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DEPARTMENT OF THE AIR FORCE
WASHINGTON 20330

Chron

October 23, 1973



OFFICE OF THE GENERAL COUNSEL

MEMORANDUM FOR CAPTAIN WHELAN, OASD/ISA

Subject: Third Draft Agreement Between the Marianas
Islands and the United States

In accordance with your request of 15 October 1973,
I am forwarding to you my comments on the subject draft.

But before making specific comments, I wish to
express my uncertainty about the procedure that has
apparently been chosen to transform the Marianas
into commonwealth status with the United States. In
discussions with Major Gehring, NJAG, and Captain
Smith, JAG-A, alternative procedures were raised
that seem to merit serious consideration. One such
procedure was that which Captain Smith outlined to
you in the attachment to his memorandum of 3 October
1973. All the alternatives, however, differ from
the present procedure in that they envision first
an agreement on the principles of the union, which
would require the appropriate approval in each state
(perhaps Congressional in the United States and
popular, by referendum, in the Marianas), before
proceeding to agree on the details of both the
relationship and internal matters of the Islands.
I believe that the chief advantage of such a
procedure is that it obviates the necessity of
including so many internal details, which are more
appropriately the subject of a constitution, in
the compact of association. It would seem more
desirable to have the two documents, which will
necessarily be complementary in nature, worked out
at the same time. I do not know whether these
possibilities were considered by the drafters of
the present agreement, but I would welcome their
comments.

Turning to the specifics of the current draft,
Article V is of the most direct interest to the

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Department of Defense. Since the article relates to three situations, that is, the status of property owned by the Trust Territory, the status of property necessary for defense responsibilities, and the right of the United States to acquire any property for public purpose, I propose changes that are intended to reflect more clearly these divisions.

Section 501. I propose deletion of the last sentence of the section, which reads "This subsection shall not apply to any interest in lands, which interest by local or customary laws or rights is held in private or communal ownership." I understand this to mean that the title to privately-owned property will not be transferred to the government of the commonwealth. If this is the intended meaning, the sentence would appear superfluous for the first sentence of Section 501 refers only to property owned by the Government of the Trust Territory being transferred to the commonwealth government.

Section 502. My editorial suggestions for subsections (a) and (b)(1) are attached as an appendix to this memorandum. I also recommend the renumbering of subsections (c) through (e) as a new Section 504 because these provisions grant to the United States broad rights to acquire property in situations that are presumably not limited to the narrower subject matter of Section 502. I would also include the gravamen of the present subsection (b)(2) in the new Section 504.

Section 503. The last phrase of the first sentence ("notwithstanding the provisions of this agreement") is ambiguous in that it literally applies to Section 503 as well. I am sure that the drafters had the provisions of Section 502 in mind, and, accordingly, I would suggest including a specific reference to it to clarify the matter. The phrase would then read "notwithstanding the provisions of Section 502 of this agreement" or even "notwithstanding the provisions of any other section of this agreement."

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I also suggest inclusion of the present Section 504, relating to the price to be paid for title to the specified areas, at the end of Section 503 as a new subsection (b). This would require the renumbering of the present subsections.

Section 504. As I indicated in the comments on Section 502, I suggest the formation of a new Section 504, which would contain the provisions on the rights of the United States generally to acquire interests in property in the commonwealth. The text of the section is included in the appendix.

David F. Edwards
DAVID F. EDWARDS

Office of the General Counsel

cc: Mr. Phil Barringer, OSD/ISA/FMRA
Mr. Harry Almond, OSD/COUN
COL W. R. Kenty, OJCS
MAJ Wayne Gehring, NJAG
CAPT J.H. Smith, JAG-A

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APPENDIX

Section 502.a. The transfer, by virtue of Section 501, of title to property which is not directly related to the defense responsibilities of the United States, but in which the United States holds an interest, shall not impair, during a three-year period from the termination of the Trusteeship Agreement, the existing agreements between the Trust Territory Government and the United States Government or any agency or instrumentality thereof insofar as they relate to land use and retention. Specifically, the Commonwealth Government takes all such land subject to such agreements, provided, however, that such retention and use will at all times be consistent with the public purposes of the United States.

b. At the end of the three-year period referred to in subsection (a), the retention and use rights



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of the United States Government shall terminate, unless, within that time the United States proceeds to acquire whatever rights in such lands may be considered necessary for the public purposes of the United States.

Section 504.a. The United States Government, its departments and agencies, are hereby authorized to, and may acquire for public purposes in the Commonwealth any property or any interest in property, including any temporary use. Such property, including that owned or controlled by private parties or the Commonwealth Government, may be acquired under this subsection by purchase, lease, exchange, gift, or otherwise under such terms and conditions as may be negotiated by the parties, subject to the limitations in Section ____ of this Article.

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b. In the event the United States is unable to acquire property or an interest in property by negotiation in accordance with subsection (a), then it may acquire property or an interest therein in accordance with its Constitutional authority and presently established and future Federal law and procedures with respect to the acquisition of real property or an interest in real property.

c. Just compensation, as defined by presently established or future Federal law, shall be paid for any property, or interest therein, acquired by the United States, less any amount or amounts previously paid, gratuitously or otherwise, therefor.

d. In the event an interest in private or communally-owned property is acquired pursuant to subsection (b)

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and the owner or owners disagree with the amount offered
and wish a further review, the United States shall proceed
immediately in accordance with established Federal law and
procedures to have the just compensation determined by
the Federal District Court for the District of _____
with the right of appeal under said Federal law and pro-
cedures to the United States Court of Appeals for the
Ninth Circuit.

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