TTPI- Marianas

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

2 November 1972

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To: Mr. James M. Wilson
From: Mr. Adrian de Graffenried

Subj: The Mariana Islands Commonwealth Proposal

DASTA has submitted for our attention, the position of the Department of the Interior regarding the future political status of the Mariana Islands. The preferred status recommended by that office is Commonwealth similar to the original 1970 Commonwealth offer. I concur with the reasoning and judgement for such a proposal. However, because we are not now dealing with Micronesia as a whole but with the Mariana Islands District, because we wish to integrate that district with Guam, and because we should avoid duplicative programming and cost factors to facilitate the integration procedure, I would submit that the original Commonwealth offer should be modified as follows:

1. Enabling Act

The original Congressional Act focused upon all of Micronesia and extended the authorization of the USG to Micronesia to convene a Constitutional Convention, after the status issue had been resolved. This approach is no longer valid. It may be best to abandon this approach and initiate a Marianas Constitution Convention under authority of an Executive Order of the President applied through the Secretary of the Interior. I believe this approach is more advantageous considering: (1) The dual nature of the status negotiations at the present time between the USG and the COM and the Mariana Islands District and the need to obtain negotiating leverage with each and to best use the time available for these negotiations to counter the independence advocates; (2) The Constitutional Convention proposed by the Congress of Micronesia is going forward with USG approval but without direct authority from the President or the Secretary of the Interior; (3) The U.S. Congress may not be acceptable to a premature, piecemeal approach to the status negotiations and may reject a proposal that calls for a U.S. Congressional Act for just one district; (4) USG security interests in the Marianas may require a solution to the Marianas Status issue before the solution of Micronesia's FA status. I, therefore, recommend that an Executive Order for Marianas Constitutional Convention be utilized as soon as feasible.

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2. Plebiscite for the Mariana Islands Constitutional Convention, Section 102, p.3.

Current provisions should be amended to reflect the Executive Order approach. There remains to be resolved whether the Marianas voters should approve the Order or whether the Executive Order should instead direct the High Commissioner or Marianas Legislature to call the Constitutional Convention. If advantages with the COM are to be realized, we must use time to our advantage by reducing the time frame within which the ratification process and the convention call are to be operative. Because only the Mariana Islands are dealt with here, we should insist that delegates come from electorial precincts as currently are established by the TTPI. This would avoid local political maneuvers to establish delegate counts and composition for the convention according to island and ethnic prejudices; such maneuvers may unduly influence the convention and its results and lead to future friction and in-house rivalry.

3. Referendum on Constitution, Section 104, p.4.

Amendment may be desired to the proposed wording of the proposition to insure a more objective vote; in this regard, since the President must in any circumstance certify the Constitution prior to the referendum, it may be wise to delete reference to this certification process by omitting the words "as certified by the President of the United States". This would avoid any misinterpretation by a voter that his Constitution did not in reality represent his views and directives.

4. Character of the Constitution of Micronesia, Title II,p.6.

Current provisions establishing what the Commonwealth Constitution must contain parallel section contained in the Guam Organic Act and insure proper recognition of certain pre-negotiated agreements with the USG in the Mariana Islands. However, no provision is made under current proposals for a continuation of certain laws of the COM and District legislature to facilitate orderly transition into a future Commonwealth Government nor is provision set forth regarding a requirement for inclusion of a bill of rights for the residents of the future Commonwealth. These provisions are essential as effective transition procedures and as a recognition of basic legal rights.

There should be considerably more attention directed towards the court system to be established in the Commonwealth. The lack of properly trained judges, the under-developed judicial system in the islands, and the complexity of U.S. laws to be applied, requires some decision be made whether the USG should have any influence upon the application and interpretation of these laws even perhaps to the selection process of local judges. In this regard, the USG could nominate local (district level not community court) judges for advice and consent of the Marianas Legislature or provision could be inserted in this title providing

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a minimum level of judicial training and experience requisite for judgeship in the Commonwealth.

There is a level of racial and cultural prejudice that cannot be ignored now existing not only among the ethnic grouping of residents of Saipan Island but also as between these residents of Saipan and residents of the other "outer" islands of the Mariana Islands - Rota, Tinian, Pagan. To insure a balanced approach to the application of U.S. Laws and regulations throughout the Marianas to insure the basic rights to equal treatment under the law and to insure consistency in approach with Guam, I submit that some USG input should be made requiring that (1) some supervisory or advisor powers over the Commonwealth judicial system be placed with U.S. trained attorneys, possibly the Federal District Judges or with the U.S. Attorney's Office, and (2) U.S. Marshals and District Attorney have some supervisory or advisory function over local law enforcement authorities. This kind of approach may even require that a court forum be made available on each of the inhabited islands presided over by a possible system of rotating or circuit-type judges sent from Saipan. Absent this mode of review by advisory or supervisory powers over this local legal system, serious problems may arise in the future. To reduce administrative costs and program duplication, the U.S. District Court, District Attorney, and Marshal should be placed under the jurisdiction of and as a part of those offices established on Guam. This would facilitate both coordinated legal approaches and future integration of the legal system with Guam.

5. Nationality and Citizenship, Chapter 2, p.9.

The residents of the Mariana Islands have expressed their desire for U.S. citizenship. Current Commonwealth provisions call for U.S. National Status but not U.S. Citizenship. As a matter of good faith, since the remainder of the TTPI is not adopting this Commonwealth status, and since a future integration with Guam is anticipated, U.S. Citizenship should be offered to the Marianas peoples. In this regard, minor amendments to current provisions (d) and (e) of Section 1421L, Guam Organic Act may be included as relevant in this regard.

6. Executive Power, Chapter 4, p.13.

No provisions are established in the current proposals that detail the powers and responsibilities of the Executive Branch as are found in the Guam Organic Act. The Mariana Constitutional Convention now is empowered to establish these duties. This "hands-off" approach by the USG was taken because we were originally dealing with all Micronesia which is no longer true. It may be disireable considering the eventual objective of integration between Guam and the Mariana Islands Commonwealth to at least parallel to a greater extent those provisions relating to the Executive Branch followed by Guam.

7. Power of Federal Courts. Chapter 5, p.14.

As noted previously, considerably more supervisory and administrative-over-function should be established between the U.S. Federal Court System and the Commonwealth Court System. Specific provision might be incorporated in this chapter. It may be wise to reconsider, at this point, whether to establish a complete, separate Federal Judicial System for the Commonwealth or to have it function within the established framework of Guam. Considering the integration goal, high administrative costs under a duplicate approach, and the need for consistent approaches to the interpretation and application of U.S. laws between the Commonwealth and Guam, it would be advantageous to incorporate, at least to some extent, the proposed federal court system in the Commonwealth with Guam.

8. Fiscal Provisions. Chapter 6, p.18.

Since the remainder of Micronesia will not be included in this offer, the power with the Mariana Islands Commonwealth to levy duties on imported goods may not be consistent with overall USG foreign policy. Specifically, economic or trade competition between Guam and the Commonwealth and favored tariff treatment by the Commonwealth to Japan or the Philippines should be prevented. It is also questionable whether the proposal should contain subsection (d), page 20, placing the Commonwealth on the same trade status as other U.S. territories, and whether other trade advantages originally tendered to all of Micronesia should remain. We should avoid appearing giving superior treatment to the Mariana Islands at the expense of American Samoa, Puerto Rico, Guam, and the Virgin Islands which we must still administer as members of the U.S. political family. Present trade provisions may find U.S. Congressional opposition for this very reason.

9. Government property and land. Chapter 7, p.20.

We can protect the integrity of the DOD security interests only by insistence that the Commonwealth proposal will become effective only upon satisfaction of DOD land requirements in the Mariana Islands. Some detailed provisions in this regard similar to those of Title III of the FA offer may be desireable.

Why must we retain the provisions curtailing USG eminent domain powers? Some amendment should be made to bring these powers into more conformity with Guam if reintegration is to be realized and if we are to avoid strong resentment that will be forthcoming from Guam. It should be noted that the Guam residency are now in opposition to new U.S. land acquisitions via eminent domain procedures and they may feel, rightly so, that the Commonwealth is receiving highly preferential treatment although they are not a full member of the U.S. System. Also, if U.S. citizens are to be able to purchase land in the Mariana Islands as is now contemplated, speculative investments are bound to follow that may well obstruct public works or DOD land

acquisition in the future absent eminent powers residing with the USG. For example, speculators may raise the price of land several times through sales techniques. Because current provisions require the USG to negotiate with the land owners before other official action, the price range of the land continues to rise. If the negotiations are not productive, then USG may ask the Executive Branch to introduce legislation transferring the land, which is a time consuming process during which the land prices continue to rise. Only after extensive and time consuming delays may eminent domain be exercised by the USG. This obstructs much needed social capital projects and adversly affects security projects where additional land is requisite. Land speculations should be prevented and land acquisition procedures should be more firmly under the control of the USG.

SUMMARY

A Commonwealth status offer is in the final analysis the best position for the USG with the Mariana Islands District. The reasoning given in support by DASTA is sound in this regard. However, a great deal of modification is in order because we are no longer dealing with Micronesia but a single district that has repeatedly insisted upon closer ties with the U.S. and has recommended a future goal of integration with Guam. The kind of offer we initially present to the Marianas peoples may significantly affect their response and their future relationship with the USG, but they should not be led to believe that we will grant a superior preferred status to the Marianas over that extended to other territorial and insular possessions of the USG.