

17 JUN 1986

(808)546-7110

SUBJ: YAP LORAN STATION; ATTORNEY'S REPORT OF TITLE 11011

16 JUN 1986

From: Timothy Titus, Attorney
To: Chairman, Real Property Management Board

Subj: YAP LORAN STATION; ATTORNEY'S REPORT OF TITLE

1. I certify I have examined the real estate records of the Office of the Commander, Fourteenth Coast Guard District, Honolulu, Hawaii. On the basis of my examination, I have determined that the United States presently owns an indefinite-term leasehold interest in Item 1a., Parcel 1, of the Board of Survey (Loran Station Grounds). The United States also has an executed, indefinite-term license for the exclusive use of a fuel pipeline right-of-way leading to Tomil Harbor, and a non-exclusive, cost-free, indefinite-term lease for use of the Yap Airfield.

2. Loran Station Grounds. The Loran Station grounds are described by metes and bounds in Schedule A (enclosure (1)) and shown on enclosure (1)(a). The Coast Guard acquired Parcel 1 from the government of the Trust Territory of the Pacific Islands (TTPI) under an indefinite-term Use and Occupancy Agreement effective 1 September 1963 (enclosures (2), (3)). The cost was \$48,274.32. The TTPI is funded through the Office of Territorial Affairs of the Department of Interior. The United States has responsibility for the various island groups within the TTPI, including Yap, under a United Nations Trusteeship Agreement.

3. Parcel 1 reverts to the TTPI, under our Use and Occupancy Agreement, 60 days after it is no longer needed for Loran Station purposes. The Coast Guard may, but is not required to, remove its improvements. This property was not part of, nor was it withdrawn from, the public domain.

4. The TTPI acquired Parcel 1 from the individual landowners under an indefinite-term Land-Use Agreement dated 18 November 1963 (enclosures (3), (3)(a), (3)(b), (3)(c)). This agreement, like the Coast Guard's agreement, requires 5-year reviews as to the continued need for the property. If no longer needed, the land reverts to the landowners.

5. The only outgrant affecting Parcel 1 is a license issued to Yap State in October, 1982 for a water well (enclosure (4)). This license is revocable on 30 days notice. No well presently exists. We have also issued a license to install a whip antenna atop a Coast Guard beacon tower in Colonia, Yap (enclosure (5)). This license is also revocable, but it doesn't affect Parcel 1 or the pipeline. Apparently, the antenna wasn't installed on the beacon tower.

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6. Fuel Pipeline Right-of-Way. The TTPI acquired a perpetual right-of-way over land leading from the Loran Station to Tomil Harbor. This right-of-way, dated 13 February 1968 (enclosure (6)) and described and shown in enclosures (7) through (12), was acquired by the TTPI for roadway and fuel oil pipeline purposes, and was assignable to an agency of the United States government. The right-of-way was never formally assigned to the Coast Guard.

7. The TTPI High Commissioner, in a 28 February 1979 letter to the Commander, Fourteenth Coast Guard District (enclosure (13)), explained that the fuel-oil pipeline right-of-way was never assigned to the Coast Guard because the TTPI wanted to wait until Congress had a chance to act upon a request for funds to implement a study (enclosure (14)) that recommended further land rental payments. As discussed later, more funding was obtained by the TTPI through PL 96-304, and the government didn't renegotiate the agreement. Our use of the right-of-way continues to be by unwritten license from the TTPI government. We have improved the road and pipeline, however, and under general real property law principles, the license has ripened into an executed license, which will terminate with the termination of the trusteeship.

8. The Coast Guard built the pipeline and funded \$25,000 to the TTPI for improving the road, which had originally been constructed by the Japanese during the war. The Coast Guard has been using the pipeline exclusively, and the road jointly, since 1968 or earlier. The right-of-way is 34 feet wide by about 3 miles long. About 10 feet of the right-of-way is for the pipeline. The right-of-way reverts to the grantors when the government (TTPI) determines it no longer needs the premises, or when the premises are abandoned for a one-year period.

9. Yap Airfield. On 29 January 1964, the TTPI granted the Coast Guard a non-exclusive, cost-free, indefinite-term right to use the Yap Airfield, including a right to construct necessary facilities. It is revocable by the Coast Guard by 30 days notice (enclosure (15)).

10. Coast Guard Sites Under the Pending FSM Compact. In 1982, subsidiary agreements regarding Status of Forces (enclosure (16)) and Military Use and Operating Rights (enclosure (17)) were concluded pursuant to Title II, Sections 227, 321, and 323 of the Compact of Free Association Act of 1985 (Title II of PL 99-239) (enclosure (18)). The Compact (Title II of the act), is an agreement between the United States government and The Federated States of Micronesia (FSM), providing for the transition to self-government for the FSM, which includes the State of Yap where the Coast Guard sites are located. The FSM government will supercede the TTPI government as landlord when the United Nations trusteeship is terminated. That date has not as yet been determined.

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11. Under the Compact, our sites will be both exclusive and joint-use as follows:

Exclusive use: Parcel 1 - Loran Station; Parcel 2 - fuel oil storage tank, and the 1/2 mile pipeline right-of-way under local custom and law.

Joint-use: Parcel 3 - roads and bridges; Parcel 4 - Yap Airfield; Parcel 5 - Tomil Harbor

The Compact and subsidiary agreements will supercede our present Use and Occupancy Agreement, the Yap Airfield lease, and the TTPI's pipeline right-of-way.

12. Under the Compact, the United States' obligations upon termination of the Yap Loran Station function are more clearly defined than under the original agreement. Because of the high probability that the Compact will come into effect by the date the Coast Guard terminates its Loran Station function on Yap, it is appropriate to terminate in accordance with the Compact's notice and environmental procedures. However, the land should be returned to the TTPI High Commissioner - for reversion to the landowners - under our original agreement so long as the TTPI continues in existence. However, we should coordinate our actions with the FSM. The FSM person to be contacted is:

- (1) Mr. Michael Wygant, Military Law and Operations U.S. Representative to the FSM
Kolonja, Pohnpei

13. Termination Obligations Under the Compact. The United States should comply with the following incident to the termination of its Loran Station function on Yap.

a. Title II, Article VI of PL 99-239, Environmental Protection (enclosure (18)). Compliance with environmental laws.

b. Status of Forces Agreement concluded pursuant to Section 323 of the Compact of Free Association (enclosure (16)).

- (1) Article X, Relinquishment of Defense Sites.

(a) Paragraph 1: If any improvements are to be left behind, consult with the FSM government to determine the residual value, including scrap value, if any, of any such improvements or installations.

(b) Paragraph 2: Take all measures practicable to remove or otherwise make safe every condition substantially or materially hazardous to human life, health, and safety. The Governments concerned shall consult as to what constitutes a hazard and how hazards shall be removed or made safe.

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13. The Micronesia (c) Paragraph 3: Enter into negotiations with the FSM government with a view to reaching an equitable arrangement for the return of lands that takes into account the United States' investment, the prospective use to which the lands will be used, and the unique importance of land under local custom and law.

c. Military Use and Operating Rights Agreement concluded pursuant to Sections 227, 321, and 323 of the Compacts of Free Association (enclosure (17)).

(1) Article III, Provisions for Defense Sites, Paragraph 4: Notify the FSM government when the Coast Guard no longer needs all or a portion of its defense sites. After termination, the sites revert to the FSM for disposition to their lawful owners as determined by the government of the FSM in accordance with its constitutional processes. (emphasis added)

(2) Article VIII, Effective Date, Amendment, and Duration, Paragraph 5: If the Coast Guard terminates before 31 December 1992, the government of the United States will notify the FSM government of its determination that the sites will no longer be needed, at least 12 months in advance of the termination date.

(3) Article IV, General Military Use and Operating Rights

(a) Paragraph 2.(c): Avoid interference with navigation. (This relates to our removing the over/under water portion of the fuel oil pipeline.)

(b) Paragraph 2.(f): Avoid harm to the environment, including water areas.

(4) Article VII, Miscellaneous, Paragraph 6: The waste disposal area at the Loran Station must be closed in accordance with Article X, Paragraph 2, of the Status of Forces Agreement.

14. Interim Land Rent Payments. An attorney for the Micronesia Legal Services Corporation (MLSC), among others, has asserted (enclosure (20)) that an "interim amount" of money is due the landowners of the Loran Station property because of the delay in approving the Compact and terminating the trusteeship. Based upon the following, the Coast Guard owes no money. However, the Department of Interior may request further ex gratia land rent payments if it believes them warranted.

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15. The Micronesian Congress commissioned a study on Indefinite Land Use (ILU) agreements in 1978 (enclosure (14)), which resulted in a recommendation to the TTPI to renegotiate its lease with the Coast Guard (among others). The Trust Territory government did not do so because it wanted to wait until various ILU claims were presented to the United States Congress (enclosure (13)).

16. These ILU claims were settled by PL 96-304 (enclosure (21)), which gave the Department of Interior's Office of Territorial Affairs an additional \$6,117,000. The Coast Guard was not a party to the funding request. From this amount, the TTPI paid an additional \$25,731 to the Loran Station landowners for the 1963-1978 period, and \$42,462 more for the 1978 to 1981 time frame. When it offered this money, Congress assumed that the trusteeship would be terminated in 1981 (enclosure (22)). Although it still hasn't been terminated, I understand present plans call for the matter to be presented to the United Nations Security Council in July, 1986.

17. Section 213(c) of the Compact provides for a lump sum payment of \$160,000 for use of the military areas (described in Paragraph 11, supra) until 31 December 1992 - or until the Coast Guard leaves - whichever is earlier. I believe this amount was based on a fair market value lease appraisal of \$14,154 per year (enclosure (23)), which in turn was based on a 7% return on the \$202,200 appraised value of the station property. A little extra was apparently added for appreciation, providing a lease rent of \$16,000 per year for ten years. The parties assumed the new land use agreement would run for 10 years (enclosure (25)). The \$160,000 amount was agreed upon during the Micronesian Status Negotiations in 1982.

18. The TTPI government hasn't acted on any ILU claims since the PL 96-304 settlements, nor has it chosen to renegotiate the Coast Guard lease. I suspect this is because the previous ILU claims settlements and the \$160,000 provided for in the Compact are payment enough.

19. It is my opinion that the Coast Guard continues to operate under the 1963 indefinite-term Use and Occupancy Agreement from the TTPI. When the trusteeship terminates, our status will be governed by the subsidiary agreements - signed in 1982 - under Sections 227, 321, and 323 of the Compact (enclosures (17) thru (19)).

20. Article XIII, Section 5, of the FSM constitution (enclosure (19)), effective 10 May 1979 and referred to in a 1985 TTPI Attorney General's letter to the Navy about additional lease rents (enclosure (24)), invalidates ILU agreements as of 10 May 1984, and also requires the "national" government to renegotiate such agreements. However, the FSM is not yet a sovereign, and the Coast Guard is not subject to its constitutional provisions.

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21. Even if the FSM constitution were applicable now, our existing TTPI indefinite-term agreement would still have been valid until 10 May 1984. This would now make the Coast Guard a tenant-at-will. Also however, it would mean that the United States government would effectively be paying even more, under the Compact, than the \$16,000 per year - for 10 years - for use of the military areas. This is because the contemplated 10-year payment period under the Compact began in 1982, 1-1/2 years before the constitution called the ILU agreements invalid.

22. The landowners' only real complaint seems to be the delay in getting their money because of the lateness in terminating the trusteeship. However, in the end, they will have benefitted monetarily in two ways beyond the terms of the existing and pending agreements: (1) they have already obtained additional ILU claim money from the TTPI under PL 96-304; and (2) their anticipated yearly \$16,000 rental will effectively double from the contemplated 1982 beginning date of the Compact. This is because the Coast Guard will leave the island in 1987, about 5 years before the 31 December 1992 termination date of the Use and Operating Rights Agreement.

23. The Compact of Free Association was approved by Joint Congressional Resolution on 3 January 1986, and signed by the President on 14 January 1986. Civil and criminal jurisdiction will be governed by the Status of Forces and Military Use and Operating Rights Agreements concluded under Sections 227, 321, and 323 of the Compact, and by Section 202 of the Compact (enclosures (16) thru (18)).

24. This property has been screened against the known needs of the Fourteenth Coast Guard District. It is not located on an Indian Reservation, nor is it located within the corporate city limits of a city or town.

25. The property is not located in an identified floodplain or wetlands area. Portions of the property (south-central and north-central) contain tracts of freshwater wetlands. These areas are not in close proximity to the developed portions of the station, which are 65-70 feet above sea level. The developed areas have never been subject to flooding (enclosures (24), (26)).

26. There are two underground fuel tanks on the property: a 1,000 gallon steel gasoline tank, which is out of use due to leakage and is filled with water; and a concrete waste oil tank of unknown size, which may also be leaking. The areas around the tanks should be cleaned up before disposing of the property.

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27. This property has no known historical, architectural, archeological, or cultural significance and is not listed, eligible for listing, or in proximity to any property which is listed on the federal register. No effort by the public to have this property so listed has come to the attention of the Coast Guard (enclosure (26)).

28. The only known personal property of any historic or cultural value are two pieces of Yapese Stone money donated to the Coast Guard by Yap State. One of the pieces was broken and repaired, and no longer has cultural value to the Yapese. Disposition of the Stone money should be handled in accordance with Yap and FSM law, as required by the National Historic Preservation Act, 16 USC Section 470 a-2, relating to federally controlled properties outside the United States (enclosure (26)).

29. The station operates a sanitary landfill and scrap metal dump within the station boundaries. There is no cause to believe that either site contains materials dangerous or toxic to the public health or safety (enclosure (26)).

30. This holding agency is in compliance with 40 CFR 761, "Polychlorinated Biphenals (PCB's) manufacturing, processing, distribution in commerce, and use prohibitions," as it relates to PCB use, storage, handling, and disposal on this property, and there are known PCB's on the property. There are six large transformers located outside the signal power and transmitter buildings. Two have been identified as containing PCB's, and the other four most probably contain PCB's. Secondary containment should be placed around them before the station's generators are turned off, as the transformers will likely start to leak at that time (enclosure (26)).

31. Asbestos. The exhaust systems for the station's four caterpillar generators are wrapped with what appears to be asbestos insulation. The asbestos is in good condition, with no apparent tears or breaks (enclosure (26)).

32. No other thing, action, or circumstance, other than has been stated herein, has occurred from the date of acquisition of this property by the United States to the date of this report which in any way affected or may have affected the right, title, and interest of the United States in and to this real property.

TIMOTHY TITUS

- Encl: (1) Schedule A; metes and bounds description, Loran Station property, Yap, Gagil-Tomil Island, Trust Territory of the Pacific Islands
 (a) CCGD14 map 14-Yap-048; Loran Station
- (2) 1 Sep 1963 Coast Guard Use and Occupancy Agreement from TTPI
- (3) Trust Territory of the Pacific Islands Land Use Agreement of 18 Nov 1963
 (a) Designations of Representatives and Power of Attorney of 13 Feb 1968
 (b) Yap district map No. SKY-4/63-Ser 147, of July, 1963
 (c) Schedule of payments
- (4) Water-well license to Yap State of 1 Oct 1982
- (5) Whip antenna license to Yap State of 1 Oct 1982
- (6) Grant of Right-of-Way in Perpetuity of 18 Feb 1968
- (7) Right-of-Way maps, Y-LTROW, Sheets 1-6
- (8) Same as (7)
- (9) Same as (7)
- (10) Same as (7)
- (11) Same as (7)
- (12) Same as (7)
- (13) TTPI HICOM ltr to CCGD14(a) of 29 Feb 1979
- (14) Report of the Study Group on Indefinite Land Use Agreements
- (15) Yap Airfield, Agreement for Use of; of 29 Jan 1964
- (16) US/FSM Status of Forces Agreement
- (17) US/FSM Military Use and Operating Rights Agreement
- (18) Compact of Free Association Act of 1985 (PL 99-239)
- (19) FSM Constitution
- (20) Micronesian Legal Services Corp. ltr to TTPI Attorney General of 15 Jan 1985
- (21) Message re: PL 96-304 of 5 Aug 1960 HICOMTERPACIS to SECSTATE, Washington, D.C.
 (a) Legislative history, PL 96-304
- (22) TTPI Attorney General ltr to PACDIVNAVFACENCOM of 13 Dec 1984
- (23) Yap Governor ltr to CG PACAREA Commander of 31 Jan 1985
- (24) TTPI Office of Capital Improvements memo to TTPI Attorney General of 19 Mar 1986 re: inapplicability of floodplains management law to TTPI
- (25) R.E. Tinker (USCG MARSEC) memo re: historical significance
- (26) CCGD14(dpl), (eps) statements regarding floodplain, historicity, sanitary landfills, PCB's, asbestos, underground fuel tanks
 (a) Site visit report

Copy: MARSEC, LT Tinker
 (flp)
 (ecv)
 (oan)



Memorandum

Subject: LORSTA YAP; ATTORNEY'S REPORT OF TITLE

Date: 30 JUL 1986

From: (ecv)

Reply to: 11011
Serial s-128
Attn of: P. Layne/x3121

To: (dl)
(flp)

Ref: (a) Timothy Titus, CCGD14(dl), memo 11011 of 16 Jun 86

1. We have reviewed the Attorney's Report of Title for LORSTA Yap, reference (a). It is well written and seems to clearly outline our responsibilities in regards to closing Yap. In short, we plan to follow the guidelines of the Compact of Free Association Act in anticipation of its being ratified within the next year.

2. The primary guidelines we are concerned with are listed in paragraph 13 of reference (a), Termination Obligations Under the Compact. Specifically, we assume that the Board of Survey met the requirements of consulting with the FSM government to determine what improvements are to be left behind and what conditions are hazardous to human life, health, and safety. The understandings reached were:

a. We will leave all buildings, utilities, and major equipment on site for the FSM. Only the electronic equipment and high value, good condition personal property and engineering spares will be retained by us.

b. We will clean up the underground gasoline and waste oil tanks. We plan to do this by complete excavation and scrapping of the tanks and removal of all contaminated dirt.

c. We will remove the underwater portion of the fuel oil pipeline and fueling platform located in the harbor.

d. We will demolish the tower which, while standing, is a major safety hazard. We will not dispose of the tower due to the request of the Yap State Governor, as relayed to the Board of Survey members, to leave the tower on site for survey.

8/5 dpl^(enw) - are measures OK?
flp - coordinate with dpl for written notice of proposed termination to FSM/YAP. + understandings re: removing safety hazards, etc.
I'm not aware of any consulting with the gov.
T (dl)

YAP LORSTA CLOSURE

6 AUG 1986

11011

Tim Titus, Attorney

d1

Titus:X7110

(flp)

Ref: (a) (ecv) memo 11011, Serial s-128, of 30 Jul 86

1. Reference (a) asks whether the Board of Survey (B/S) constitutes notice to the TTPI and FSM that we are leaving in July, 1987. Also, the memo assumes that the B/S meets the consultation requirements regarding what stays on the property when we leave. The B/S is internal, and doesn't constitute either notice of our termination date or confirmation that we have consulted with the affected governments on what we plan to do before we leave.

2. Although the senior member of the B/S may have consulted with the Yap State government as to what they wanted us to leave on the property, these consultations were informal at best. I recommend that we memorialize our proposed actions to make the property safe in a letter to the TTPI. Copies should be sent to the FSM liaison and the Yap State governor. In this letter, we should also notify the affected governments of our contemplated termination date. It's always best to communicate these things in writing.

3. Prior to sending the letter, confirm with (dpl) that the measures we are taking are sufficient to make the place safe.

TIM TITUS

Copy: CCGD14(ecv)
CCGD14(dpl)