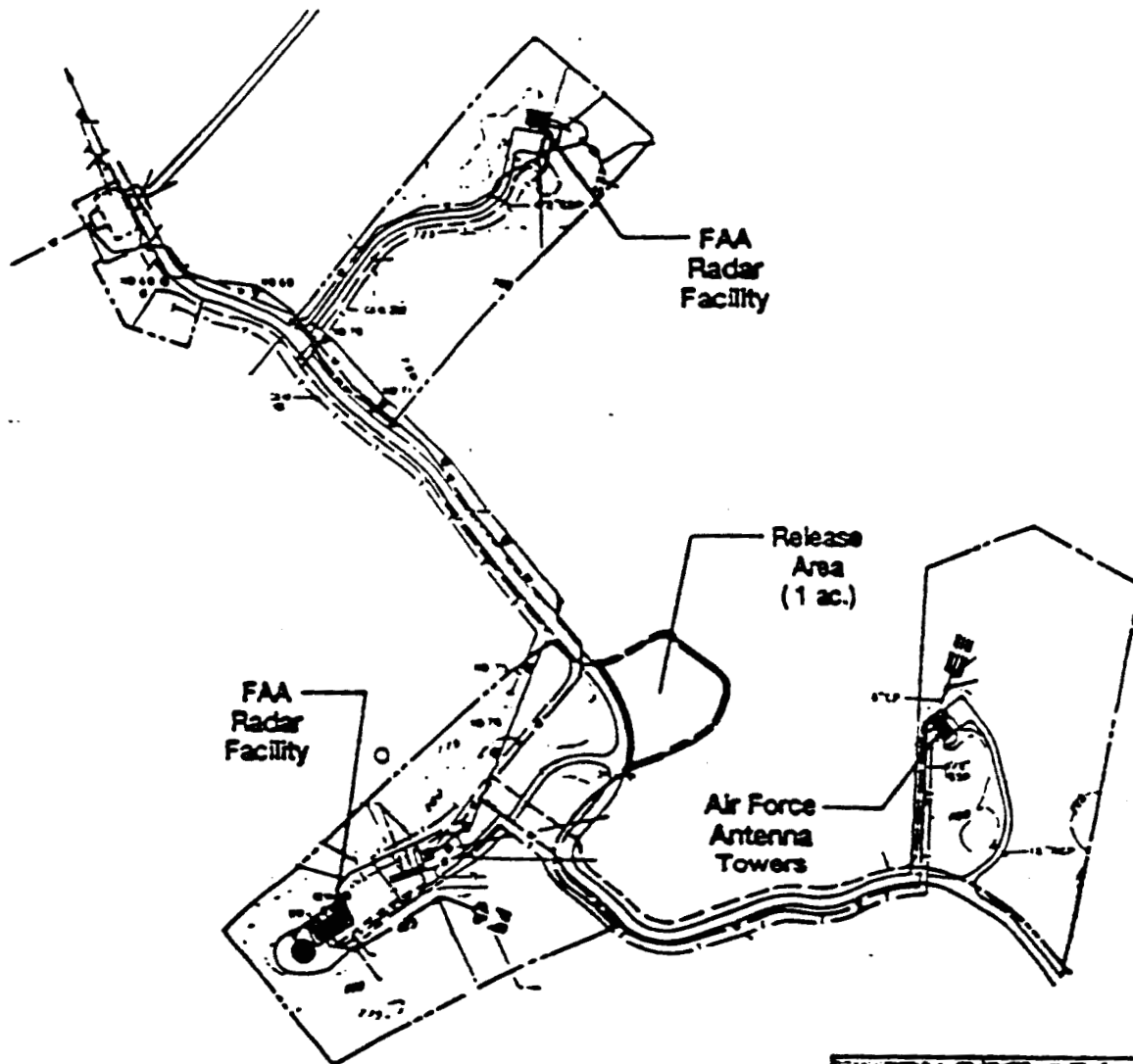


A7

SITE A2: MT. SANTA ROSA- 1 ACRE

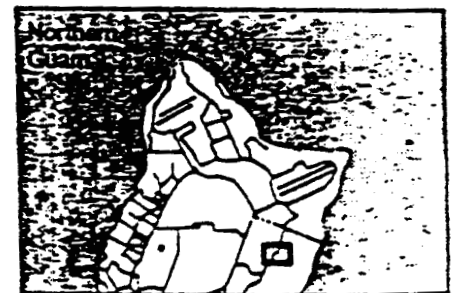
JUSTIFICATION FOR RELEASE:

- Land currently unused by Air Force
- No anticipated future DOD need for land

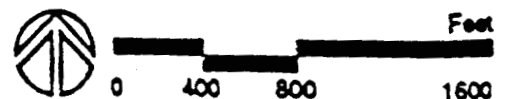


CONDITIONS OF RELEASE:

- Restrict development to protect Air Force and FAA communications mission



3/1/94

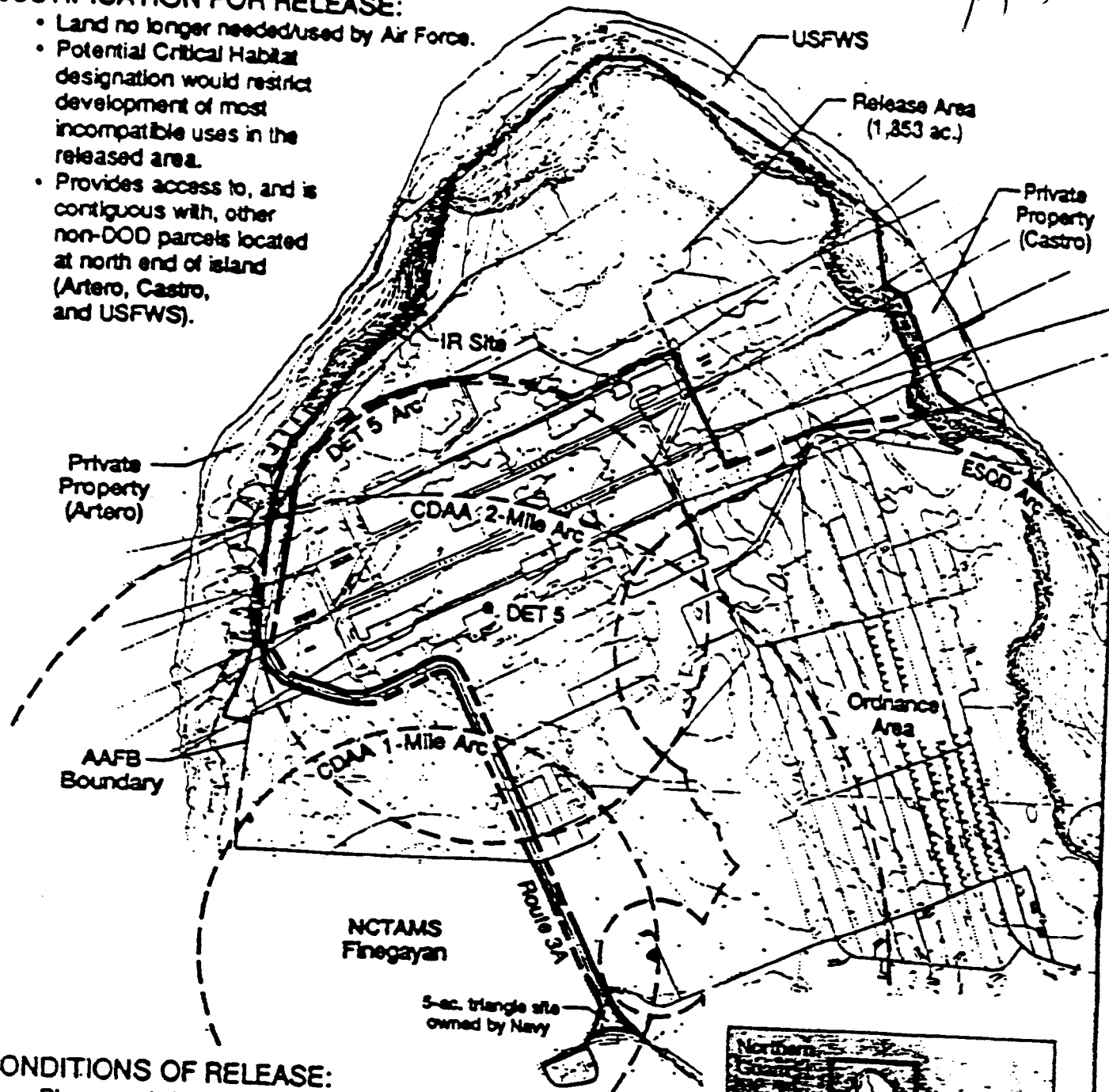


SITE A3: NORTHWEST FIELD/ROUTE 3A- 1,853 ACRES*

A7

JUSTIFICATION FOR RELEASE:

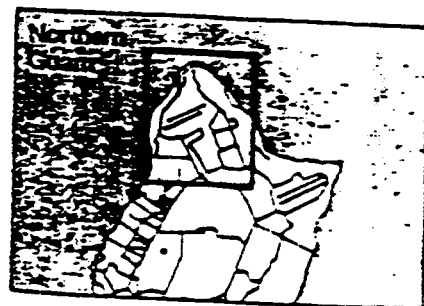
- Land no longer needed/used by Air Force.
- Potential Critical Habitat designation would restrict development of most incompatible uses in the released area.
- Provides access to, and is contiguous with, other non-DOD parcels located at north end of island (Artero, Castro, and USFWS).



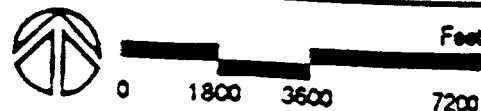
CONDITIONS OF RELEASE:

- Place restrictive covenants on lands to prohibit development and operation of incompatible uses which would impact DET 5 mission.
- Provide easements for DET 5 communication cables in release area.
- Air Force completes IR clean-up.
- Recipient provide fencing or other measures, as required.

* 1,848 acs. owned by Air Force, 5 acs. owned by Navy.



3/31/94

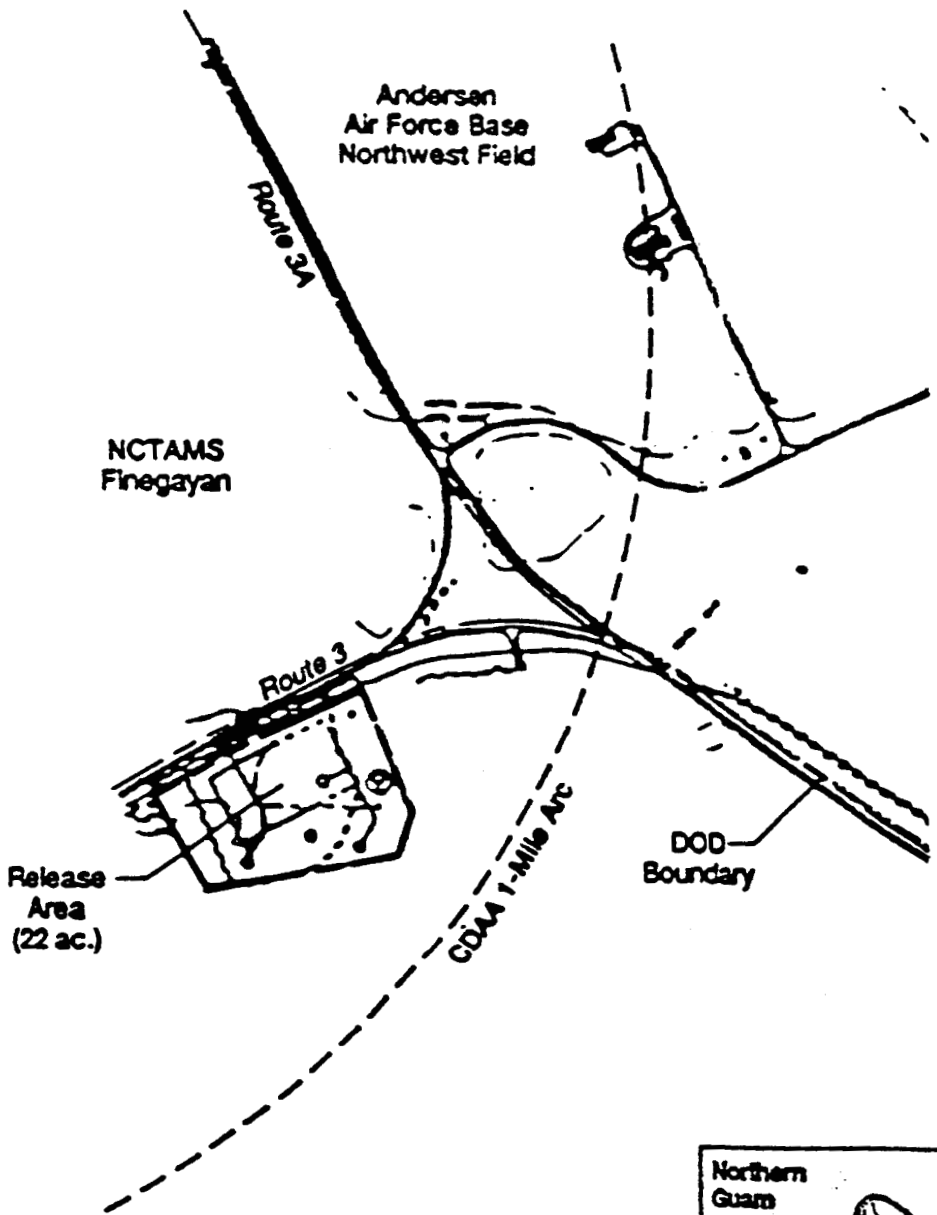


A7

SITE A4: POTTS JUNCTION- 22 ACRES

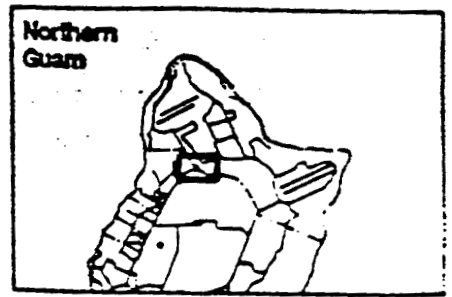
JUSTIFICATION FOR RELEASE:

- lands no longer needed/used by Air Force for fuel storage
- outside of AAFB and NCTAMS main compounds



CONDITIONS OF RELEASE:

- Place restrictive covenants on land to prohibit development and operation of incompatible uses within CDAA arc
- Air Force conduct environmental clean-up
- Maintain POL pipeline easements



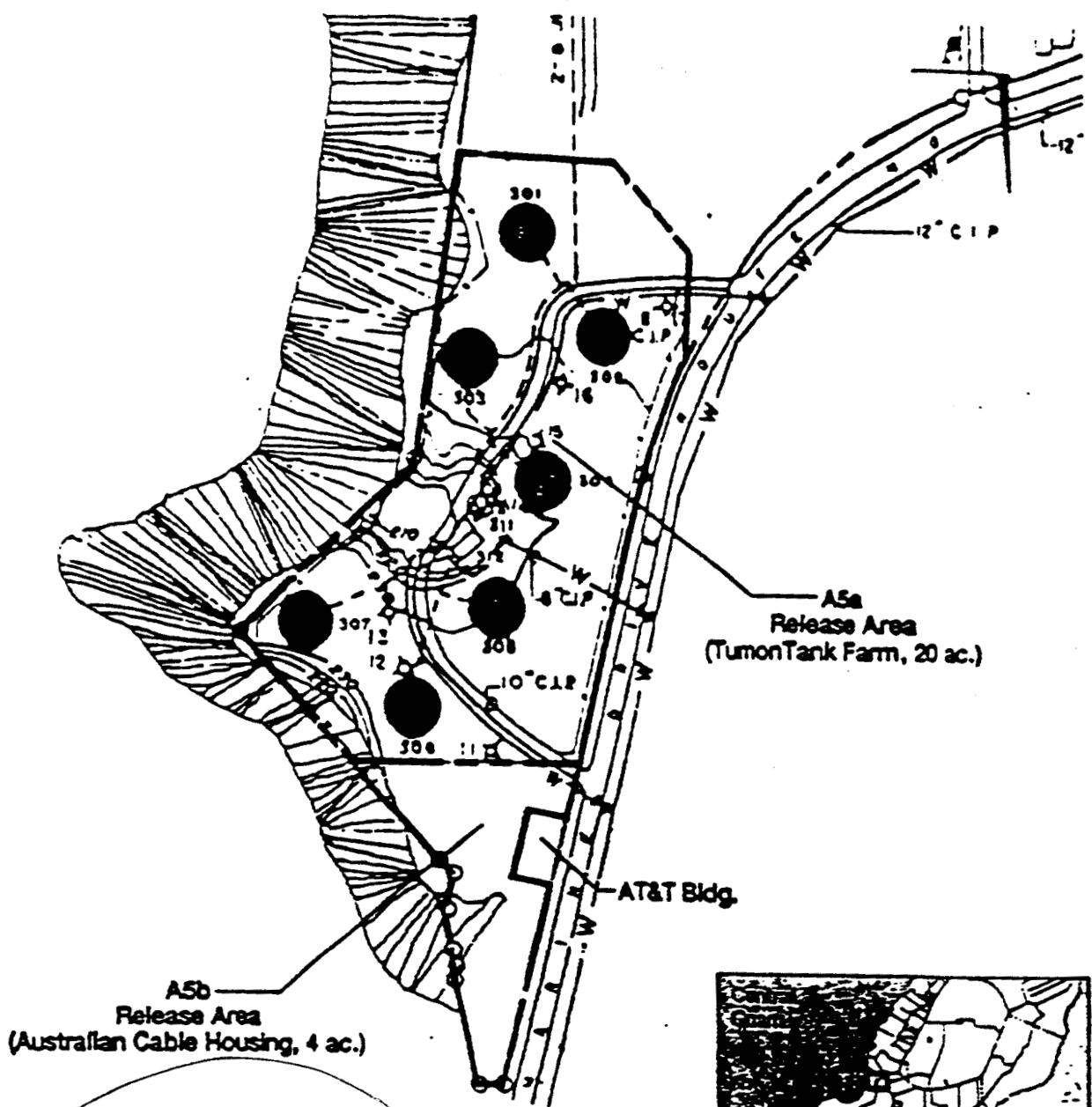
3/11/94



SITE A5: TUMON TANK FARM/AUSTRALIAN CABLE HOUSING- 24 ACRES

JUSTIFICATION FOR RELEASE:

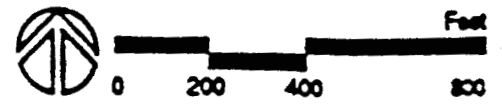
- Retain land for AT&T facility
- POL facilities no longer needed for Air Force fuel storage
- Housing not needed to satisfy Air Force requirements



- CONDITIONS OF RELEASE:**
- Air Force conduct environmental clean-up
 - Maintain POL pipeline easements



3/1/94

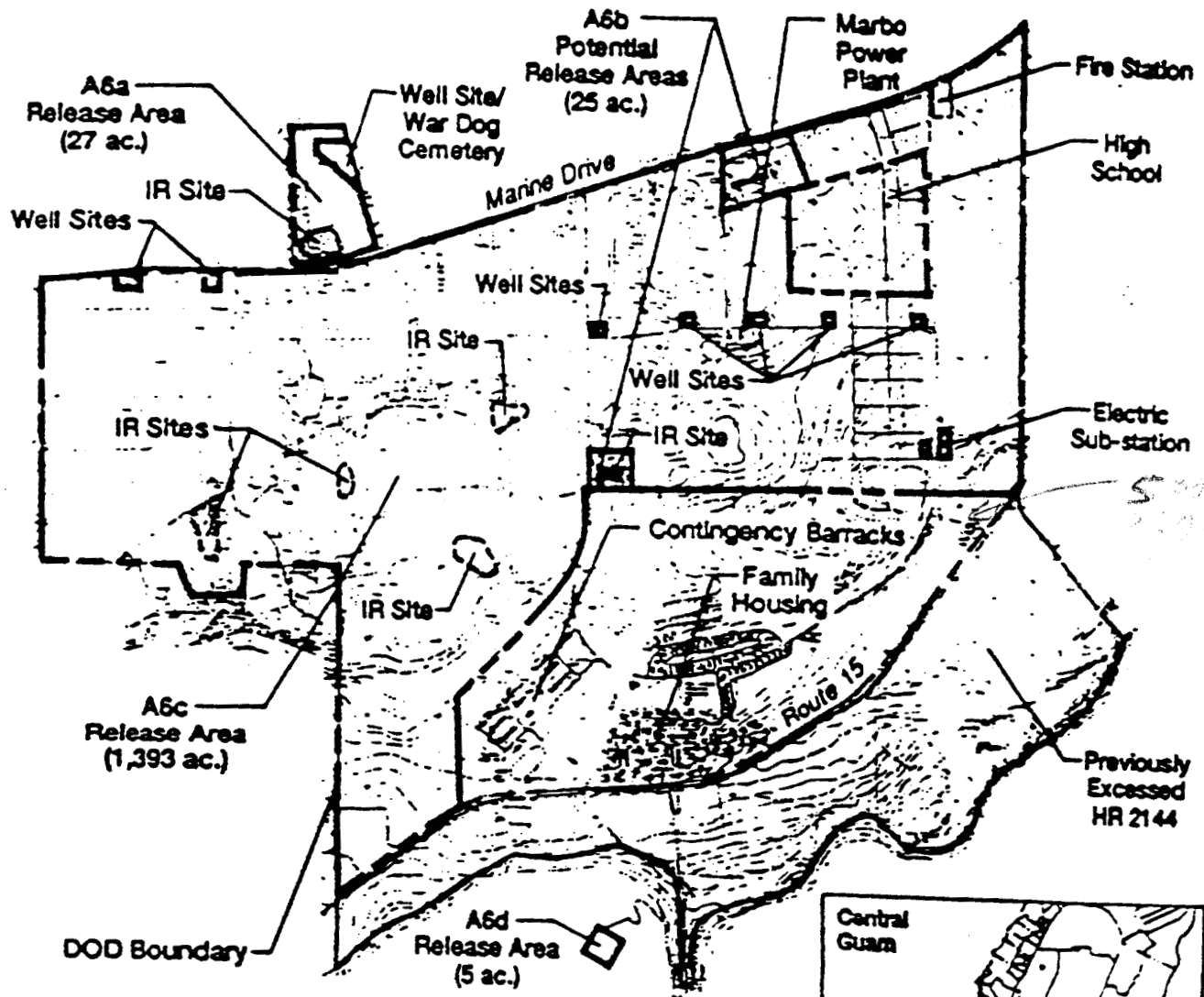


SITE A6: ANDERSEN SOUTH- 1,450 ACRES

A7

JUSTIFICATION FOR RELEASE:

- Retain existing family housing, barracks and staging areas.
- Potential release of warehouse properties if replacement facilities can be provided (25 acs. potentially releasable).
- Release 1,425 acs. no longer needed/used by Air Force.
- Army Reserves and National Guard not able to justify owning land for training purposes.
- No other anticipated future DCD need for land.
- Retain well sites and water pumping, treatment and storage systems.
- Release Marbo Power Plant in accordance with Customer Service Agreement.



CONDITIONS OF RELEASE:

- Prohibit activities on released land which may impact water resources.
- Retain access and utility easements.
- Air Force completes IR clean-up.

3/31/94

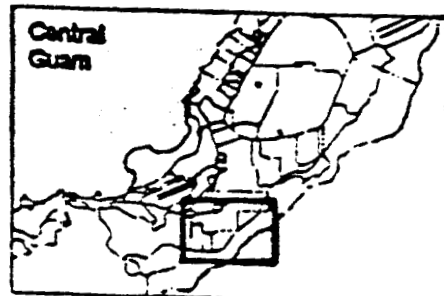
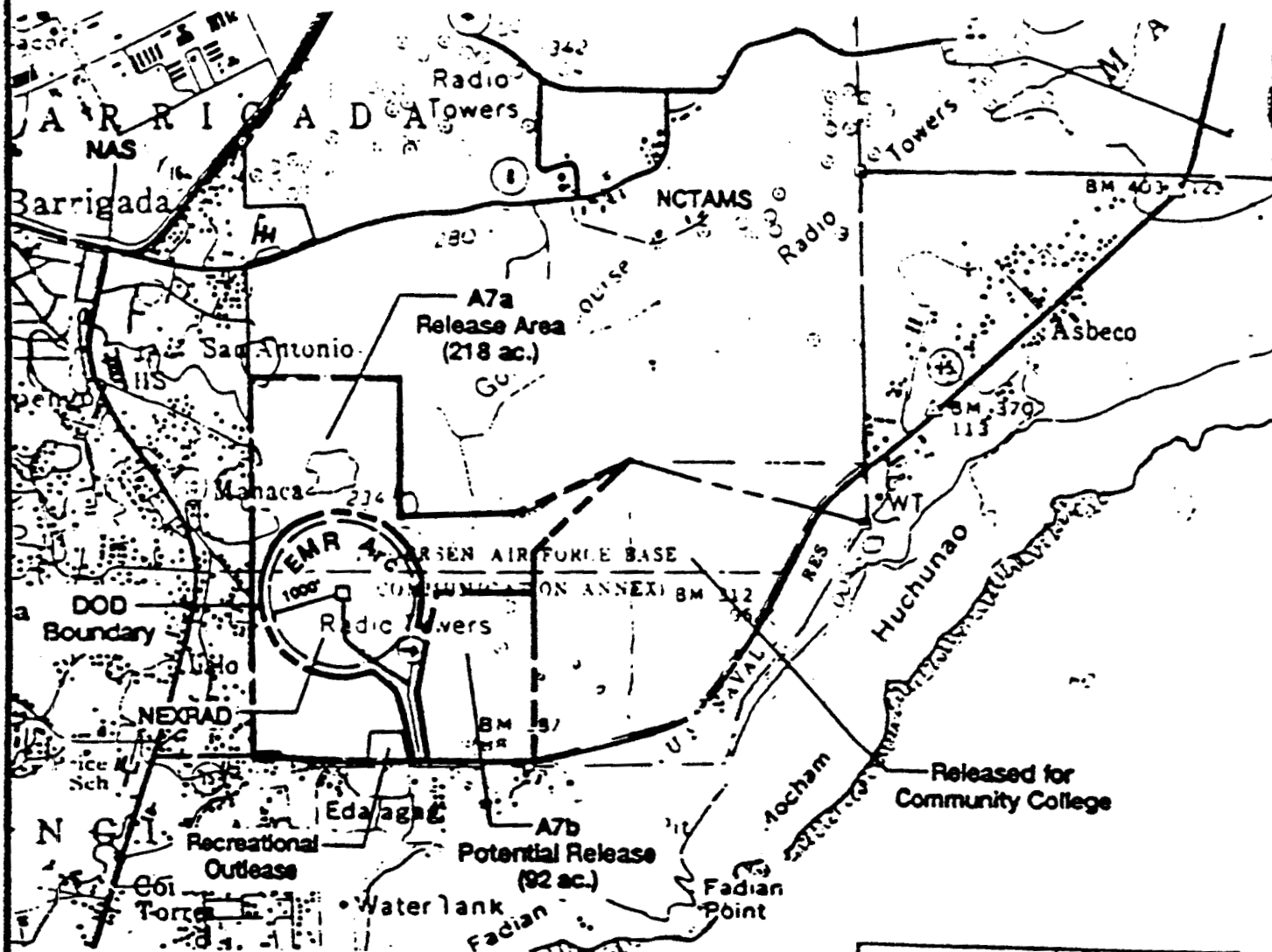


A7

SITE A7: AAFB BARRIGADA- 310 ACRES

JUSTIFICATION FOR RELEASE:

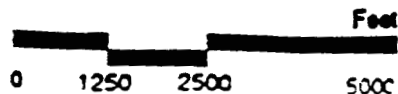
- Retain NEXRAD and associated hazard zone along with comm. building and access road
- Northern portion no longer needed/used by Air Force (218 acs. releasable)
- Proposed consolidation of AF comm. facilities with NCTAMS Barrigada may eliminate need for land at AF transmitters (92 acs. potentially releasable)



CONDITIONS OF RELEASE:

- Restrict height of development on released parcels to eliminate potential impact on NEXRAD operations.

3/11/94





DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

LT-0848-F16
BSAT/ss
18 June 1995

The Honorable Alan J. Dixon
Chairman, Defense Base Closure
and Realignment Commission
1700 North Moore Street
Suite 1475
Arlington, VA 22209

Dear Chairman Dixon:

This letter provides the Department of the Navy's position on the Air Force proposal to include Air Force housing located at Andersen South in the Navy recommendation to realign Naval Activities Guam.

The Department of the Navy does not consider the base closure process to be required for the excessing of unnecessary housing, when the base itself is not considered for realignment or closure. When a base is not closing, as in the case of Andersen AFB, determination of housing requirements is a function of the normal real estate management program. The BRAC-93 closure recommendation specifically retained sufficient Navy housing to accommodate personnel remaining on Guam, including those transferred to Andersen AFB.

Attached you will find our response to this Air Force proposal. I do not believe it appropriate to burden the Department of the Navy with the costs to excess housing on the Air Force plant account. While I appreciate the financial benefits that accrue from the proposed consolidation of Air Force housing, I believe it is wholly appropriate for the Department of the Air Force to manage their own assets, paying the one-time costs to achieve the savings.

As always, if I can be of any further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles P. Nemfakos".

Charles P. Nemfakos
Vice Chairman,
Base Structure Evaluation Committee

Attachment



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

MM-0806-F16
BSAT/AR
5 June 1995

MEMORANDUM FOR THE SPECIAL ASSISTANT TO THE CHIEF OF STAFF OF THE
AIR FORCE FOR REALIGNMENT AND TRANSITION

Subj: POTENTIAL ANDERSON AFB EXCESS HOUSING

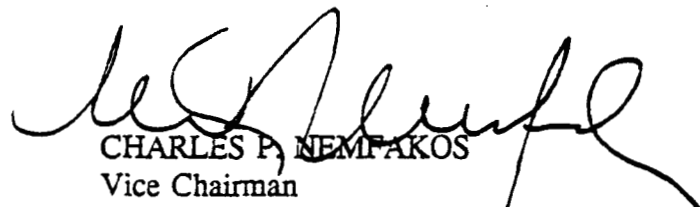
Ref: (a) Your memorandum of 23 May 95, same subject

In response to your request in the reference for the Department of the Navy's thoughts on including language in the Naval Air Station Agana, Guam redirect relating to excessing of Air Force housing at Anderson Air Force Base, we see no value in such a proposal, and are not inclined to support it.

Under the base closure process, the only time we include language relating to family housing assets is when we are closing a base but wish to retain the housing to support military personnel who may be remaining in the area after the base closes. An example of such language is the BRAC-93 NAS Agana recommendation, in which the Commission recommended retaining housing at NAS Agana necessary to support Navy personnel who relocated to Andersen AFB. In the absence of such language, the family housing owned by a base would close along with the base.

When a base is not closing, as in the case of Andersen AFB, determination of housing requirements is a function of the normal real estate management program. If the Air Force determines that there is no longer a requirement for Andersen South housing units, or any other facilities, whether because of independent Navy actions or otherwise, it has the ability to excess that property, with no need to utilize the base closure process. Furthermore, the Navy is not inclined to put itself in a position where an argument could be made that disposal of Air Force housing is their financial responsibility.

I appreciate the pressure that PACAF's desires to dispose of this property may be placing on you. However, I believe it is wholly inappropriate for the Department of the Navy to be involved in satisfying these desires, particularly in a recommendation dealing with a closing Navy base. If I can be of any further assistance, please don't hesitate to contact me.


CHARLES P. NEMPAKOS
Vice Chairman
Base Structure Evaluation Committee

MM-0806-F16
*** MASTER DOCUMENT ***
DO NOT REMOVE FROM FILES

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

20 JUN 1995

MEMORANDUM FOR HQ USAF/CE (DR. WOLFF)

FROM: HQ PACAF/CE
25 E St Ste D306
Hickam AFB HI 96853-5412

SUBJECT: BRAC 95 Insert Request--Andersen South MFH, Guam

References: (a) HQ PACAF/XP memo, 25 Apr 95, same subject

(b) HQ USAF/RT memo, 19 May 95, same subject

1. Reference (a) requested USAF/RT assistance to insert Andersen South family housing into DoD's proposed BRAC 95 language. Reference (B) is HQ USAF/RT response to PACAF indicating a request for inclusion was made to the Navy's Base Structure Evaluation Committee.
2. Based on conversations with your staff, we now understand that the Navy is modifying their BRAC 95 language to include closure and disposal of the Andersen South family housing area as a consequence of proposed Navy unit relocations from Guam. We also understand the Navy is reluctant to support a \$500K/year caretaker maintenance requirement to maintain the 360 units in a reasonable condition until GSA can surplus the property and housing units.
3. PACAF concurs with the BRAC approach for Andersen South family housing and will pursue caretaker maintenance funding requirements by other means if the BRAC account cannot be sourced. PACAF did not POM for this maintenance requirement, therefore we will either source funds from our existing MFH O&M account or more likely, submit as an unfunded requirement to HQ USAF/CEH. We do not anticipate caretaker maintenance costs to be incurred over an extended period. We look to lease arrangement possibilities with GovGuam or expedited GSA surplusing procedures.
4. Please ensure the environmental requirements for the EBS (\$75K for Phase I; \$200K for Phase II) and potential remediation (\$550K) are still carried as valid BRAC requirements. PACAF has already budgeted for the three to four bedroom conversions that will be required on the main base.

5. We appreciate your continued assistance in this matter. Questions can be directed to my POC, Maj Bryan Bodner, DSN 449-8075.

Frank J. Destadio

FRANK J. DESTADIO, Colonel, USAF
Assistant Civil Engineer

cc:
PACAF/CS
HQ PACAF/JA/PA/XP/FM
AFREA/MI
36 ABW/CC/
36 SPTG/CC/CE

Document Separator

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 26 jobs (20 direct jobs and 6 indirect jobs) over the 1996-to-2001 period in the Monroe County, Florida economic area, which is 0.1 percent of economic area employment.

Community Infrastructure Impact: There is no community infrastructure impact since there are no receiving installations for this recommendation.

Environmental Impact: The realignment of NAS Key West to a Naval Air Facility has a minimal impact on the air quality of the local area, which is in attainment for carbon monoxide, ozone, and PM-10. Since no aviation assets are being moved into or out of this facility, the reduction in personnel and the resultant commuter carbon monoxide emissions will have a positive impact on the environment. Also, there is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Activities, Guam

Recommendation: Realign Naval Activities Guam. Relocate all ammunition vessels and associated personnel and support to Naval Magazine, Lualualei, Hawaii. Relocate all other combat logistics force ships and associated personnel and support to Naval Station, Pearl Harbor, Hawaii. Relocate Military Sealift Command personnel and Diego Garcia support functions to Naval Station, Pearl Harbor, Hawaii. Disestablish the Naval Pacific Meteorology and Oceanographic Center-WESTPAC, except for the Joint Typhoon Warning Center, which relocates to the Naval Pacific Meteorology and Oceanographic Center, Pearl Harbor, Hawaii. Disestablish the Afloat Training Group-WESTPAC. All other Department of Defense activities that are presently on Guam may remain either as a tenant of Naval Activities, Guam or other appropriate naval activity. Retain waterfront assets for support, mobilization, and contingencies and to support the afloat tender.

Justification: Despite the large reduction in operational infrastructure accomplished during the 1993 round of base closure and realignment, since DON force structure experiences a reduction of over 10 percent by the year 2001, there continues to be additional excess capacity that must be eliminated. In evaluating operational bases, the goal was to retain only that infrastructure necessary to support the future force structure without impeding operational flexibility for deployment of that force. Shifting deployment patterns in the Pacific Fleet reduce the need for a fully functional naval station. Operational and forward basing considerations require access to Guam. However, since no combatant ships are

Environmental Impact: The closure of Long Beach Naval Shipyard will have a positive impact on the local environment. The removal of a major industrial activity from an area that is in non-attainment for carbon monoxide, ozone, and PM-10 will be of substantial benefit to the air quality of this area. Similarly, the workload and small numbers of personnel being relocated to other activities are not expected to adversely impact the environment of geographic areas in which those activities are located. There are no adverse impacts to threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Ship Repair Facility, Guam

Recommendation: Close the Naval Ship Repair Facility (SRF), Guam, except transfer appropriate assets, including the piers, the floating drydock, its typhoon basin anchorage, the recompression chamber, and the floating crane, to Naval Activities, Guam.

Justification: Despite substantial reductions in depot maintenance capability accomplished in prior base closure evolutions, as force levels continue to decline, there is additional excess capacity that needs to be eliminated. While operational and forward basing considerations require access to Guam, a fully functional ship repair facility is not required. The workload of SRF Guam can be entirely met by other Department of the Navy facilities. However, retention of the waterfront assets provides the DON with the ability to meet voyage repair and emergent requirements that may arise in the Western Pacific.

Return on Investment: The total estimated one-time cost to implement this recommendation is \$8.4 million. The net of all costs and savings during the implementation period is a savings of \$171.9 million. Annual recurring savings after implementation are \$37.8 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of \$529 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,321 jobs (663 direct jobs and 658 indirect jobs) over the 1996-to-2001 period in the Agana, Guam economic area, which is 2.0 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 10.6 percent of employment in the economic area. However, much of this impact involves the inclusion of Military Sealift Command mariners in the job loss statement, which does not reflect the temporary nature of their presence on Guam.

1995

60

NAVAL AIR STATION, AGANA

- Change receiving site specified by '93
for aircraft, personnel + associated equip
from Andersen to

"other ~~naval~~ naval or DOD air station
in CONUS + Hawaii

V-45
V-41
HC-5

JUST

- this says some verrels (not combat verrels)
are homebased at Guam

↳ what are they

↳ relocating these verrels

- helps supporting these verrels would
go with them

- also would move surveillance aircraft
to HI + west coast for better synergy

1,641

1st Air
SAR

Pt 2
HC-5 may
delay
to support
MSC ships

1995

NAVAL ACTIVITIES, GUAM

- 1) Realign Naval Activities Guam
- 2) Relocate all ammunition vessels & associated ^{July} personnel & support to Naval Mag, Luchales; HI
- 3) Relocate all other combat logistic force ships & associated personnel & support to Naval Station Pearl _{delay}
- 4) Relocate Military Sealift Command personnel & Diego Garcia support functions to Naval Station, Pearl Harbor, HI _{delay}
- 5) Disestablish the Naval Pacific Meteorology & Oceanography Center - WESTMAC
 except for JT Typhoon Centering center, which relocates to Pearl
 could go immediately
- 6) Disestablish Afloat Training Group - WESTMAC
 go right away
- 7) HUH →
 All other DOD activities on Guam may remain either as a tenant of Naval Activities Guam or other appropriate naval activity
- 8) Retain waterfront assets for support, mobilization, & contingencies to support afloat tender,
 - stays a center

1995

FLEET + INDUSTRIAL SUPPLY CENTER

REC

DISESTABLISH the FLEET + INDUSTRIAL
SUPPLY CENTER

delay

JUSTIF

- it's a follow-up

- w/ asura engine + NAVAL ACT reauthorized,
don't need it

NAVAL ACT - first one brief

Guam

- KEEP MSC ship here + buy back
what you need

① DCU

- don't need MSC ships there

supposedly there is Mackay letter answering
commissioners

② GUAM ALT 2

↳ 2 year delay

- Aviation redirect already gone
~~MSC ships del~~

won't delay

↳ VQ1

VQ5

Document Separator

LEVEL 1 - 1 OF 1 DOCUMENT

UNITED STATES CODE SERVICE
 ADVANCE LEGISLATIVE SERVICE
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PUBLIC LAW 103-339

103rd Congress -- 2nd Session

H.R. 2144

103 P.L. 339; 108 Stat. 3114
 94 Enacted H.R. 2144; 103 Enacted H.R. 2144

BILL TRACKING REPORT: <=1> 103 Bill Tracking H.R. 2144
 FULL TEXT VERSION(S) OF BILL: <=2> 103 H.R. 2144

DATE: OCT. 06, 1994 -- PUBLIC LAW 103-339

SYNOPSIS: An Act

To provide for the transfer of excess land to the Government of Guam, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. SHORT TITLE.

This Act may be cited as the "Guam Excess Lands Act".

[*2] SEC. 2. TRANSFER.

(a) In General.--The Administrator of General Services shall, subject to section 3, transfer all right, title, and interest of the United States in and to the parcels of land described in subsection (b) (together with any improvements thereon) to the Government of Guam for public benefit use, by quitclaim deed and without reimbursement. Such transfers shall take place after a determination by the head of the Federal agency controlling a parcel that the parcel is excess to the needs of such agency.

(b) Description of Parcels To Be Transferred.--Unless a parcel of land described in this subsection has been disposed of under other authority on or before the date of the enactment of this Act or is transferred for further Federal utilization as a result of the screening required by section 3(a), the parcels of land required to be transferred under subsection (a) shall consist of the following:

Navy Parcels	
South Finegayan	445 acres
Nimitz Hill Parcels and 1 and 2B	208 acres
NAVMAG Parcel 1	144 acres

103 P.L. 339, *2

Apra Harbor Parcel 7	73 acres
Apra Harbor Parcel 8	6 acres
Apra Harbor Parcel 6	47 acres
Apra Harbor Parcel 9	41 acres
Apra Harbor Parcel 2	30 acres
Apra Harbor Parcel 1	6 acres
Asan Annex	17 acres
NAVCAMS Beach	14 acres
ACEORP Msui Tunnel	4 acres
Agat Parcel 3	5 acres
Air Force Parcels	
Andersen South (portion of Andersen Admin. Annex)	395 acres
Camp Edusa (Family Housing Annex 1)	103 acres
Harmon Communication Annex No. 1	862 acres
Harmon Housing Annex No. 4	396 acres
Harmon POL Storage Annex No. 2	35 acres
Harmon VOR Annex	308 acres
Harmon POL Storage Annex No. 1	14 acres
Andersen Radio Beacon Annex	23 acres
Federal Aviation Administration Parcel	
Talofofa "HH" Homer Facility	37 acres

(c) Legal Descriptions.--The exact acreages and legal descriptions of all parcels of land to be transferred under this Act shall be determined by surveys which are satisfactory to the head of the controlling Federal agency referred to in subsection (a). The cost of such surveys, together with all direct and indirect costs related to any conveyance under this section, shall be borne by such controlling Federal agency.

[*3] Sec. 3. TERMS AND CONDITIONS.

(a) Further Federal Utilization Screening.--Parcels of land determined to be excess property pursuant to section 2 shall be screened for further Federal utilization in accordance with the Federal Property and Administrative Services of 1949 (40 U.S.C. 471 et seq.) and such screening will be completed

within 45 days after the date on which they are determined to be excess.

(b) Appraisals.--The Administrator shall promptly appraise those parcels that are not needed for further Federal utilization to determine their estimated fair market value. The head of the Federal agency which controls such parcels shall cooperate with the Administrator in carrying out appraisals under this section. The Administrator shall submit a copy of the appraisals to the committees of the Congress specified in subsection (d). The cost of such appraisals shall be paid for under section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)).

(c) Land Use Plan.--The parcels of land to be transferred under this Act shall be eligible for transfer after the Government of Guam enacts legislation which establishes a detailed plan for the public benefit use (including, but not limited to, housing, schools, hospitals, libraries, child care centers, parks and recreation, conservation, economic development, public health, and public safety) of such parcels and the Governor of Guam submits such plan to the committees of the Congress specified in subsection (d).

(d) Submissions.--The appraisals and land use plan required to be submitted to the committees of the Congress under subsections (b) and (c) shall be submitted to the Committee on Natural Resources, the Committee on Armed Services, the Committee on Government Operations and the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources, the Committee on Armed Services, and the Committee on Governmental Affairs of the Senate.

(e) Review by Committees.--Parcels of land may not be transferred under this Act until 180 days after the submission to the committees of the Congress specified in subsection (d) of--

- (1) the appraisals provided for in subsection (b), and
- (2) the land use plan provided for in subsection (c).

(f) Government of Guam Lands Within the War in the Pacific National Historical Park.--Parcels of land may not be transferred under this Act until after the Government of Guam enters into a cooperative agreement with the Secretary of the Interior, acting through the Director of the National Park Service, which grants to the Secretary, at no cost, the administrative jurisdiction over all undeveloped lands within the boundary of the War in the Pacific National Historical Park, except those lands at Adelup Point, which are owned by the Government of Guam. The lands covered by such cooperative agreement shall be managed in accordance with the general management plan of the park and in the same manner as lands within the park that are owned by the United States.

[*4] Sec. 4. OBJECTS AFFECTING NAVIGABLE AIRSPACE.

The conveyance document for any land transferred under this Act located within 6 nautical miles of an airport shall contain a provision that requires a determination of no hazard to air navigation to be obtained from the Federal Aviation Administration in accordance with applicable regulations governing objects affecting navigable airspace or under the authority of the Federal Aviation Act of 1958 (Public Law 85-726, as amended) in order for construction alteration on the property to be permitted.

[*5] Sec. 5. SEVERE CONTAMINATION.

Notwithstanding any other provision of this Act, the Administrator of General Land Offices, in his discretion, may choose not to transfer any parcel under this Act on which there is severe contamination, the remedy of which would require the United States to incur extraordinary costs.

[*6] Sec. 6. APPLICATION OF FEDERAL AND TERRITORIAL LAWS.

All Federal and territorial environmental laws and regulations shall apply to the parcels transferred pursuant to this Act during and after the transfer of such parcels.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

SENT BY: 63407

11/18/93 10:47AM LEGISLATIVE COUNSEL-

55255:2 2/7

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H.L.C. 208 3390

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2144
AS REPORTED BY THE COMMITTEE ON NATURAL
RESOURCES**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Guam Excess Lands
3 Act".

4 SEC. 2. TRANSFER.

5 (a) **IN GENERAL.**—The Administrator of General
6 Services shall, subject to section 3, transfer all right, title,
7 and interest of the United States in and to the lands de-
8 scribed in subsection (b) (together with any improvements
9 thereon) to the Government of Guam for public benefit,
10 by quitclaim deed and without reimbursement, after the
11 head of the Federal agency which controls such lands de-
12 termines whether any of those parcels are excess to the
13 needs of such agency.

14 (b) **LANDS DESCRIBED.**—The lands referred to in
15 subsection (a) consist of—

Navy Parcels

North Fireaguan	445 acres
Nimitz Hill Parcels and I and 2B	208 acres
NAVMAC Parcel 1	144 acres
Apra Harbor Parcel 7	78 acres
Apra Harbor Parcel 8	6 acres
Apra Harbor Parcel 8	47 acres

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F.I.C.

Apex Harbor Parcel 9	61 acres
Apex Harbor Parcel 8	30 acres
Apex Harbor Parcel 1	6 acres
Apex Annex	17 acres
NAVDALCS Beach	14 acres
ALCOBY Mini Tunnel	4 acres
Apex Parcel 5	5 acres
Air Force Parcels	
Anderson South (portion of Anderson Admin. Annex)	896 acres
Camp Eden (Family Housing Annex 1)	103 acres
Harmon Consolidation Annex No. 3	482 acres
Harmon Housing Annex No. 4	896 acres
Harmon POB Storage Annex No. 2	85 acres
Harmon POB Annex	308 acres
Harmon POL Storage Annex No. 1	14 acres
Anderson Beach Rescue Annex	28 acres
Federal Aviation Administration Parcel	
Talbot "RH" Radar Facility	37 acres

1 (c) LEGAL DESCRIPTIONS.—The exact acreages and
 2 legal descriptions of all lands to be transferred under this
 3 Act shall be determined by surveys which are satisfactory
 4 to the head of the controlling Federal agency referred to
 5 in subsection (a). The cost of such surveys, together with
 6 all direct and indirect costs related to any conveyance
 7 under this section, shall be borne by such controlling Fed-
 8 eral agency.

9 SEC. 2. TERMS AND CONDITIONS.

10 (a) FURTHER FEDERAL UTILIZATION SCREENING.—
 11 Lands determined to be excess property pursuant to sec-
 12 tion 2 shall be screened for further Federal utilization in
 13 accordance with the Federal Property and Administrative
 14 Services Act of 1949 (40 U.S.C. 471 et seq.) and such
 15 screening will be completed within 45 days after the date
 16 on which they are determined to be excess.

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8

1 (b) APPRAISAL.—The Administrator shall promptly
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3 eral utilization to determine their estimated fair market
4 value. The head of the Federal agency which controls such
5 lands shall cooperate with the Administrator in carrying
6 out appraisals under this section. The Administrator shall
7 submit a copy of the appraisals to the committees of the
8 Congress specified in subsection (d). The cost of such ap-
9 praisals shall be paid for under section 204(b) of the Fed-
10 eral Property and Administrative Services Act of 1949 (40
11 U.S.C. 486(b)).

12 (c) LAND USE PLANS.—The lands to be transferred
13 under this Act shall be eligible for transfer after the Gov-
14 ernment of Guam enacts legislation which establishes a
15 detailed plan for the public benefit use (including, but not
16 limited to, housing, schools, hospitals, libraries, child care
17 centers, parks and recreation, economic development, pub-
18 lic health, and public safety) of such lands and the Gov-
19 ernor of Guam submits such plan to the committees of
20 the Congress specified in subsection (d).

21 (d) SUBMISSIONS.—The appraisals and plans re-
22 quired to be submitted to the committees of the Congress
23 under subsections (b) and (c) shall be submitted to the
24 Committee on Natural Resources, the Committee on
25 Armed Services, the Committee on Government Oper-

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CONG. UNDERWOOD

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1 ations and the Committee on Merchant Marine and Fish-
2 eries of the House of Representatives and the Committee
3 on Energy and Natural Resources, the Committee on
4 Armed Services, and the Committee on Governmental Af-
5 fairs of the Senate.

6 (e) REVIEW BY COMMITTEES.—Lands may not be
7 transferred under this Act until 180 days after the sub-
8 mission to the committees of the Congress specified in
9 subsection (d) of—

10 (1) the appraisal provided for in subsection (b),
11 and

12 (2) the land use plan provided for in subsection
13 (c).

14 (f) GOVERNMENT OF GUAM LANDS WITHIN THE
15 WAR IN THE PACIFIC NATIONAL HISTORICAL PARK.—

16 (1) REPORT.—The Government of Guam shall
17 submit a report with the submission to the Congress
18 of the public benefit use plan required by subsection
19 (c) that states the present and any proposed uses of
20 fast and submerged lands owned by the Government
21 of Guam inside the boundaries of the War in the Pa-
22 cific National Historical Park, except those lands at
23 Adakup Point.

24 (2) COOPERATIVE AGREEMENT.—Lands may
25 not be transferred under this Act until after the

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1 Government of Guam enters into a cooperative
 2 agreement with the Secretary of the Interior that
 3 provides for such scenic and public access easements
 4 that will ensure that the use of the lands referred
 5 to in paragraph (1) retained by the Government of
 6 Guam is compatible with the purposes of the War in
 7 the Pacific National Historical Park.

8 **SEC. 4. OBJECTS AFFECTING NAVIGABLE AIRSPACE.**

9 The conveyance document for any land transferred
 10 under this Act located within 6 nautical miles of an airport
 11 shall contain a provision that requires a determination of
 12 no hazard to air navigation to be obtained from the Fed-
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 14 regulations governing objects affecting navigable airspace
 15 or under the authority of the Federal Aviation Act of 1958
 16 (Public Law 85-726, as amended) in order for construc-
 17 tion or alteration on the property to be permitted.

18 **SEC. 5. SEVERE CONTAMINATION.**

19 Notwithstanding any other provision of this Act, the
 20 Administrator of General Services, in his discretion, may
 21 choose not to transfer any parcel under this Act on which
 22 there is severe contamination, the remedy of which would
 23 require the United States to incur extraordinary costs.

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1 SEC. 6. APPLICATION OF FEDERAL AND TERRITORIAL

2 LAWS.

3 All Federal and territorial environmental laws and
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5 to this Act during and after the transfer of such parcels.

6 SEC. 7. GENERAL PROVISIONS.

7 Any property subject to this Act shall not be subject
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9 818(b)(2) of Public Law 96-418 (94 Stat. 1782), as
10 amended.

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Navy Parcels	
North Pigeon	448 acres
Nimitz Hill Parcels and I and 2B	208 acres
NAVMAC Parcel 1	144 acres
Apts Harbor Parcel 7	72 acres
Apts Harbor Parcel 8	8 acres
Apts Harbor Parcel 9	47 acres

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R.I.C.

Apex Harbor Parcel 9	61 acres
Apex Harbor Parcel 8	30 acres
Apex Harbor Parcel 1	6 acres
Apex Annex	17 acres
NAVDAMS Beach	14 acres
ALCOBY Mini Tunnel	4 acres
Apex Parcel 9	5 acres

Air Force Parcels

Anderson South (portion of Anderson Alaska Annex)	396 acres
Camp Edna (Family Housing Annex 1)	163 acres
Harmon Canteen/Storage Annex No. 1	482 acres
Harmon Housing Annex No. 4	894 acres
Harmon POL Storage Annex No. 2	86 acres
Harmon POL Annex	208 acres
Harmon POL Storage Annex No. 1	14 acres
Anderson Bedia Recess Annex	28 acres

Federal Aviation Administration Parcel

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Document Separator

Wayne ARMY & ASSOCIATES, INC.
The Watergate, Suite 600, 2600 Virginia Avenue, N.W., Washington, D.C. 20037
(202) 333-2919 Fax: (202) 338-5950

Legislative & Government Relations
National Security & International Affairs

TELECOPIER TRANSMITTAL FORM

TO: Name: Liz King
Fax Phone #: 703-696-0550
FROM: Wayne Army
DATE: June 8, 1995

Number of pages (including cover sheet): 5

Liz,

Position Papers. Attached for your perusal are three papers: the first is the point paper we are using currently; the second is a set of talking points we used in a meeting with the Secretary of the Navy; and the third is the text from a fax we used to elaborate further on our position.

Would you please look them over and think about how, if they chose to, the Commissioners might implement such a position legally?

The "New" Guam Position: Let the Navy decide on the location of the MSC ships and HC-5. The essence of our new position is: Go ahead and do the following as recommended by DOD:

1. Close the SRF
2. Disestablish the FISC
3. Realign the Naval Activities

The principle difference between the DOD position (move the MSC ships and HC-5 to Hawaii) and our earlier position (Leave the MSC ships and HC-5 in Guam) is that now we are asking to have the BRAC "undo" the MSC/HC-5 portion of the decision and leave the final disposition of their location up to the Navy when the closure begins. This way the Secretary can consult with his operational and administrative commanders at greater length and either move the assets to Hawaii or to Guam or wherever they decide.

Thus, our "new" position is:

1. Execute the DOD closures and realignments listed above with one exception:
2. "Decouple" the decision to move the MSC ships and HC-5 from the BRAC process and allow the Navy to determine their locations based on operational considerations during the reuse period.

My thoughts are that the actual location of the ships and helos then becomes an operational and not a "base closure" action. The MSC ships do not require a "base," since they are mobile and manned principally by contract MSC mariners. They do require supply warehouses, but my contacts in CINCPACFLT and others say they can get that either from a privatized facility in Guam or from other locations in Southeast Asia. Hawaii is too far away. Moreover, the helo squadron is already located at Andersen AFB in Guam, and the Navy will soon complete a \$17M hangar that will sit idle if they move to Hawaii. The fleet commanders and their staffs are concerned about the personnel rotation schedules if they have to operate the helos from Hawaii.

We are meeting formally with CINCPACFLT, the CNO and ASN Pirie. We have spoken with CINCPAC, the Secretary and the VCNO. My informal contacts indicate they do not want to move the helos to Hawaii, and they would be overjoyed to have the decision left up to decide on operational grounds during the reuse period.

The real question then becomes: If one decides to "decouple" the MSC ships and HC-5, how is it worded?

"Transition Period." I need to speak with you concerning our request for a "transition period." Initially my thoughts were that since the BRAC rules require that a closure or realignment must begin within two years and be complete within six years that one could demand in the decision that no actions take place prior to the 24th month, etc. When we spoke with Charlie Smith, he indicated that BRAC General Counsel said that the Commission could only "recommend" that no actions take place until the end of the two year period.

Is there a way around this? If the law requires that closures take place within two years, isn't there a way to word a Commission decision to demand that no final actions take place until near the end of that two year period?

What are your thoughts? We need your help. With our experience with Navy bureaucrats in the Pacific for the past hundred years, we are not confident they will adhere to a BRAC "recommendation." We suspect that they will begin the closures, etc. while the ink is still wet on the President's signature.

Thanks and give me a call. I will come over and discuss this with you any time you want.

Wayne Arny

p.s. I am sending a copy of this to Charlie and Eric for info. Thanks again. Wayne

Guam Preferences for BRAC95

June 2, 1995

Basic Underlying Theme.

The Government and Citizens of Guam cannot be expected to survive the closures and realignments recommended by DOD unless we are given the means by which to provide for our own Economic Revitalization. We need access and title to all former Navy facilities.

- **The preferred alternative offered below is consistent with, and indeed strengthens, the strategic uses of Guam in the current world environment.**
- **The preferred alternative in fact is less costly to initiate than the DOD recommendation, provides more effective MSC support for the fleet, allows for realistic utilization of Navy manpower (manageable PERSTEMPO), makes better use of new and expensive Navy aircraft facilities at Andersen AFB in Guam, and still provides over three-quarters of the long term savings envisioned under the DOD recommendation.**
- **The preferred alternative provides for a smooth transition of the work force in Guam from the public to the private sector, further ensuring the continuation of amicable relations between the Navy and Guam that has been key to the long term strategic alliance in the Pacific.**

Preferred Alternative. If closures are inevitable and significant cost savings are to be realized, Guam would prefer the BRAC Commission agree to the following:

- **Leave the MSC ships forward deployed at Guam**
- **Leave HC-5 operations based at the Navy's facility at Andersen AFB**
- **Begin closure and realignment action no earlier than September 1997**
- **Close SRF-Guam and disestablish FISC-Guam**
 - **SRF and FISC will be privatized under GovGuam leadership**
- **The Navy can then lease only the pier space needed and procure only those support services required for MSC operations from:**
 - **A Privatized SRF**
 - **A Privatized FISC**
- **This alternative:**
 - **allows CINCPAC to operate MSC assets closer to the fleet than the location provided for in the DOD recommendation**
 - **Provides more manageable PERSTEMPO for military personnel assigned to MSC vessels, including VERTREP personnel (HC-5)**
 - **Provides utilization for newly completed Navy hangar at AAFB**
 - **Permits GovGuam to privatize the support facilities, retain and utilize a higher level of skilled workers, and begin to fill in the lowering Navy fleet work requirements with private sector work**
- **Cost Savings relative to DOD recommendations (by COBRA run):**
 - **Cost to implement: 60% less (\$67M vs. \$166M)**
 - **Net of Recurring Cost/Savings 88% of DOD**
 - **Net Pres. Value Savings (20 yrs) 78% of DOD**

Basic Minimum Alternative.

- **Return all closed or realigned assets to GovGuam to aid in economic revitalization**
- **Do not begin any closure or realignment actions until two years after passage of BRAC 95 enabling legislation**

Talking Points for Navy Secretary John Dalton

June 6, 1995

- Summary of the Navy's base closure and realignment recommendations:
 - **Close the SRF.**
 - **Disestablish the FISC.**
 - **Realign the Naval Activities.**
 - We will then turn those activities into private sector facilities.
- In our preferred alternative, however, we are asking for one principal exception:
 - **Leave the MSC ships in Guam, along with their helos (HC-5).**
- We believe this is **consistent with the operational needs of the Navy**, and it **strengthens the strategic uses of Guam** in the current world environment. It also **strengthens Guam's ties with DOD as we transition** to a more vigorous private sector.
- By leaving the MSC ships and their helos in Guam, there will be **operational benefits to the Navy and economic benefits to Guam**:
 - our new private facilities will benefit from some minimum amount of work from the ships, which will help ease the transition as we bring in more private sector work,
 - our alternative is **less costly to initiate** than a move to bases 3,800 miles further from the fleet; to bases that are crowded and require considerable MILCON,
 - it provides **more effective and simple MSC support** for the fleet (the ships are closer to the fleet -- a position we understand is favored by the fleet),
 - it **eases greatly the PERSTEMPO demands** on HC-5 and the other few active duty personnel on the ships (we suspect that supporting the MSC ships with those helos in their new base will require convoluted aircraft or personnel transfer schemes),
 - it makes **better use of a new/expensive Navy hangar** at Andersen (and if you don't use the new, \$17M hangar, it will end up as storage space for the Air Force),
 - and our alternative **still provides, conservatively, over three-quarters of the long term savings** envisioned under the DOD recommendation.
- We have submitted what we believe is a conservative COBRA run on our scenario:
 - We believe **it saves much more money up front and most of the money in the long run**: the "cost to implement" is 60% less (\$67M vs. \$166M); the net of Recurring Cost/Savings is 88% of DOD; and the net present value savings over 20 yrs is 78% of DOD.
- Finally, **we have explored** this issue, and we find it **hard to understand why the Department of the Navy would want to tie the hands of the fleet commanders with the specificity of the current DOD recommendation**.
 - It seems to us that **it should be much easier to support the fleet from Guam** than it would be from mid-Pacific.
 - **Please look carefully at our alternative**, and ask the fleet commanders personally for their thoughts.
 - **We will survive without the MSC ships and the helos, but this alternative makes our transition to the private sector easier, and it appears to us that it will make life easier for the fleet and the young officers and sailors who man the helo squadron and the few remaining billets on the ships.**

WE NEED YOUR UNDERSTANDING AND SUPPORT. WE ARE NOT TRYING TO DO SOMETHING THAT DOES NOT MAKE SENSE OPERATIONALLY.

[This is from a fax I sent to the CNO yesterday without the bios.]

Attached as promised are bios for Governor Gutierrez, Congressman Underwood, and me. Attached also is a point paper outlining GovGuam's proposed alternative and a copy of talking points the Governor used in his meeting with the Secretary.

We have been telling the people with whom we meet that we understand the Navy's need to reduce its infrastructure, and indeed we have gone through more of that than most other communities over the past 50 years. So, close the SRF, disestablish the FISC, and realign the NAVACTS. We will take them over and reopen them as private activities. We are very optimistic we can make them into successful ventures. We are already at the limit in our port area and have received numerous inquiries on a wide range of possibilities.

We would, however, you to leave the MSC ships and the HC-5 helos for a while. First, we think **it makes sense operationally** to have them closer to the fleet. The Navy will still save considerable money by leaving them in Guam; the Navy will not have to build the MILCON that is needed in Hawaii, the MSC ships will only need to procure the space, etc. they need from our private operations, and the helo squadron will utilize a brand-new hangar at a field they are using already.

Second, **it helps us economically.** If the MSC ships remain, there will be some small level of work on top of what we will get from the Tender and the MPS ships. We realize it will be less probably than what they are doing now, but it does provide us a Federal "underpinning" on which we will add private sector work.

The only additional comment we have made over the points in the attached paper is that we have raised to the BRAC COS and SecNav the possibility of the BRAC deciding to ept all the Navy/DOD recommendations except for moving the MSC ships and the os. Instead, we suggested, **the BRAC should "neutralize" the DOD recommendation and allow the Navy to make either the one in the DOD recommendation or another one that may reflect more accurately the needs of the operational commanders at the time the decision needs to be made. These are not bases; they are ships and aircraft.**

We are anxious to transition to a more private sector based economy in Guam, and we are not trying to do anything that does not make sense operationally. We think leaving the MSC ships and HC-5 in Guam is a win-win for the Navy and Guam. **We need the CNO's support.**

If you have any questions, please give me a call. We met with SecNav yesterday; I spoke with VCNO today; and we are scheduled to meet with ASN(I&E) on 6/16.

Wayne Army

Guam Preferences for BRAC95

June 2, 1995

Basic Underlying Theme.

- **The Government and Citizens of Guam cannot be expected to survive the closures and realignments recommended by DOD unless we are given the means by which to provide for our own Economic Revitalization. We need access and title to all former Navy facilities.**
- **The preferred alternative offered below is consistent with, and indeed strengthens, the strategic uses of Guam in the current world environment.**
- **The preferred alternative in fact is less costly to initiate than the DOD recommendation, provides more effective MSC support for the fleet, allows for realistic utilization of Navy manpower (manageable PERSTEMPO), makes better use of new and expensive Navy aircraft facilities at Andersen AFB in Guam, and still provides over three-quarters of the long term savings envisioned under the DOD recommendation.**
- **The preferred alternative provides for a smooth transition of the work force in Guam from the public to the private sector, further ensuring the continuation of amicable relations between the Navy and Guam that has been key to the long term strategic alliance in the Pacific.**

Preferred Alternative. If closures are inevitable and significant cost savings are to be realized, Guam would prefer the BRAC Commission agree to the following:

- **Leave the MSC ships forward deployed at Guam**
- **Leave HC-5 operations based at the Navy's facility at Andersen AFB**
- **Begin closure and realignment action no earlier than September 1997**
- **Close SRF-Guam and disestablish FISC-Guam**
 - **SRF and FISC will be privatized under GovGuam leadership**
- **The Navy can then lease only the pier space needed and procure only those support services required for MSC operations from:**
 - **A Privatized SRF**
 - **A Privatized FISC**
- **This alternative:**
 - **allows CINCPAC to operate MSC assets closer to the fleet than the location provided for in the DOD recommendation**
 - **Provides more manageable PERSTEMPO for military personnel assigned to MSC vessels, including VERTREP personnel (HC-5)**
 - **Provides utilization for newly completed Navy hangar at AAFB**
 - **Permits GovGuam to privatize the support facilities, retain and utilize a higher level of skilled workers, and begin to fill in the lowering Navy fleet work requirements with private sector work**
- **Cost Savings relative to DOD recommendations (by COBRA run):**
 - **Cost to implement: 60% less (\$67M vs. \$166M)**
 - **Net of Recurring Cost/Savings 88% of DOD**
 - **Net Pres. Value Savings (20 yrs) 78% of DOD**

Basic Minimum Alternative.

- **Return all closed or realigned assets to GovGuam to aid in economic revitalization**
- **Do not begin any closure or realignment actions until two years after passage of BRAC 95 enabling legislation**

WAYNE ARNY & ASSOCIATES, INC.

THE WATERGATE, SUITE 600

2600 VIRGINIA AVENUE, N.W.

WASHINGTON, D.C. 20037

(202) 333-2919 FAX: (202) 338-5950

LEGISLATIVE & GOVERNMENT RELATIONS
NATIONAL SECURITY & INTERNATIONAL AFFAIRS

June 14, 1995

Jiz.

I faxed these to Alex and Eric last night, so they are somewhere in the system. Just in case, here is another set. I did make one change to the last part of the first question: rather than "in consultation with the fleet commanders," I changed it to "the leadership of the navy."

I also spoke with the BSAT staff, and they are in general agreement ~~with~~ that these reflect our Navy Guam agreement. I read them to one of the flag participants last night, and he made one small change and agreed with them.

If you have any questions, please call. My beeper is 202-896-0576. Enter your number and hit the pound (#) sign. No one answered at 224-3148.

Thanks,
Wayne

Questions concerning Closures and Realignments in Guam

MSC Ships/HC-5

(For the Navy): We understand that the senior leadership in the Navy has had discussions with Governor Gutierrez and Congressman Underwood from Guam concerning the MSC ships and their helicopter squadron, HC-5. We also heard that you and the delegation from Guam are in essential agreement as to a change in the recommendation that will be a win-win position for both parties. It appears to us that the decision to locate the MSC ships and HC-5 at a particular location is not a decision that depends on whether a particular base is closed or not, and neither unit has more than 300 civilian personnel.

Consequently, would it be acceptable to you if the Commission made no decision as to the final location of the MSC ships and HC-5 and recommended that any such decision be made by the Navy at some time in the future when the leadership of the Navy found it necessary?

The Addition of GLUP-94 Lands to the Base Closure Recommendations

(For the Navy): We are interested in helping ease the process of transferring excess Federal land in Guam to the Government of Guam.

We understand that there are some 4,000 acres of Navy land included in a report known as GLUP-94 that the Navy has declared to be excess to their needs. Also, we understand that there is no disagreement within the Navy as to the recommendations of this report.

Would the Navy have any objection if this Commission included in its report recommendations to transfer those Navy lands in the GLUP-94 report to the Government of Guam under the procedures of the Base Closure Act?

Yes

Public Works Center

(For the Navy): As you are aware, this Commission added the Public Works Center in Guam to its list of facilities for consideration with a recommendation to look at turning the PWC into a PWD, or to turn it from a "Center" into a "Department."

Can I assume that you still stand by your earlier recommendation to leave the Public Works Center as it is?

Guam Preferences for BRAC95

June 2, 1995

Basic Underlying Theme.

- *The Government and Citizens of Guam cannot be expected to survive the closures and realignments recommended by DOD unless we are given the means by which to provide for our own Economic Revitalization. We need access and title to all former Navy facilities.*
- *The preferred alternative offered below is consistent with, and indeed strengthens, the strategic uses of Guam in the current world environment.*
- *The preferred alternative in fact is less costly to initiate than the DOD recommendation, provides more effective MSC support for the fleet, allows for realistic utilization of Navy manpower (manageable PERSTEMPO), makes better use of new and expensive Navy aircraft facilities at Andersen AFB in Guam, and still provides over three-quarters of the long term savings envisioned under the DOD recommendation.*
- *The preferred alternative provides for a smooth transition of the work force in Guam from the public to the private sector, further ensuring the continuation of amicable relations between the Navy and Guam that has been key to the long term strategic alliance in the Pacific.*

Preferred Alternative. If closures are inevitable and significant cost savings are to be realized, Guam would prefer the BRAC Commission agree to the following:

- *Leave the MSC ships forward deployed at Guam*
- *Leave HC-5 operations based at the Navy's facility at Andersen AFB*
- *Begin closure and realignment action no earlier than September 1997*
- *Close SRF-Guam and disestablish FISC-Guam*
 - *SRF and FISC will be privatized under GovGuam leadership*
- *The Navy can then lease only the pier space needed and procure only those support services required for MSC operations from:*
 - *A Privatized SRF*
 - *A Privatized FISC*
- *This alternative:*
 - *allows CINCPAC to operate MSC assets closer to the fleet than the location provided for in the DOD recommendation*
 - *Provides more manageable PERSTEMPO for military personnel assigned to MSC vessels, including VERTREP personnel (HC-5)*
 - *Provides utilization for newly completed Navy hangar at AAFB*
 - *Permits GovGuam to privatize the support facilities, retain and utilize a higher level of skilled workers, and begin to fill in the lowering Navy fleet work requirements with private sector work*
- *Cost Savings relative to DOD recommendations (by COBRA run):*
 - *Cost to implement: 60% less (\$67M vs. \$166M)*
 - *Net of Recurring Cost/Savings 88% of DOD*
 - *Net Pres. Value Savings (20 yrs) 78% of DOD*

Basic Minimum Alternative.

- *Return all closed or realigned assets to GovGuam to aid in economic revitalization*
- *Do not begin any closure or realignment actions until two years after passage of BRAC 95 enabling legislation*

We are meeting formally with CINCPACFLT, the CNO and ASN Pirie. We have spoken with CINCPAC, the Secretary and the VCNO. My informal contacts indicate they do not want to move the helos to Hawaii, and they would be overjoyed to have the decision left up to decide on operational grounds during the reuse period.

The real question then becomes: If one decides to "decouple" the MSC ships and HC-5, how is it worded?

"Transition Period." I need to speak with you concerning our request for a "transition period." Initially my thoughts were that since the BRAC rules require that a closure or realignment must begin within two years and be complete within six years that one could demand in the decision that no actions take place prior to the 24th month, etc. When we spoke with Charlie Smith, he indicated that BRAC General Counsel said that the Commission could only "recommend" that no actions take place until the end of the two year period.

Is there a way around this? If the law requires that closures take place within two years, isn't there a way to word a Commission decision to demand that no final actions take place until near the end of that two year period?

What are your thoughts? We need your help. With our experience with Navy bureaucrats in the Pacific for the past hundred years, we are not confident they will adhere to a BRAC "recommendation." We suspect that they will begin the closures, etc. while the ink is still wet on the President's signature.

Thanks and give me a call. I will come over and discuss this with you any time you want.

Wayne Army

p.s. I am sending a copy of this to Charlie and Eric for info. Thanks again. Wayne

Talking Points for Navy Secretary John Dalton

June 6, 1995

- Summary of the Navy's base closure and realignment recommendations:
 - **Close the SRF.**
 - **Disestablish the FISC.**
 - **Realign the Naval Activities.**
 - We will then turn those activities into private sector facilities.
- In our preferred alternative, however, we are asking for one principal exception:
 - **Leave the MSC ships in Guam, along with their helos (HC-5).**
- We believe this is **consistent with the operational needs of the Navy**, and it **strengthens the strategic uses of Guam** in the current world environment. It also **strengthens Guam's ties with DOD as we transition** to a more vigorous private sector.
- By leaving the MSC ships and their helos in Guam, there will be **operational benefits to the Navy and economic benefits to Guam**:
 - our new private facilities will benefit from some **minimum amount of work from the ships**, which will help ease the transition as we bring in more private sector work,
 - our alternative is **less costly to initiate** than a move to bases 3,800 miles further from the fleet; to bases that are crowded and require considerable MILCON,
 - it provides **more effective and simple MSC support** for the fleet (the ships are closer to the fleet -- a position we understand is favored by the fleet),
 - it **eases greatly the PERSTEMPO demands** on HC-5 and the other few active duty personnel on the ships (we suspect that supporting the MSC ships with those helos in their new base will require convoluted aircraft or personnel transfer schemes),
 - it makes **better use of a new/expensive Navy hangar** at Andersen (and if you don't use the new, \$17M hangar, it will end up as storage space for the Air Force),
 - and our alternative **still provides, conservatively, over three-quarters of the long term savings** envisioned under the DOD recommendation.
- We have submitted what we believe is a conservative COBRA run on our scenario:
 - We believe **it saves much more money up front and most of the money in the long run**: the "cost to implement" is 60% less (\$67M vs. \$166M); the net of Recurring Cost/Savings is 88% of DOD; and the net present value savings over 20 yrs is 78% of DOD.
- Finally, **we have explored this issue**, and we find it **hard to understand why the Department of the Navy would want to tie the hands of the fleet commanders with the specificity of the current DOD recommendation**.
 - It seems to us that **it should be much easier to support the fleet from Guam** than it would be from mid-Pacific.
 - **Please look carefully at our alternative**, and ask the fleet commanders personally for their thoughts.
 - **We will survive without the MSC ships and the helos, but this alternative makes our transition to the private sector easier, and it appears to us that it will make life easier for the fleet and the young officers and sailors who man the helo squadron and the few remaining billets on the ships.**

WE NEED YOUR UNDERSTANDING AND SUPPORT. WE ARE NOT TRYING TO DO SOMETHING THAT DOES NOT MAKE SENSE OPERATIONALLY.

[This is from a fax I sent to the CNO yesterday without the bios.]

Attached as promised are bios for Governor Gutierrez, Congressman Underwood, and me. Attached also is a point paper outlining GovGuam's proposed alternative and a copy of the talking points the Governor used in his meeting with the Secretary.

We have been telling the people with whom we meet that we understand the Navy's need to reduce its infrastructure, and indeed we have gone through more of that than most other communities over the past 50 years. So, close the SRF, disestablish the FISC, and realign the NAVACTS. We will take them over and reopen them as private activities. We are very optimistic we can make them into successful ventures. We are already at the limit in our port area and have received numerous inquiries on a wide range of possibilities.

We would, however, you to leave the MSC ships and the HC-5 helos for a while. First, we think **it makes sense operationally** to have them closer to the fleet. The Navy will still save considerable money by leaving them in Guam; the Navy will not have to build the MILCON that is needed in Hawaii, the MSC ships will only need to procure the space, etc. they need from our private operations, and the helo squadron will utilize a brand-new hangar at a field they are using already.

Second, **it helps us economically.** If the MSC ships remain, there will be some small level of work on top of what we will get from the Tender and the MPS ships. We realize it will be less probably than what they are doing now, but it does provide us a Federal "underpinning" on which we will add private sector work.

The only additional comment we have made over the points in the attached paper is that we have raised to the BRAC COS and SecNav the possibility of the BRAC deciding to accept all the Navy/DOD recommendations except for moving the MSC ships and the helos. Instead, we suggested, **the BRAC should "neutralize" the DOD recommendation and allow the Navy to make either the one in the DOD recommendation or another one that may reflect more accurately the needs of the operational commanders at the time the decision needs to be made. These are not bases; they are ships and aircraft.**

We are anxious to transition to a more private sector based economy in Guam, and we are not trying to do anything that does not make sense operationally. We think leaving the MSC ships and HC-5 in Guam is a win-win for the Navy and Guam. We need the CNO's support.

If you have any questions, please give me a call. We met with SecNav yesterday; I spoke with VCNO today; and we are scheduled to meet with ASN(I&E) on 6/16.

Wayne Army

Wayne ARMY & ASSOCIATES, INC.

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Legislative & Government Relations
National Security & International Affairs

TELECOPIER TRANSMITTAL FORM

TO: Name: Liz King
Fax Phone #: 703-696-0550
FROM: Wayne Army
DATE: June 8, 1995

Number of pages (including cover sheet): 5

Liz,

Position Papers. Attached for your perusal are three papers: the first is the point paper we are using currently; the second is a set of talking points we used in a meeting with the Secretary of the Navy; and the third is the text from a fax we used to elaborate further on our position.

Would you please look them over and think about how, if they chose to, the Commissioners might implement such a position legally?

The "New" Guam Position: Let the Navy decide on the location of the MSC ships and HC-5. The essence of our new position is: Go ahead and do the following as recommended by DOD:

1. Close the SRF
2. Disestablish the FISC
3. Realign the Naval Activities

The principle difference between the DOD position (move the MSC ships and HC-5 to Hawaii) and our earlier position (Leave the MSC ships and HC-5 in Guam) is that now we are asking to have the BRAC "undo" the MSC/HC-5 portion of the decision and leave the final disposition of their location up to the Navy when the closure begins. This way the Secretary can consult with his operational and administrative commanders at greater length and either move the assets to Hawaii or to Guam or wherever they decide.

Thus, our "new" position is:

1. Execute the DOD closures and realignments listed above with one exception:
2. "Decouple" the decision to move the MSC ships and HC-5 from the BRAC process and allow the Navy to determine their locations based on operational considerations during the reuse period.

My thoughts are that the actual location of the ships and helos then becomes an operational and not a "base closure" action. The MSC ships do not require a "base," since they are mobile and manned principally by contract MSC mariners. They do require supply warehouses, but my contacts in CINCPACFLT and others say they can get that either from a privatized facility in Guam or from other locations in Southeast Asia. Hawaii is too far away. Moreover, the helo squadron is already located at Andersen AFB in Guam, and the Navy will soon complete a \$17M hangar that will sit idle if they move to Hawaii. The fleet commanders and their staffs are concerned about the personnel rotation schedules if they have to operate the helos from Hawaii.

ROBERT A. UNDERWOOD
GUAM

NATIONAL SECURITY COMMITTEE

SUBCOMMITTEES

MILITARY INSTALLATIONS,
RESEARCH AND DEVELOPMENT

RESOURCES COMMITTEE

SUBCOMMITTEES

NATIONAL PARKS, FORESTS AND LANDS
NATIVE AMERICAN AND INSULAR AFFAIRS



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Congress of the United States

House of Representatives

Washington, DC 20515-5301

May 8, 1995

The Honorable Alan Dixon
Chairman
Defense Base Closure and Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, Virginia 22209

Dear Mr. Chairman,

I want to thank you and the Members of the Commission for your hospitality and kindness toward Team Guam at the Regional Hearing in San Francisco on April 28. We are most appreciative of your attention to our concerns.

In that light, I would like to highlight our recommendations for "add-ons" that were contained in the report we prepared and presented to your staff at the San Francisco hearing. These are facilities in Guam that were not included in DoD's recommendations for closures, disposal or realignment, but, speaking for Team Guam, we would like you to consider adding them for review by the Commission during your upcoming hearing on Wednesday, May 10.

The facilities we would like to add for BRAC consideration are discussed in our report beginning on page 124. They include the following:

- Officer Housing at the former NAS Agaña;
- All lands identified in DoD's Guam Land Use Plan of 1994;
- The land and facilities known as Nimitz Hill;
- Housing areas on Nimitz Hill and Apra Heights;
- The Fena Lake watershed;
- Naval Magazine.

Again, thank you very much for your thoughtfulness in San Francisco and for favorable attention to our request to add these facilities to your list for further consideration by the Commission.

Sincerely,

ROBERT A. UNDERWOOD
Member of Congress



Governor's Office Complex
P. O. Box 736
Agana, Guam 96910

GOVERNMENT OF GUAM
AGANA, GUAM 96910



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APR 06 1995

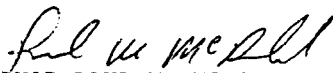
Mr. Alan J. Dixon
Chairman
Defense Closure and Realignment Commission
1700 North Moore Street
Suite 1425
Arlington, VA 22209

Please refer to this number
when responding 950502-13

Dear Mr. Dixon:

Transmitted herewith is the Mayors' Council of Guam Resolution No. 95-01, "Relative to expressing the opposition of the Mayors' Council of Guam to the U.S. Department of Defense recommendations to the 1995 Defense Base Closure and Realignment Commission", which was duly adopted by the Mayors' Council of Guam on the 6th day of April, 1995 at Agana, Guam 96910.

Sincerely,


MAYOR PAUL M. MCDONALD
Secretary
Mayors' Council of Guam

Enclosures

MAYORS' COUNCIL OF GUAM
1995 REGULAR SESSION

RESOLUTION NO. 95-01

Please refer to this number
when recording 950502-14

RELATIVE TO EXPRESSING THE OPPOSITION OF THE MAYORS' COUNCIL OF GUAM TO THE U.S. DEPARTMENT OF DEFENSE RECOMMENDATIONS TO THE 1995 DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

BE IT RESOLVED BY THE MAYORS' COUNCIL OF GUAM:

WHEREAS, the Mayors' Council of Guam is comprised of elected Mayors and Vice Mayors representing the nineteen municipalities of Guam; and

WHEREAS, the Mayors and Vice Mayors are the direct representatives of the people of Guam; and

WHEREAS, on March 1, 1995, the Secretary of Defense presented to the 1995 Defense Base Closure and Realignment Commission (BRAC95) recommendations for military base closures and realignments in the United States under the BRAC95 process; and

WHEREAS, the recommendations of the Secretary of Defense included the closure of the Ship Repair Facility, Guam (SRF), and the Fleet Industrial and Supply Center, Guam (FISC), formerly Naval Supply Depot, and the redirection to other bases in the U.S. of the personnel and squadrons affected by the BRAC93 realignment of NAS Agana to Andersen Air Force Base (AAFB), Guam; and

WHEREAS, the Department of Defense estimated that the closure of these Naval facilities would result in the loss of over 2,400 direct and 900 indirect jobs, the closure of SRF would result in the loss of over 600 direct and 650 indirect jobs, and the closure of FISC would result in the loss of over 400 direct and 160 indirect jobs thus affecting approximately 10% of Guam's employment positions; and

WHEREAS, federal civil service employees in Guam over the past two (2) years have supported decreases in authorized positions and enhanced operational efficiency in attempts to reduce federal budgetary outlays and thus believe that military operations in Guam should not be further reduced; and

WHEREAS, the DOD recommendation to the 1995 Defense Base Closure and Realignment Commission further provides for the retention of all land and assets of these facilities for some unspecified contingency use for the Federal Government; and

WHEREAS, the combined effect of the base closure proposal and the retention of the accompanying land and assets will be to strike an exceptionally painful and profound blow to the economy of the Territory of Guam; and

WHEREAS, past Federal policies regarding Guam, such as 30% Federal ownership of the island's land space, onerous regulation of our economy, and denial of access to vital trade, air, and sea links in the Asia-Pacific region, have hindered our island's economic development and denied our people their full potential for economic prosperity and self-sufficiency; and

WHEREAS, it is the position of the people of Guam that the recommendations to "mothball" the bases and deny the utilization of these lands to the people of Guam is absolutely untenable; and

WHEREAS, alternate courses of action should be considered, including but not limited to: collaborative arrangements between the Navy and the civilian community to continue operations of SRF and FISC that would satisfy the strategic requirements of the U.S. Fleet, direct payment to the community for economic reuse of the facilities in lieu of expending funds for "mothballing" strategically important facilities, as well as joint public/private ventures that would enable continuation of an adequate level of employment related to these facilities; and

WHEREAS, regardless of the course embarked on by the Federal Government, it is absolutely essential that, if the bases are to be closed, the land upon which they rest must be returned to the people from whom it was obtained---the People of Guam; and

WHEREAS, if the President's goal of Economic Revitalization is to be realized, such a return of the land and the assets on them is not only historically just but also economically imperative; now, therefore, be it

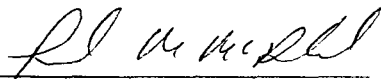
RESOLVED, that the Mayors' Council of Guam hereby conveys its opposition to the Department of Defense's recommendations with respect to SRF and FISC in the United States Territory of Guam; and be it further

RESOLVED, that the Mayors' Council of Guam further urges the 1995 Defense Base Closure and Realignment Commission to consider the serious economic impact on the People of Guam resulting from this recommendation and respectfully requests their full consideration of all possible measures to avoid inflicting this severe economic distress upon our community and our people; and be it further

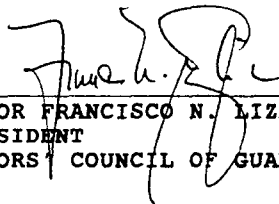
RESOLVED, that the President of the Mayors' Council of Guam certify to and the Secretary attest the adoption hereof and that copies of the same be transmitted to the Chairman and Members of the 1995 Defense Base Closure and Realignment Commission; the Secretary of Defense; the Secretary of Navy; Commander in Chief, Pacific; Commander in Chief, Pacific Fleet; Commander, U.S. Naval Forces Marianas; Guam's Delegate to the U.S. Congress; Speaker of the 23rd Guam Legislature; and to the Governor of Guam.

DULY ADOPTED ON THE 6TH DAY OF APRIL, 1995 AT AGANA, GUAM 96910.

ATTESTED:



**MAYOR PAUL M. MCDONALD
SECRETARY
MAYORS' COUNCIL OF GUAM**



**MAYOR FRANCISCO N. LIZAMA
PRESIDENT
MAYORS' COUNCIL OF GUAM**

1995

SHIP REPAIR FACILITY, GUAM

~~delay~~

- Close the Naval Ship Repair Facility, Guam, except transfer appropriate assets, including piers, the floating drydock, its typhoon basin anchorage, the recompression chamber + floating crane to Naval Activities, Guam.

JUSTIFICATION

- excess

"While operational + forward basing considerations require access to Guam, fully functional SR7 not required

"Retention of waterfront assets provides DOW w/ ability to meet voyage repair + emergent requirements"

663 direct JWS



GUAM DEMANDS

1. Don't want to start ~~of~~ until
1 year 364 days

* Supporting this would likely be the position of Dept of Interior that a quick economic downturn would turn Guam against US + a quick US pullout would mean a quick economic downturn.

2. Want the power plant back in working order.
 - Is this a watershed? - not going to be
 - ↳ GLUP 94 seems to give power plant
↳ says in accordance w/ customer service ^{back to} agreement
3. Want GLUP '94 lands in DBERC
 - Does this mean you're pleased w/ process
 - PLWC Guam ~~City~~ ^{over} A7 lands too?

4) FEWA LAKE WATERSHED -NU

5) WAVAL MAG
LNU

PWC Land → involved in Adels

↳ 6000 acres

↳ special mention of
resettlement

- historical circumstances

- don't want to pay FMV

- FMV unless narrow set of ~~cases~~ exceptions

1) public use

2) wildlife

3) economic revitalization

↳ if return to DOW

put GLUP under BRAC

Resettlement of

GLUP I → going F

GLUP 94 is new
batch

GLUP II '94 -

↳ ~~owned~~ DOD decided on own

1800 acres
owned by AF

II) Power plant
↳ want to fulfill

↳

turn over in good
working order

III. legal aspect

- worst case - we get nothing
↳ not from Penyh letter

- want directed language

↳ do not begin for 2 years

& complete w/in 6

BASE CLOSURE LAW

①

MANAGEMENT + DISPOSAL OF PROPERTY

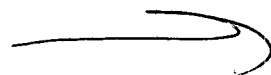
1) GSA shall delegate to SecDef, w/ respect to excess + surplus real property + facilities + personal property at a military installation closed or realigned under this part

(A) the authority of GSA to utilize excess property under § 202 of Fed Prop + Admin Serv Act of 1949 (40 USC 483)

(B) authority of GSA to dispose of surplus property under § 203 of 40 USC 484

(C) authority of GSA to grant approvals + make determination under 13(g) of the Surplus Prop Act of 1944 (50 USC App 1622(g)).

(D) authority of GSA to determine availability of excess or surplus property for wildlife conservation purposes



(2)(A) Subject to (C) + (3, 4, 5, 6) the Sec Def shall use this delegate authority ~~to~~ in accordance

w/

i) all regs in effect on date of Act under Fed Prop Act

ii) all regs in effect on Surplus Prop Act

(B) Sec Def ~~may~~ ^{act} confer w/ GSA, + issue regs necessary

(C) This delegated authority shall NOT

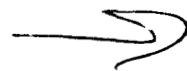
INCLUDE AUTHORITY TO PRESCRIBE GENERAL

POLICIES + METHODS FOR UTILIZING EXCESS

PROPERTY + DISPOSING OF SURPLUS PROP

(D) The Sec Def may transfer real property or facilities located at a military installation to be closed or realigned

w/ or w/o reimbursement to a military dept or other entity w/in DOD or Coast Guard



(E) Before any action may be taken w/ respect to disposal of any surplus prop

Sec Def shall consult w/ the Gov of the State + the heads of local govt concerned for the purpose of considering any plan for the use of such prop by the local community concerned.

3(A)^B Not later than 6 mo after approval of closure of mil installation, in consultation w/ redevelopment authority or, if none, local govt Sec Def will

- 1) no personal prop
- 2) see what is related / supports real estate

(C) Sec Def may not transfer

- 1) items in to support prop; or
- 2) reduce maintenance + repair ~~below~~ of facilities + equip below min level needed to keep them going for normal support until the earlier of

- 1) 1 week after decl decl plan goes to Sec Def
- 2) Date ~~After~~ Sec Def notified decl decl plan will be subm Hec
- 3) 24 mo after approval of plan

IV) 90 days before closure

1) Sec Def can't transfer items or dispose of them if IO is essential to reuse
↳ work w/ redevelp to IO

(E)¹⁷ Exemptions to above rule. Sec Def can do what he wants to reus prop if

- 1) is required to operate unit, weapon, etc elsewhere
- 2) unique mil value + no civilian use
- 3) not required for redevelp as sth determined by sec + redevelp auth
- 4) standard stock
- 5) some other fed agency needs it + has asked for it

- w/ nat'l interest

4) Sec Def may transfer real + pers props to redevelopment authority

- may be for consideration at or below ~~market~~ FMV or w/o consideration

- consideration may be ~~in~~ in kind (goods, serv or real prop or improvements or other)

- Sec determines FMV

- Sec must set guidelines + regs for ~~transfer~~ determining amt

- must explain why not FMV if that case

4(B)(ii)

- If rural area where closure has substantial impact on economy of local area + recovery

- no consideration needed

- Sec. prescribes reg for determining if eligible under this

III → If Sec gets below FMV + the new owner sell it for more than pd, Sec Def can get \$

(C)(i) - Transfers to redevelop not under §202, 203
if Sec determines transfer
is necessary for redevelop

(C)(ii) The Secretary may, in

(E)(i) The transfer of PERSONAL PROP
shall not be subject to 483, 484 of
Fed Prop Act if Sec determines transfer
of such prop is necessary for effective
implementation of a redevelopment policy

(ii) The Sec in lieu of transfers real + personal
may transfer property similar to such
prop - including prop not located at
the installation if the Secretary determines
that the transfer of such similar prop is
in the interests of the US.

(D) CERCLA applies to any transfer of real
prop

(E) Sec may require any add'l terms +
conditions in connection w/ transfer under
this para as such Sec considers appropriate

(5) (A) Except as in B, Sec shall take such actions as necessary to ensure that final ^{excessing} determ under (1) regarding whether another Dept or Fed agency has use for part of installation are made not later than 6 mo after date closure approved

(B) EXCEPTION

Sec may delay this, if in consultation w/ redevelopment authority, he determines it is in best interest of that authority

(6) (A) - Stewart B McKinney Homeless Assistance Act

No later than the 6 mo above - Sec must tell HUD of buildings that Fed don't want or for which no use is in

- HUD has 60 days to MD building useful for homeless
- tell Sec Def
- publish in Fed reg

↳ Then there are available for folks to apply for

- send written app to HSS
- HSS approves app

Does this mean no reuse plan either?
A

(7) If buildings make the Fed Reg list,
a redevelopment authority may
write Sec Def & express interest in them

↳ They get them if
- if no one writes to intend to use
for homeless
- no one complete app
- app not approved

↳ Get 1 yr from there 3 options to
use it - during that time homeless
can't use it

- if redevelopment doesn't use it
in 1 yr - go back to homeless

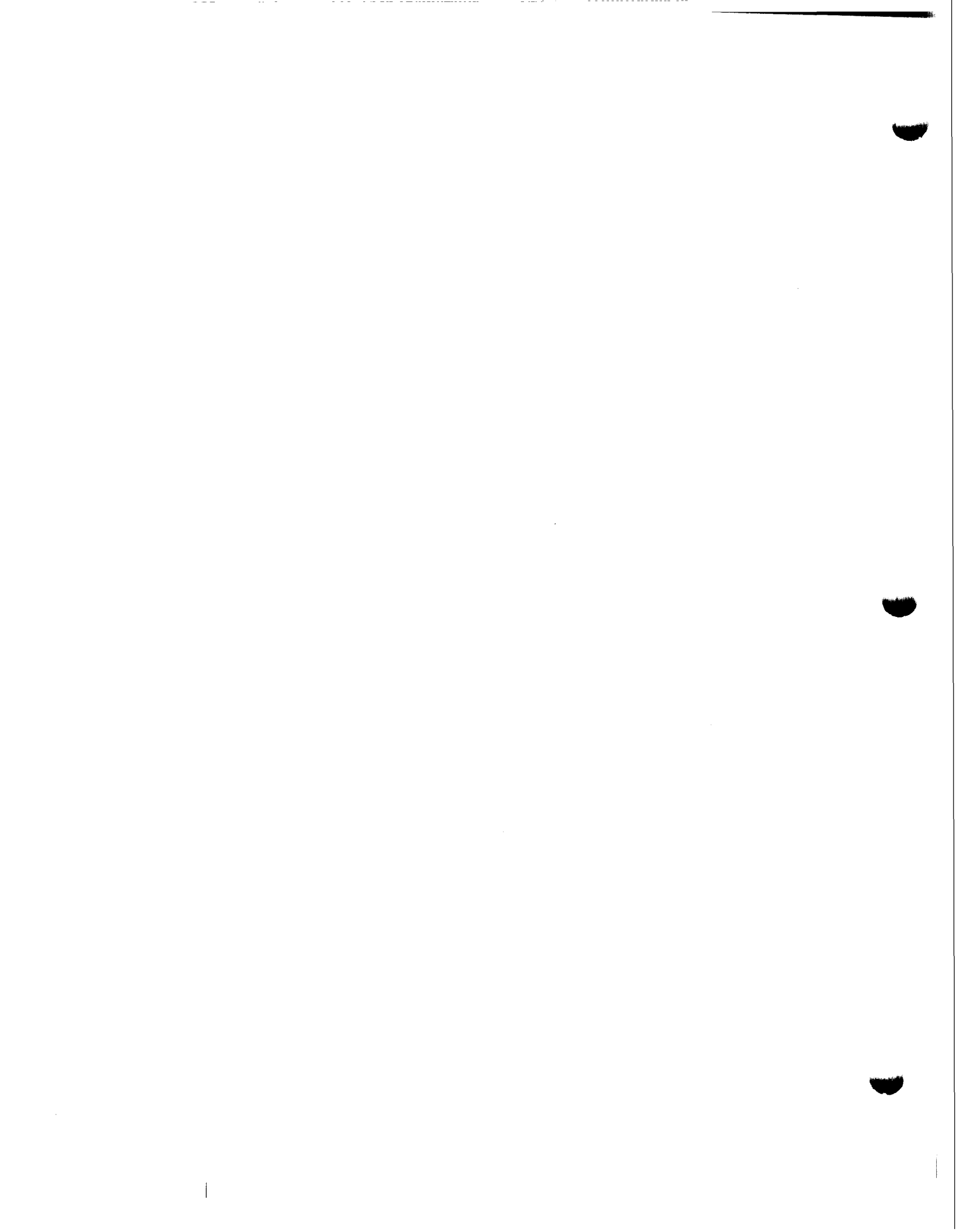
(8) Sec may & w/ local govt for notice & fees

40 USC § 483 PROPERTY UTILIZATION

- GSA to find methods to promote maximum utilization of excess properties by agencies
- & GSA should transfer prop to these agencies
- agency must pay fair value

40 USC 484 - DISPOSAL OF SURPLUS PROPERTY

- GSA shall have supervision over disposal of excess property



GUAM EXCESS LANDS ACT
PUB LAW 103-339
passed 10/6/94

SEC (1) → short title

Sec (2) → TRANSFER

(2)(a) In general

- ~~the~~ GSA shall, subject to sec. 3, transfer all right, title & interest of US in + to parcels of land in (b)
- to Gov Guam
- for public benefit use
- by quitclaim deed + w/o reimbursement

- Such transfers shall take place after a determination by the head of the Federal Agency controlling a parcel that the parcel is excess to the needs of such agency

(2)(b) DESCRIPTION OF PARCELS TO BE TRANSFERRED

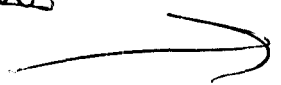
- Unless land described in this subsection has been disposed of under other authority on or before 10/6/94
- or is transferred for further federal utilization as a result of 3(a) screening

(2)(c) LEGAL DESCRIPTIONS

The exact acreages + descriptions done by survey that is okayed by Fed agency that owns it

- Fed agency pays for cost

~~SEC 3 → TERMS + CONDITIONS~~



SEC 3 - TERMS + CONDITIONS

(3) (a) FURTHER FEDERAL UTILIZATION SCREENING

↳ Parcels of land determined to be excess under §2 shall be screened for further Federal utilization, unless

FEDERAL PROP + ADMIN SERV AG

+ such screening will be completed w/in 45 days after the date on which they are determined to be excess

3(b) ^{ES.} ~~Administrative~~ GSA shall promptly appraise those parcels that are not needed for further Fed utilization to determine ESTIMATED FMV

↳ Agency which owns land shall work w/ GSA on appraisals

- copy of appraisals goes to Congressional committees named in (d)

- Cost paid on 201(b) of Fed Prop + Serv Act

3(c) LAND USE PLAN

- Parcels to be transferred shall be eligible for transfer after Govt enacts legis which establishes

DETAILED PLAN FOR PUB BEWE USE

- PUB BEWE USE =

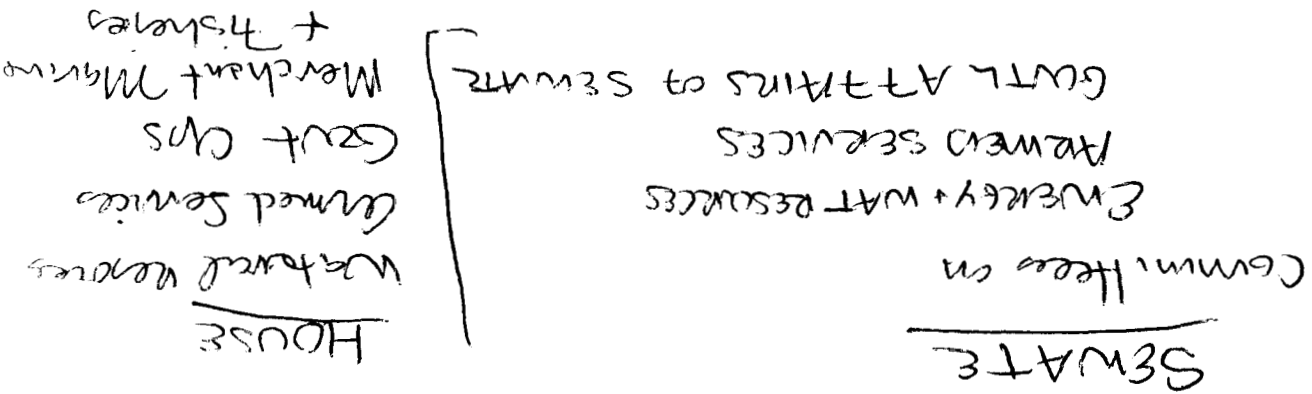
Including but not limited to housing, schools, hospital, libraries, child care, parks + recreation, conservation, economic development, public health, etc.

SEC 4 - OBJECTS AFFECTIONS NAVIGABLE AIRSPACE
 Any land transferred under this Act w/in 6
 nautical miles of an airport must contain no
 no beyond to air nav from FAA or other construction
 or alterations on the property to be permitted

3(f) Land w/in 6 mi in Pacific West Part
 (over sea)

180 days after both appraisals
 + land use plan submitted

3(e) LANDMAY NOT BE MATURIZED WITH



must be submitted to
 → appraisals + land use plan

(3)(d) SUBMISSIONS

must submit plan to ~~SEWATE~~ in (d)
 (over sea)
 committees

SEC 5

-GSA may choose, at his discretion, not to transfer any parcel under this Act in which there is severe contamination & which would take extraordinary costs to clean up

SEC 6 Application of Fed + Territorial laws

All fed + territorial environmental laws & regs shall apply to the parcels transferred pursuant to this Act and
after transfer of such parcels

Delivered 8/94

GLUP 94 - GUAM LAND USE PLAN UPDATE

NAVY tasked in 1993 to review DOW & AF holdings on Guam & develop master plans for DOW land use on the island

INTENT

over next
10 to 15 yrs

- 1) Develop rationale for mil. landholdings based on foreseeable mission tasking & force levels
- 2) Develop comprehensive plan for all DOW land requirements on Guam which considers combined service use of real property where feasible
- 3) ID opps for functional ~~consolidation~~ consolidations & JT use arrangements - address environ concerns
- 4) Address specific functional requirements ID by services

110
7,600 acres considered releasable
450 potentially releasable

- obtaining development controls for 130 acres

- takes DOW footprint from 1/3 to 1/4 of Guam

DDO Prop on Guam → 33% of land

NAVY = 24,500 acres

AF = 20,300 acres

↳ includes 3200 acres considered
releasable lands

LONG RANGE USE CONCEPTS

- wanted to see if could consolidate

RU+S

- see if could jointly use middle

↳ GOV GUAM likes middle

- think so

- if ever released

SUBMERGED LAND

- release them if off owned or

releasable lands

AF to give up
3705

3588 releasable

117 potentially releasable

NAVY

4418

4085 releasable

333 potentially releasable

133 get development credits

- 1000 needs to retain 33,500 acres

IMPLEMENTATION COSTS + TIME FRAME

ENVIRONMENTAL BASELINE SURVEYS

1-2 yrs
2.5-3 mil

Environmental Documentation	<u>1-2 yrs</u>
Property Description	1-2 yrs
Caretaker Response	?? yrs
Mitigation - Cleanup	?



Document Separator



GUAM → meeting w/ Interior

FRANK QUIMBY
MARK LANGERMAN
DANNY ARANZI
AL STAYMAN

Acting ASI for Policy
Deputy ASI for Policy
C

al: do we need to be concerned

al Stayman

Angel Santos - leader of nationalist element

↳ elected to legislature

↳ gaining ground

At 15, he thinks this is a blip or screen

↳ Guam thinking because loss of jobs

SPEAKER - against

Gov ~~to~~ pragmatic but will go behind radicals

DANNY

2/78 → 96

- 78 - mostly indigenous

90s - Phillipinos army in

80s → land boom w/ hotels

↳ this got folks thinking if we owned land we'd be rich

new generation of leadership

Q: do they want independence

al Stay

Congress is unresponsive

Endangered Species is wreaking havoc

↳ about every species on Guam is out

- even if you own land - trouble developing it

FEDERAL EXCESS PROPERTY ACT

- Commonwealth proposal - gives ability to work
 - ↳ not going well
 - every issue but citizenship is on table
- DOD says better off in politically stable environment
 - ↳ don't care what political status is

177

10,000

↳ 3000 acres

↳ DOD didn't want to turn it over to GSA

GSA would sell it to highest bidder - open

- back channels

9 months

↳ land goes back for free - public use

Regulator of Guam

↳ back to original landowner

Guamant

- 5,000 acres ~~also~~ actually did go back

10,000 → withdrawn

7 or 8000 went back

↳ if you demonstrate specific interest



NAVY letter

- Tourism taking over

- mil was always safety net

- if mil leaves, safety net lower

-> NOT ADDRESSED: taxes from military



1993 NAVAL AIR STATION AGANG-

→ Commission added this

COMMUNITY CONCERNS

- wanted NAS Agana closed
- wanted to reuse facilities to expand civilian airport
- need mil value low
- few activities performed at Agana could be moved to ANDERSON AFB

GAO says cost 229 mil
Comm cost 123.5 mil
payback 11 yrs

COMMISSION FINDINGS

- Found excess land & operations, maintenance & admin capacity existed at Anderson to allow consolidation of mission, personnel, ground & support
- Housing at AGANA supports NAVY command throughout Guam
+ if return housing not necessary to build replace because Agana - Anderson 15 mi apart

RECOMMENDATION

- SecDef substantially deviated from force structure plan
- + criteria 2 - availability + condition of mil facil + services
- + " 3 - ability to accommodate contingency, mobilization + future total force require + existing + recent location

→

Recommend

- CLOSE WAS Agana
- Move aircraft, personnel + associated equip to Andersen AFB
- Retain housing at NAS Agana necessary to support Navy personnel at Andersen.

Naval Air Station, Agana, Guam

Recommendation: Change the receiving site specified by the 1993 Commission (1993 Commission Report, at page 1-21) for "the aircraft, personnel, and associated equipment" from the closing Naval Air Station, Agana, Guam from "Andersen AFB, Guam" to "other naval or DoD air stations in the Continental United States and Hawaii."

Justification: Other BRAC 95 actions recommended the partial closure of Naval Activities, Guam, with retention of the waterfront assets, and the relocation of all of the vessels currently homeported at Naval Activities, Guam to Hawaii. Among the aircraft at Naval Activities, Guam is a squadron of helicopters performing logistics functions in support of these vessels. This redirect would collocate these helicopters with the vessels they support. Similarly, regarding the other aircraft at the closing Naval Air Station, the Fleet Commander-in-Chief desires operational synergies for his surveillance aircraft, which results in movement away from Guam. This redirect more centrally collocates those aircraft with similar assets in Hawaii and on the West Coast, while avoiding the new construction costs required in order to house these aircraft at Andersen Air Force Base, Guam, consistent with the Department's approach of eliminating capacity by not building new capacity.

Return on Investment: The total estimated one-time cost to implement this recommendation is \$43.8 million. The net of all costs and savings during the implementation period is a savings of \$213.8 million. Annual recurring savings after implementation are \$21.7 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of \$418 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,641 jobs (1,272 direct jobs and 369 indirect jobs) over the 1996-to-2001 period in the Agana, Guam economic area, which is 2.5 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 10.6 percent of employment in the economic area. However, much of this impact involves the inclusion of MSC mariners in the job loss statement, which does not reflect the temporary nature of their presence on Guam.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.9 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NRL UWSRD Orlando generally will have a minor positive impact on the environment. Both Orlando and NUWC Newport are in areas of attainment for carbon monoxide, and the additional personnel relocating to Newport, when compared to force structure reductions by FY 2001, still represent a net decrease in personnel at the Newport site. The utility infrastructure at the receiving site is sufficient to handle the relocating personnel. There is no adverse impact to threatened/endangered species, sensitive habitats and wetlands, and cultural/historical resources occasioned by this recommendation.

Fleet and Industrial Supply Center, Guam

Recommendation: Disestablish the Fleet and Industrial Supply Center, Guam.

Justification: Fleet and Industrial Supply Centers (FISC) are follower activities whose existence depends upon active fleet units in their homeport area. Prior and current BRAC actions closing both Naval Air Station, Guam and a portion of Naval Activities, Guam have significantly reduced this activity's customer base. The remaining workload can efficiently be handled by other activities on Guam or by other FISCs.

Return on Investment: The total estimated one-time cost to implement this recommendation is \$18.4 million. The net of all costs and savings during the implementation period is a savings of \$143 million. Annual recurring savings after implementation are \$31.1 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of \$437.3 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 580 jobs (413 direct jobs and 167 indirect jobs) over the 1996-to-2001 period in the Agana, Guam economic area, which is 0.9 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 10.6 percent of

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DEPARTMENT OF THE NAVY

COMMANDER IN CHIEF U.S. PACIFIC COMMAND REPRESENTATIVE
GUAM/COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS/
FEDERATED STATES OF MICRONESIA/REPUBLIC OF PALAU

PSC 489

FPO AP 96536-0061

IN REPLY REFER TO
11010

Ser N4/0076

5 Jun 95

From: Commander in Chief, U.S. Pacific Command Representative
Guam/Commonwealth of the Northern Mariana Islands/
Federated States of Micronesia/Republic of Palau

Subj: GUAM LAND USE PLAN 1994 (GLUP '94) UPDATE

Encl: (1) Subject Final Report

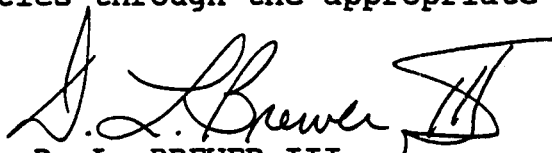
1. Enclosure (1) is forwarded for further use. This report has been prepared with the support of all Department of Defense activities on Guam.

2. The analysis presented by GLUP '94 reflects the input of the Guam Military Land Use Working Group and provides the basis for the proposed future use of Department of Defense (DOD) real estate on Guam. As a result of this analysis, over 8,000 acres of land have been identified as excess to DOD needs. Upon final approval by the respective military service Secretaries, all land releases will be accomplished through established U.S. Government procedures.

3. The report, Guam Land Use Plan 1994, completes this study on the military land requirements on Guam. The report will be updated periodically as events dictate. Additional copies may be obtained from:

Commander, U.S. Naval Forces Marianas
ATTN: Code N4
PSC 489, Box 6A
FPO AP 96536-0051

4. By copy of this letter, it is requested that all Guam DOD activities commence implementation of the plan by submitting reports of excess for properties through the appropriate chain of command.


D. L. BREWER III

Subj: GUAM LAND USE PLAN 1994 (GLUP '94) UPDATE

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GLUP 94

GUAM LAND USE PLAN UPDATE

April 1995

Prepared by:

Pacific Division
Naval Facilities Engineering Command

Prepared for:

CINCPACFLT/PACAF

A Plan for Department of Defense Real Estate on Guam

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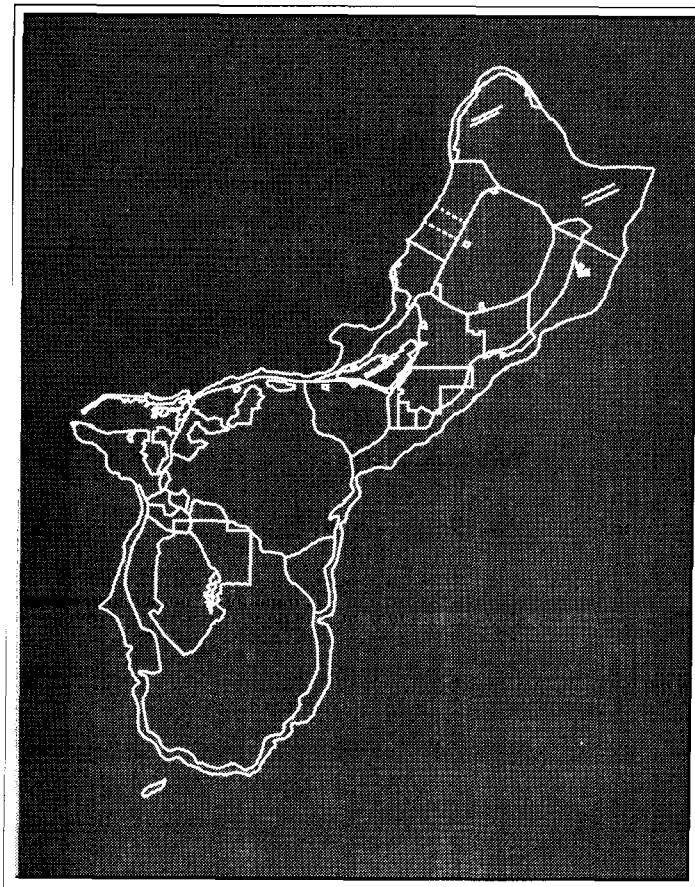
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EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

The island of Guam is strategically located at the boundary between the Pacific Ocean and Philippine Sea, and has been an integral part of the U.S. military's base support complex since World War II. Guam is a major logistic, communication, surveillance, and weather center in the Western Pacific, and is becoming more important as a training area for units assigned to the island, as well as transient units.

The intent of the Guam Land Use Plan Update (GLUP 94) is to:

- Review the requirements for military land holdings based on foreseeable mission taskings and force levels.
- Develop a comprehensive plan for all DOD land requirements on Guam which considers combined service use of property where feasible.
- Identify opportunities for functional consolidations and joint use arrangements, and address environmental considerations that affect land use.

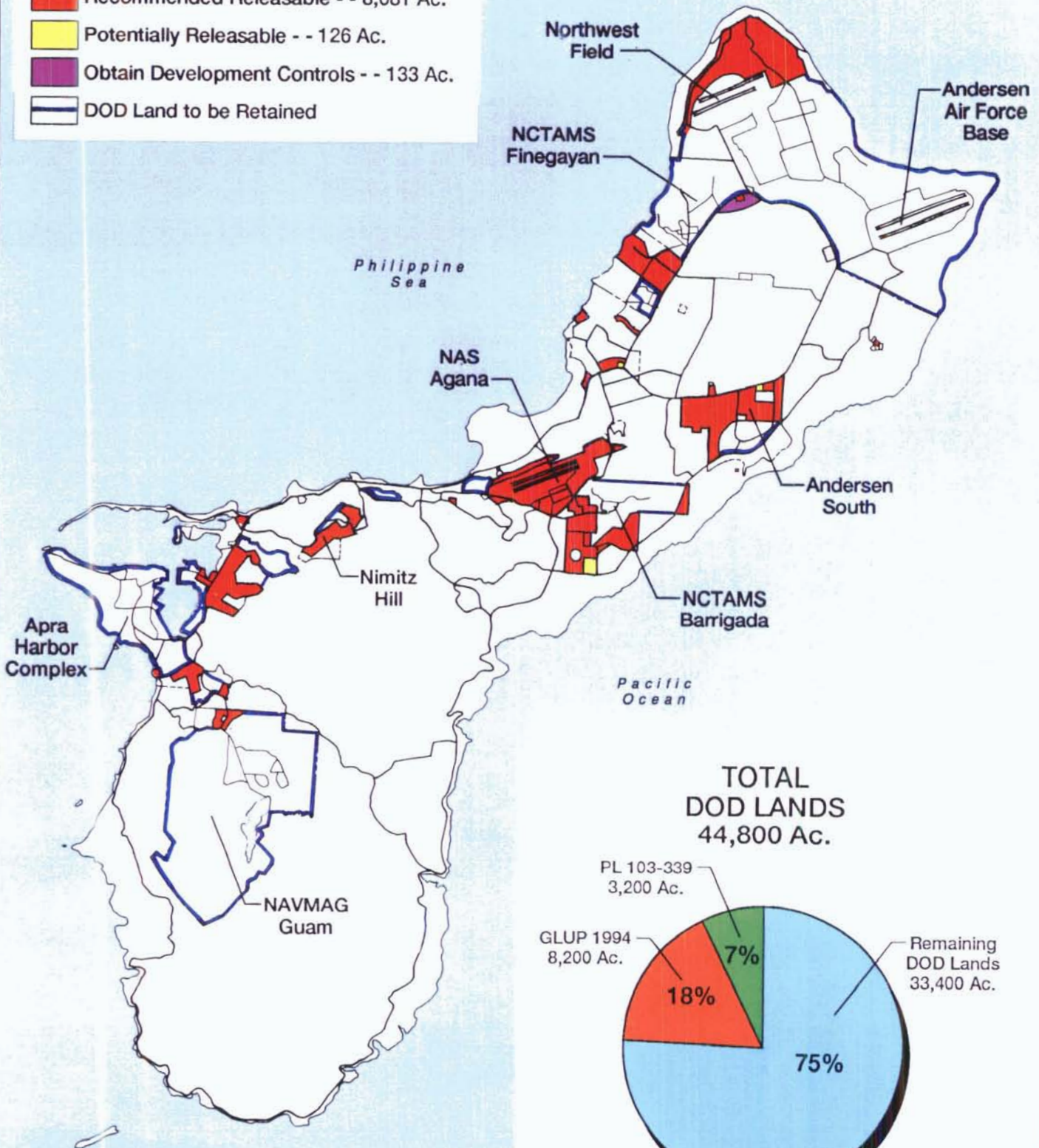
The study area for GLUP 94 includes all land currently owned by the Department of Defense (DOD) on Guam. This amounts to a total of approximately 44,800 acres of land. Of this, about 24,500 acres are owned by the Navy and 20,300 acres are owned by the Air Force. The total DOD land holdings constitute approximately 33 percent of the total land area of Guam.

Projected base loading requirements provided the major focus for GLUP 94. The Air Force's current personnel loading is 2,500 persons (PN). No personnel loading changes are anticipated in the near- or long-term, although there is a need to maintain an adequate footprint on Guam to accommodate the Air Force's contingency plan for the Pacific Region. The Navy's current authorized personnel loading is 7,700 PN. Reductions in the near-term are expected to occur due to the closure of Naval Air Station (NAS) Agana and the transfer of supply ship operations from military control to the Military Sealift Command (MSC). These actions would result in an estimated loading of 5,600 PN. Based on the recent decision to temporarily relocate the VQ-1 and VQ-5 squadrons to CONUS, this figure will decrease to approximately 4,600 PN. Neither the Air Force nor the Navy have long-term land requirements to accommodate a potential rollback scenario.

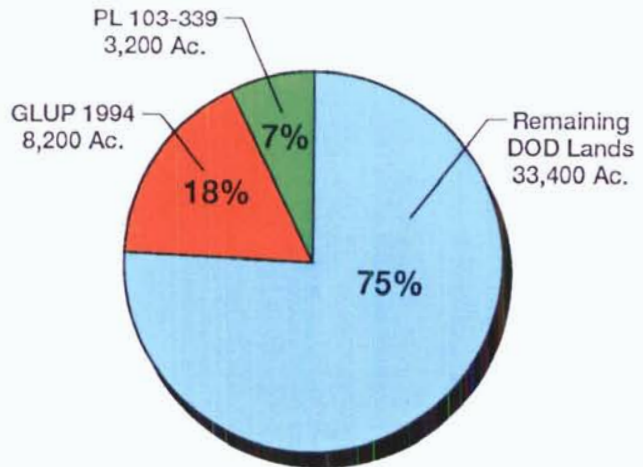
[Note: During the final stages of the preparation of this report, potential changes to baseloading on Guam were announced as part of the Base Realignment and Closure (BRAC) process for 1995. These proposed changes

LEGEND

- Recommended Releasable - - 8,081 Ac.
- Potentially Releasable - - 126 Ac.
- Obtain Development Controls - - 133 Ac.
- DOD Land to be Retained



**TOTAL
DOD LANDS
44,800 Ac.**



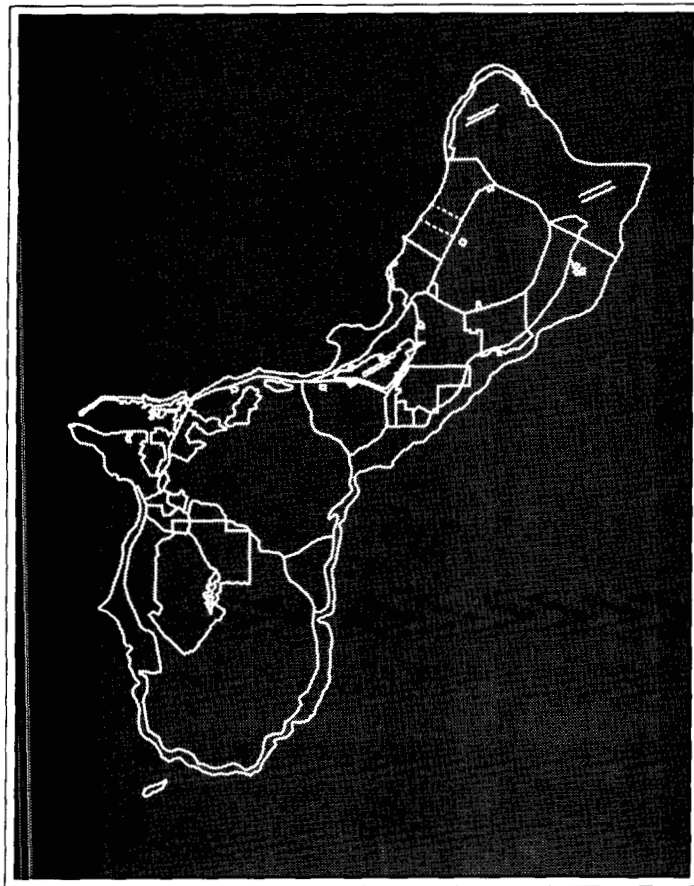
**ISLANDWIDE SUMMARY
GUAM LAND USE PLAN**



Figure:
ES-1

A

INTRODUCTION



CHAPTER A: INTRODUCTION

1. Purpose of Plan Update

The island of Guam is strategically located at the boundary between the Pacific Ocean and Philippine Sea, approximately 3,600 miles west of Hawaii, 1,400 miles southeast of Japan, and 1,250 miles east of the Philippines. Due to its location, Guam has been an integral part of the U.S. military's base support complex since World War II. Guam is a major logistic, communication, surveillance, and weather forecasting center in the Western Pacific, and is becoming more important as a training area for units assigned to the island, as well as transient units.

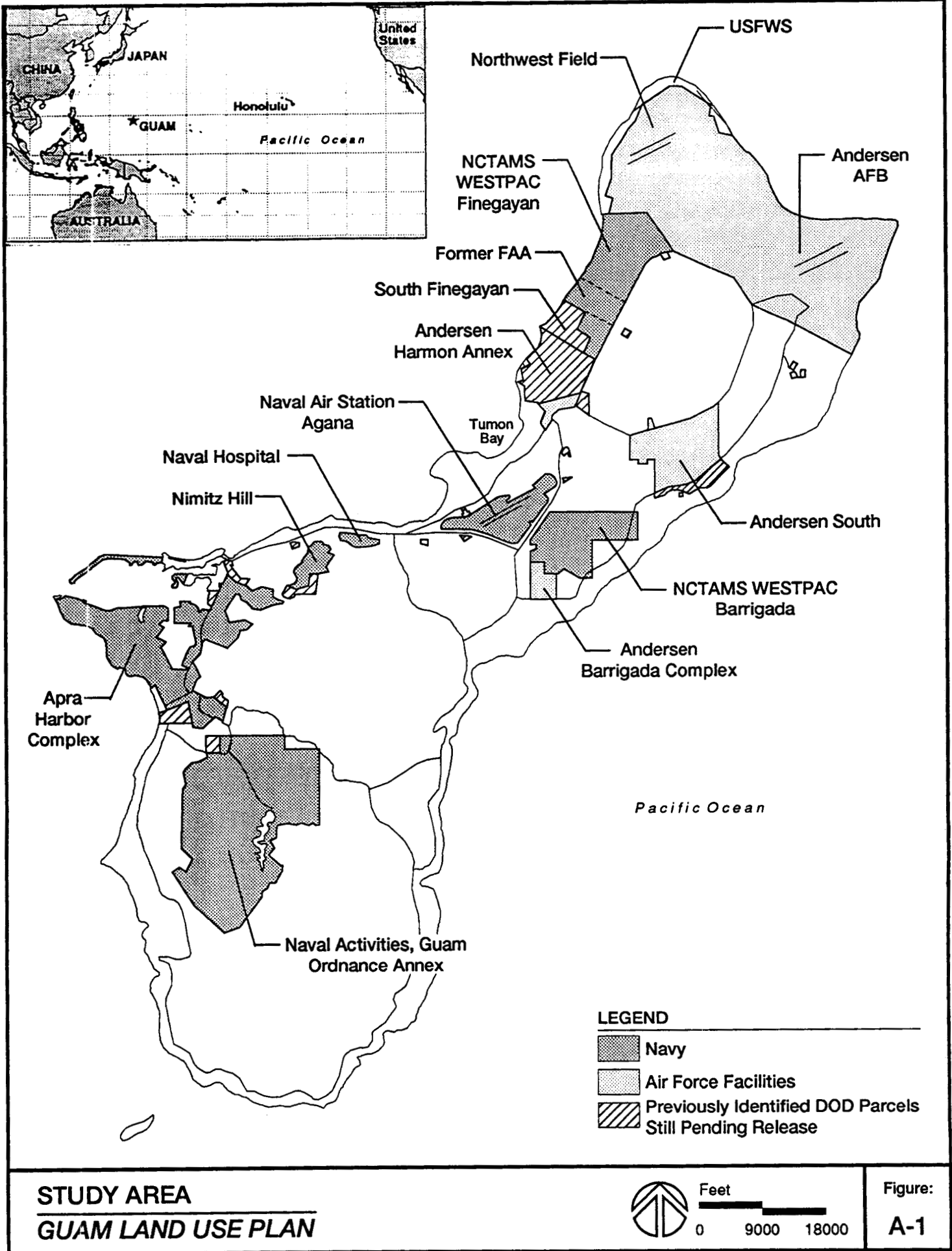
In mid-1993, the Air Force and Navy services began a review of their land holdings on Guam, with the intent of developing a master plan for future Department of Defense (DOD) land use. The U.S. Navy, through the Pacific Division, Naval Facilities Engineering Command (PACNAVFACENGCOCM), was designated as the executive agent for this plan.

The Guam Land Use Plan Update, or GLUP 94, represents an update of a previous land use plan prepared by PACNAVFACENGCOCM dated September 1977. The purpose of GLUP 94 is to:

- Review the requirements for military land holdings based on foreseeable mission taskings and force levels.
- Develop a comprehensive plan for all DOD land requirements on Guam which considers combined service use of property where feasible.
- Identify opportunities for functional consolidations and joint use arrangements, and address environmental considerations that affect land use.

2. Background

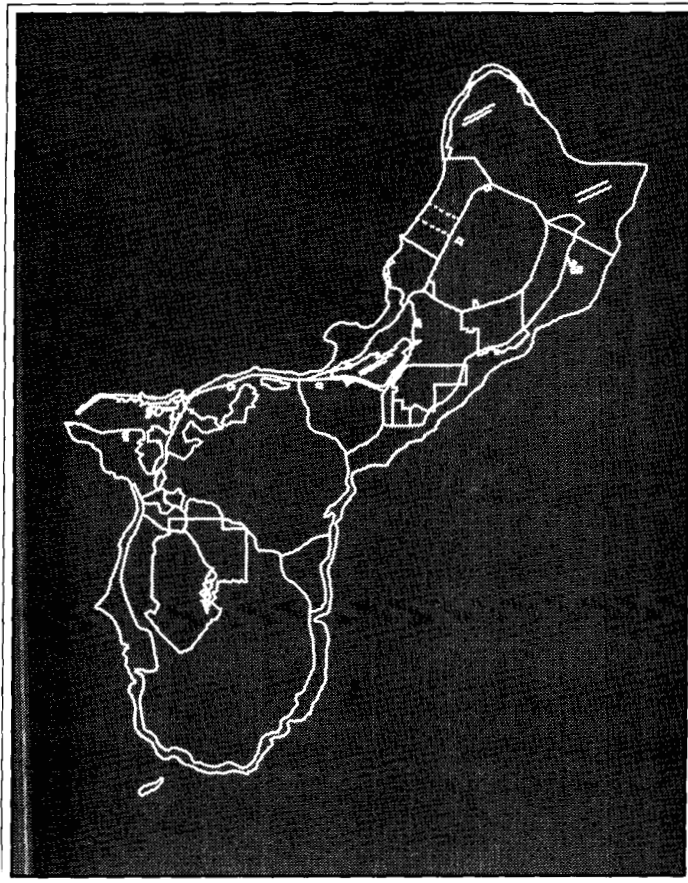
Department of Defense land holdings on Guam have been a source of tension between the military and the people of Guam since the original condemnations during World War II. In recent years, these tensions have grown. Recently, representatives of the Government of Guam, Guam Legislature, and Congressman Robert Underwood, Guam's delegate to the U.S. House of Representatives, organized a "Territorial/Federal Land Conference" to provide a venue for discussion and a comprehensive look at these issues.



- Brief staffs of Commander in Chief, U.S. Pacific Command (USCINCPAC), Commander in Chief, Pacific Fleet (CINCPACFLT), and Commander Pacific Air Forces (PACAF) to enlist input on operational and base loading requirements for the future.
- Conduct fieldwork on Guam. This included meetings with the GLUWG and all major local commanders to review projected land requirements, current operations, and potential areas for consolidation.
- Present preliminary recommendations to the GLUWG.
- Brief preliminary recommendations to staffs of CINCPACFLT and PACAF.
- Prepare planning analysis and draft land use proposals.
- Brief draft land use proposals to staffs of CINCPACFLT and PACAF.
- Conduct fieldwork on Guam. A second trip to Guam provided for the refinement of proposals and final site investigations.
- Present final land use proposals to the GLUWG.
- Brief USCINCPAC, CINCPACFLT, and PACAF for concurrence on land use proposals.
- Brief various activities in Washington D.C. for final acceptance of plan proposals.
- Brief representatives of the Government of Guam (GOVGUAM) and Congressman Underwood in Guam to present findings and recommendations of GLUP 94.
- Prepare and distribute Briefing Booklet documenting findings and recommendations.
- Prepare and distribute Draft GLUP 94 report for military command review.
- Incorporate review comments and distribute final GLUP 94 report.

B

U.S. MILITARY PRESENCE ON GUAM



CHAPTER B: U.S. MILITARY PRESENCE ON GUAM

1. Introduction

This chapter discusses U.S. military activities on Guam, their missions, and current and projected base loading levels.

2. Regional Perspective

The U.S. Asia-Pacific strategy, as outlined in the Department of Defense 1992 report to Congress titled "A Strategic Framework for the Asian/Pacific Rim," centers on the need for sustained security in the region. Military forward presence, sufficient overseas base structure to support these forces, and a strong system of bilateral security arrangements are the main principles of the U.S. security policy in Asia. The report also recognizes the "shifting U.S. military posture in Southeast Asia from a large, permanent presence at a single complex of bases in the Philippines to a more widely distributed, less fixed posture. This posture consists of regional access, mutual training arrangements, periodic ship visits, intelligence exchanges, and professional military educational programs rather than permanently stationed forces." The strategic location of Guam, and the availability of adequate facilities and infrastructure, are important elements to the success of this regional strategy.

3. Navy

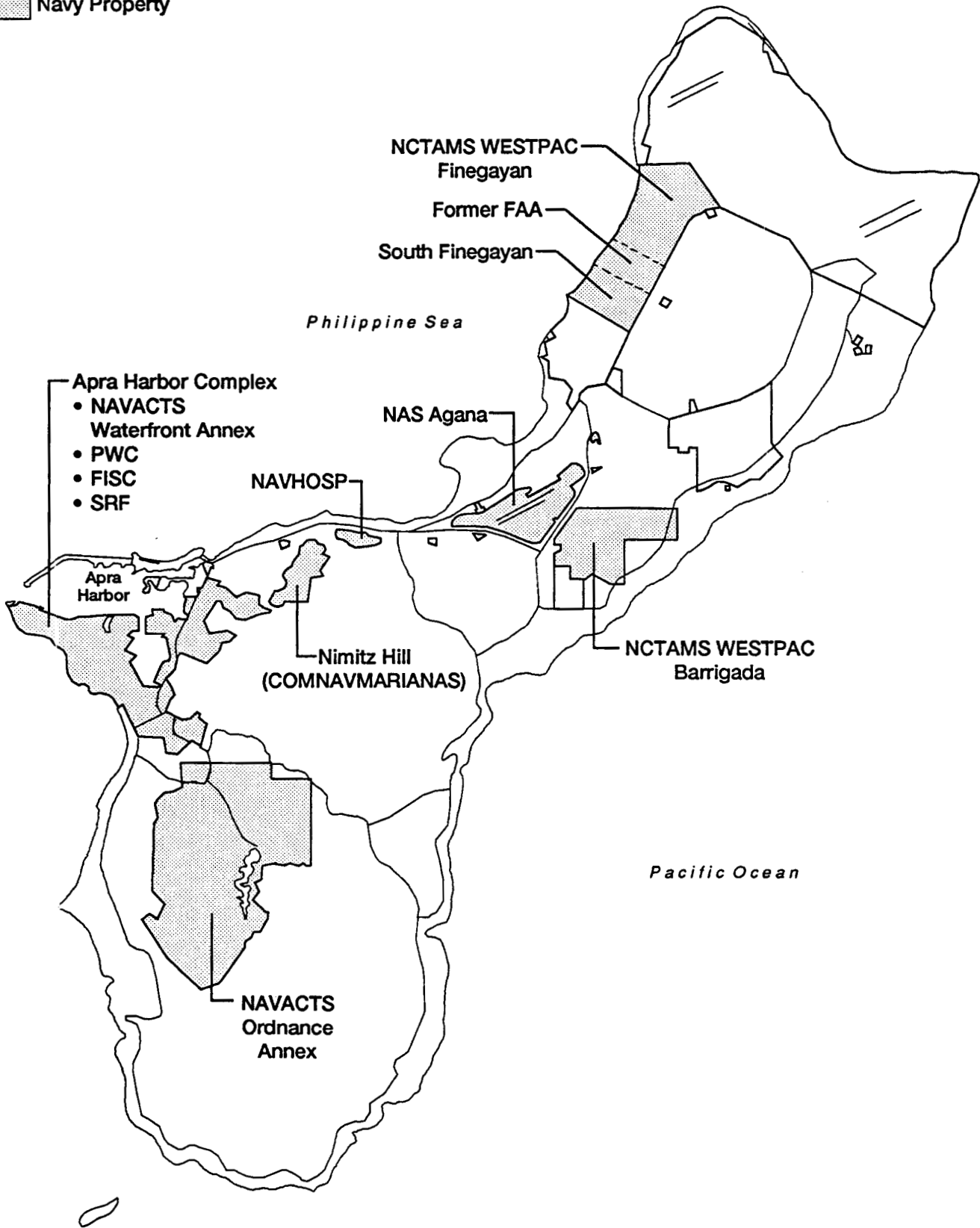
The primary mission of the Navy is to protect the U.S. by the effective prosecution of war at sea including, with its Marine Corps component, the seizure or defense of advanced naval bases; to support, as required, the forces of all military departments of the U.S.; and to maintain freedom of the seas.

In the Pacific Ocean, the Commander U.S. Naval Forces Marianas (COMNAVMARIANAS) comes under the command of the Commander in Chief U.S. Pacific Fleet (CINCPACFLT). COMNAVMARIANAS is the Regional Coordinator and the U.S. Commander in Chief, Pacific Command Representative for Guam, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of Palau (USCINCPAC REP Guam/CNMI/FSM/PALAU).

As Regional Coordinator, COMNAVMARIANAS assures that adequate support is provided to the Operating Forces of the Navy, and to shore activities and personnel of the naval service on Guam. COMNAVMARIANAS also serves as the interface between the Navy and the civilian community. As USCINCPAC REP Guam/CNMI/FSM/PALAU, the Commander coordinates actions by the Pacific Command service components located on Guam and in

LEGEND

 Navy Property



NAVY ACTIVITY MAP
GUAM LAND USE PLAN

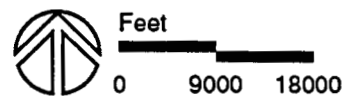


Figure:
B-1

Guam at Barrigada and at Mt. Santa Rosa for communications operations, and at Tumon and Potts Junction for petroleum storage.

5. Army

The U.S. Army Reserve-Marianas (USAR-M) is composed of the following units:

- Headquarters and Headquarters Company
- E Company, 442d Infantry
- 368th Military Police Company
- 297th Engineer Company

The mission of the USAR-M is to provide trained units and soldiers to the wartime commander, whether that wartime mission be Guam land defense or deployment to meet other contingencies. This mission may change to meet changing world situations.

6. National Guard

The Guam National Guard is composed of an Air National Guard (ANG) and an Army National Guard (ARNG). The ANG is housed at Andersen AFB and is composed of the following units:

- 254th Air Base Group
- 254th Civil Engineer Squadron
- 254th Services Flight

The mission of the ANG is to provide trained personnel and units capable of performing their wartime mission and military support to civil authorities in emergencies. Each unit within the ANG is capable of deploying within 24 hours to meet any contingency. The ANG has an approximate strength of 160 personnel.

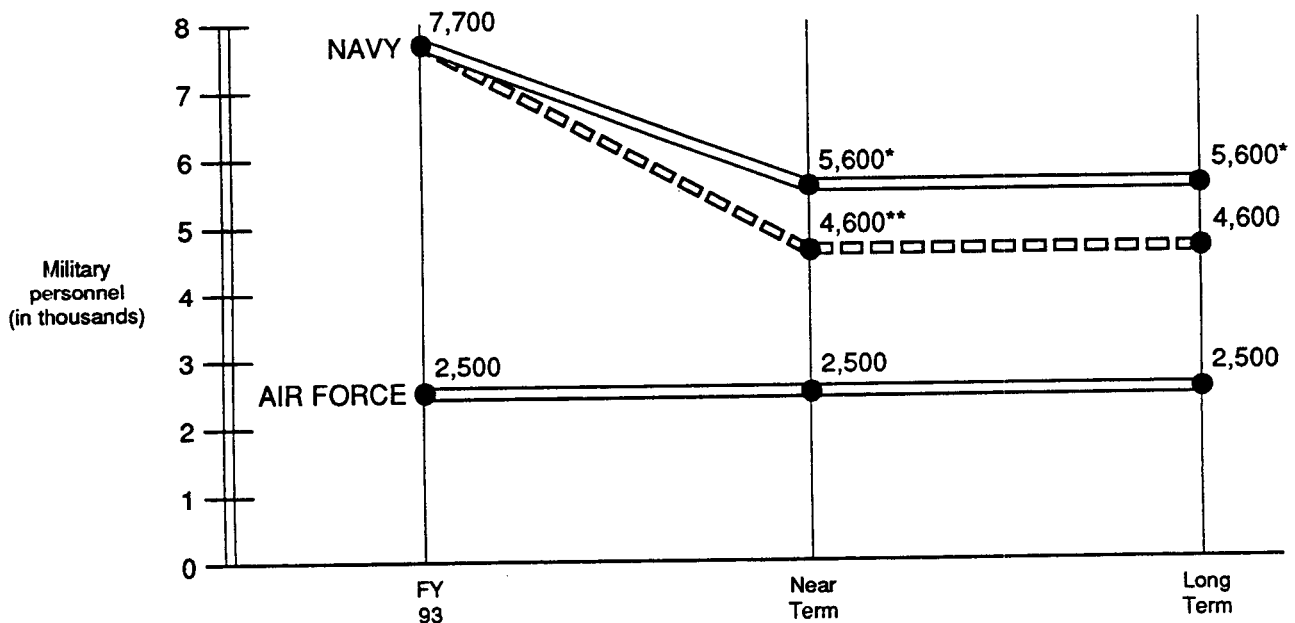
The ARNG is comprised of the following units:

- Headquarters, Guam Territorial Area Command
- 1-294th Infantry
- 1224th Engineer Detachment (utilities)
- 909th Quartermaster Detachment (water purification)
- 294th Military Intelligence Detachment

The mission of the ARNG is to provide trained soldiers and units capable of performing their wartime mission and military support to civil authorities in emergencies. The 1-294th Infantry requires maneuver space and ranges for

GUAM FORCE STRUCTURE

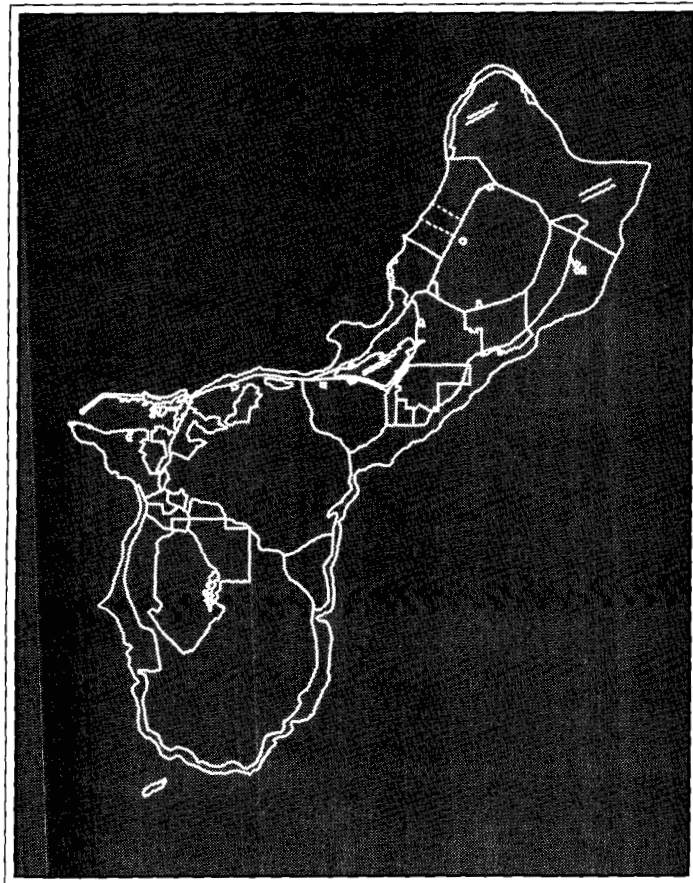
	<u>Current</u>	<u>Near Term</u>	<u>Long Term</u>
AIR FORCE	Peacetime + OP Plan	No Change	No Change
NAVY	Peacetime	Reduction: - Close NAS -AFSS to MSC	No Change
ADDITIONAL TRAINING REQUIREMENTS:			
MARINES - Special Ops	Peacetime	Increase	No Change
NAT. GUARD - Air/Army	Peacetime	No Change	No Change
RESERVES - MP - Infantry - Combat Engineers	Peacetime	No Change	No Change



* Loading with VQ-1, VQ-5 and misc. aviation support.
 ** Loading without VQ-1, VQ-5 and misc. aviation support.

C

FUNCTIONAL REQUIREMENTS ANALYSIS



CHAPTER C: FUNCTIONAL REQUIREMENTS ANALYSIS

1. Introduction

Objectives presented in Chapter A, which included identifying opportunities for functional consolidation and addressing requirements of various functional areas, are discussed in this chapter. First, an overall concept for DOD land use activities on Guam is presented. This is followed by a discussion of functional areas required to meet DOD's current mission, and those in the foreseeable future. The chapter concludes with an overview of the conclusions regarding the functional areas, which provides the basis for land recommendations and identification of releasable parcels in following chapters.

As previously discussed, DOD landholding on Guam is located throughout the island. As a first step in achieving desired functional consolidation, a long-range land use concept for DOD activities was established. As shown in Figure C-1, the concept recommends (where appropriate) the consolidation of activities in the northern sector, around Andersen AFB and NCTAMS WESTPAC Finegayan, and in the southern sector, around the Apra Harbor Complex and NAVACTS Guam Ordnance Annex. Such a concept would create more efficient operations by reducing travel requirements and the need to provide support services at outlying locations. This would result in a reduction in the DOD footprint on Guam as well as lowering operational costs. Additionally, by releasing property in Central Guam, it would provide valuable land for the development of commercial, industrial, and residential activities for the benefit of Guam's people.

Based on the overall long-range concept, an evaluation of specific functional areas was conducted. The following discussion presents conclusions from this process.

2. Training

a. Requirements. Various units require land and water areas on Guam to conduct routine training activities. The need for training areas has become a major issue during recent years due to the following reasons: 1) the rollback from the Philippines permanently relocated Navy units Naval Special Warfare Unit ONE (NAVSPECWARUNIT ONE) and Explosive Ordnance Disposal Mobile Unit FIVE (EODMU FIVE) to Guam; and 2) the increasing constraints to training on Okinawa have caused Marine and Army special operations units

to train in Guam. In order to meet current mission and training requirements, DOD must maintain training capabilities on Guam.

b. Discussion. Major ground and air units which currently train on Guam include NAVSPECWARUNIT ONE, EODMU FIVE, the U.S. Air Force 36th Civil Engineering Squadron/ Explosive Ordnance Disposal (CES/EOD) Flight, the Helicopter Combat Support Squadron FIVE (HC-5), the U.S. Army Reserve-Marianas, and the Guam Army National Guard. Additionally, most DOD personnel stationed on Guam require training in weapons firing and qualifications. Transient units include Marine units from the 31st Marine Expeditionary Unit (MEU) and Army Special Forces currently located in Okinawa. Figure C-2 indicates areas on Guam which have been used for training activities. The following discussion provides a brief analysis of these areas.

Andersen AFB/Tarague Beach. The small arms firing range and the EOD detonation site located along the north coastline have impacts on land use at Tarague Beach and on the north side of the runways above the cliffline. The firing range is an impact type range which offers 100 firing points, and is rated for fire on all military handguns, rifles, and machine guns up to the M60. The facility is used about 85 to 90 percent of the time each month. All major trainers on Guam use this facility. The EOD site provides a location for explosive training operations (in addition to disposal operations). Training is limited to only about five times per month, since training at the EOD site requires closure of the small arms range. Land uses within the safety zones of these facilities must be strictly controlled to prevent potential accidents from occurring.

Aircraft training operations generally involve touch-and-go takeoffs and landings on the runway. Impacts on land use occur from hazard zones relating to potential aircraft accidents and high noise areas. These constraints are discussed further in Section 4 of this chapter.

Northwest Field/Ritidian Point. Bivouac training occurs south of the runways at Northwest Field. This area is used by all trainers on the island. The runway area is infrequently used for airfield control training, parachute drops, and in the past for C-130 special operations (no further C-130 ops are proposed at this time). Forest areas surrounding the runways have been used for small unit maneuvers in the past. However, environmental regulations have largely restricted continued training exercises. The Air Force does not require land outside of the runway area for any training requirements. Nonetheless, as discussed in Section 5 of this chapter, land within a one-mile zone from the Air Force satellite tracking terminal must be retained.

In the past, physical features at Ritidian Point have provided excellent conditions for sea and land assault training. The area is now owned by the U.S. Fish & Wildlife Service (USFWS) and is designated as a Wildlife Refuge Area (also see Section 3, Chapter G for additional discussion of wildlife refuge issues). Recent requests to use the beach and cliff areas for training have been denied by USFWS. USFWS is planning to increase its presence in the area, in addition to providing for increased access by the civilian community. This, in addition to restrictions associated with the Endangered Species Act, will likely preclude future training activities at Ritidian Point.

Andersen South. This area has been used by all trainers for small unit maneuvers, as well as by engineers from the Army Reserves. Training in this area has decreased in recent years. The Air Force no longer has requirements for the undeveloped areas at Andersen South.

NCTAMS WESTPAC Finegayan/Harmon Annex. The pistol and rifle ranges at NCTAMS Finegayan are limited in size. However, the facilities are used by all trainers on the island, and are important for maintaining qualifications requirements.

The Harmon Annex area is used by the Army Reserves military police forces for vehicle patrol training. This area is to be released under earlier GLUP recommendations, and will therefore be unavailable for training in the future.

Apra Harbor Complex. This area is valuable for training, particularly on Orote Peninsula and the surrounding waters of Inner and Outer Apra Harbor. All trainers utilize interior jungle areas and the jungle warfare facility for training operations. Furthermore, with the loss of access to Ritidian Point, shoreline and cliffline areas around the peninsula have become important for sea and land assault training. The ability to conduct training operations on Orote Peninsula is constrained by ordnance handling operations at Kilo Wharf. Kilo Wharf is the only ammunition handling wharf on Guam and generates an Inhabited Building Distance (IBD) explosives safety zone of 7,210 feet generated by the 3,000,000 pounds Net Explosives Weight (NEW) limit for Class 1, Division 1 explosives. (Also see the discussion on waterfront facilities in Section 14 of this chapter.) Training operations are only authorized outside of the Public Traffic Route (PTR) distance, which is 4,325 feet from Kilo Wharf. Since a 4,325-foot arc covers the width of the peninsula, many training exercises and facilities in the area are in violation of explosives safety criteria.

A recent review of this situation by the Navy's Ammunition and Hazardous Material (AMHAZ) Board recommended that ongoing and proposed training exercises and facilities should have explosives safety site approval.

- Reserve land areas and safety zones for firing range expansion projects on Orote Peninsula, and maintain existing firing range facilities at Andersen AFB and NCTAMS Finegayan.
- Submit a plan for training exercises and facilities on Orote Peninsula for explosives safety site approval in accordance with the AMHAZ Board recommendations.
- Release land areas at Northwest Field and Andersen South which are no longer required for mission requirements.

3. Family Housing

a. Requirements. Section 6 in Chapter B provided an overview of projected FY99 base loading requirements on Guam. These figures provide the basis for future family housing requirements. For the Air Force, the projected base loading is expected to remain constant from the present loading of 2,500 PN. Based on the decision to temporarily relocate naval air squadrons to CONUS, the Navy's projected base loading is 4,600 PN. The following family housing discussion is based on these projected numbers.

b. Discussion. Figure C-3 identifies existing Navy and Air Force family housing areas. Navy and Air Force family housing issues are discussed separately below. Major planning assumptions used to calculate requirements presented in the discussion include:

- Air Force and Navy will plan to satisfy 100 percent of their housing requirements with on-base housing, based on the economic benefits of providing housing assets versus paying housing allowances.
- 55 percent of military personnel on Guam are accompanied by dependents and require family housing.
- 5 percent of housing units are undergoing major renovation/repair at any given time.

Navy

The Navy currently has an existing inventory of 3,091 family housing units. This will increase by 300 as soon-to-be-constructed units in the Tupalao area within the Apra Harbor Complex come on line. The current housing requirement is 4,447 units. This indicates a near-term deficit of 1,056 units after the Tupalao units are constructed.

Guam can be divided into north, central, and south geographical sectors in terms of Navy activities. Currently, the Navy housing asset distribution is 50 percent in the south region, 20 percent in the central region, and 30 percent in the north region. This roughly corresponds to the locations of Navy operations. For the projected loading of 4,600 PN, the distribution shifts to about 40 percent of the personnel in the north region and 60 percent in the south region. Downsizing of family housing assets should follow these general geographical distributions.

Based on a projected level of 4,600 PN, the housing requirement declines to under 2,700 units. Assets can generally be balanced with requirements by reducing inventories at the former FAA site, Nimitz Hill enlisted housing area, NAVACTS Guam Ordnance Annex, Sumay in Apra Harbor, Apra Heights, and the NAS Agana enlisted housing area. Reductions in these locations would lower the total family housing inventory to approximately 2,570 units, thereby reducing the Navy's overall shortfall to about 100 units.

Air Force

The current family housing requirement for the Air Force is 1,770 units. This includes the need to provide for approximately 279 Navy aviation personnel and 32 DOD civilians. Existing assets, located at Andersen AFB, Andersen South, and the Australian Cable site near Tumon Bay, amount to a total of 1,751 units.

Based on the existing level of inventory, the six units at the Australian Cable site could be released without adversely impacting the Air Force's ability to satisfy its housing requirements.



c. Conclusions/Recommendations. As base loading levels change, the most evident impact on land use requirements is in the area of family housing. Recommendations regarding family housing which impact future land use on Guam are:

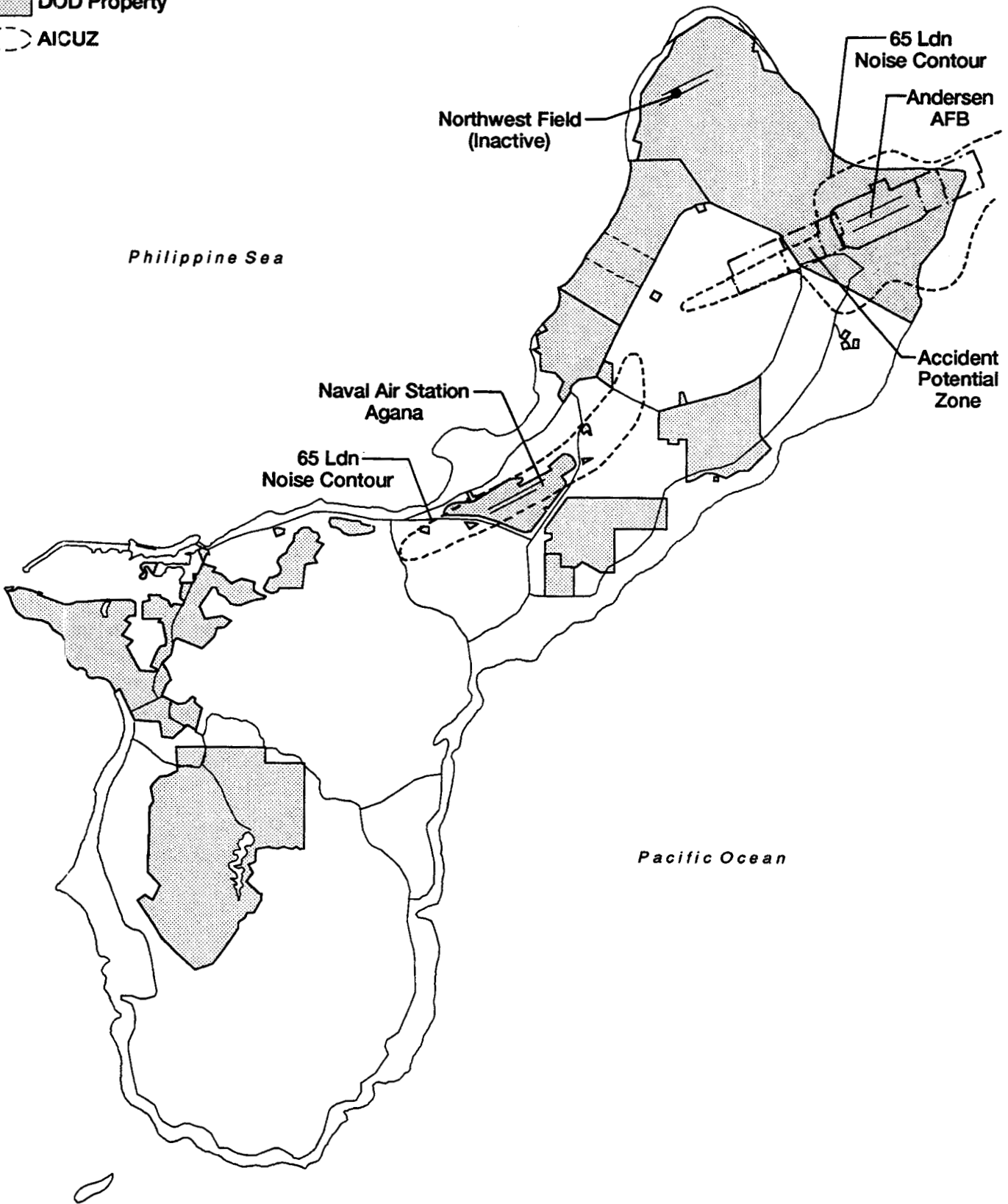
- Reduce family housing inventories at the former FAA site, Nimitz Hill enlisted housing area, NAVACTS Guam Ordnance Annex, Sumay in Apra Harbor, Apra Heights, NAS Agana enlisted housing area, and the Australian Cable site to accommodate projected base loading requirements.

4. Aviation

a. Requirements. Until recently, requirements for aviation operations on Guam have increased due to the growth of the VQ-5 squadron, and the reassignment of VRC-50 and the Naval Aviation Repair Facility, Pacific

LEGEND

-  DOD Property
-  AICUZ



**AVIATION OPERATIONS
GUAM LAND USE PLAN**

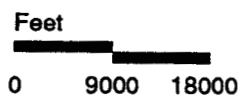
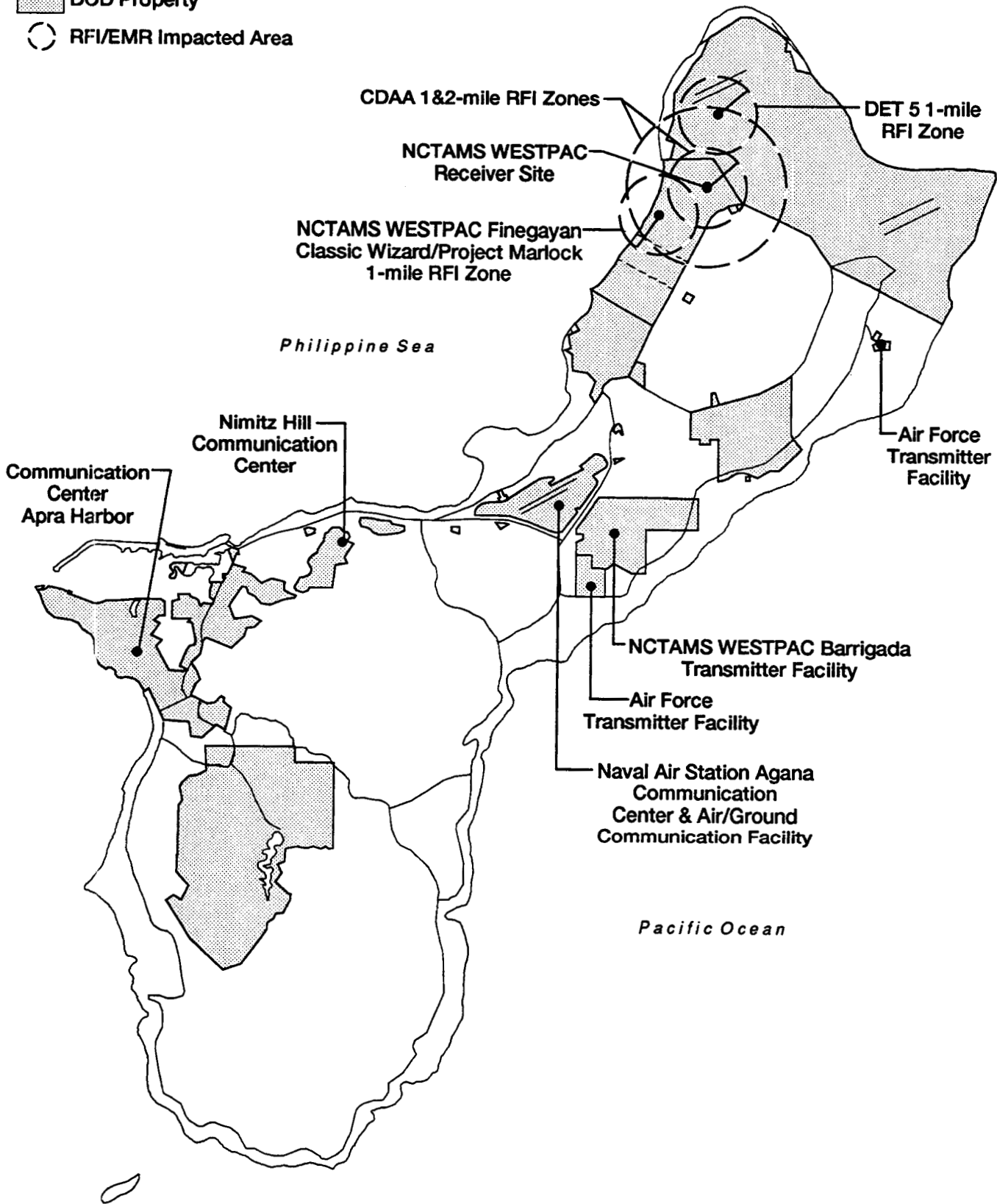


Figure:
C-4

LEGEND

-  DOD Property
-  RFI/EMR Impacted Area



COMMUNICATIONS FACILITIES
GUAM LAND USE PLAN

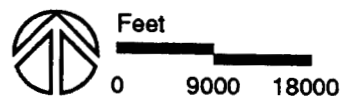


Figure:
C-5

Structures protruding into this horizon plane will cause blind spots in the radar's reception.

c. Conclusions/Recommendations. There is a significant mission requirement for communications facilities on Guam. DOD transmitter facilities, located in the central part of the island, would be difficult to relocate due to the high cost of moving and/or reconstructing the facilities, as well as a lack of suitable sites in other areas. Recommendations which impact future land use are:

- Retain ownership of lands currently within the CDAA, DET 5, Classic Wizard, and Project Marlock 1-mile RFI zones.
- Obtain restrictive easements on non-DOD land within the 1-mile CDAA zone to ensure compatible future development.
- Release lands in the Barrigada area which are no longer needed for mission requirements. Place height and development restrictions on any released land to protect the NEXRAD mission and the public from HF hazards.

6. Recreation

a. Requirements. DOD recreational facilities exist to support and enhance the morale and quality of life for military personnel and families. DOD recreational opportunities on Guam are key ingredients in maintaining high morale for service men and women who are in many cases thousands of miles from their families.

b. Discussion. Navy and Air Force activities provide morale, welfare and recreation support to DOD personnel on Guam. Recreational districts are shown in Figure C-6. All facilities within each district are on the plant account of the activity at which they are located. However, each district has only a single Morale, Welfare & Recreation (MWR) Department and District Supervisor, who is responsible for the day-to-day operation of MWR programs and maintenance of facilities within the district. Each district has its own recreation programs and most include intramural sports activities. In addition to sports, numerous hobby interests are provided on an individual basis, while specialized classes are offered in a variety of hobby and recreational fields.

The following provides an overview of individual recreation districts.

Apra Harbor. This is the largest of the Navy districts, providing a full range of facilities for personnel within Apra Harbor, as well as NAVACTS Guam

Ordnance Annex, Nimitz Hill, and on transient ships. Facilities within this district are heavily utilized and generally considered to be adequate.

NAVHOSP. The MWR program at NAVHOSP was recently established to more adequately serve the recreational needs of personnel within the activity. Previously, NAVHOSP had been part of the NAS Agana District. Existing facilities are adequate to serve the population at NAVHOSP and no expansion plans are proposed.

NAS Agana. Facilities in this district primarily serve personnel living within the station. Major facilities include a gymnasium, theater, and a recently constructed sports complex. Demand for use of the sports complex has been high, even from the civilian community. Intermittent use of the facilities by the Guam Department of Education and private corporations has been authorized for league and tournament activities. After relocation of the naval air squadrons to CONUS, DOD personnel will no longer occupy enlisted family housing and bachelor quarter facilities at NAS Agana, thereby eliminating the need to retain recreational facilities in the district.

Barrigada. The only Navy golf course on the island is located at NCTAMS WESTPAC Barrigada. The course is heavily used by military personnel and their bona fide guests and is adequate for current needs. The golf course is administered and maintained by NCTAMS WESTPAC.

NCTAMS WESTPAC. This district serves personnel at NCTAMS WESTPAC Finegayan, the former FAA site, and the South Finegayan housing area. Facilities are generally adequate to meet current requirements.

Andersen AFB. This district serves Air Force and Navy personnel on the main base and those living at Andersen South. Similar to Navy districts, the MWR Department in this district provides a full range facilities and programs to meet the recreational requirements for Air Force and Navy personnel assigned to the base. Existing facilities are adequate.

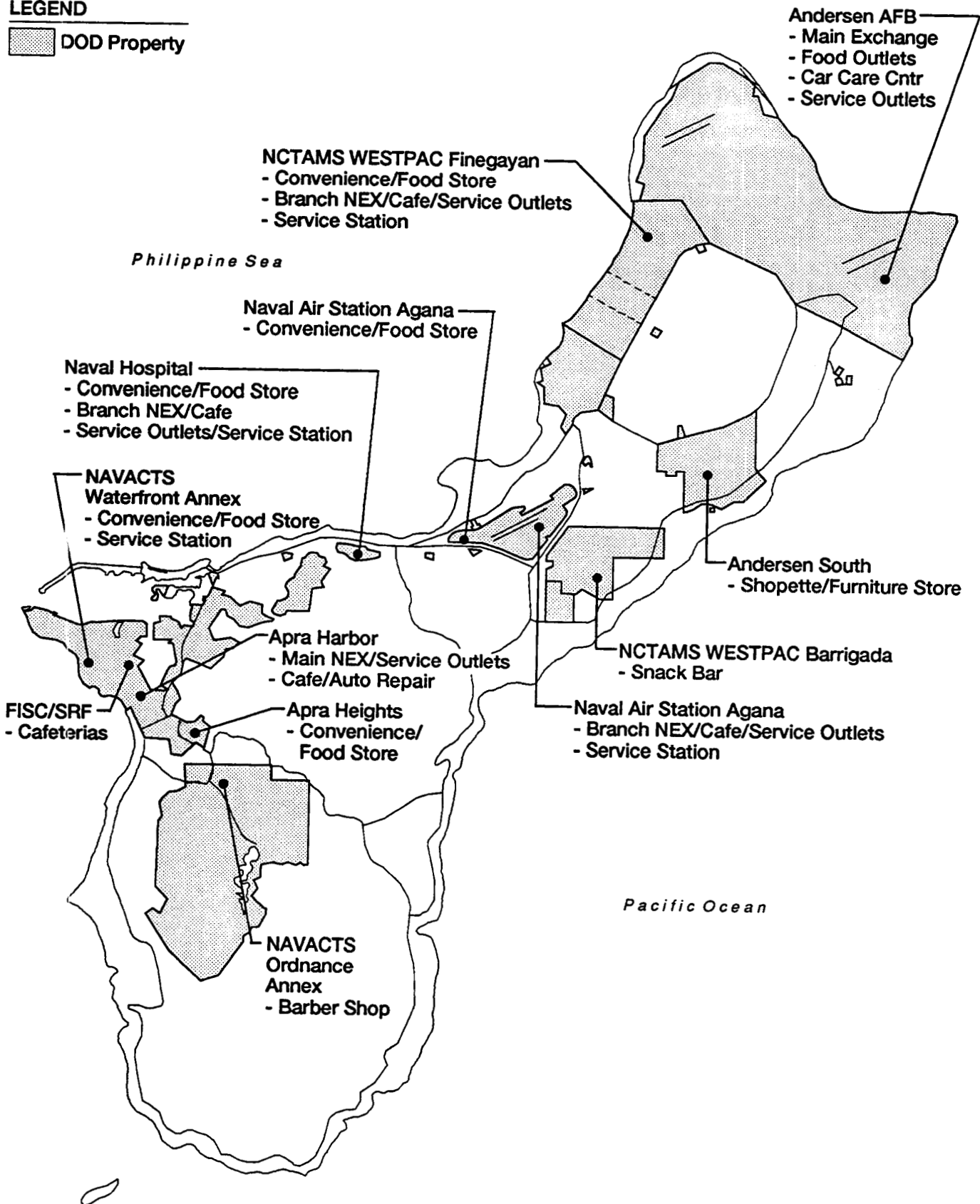
c. Conclusions. Recreational facilities on Guam are extremely valuable to maintaining a desirable quality of life for military personnel and their dependents. Existing facilities satisfy recreational requirements. All facilities, except those at NAS Agana, should be retained.

7. Exchange and Commissary

a. Requirements. Exchanges and commissaries support active duty personnel and their dependents, retired DOD personnel, and authorized civilians on Guam. Exchanges provide the primary retail outlets for consumer goods and services, in addition to snack bars and restaurants, laundry, service

LEGEND

 DOD Property



EXCHANGE AND COMMISSARY FACILITIES
GUAM LAND USE PLAN

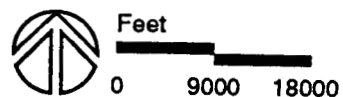


Figure:
C-7

Andersen AFB. Currently, the Air Force has an overall storage requirement of 50,800 short tons of ordnance. This correlates to a total requirement of 406,400 square feet of magazine space. Existing assets provide 407,725 square feet of space which satisfy the Air Force's requirement.

NAVACTS Guam Ordnance Annex. The Navy also has adequate facilities to satisfy its requirements. The overall storage requirement is 13,048 short tons of ordnance, or 195,720 square feet of magazine space. Existing assets provide 278,177 square feet. Surplus magazine space is being used to meet storage requirements of Mobile Mine Assembly Group (MOMAG) Unit Eight, NAVSPECWARUNIT ONE, and provide overflow storage capabilities to accommodate an ammunition ship download.

An evaluation of the potential to consolidate Air Force and Navy storage facilities into a single area, either at Andersen AFB or at the NAVACTS Guam Ordnance Annex, was conducted. The findings indicated that from a land standpoint, consolidation could be accomplished at either station. However, from a cost standpoint, consolidation would not be feasible given current budgetary constraints, since additional magazine space would have to be constructed at either location. Additionally, operational requirements would make consolidation impractical. Ship replenishments at Kilo Wharf occur approximately 60 times per year. If the Navy's ordnance was stored at Andersen AFB in the north, the distance between the storage area and the waterfront facilities would create significant operational inefficiencies, in addition to requiring a sizable increase in the hauling of ordnance through civilian communities. Similar negative effects would impact Air Force operations if ordnance storage was consolidated at the NAVACTS Guam Ordnance Annex. Due to the various configurations of ammunition which must be finalized just prior to loading on the aircraft, the transportation of ordnance from the Ordnance Annex to Andersen AFB would reduce response times for aircraft operations, thereby impacting mission readiness.

A third option for consolidation, involving the relocation of the NAVACTS Guam Ordnance Annex facilities to Orote Peninsula, was also considered. This action would allow for the release of land at the Ordnance Annex. It would also provide an ideal ordnance handling situation in which the wharf is located away from civilian uses, and magazines are located within the ESQD generated by the ammunition wharf. From a land standpoint, relocation of these facilities is possible. However, the significance of Orote Peninsula as a training area, as discussed previously in Section 2 of this chapter, precludes relocation as a viable alternative. Furthermore, funding for such a relocation is not considered feasible.

Shipping and Receiving. The Navy requires wharf facilities to accommodate ordnance shipping and receiving operations on Guam. Facilities should be

c. Conclusions. Based on current mission requirements, and the distance between waterfront and airfield facilities at Apra Harbor and Andersen AFB, existing separate ordnance operations areas need to be retained in order to maintain readiness capabilities and a high degree of operational efficiency. Additionally, separate EOD disposal sites should also be retained in order to satisfy emergency ordnance disposal needs of the civilian community.

9. Supply

a. Requirements. Air Force and Navy operations require supply functions to handle and distribute military provisions and consumable supplies. Storage facilities in proximity to major operational users are essential to maintain efficient operations.

b. Discussion. The Air Force and Navy maintain separate supply warehouses and distribution systems to support their missions. FISC Guam provides limited container unstuffing and distribution for Air Force, but in general, there is little overlap of supply functions.

FISC Guam. FISC Guam supplies Navy fleet units and supports shore activities of DOD activities and federal agencies on Guam. The primary FISC warehouses and cold storage facilities are located in the Apra Harbor Complex (Figure C-9). Other Navy activities (NAVACTS, PWC, SRF) provide their own supply areas for ready issue storage. Ocean freight arrives through Navy wharves or at the commercial port. Air cargo arrives through NAS Agana or Andersen AFB.

Through new warehouse construction, FISC Guam will be able to accommodate an increase in its mission due to the rollback of operations from the Philippines. The existing and proposed facilities will be adequate for its mission.

Andersen AFB. The Air Force supply squadron at Andersen AFB provides similar warehousing and distribution services. In-coming supplies largely enter Guam through the commercial port, then either go to FISC for unstuffing and distribution, or are trucked directly to Andersen AFB.

The closure of NAS Agana is not expected to impact supply land use on the base.

c. Conclusions. The proximity of supply warehouses to operational areas is essential for operational efficiency. Consolidation of Navy and Air Force supply functions would require merging two separate inventory and distribution systems. The result may provide benefits from an administrative standpoint, but would have little if any impact on land use. Additionally,

individual activities and outlying areas would continue to have requirements for ready-issue storage. Separate Navy and Air Force supply operations and warehouses will be retained.

10. Headquarters.

a. Requirements. Facilities for command headquarters operations are required on Guam to provide overall control of Air Force and Navy operations in the Pacific Region. Facilities are also required for the U.S. Army Reserves and the National Guard.

b. Discussion. Headquarter facilities on Guam are generally located within close proximity to related operational areas (Figure C-10). The 13th Air Force headquarters, located at Andersen AFB, is adequate for current requirements.

Navy headquarters for COMNAVMARIANAS is located at Nimitz Hill, approximately six miles from the center of naval operations at Apra Harbor. In addition to administrative functions, facilities (primarily Bldg. 200) at Nimitz Hill include the OPCON Center for fleet operations, the Naval Telecommunications Center (NTCC), and the Naval Pacific Meteorology and Oceanography Center West/Joint Typhoon Warning Center (NAVPACMETOCEN WEST/JTWC (formerly the Naval Oceanography Command Center/JTWC). These facilities satisfy current requirements for headquarters operations.

From a functional standpoint, relocating COMNAVMARIANAS to Apra Harbor would somewhat improve communications and operational efficiency. However, since any intended change in land use or release of property would also require the relocation of NAVPACMETOCEN WEST/JTWC operations, the overall costs of new facilities is not considered a viable alternative.

Headquarters for the Guam Army National Guard are currently located at Fort Juan Muña near the Guam International Airport. DOD land within the current boundaries of NCTAMS WESTPAC Barrigada is being made available for construction of a new National Guard armory/headquarters facility. U.S. Army Reserve headquarters are also located at NCTAMS WESTPAC Barrigada.

c. Conclusions. Existing headquarters facilities are adequate for current requirements. In terms of future land use on Guam, existing facilities for the 13th Air Force, COMNAVMARIANAS, and U.S. Army Reserves should be retained. The property at NCTAMS WESTPAC Barrigada should be turned over to the National Guard.

11. Petroleum-Oil-Lubricants (POL)

a. Requirements. The Navy and Air Force have requirements for readily accessible fuel and related storage facilities. According to the Defense Fuel Region, Pacific (DFR PAC), the proposed bulk fuel storage requirement on Guam for all DOD activities is 2.9 million barrels. The Navy's requirement supports existing operations, while the Air Force's requirement largely is intended to support a contingency plan. The existing Navy fuel storage requirement for about 1,440 million barrels is expected to remain constant in the future. The Air Force's requirement is slightly more at about 1,480 million barrels.

b. Discussion. DOD fuel arrives on Guam via ship and is off-loaded at the FISC fuel piers (Delta and Echo) in Apra Harbor. The fuel is transported via pipeline to Navy and Air Force storage facilities as shown in Figure C-11. Navy fuel operations are controlled by FISC Guam. Most fuel storage tanks are located at Sasa Valley and Tenjo Vista. The Navy currently owns a sizeable amount of acreage in these areas east of Apra Harbor. Most of the land is not used for operational purposes, and is maintained largely as a security zone and buffer from surrounding land uses. Additional facilities are located at NAS Agana to accommodate the current mission at the station. These facilities will be released as part of the BRAC recommendations for NAS Agana.

Most Air Force fuel storage is located on the main base in Andersen 1, 2 and 3 Tank Farms. Outlying areas owned by the Air Force include the Tumon Tank Farm, located on Marine Drive near Tumon Bay, and Potts Junction, located on Route 3 across from NCTAMS WESTPAC Finegayan. The Potts Junction Tank Farm has been deactivated, and similar plans are proposed for the Tumon Tank Farm and most of the Andersen 1 Tank Farm on the main base, since these areas provide surplus capacity to the existing facility requirement. These actions will reduce the Air Force capacity by over 30 percent, and reduce the overall DOD capacity to meet proposed requirements.

c. Conclusions. Navy future POL storage requirements are remaining steady, while Air Force requirements are declining. As a consequence, the Air Force no longer requires outlying areas at Tumon and Potts Junction. After appropriate clean-up and remediation, these sites could be released. The discussion on communications facilities in Section 5 noted that the 1-mile RFI zone from the CDAA antenna at NCTAMS WESTPAC Finegayan extends beyond the activity boundary and affects land east of Route 3. The Potts Junction storage facilities are in this area. Release of this area would require restrictions which limit development and protect the mission of the CDAA.

The Navy needs to retain existing facilities at Sasa Valley and Tenjo Vista, plus the fuel piers in Apra Harbor, in order to continue its mission. The pipeline corridor and easements between Apra Harbor, the fuel piers, and Andersen AFB must also be retained. This includes the route through NAS Agana and Potts Junction.

12. Health Services

a. Requirements. Medical and dental facilities are required throughout Guam to provide adequate services for DOD personnel.

b. Discussion. Existing medical and dental facilities are shown in Figure C-12. NAVHOSP Guam in central Guam, and the Naval Dental Clinic (NAVDENCLINIC) Guam in the Apra Harbor Complex, provide medical and dental care for all military, dependents, and eligible civilians on Guam. These activities provide primary care services and are supported by branch facilities at the NAVACTS Guam Ordnance Annex, the NAVACTS Guam Waterfront Annex, NAS Agana, and NCTAMS WESTPAC Finegayan. Air Force personnel are provided outpatient care services at Andersen AFB, but must go to NAVHOSP Guam or NAVDENCLINIC Guam for surgical or other major procedures. NAVHOSP Guam is the only accredited hospital on Guam.

The hospital at NAVHOSP Guam was constructed in 1954 and provides a total of almost 250,000 square feet of space. Although there are some deficiencies in the facility relating to the original design and layout, the structure is in generally good condition. During the past two years, it has survived a number of typhoons and a severe earthquake. The facility is also larger than required to support a 45-bed hospital requirement which is its current loading. However, based on its forward location in the Pacific Region, the hospital provides a valuable resource in terms of facilities and equipment to meet emergency conditions that may occur in the future.

c. Conclusions. Land and facilities at NAVHOSP Guam should be retained to meet current and potential emergency situations resulting from regional conflicts. The branch facilities at NAS Agana may be discontinued when the Navy VQ squadrons are relocated off-island.

13. Utilities

a. Requirements. In the past, all utilities on Guam were provided by the Navy. The past decade can be characterized as a period of transition, where some utility services have gradually come under control of GOVGUAM. Even as this process continues, DOD requirements for adequate water, electric power, sewer, and other utility services will remain essential to meeting mission objectives.

b. Discussion. The following discussion analyzes major utility systems on Guam.





Electrical/Telephone Facilities. The Navy and Guam Power Authority (GPA) have had a Customer Service Agreement (CSA) which provides for the joint use of separately owned power generation, transmission and distribution facilities. This agreement has also included performance requirements, which if met, would allow certain facilities to be transferred to GPA. A majority of these performance requirements have now been met by GPA. Within the next several years, most assets (excluding the Orote Power Plant in the Apra Harbor Complex) and transmission lines will be turned over to GPA. The Air Force currently purchases electrical power service from the Navy PWC. The major facilities are shown in Figure C-13.

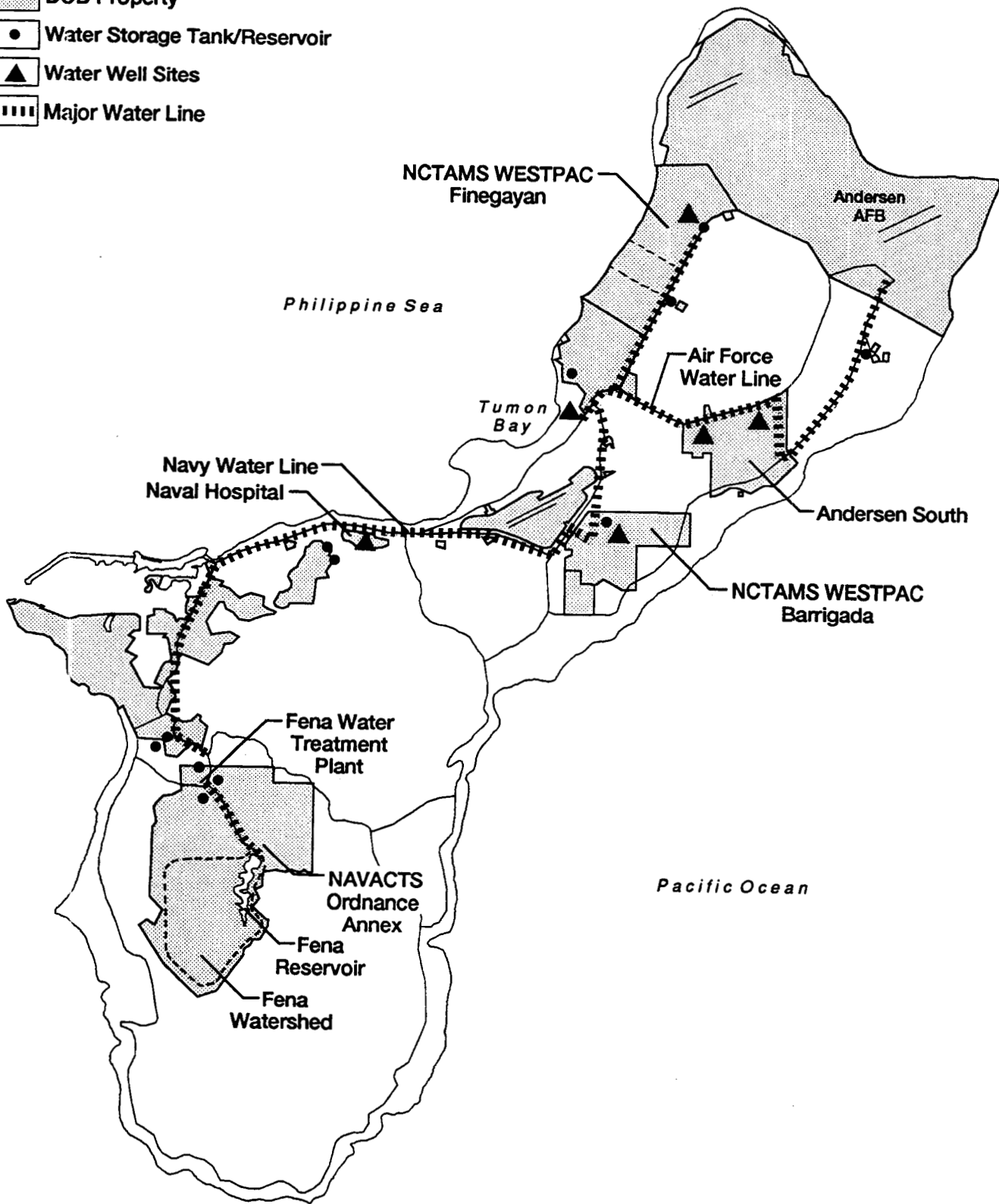
Civilian and military communities operate separate telephone systems that are interconnected to allow for access to each system. The military phone system is operated by NCTAMS WESTPAC. Upgrades to the system have eliminated the need to maintain the existing telephone exchange facility at Tamuning which is also identified in Figure C-13. A small switching facility at Harmon is still needed, but could be relocated to another site.

Water System. The Navy and Air Force maintain separate water systems to accommodate each service's requirement for water (Figure C-14). The Navy's Fena system provides water to all naval facilities, in addition to civilian communities in southern Guam (approximately 5 million gallons per day). The primary source of water is the Fena Watershed located within the boundaries of the NAVACTS Guam Ordnance Annex. Water from the Fena Reservoir, along with several springs also located in the watershed, is transferred to the Fena Treatment Plant where it is processed for distribution or stored in tanks. The current "wet" season capacity of the system is 16 million gallons per day (mgd), and usage is approximately 10.5 mgd. The capacity during the "dry" season falls to about 12 mgd, while usage increases to around 12.5 mgd. This shortfall during "dry" seasons has led to the proposal of a new project (Lost River Project) designed to increase the capacity of the Fena System. This will primarily accommodate the demand from the civilian community. In addition to the above, the Navy maintains wells at NAVHOSP Guam, NCTAMS WESTPAC Barrigada, NAS Agana, and NCTAMS WESTPAC Finegayan to help serve military communities in the north.

The Air Force water system is supplied by wells located at Andersen South and near Tumon Bay. The capacity of the system is approximately 4 mgd. The current use is about 3 mgd. The Air Force has indicated that certain lands at Andersen South are no longer required. These areas surround existing well

LEGEND

-  DOD Property
-  Water Storage Tank/Reservoir
-  Water Well Sites
-  Major Water Line



EXISTING WATER SYSTEM
GUAM LAND USE PLAN

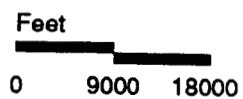
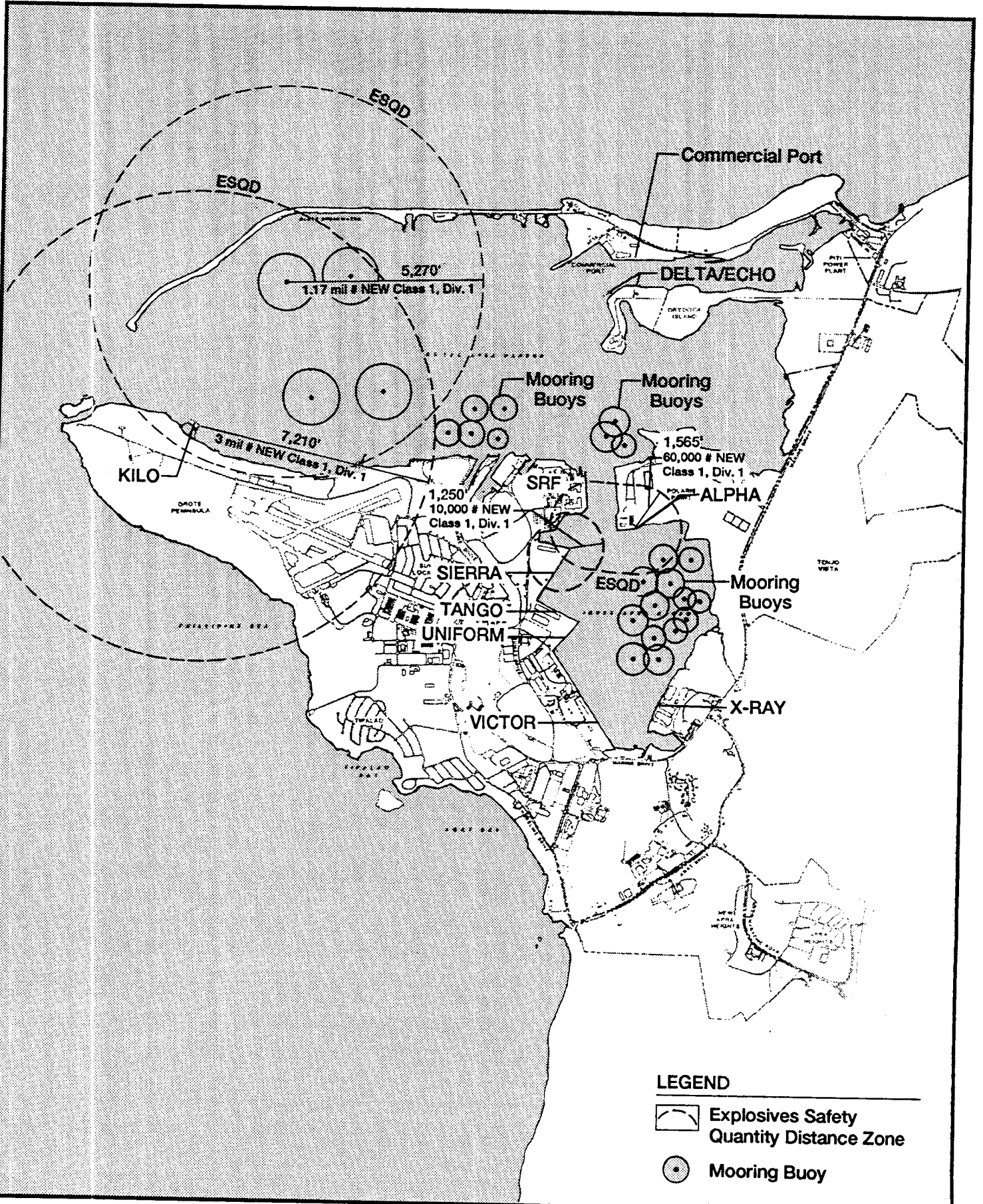


Figure:

C-14



WATERFRONT FACILITIES
GUAM LAND USE PLAN

Figure:
C-15

and training operations could be affected, and flexibility to meet changing future requirements would be restricted.

c. Conclusions. The Apra Harbor Complex is the center of naval operations in the region. Existing active waterfront areas should be retained to satisfy mission requirements. Retention of the Inner Harbor and surrounding lands is essential to maintain adequate security in the area.

15. Solid/Hazardous Waste Disposal

a. Requirements. DOD requires processing and disposal of solid and hazardous waste materials generated by its operations.

b. Discussion. Defense Reutilization and Marketing Office (DRMO) is a FISC Guam tenant at the Apra Harbor Complex. It provides disposition and sale of excess property and scrap material, including hazardous materials and wastes. DRMO provides services to all DOD activities on Guam, Singapore, and Diego Garcia.

DRMO Guam has expanded its mission and service area since the closure of naval operations at Subic Bay. Even if DOD operations decreased or ceased on Guam, DRMO's mission would remain, as it would need to dispose of remaining property and hazardous materials. Existing and planned facilities (e.g., Conforming Storage Facility) will be adequate to support DRMO's current and projected mission and no future impacts on land use will be required.

The Air Force and Navy each maintain individual sanitary landfills at Andersen AFB and Apra Harbor Complex, respectively (Figure C-16). A GOVGUAM sanitary landfill in central Guam (Ordot) provides for civilian solid waste disposal needs.

c. Conclusions. Current operations to dispose of hazardous and non-hazardous wastes are adequate and will not impact future land use decisions.

16. Submerged Lands

a. Requirements. The DOD currently owns submerged lands out to three miles offshore adjacent to DOD-owned fast lands. Ownership is beneficial when DOD owns the adjacent shoreline or when areas are encumbered by safety hazard zones to maintain security, control access to operational areas, and promote public safety.

b. Discussion. Some submerged lands are encumbered by man-made constraints such as explosives safety zones and small arms range surface

danger zones. Other submerged lands include environmental resources such as the Marine Resources Reserve off the coast of Andersen AFB. Generally, if DOD no longer owns shoreline areas, there is no longer a requirement to retain ownership of adjoining submerged areas.

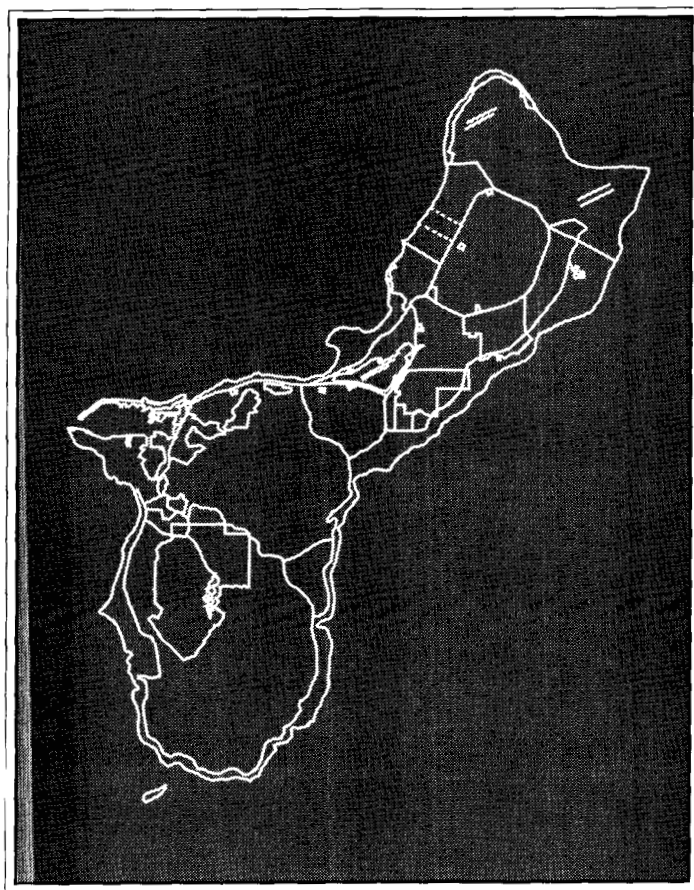
c. Conclusions. Submerged areas adjoining Ritidian Point and adjacent private lands, Harmon Annex, and along Asan Beach and Cabras Island can be released. See Chapter E for identification of these areas.

17. Functional Analysis Summary

Based on the previous discussion of functional areas, Figure C-17 provides a summary of areas needed to meet current mission requirements on Guam. The figure shows lands which are currently developed, in addition to undeveloped areas that are impacted by DOD missions (i.e., training areas, explosive safety zones, electromagnetic interference/hazard zones, and aircraft safety zones). The figure also identifies areas not required for DOD missions. These areas, predominantly located in central Guam, are consistent with the Long Range Land Use Concept presented in Figure C-1 at the beginning of this chapter.

D

LAND USE ANALYSIS



CHAPTER D: LAND USE ANALYSIS

1. Introduction

Land use at military installations can be significantly affected by natural and man-made constraints. These constraints can determine the siting of various types of land use, and can identify areas which should be retained to protect mission requirements. This chapter presents an overview of major constraints which impact land requirements on Guam, followed by a discussion of existing DOD land use. Additional constraints which do not necessarily identify boundaries of mission requirements, but nonetheless can impact future land use, are discussed in Chapter G, Additional Planning Issues.

2. Man-Made Land Use Constraints

Some military operations generate requirements for land far beyond the area physically occupied by their specific facilities. These land areas may be termed "impacted" or "hazard" zones. It is desirable that use of these lands be highly controlled. Appendix A provides additional information on hazard zone safety guidelines.

a. Explosives Safety Quantity Distance (ESQD) Arcs. Hazard zones have been established by the DOD for the storage or handling of various quantities and types of ammunition and explosives. These hazard zones increase as the quantity of explosives increases, making it desirable to limit the total quantity of explosives at any one location to minimize the area covered by the hazard zone. Minimum distances are prescribed for separating explosives from inhabited structures, from public roads, and from other explosives. In general, these structures are proportional to the quantity of ammunition at each location and are called ESQD arcs. DOD Standard 6055.9-STD states that land within ESQD arcs must be owned by the U.S. Government.

Land uses within the ESQD arcs are severely limited by explosives safety criteria for non-ordnance related functions. For example, maneuver training exercises are only authorized outside the Public Traffic Route distance from ordnance storage or handling sites. Due to shortages of training lands on Guam, training exercises are conducted within ESQD arcs in violation of explosives safety criteria.

b. Aircraft Noise and Safety Areas. The Air Installation Compatible Use Zone (AICUZ) program was initiated by the DOD to recommend land uses which may be compatible with noise levels, accident potential, and airfield operations. The initial step of the AICUZ process is to prepare a noise study to define noise exposure contours. For land use planning, the noise exposure

constitute a hazard to personnel, explosives or fuels, or may interfere with non-military electronic equipment. General guidelines recommend that land uses within a one-mile radius of transmitting antennas be controlled to preclude EMR problems. The actual degree of hazard at a specific location, however, must be determined by a special study since the degree of hazard can vary with the type of antenna, radio frequencies transmitted and amount of radio frequency energy radiated.

In addition to EMR zones required for high-powered transmitting antennas previously discussed, specialized transmitting facilities such as air navigational aids require isolation in order to operate correctly.

3. Natural Land Use Constraints

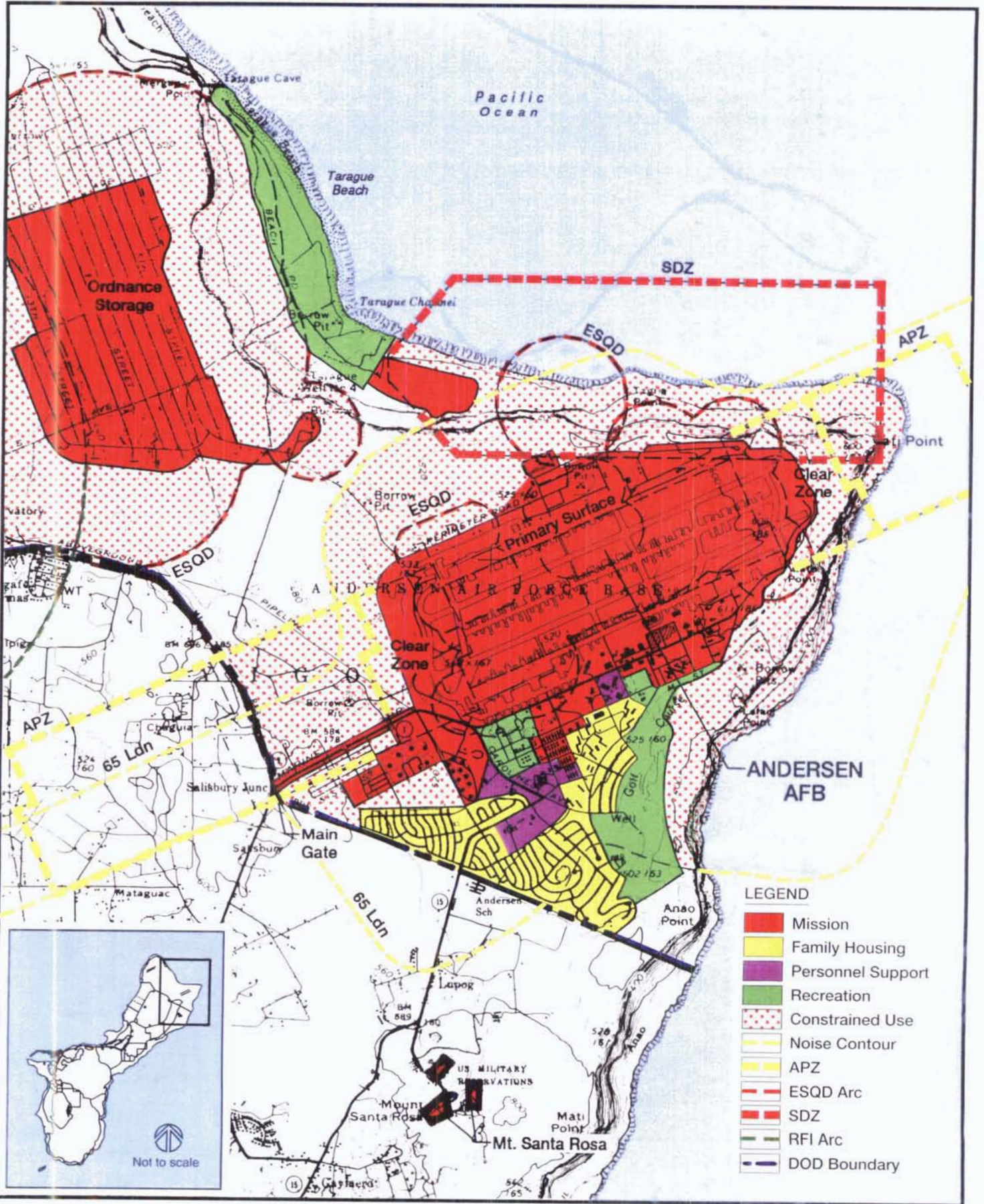
a. Watershed Areas. Two major watershed areas, the Fena Valley Watershed and the Tolaeyuus River Watershed, are located within the boundaries of NAVACTS Guam Ordnance Annex. The Fena Valley Watershed feeds into the Fena Reservoir, which is a storage facility for the Navy water system and a major source of potable water for southern Guam (also see discussion in Section 13, Chapter C).

Water quality in the Fena Reservoir is high, requiring only a minimum of finishing and chlorination to meet potability standards. Because of its value as a major water source, the Fena Valley Watershed requires protection against degradation. Any development within the area which could increase the potential of erosion and consequent siltation of the potable water supply should be restricted.

The Tolaeyuus River Watershed drains into a low-lying sump area to the northeast of Fena Reservoir (see further discussion and related map in Section 4 of this chapter). This watershed provides water resources for the proposed Lost River project.

b. Wetlands. The protection of wetlands has gained importance in recent years. The Section 404 permit program under the Clean Water Act seeks to achieve a goal of no overall net loss of wetland areas. The existence of wetlands in Apra Harbor constrains naval operations from protected areas.

c. Endangered Species. Several endangered species occupy military lands on Guam. The Endangered Species Act requires that proposed Federal actions be reviewed for potential impacts on endangered species. These concerns may result in significant constraints on land use for areas which have endangered species present.



LEGEND

	Mission
	Family Housing
	Personnel Support
	Recreation
	Constrained Use
	Noise Contour
	APZ
	ESQD Arc
	SDZ
	RFI Arc
	DOD Boundary

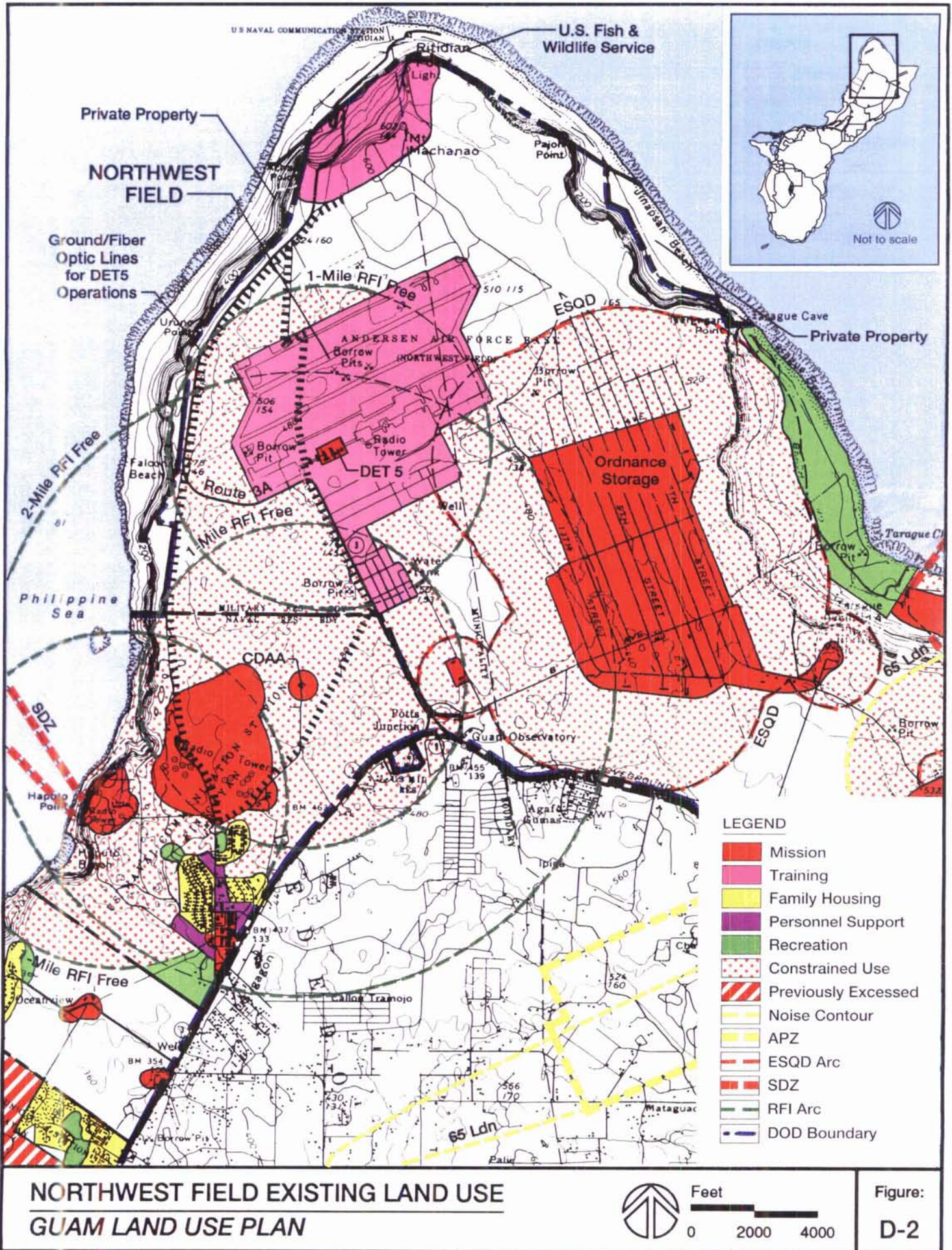
ANDERSEN AFB EXISTING LAND USE
GUAM LAND USE PLAN



Figure:
D-1

b. Northwest Field (Figure D-2). Land in the Northwest Field area is owned by the Air Force. The predominant land uses are ordnance storage and training. Ordnance storage takes place in magazines and open storage areas southeast of the Northwest Field runways. Existing magazines are fully utilized and are associated with contingency planning requirements for Andersen AFB. The runways at Northwest Field are inactive. This area is used for airfield security exercises and military police training. SPACECOM DET 5 also has a communications facility located on an apron area at Northwest Field. Until recently, training also occurred at Ritidian Point. This area is now owned by the USFWS, and continued military training in this area is unlikely. Recreational areas at Tarague Beach extend along the coastline at the bottom of the cliff. ESQD arcs from the ordnance storage area and the one-mile RFI-free zone from DET 5 constrain land uses within much of the Northwest Field area. The northernmost portion is generally undeveloped and unused for military activities. One- and two-mile RFI-free zones from the CDAA at NCTAMS WESTPAC Finegayan overlap Air Force property in this area.

Although Andersen AFB administers a hunting education and training program, and allows regulated hunting within Northwest Field, poaching is a significant encroachment issue. Poachers can endanger themselves, the mission, and have a harmful impact on endangered species or their habitat found at Northwest Field.



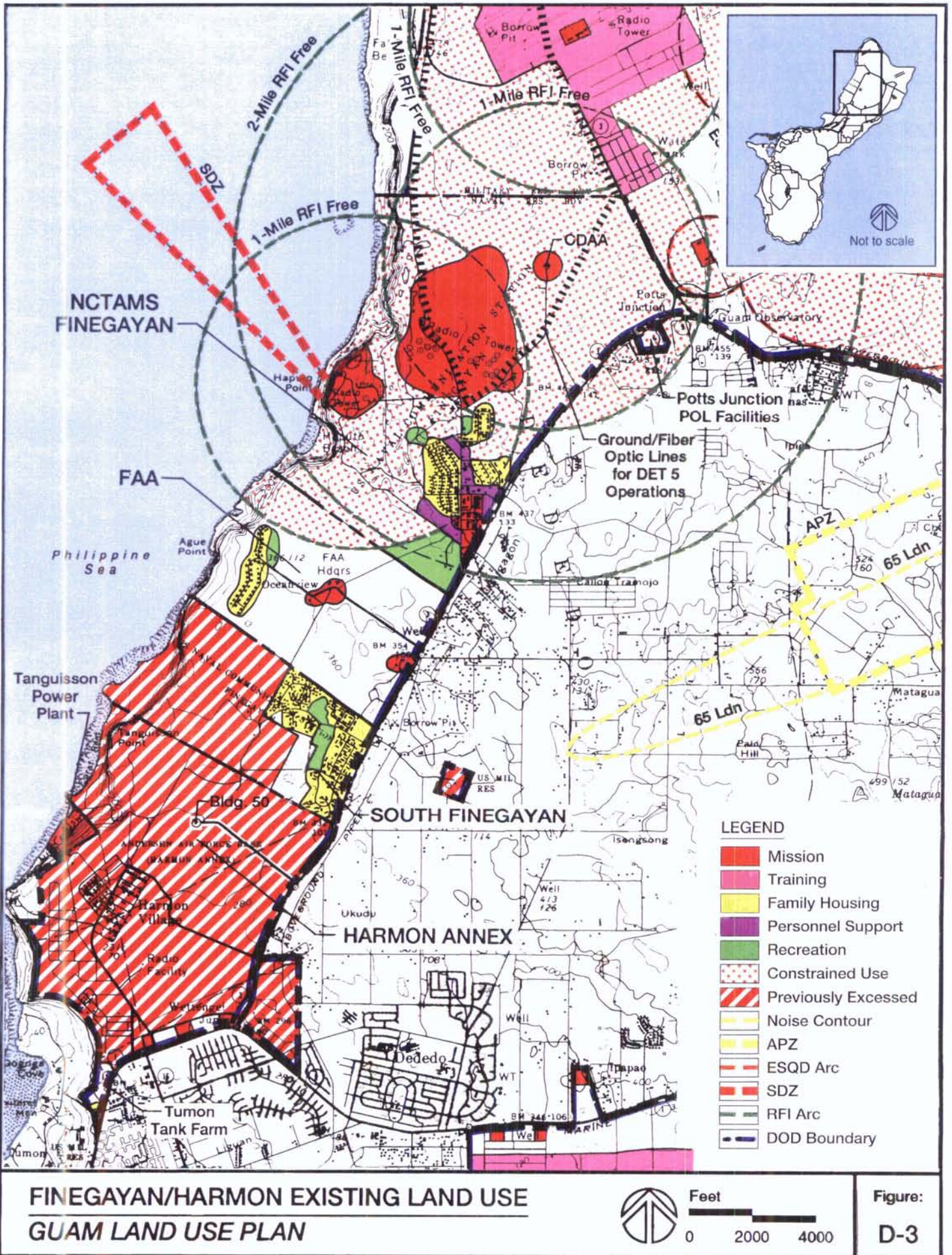
c. Finegayan/Harmon (Figure D-3). Navy property in this area includes operations at NCTAMS WESTPAC Finegayan, the former FAA parcel, and the South Finegayan housing area. The Air Force owns property at the Harmon Annex and a portion of the South Finegayan housing area. These Air Force lands were exsessed as a result of the previous GLUP study. The Air Force also owns the Potts Junction POL Tank Farm.

The primary land uses at NCTAMS WESTPAC Finegayan are for active mission operations, mission-related constrained land, and family housing. Communications functions are located throughout much of the installation; the CDAA is located to the northeast while Classic Wizard/Project Marlock facilities are located in the west along the coastline. Each of these facilities has a one-mile RFI free zone associated with its mission. These zones constrain most of the land at the installation.

The former FAA parcel is generally undeveloped, with two small mission-related pockets and an isolated family housing area. Neither mission function constrains adjacent land uses. The Classic Wizard and Project Marlock one-mile RFI free zones extend into the north corner of this area.

The L-shaped South Finegayan family housing area is located south of the FAA parcel, and is outside of any communications hazard zone.

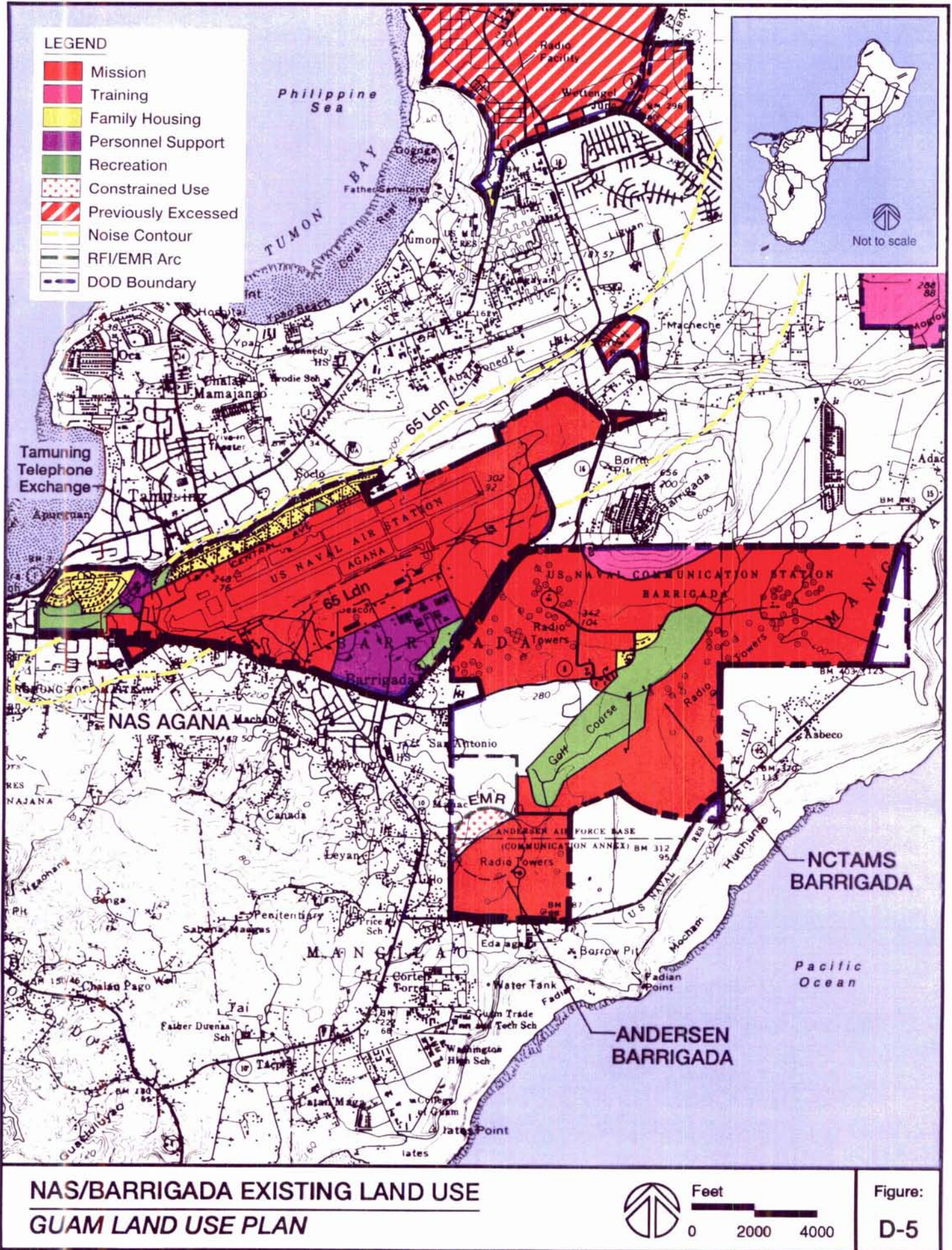
The Air Force controls the 22-acre Potts Junction POL Tank Farm located on Route 3. The Air Force has deactivated this facility. This facility is located within the one-mile RFI free zone of the CDAA at NCTAMS WESTPAC Finegayan.



d. Andersen South (Figure D-4). This area is owned by the Air Force. The most evident land uses at Andersen South are family housing and the mission-related barracks facilities. Training has occurred in the past, predominantly in the western portion of the area. Andersen South also contains all water wells which provide water for the Air Force's system. An 80-acre site was recently transferred to GOVGUAM for the development of a high school for the northern Guam region, and land is being outleased to GOVGUAM along Marine Drive for a public fire station. Most other areas at Andersen South are undeveloped.

e. NAS/Barrigada (Figure D-5). The primary land use in this area is related to Navy and Air Force communication missions. Navy and Diplomatic Telecommunications Service transmitters and associated operational support facilities are predominant in this area. The Air Force maintain high frequency transmitters at Andersen Barrigada, as well as the NEXRAD facility. A golf course runs though the center of the NCTAMS WESTPAC Barrigada installation. A small pocket of family housing is located adjacent to the golf course. A recent study concluded that EMR hazard areas are located within areas shown as mission-related.

The dominant land use at NAS Agana is related to the current aviation mission. A large area of personnel support facilities is located south of the runways. Land use north of the runways is dominated by enlisted and officer family housing. The enlisted family housing area is particularly affected by noise from airfield operations. After the closure of NAS Agana and the relocation of aviation operations, retention of most land will not be required. Personnel of the HC-5 squadron will be housed at Andersen AFB.



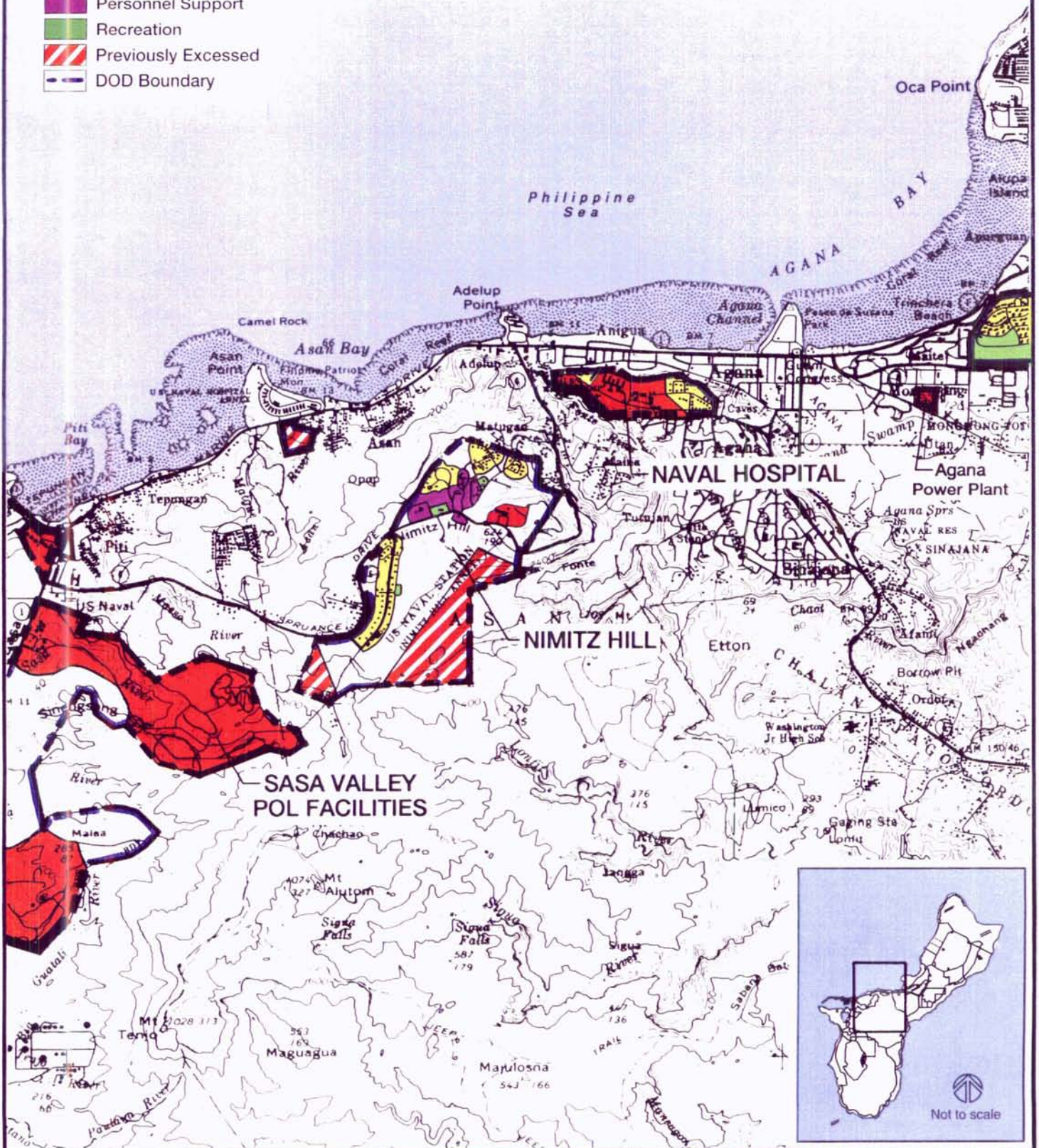
f. NAVHOSP/Nimitz Hill (Figure D-6). The primary land uses at NAVHOSP Guam are mission-related and family housing. Hospital-related facilities occupy most of the land area, while two pockets of family housing are located at either end. There are no unused areas within the installation boundaries.

The primary land use at Nimitz Hill is family housing. Small areas of mission-related activities for COMNAVMARIANAS Headquarters and naval weather operations are also located at Nimitz Hill. Much of the land is undeveloped and is not needed for mission requirements. Two parcels of land were previously excessed in the earlier GLUP study.

The POL storage facilities occupy a small percentage of Navy-owned land at Sasa Valley. The area surrounding the storage facilities has a steep topography and is generally undeveloped.

LEGEND

- Mission
- Family Housing
- Personnel Support
- Recreation
- Previously Excessed
- DOD Boundary



NAVHOSP/NIMITZ HILL EXISTING LAND USE
GUAM LAND USE PLAN

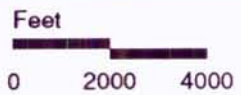


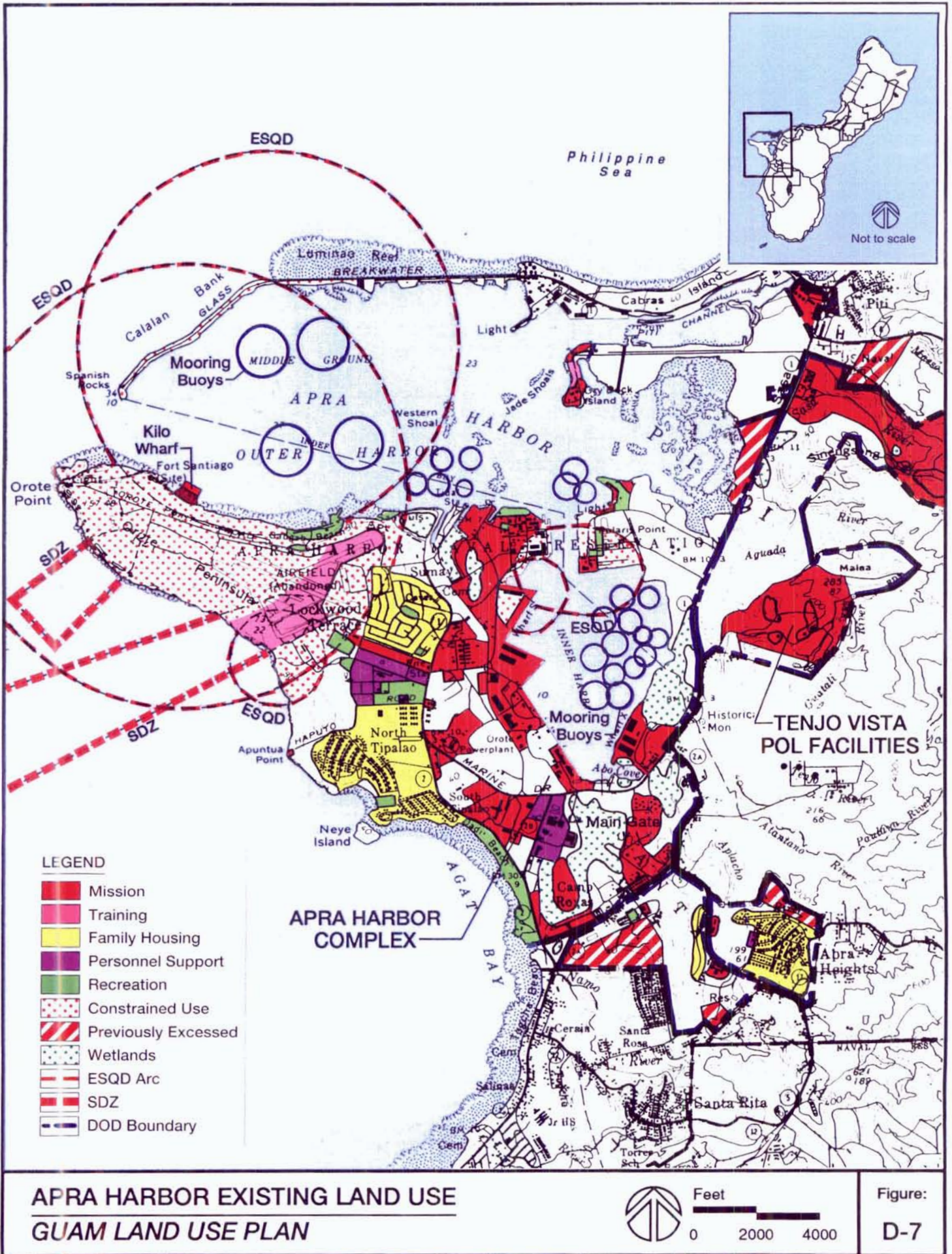
Figure:
D-6

g. Apra Harbor (Figure D-7). The present land use pattern at the Apra Harbor Naval Complex is typical of an established shore facility. The areas adjacent to the ship berths are primarily mission-related in nature. Operational, industrial, maintenance, and storage uses are located near the waterfront on the main side along the western and southern shoreline of the Inner Apra Harbor. Submerged lands in the harbor support mission requirements by providing mooring points for transient, homeported, and support vessels. Administrative, personnel support, and family housing land uses are generally located inland from the berthing areas. Fuel storage facilities are located to the east at Tenjo Vista and Sasa Valley.

Mission-related uses are also located at Polaris Point and Drydock Island. Although distant from the main side facilities, these locations are necessary to support current mission requirements.

As discussed in Chapter C, the use of Orote Peninsula for training has expanded in recent years. Most of the peninsula is encumbered by an explosives safety zone generated by operations at Kilo Wharf. Two surface danger zones also impact portions of the peninsula.

Wetlands along the southern and eastern shores of the Inner Harbor constrain development within the Complex. Wetlands are also located in the Sumay Cove area.

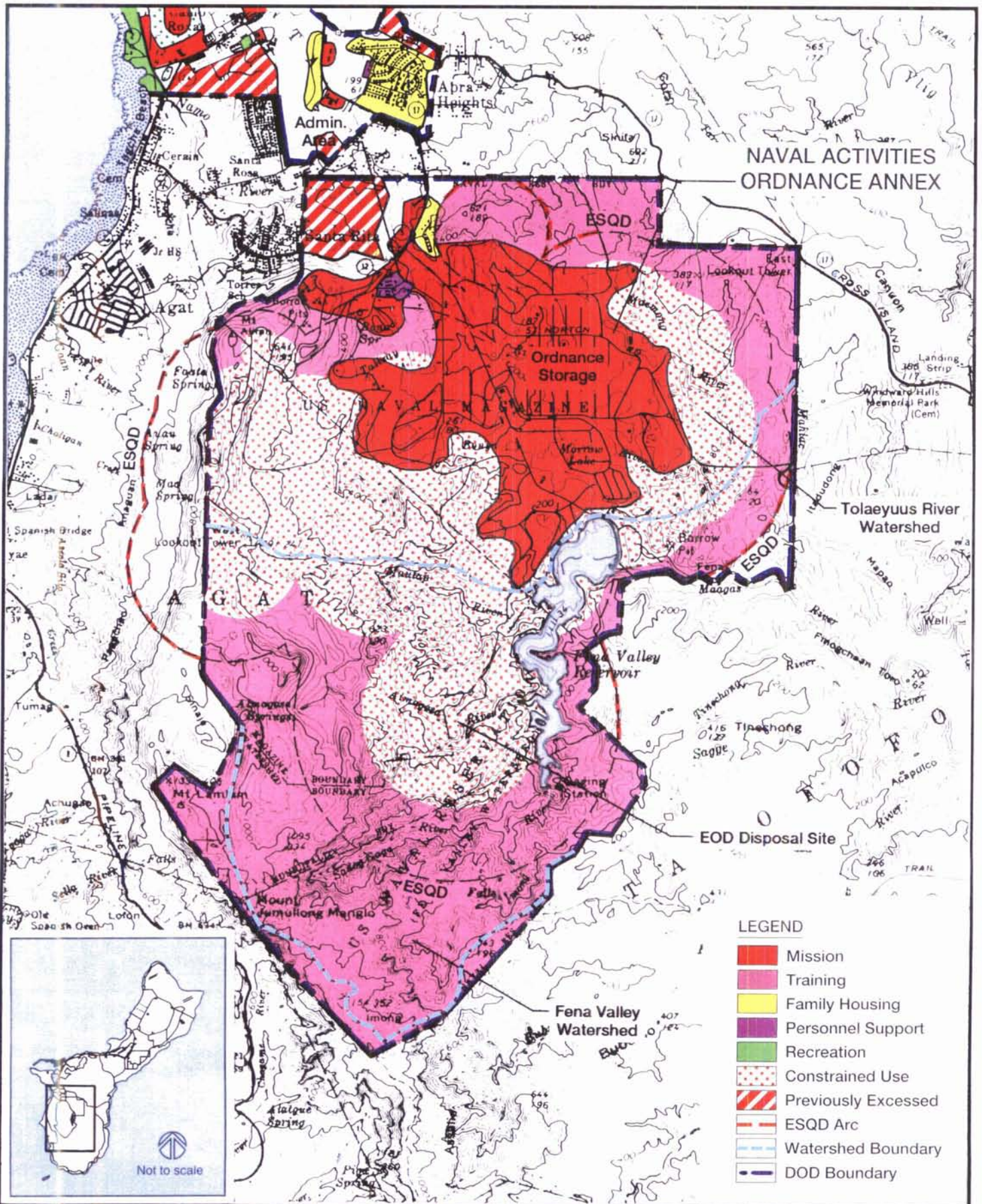


h. NAVACTS Guam Ordnance Annex (Figure D-8). The most evident land use at NAVACTS Guam Ordnance Annex is associated with its mission requirements as an ordnance storage facility. Explosives safety zones cover approximately 75 percent of the station. Ordnance operating buildings and support facilities are located inside this zone, but are allowable activities with NAVSEASCOM approval in accordance with NAVSEA OP-5.

The other major land use is training. As discussed in Chapter C, this area is necessary to satisfy requirements of units based on Guam, as well as transients units. Small unit maneuvers occur throughout most of the NAVACTS Guam Ordnance Annex.

The Fena Valley Watershed is located in the southern portion of the Ordnance Annex. The Tolaeyuus River Watershed covers much of the northeast portion of the station.

The administrative/personnel support area is located on approximately 60 acres in the northwest corner of the installation. This area includes family housing, unaccompanied personnel housing, administrative functions, supply and storage facilities, major utility operations, and various community support facilities.



ORDNANCE ANNEX EXISTING LAND USE
GUAM LAND USE PLAN



Feet

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Figure:

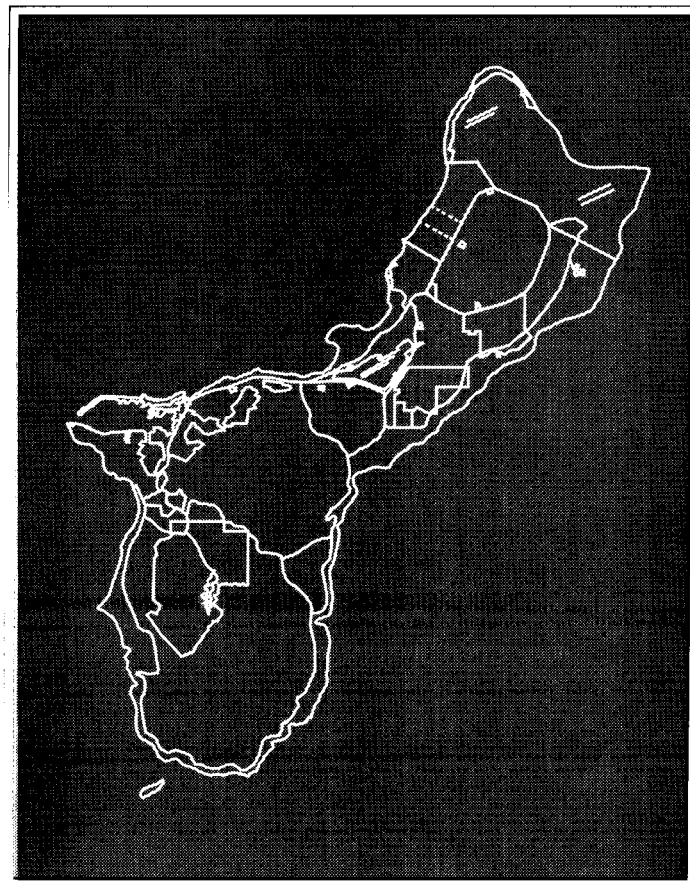
D-8

5. Land Use Analysis Summary

This chapter provided an overview of existing land use and mission-rated constraints. Viewing this information within the context of previous discussions on projected personnel loading and functional requirements, future DOD land use on Guam can be reduced through the identification of lands which no longer support the military mission on Guam. The following chapter will focus on these releasable areas.

E

LAND USE PLAN



CHAPTER E: LAND USE PLAN

1. Introduction

This chapter presents the land use plan for future DOD activities on Guam. In areas to be retained for military activities, the future land use pattern is expected to be similar to the existing pattern in terms of the distribution of mission-related, personnel support, and family housing uses. Changes in future land use will be most evident in areas that can now be identified as having no further requirement to support mission-related activities on Guam. Consequently, the discussion in this chapter will focus on lands considered to be releasable or potentially releasable. Releasable lands are those areas that can be released based on current analysis of mission requirements and existing land use. Potentially releasable lands are those that will require additional actions (e.g., change in mission requirements, provision of replacement facilities, etc.) before they can be released.

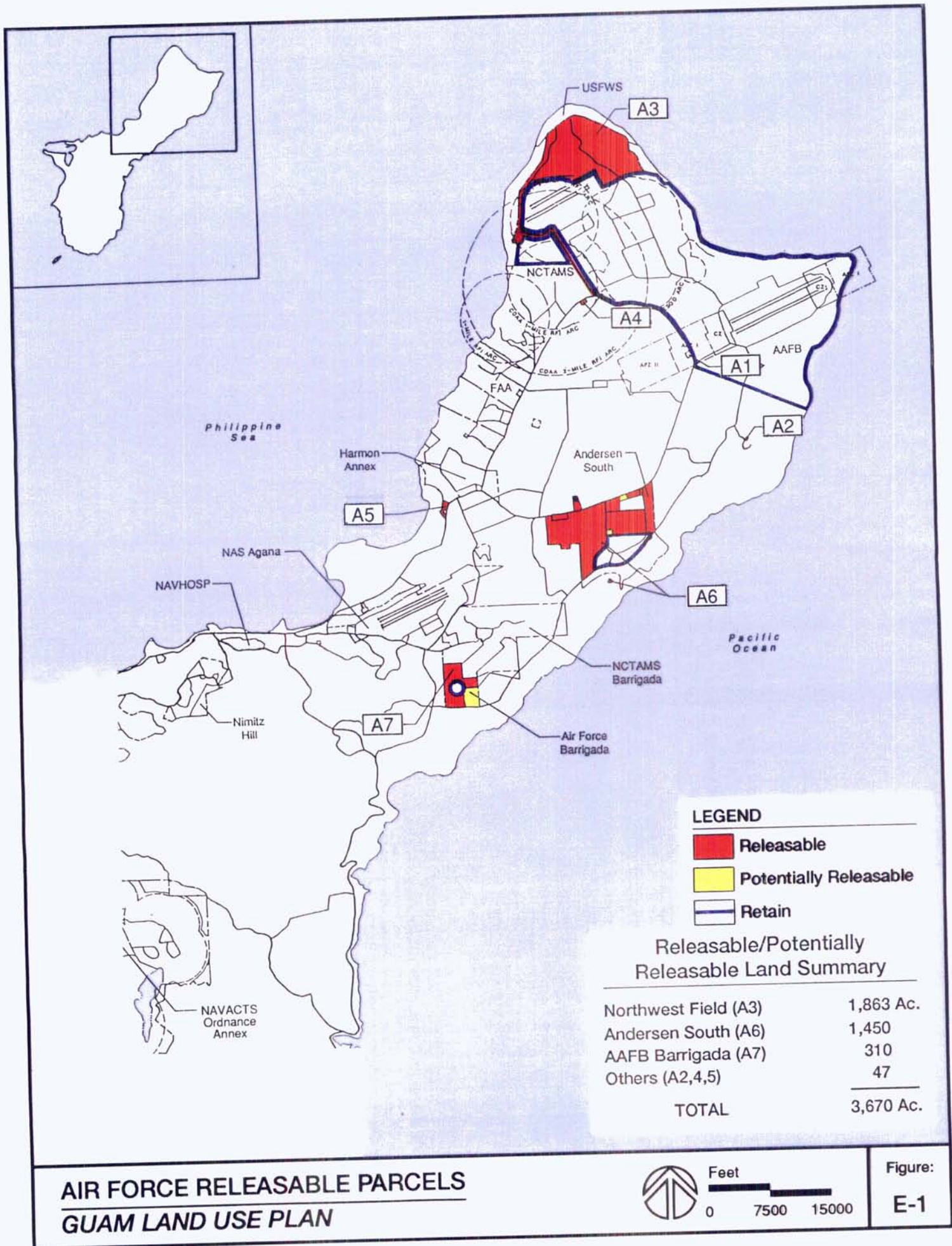
[Note: All acreage figures presented in the following discussion are estimates. Actual releasable land figures must be verified by surveyed metes and bounds.]

2. Proposed Air Force Land Disposition

Figure E-1 identifies land areas owned by the Air Force which have been determined to be excess to mission requirements. This involves a total of 3,670 acres. Of this total, 3,553 acres are releasable, and 117 acres are potentially releasable. The following discussion provides an overview of these lands. See Appendix B for more detailed maps and conditions of release for specific parcels of land.

Site A1: Andersen Main Gate. Originally, a 45-acre site located across Route 9 from the Andersen AFB main gate was identified as Air Force property. Further investigation has confirmed the site is actually owned by the Department of Interior (DOI). The site lies within the APZ I of the Andersen AFB runways. Because of this and the site's proximity to the runway clear zone, the land was to have been transferred to the Air Force. This action never occurred. Headquarters PACAF (in conjunction with 13th Air Force and 36 ABW) will review and determine the necessary course of action for the site. The 45 acres are not included in the inventory of releasable lands in this final report.

Site A2: Mt. Santa Rosa. A one-acre site atop Mount Santa Rosa is considered releasable. The parcel is located to the west of an FAA radar



facility. The land is currently unused by the Air Force and bounded on the remaining sides by private property. There is no anticipated future DOD requirement for the land.

Site A3: Northwest Field/Route 3A. Approximately 1,860 acres of land north and west of the runways at Northwest Field, and the section of Route 3A (including the spur leading to the USFWS boundary) extending northwest from Potts Junction at the former naval facility complex, are releasable. The area is defined by the cliff line on the west, north, and east. On the south, the SPACECOM DET 5 one-mile RFI zone, Northwest Field boundary, and ESQD arc from ordnance storage identify the boundary of the releasable land.

The release area is no longer needed or used by the Air Force, nor have other DOD agencies justified retention of the land to satisfy their mission requirements. The area is entirely within the recently established boundaries of the Wildlife Refuge Overlay, and military operations (i.e., training) have been restricted in this area in recent years due to environmental considerations. The release area is contiguous with, and provides access to, other non-DOD parcels along Guam's northernmost coastline. This includes a 10-acre site which provides potential access to GOVGUAM's Falcona Beach.

Site A4: Potts Junction. A 22-acre site near the intersection of Route 3 and Route 3A (Potts Junction) is releasable with conditions. Route 3 forms the northern boundary of the parcel, which is surrounded on the east, south and west by private property. The entire site lies within the one-mile RFI-free zone from the NCTAMS WESTPAC CDAA facility and will require restrictive covenants to prohibit incompatible uses. Potts Junction is releasable since the Air Force no longer requires the land for fuel storage and has deactivated its fuel storage facilities. The parcel is outside the main compounds of Andersen AFB and NCTAMS WESTPAC Finegayan.

Site A5: Tumon Tank Farm/Australian Cable Housing. This releasable parcel consists of 24 acres along Marine Drive. The western boundary of the site is defined by a cliffline, while Marine Drive forms its eastern boundary. The Air Force has plans for the deactivation of the Tumon Tank Farm fuel storage facilities (20 acres) and does not require the retention of the six Australian Cable housing units (4 acres) for its housing requirement. A small parcel of land currently leased to AT&T (and containing a small DOD mission) is not included in the release parcel.

Site A6: Andersen South. About 1,425 acres of land at Andersen South are considered releasable. This includes 27 acres north of Marine Drive, 5 acres in the Marbo Caves area, and the remaining acreage within Andersen South proper. The release area is no longer required or used by the Air Force and excludes existing well sites, an electrical substation site, and water pumping,

treatment and storage systems. There is no other anticipated future DOD need for the land.

An additional 25 acres at Andersen South are identified potentially releasable. This includes two warehouse sites, one located along Marine Drive, and the other in the center of the release area. These sites can become releasable if replacement facilities are provided.

Site A7: Andersen AFB Barrigada. This releasable area consists of approximately 218 acres. The land surrounds the NEXRAD weather radar facility 1,000-foot radius arc. This area is no longer utilized by the Air Force.

Ninety-two acres have been identified as potentially releasable at Air Force Barrigada. This area contains Air Force high frequency transmitters which are proposed for consolidation with Navy facilities at Barrigada. Consolidation would eliminate the Air Force's requirement for this land.

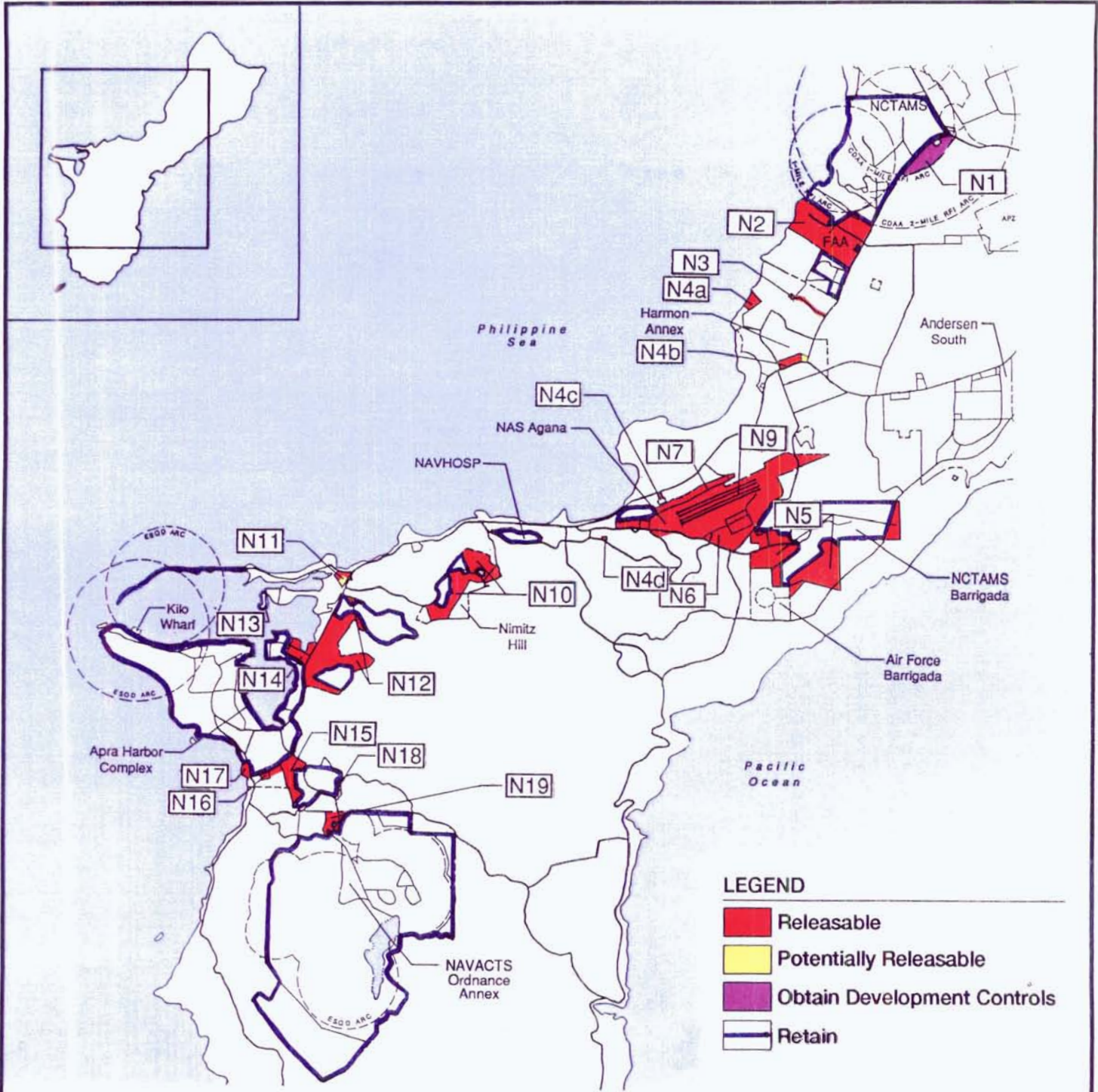
Height restrictions will be required on released parcels to eliminate potential impacts on NEXRAD operations.

3. Proposed Navy Land Disposition

Figure E-2 identifies land areas currently owned by the Navy which have been determined to be excess to the mission requirements. Of the total 4,537 acres, 4,528 acres are identified as releasable and 9 acres are potentially releasable. The following provides an overview of Navy releasable lands on a site-by-site basis. Appendix B contains detailed maps and conditions of release for the specific parcels.

Site N2: Former FAA Parcel. Approximately 698 acres are identified as releasable at the former FAA parcel. The site is bounded by NCTAMS WESTPAC Finegayan, the Philippine Sea, Route 3, and the South Finegayan housing area. National Weather Service (NWS) facilities and Navy family housing units (occupied by FAA personnel) are located on this parcel. The releasable area does not include FAA or NWS operational facilities. The housing area is not needed to meet the Navy's FY99 housing requirements, and no other anticipated future DOD need for the land has been identified.

Site N3: Harmon Annex. This seven acre site is surrounded by land identified as excess by the previous GLUP study. The land is owned by the Navy Publication and Printing Service (NPPS). NPPS no longer utilizes Building 50 for its operations and have vacated the facility. PWC has conducted some asbestos clean-up in Building 50, with the intent of using it for a maintenance shop. Most recently, PWC has stated it is no longer interested in the building, and recommends the site to be releasable.



Releasable/Potentially Releasable Land Summary

FAA (N2)	698 Ac.	Sasa/Tenjo (N12)	568 Ac.
NCTAMS Barrigada (N5)	823	Polaris Point (N14)	82
NAS (N6,7)	325	Apra Heights (N15-18)	169
NAS (N9)	1,400	NAVACTS Ordnance Annex (N19)	102
Nimitz Hill (N10)	303	Others (N3,4,11)	67
TOTAL		4,537 Ac.	

NAVY RELEASABLE PARCELS
GUAM LAND USE PLAN

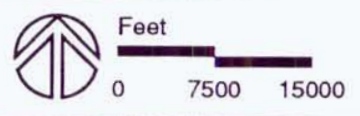


Figure:
E-2

Site N4a: Tanguisson Power Plant. The 5-acre Tanguisson Power Plant site is releasable. A customer service agreement between the Navy and GOVGUAM proposes to transfer operation of the electrical system and related facilities to the Guam Power Authority (GPA) within the next few years.

Site N4b: Marine Drive. A 25-acre site along Marine Drive in central Guam is identified as releasable. Previously excessed land at Harmon Annex surrounds much of the site. The land is undeveloped with the exception of an electrical sub-station in the center of the parcel. This facility will be part of the transfer of electrical operations to GPA.

A 2-acre site at the east end of the site is potentially releasable. This area is located at the intersection of Route 3 and Marine Drive, and contains the Pacific Stars and Stripes building and a Navy telephone exchange. The Navy plans to remove the telephone switching system in the building. The cable hut which is also on the site will be retained. This area can be released if a replacement facility for the Stars & Stripes building is provided.

Site N4c: Tamuning Telephone Exchange. The 2-acre Tamuning Telephone Exchange site is identified as releasable. The parcel is located along Marine Drive in Tamuning, north of NAS Agana. The previously-released ACEORP Maui Well site and a pronounced cliffline separate the parcel from NAS Agana. Due to Navy plans to upgrade and consolidate telephone facilities in other locations, the Tamuning facility will not be needed in the future.

Site N4d: Agana Power Plant. The 6-acre Agana Power Plant on Damian Street is releasable. Similar to the Tanguisson Power Plant, this site will be transferred to GPA based on an earlier customer service agreement.

Site N5: NCTAMS Barrigada. Approximately 823 acres at NCTAMS Barrigada are identified as releasable. (This figure is over 100 acres larger than presented in the Draft GLUP 94 report, based on recommendations from COMNAVMARIANAS.) The release area consists of four non-contiguous parcels ranging in area from 15 to 395 acres. A portion of the land is outleased to the City of Barrigada and used as a public recreational area. Land to be used for construction of a new National Guard headquarters and armory facility is also within the releasable area. The remaining releasable areas are undeveloped, and not required to satisfy NCTAMS communications operations of other DOD agencies. A February 1994 EMR study found no hazard to personnel in areas identified for release.

Site N6: NAS Barracks/Community Support. A 190-acre site at NAS Agana is identified as releasable. This area is located south of the runways inside the main gate. The parcel contains bachelor housing, personnel support, and recreational facilities. The operational area at NAS Agana was

included on the 1993 BRAC base closure list. Site N6 is releasable based on the recent decision to relocate the naval air squadrons to CONUS. This is a change from the Draft GLUP 94 report. No other future DOD requirements for the land have been identified.

Site N7: NAS Enlisted Housing. The enlisted housing area at NAS Agana is identified as releasable. This recommendation is also a change from the Draft GLUP 94 report, based on the recent decision to relocate the naval air squadrons to CONUS. The final releasable area has been expanded to a total of 135 acres (as opposed to the 115 acres identified as potentially releasable in the draft report). The site consists of a long, narrow strip of land north of the runways, and includes 352 units of enlisted family housing, three BOQs, and a swimming pool.

Site N9: NAS Ops Area. The 1,400-acre operations area at NAS Agana is releasable based on recommendations of the 1993 BRAC.

Site N10: Nimitz Hill. Two areas at Nimitz Hill, totaling 303 acres, are considered to be releasable. One area consists of approximately 120 acres north of Spruance Drive. The site includes 78 units of enlisted family housing; the remainder of the area is undeveloped and characterized by excessive slopes. The enlisted housing is not required to meet FY99 Navy family housing requirements, and no other DOD requirements for the area have been identified.

The second site consists of about 183 acres of undeveloped land south of Spruance Drive. It is segmented into two parcels by an access road from the south end of the officer family housing area to the Nimitz Hill reservoir/VHF repeater site. This area has been retained in the past to satisfy potential family housing expansion. This justification is no longer valid.

Site N11: Piti Power Plant. The 13-acre Piti Power Plant site, located at the intersection of Marine Drive and Route 11, is releasable. The Navy will transfer this facility to GPA under terms of the Customer Service Agreement.

An adjacent 7-acre parcel is considered potentially releasable. Facilities on this site are occupied by the PWC Guam Utilities Department. The land can be released if replacement facilities are provided.

Site N12: Sasa Valley/Tenjo Vista. A total of 568 acres of land surrounding the Sasa Valley and Tenjo Vista Tank Farms are identified as releasable. The land is undeveloped, and contains areas of excessive slope and wetlands. The land has been used as a buffer for FISC Guam's POL operations. As long as appropriate security measures are maintained, this area is not required to support the mission of FISC Guam.

Site N13: Drydock Island. Seventeen acres at Drydock Island were considered to be potentially releasable in the Draft GLUP 94 report. Upon further investigation, this land is now recommended for retention. As noted in the training section in Chapter C, the area includes a small beach on the west shoreline used for LCAC vehicle training operations. A survey of alternative sites for this activity has failed to identify an adequate location. Furthermore, the surrounding waters are the only location able to accommodate a floating drydock. CINCPACFLT wants to retain the capability for emergency ship repair in the area should the need arise in the future. As an alternative to releasing the land, the area could be licensed to GOVGUAM with the condition that no permanent development occurs.

Site N14: Polaris Point. An 82-acre site along the northern shoreline of Polaris Point is considered to be releasable. The area is generally undeveloped and is outside of the area required to support the submarine tender operations at Alpha wharf. No other DOD requirements have been identified for the area.

Site N15: New Apra Heights. A 125-acre site near the New Apra Heights family housing area is identified as releasable. The site is located south of the intersection of Route 2A (Agat Drive) and Magazine Road. It is in the vicinity of several previously-excessed parcels, and includes land to be turned over to GOVGUAM for the construction of a wastewater treatment facility. Portions of the site were being held for potential expansion of family housing. This is no longer a requirement, and other DOD requirements are not anticipated.

Site N16: Route 2A. A 15-acre site along Route 2A (Agat Drive), near the intersection of Shoreline Drive, is releasable. This area is west of Site N15 and currently used by GOVGUAM for school bus parking. The property abuts previously excessed lands to the south. There is current or anticipated DOD requirement for the land.

Site N17: Rizal Beach. A 16-acre site encompassing Rizal Beach on Agat Bay is considered releasable. The parcel is located south of the back gate to the Apra Harbor Complex. The release area also includes the section of Shoreline Drive extending from the back gate to the Agat Highway Triangle (intersection of Route 2A with Shoreline Drive). The Rizal Beach portion of the site is currently leased to GOVGUAM. Lands previously excessed are adjacent to the south of the property. There is no anticipated future DOD requirement for the land.

Site N18: Old Apra Heights. A 13-acre site adjacent to the Apra Heights family housing area is releasable. Magazine Road (Route 5) and Cross Island Road (Route 17) form the western and northern boundaries of the parcel. It is undeveloped and not required for future DOD use.

Site N19: NAVACTS Ordnance Annex North Parcels. A total of 102 acres at the NAVACTS Guam Ordnance Annex are identified as releasable. The area includes two parcels separated by Route 5. As with most of the land at the Ordnance Annex, the topography of both sites is characterized by steep slopes.

To the west of Route 5, about 50-acres of land surrounding the water reservoir and water treatment plant are releasable. This land is adjacent to previously excessed property. Another 52 acres of land are located east of Route 5. This area contains 17 family housing units which are not needed to meet the Navy's FY 1999 family housing requirements. There is no anticipated future DOD need for the release area.

4. Proposed Navy Land Acquisition

Figure E-2 also identifies an area of land recommended for acquisition of development controls. The following provides an overview of this area. Appendix B contains a detailed map and justification for acquisition of controls on the site.

Site N1: CDAA RFI Area. Acquisition of restrictive easements on 133 acres of land south of Potts Junction is recommended. The boundary of the site is defined by Route 3, the boundary of Potts Junction POL Tank Farm, and a segment of the one-mile RFI-free zone emanating from the NCTAMS WESTPAC Finegayan CDAA receiver. This land is currently privately owned and contains some residential and recreational development. Acquisition of restrictive easements is recommended to protect the CDAA mission from further degradation by additional development within the RFI-free zone.

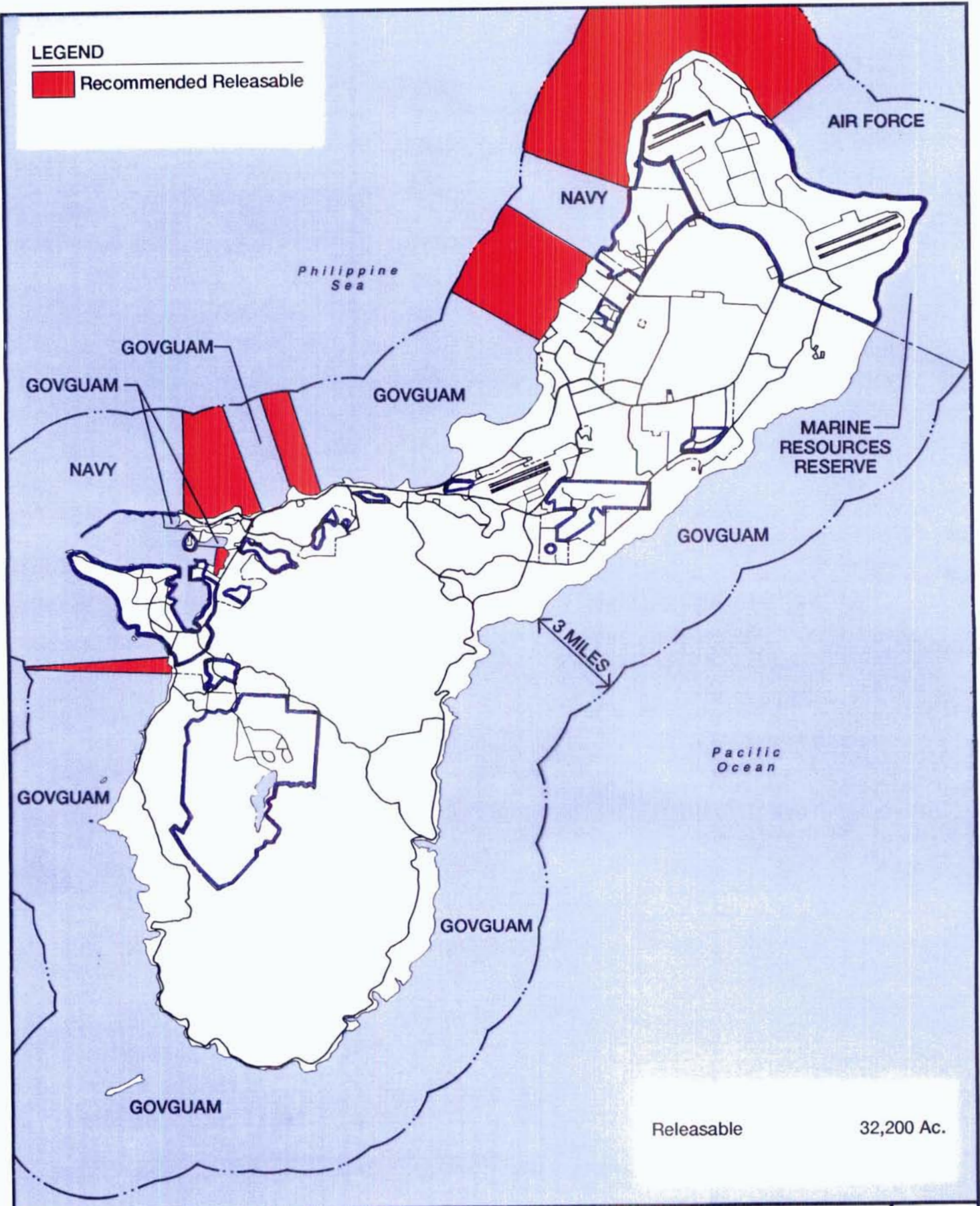
5. Proposed DOD Submerged Land Disposition

The DOD owns submerged lands adjacent to its property out to three miles offshore. It also owns submerged lands adjacent to property previously excessed/released (e.g. Harmon Annex, Ritidian Point, Asan Beach).

About 32,200 acres of submerged lands are recommended for release (Figure E-3). This includes submerged lands contiguous to non-DOD property and DOD shore-side property identified for release in this study. These lands are not encumbered by man-made constraints such as ESQDs and SDZs.

LEGEND

 Recommended Releasable



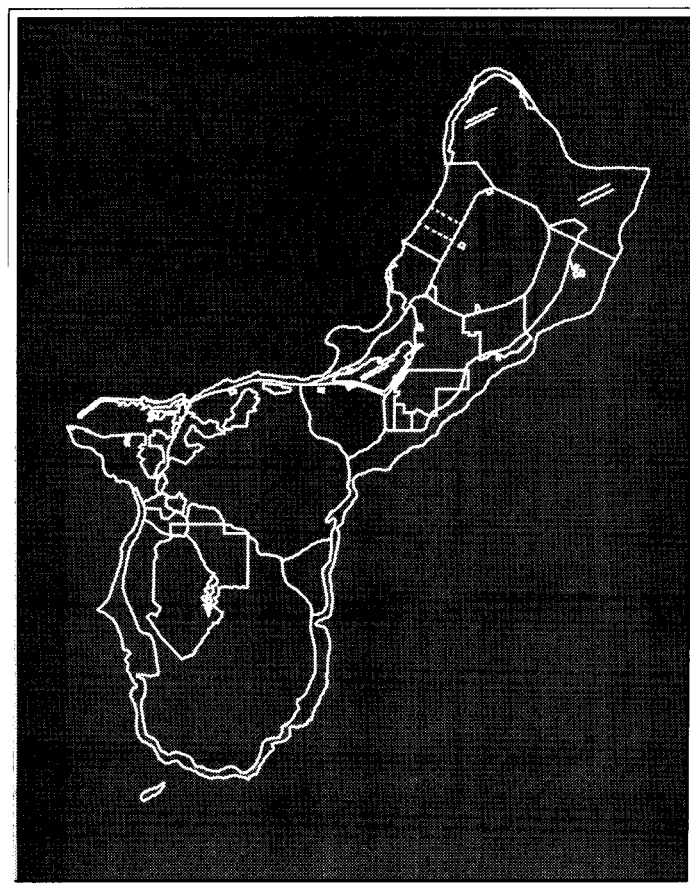
RELEASABLE SUBMERGED LANDS
GUAM LAND USE PLAN

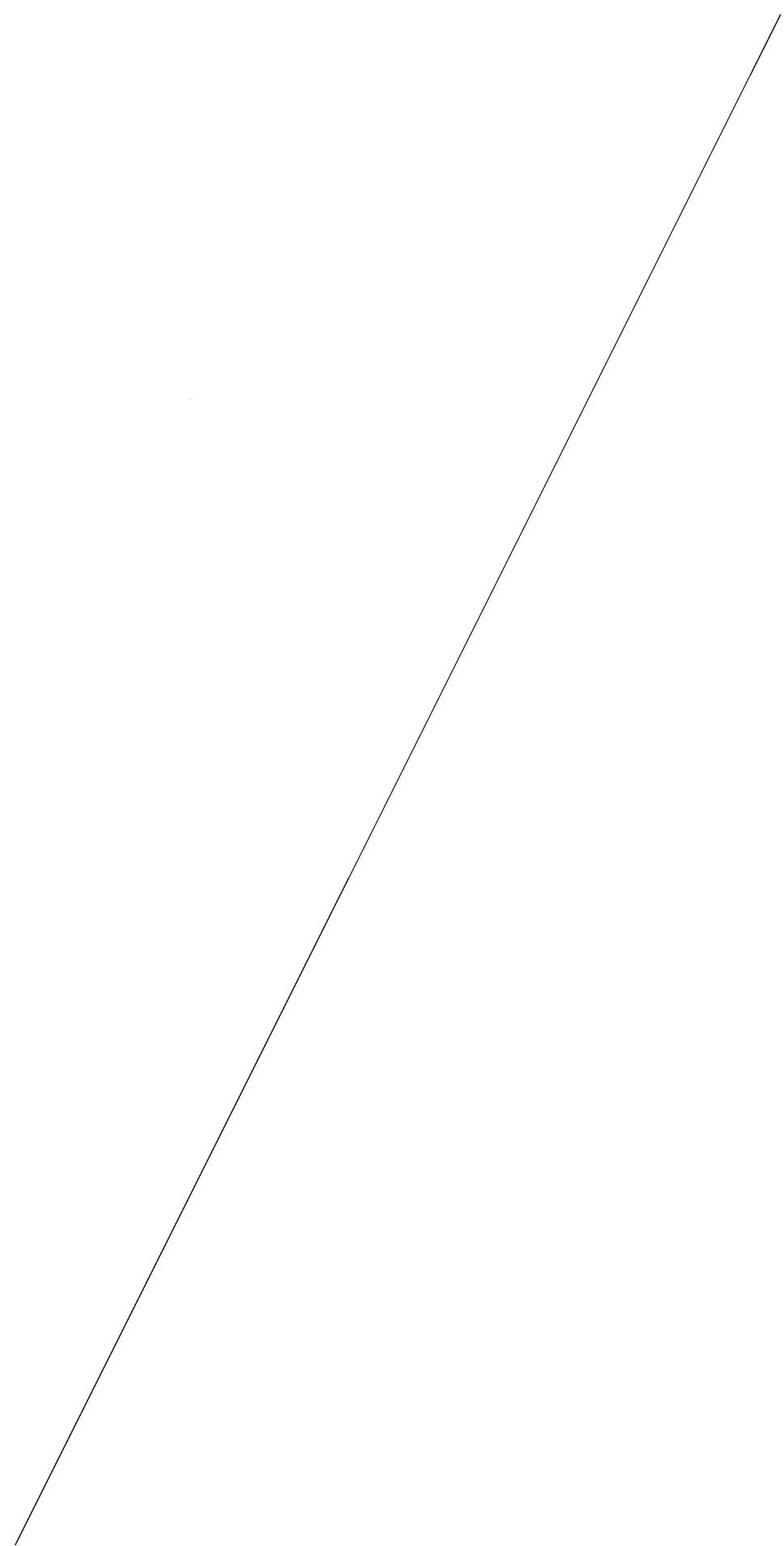


Figure:
E-3

F

RELEASABLE LAND SUMMARY





CHAPTER F: RELEASABLE LAND SUMMARY

1. Overview

An overview of land release recommendations was previously shown in Figure ES-1 in the Executive Summary. The total acreage currently owned by DOD on Guam amounts to approximately 44,800 acres. Under the P.L. 103-339 legislation, 3,200 acres (7 percent of the total acreage) have been previously identified as excess. The GLUP 94 study has identified an additional 8,200 acres for release or potential release, or 18 percent of the total DOD-owned lands. As a result of the two studies, one-fourth of all DOD real estate on Guam is recommended for release.

Significant releasable areas are located in central Guam at NAS Agana, NCTAMS WESTPAC Barrigada, the former FAA site, and Andersen South. The central location of these areas and their proximity to growing civilian communities, should provide valuable economic resources for the local community. Releasable acreage at Northwest Field in northern Guam will provide access to previously restricted areas and greater recreational opportunities to civilians.

2. Releasable Land Summary

Table F-1 summarizes sites proposed for release. A total of 8,081 acres have been identified as excess to DOD mission requirements. Of this total, 3,553 acres (44%) are on the Air Force plant account. The remaining 4,528 acres (56%) are owned by various Navy activities.

3. Potentially Releasable Land Summary

Table F-2 summarizes the potentially releasable lands. A total of 126 acres were determined to be potentially releasable, meaning that certain conditions must be met before they could be released. Parcels owned by the Air Force constitute 117 acres (93%) of potentially releasable land, while the Navy owns the remaining 9 acres (7%).

4. Acquisition Requirements

GLUP 94 proposes the acquisition of a restrictive easement over 133 acres of land near Potts Junction. This site surrounds the Air Force's Potts Junction POL Tank Farm on three sides and lies within the one-mile RFI free arc from the NCTAMS WESTPAC CDAA. The restrictive easements are required to protect the mission of the sensitive receiver from degradation of the noise environment within the CDAA arc by incompatible land uses. Once acquired,

**Table F-1
Releasable Land Summary**

<u>Site No.</u>	<u>Location</u>	<u>Size (acres)</u>	<u>Plant Account Holder</u>
A2	Mt. Santa Rosa	1	AAFB
A3	Northwest Field/Route 3A	1,863	AAFB
A4	Potts Junction	22	AAFB
A5	Tumon Tank Farm/Australian Cable	24	AAFB
A6	Andersen South	1,425	AAFB
A7	AAFB Barrigada	218	AAFB
N2	Former FAA Parcel	698	PWC Guam
N3	Harmon Annex	7	NPPS
N4a	Tanguisson Power Plant	5	PWC Guam
N4b	Marine Drive	25	PWC Guam
N4c	Tamuning Telephone Exchange	2	PWC Guam
N4d	Agana Power Plant	6	PWC Guam
N5	NCTAMS Barrigada	823	NCTAMS WESTPAC
N6	NAS Barracks/Community Support	190	NAS Agana
N7	NAS Enlisted Housing	135	NAS Agana
N9	NAS Ops Area	1,400	NAS Agana
N10a	Nimitz Hill Enlisted Housing	120	NAVACTS Guam
N10b	Nimitz Hill Vacant Lands	183	NAVACTS Guam
N11	Piti Power Plant	13	PWC Guam
N12	Sasa Valley/Tenjo Vista	568	FISC Guam
N14	Polaris Point	82	NAVACTS Guam
N15	New Apra Heights	125	NAVACTS Guam
N16	Route 2A	15	NAVACTS Guam
N17	Rizal Beach	16	NAVACTS Guam
N18	Old Apra Heights	13	PWC Guam
N19	NAVACTS Ordnance Annex North Parcels	102	NAVACTS Guam
TOTAL		8,081	

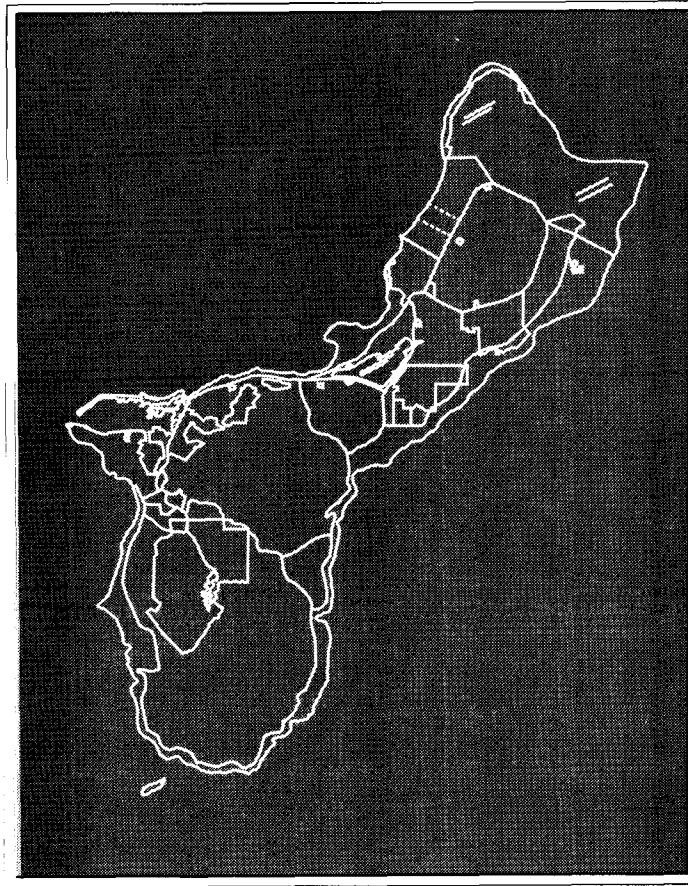
**Table F-2
Potentially Releasable Land Summary**

<u>Site No.</u>	<u>Location</u>	<u>Size (acres)</u>	<u>Plant Account Holder</u>
A6b	Andersen South	25	AAFB
A7b	AAFB Barrigada	92	AAFB
N4b	Marine Drive	2	PWC Guam
N11	Piti Power Plant	7	PWC Guam
TOTAL		126	

these easements would be recorded as covenants on the property and be effective in perpetuity, or until the property is released at a future time by DOD. However, as mentioned earlier in this report, there are a number of additional conditions relating to Air Force land which must be met because of Andersen AFB's listing on the National Priorities List.

G

ADDITIONAL PLANNING ISSUES





CHAPTER G: ADDITIONAL PLANNING ISSUES

1. Introduction

This chapter presents a discussion of additional planning issues which will affect future DOD land use on Guam. These issues include the recently designated Wildlife Refuge Overlay, cultural and historic resources, hazardous sites and the military's Installation Restoration Program, encroachment, and implementation of this GLUP 94.



2. Wildlife Refuge Overlay

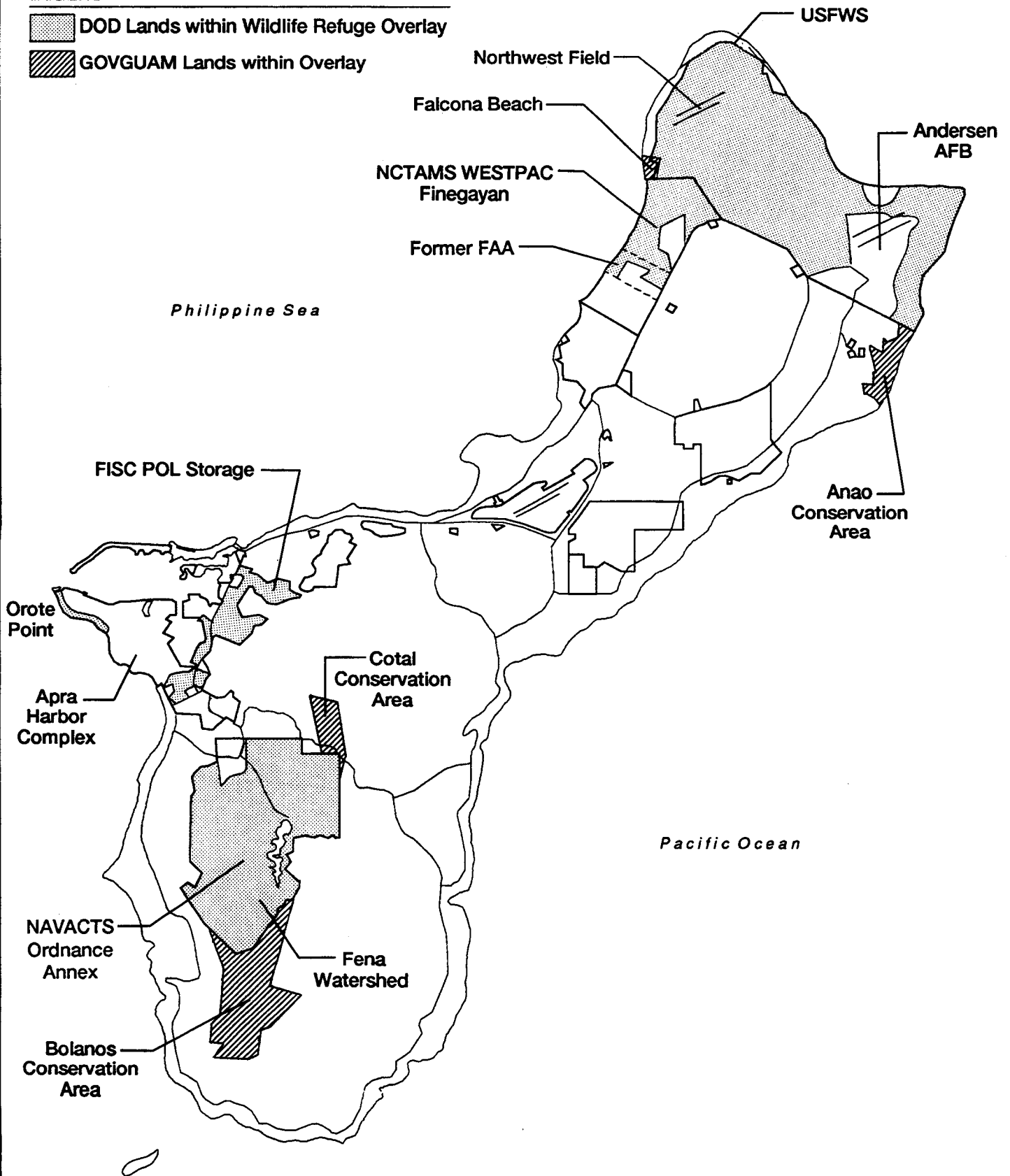
All of Guam's native terrestrial mammals and birds are on the threshold of extinction in the wild. To address this problem, the U.S. Fish and Wildlife Service (USFWS) studied the feasibility of establishing a Wildlife Refuge on certain Federal and GOVGUAM lands. The establishment of a Refuge was intended to provide a coordinated program for the protection of endangered and threatened species and other native flora and fauna, unique ecosystems, and the conservation of native biological diversity through coordination and cooperation among GOVGUAM, DOD, and the USFWS.

In March 1994, the USFWS established a Wildlife Refuge Overlay as part of the implementation of a Cooperative Agreement among the Air Force, Navy, and USFWS. The Agreement provides for the ownership of land to remain with the individual military services, while allowing the USFWS to manage the natural resources within the boundaries of the Overlay shown in Figure G-1. The total land area within the Overlay is approximately 28,000 acres. A significant amount of Air Force property at Andersen AFB and Northwest Field is included within the Overlay. Navy lands within the Overlay are located at NCTAMS WESTPAC Finegayan, the former FAA site, surrounding POL operations in the Apra Harbor Complex, and at the NAVACTS Ordnance Annex. GOVGUAM declined to sign the Cooperative Agreement. Nonetheless, areas owned by GOVGUAM were identified in the Overlay, including conservation areas at Anao, Cotal, and Bolanos.

The establishment of the Wildlife Refuge Overlay could impact future activities on DOD property. Existing operational areas are not included in the Overlay, and expansion into currently unused areas is not proposed. However, the extent to which USFWS natural resource management may limit activities, such as training in undeveloped areas, is uncertain. Areas of particular importance include the NAVACTS Ordnance Annex and Northwest Field (south of the runways). Continued small unit operations for training will likely require an Endangered Species Act Section 7 consultation with USFWS. An environmental assessment may be needed to provide the necessary

LEGEND

-  DOD Lands within Wildlife Refuge Overlay
-  GOVGUAM Lands within Overlay



**WILDLIFE REFUGE OVERLAY
GUAM LAND USE PLAN**

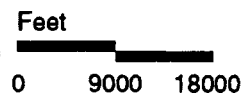


Figure:
G-1

information about training operations, and establish guidelines for future activities in the area. Future restrictions resulting from this process are currently unknown.

3. Cultural/Historic Resources

Guam played a major role during World War II. Because of the war's importance in the history of the U.S. military and Guam, sites and structures from this era have the potential for being eligible for nomination to the National Register of Historic Places. The military is required to comply with federal statutes, including the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), and the Archaeological Resources Protection Act (ARPA), which regulate actions affecting historic resources.

The NHPA is the most important legislation in terms of management of cultural/historic resources. In particular, Section 106 of the NHPA requires that all federal agencies take into account the effects of their undertakings on historic properties. A federal undertaking includes the full range of federal activities, such as construction, rehabilitation and repair projects, the granting of licenses and permits, federal property transfers, and many other types of federal involvement. Whenever an undertaking has the potential to affect a cultural/historic resource, any DOD service is obligated to fulfill the requirements of Section 106 of the NHPA, in addition to its implementing regulations in 36 CFR 800, "Protection of Historic Properties."

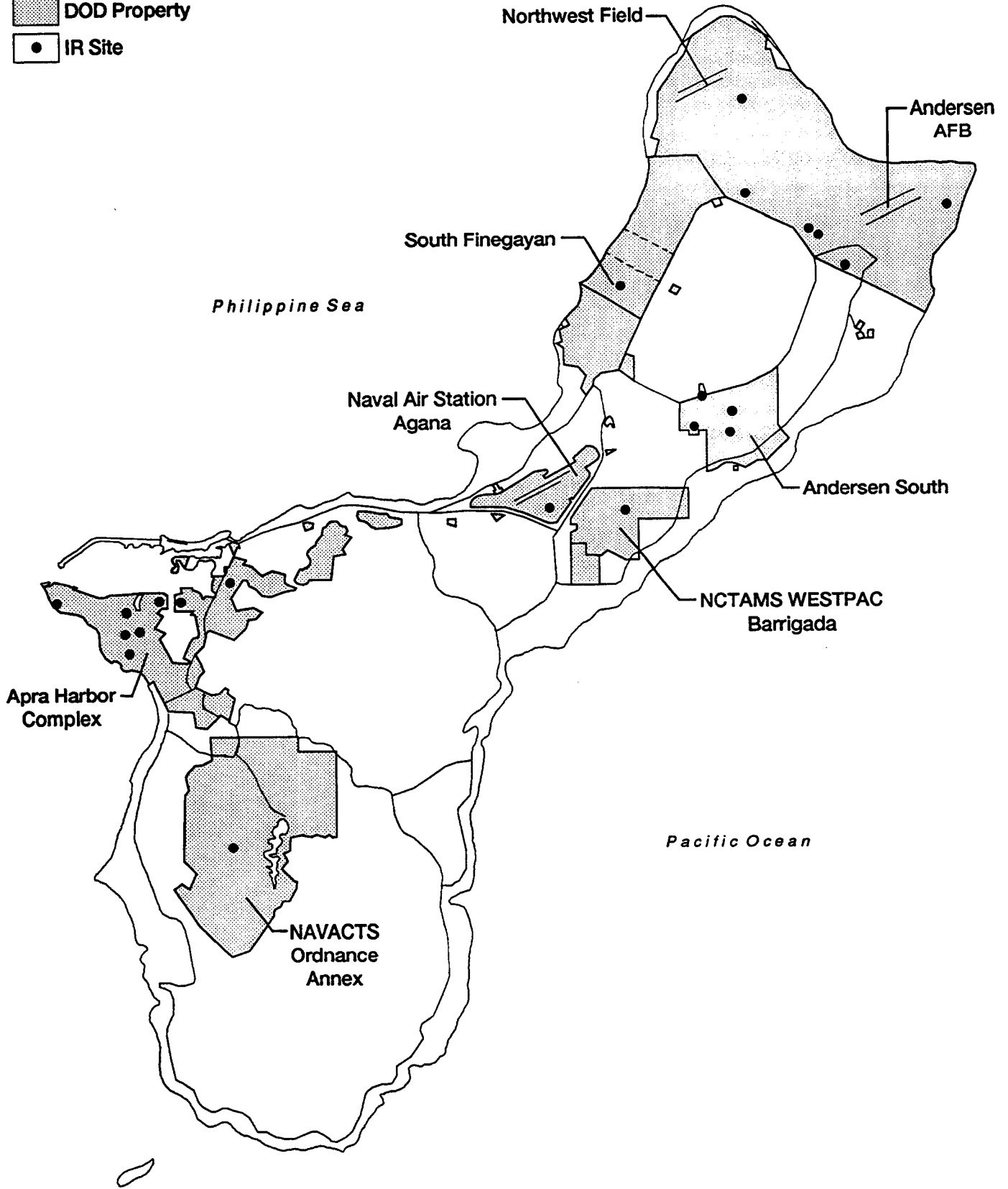
4. Installation Restoration Sites

The Navy's Installation Restoration (IR) program is intended to identify and control environmental contamination resulting from past methods of storage, handling, and disposal of hazardous substances at Navy facilities. On Guam, a total of 16 sites have been identified on Navy land for possible remedial action. The most significant IR sites are shown in Figure G-2.

Prior to transfer of title of DOD real property to another party, compliance with the Community Environmental Response Facilitation Act (CERFA, P.L. 101-426), as it amends Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. Section 9620(h)) is required. This is to ensure the prompt transfer of uncontaminated and remediated property. According to DOD Policy on the Implementation of CERFA, the assessment and determination of real property that can be considered "uncontaminated" will be based on an Environmental Baseline Survey (EBS). An EBS will be prepared for each installation being closed or realigned. The EBS will be based on all existing environmental information related to storage, release, treatment or disposal of hazardous

LEGEND

-  DOD Property
-  IR Site



**MAJOR INSTALLATION RESTORATION SITES
GUAM LAND USE PLAN**

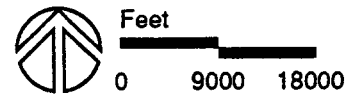


Figure:

G-2

substances or petroleum products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or petroleum product. Additional data, including sampling and analysis, may be needed in the EBS to support the determination.

In 1992, the Environmental Protection Agency (EPA) placed Andersen AFB on the National Priority List based on the installation's score under the Hazard Ranking System (HRS), in accordance with 40 CFR, Part 300. A total of 30 IR sites have been identified. The most significant of these, which are largely landfills and waste piles, are also shown in Figure G-2.

5. Encroachment

Encroachment, in this context, is any action by outside activities which may negatively impact the DOD mission on Guam. These actions may originate beyond the boundaries of the various service land areas, but nonetheless could ultimately affect the use of land on Air Force or Navy installations and restrict related military missions. Issues presented in this section are highlighted in order to make military planners aware of the nature of the problem. Except for aviation operations at NAS Agana, encroachment issues have not yet seriously impacted military missions on Guam. However, if not addressed early, external conditions in some problem areas could reduce operations to the point where the only alternative is to give up the land. Some encroachment issues have been discussed in other sections of this report. They are reiterated here due to the importance of this subject.

a. Aviation Operations. The Navy and GOVGUAM had a joint-use agreement for runways and facilities at NAS Agana for a number of years. The combination of military and civilian air traffic and high urban development caused increasingly serious encroachment problems for the Navy. Incompatible civilian land uses encroached into airfield safety zones near the runways, and GOVGUAM pushed to expand operations of the international airport. In 1993, GOVGUAM successfully fought to include NAS Agana on the BRAC closure list. Aviation operations will be relocated to Andersen AFB, or to bases off-island.

b. GOVGUAM Requirements. As it should, GOVGUAM works toward the expansion of economic opportunities for island residents. Economic expansion and the need to accommodate a growing tourism industry was the primary reason for the effort to obtain lands at NAS Agana. A similar focus may next be expected for facilities in Apra Harbor. GOVGUAM has indicated a need to expand its commercial port operations, and considers existing Navy wharves and facilities in the Inner Harbor to be underutilized. Joint use of facilities in the harbor should be evaluated. However,

encroachment of civilian operations should not be allowed to impact the Navy's mission at Apra Harbor.

c. Wildlife Refuge Overlay. The recent establishment of the Wildlife Refuge Overlay was discussed previously in this section. Management practices of the USFWS have the potential to impact the military's mission, particularly at the NAVACTS Ordnance Annex and the Andersen AFB/Northwest Field areas.

d. Endangered Species. During the past 30 to 40 years, Guam's native wildlife has undergone a catastrophic decline due to predation of the brown tree snake. Several of Guam's endemic forest birds have become extinct during the past ten years. The Wildlife Refuge Overlay was established to address this problem. However, endangered species habitats may extend across the entire island, thus presenting the possibility that additional areas requiring protection may be identified in the future.

e. CDA Communication Operations. The mission of the NCTAMS WESTPAC CDA facility at Finegayan requires a 1-mile RFI-free zone for proper operation of communication equipment. This zone extends across Route 3 to the southeast, encompassing approximately 130 acres of private land. Continued development in this area could result in activities that interfere with the CDA functions.

f. Accident Potential Zones. The accident potential zone (APZ) at Andersen AFB covers approximately 900 acres of private property southwest of the installation. These encumbered areas, which are in the APZ I and APZ II zones, are outside DOD jurisdiction and are subject to local zoning ordinances. Land uses considered to be incompatible with these APZ zones include high density housing, high-rise housing, some higher density retail uses, and most public recreational facilities (e.g., stadiums, arenas, etc.).

g. Poaching. Illegal hunting at the NAVACTS Ordnance Annex has been a problem for many years. This activity increases security requirements, and has created safety problems. This has occurred when poachers have deliberately set fires in forested areas in order to drive caribao, deer, and wild boar into shooting zones. Wildfires are a significant risk to the mission at the NAVACTS Ordnance Annex, degrade wildlife habitats, and lead to increased siltation in the Fena Reservoir.

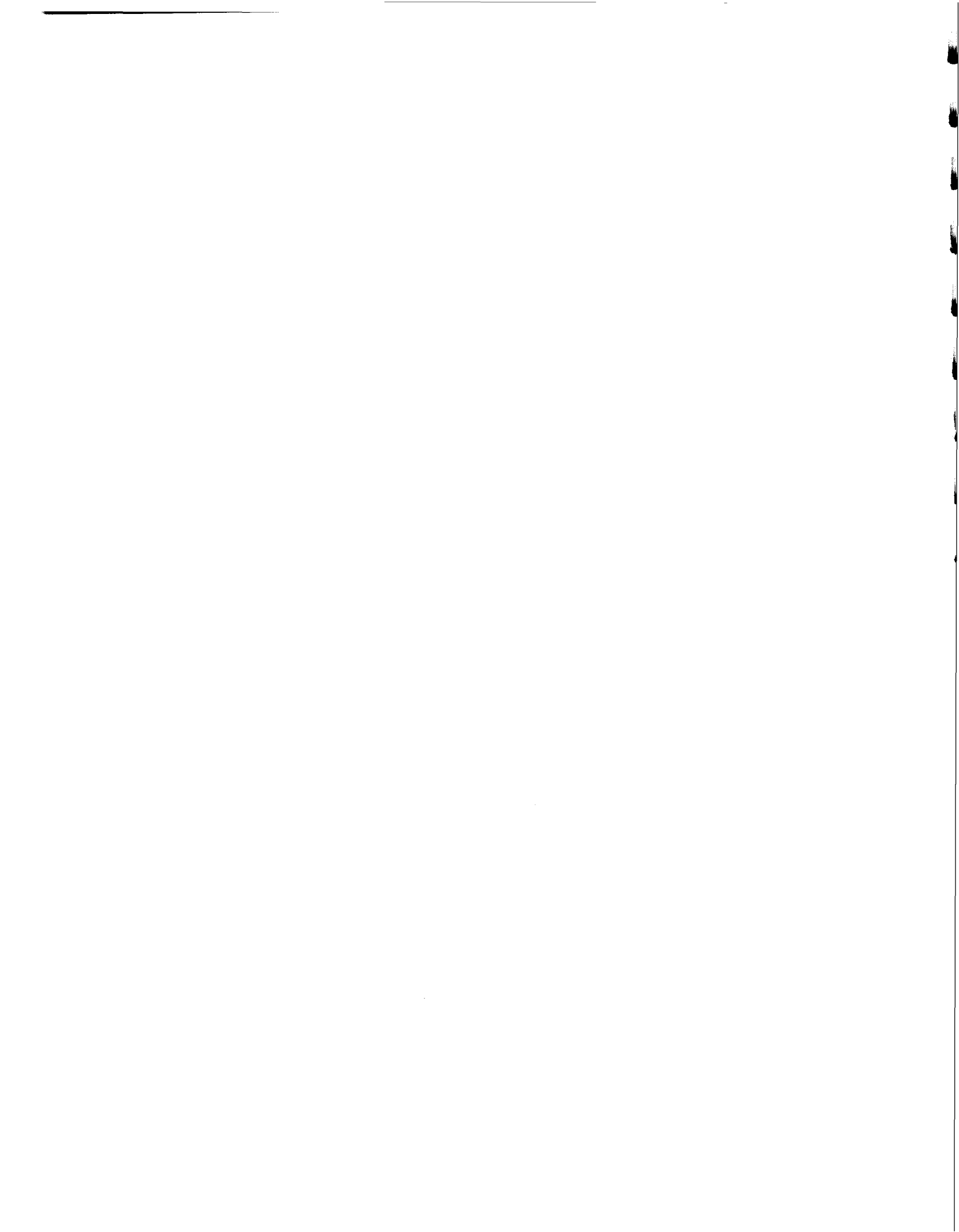
h. Air Force Site A1: Andersen Main Gate. Originally, a 45-acre site located across Route 9 from the Andersen AFB main gate was identified as Air Force property. Further investigation has confirmed the site is actually owned by the Department of Interior (DOI). The site lies within the APZ I of the Andersen AFB runways. Because of this, and the site's proximity to the

runway clear zone, the land was to have been transferred to the Air Force. This action never occurred. Headquarters PACAF (in conjunction with 13th Air Force and 36 ABW) will review and determine the necessary course of action for the site. The 45 acres are not included in the inventory of releasable lands in this final report. A site map of this area is included in Appendix B.

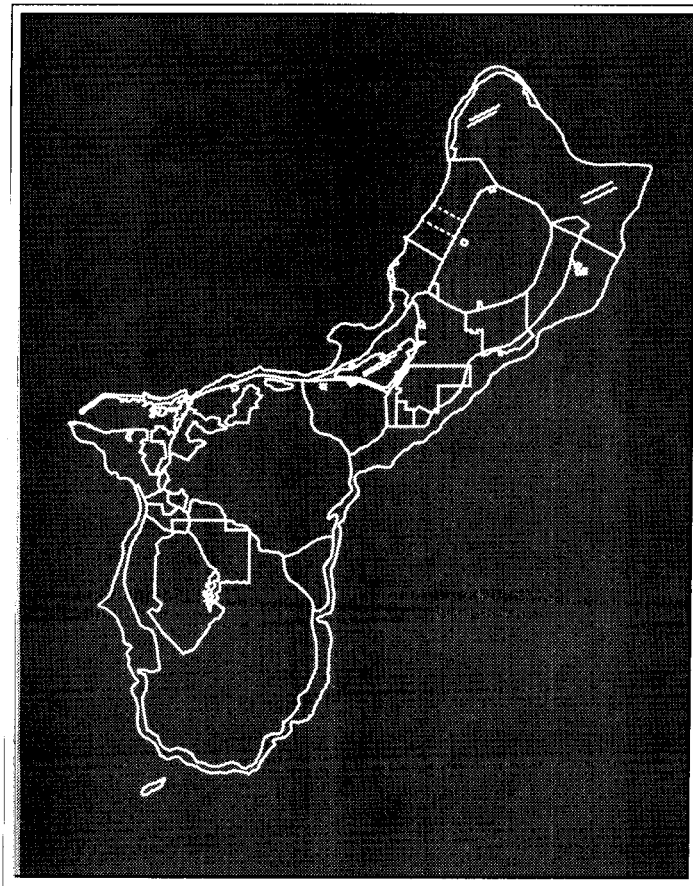
6. Implementation Costs & Timeframe

Prior to final disposal, several major tasks must be performed. First, plant account holding activities need to submit reports of excess, environmental certification forms, and McKinney Act checklists to PACNAVFACENGCOM via their chain of command to the major claimant level. Environmental baseline surveys may be prepared to complete the environmental certification forms. The next step is to request Washington D.C. approvals for disposal actions. Then, legal property descriptions and easement boundaries must be established. The above tasks may require one and two years to complete. The initial environmental baseline surveys will cost approximately \$520,000, and could be higher if follow-up studies are required. The cost of preparing property descriptions will be approximately \$300,000. It should be noted that property disposal actions for contaminated areas must be deferred until environmental mitigation studies and clean up actions are completed.

Non-BRAC properties approved for release are reported to the General Services Administration (GSA) for disposal. GSA will screen the property before the federal agencies to identify other potential federal requirements for the property. If other federal requirements exist, the property will be transferred to the appropriate agency. If none exists, the property is declared surplus and made available for disposal to the homeless, local governments and/or the public. GSA is responsible for obtaining environmental documentation for disposal actions in accordance with the National Environmental Policy Act.

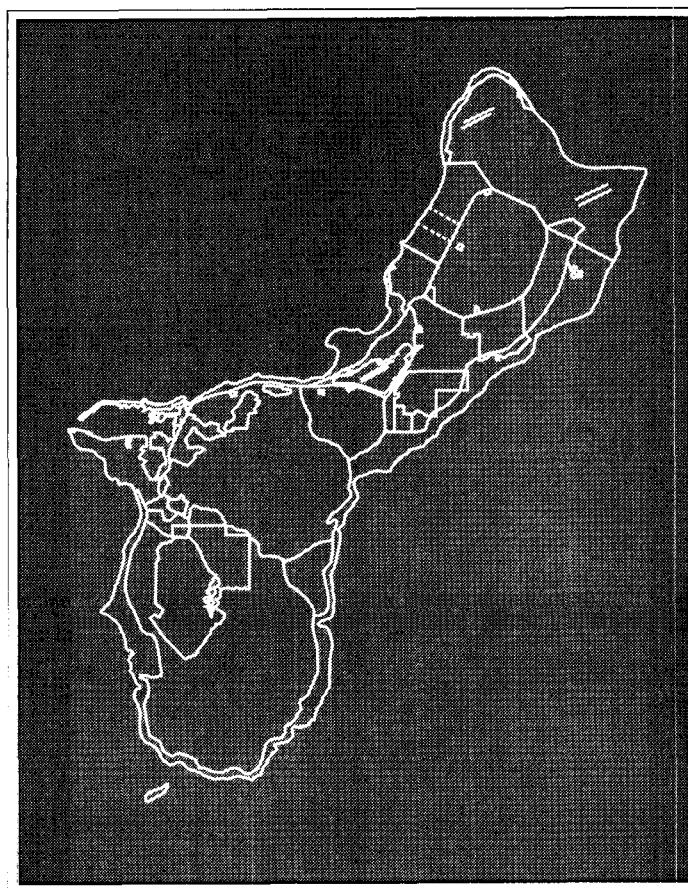


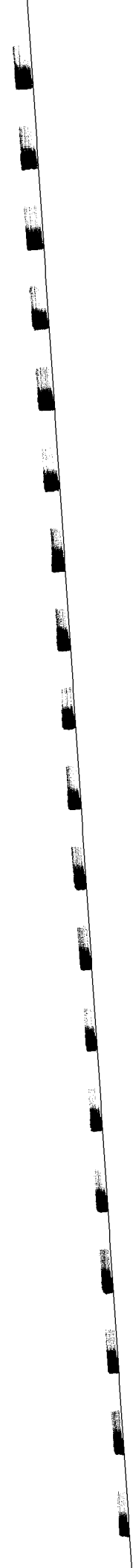
APPENDICES





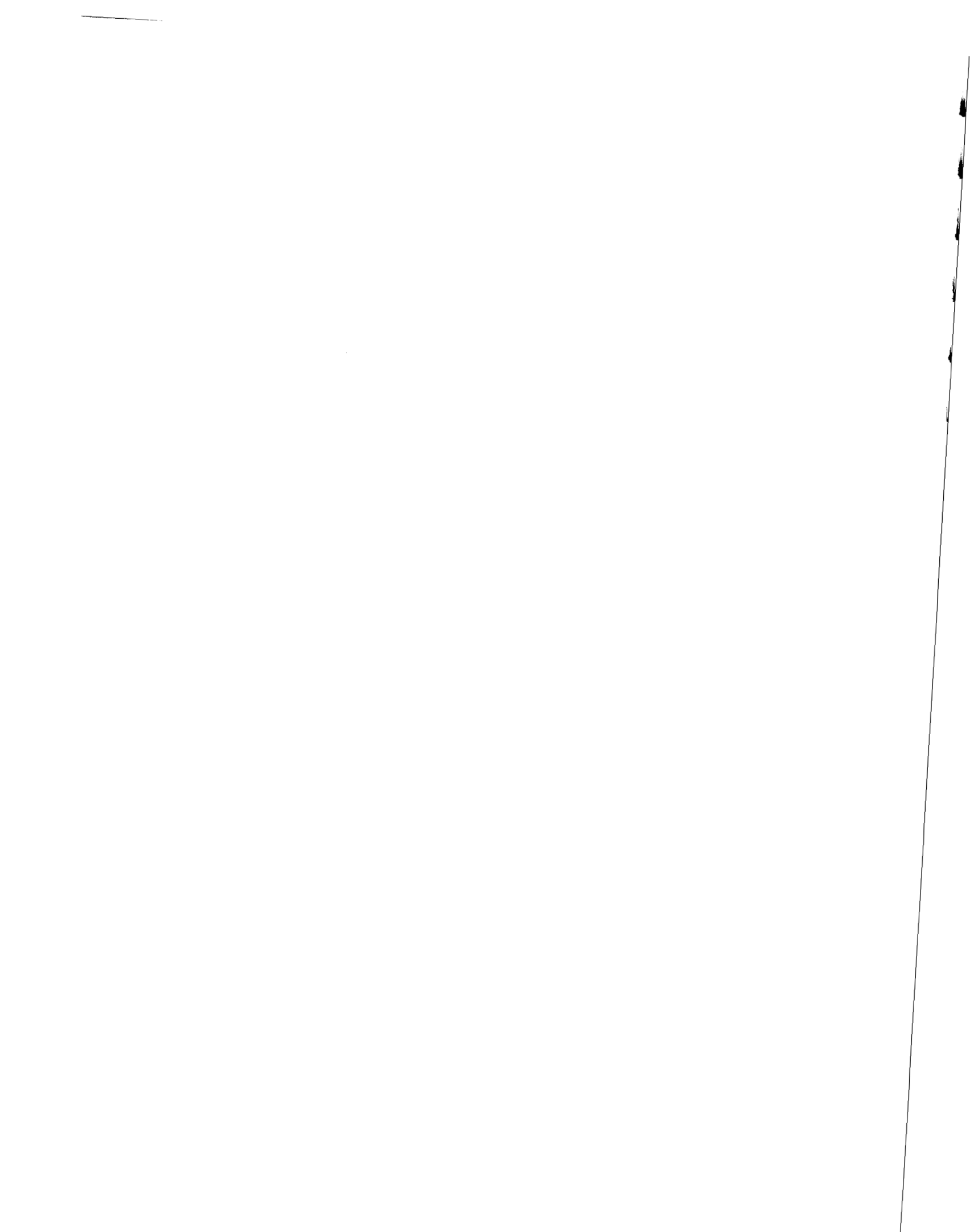
APPENDIX A
HAZARD ZONE SAFETY GUIDELINES





**APPENDIX A:
HAZARD ZONE SAFETY GUIDELINES**

The following pages provide detailed guidelines for man-made constraints discussed in Chapter D which can affect facility sitings and land use decisions.



RADIO FREQUENCY INTERFERENCE FREE ZONE CRITERIA FOR CIRCULARLY DISPOSED ANTENNA ARRAY (CDAA) ARCS

5.6.1 Buffer Zone Criteria

Buffer zones are required around C-E receiver sites to ensure adequate protection from local man-made radio noise source. Within these zones, noise producing activity, buildings, above ground wiring, roads, etc., must be prohibited. The interference free zones are concentric circles centering on the antenna system or field. Figure 5-4 shows the site plan and buffer zones required for EMI/RFI protection. These zones, Prohibited and Restricted Areas, are described in the following paragraphs.

- (a) **Prohibited Area** - The first circular zone, beginning at the outer periphery of the antenna field and extending outward for one mile. Only essential construction required to carry on the site's mission is permitted within this zone. All conductors not associated with the receiving antenna or its supporting structure should be buried. All structures (fences, lighting poles, etc.) within this zone must not extend above the vertical clearance zone (measured from the base of the receiving antenna) prescribed for particular antenna systems. See Figure 5-4. The vertical clearance angle is measured from the base of the receiver antenna closest to potential obstruction.

Within the restricted area, no overhead powerlines shall be permitted. Every effort must be made to keep the prohibited area clear of high trees and bushes which due to re-radiation/reflection could induce bearing errors into the receive system. Roads and trails must be kept to a minimum, and only vehicles which are mission essential and radio silenced should be allowed.

- (b) **Restricted Area** - A second circular zone beginning at the outer edge of the prohibited area and extending outward for one mile. Within the restricted area only limited domestic housing may be permitted (not to exceed 5 individual family units per acre). Command support facilities may be permitted within the restricted area if care is taken to ensure the functions of these facilities does not produce EMI/RFI or in any way change or degrade the C-E receive mission. No radio transmitters of any type may be permitted within this area unless mission essential (i.e. security patrol or fire department radio communications). All fixed and mobile.

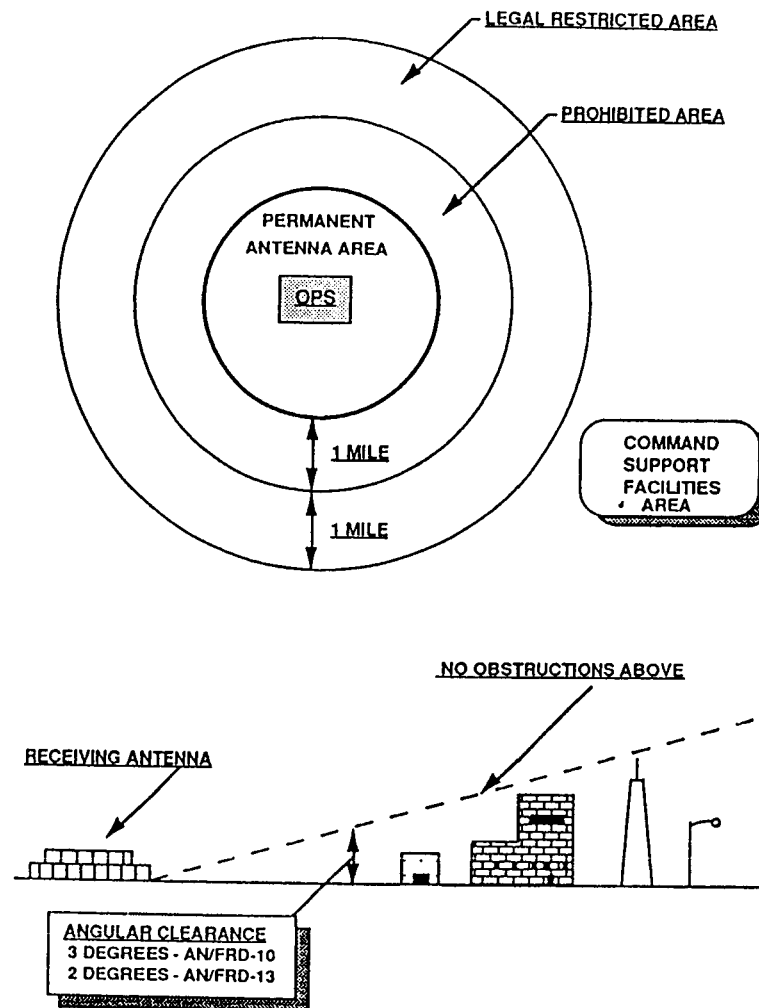


Figure 5-4

Buffer/Vertical Clearance Zones



<u>Potential Interference Source</u>	<u>Distance from Antenna Field Boundary</u>	
	Miles	(Kilometers)
VLF Transmitters (3 KHz-30KHz)	25	(40)
LF-HF Transmitters (30KHZ-30MHz)	15	(24.0)
Other Transmitters (>30 MHz)	5	(8.0)
Above Ground Power Lines	No nearer than line-of-sight measured from top of low band screen or 2 mi which ever is greater.	
Airfields with ATC Radar	10	(16.1)
Airfields without ATC Radars	5	(8.0)
Main Highways, Expressways	1	(1.6)
Secondary Roads (<200 Vehicles per Hour)	1/2	(0.8)
Housing Areas		
Low Density (< 5 Units per Acre)	1	(1.6)
High Density (> 5 Units per Acre)	2	(3.2)
Industrialized Areas		
Light Industry	4	(6.4)
Heavy Industry	6	(9.6)
Any Industry Using RF Heating Process	15.5	(25)
Electric Discharge Vapor Lamps	1	(1.6)
Power Plants	5	(8.0)
Railroads	1	(1.6)
Ionospheric Sounders	25	(40.0)
Over-the-Horizon HF Backscatter Radars	100	(160.9)
Receive Station Power Feeders	1, 000 ft from antenna (305 meters)	

Table 5-1

Minimum Receiver Site Separation Distances For EMI Protection



Suggested Land Use Compatibility in Noise Zones

Facility	Noise Zones/DNL Levels (in Ldn)									
	1		2				3			
	0-55	55-65	65-70	70-75	75-80	80-85	85+			
Residential - Single & two units, apartments, group quarters & residential hotels	Y	Y*	25 ¹	30 ¹	N	N				
Transient lodgings	Y	Y*	25 ¹	30 ¹	35 ¹	N				
Manufacturing	Y	Y	Y	Y ²	Y ³	Y ⁴				
Transportation - railroad, rapid rail, motor vehicle, aircraft, marine craft, auto parking	Y	Y	Y	Y ²	Y ³	Y ⁴				
Communication	Y	Y	Y	25 ³	30 ³	N				
Utilities	Y	Y	Y	Y ²	Y ³	Y ⁴				
Other transportation, communication and utilities	Y	Y	Y	25 ⁵	30 ⁵	N				
Retail trade - general merchandise, food, automotive, marine craft, apparel & accessories, furniture & home furnishings, eating & drinking establishments, other retail	Y	Y	Y	25	30	N				
Services - personal, finance, insurance, real estate	Y	Y	Y	25	30	N				
Hospitals, nursing homes	Y	Y*	25*	30*	N	N				
Other medical facilities	Y	Y	Y	25	30	N				
Educational services	Y	Y*	25*	30*	N	N				
Cultural activities (including churches)	Y	Y*	25*	30*	N	N				
Public assembly	Y	Y	25	30	N	N				
Auditoriums, concert halls	Y	Y*	N	N	N	N				
Outdoor music shells, amphitheaters	Y	Y	N	N	N	N				
Outdoor sports arenas, spectator sports	Y	Y	Y ⁷	Y ⁷	N	N				
Recreational activities (incl. golf courses, riding stables, water recreation)	Y	Y*	Y*	25*	30*	N				
Parks	Y	Y*	Y*	Y*	N	N				
Agriculture (except livestock)	Y	Y	Y ⁸	Y ⁸	Y ¹⁰	Y ^{10,11}				
Livestock farming and animal breeding	Y	Y	Y ⁸	Y ⁸	N	N				

Source: OPNAVINST 11010.36A of 11 April 1988

KEY:

- Y (Yes)
- N (No)
- NLR (Noise Level Reduction)
- Y* (Yes with restrictions)
- 25, 30, or 35
- 25¹, 30¹ or 35¹
- DNL
- Ldn

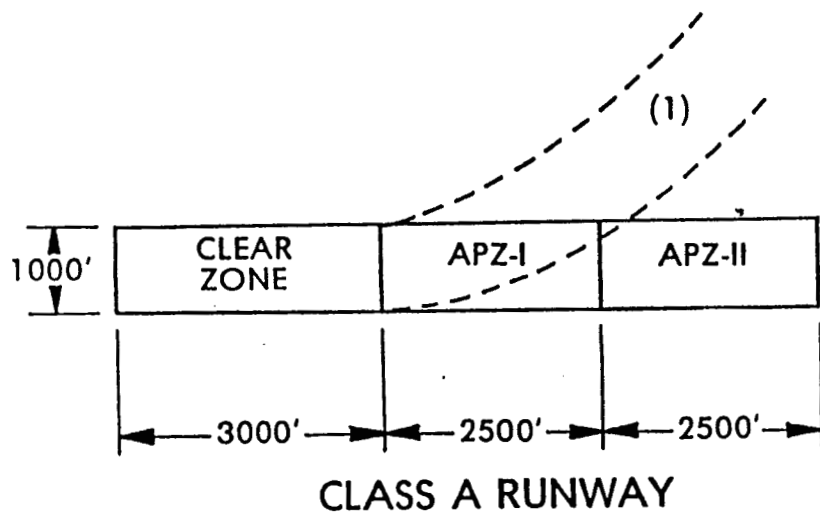
FOOTNOTES:

1. a) Although local conditions regarding the need for housing may require residential use in these zones, residential use is discouraged in DNL 65-70 and strongly discouraged in DNL 70-75. The absence of viable alternative development options should be determined and an evaluation should be conducted prior to approvals indicating that a demonstrated community need for the residential use would not be met if development were prohibited in these zones.
- b) Where the community determines that residential uses must be allowed, measures for Noise Level Reduction (NLR) of at least 5 dB (DNL 65-70) and 30 dB (DNL 70-75) are required. Normal construction codes and be considered in individual approvals. Normal construction codes are expected to provide a NLR of 20 dB, thus the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. Additional consideration should be given to modifying NLR levels based on peak noise levels or vibrations.
- c) NLR criteria will not eliminate outdoor noise problems. However, building mitigation such as soundproofing, design and use of berms and barriers can help mitigate outdoor noise at sites abutting ground level sources. Measures that reduce noise at sites abutting ground level sources are given preference to measures which only protect interior spaces.
2. Measures to achieve NLR of 25 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
3. Measures to achieve NLR of 30 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
4. Measures to achieve NLR of 35 must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
5. If project or proposed development is noise sensitive, use indicated NLR; if not, land use is compatible without NLR.
6. No buildings.
7. Land use compatible provided special sound reinforcement systems are installed.
8. Residential buildings require a NLR of 25.
9. Residential buildings require a NLR of 30.
10. Residential buildings not permitted.
11. Land use not recommended, but if community decides use is necessary, hearing protection devices should be worn by personnel.

* The designation of these uses as "compatible" in this zone reflects individual Federal agencies' consideration of general cost and feasibility factors as well as past community experiences and program objectives. Localities, when evaluating the application of these guidelines to specific situations, may have different concerns or goals to consider (Guidelines for Considering Noise in Land Use Planning and Control, June 1980).

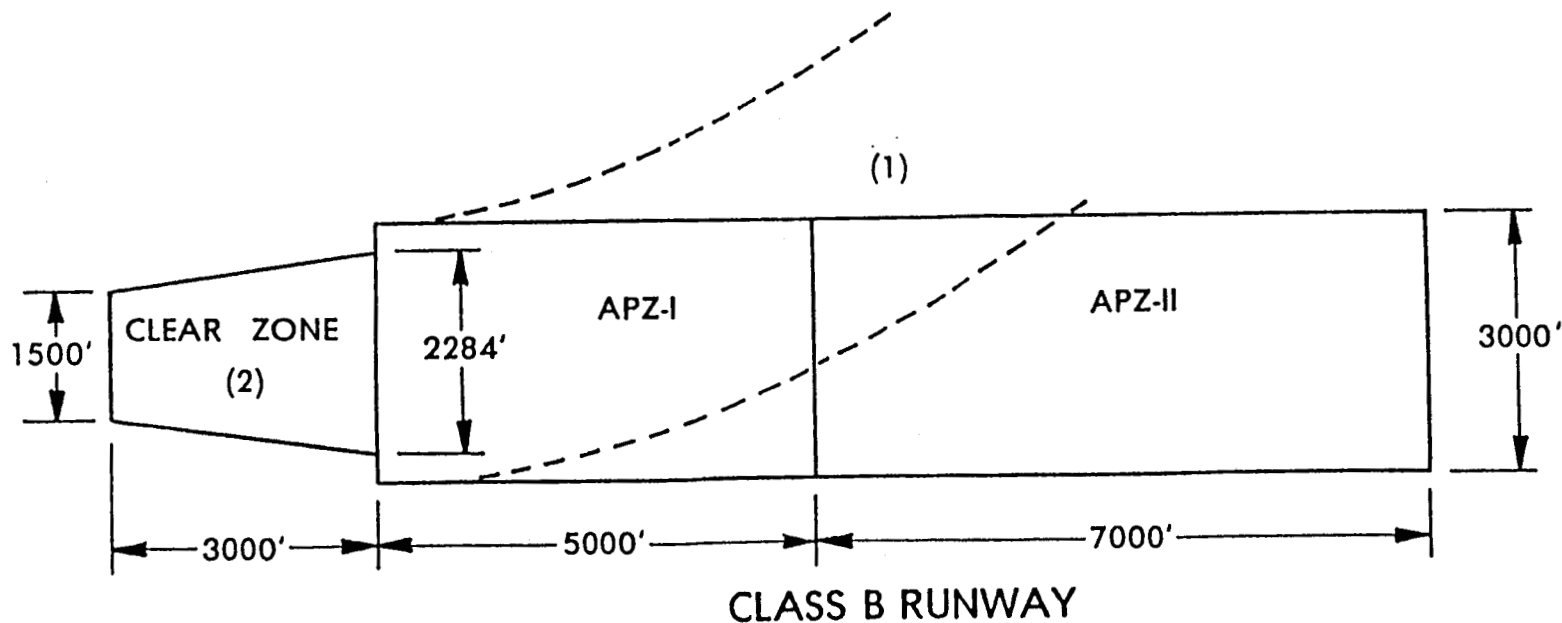
FIGURE 1

FIXED WING AIRCRAFT ACCIDENT POTENTIAL ZONES

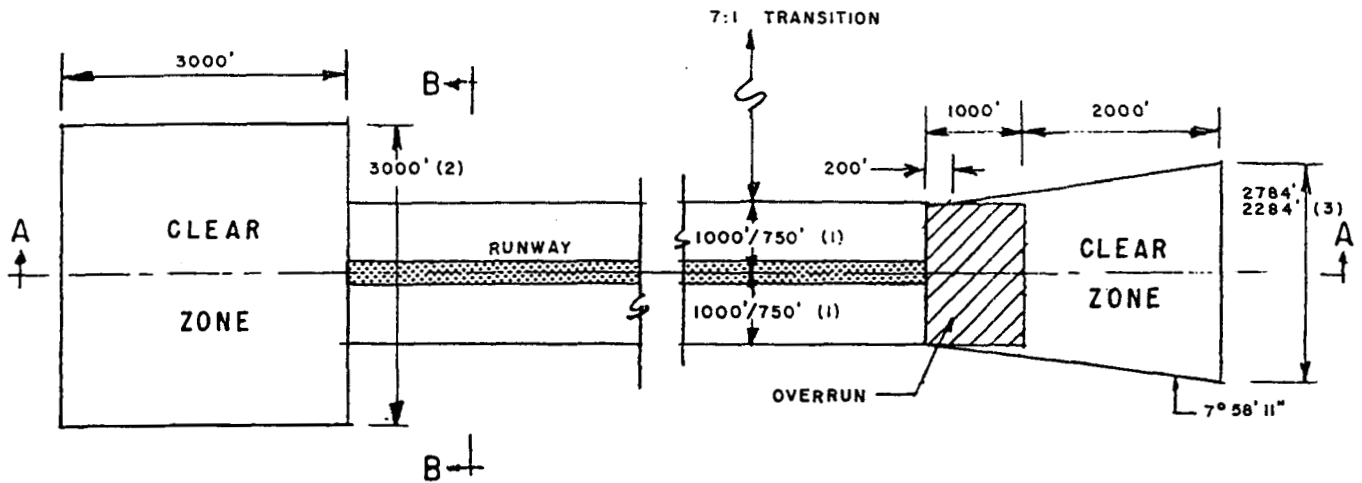


NOTES

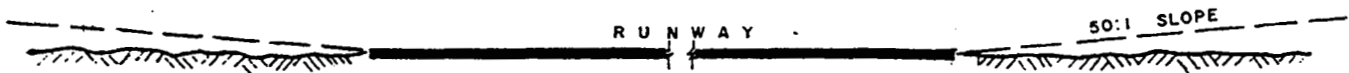
- (1) APZ I AND II MAY BE ALTERED TO CONFORM WITH FLIGHT SHADOW.
- (2) THE WIDTH IS THE SAME AS THE NAVY STANDARD 50:1 APPROACH/DEPARTURE FAN.
- (3) SEE ATTACHED GUIDELINES FOR HELICOPTERS.



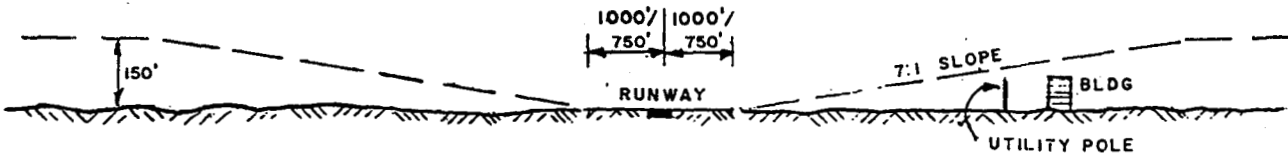
Note: See OPNAVINST 11010.36A of 11 April 1988 for suggested land use compatibility in Accident Potential Zones.



CLASS B RUNWAY
P L A N



SECTION A-A



SECTION B-B

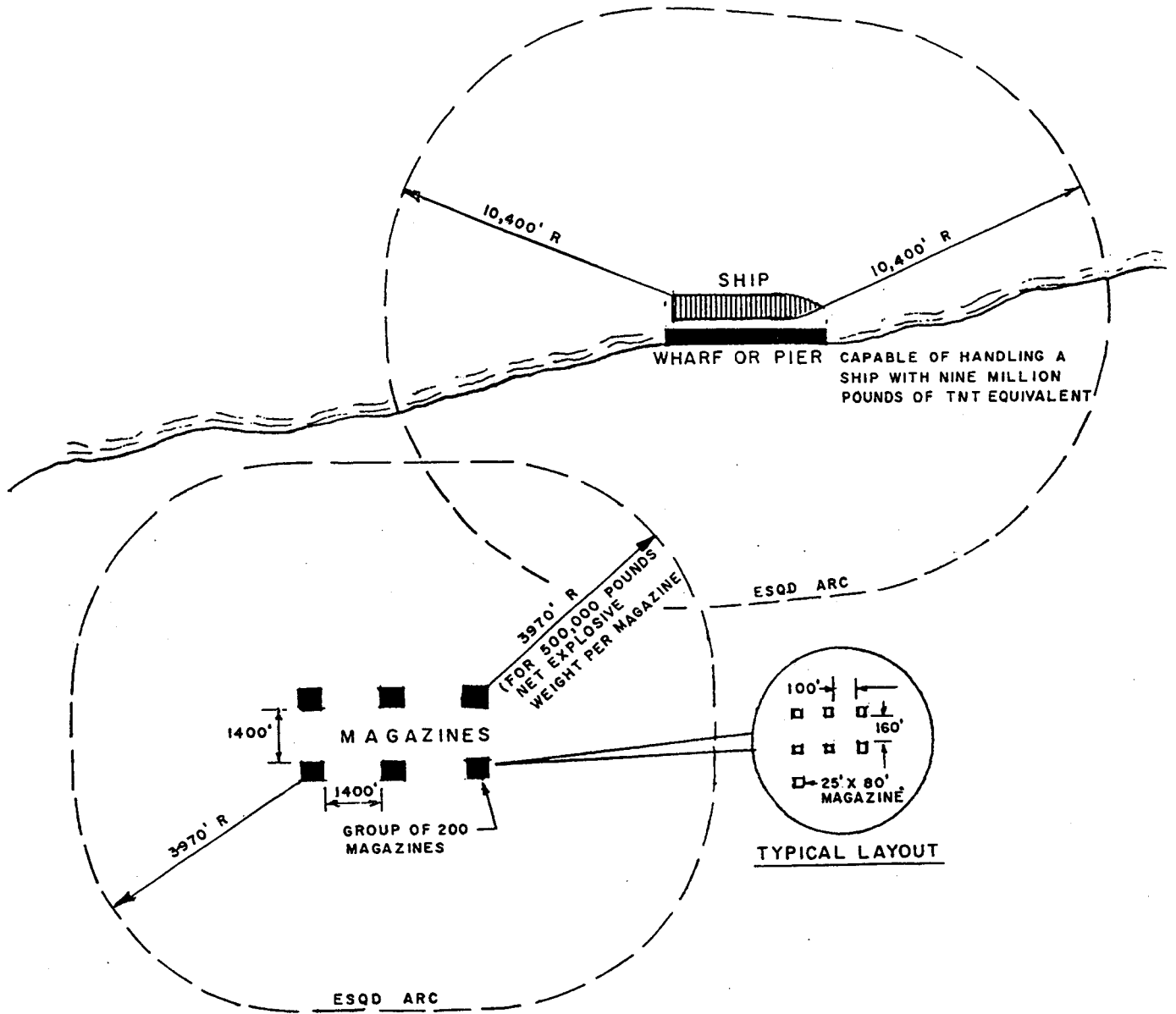
- (1) 750 FEET FOR EXISTING AIR INSTALLATIONS ACCEPTABLE:
1,000 FEET FOR AIR INSTALLATIONS PLANNED IN THE
FUTURE.
- (2) WIDTH OF CLEAR ZONE MAY BE BASED ON INDIVIDUAL SERVICE
ANALYSIS OF HIGHEST ACCIDENT POTENTIAL AREA FOR SPECIFIC
RUNWAY USE AND VARIED BASED ON ACQUISITION CONSTRAINTS.
3,000-FOOT WIDE CLEAR ZONE IS DESIRABLE FOR NEW CONSTRUCTION.
- (3) 2,784 FEET IF 2,000-FOOT PRIMARY SURFACE UTILIZED.
2,284 FEET IF 1,500-FOOT PRIMARY SURFACE UTILIZED.

AIRFIELD SAFETY ZONES

NOT TO SCALE

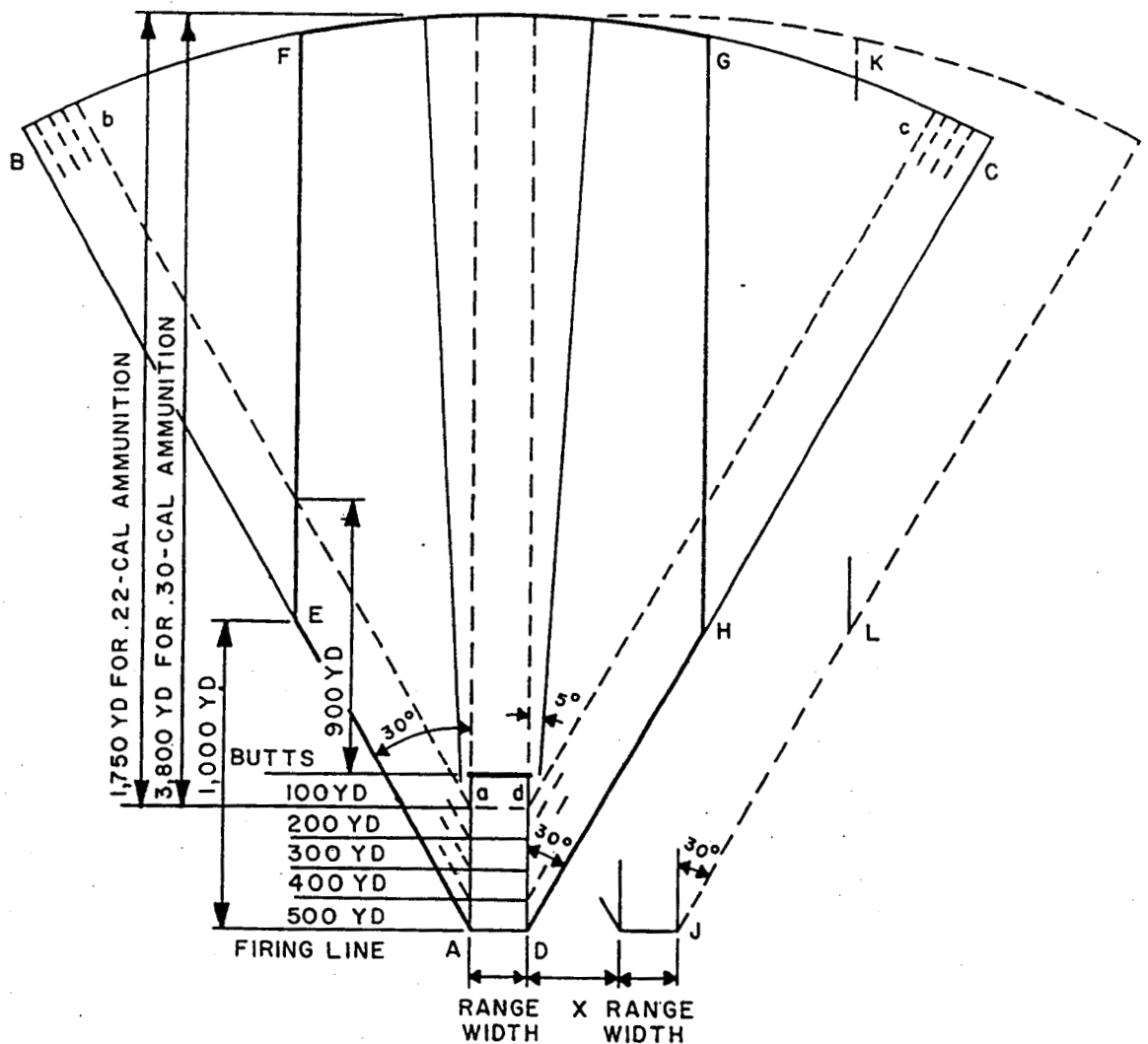
ESQD ARCS FROM PIER/WHARF

NOT TO SCALE



ESQD ARCS FROM MAGAZINES

NOT TO SCALE



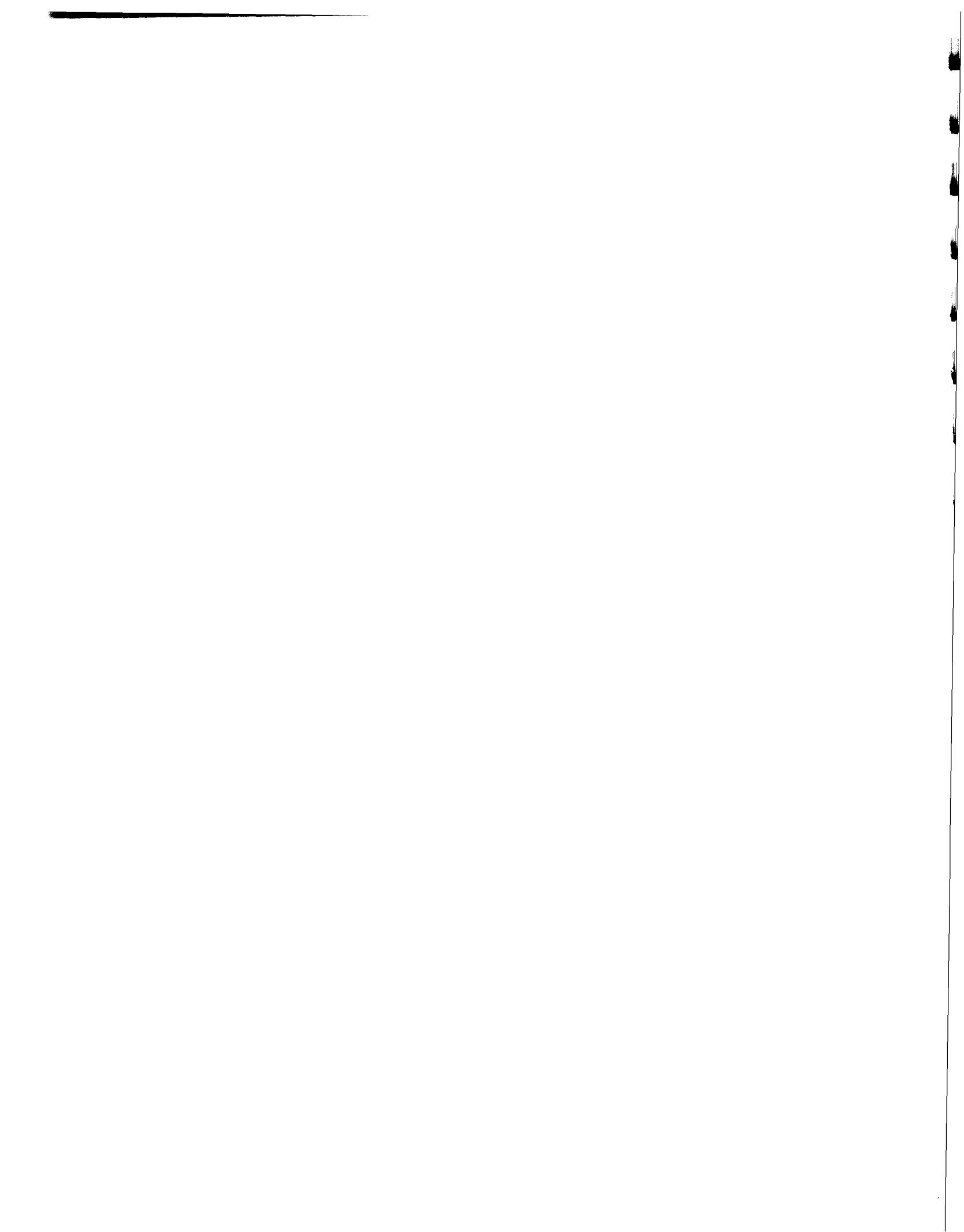
NOTE: AREA ABCD INDICATES THE MAXIMUM AREA REQUIRED FOR A 500-YARD RANGE WHERE TERRAIN IS LEVEL AND FREE OF MATERIALS THAT CAUSE RICOCHETS. THE AREA CAN SAFELY BE REDUCED TO AREA AEFKIJ.

AREA abcd INDICATES MAXIMUM AREA REQUIRED FOR A 100 YARD RANGE WHERE TERRAIN IS LEVEL AND FREE OF MATERIALS THAT CAUSE RICOCHETS. THE AREA CAN SAFELY BE REDUCED SIMILARLY AS FOR A 500-YARD RANGE.

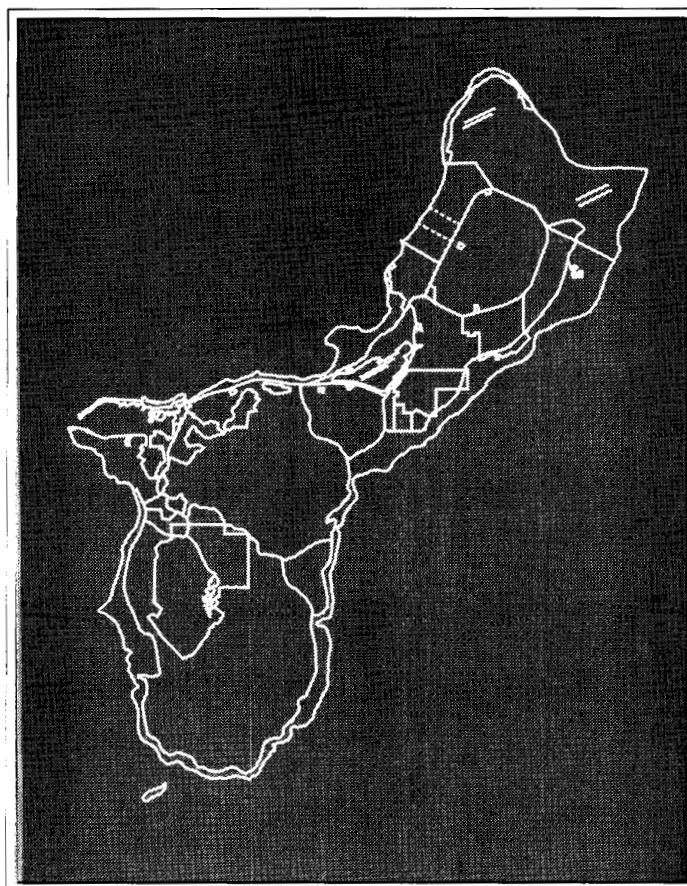
AREA REQUIRED FOR INTERMEDIATE DISTANCE RANGES AND RANGES OVER 500 YARDS TO BE DETERMINED SIMILARLY.

MAXIMUM AREA REQUIRED FOR PARALLEL 500-YARD RANGES INDICATED BY AREA ABIJ WHERE TERRAIN IS LEVEL AND FREE OF MATERIALS THAT CAUSE RICOCHETS. THE AREA CAN SAFELY BE REDUCED TO AREA AEFKIJ. DISTANCE X SHALL BE NOT LESS THAN 200 YARDS FOR RANGES UP TO 300 YARDS NOR 300 YARDS FOR RANGES MORE THAN 300 YARDS, UNLESS A PROTECTIVE LONGITUDINAL ENBANKMENT IS BUILT AS INDICATED ON FIGURE 3-7.

Danger Areas for Rifle Range Without Bullet Stops

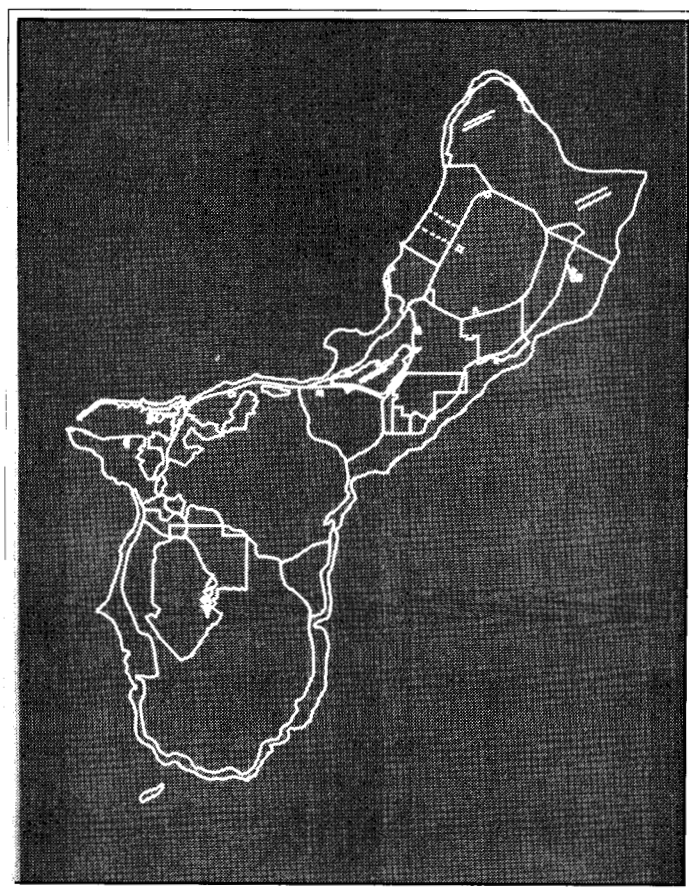


APPENDIX B
RELEASABLE PARCEL MAPS



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APPENDIX C
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_____. *Regional Profile of Navy Activities, Guam, Mariana Islands*. March 1985.

_____. *Apra Harbor Naval Complex Master Plan, Guam, Mariana Islands*. April 1986.

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_____. *Draft Capital Improvements Plan, Naval Station, Guam, Mariana Islands*. August 1993.

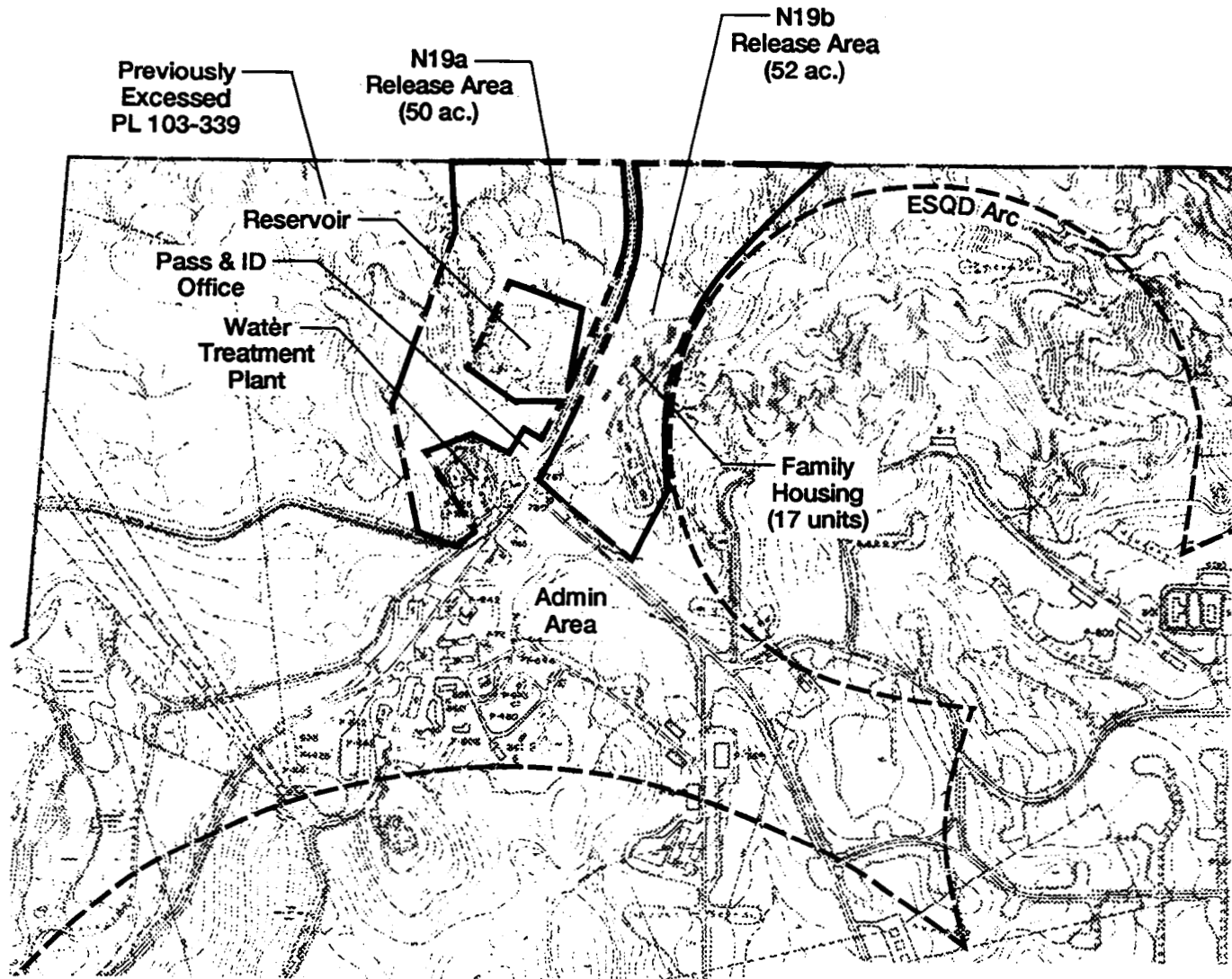
_____. *Naval Magazine Guam Master Plan, Guam, Mariana Islands*. August 1991.

_____. *Naval Air Station Agana Master Plan, Mariana Islands*. 1984.

SITE N19: NAVACTS ORDNANCE ANNEX NORTH PARCELS- 102 ACRES

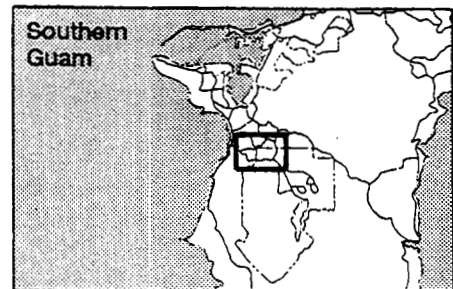
JUSTIFICATION FOR RELEASE:

- Retain lands within ESQD arcs and Lost River watershed for training and watershed protection.
- Family housing not required to meet FY99 base loading requirements.
- No other anticipated future DOD need for releasable land.



CONDITIONS OF RELEASE:

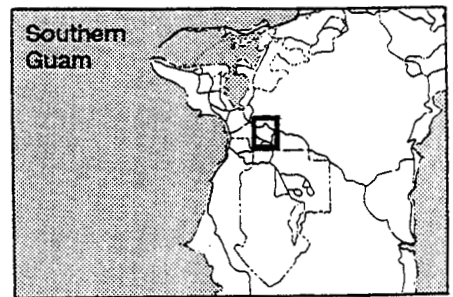
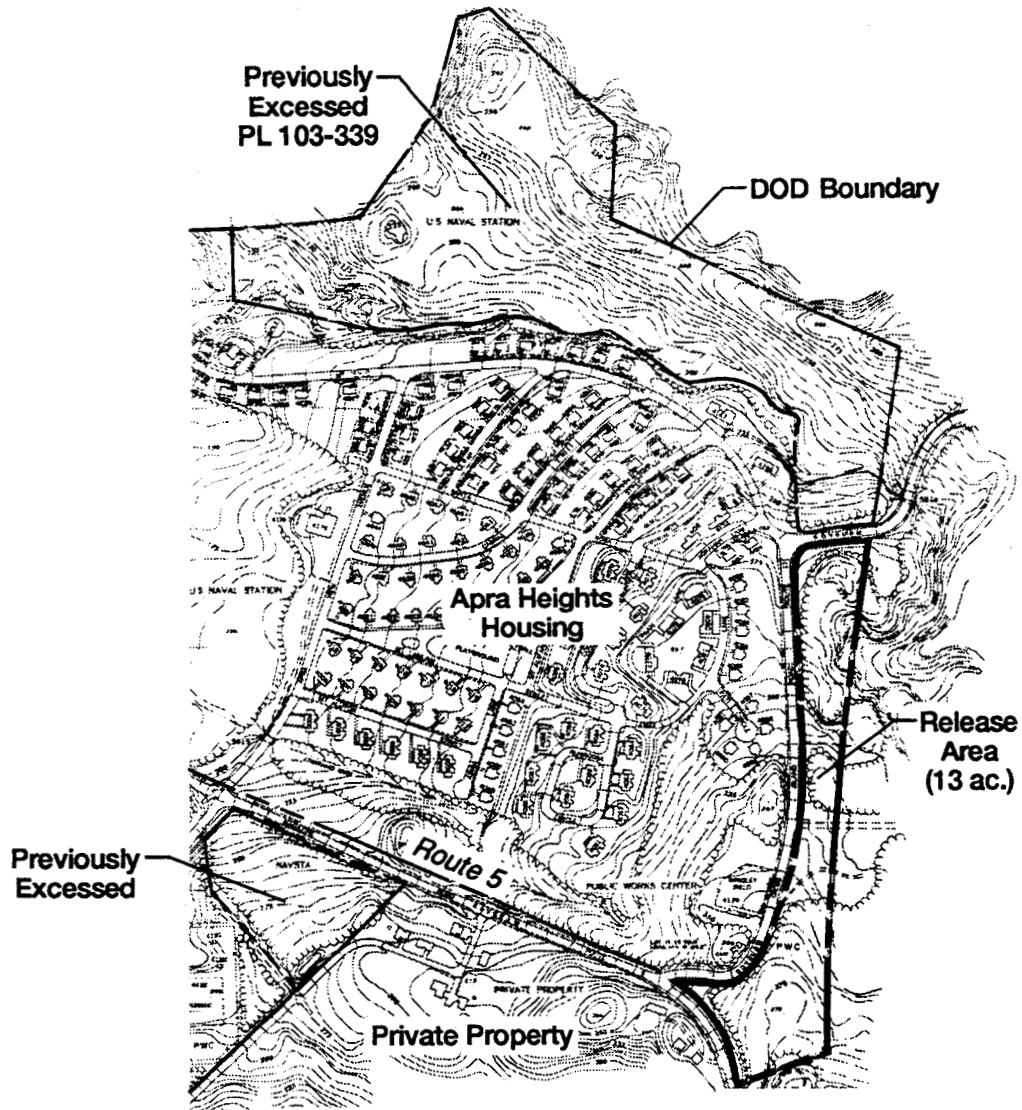
- Construct fence line around treatment plant, reservoir and behind family housing area.
- Retain utility easements.
- Retain access easement to reservoir behind (east) family housing area.



SITE N18: OLD APRA HEIGHTS- 13 ACRES

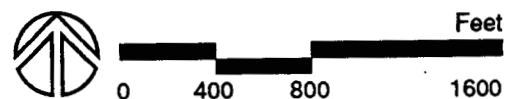
JUSTIFICATION FOR RELEASE:

- No anticipated future DOD need for land.



CONDITIONS OF RELEASE:

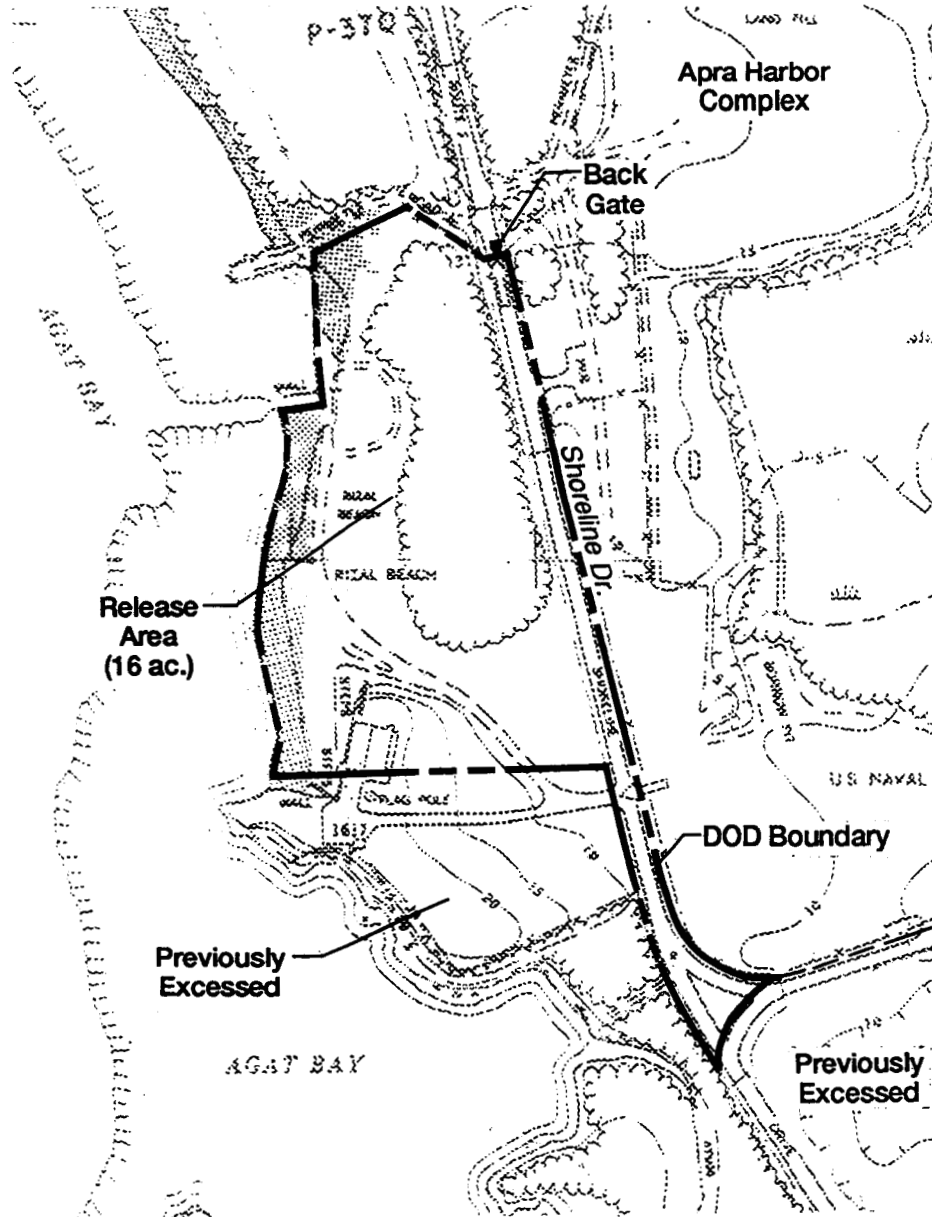
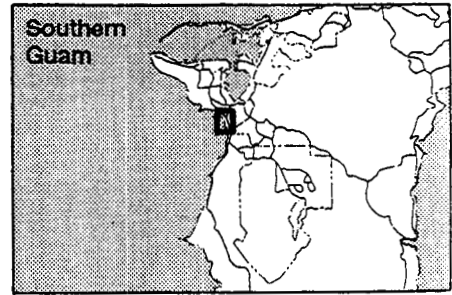
- None.



SITE N17: RIZAL BEACH- 16 ACRES

JUSTIFICATION FOR RELEASE:

- No anticipated future DOD need for land.
- Outside of Apra Harbor Complex main compound.
- Adjacent to other previous GLUP parcels.
- Land currently licensed to GOVGUAM.



CONDITIONS OF RELEASE:

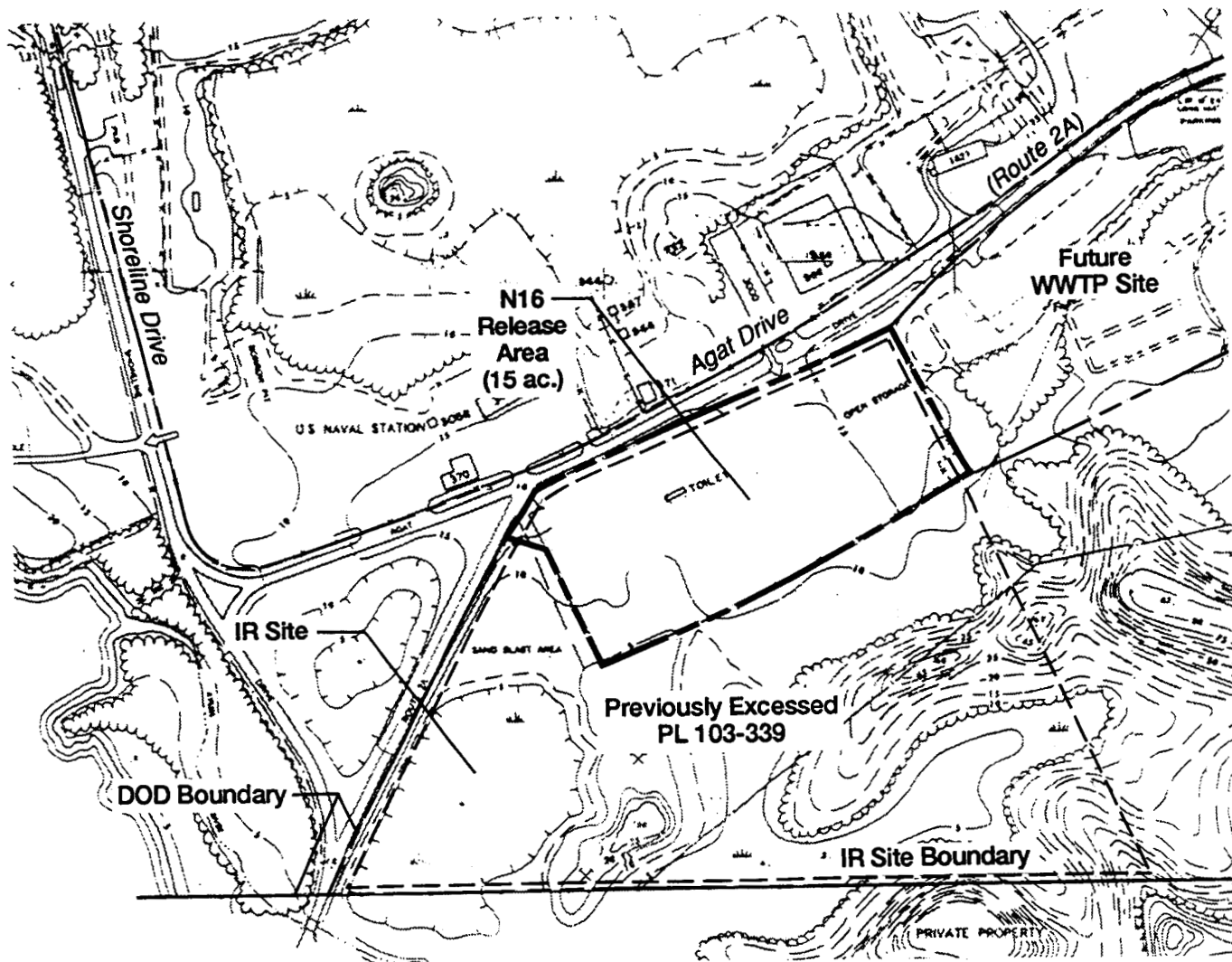
- Retain access and utility easements.



SITE N16: ROUTE 2A- 15 ACRES

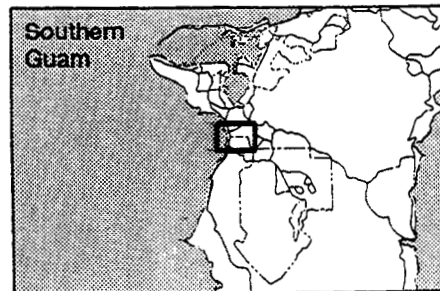
JUSTIFICATION FOR RELEASE:

- No anticipated future DOD need for land.
- Adjacent to previous GLUP parcel and land for future wastewater facility.



CONDITIONS OF RELEASE:

- Navy completes IR clean-up.



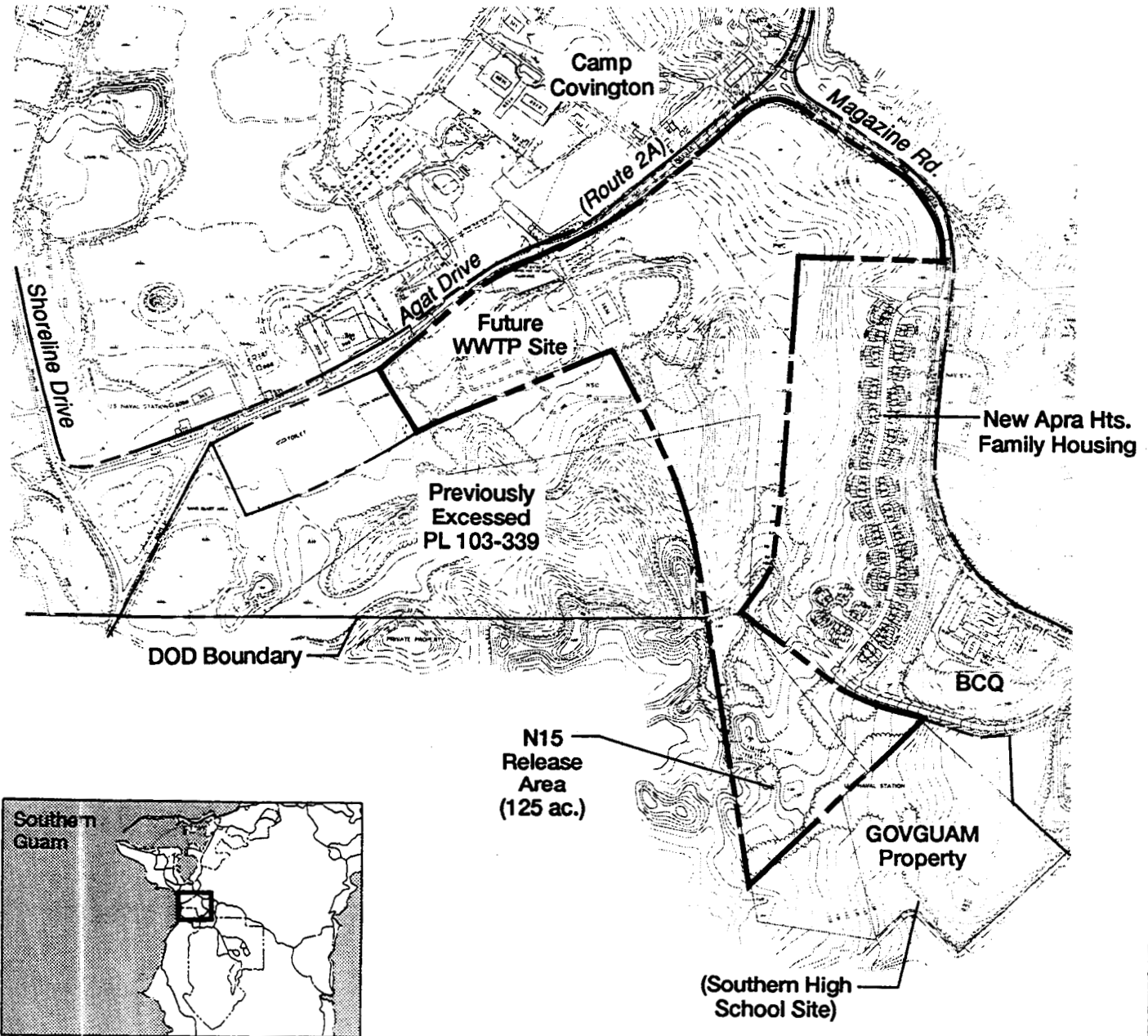
ROUTE 2A/APRA HTS.
GUAM LAND USE PLAN



SITE N15: NEW APRA HEIGHTS- 125 ACRES

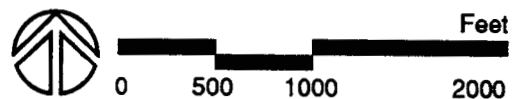
JUSTIFICATION FOR RELEASE:

- Retain New Apra Heights housing and Bachelor Civilian Quarters (BCQ).
- No anticipated future DOD need for remaining undeveloped land.
- Adjacent to previous GLUP parcel and land for future GOVGUAM wastewater facility.



CONDITIONS OF RELEASE:

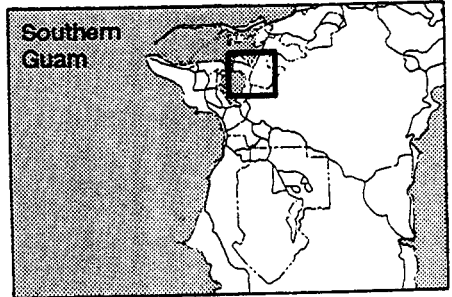
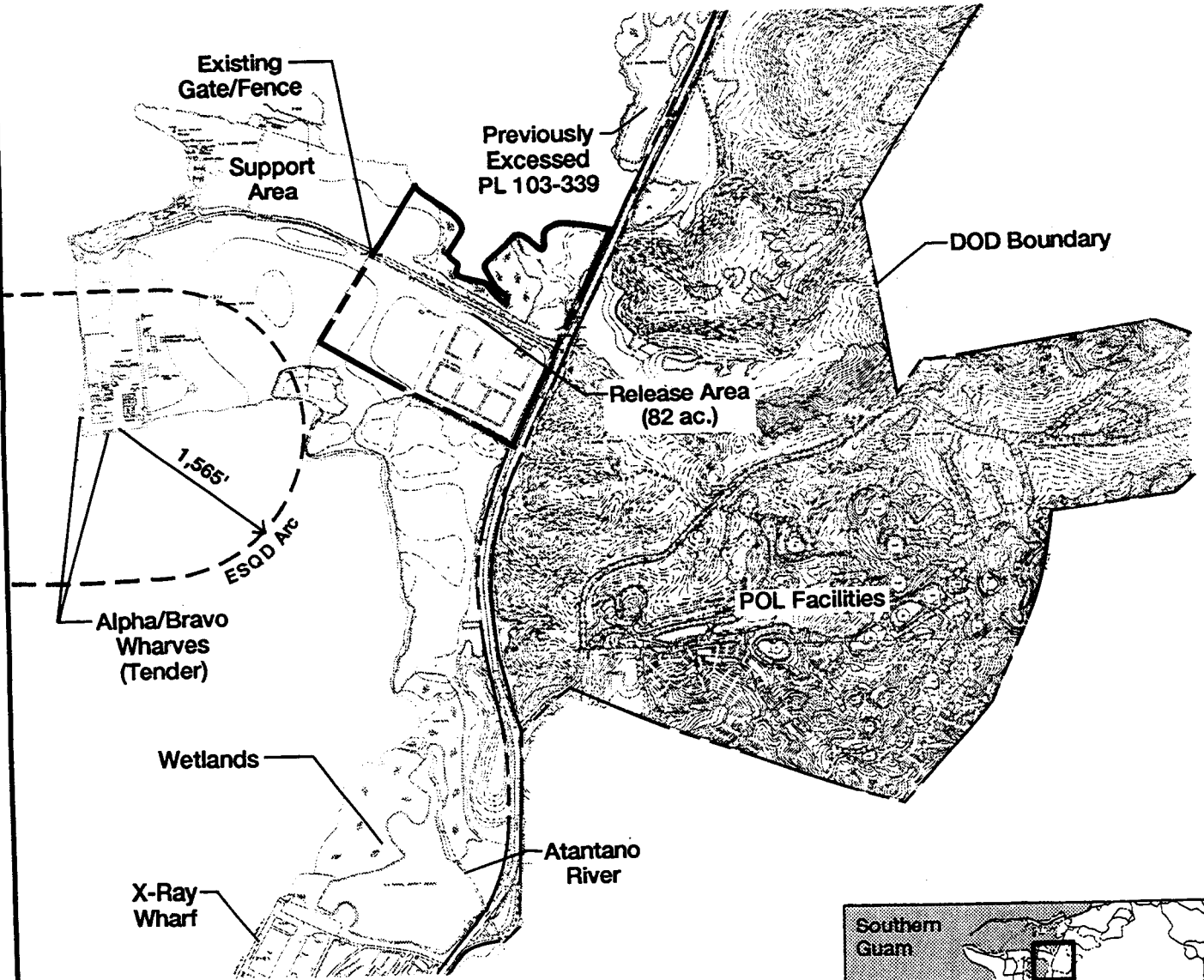
- Retain utility easements to service New Apra housing area.



SITE N14: POLARIS POINT- 82 ACRES

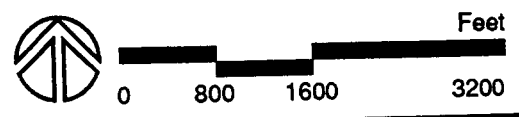
JUSTIFICATION FOR RELEASE:

- Retain southern and western portions for tender operations and to maintain security of Inner Harbor.
- Area outside gate/fence is unused by DOD.
- No additional DOD requirements identified for area.



CONDITIONS OF RELEASE:

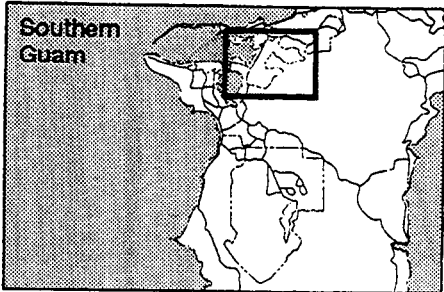
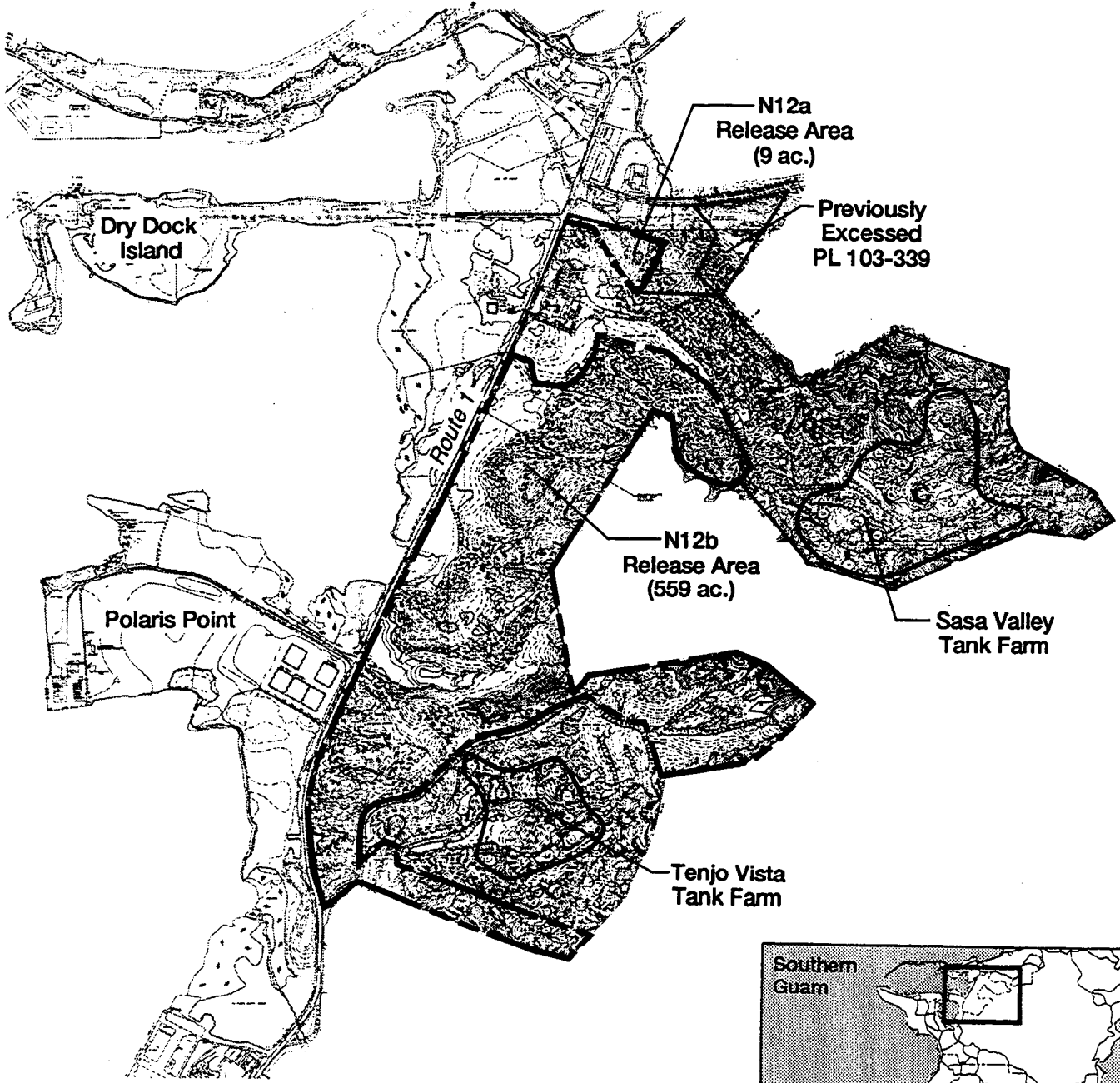
- Retain access and utility easements to Polaris Point facilities.
- Construct fencing along joint boundary with Navy.



SITE N12: SASA VALLEY/TENJO VISTA- 568 ACRES

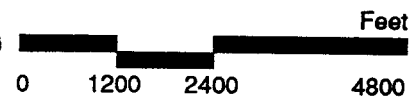
JUSTIFICATION FOR RELEASE:

- Retain tank farms and buffers.
- Remaining land not used/needed by FISC for POL operations.



CONDITIONS OF RELEASE:

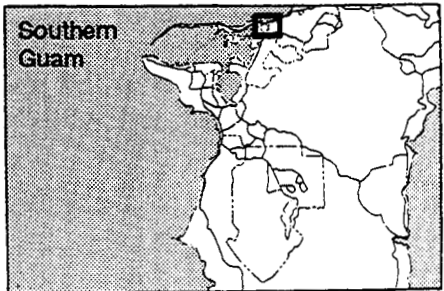
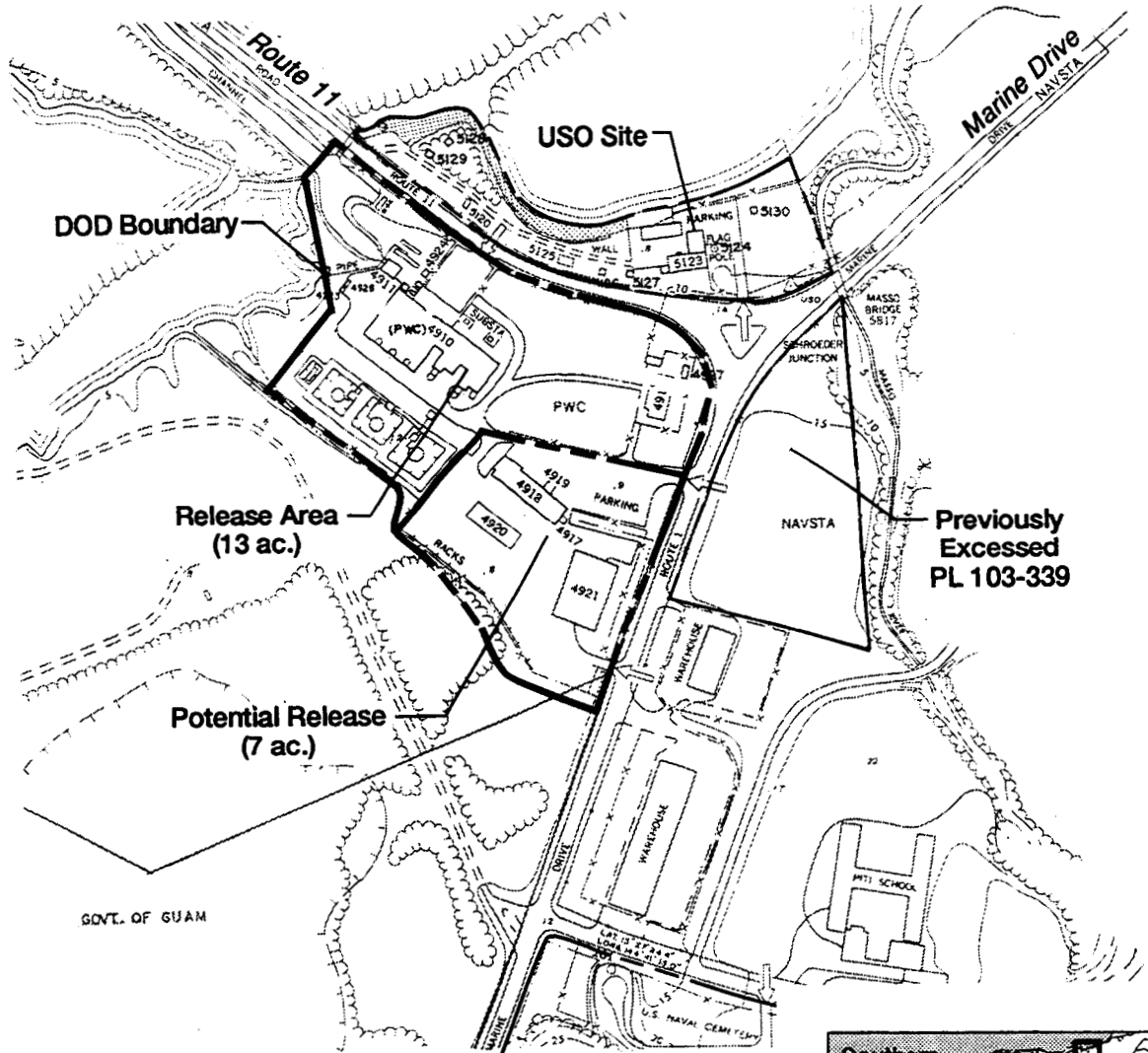
- Retain access, utility and POL pipeline easements.
- Require construction of fences around tank areas.



SITE N11: PITI POWER PLANT- 20 ACRES

JUSTIFICATION FOR RELEASE:

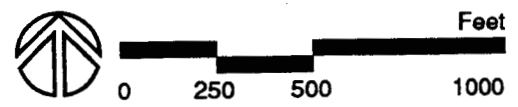
- Navy to transfer operation of electrical system to GPA in accordance with Customer Service Agreement.
- Not contiguous with other major DOD land holdings in the south.
- No anticipated future DOD need for land.



CONDITIONS OF RELEASE:

- Relocate PWC uses in Bldgs. 4918, 4920, and 4921.

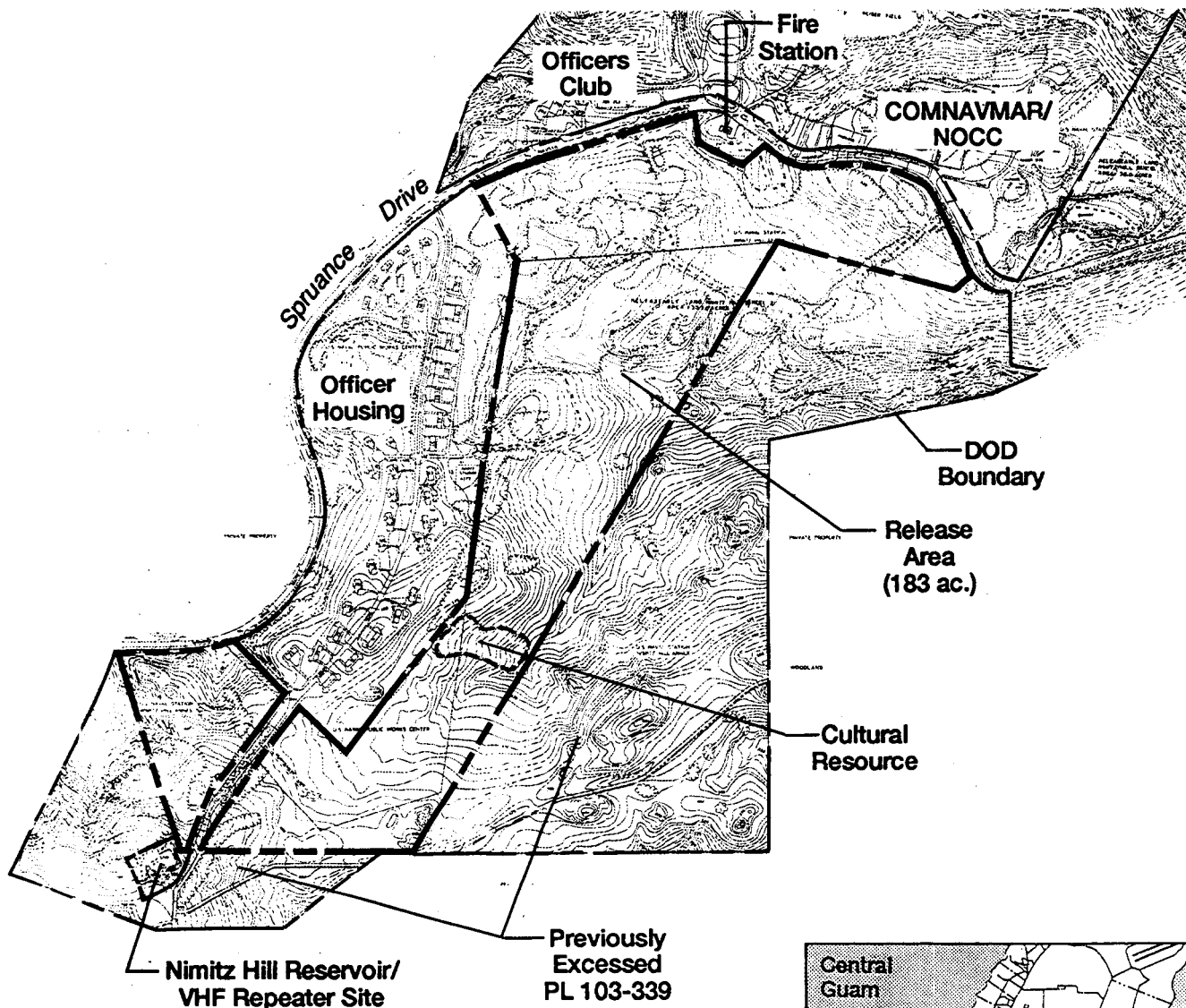
PITI POWER PLANT
GUAM LAND USE PLAN



SITE N10b: NIMITZ HILL VACANT LANDS- 183 ACRES

JUSTIFICATION FOR RELEASE:

- Retain fire station for protection of remaining DOD facilities.
- Retain officers housing which is needed to meet FY99 base loading requirements.
- Retain Nimitz Hill Reservoir and adjacent comm. facilities.
- Other lands no longer needed for future housing expansion or other anticipated DOD requirements.



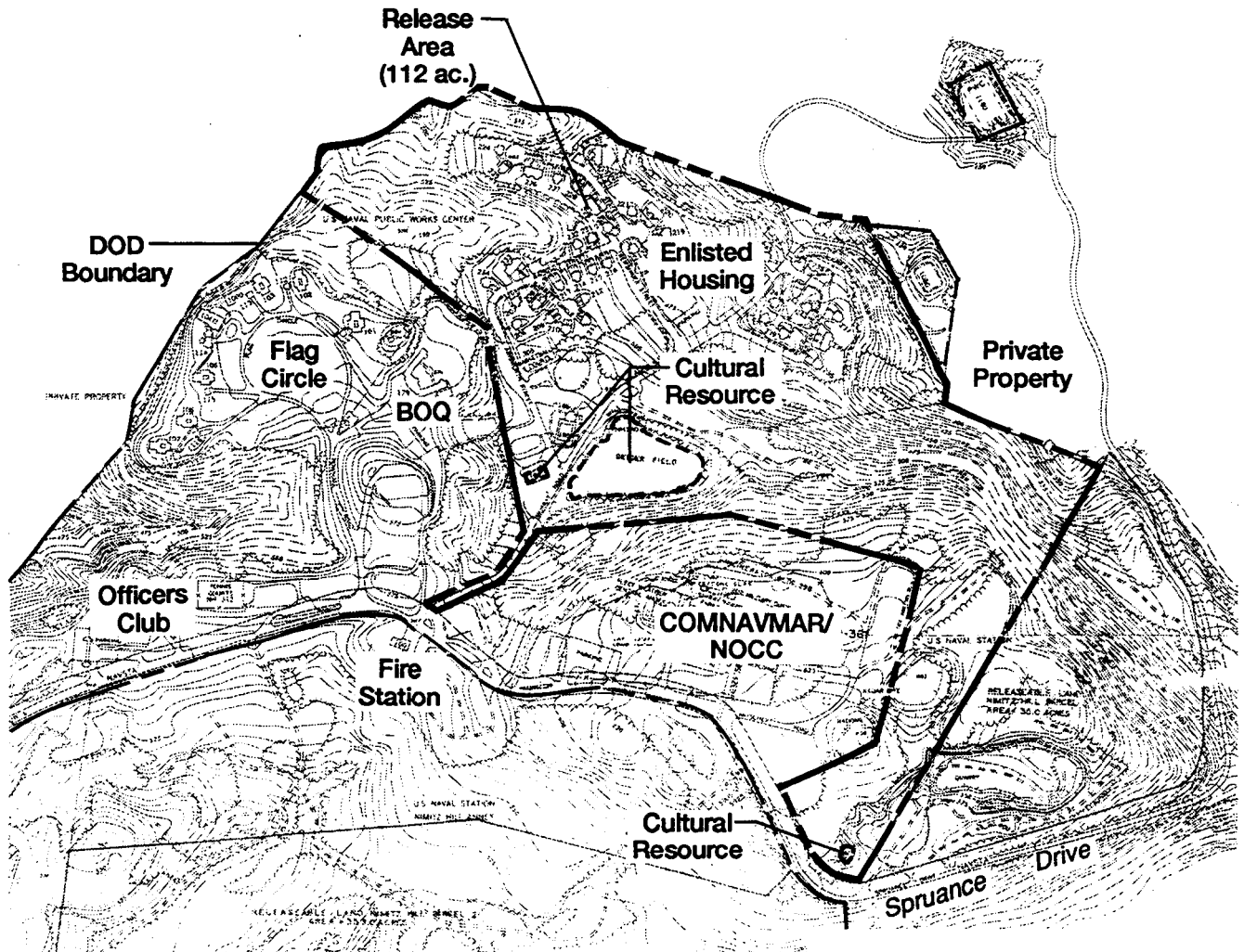
CONDITIONS OF RELEASE:

- Retain easements (including access to Nimitz Hill Reservoir and PCL lines) for DOD owned and operated facilities to be provided.

SITE N10a: NIMITZ HILL ENLISTED HOUSING- 120 ACRES

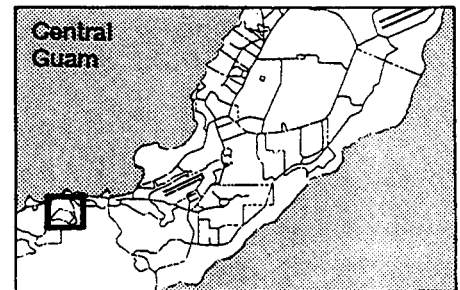
JUSTIFICATION FOR RELEASE:

- Retain COMNAVMAR/NOCC and Flag Circle, BOQ and Officers' Club, as no replacement facilities currently exist.
- Enlisted housing no longer needed to meet FY99 base loading requirements.
- No anticipated future DOD need for land.



CONDITIONS OF RELEASE:

- Retain easements for DOD owned and operated utilities.
- Retain access road easement.
- Construct fencing along joint boundary with COMNAVMAR/NOCC parcel.



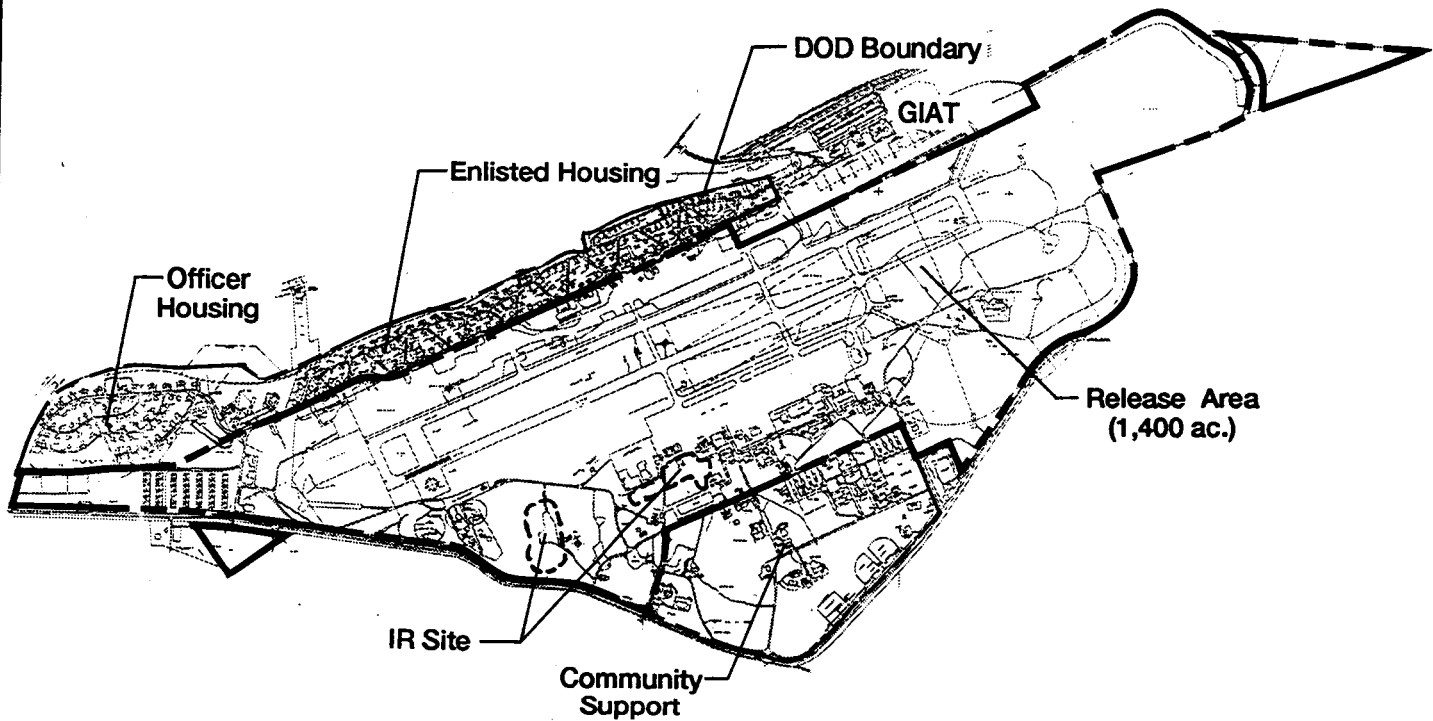
NIMITZ HILL ENLISTED HOUSING
GUAM LAND USE PLAN



SITE N9: NAS OPS AREA- 1,400 ACRES

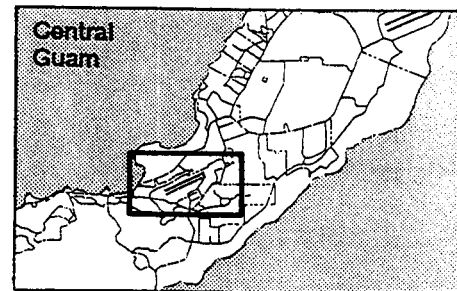
JUSTIFICATION FOR RELEASE:

- NAS identified for closure under BRAC.
- Air operations to relocate to Andersen AFB.
- Housing and support areas to be retained to support relocated personnel.



CONDITIONS OF RELEASE:

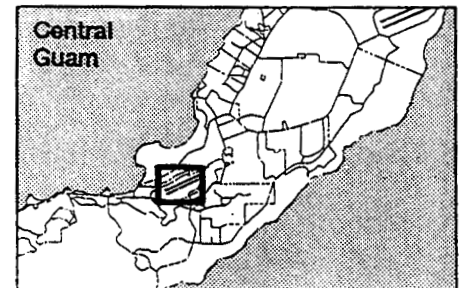
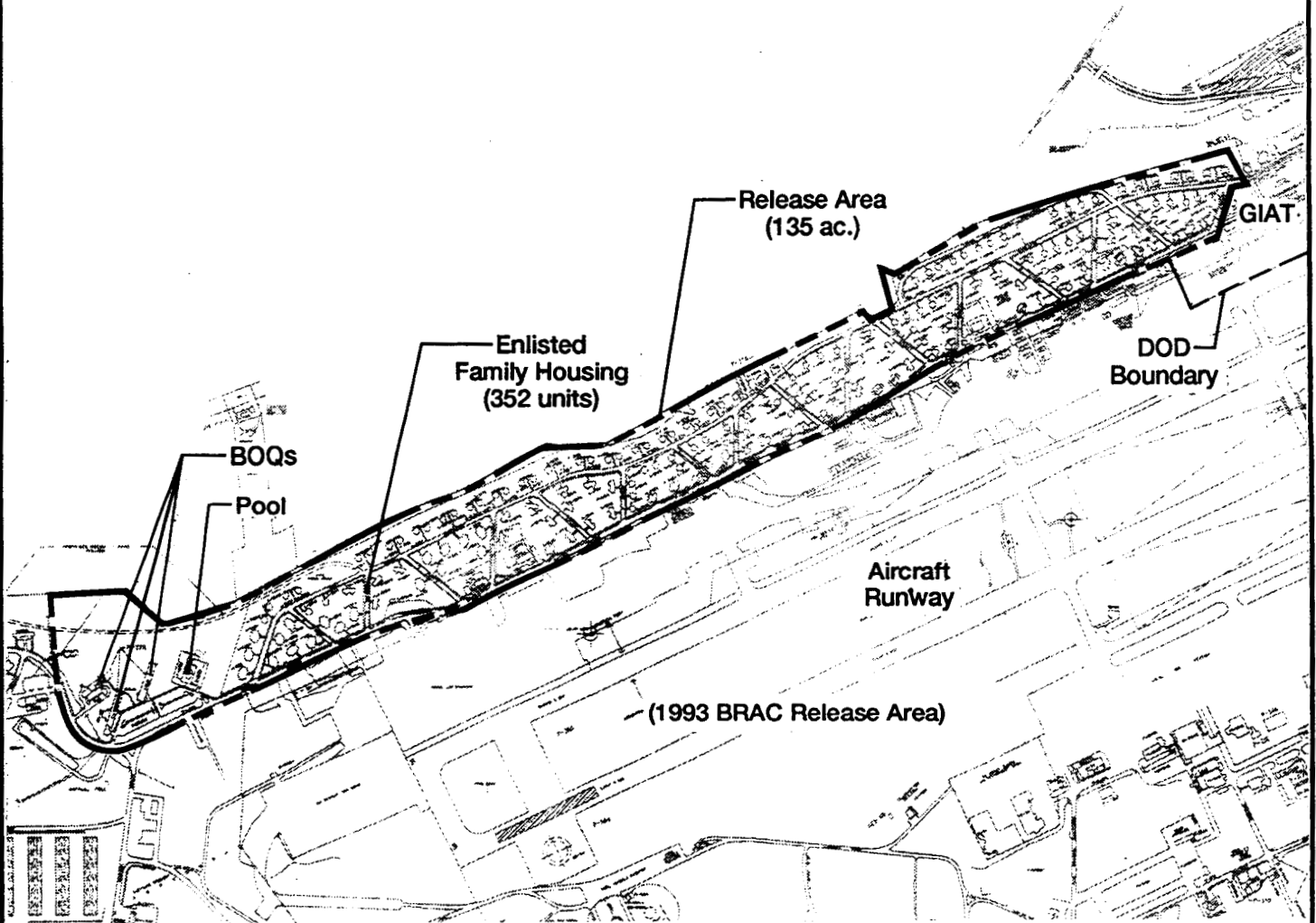
- Maintain easements for DOD owned and operated utilities.
- Require sound and aircraft safety barriers adjacent to family housing areas. (Note: Not required if site N7 released.)
- Navy complete IR clean-up.



SITE N7: NAS ENLISTED HOUSING- 135 ACRES

JUSTIFICATION FOR RELEASE:

- Air squadrons VQ-1 and VQ-5 to be relocated off Guam.
- Not contiguous with other major DOD land holdings in north and south.
- No anticipated future DOD need for land.



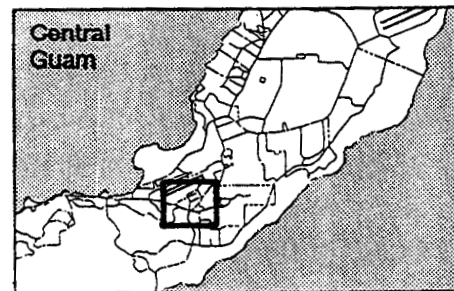
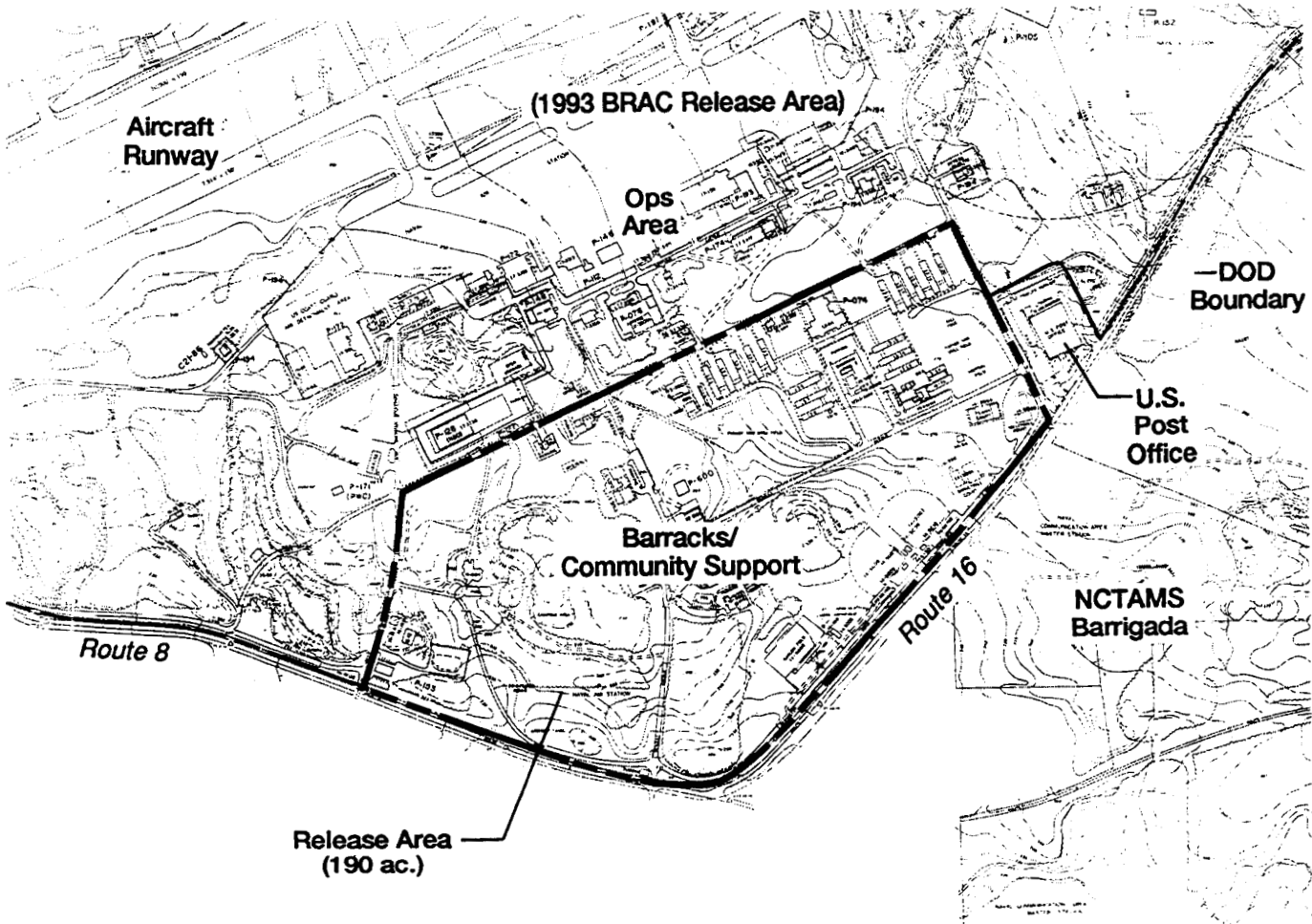
CONDITIONS OF RELEASE:

- Maintain easements for DOD owned & operated utilities.

SITE N6: NAS BARRACKS/COMMUNITY SUPPORT- 190 ACRES

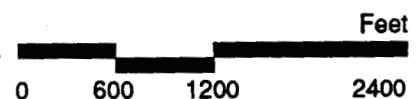
JUSTIFICATION FOR RELEASE:

- Air squadrons VQ-1 and VQ-5 to be relocated off Guam.
- Not contiguous with other major DOD land holdings in north and south.
- No anticipated future DOD need for land.



CONDITIONS OF RELEASE:

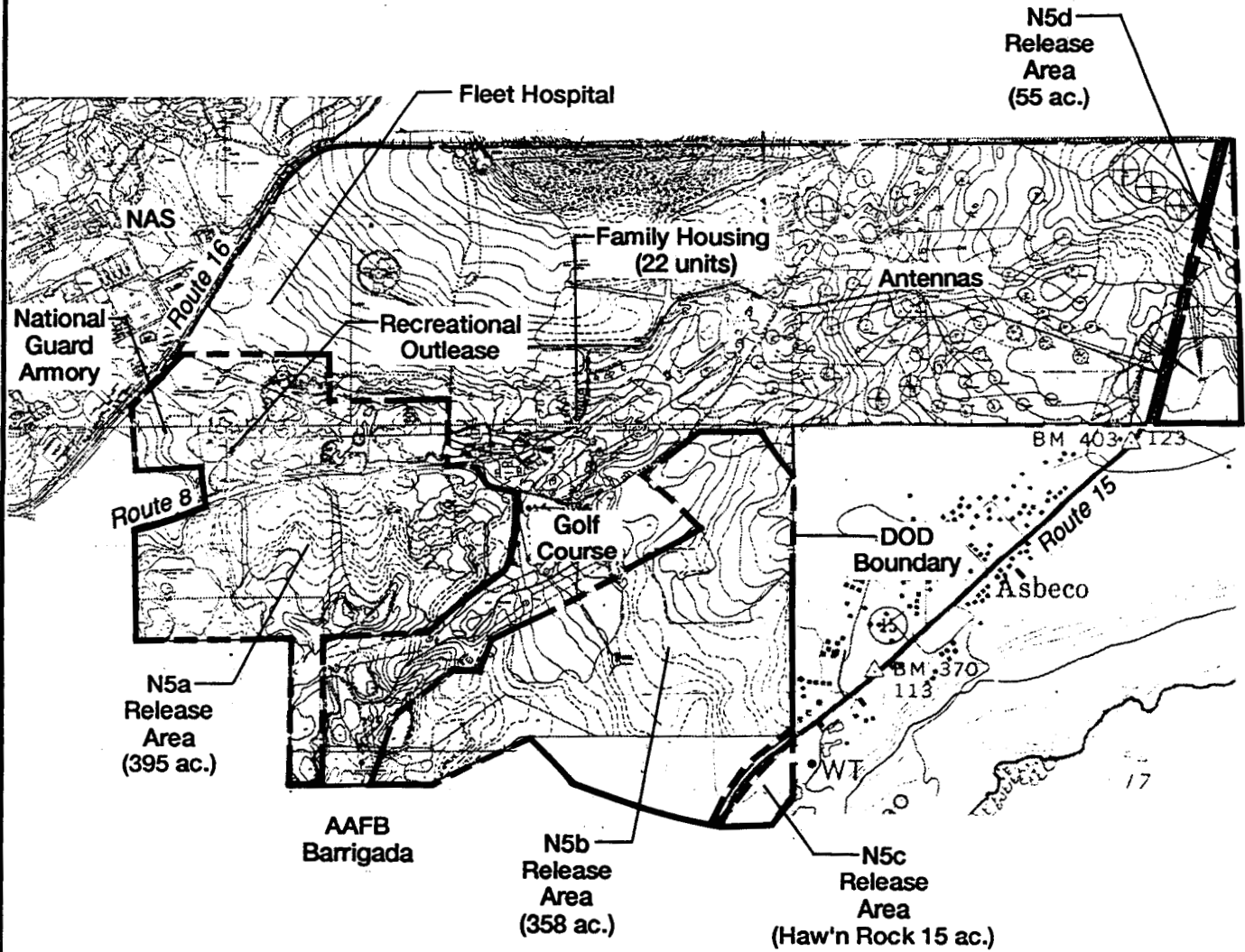
- Maintain easements for DOD owned and operated utilities.
- Navy complete IR clean-up.



SITE N5: NCTAMS BARRIGADA- 823 ACRES

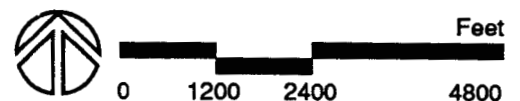
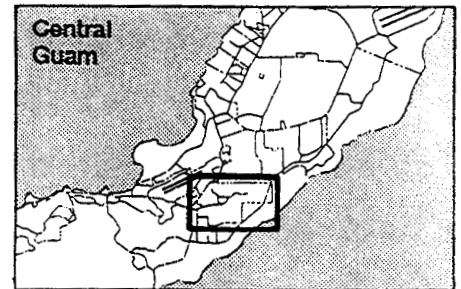
JUSTIFICATION FOR RELEASE:

- Retain antenna fields and related facilities, family housing, utilities and golf course
- Remaining land no longer used for NCTAMS communications operations
- No other future DOD need for land



CONDITIONS OF RELEASE:

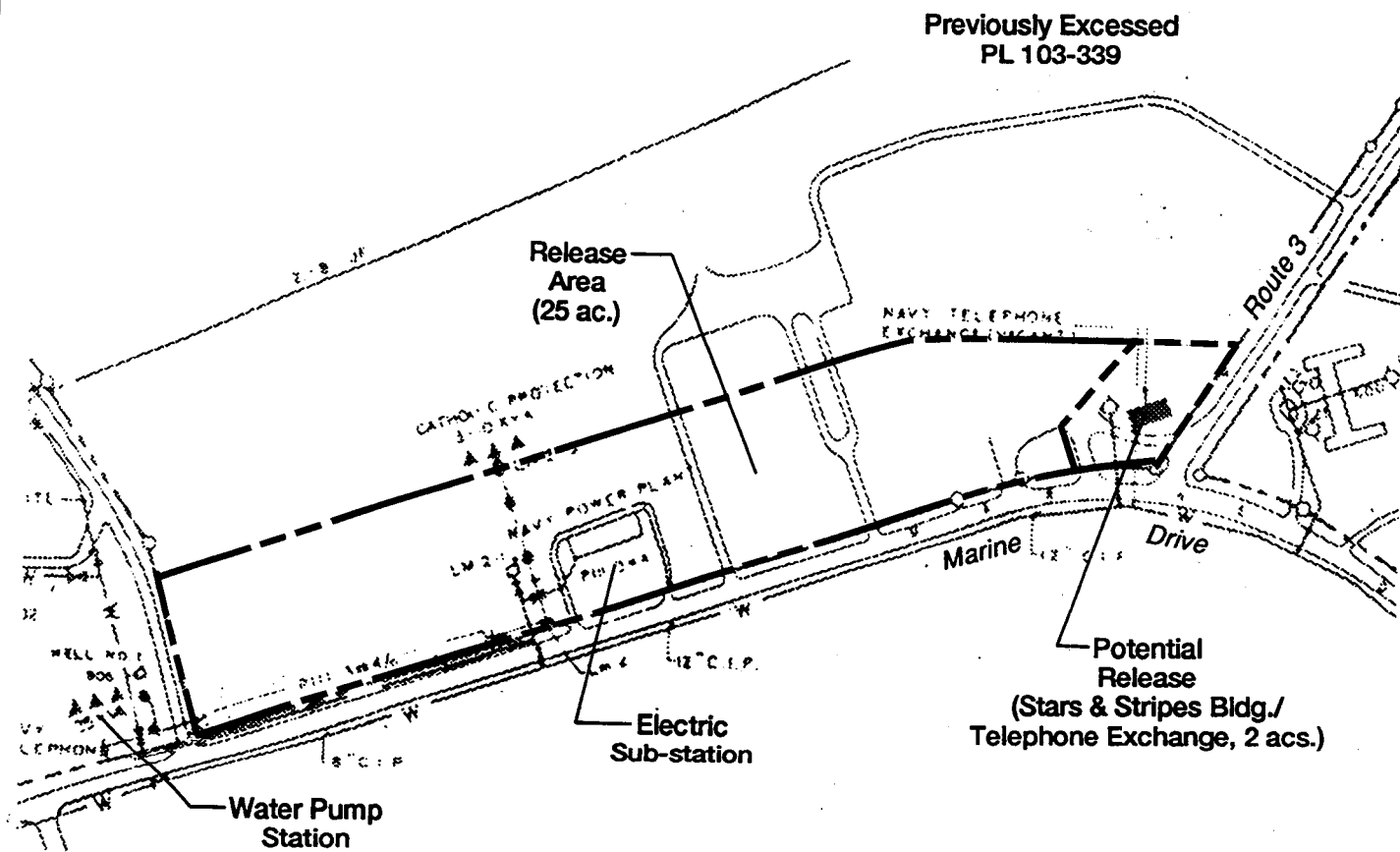
- Replace warehouse across Route 15
- Restrict height of development on released parcels to eliminate potential impact on NEXRAD operations
- New fence lines would require proper grounding



SITE N4b: MARINE DRIVE- 27 ACRES

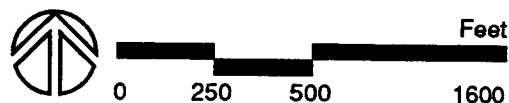
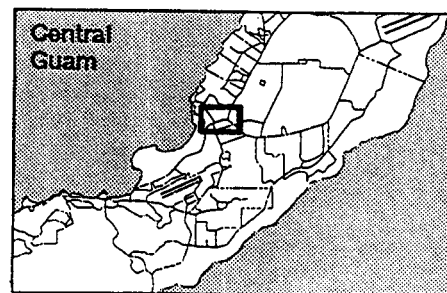
JUSTIFICATION FOR RELEASE:

- Site is adjacent to previous GLUP parcel.
- Navy to transfer operation of electrical equipment to GPA in accordance with customer service agreement.
- No anticipated DOD need for land.
- Potential release of Stars & Stripes building if replacement facility can be provided.



CONDITIONS OF RELEASE:

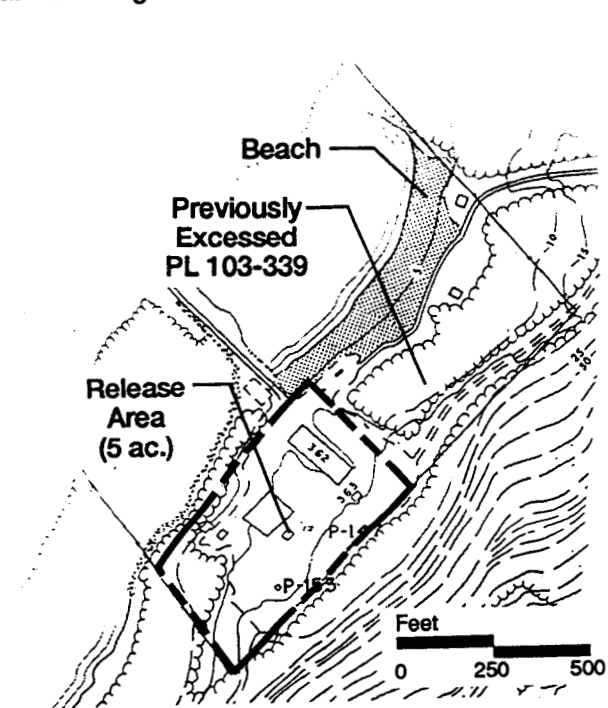
- Retain utility easements for water, POL and other DOD operations.
- Retain telephone cable hut on Stars & Stripes site.



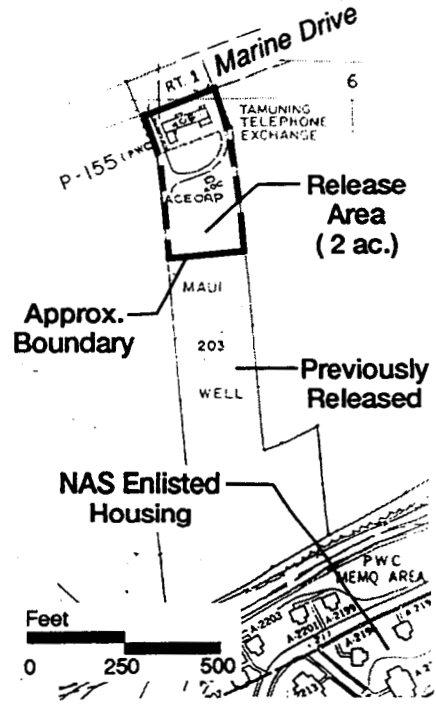
SITES N4a, N4c, & N4d: NAVY UTILITY PARCELS- 13 ACRES

JUSTIFICATION FOR RELEASE:

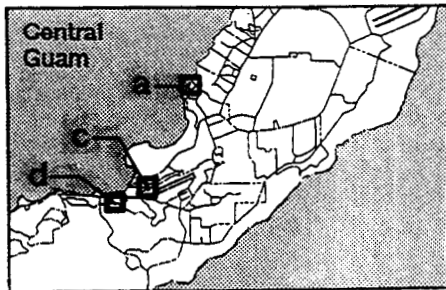
- Navy to transfer operation of electrical system to GPA in accordance with Customer Service Agreement.
- Upgrading and consolidation of telephone facilities in other locations removes the requirement for facilities at Tamuning.



SITE N4a-TANGUISSON POWER PLANT

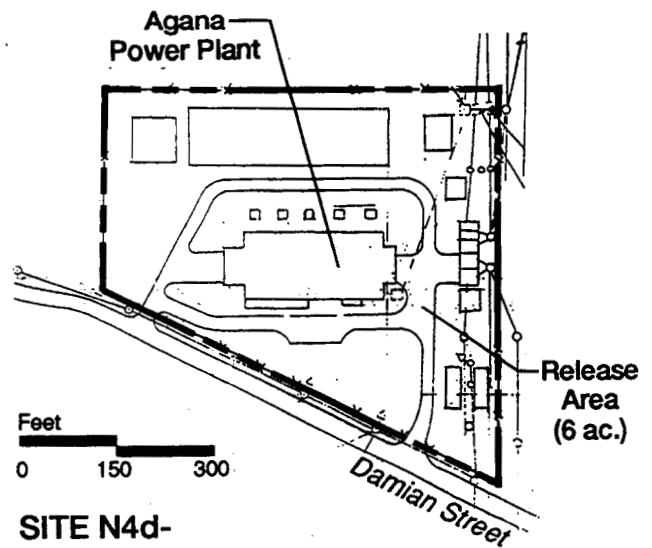


SITE N4c-TAMUNING TELEPHONE EXCHANGE



CONDITIONS OF RELEASE:

- Retain access easement to cable lines.
- Retain telephone cable hut at Tamuning.



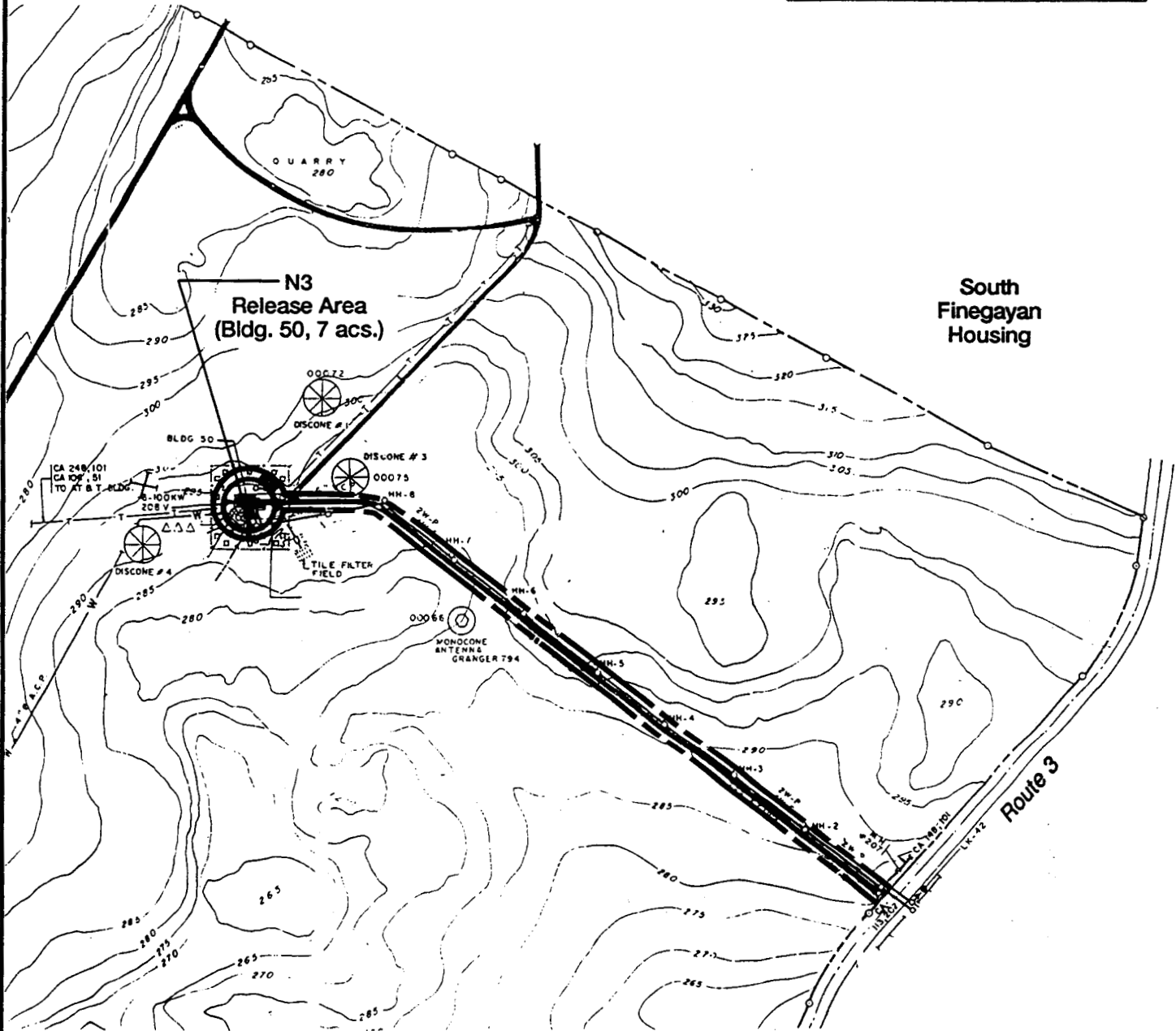
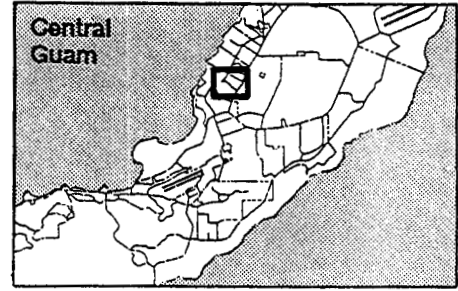
SITE N4d-AGANA POWER PLANT



SITE N3: HARMON ANNEX- 7 ACRES

JUSTIFICATION FOR RELEASE:

- Site is surrounded by previous GLUP parcel.
- No anticipated future DOD need for land.
- Bldg. 50 no longer needed by NPPS.



CONDITIONS OF RELEASE:

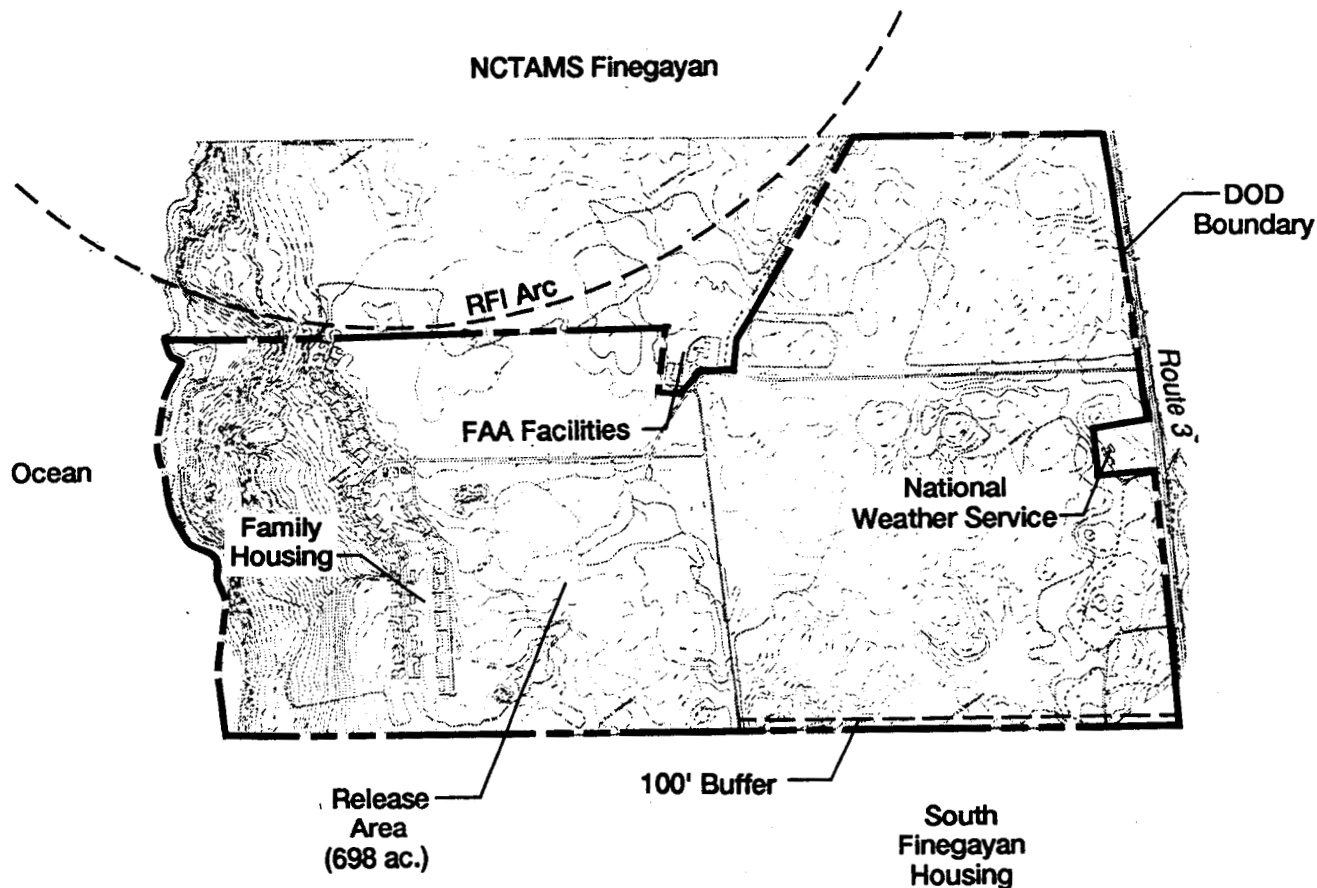
- Navy complete clean-up of hazardous materials in Bldg. 50.



SITE N2: FORMER FAA PARCEL- 698 ACRES

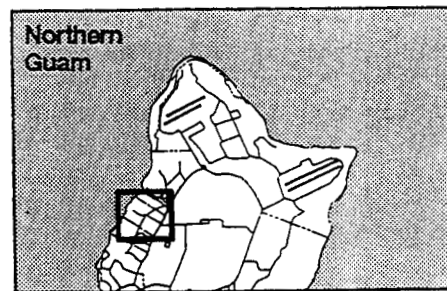
JUSTIFICATION FOR RELEASE:

- Retain land within RFI arc from Marlock/Classic Wizard Facilities at NCTAMS.
- Retain land under FAA facilities (PWC currently utilizing portion of warehouse).
- Retain land under National Weather Service facilities until NWS can acquire it or no longer needs it.
- Housing no longer needed to meet FY99 base loading requirements.
- No anticipated future DOD need for land.



CONDITIONS OF RELEASE:

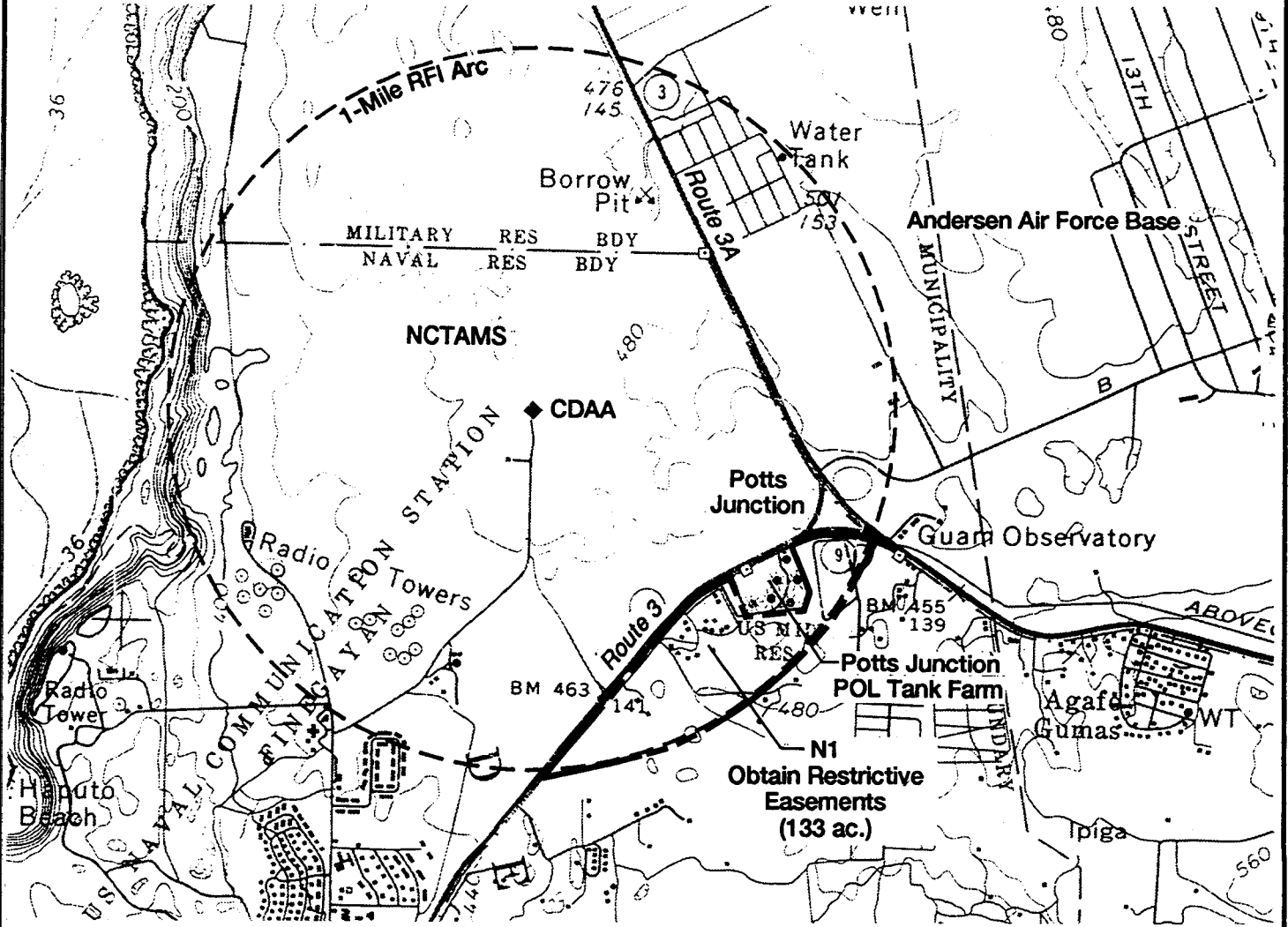
- Provide 100' buffer along southern boundary adjacent to South Finegayan housing.
- Retain utility and access easements.



SITE N1: CDAA RFI AREA- 133 ACRES

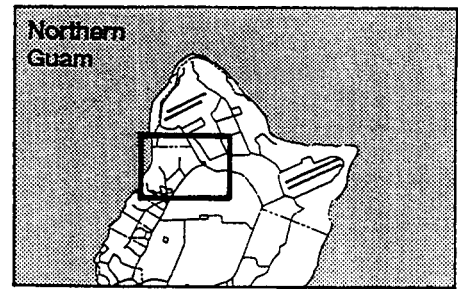
JUSTIFICATION FOR ACQUISITION OF RESTRICTIVE EASEMENTS :

- Needed to prevent development and operation of incompatible uses within CDAA Arc

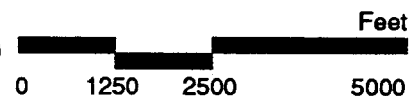


CONDITIONS OF AQUISITION:

- Obtain restrictive covenants on land to prohibit development and operation of incompatible uses within CDAA arc.



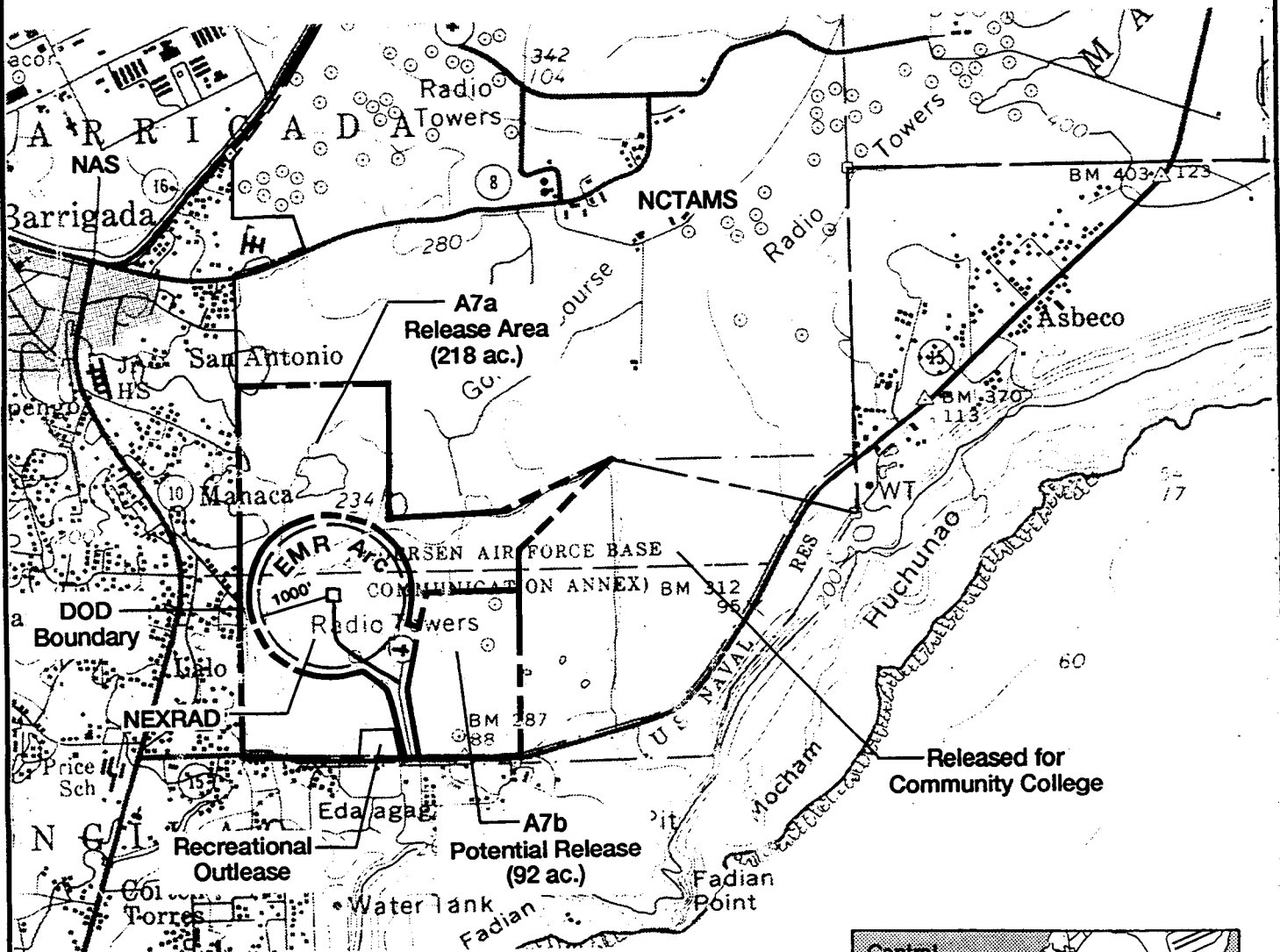
CDAA RFI AREA
GUAM LAND USE PLAN



SITE A7: AAFB BARRIGADA- 310 ACRES

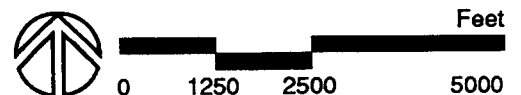
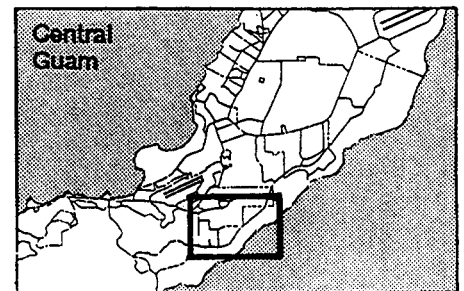
JUSTIFICATION FOR RELEASE:

- Retain NEXRAD and associated hazard zone along with comm. building and access road
- Northern portion no longer needed/used by Air Force (218 acs. releasable)
- Proposed consolidation of AF comm. facilities with NCTAMS Barrigada may eliminate need for land at AF transmitters (92 acs. potentially releasable)



CONDITIONS OF RELEASE:

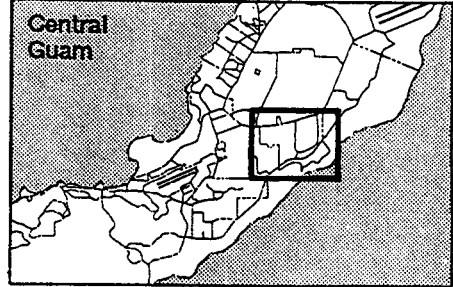
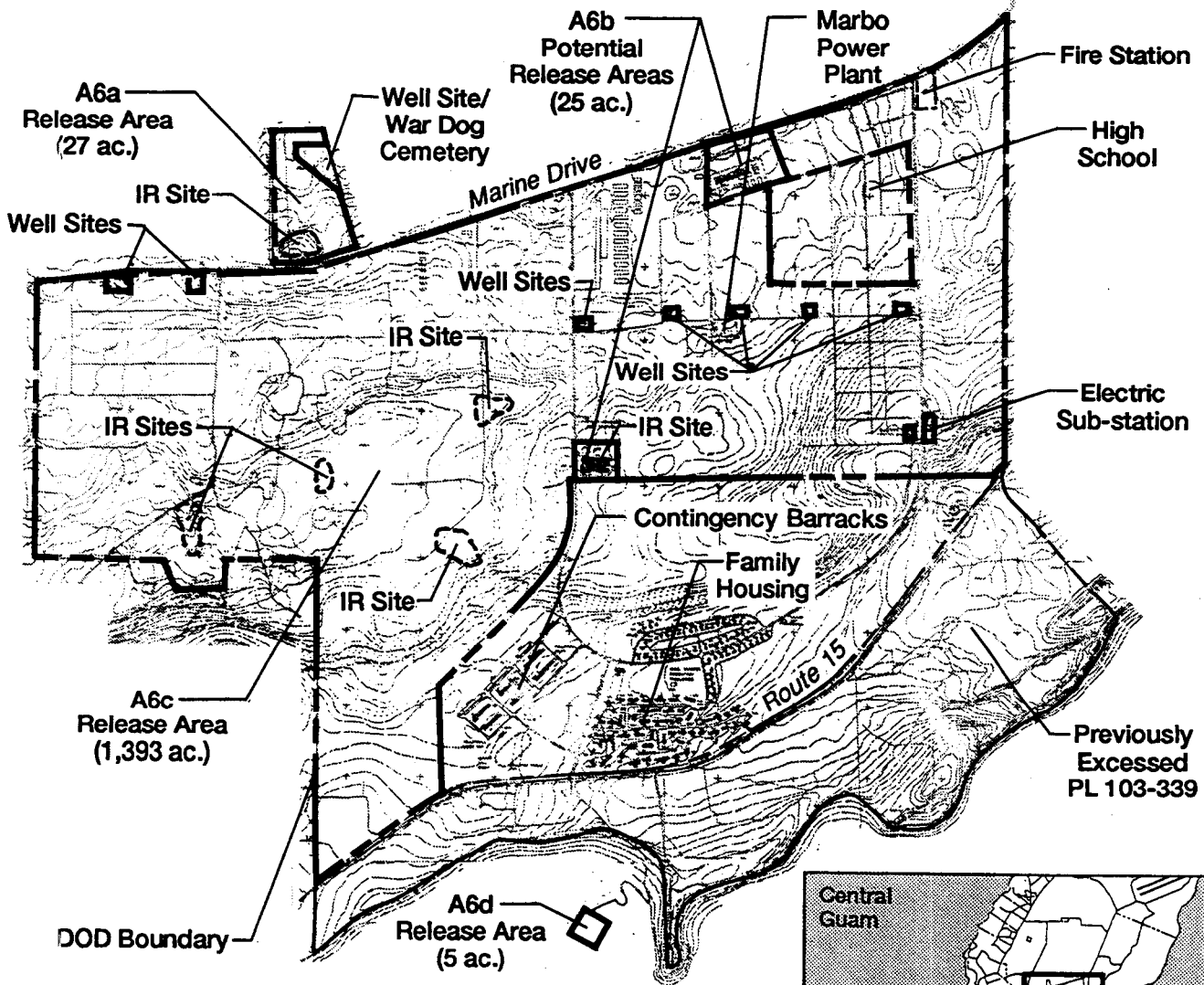
- Restrict height of development on released parcels to eliminate potential impact on NEXRAD operations.



SITE A6: ANDERSEN SOUTH- 1,450 ACRES

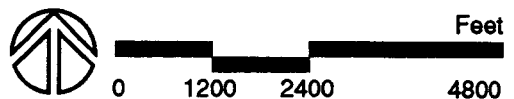
JUSTIFICATION FOR RELEASE:

- Retain existing family housing, barracks and staging areas.
- Potential release of warehouse properties if replacement facilities can be provided (25 acs. potentially releasable).
- Release 1,425 acs. no longer needed/used by Air Force.
- Army Reserves and National Guard not able to justify owning land for training purposes.
- No other anticipated future DOD need for land.
- Retain well sites and water pumping, treatment and storage systems.
- Release Marbo Power Plant in accordance with Customer Service Agreement.



CONDITIONS OF RELEASE:

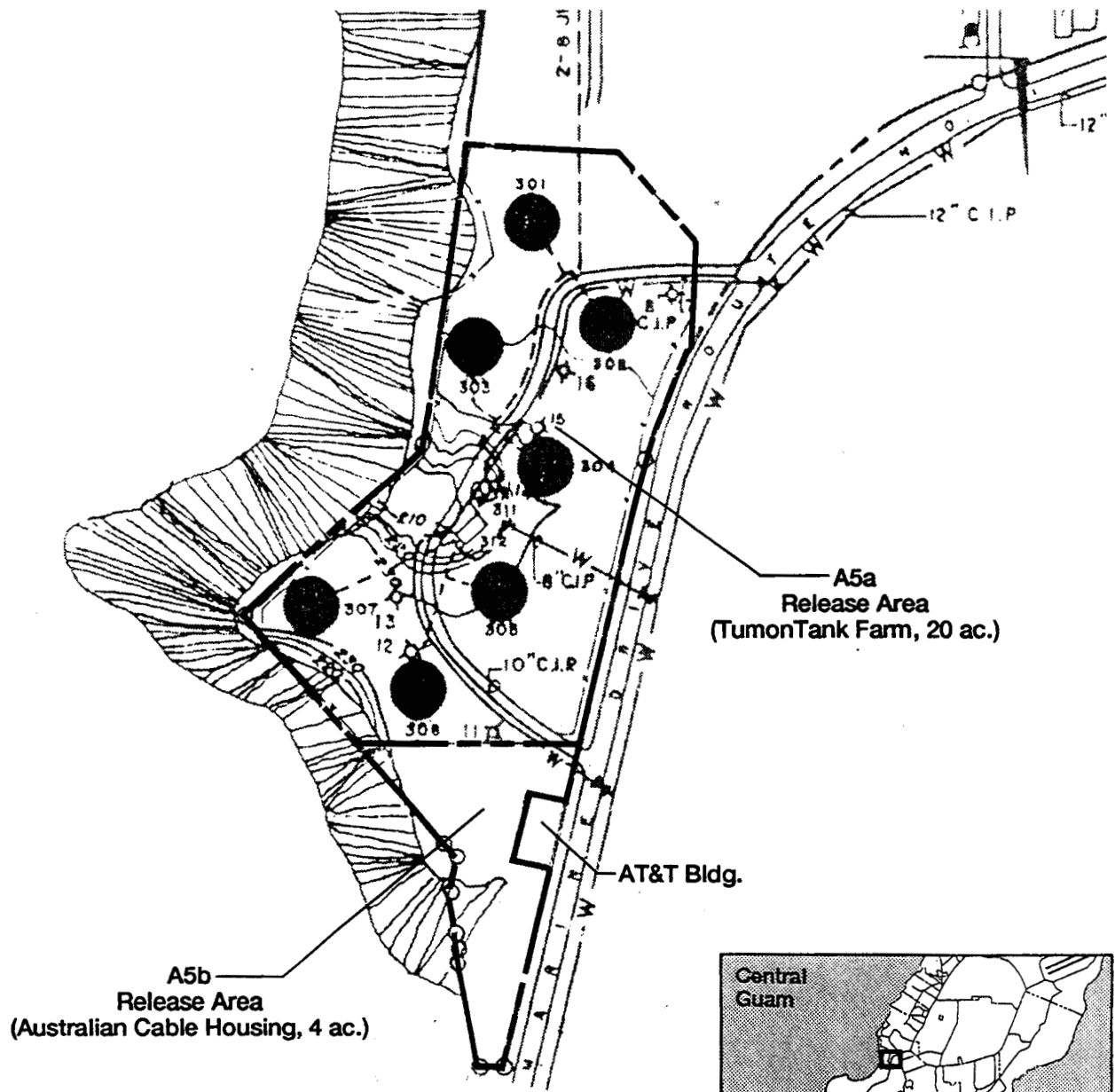
- Prohibit activities on released land which may impact water resources.
- Retain access and utility easements.
- Air Force completes IR clean-up.



SITE A5: TUMON TANK FARM/AUSTRALIAN CABLE HOUSING- 24 ACRES

JUSTIFICATION FOR RELEASE:

- Retain land for AT&T facility.
- POL facilities no longer needed for Air Force fuel storage.
- Housing not needed to satisfy Air Force requirements.



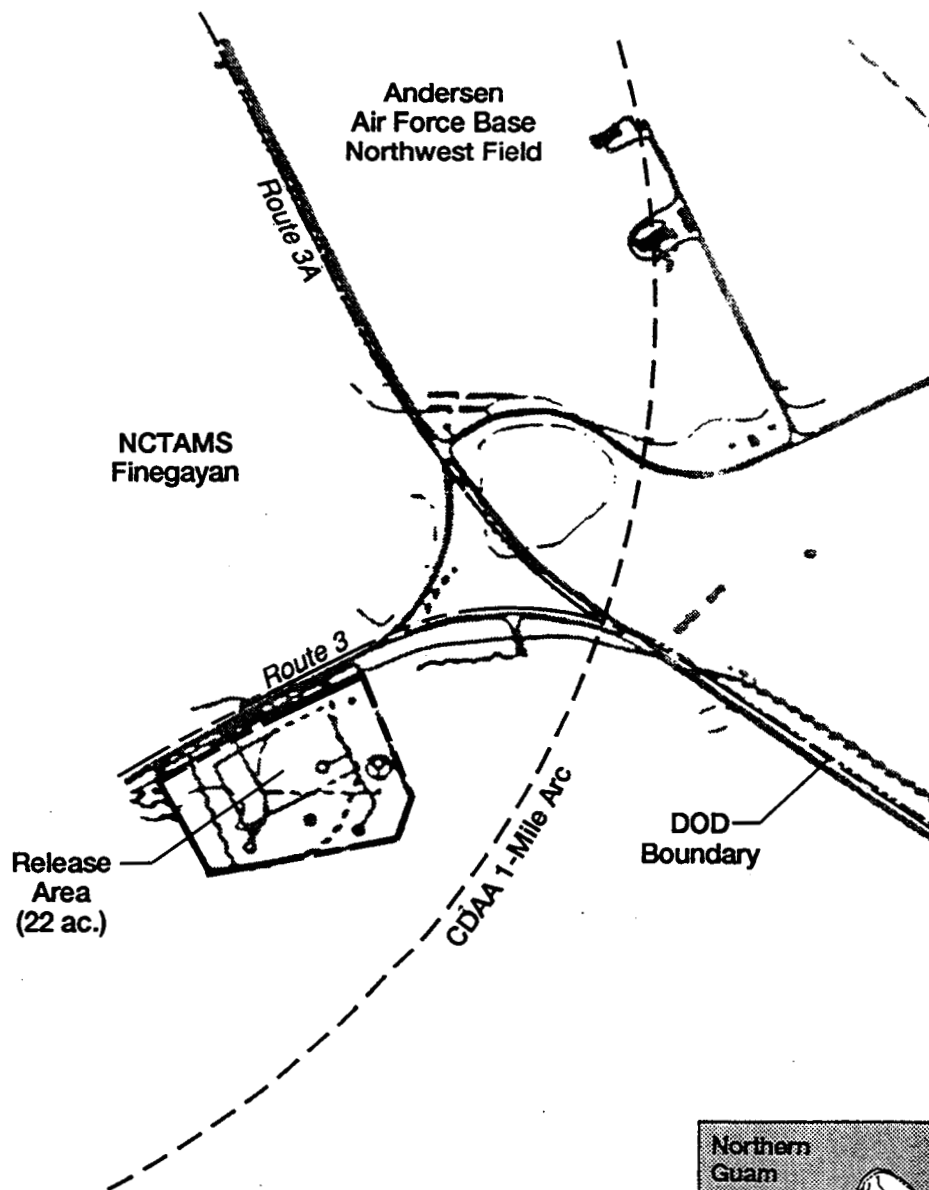
CONDITIONS OF RELEASE:

- Air Force conduct environmental clean-up (including UST removal).
- Maintain POL pipeline easements.

SITE A4: POTTS JUNCTION- 22 ACRES

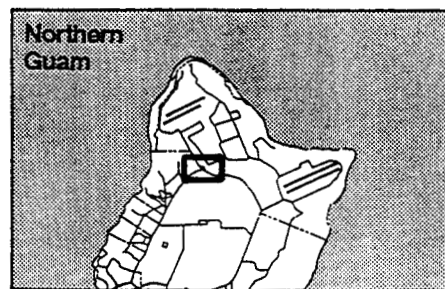
JUSTIFICATION FOR RELEASE:

- Lands no longer needed/used by Air Force for fuel storage
- Outside of AAFB and NCTAMS main compounds



CONDITIONS OF RELEASE:

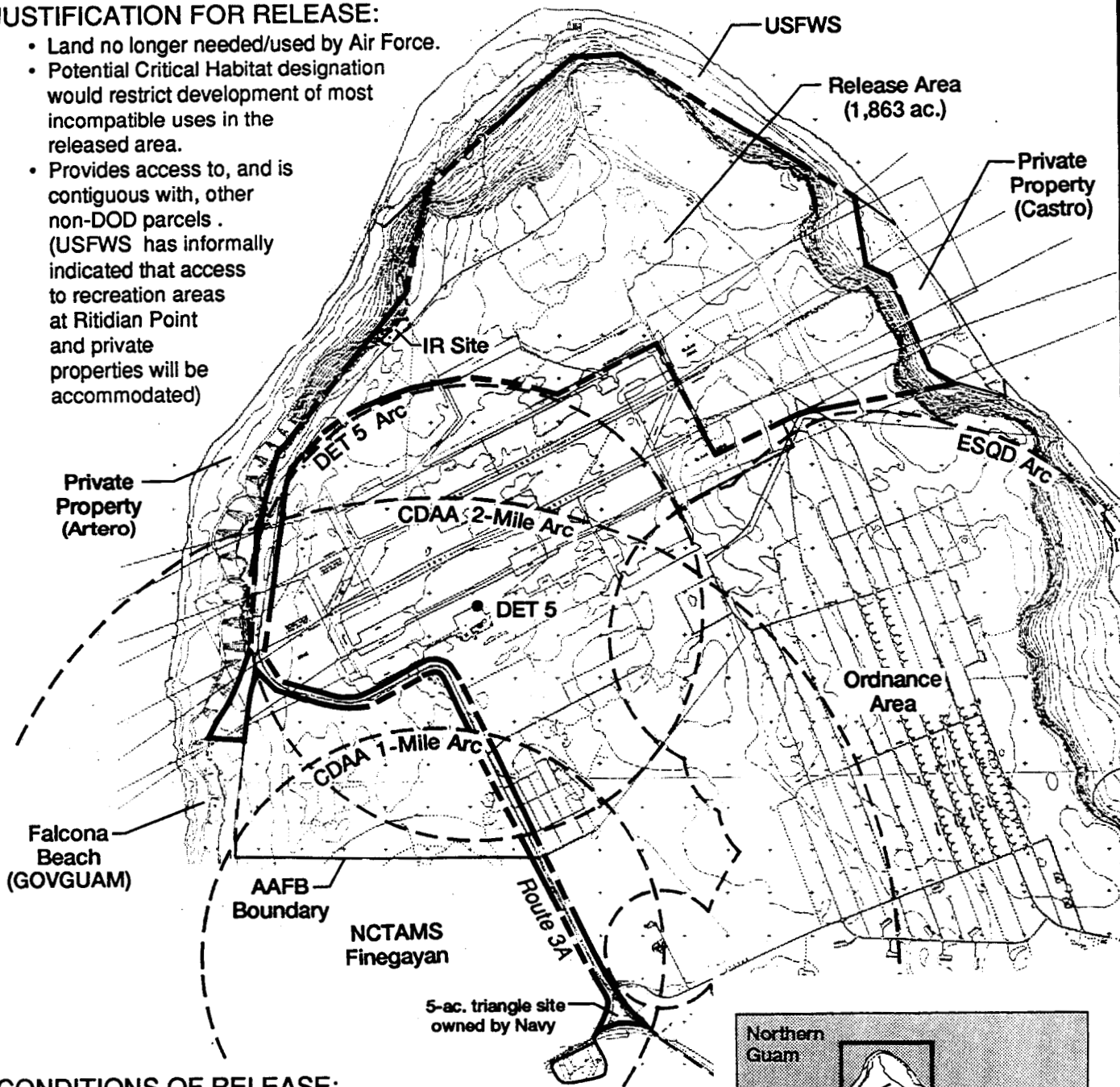
- Place restrictive covenants on land to prohibit development and operation of incompatible uses within CDAA arc
- Air Force conduct environmental clean-up
- Maintain POL pipeline easements



SITE A3: NORTHWEST FIELD/ROUTE 3A- 1,863 ACRES*

JUSTIFICATION FOR RELEASE:

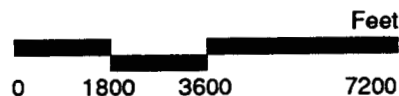
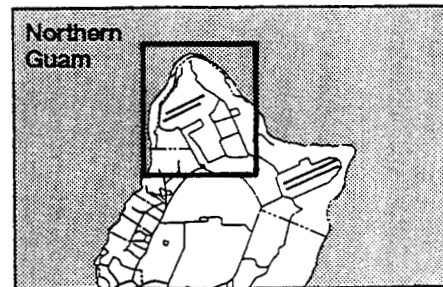
- Land no longer needed/used by Air Force.
- Potential Critical Habitat designation would restrict development of most incompatible uses in the released area.
- Provides access to, and is contiguous with, other non-DOD parcels . (USFWS has informally indicated that access to recreation areas at Ritidian Point and private properties will be accommodated)



CONDITIONS OF RELEASE:

- Place restrictive covenants on lands to prohibit development and operation of incompatible uses which would impact DET 5 mission.
- Provide easements for DET 5 communication cables in release area.
- Air Force completes IR clean-up.
- Recipient provide fencing or other measures, as required.

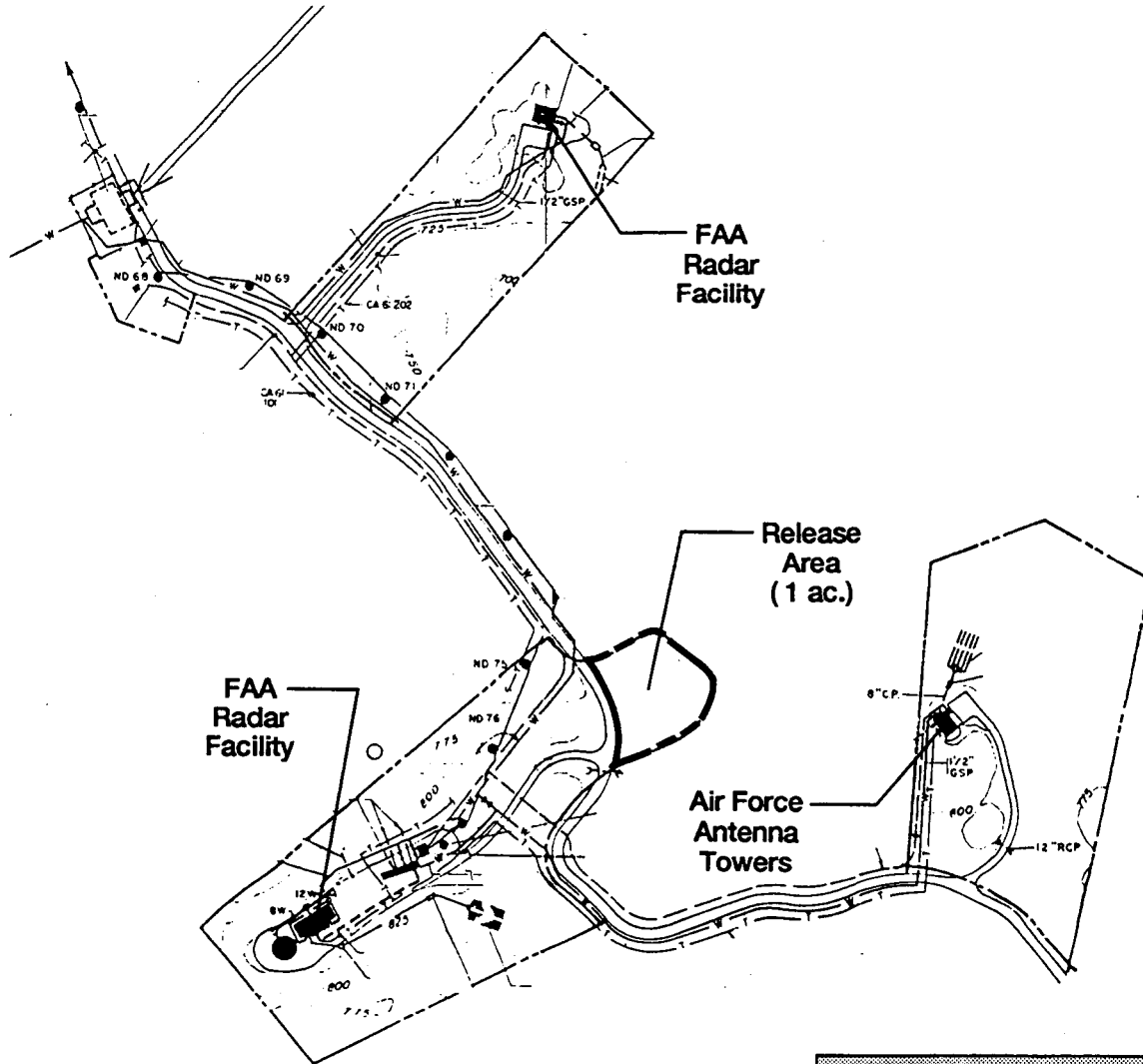
* 1,858 acs. owned by Air Force, 5 acs. owned by Navy.



SITE A2: MT. SANTA ROSA- 1 ACRE

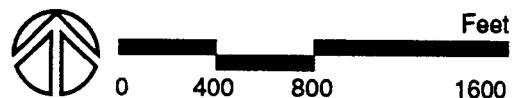
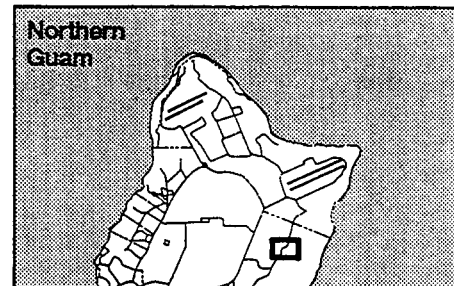
JUSTIFICATION FOR RELEASE:

- Land currently unused by Air Force
- No anticipated future DOD need for land



CONDITIONS OF RELEASE:

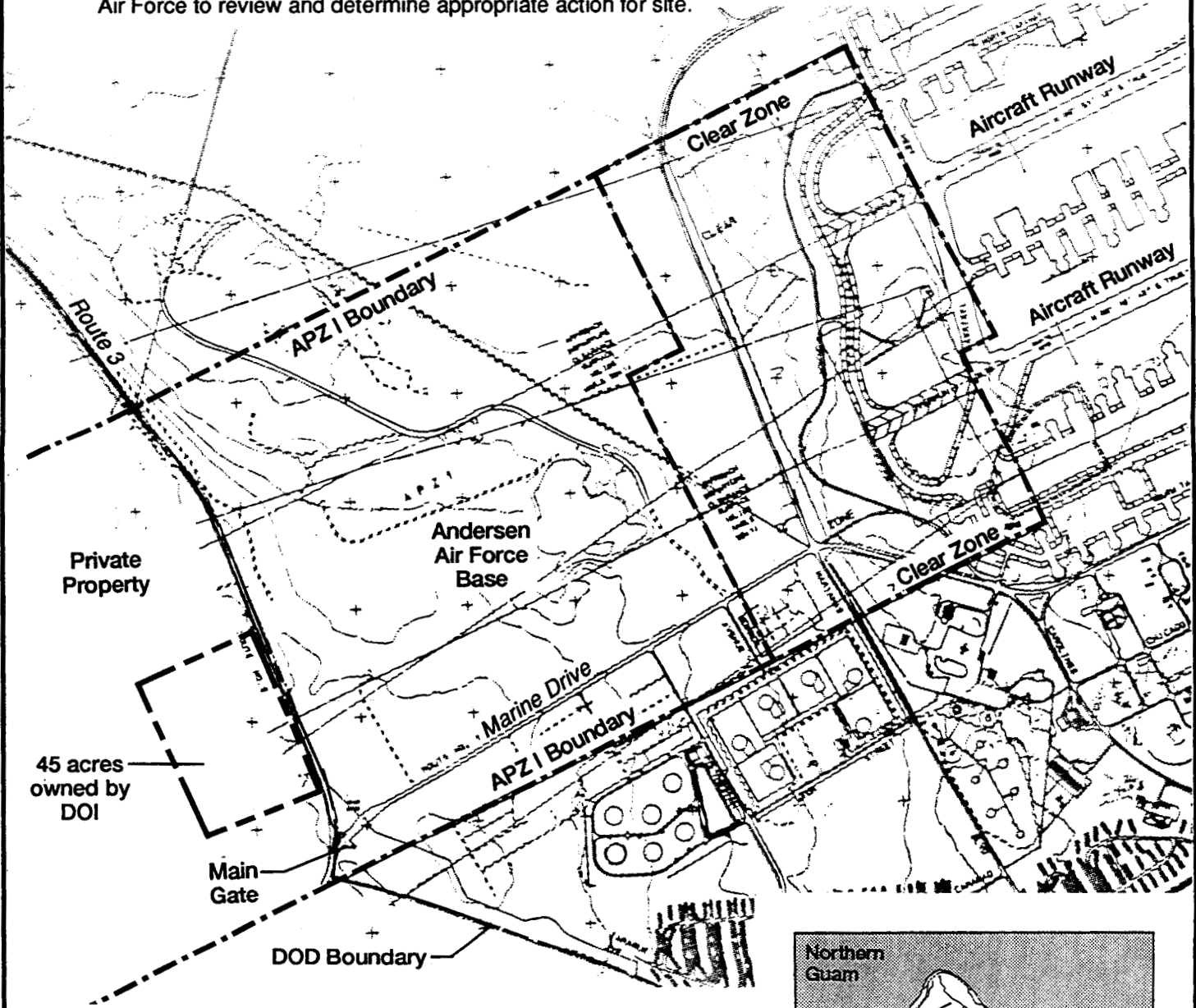
- Restrict development to protect Air Force and FAA communications mission



SITE A1: ANDERSEN MAIN GATE- 45 ACRES

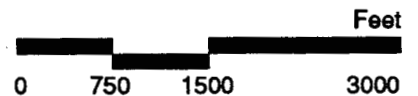
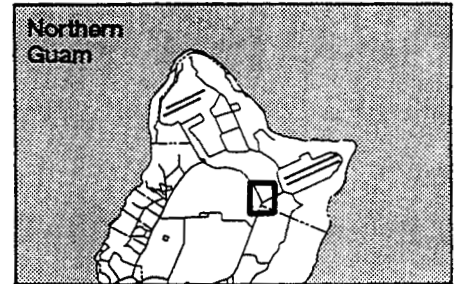
JUSTIFICATION FOR RELEASE:

- Site owned by Dept. of Interior. Was to be transferred to Air Force due to proximity to runway clear zone. Transfer never occurred. Air Force to review and determine appropriate action for site.



CONDITIONS OF RELEASE:

- Land uses such as residential, light manufacturing, petroleum production, retail, medical facilities, and sports arenas are prohibited in the Accident Potential Zone (APZ) I.



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**APPENDIX B:
RELEASABLE PARCEL MAPS**

The following exhibits provide site-specific maps of the releasable and potentially releasable parcels. Each map provides an overview of the justification for release and conditions of release for each site.