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BACKGROUND PAPER ON U.S. DECISION TO RETURN MICRONESIAN
PUBLIC LANDS TO DISTRICT CONTROL

--INTRODUCTION

The United States has always considered the public lands which the TTPI Government is holding in trust for the people of Micronesia to be Micronesian property, which would ultimately be returned to Micronesian control. When the U.S. was informed earlier this year that many Micronesians favored an early transfer of control over the land to district authority, Ambassador F. Haydn Williams said that the U.S. had no objection in principle, and that the U.S. would immediately undertake in each district a priority study of local views on public lands, including the question of how the transfer to local control could best be managed, given the many different land patterns and traditions throughout the TTPI.

The comprehensive study which followed included extensive discussions in all the districts of Micronesia as well as with land experts at all levels within the Trust Territory Government. The study also considered the views of the Congress of Micronesia's Joint Committee on Future Status which were submitted in response to a series of questions posed by Ambassador Williams. Since there appears to be general agreement in Micronesia that there should be an early solution to the public lands problem and strong sentiment for district control over public lands, the United States is willing to transfer title and control over Micronesian public lands to the district in which those lands are located if that is the desire of the people of the district concerned. The U.S. approach to accomplishing the transfer is being released today to Senator Salii, Chairman of the Joint Committee on Future Status and will be discussed with him and the Joint Committee on Future Status when they meet with Ambassador Williams in Washington beginning November 13.

--THE DEFINITION OF PUBLIC LAND AND ITS EXTENT

According to current calculations, over sixty percent of Micronesia's total land area is included in the working definition of "public land" used by the TTPI Government. The proportion of public land to the total land area in each of Micronesia's six districts is: Palau 68%; Yap 4%; Truk 17%; Ponape 66%; Marshall Islands 13%; and Mariana Islands 90%.

The Trust Territory Code and various Trust Territory court decisions define public lands as all lands acquired by the prior Spanish, German, and Japanese administrations for governmental or other public purposes, as well as those lands which the TTPI Government may itself have acquired for public use. As in U.S. Territories, tidelands and marine lands are also considered to be in the public domain. Moreover, former private Japanese properties, including those belonging to agencies and corporations controlled by the Japanese Government, which were seized at the end of World War II and placed under the control of an "alien property custodian", are administratively handled as public lands, although they are not technically a part of the public domain.

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Only a very small proportion of the Trust Territory's public lands is currently being used for such public purposes as schools, hospitals, airports, roads, Post Offices. Additional small parcels have been leased for commercial undertakings, or have been made available to individuals for homesteading. However, the great bulk of public land is not in use, and will thus be available for the Micronesians to dispose of themselves in accordance with whatever appropriate legal procedures they choose to establish.

--THE U.S. APPROACH TO RETURNING CONTROL TO THE DISTRICTS

Under the new U.S. policy there will be an early transfer of public land to the districts if the people of these districts so desire, subject only to some minimum safeguards and limitations. Since the disposition of the public lands is recognized to be a Micronesian issue to be handled by the Micronesians, according to their laws, customs and traditions, only a limited number of safeguards appear necessary. These are designed to enable the Trust Territory to continue to meet its responsibilities for serving public needs during the remainder of the trusteeship and to protect private Micronesian citizens who have acquired property interests in public lands, have leased public lands, or are now living on public lands by agreement with the Trust Territory Government.

The Congress of Micronesia will be asked to play an active role in the land transfer by passing enabling legislation and appropriately amending or modifying the Trust Territory Code. It is expected that prior to the January session of the Congress of Micronesia the High Commissioner of the Trust Territory will submit a list of land laws that should be amended by the Congress before a transfer can be effected. A rather large body of present legislation may be affected.

Each District Legislature will be asked to indicate whether the people of its district wish the United States to transfer public lands to the district and if so to whom the lands should be transferred and when. The persons or groups or organizations receiving the public lands, however, must have or be given by appropriate action the legal capacity to hold title. For example; if it is determined that title should go to a District Legislature, prior action would be necessary to charter that legislature to enable it to hold title to land. Or, if it is determined that land title should go to municipalities, land boards, traditional leaders or specially created legal entities or other types of trustees, they would have to be given a similar capacity.

In addition, the new titleholders must hold the public lands "in trust" for the people of the districts. This means they do not hold it for their own individual or personal use. Disposition of public land can be accomplished by traditional means or new homesteading programs, or by leasing or by other means as locally determined.

Under these procedures the requested transfer of public land to the traditional leaders in Palau in trust for the people of Palau seems feasible. Other districts would decide for themselves what they wanted.

After these arrangements have been made, the TTPI Government will transfer title to all public lands not being used or not needed for immediate future use, by the Trust Territory Government. However, such action need not take place simultaneously for all districts.

The TTPI Government must be able to go forward on presently approved capital improvement projects such as water, electric and sewage lines, new roads, hospitals, new schools, enlarging docks and harbors, and improving airfields. The public land areas needed for these projects have already been identified. Once public lands are no longer needed title will be turned over to the districts. Any other future needs will have to be met by negotiation between the Trust Territory Government and the land owners. The Trust Administration will continue to hold the power of eminent domain until the end of the trusteeship to be used only as a last resort, but this power may be shared with the districts if the legislatures so desire. The power of eminent domain can then be exercised locally for district projects as well.

Citizens who have gained title to land by homesteading, along with their heirs and assignees, will remain in possession of their lands. Where people have entered land under a homestead program but have not yet received title, they will get it from the TTPI Government as soon as the homestead requirements have been met. If the homesteader does not satisfy the homestead requirements under the law, then the title to the homestead property will be turned over to the district.

Where people have leased public land from the TTPI, they will be able to continue to use the land under the terms of the lease. If people now use or live on public land without a legal agreement but under an informal arrangement with the Trust Administration, the title to these lands will not pass to the district until an arrangement is made to permit the person now occupying the public land to continue in possession for a reasonable period of years after title is transferred to the districts.

In the case of public land to be used for defense purposes under proposed future status agreements with the United States title will be passed to the new titleholders when they have formally committed themselves to accommodate those requirements on terms to be mutually agreed with the United States.

There are some plots of public land over which there are unresolved claims. In these cases transfer of title to each district will be subject to such claims, which may then be settled under procedures and means prescribed by the individual legislatures, providing, however, that in the event such claims still remain unsettled the claimant will have access to regular courts of the Trust Territory. In addition, future titleholders to public land must agree before title is finally passed, to hold the TTPI Administration and the United States harmless from claims other than those resulting directly from action of the United States or the TTPI Administration or their duly authorized agents.

The U.S. will have no objection to having title to tidelands, filled lands, submerged lands and lagoons also turned over to the districts. However, the central government of the Trust Territory shall retain the right to control activities within these areas affecting the public interest, such as prescribing measures for navigation, control of pollution and the protection of the environment.

The U.S. plan for transferring public land recognizes the inadequacy of existing land data and boundary descriptions involving public lands. It also recognizes the operational difficulties encountered in the current survey program under the Trust Territory Government and the inadequacy of the resources allocated to that program. Because these two shortcomings could significantly delay the transfer of lands, and because many leaders in Micronesia have requested a completed survey and boundary settlement by the U.S. prior to a transfer, the U.S. Government has already requested the U.S. Congress to authorize funds to initiate a special CADASTRAL effort. This augmented program will be under the direction of the High Commissioner. He is being asked to complete within three years a CADASTRAL program on all present public lands. Without such a special program, it is estimated that almost thirty years would be required to complete the surveys of these lands. Hopefully, the proposed three year CADASTRAL program will be accomplished by special contracts which will leave present land survey personnel and resources free to concentrate on completion of the private land CADASTER program as desired by the districts.