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22 January 1973

MEMORANDUM

**From:** Mr. Roy Markon, Executive Assistant to the Assistant  
Commander for Real Property Management  
**To:** Captain Gordon J. Schuller, Office of Assistant Secretary  
of Defense (International Security Affairs)  
**Subj:** Eminent Domain as an issue to the Status negotiation

In response to your request, I have prepared the following comments on the subject of Condemnation or Eminent Domain. These comments are predicated upon the subject being an open negotiable question in the Status talks.

I believe that some general comments on the subject are necessary to understand the basis of any recommendations that may be made. In our own Constitution the words "eminent domain" or "condemnation" are not present. The only reference to the power of eminent domain is the indirect statement in the Fifth Amendment: "No person shall... be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation".

The power of eminent domain has been frequently and variously defined. The following may be considered as a composite statement of judicial opinion as to its essential features when applied to its exercise by the United States. The power is the inherent sovereign power of the United States, subject to providing just compensation therefor, to appropriate any property within its geographical limits necessary for any of its constitutional activities. This power may be exercised only when and by agents to whom authority therefor has been expressly or impliedly granted by previous act or subsequent ratification of Congress. Eminent Domain is neither a paramount property interest of the sovereign in the thing taken nor a contract with the condemnee, but a power to take, which is essential to the independent existence and perpetuity of the sovereign, growing out of the necessity of its being. It has sometimes been said that the power is without limitation except as the people have limited it by constitutional inhibitions.

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**Subj: Eminent Domain as an issue to the Status negotiation**

It is inconceivable to me to have a viable form of government without authority in that government to do all that is necessary to execute its obligations to its people. Essential public programs such as education (school sites), commerce (streets and highways) and the government itself (courthouse sites - jails - legislative buildings) can be stymied by one individual if some provision is not made to legally permit recognition of the obligation of the individual to the rights and benefits of all its citizens. Some form of power to promote the public welfare of the citizens must be provided to the government if it is to be effective at all.

In our particular concern, the question of Eminent Domain power in the new government of Micronesia is not one of its necessity but of its limitations. In other words, is the taking of tribal or private property for defense purposes to be included in the powers delegated to the new government by the people, or should some separate provision be made for defense property requirements? It is presumed that the new government will have some authority to take land for essential government functions.

The question may be viewed in two parts, one being whether the power of condemnation will be available for defense purposes and, if so, what procedures will be devised to exercise this right. All too often we presume that the Courts, as is the case in our laws, will review any action to ascertain the constitutionality of the action undertaken by a government official in this regard.

Condemnation or the taking of land is primarily a Congressional act. As stated above, the act of taking the property may be exercised only when and by agents to whom authority therefor has been expressly or impliedly granted or ratified by Congress. Congress can determine not only when and by whom, but how the power is to be used. Limitations on the use of the power in the United States are evidenced in certain National Park legislation and the enlargement of the judicial concept of constitutional compensation is found in the Uniform Relocation and Acquisition Policy Act, P. L. 91-646.

It is not unreasonable to insist that the parties to the negotiations manifest some ability to meet their respective commitments. How the Micronesian Government plans to provide land for defense requirements can not be left to stated good intentions but the means to accomplishment

Subj: Eminent Domain as an issue to the Status negotiation

must also be understood. Condemnation is merely a means of fulfilling requirements that are predicated upon essential government functions (public use) and obligations (compact).

I see no alternative to some form of a power to appropriate that which is necessary to comply with the obligations of the Micronesians and the responsibilities of the United States that may be agreed to in the Compact. The form may be one for the Congress of the new government to review all requests for land to insure that the requirement is Compact oriented and also to determine the measure of compensation to the rightful owners. Micronesian guarantees such as market value or a pre-set price per acre or replacement land can be a part of the procedure. Our own interests, of course, must be protected to the extent that these guarantees and procedures do not exceed a rule of reasonableness.

I believe, therefore, that in the negotiations the United States should insist that some means be available to the new government to reasonably provide for our requirements. This need not be in a form of Eminent Domain as we know it and use it in the United States. There is no alternative but there may be ways to avoid the issue. For example, if our complete requirements can be satisfied from public land and no private lands are involved. This procedure would depend on the resolution of the public land question.

It is difficult to set forth a recommended procedure that the Micronesians may find acceptable without a thorough understanding of their own ideas on the subject. This can only be gained in further talks. The land survey visit would also be beneficial. Because of its technical nature, the negotiations should be supported by someone who is experienced and totally conversant with the subject.

ROY MARKON

Attach this is one agreement  
All others read exactly the  
same except for land description  
& price

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LEASE AND OCCUPANCY AGREEMENT FOR LAND IN THE TRUST TERRITORY OF THE PACIFIC ISLANDS, SAIPAN DISTRICT

This agreement made as of the 9th day of July, 1944, by and between the Government of the Trust Territory of the Pacific Islands, Saipan District, hereinafter called "Grantor", and the United States of America, hereinafter called "Grantee":

WITNESSETH:

Whereas, Grantor is the owner of a certain parcel of land more particularly identified as Area 13 (Inlay Field), and situated on the island of Saipan, Mariana Islands, described as follows:

Beginning at a point designated as Corner IF-1, having plane grid coordinates (Base Development 1951 Saipan Grid) of North 44,132.66 meters (144,955.95 feet) and East 50,433.26 meters (165,545.15 feet) being North 33 degrees 05 minutes 10 seconds East for 362.02 meters (1,210.70 feet) from triangulation station CBLAII; thence North 44 degrees 30 minutes 42 seconds East for 102.35 meters (335.82 feet) to IF-2; thence along the arc of a curve 95.89 meters (317.52 feet) to IF-3, the curve data being central angle 22 degrees 44 minutes 43 seconds and a radius of 243.84 meters (800.00 feet); thence North 21 degrees 45 minutes 59 seconds East for 92.34 meters (302.95 feet) to IF-4; thence along the arc of a curve for 45.12 meters (148.26 feet) to IF-5, the curve data being central angle 02 degrees 54 minutes 52 seconds and a radius of 83.55 meters (274.50 feet); thence North 24 degrees 40 minutes 51 seconds East for 57.32 meters (188.23 feet) to IF-6; thence along the arc of a curve for 30.78 meters (100.97 feet) to IF-7, the curve data being central angle 04 degrees 50 minutes 03 seconds and a radius of 364.65 meters (1,196.23 feet); thence North 29 degrees 30 minutes 59 seconds East for 86.35 meters (283.21 feet) to IF-8; thence along the arc of a curve for 71.01 meters (232.97 feet) to IF-9, the curve data being central angle 21 degrees 24 minutes 03 seconds and a radius of 170.10 meters (558.69 feet); thence North 50 degrees 55 minutes 07 seconds East for 33.66 meters (110.42 feet) to IF-10; thence along the arc of a curve for 50.43 meters (165.63 feet) to IF-11, the curve data being central angle 33 degrees 40 minutes 09 seconds and a radius of 83.74 meters (274.69 feet); thence North 83 degrees 35 minutes 16 seconds East for 45.02 meters (147.91 feet) to IF-12; thence along the arc of a curve for 53.52 meters (175.97 feet) to IF-13, the curve data being central angle 57 degrees 44 minutes 29 seconds and a radius of 58.66 meters (190.49 feet); thence North 25 degrees 59 minutes 47 seconds East for 195.43 meters (641.35 feet) to IF-14; thence along the arc of a curve for 61.67 meters (202.33 feet) to Corner IF-15, the curve data being central angle 10 degrees 34 minutes 29 seconds and a radius of 334.15 meters (1,096.26 feet); thence North 15 degrees 16 minutes 18 seconds East for 119.72 meters (392.49 feet) to IF-16; thence North 15 degrees 16 minutes 18 seconds East for 40.17 meters (131.73 feet) to IF-17; thence along the arc of a curve for 73.02 meters (239.56 feet) to IF-18, the curve data being central angle 13 degrees 46 minutes 53 seconds and

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Area 13, Saipan

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a radius of 303.57 meters (995.96 feet); thence along the arc of a curve for 199.79 meters (655.69 feet) to IF-19, the curve data being central angle 11 degrees 04 minutes 39 seconds and a radius of 521.33 meters (1,710.40 feet); thence North 40 degrees 01 minute 50 seconds East for 79.73 meters (261.53 feet) to IF-20; thence along the arc of a curve for 124.00 meters (406.83 feet) to IF-21, the curve data being central angle 13 degrees 18 minutes 10 seconds and a radius of 382.18 meters (1,253.57 feet); thence North 21 degrees 49 minutes 40 seconds East for 236.47 meters (775.81 feet) to IF-22; thence along the arc of a curve for 167.83 meters (550.79 feet) to IF-23, the curve data being central angle 24 degrees 51 minutes 56 seconds and a radius of 275.83 meters (905.13 feet); thence North 56 degrees 41 minutes 36 seconds East for 77.61 meters (254.61 feet) to IF-24; thence North 53 degrees 26 minutes 53 seconds East for 448.48 meters (1,471.39 feet) to IF-25; thence North 51 degrees 36 minutes 42 seconds East for 57.46 meters (195.09 feet) to IF-26; thence North 54 degrees 23 minutes 21 seconds East for 60.03 meters (196.95 feet) to IF-27; thence along the arc of a curve for 112.95 meters (370.57 feet) to IF-28, the curve data being central angle 51 degrees 52 minutes 42 seconds and a radius of 324.75 meters (1,069.27 feet); thence South 73 degrees 43 minutes 57 seconds East for 196.99 meters (646.30 feet) to IF-29; thence along the arc of a curve for 63.47 meters (208.24 feet) to IF-30, the curve data being central angle 57 degrees 26 minutes 39 seconds and a radius of 63.27 meters (207.53 feet); thence South 16 degrees 15 minutes 18 seconds East for 63.60 meters (208.67 feet) to IF-31; thence along the arc of a curve for 134.45 meters (441.16 feet) to IF-32, the curve data being central angle 31 degrees 15 minutes 21 seconds and a radius of 338.12 meters (1,109.33 feet); thence South 47 degrees 30 minutes 39 seconds East for 192.95 meters (633.03 feet) to IF-33; thence along the arc of a curve for 88.53 meters (290.44 feet) to IF-34, the curve data being central angle 74 degrees 09 minutes 59 seconds and a radius of 68.39 meters (224.37 feet); thence North 58 degrees 19 minutes 22 seconds East for 30.86 meters (101.24 feet) to IF-35; thence along the arc of a curve for 31.80 meters (104.32 feet) to IF-36, the curve data being central angle 26 degrees 36 minutes 08 seconds and a radius of 275.96 meters (905.27 feet); thence North 51 degrees 43 minutes 14 seconds East for 297.51 meters (976.03 feet) to IF-37; thence along the arc of a curve for 242.71 meters (796.30 feet) to IF-38, the curve data being central angle 92 degrees 47 minutes 33 seconds and a radius of 149.36 meters (491.66 feet); thence South 35 degrees 29 minutes 13 seconds East for 371.12 meters (1,217.57 feet) to IF-39; thence along the arc of a curve for 32.95 meters (108.10 feet) to IF-40, curve data being central angle 05 degrees 10 minutes 39 seconds and a radius of 364.63 meters (1,196.26 feet); thence South 30 degrees 18 minutes 34 seconds East for 59.96 meters (196.68 feet) to IF-41; thence along the arc of a curve for 54.22 meters (178.12 feet) to IF-42, the curve data being central angle 07 degrees 22 minutes 51 seconds and a radius of 421.44 meters (1,382.61 feet); thence South 37 degrees 41 minutes 35 seconds East for 164.65 meters (540.13 feet) to IF-43; thence along the arc of a curve for 44.65 meters (146.49 feet) to IF-44, the curve data being central angle 32 degrees 42 minutes 01 second and a radius of 78.24 meters (256.63 feet); thence South 04 degrees 59 minutes 24 seconds East for 305.13 meters (1,002.07 feet) to IF-45; thence along the arc of a curve for 167.83 meters (550.79 feet) to IF-46, the curve data being central angle 29 degrees 23 minutes 17 seconds and a radius of 328.31 meters (1,077.11 feet); thence South 31 degrees 19 minutes 41 seconds East for 145.66 meters (478.31 feet) to IF-47; thence along

the arc of a curve for 93.36 meters (322.69 feet) to IF-48, the curve data being central angle 87 degrees 17 minutes 31 seconds and a radius of 64.55 meters (211.80 feet); thence South 52 degrees 57 minutes 50 seconds West for 528.92 meters (1,912.16 feet) to IF-49; thence South 21 degrees 33 minutes 44 seconds West for 152.21 meters (497.37 feet) to IF-50; thence along the arc of a curve for 160.55 meters (526.75 feet) to IF-51, the curve data being central angle 42 degrees 58 minutes 52 seconds and a radius of 214.02 meters (702.13 feet); thence South 64 degrees 37 minutes 36 seconds West for 358.25 meters (1,208.16 feet) to IF-52; thence along the arc of a curve for 191.67 meters (628.83 feet) to IF-53; the curve data being central angle 41 degrees 27 minutes 35 seconds and a radius of 264.83 meters (869.02 feet); thence North 73 degrees 54 minutes 49 seconds West for 643.05 meters (2,140.75 feet) to IF-54; thence along the arc of a curve for 55.20 meters (181.35 feet) to IF-55, the curve data being central angle 07 degrees 03 minutes 30 seconds and a radius of 451.92 meters (1,482.69 feet); thence North 65 degrees 54 minutes 19 seconds West for 151.45 meters (496.89 feet) to IF-56; thence along the arc of a curve for 157.44 meters (516.55 feet) to IF-57, the curve data being central angle 44 degrees 57 minutes 36 seconds and a radius of 203.23 meters (666.73 feet); thence South 60 degrees 03 minutes 05 seconds West for 156.10 meters (512.14 feet) to IF-58; thence along the arc of a curve for 98.35 meters (322.67 feet) to IF-59, the curve data being central angle 29 degrees 33 minutes 35 seconds and a radius of 190.09 meters (623.67 feet); thence North 82 degrees 13 minutes 20 seconds West for 398.66 meters (1,308.36 feet) to IF-60; thence along the arc of a curve for 74.83 meters (245.50 feet) to IF-61, the curve data being central angle 26 degrees 51 minutes 36 seconds and a radius of 159.61 meters (523.67 feet); thence South 70 degrees 54 minutes 56 seconds West for 220.98 meters (724.99 feet) to IF-62; thence along the arc of a curve for 156.06 meters (512.00 feet) to IF-63, the curve data being central angle 21 degrees 19 minutes 43 seconds and a radius of 419.22 meters (1,375.40 feet); thence North 07 degrees 45 minutes 21 seconds West for 83.79 meters (274.89 feet) to IF-64; thence along the arc of a curve for 171.11 meters (561.39 feet) to IF-1, the point of beginning, the curve data being central angle 132 degrees 16 minutes 03 seconds and a radius of 74.12 meters (243.19 feet), containing an area of 4,810,370 square meters (1,189.35 Acres), more or less; and

as delineated on the attached Maricao Area Drawing No. 10250 (revised 16 November 1953) marked Exhibit "A", and made a part hereof; and

Whereas, Grantor is agreeable to conveying to grantee the use and occupancy of the land described aforesaid for an indefinite period of time, subject to certain conditions; and

Whereas, the grantee desires to acquire the use and occupancy of the land described aforesaid for an indefinite period of time.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth and the mutual benefits to be derived therefrom, it is agreed as follows:

1. Estate Granted. Grantor for and in consideration of the sum of \$47,574.00, hereby grants and conveys to the grantees, the right to use and occupy the land described aforesaid for an indefinite period of time, to continue so long as the grantees has a use for said land.

2. Conditions of Grant. (A) Use To Be Consistent With Trusteeship Agreement. The use to which the land is put by the grantees shall be consistent with the provisions and purposes of the Trusteeship Agreement relating to the Administration of the Trust Territory of the Pacific Islands.

(B) Review of Need for Land Every Five Years. On or about June 30, 1961, and on a similar date each five year period thereafter, the agency of grantees having the use and occupancy of said land or the Department of the Navy as the representative thereof, and the grantor, shall jointly review and determine the need for continuing the use and occupancy granted hereby.

(C) Review by the President. In the event the review provided for in paragraph (B) does not result in agreement as to the need for continuing grantees' use and occupancy, the matter shall be presented to the President of the United States for final decision.

(D) Termination of Use and Occupancy. In the event of a decision pursuant to paragraphs (B) or (C) that a need for the continued use and occupancy of said land does not exist, the estate granted hereby shall terminate thirty days from the date of such decision, and revert to the grantor. During said thirty day period the grantees may if it elects remove any structures or improvements it has heretofore erected or may hereafter erect on the land, and if the structures or improvements cannot be removed during said thirty day period, the grantees shall be permitted such additional reasonable time as may be required.

3. Use of Land by Grantor. When not actively used by the grantees, said lands and improvements will be made available to the grantor on a license basis for the use and benefit of the people of the Trust Territory. The license shall be subject to the following conditions:

(A) The license may be revoked at any time, by the grantees so advising the grantor in writing.

(B) The grantor shall reimburse the grantees for any utilities and services furnished.

(C) Grantor shall maintain and be responsible for any loss or damage to the real property and personal property owned by the grantees, except for loss or damage caused by ordinary wear and tear, and conditions beyond the control of the grantor.

(D) Grantor shall be responsible for any damage or injury to others arising from the use by the grantor or the people of the Trust Territory of said land or any improvements or facilities located thereon.

(E) No permanent native dwellings or settlements shall be established on said land without the grantor obtaining prior written approval from the grantees.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.

Government of the Trust Territory of the Pacific Islands, Saipan District

By /s/ W. H. ARZON  
W. H. ARZON, RADM, USN  
COMMANDER NAVAL FORCES MARIANAS  
By direction of the Commander in Chief  
U. S. Pacific Fleet under direction  
of the Secretary of the Navy

The United States of America

By /s/ J. F. JELLEY  
J. F. JELLEY, RADM, USN  
DIRECTOR, PACIFIC DIVISION  
BUREAU OF YARDS AND DOCKS  
By direction of the Chief of the Bureau  
of Yards and Docks, acting under the  
direction of the Secretary of the Navy

Filed this 22nd day of August 1956.

Glypto T. Heria  
Clerk of Courts  
Saipan District

CERTIFIED TO BE TRUE COPY  
P. M. BROTHE  
P. M. BROTHE  
CAPT, CEC, USN  
JUN 25 1956

H. K. ...  
JUN 25 1956