

MARIANAS POLITICAL STATUS COMMISSION

December 13, 1973

POSITION PAPER ON THE RETURN OF
PUBLIC LANDS TO THE PEOPLE OF THE MARIANAS

At the last session of these negotiations, the United States expressed its commitment to return to the people of the Marianas the land now held in public trust "just as soon as questions of a legal, technical, administrative and timing nature can be resolved." (Joint Communique of June 4, 1973.) On November 1, 1973, Ambassador Williams announced a formal United States policy with respect to the prompt return of public lands throughout all of Micronesia. The Policy Statement provides that, subject to certain limitations and safeguards, public lands will be returned to the districts just as soon as the necessary enabling legislation is passed by the Congress of Micronesia and the respective district legislatures. This position paper will summarize the Commission's preliminary views regarding the Policy Statement and advance certain proposals and requests with respect to its implementation.

A. Comments on the Policy Statement of November 1, 1973.

The Marianas Commission has given careful study to the United States Policy Statement on public land and is pleased to inform the United States that the Commission is prepared to accept the Statement as a basis for satisfactory resolution of the public land issues in the Marianas. To avoid any future misunderstanding,

however, the Commission would like to offer a few comments on specific aspects of the Policy Statement:

1. The Policy Statement is a welcome effort by the United States to solve the public land problem before the conclusion of these negotiations. If the Statement is implemented promptly and fully, then the issue of public land no longer need be a principal agenda item for these talks. However, the Marianas Commission looks to the United States delegation for assistance in assuring that implementation of the Policy Statement occurs smoothly and without delay. In this regard, we fully expect that, if the Congress of Micronesia does not pass suitable enabling legislation in its January Session, the Secretary of Interior will promptly amend the Secretarial Order for Micronesia to facilitate the return of land and the vesting of land management authority in the District Legislature. Moreover, the Commission fully expects that the return of public land will not be delayed by legal wrangling and bureaucratic red tape generated by personnel in the Trust Territory Government. Although, implementation is largely a matter for the District Legislature and the Trust Territory Government, the Commission must be satisfied that all public lands will be returned promptly and on terms that are consistent with the other agreements reached in these negotiations. On its part, the United States delegation

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should have a continuing interest in the implementation of the Policy Statement since the return of public land provides the legitimate basis for the contemplated future use by the United States of major portions of that land for military purposes.

2. The Policy Statement defines public land as "property held in trust for the people of Micronesia." The Commission believes that definition describes all non-privately owned land in the Marianas, including military retention lands. The more detailed definition of public land in the Statement does not exclude military retention land expressly or implicitly. This reading of the definition is corroborated by the Statement's assertion that the "public land areas" in the Marianas are 90% of the District's total land area. Apart from whether the United States requires military retention land, as well as other public land, for future military use, the Commission believes that all such land must initially be returned to the people and that the Statement so promises.

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3. As noted above, the Commission is prepared to accept the United States Policy Statement -- including the so-called "Limitations and Safeguards" described therein -- as a basis for satisfactory resolution of the public land issues in the Marianas. With respect to public lands now being actively used by the Trust Administration and subordinate units, or reserved for future capital improvement projects, the Commission believes that title to these lands should be returned to the people of the Marianas promptly. The Commission believes that these lands

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can be made available for these governmental uses on a rent-free basis until the new Government of the Marianas is formed. There are obviously many specific questions that will arise as the task of implementation progresses. We assume, for example, that no new capital improvement projects will be planned on public land in the Marianas without the approval of the Marianas people. The Commission expects that these matters can be resolved in the course of discussions with the Trust Territory Government and in preparing the contract for transferring the lands.

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4. A separate comment is in order, however, concerning the conditions specified for the transfer of land required by the United States for future military use. The Commission agrees that the recipient of such land should be required to covenant that it will reconvey the land in such amounts and on such terms and conditions as are subsequently negotiated and agreed to in these talks and approved by the United States Congress and the people of the Marianas. We believe this is a fair reading of the Policy Statement and we believe further that it would be unfair and inappropriate (and indeed inconsistent with the thrust of the Policy Statement) to hold the return of public land in the Marianas hostage to a final agreement on military land requirements. The United States will be fully protected if the recipient of such land makes the kind of covenant described above. Such a procedure will lend additional dignity and legitimacy to the ultimate receipt and use of this land by the United States.

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5. Finally, the Commission appreciates the United

States commitment to implement a cadastral survey program for public land in all of Micronesia. As the Statement seems to recognize, this survey should not delay the return of public land which will be received subject to possible title and boundary disputes. However, the Commission wishes to repeat its view that a cadastral survey of the private land in the Marianas must also go forward without delay -- as part of Phase I or sooner. Deferral of the private survey would ignore the fact that public land abuts private land and that a survey of public land only -- particularly in the Marianas -- would entail considerable inefficiency and duplication of effort. The Commission still believes that surveys of both public and private land should be performed by individuals or organizations other than the Trust Territory Government funded by the United States and responsible to the Marianas District Legislature.

B. Proposal for Implementing the Policy Statement in the Marianas.

The Commission proposes to recommend to the District Legislature that a non-profit corporation be formed and designated as the recipient of public land in the Marianas pending termination of the Trusteeship. This entity could be controlled by the people of the Marianas either directly or through their public officials. The corporation would hold the public land in trust for the people of the Marianas to be disposed of under terms established by the District Legislature. The corporation, on behalf of the District Legislature, would assume the essential land management functions that the Policy

Statement contemplates would be vested at the district level. The corporation would be legally qualified to hold the land and would be organized consistently with the limitations and safeguards described in the Policy Statement. Specifically, the corporation would enter into a binding agreement with the United States to convey to the United States such interests in land for military uses, in such amounts and on such terms and conditions, as are subsequently negotiated between the United States and this Commission or its successor and agreed to by the United States Congress and the people of the Marianas.

The Commission has prepared a rather lengthy discussion paper on the use of a non-profit corporation for these purposes and copies of that paper will be made available to the United States delegation. The paper is purposefully general in terms of the options available for structuring such an entity, and the Commission has not finally decided what specific recommendations will be made to the District Legislature along these lines. As will be made clear below, we expect to solicit considerable input from the United States delegation on this subject over the next few months to assure that the corporation is organized in accordance with the terms of the Policy Statement. After the United States delegation has had an opportunity to consider our proposal and to review the discussion paper, the Commission

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would appreciate hearing during this session of the talks whether the United States has any major objections in principle to the approach we are planning to recommend to the District Legislature.

C. Proposal for Use of Land Corporation to Satisfy United States Military Requirements.

Last Thursday (December 6), Ambassador Williams asked for the Commission's views on the mechanics of providing land for the future United States military needs in the Marianas. We would like to take this opportunity to state clearly the Commission's present thinking in this area:

1. The United States will return all public land, including military retention land, to the land corporation on the terms described above. Such terms will include a covenant by the corporation, as trustee for the people, to convey land to the United States for military purposes in such amounts and on such terms and conditions to be set forth in the Status Agreement, as approved by the United States Congress and the people of the Marianas. The return of all military retention land in the Marianas is a necessary predicate to the future use of that land for military purposes. The Commission believes that any difference in the treatment by the United States of military retention land, as compared with the rest of the public

land in the Marianas, would simply be unacceptable to the people. Furthermore, it would seem to be in the interest of the United States to receive all the land it needs for military purposes directly from the people. Accordingly, the Commission would question both the political wisdom and the legal sufficiency of a United States position that it simply will retain land it obtained through military use agreements negotiated years ago with its alter ego, the Trust Territory Government.

2. The Status Agreement will also provide that the District Legislature will acquire, through purchase or condemnation, any private land that the parties agree, with the approval of the United States Congress and the people of the Marianas, will be required for United States military use. The Policy Statement recognizes that the District Legislature will obtain the power of eminent domain (to be shared with the Trust Territory Government) with the transfer of public land and land management responsibility to the district level. When the District Legislature obtains this private property, it will become part of the public land of the Marianas and will be turned over to the land corporation which will hold title.

The District Legislature will look to the United States to provide relocation payments and assistance under the Uniform Relocation Act. In order to finance the acquisition of the

private property, it may also be necessary for the District Legislature to receive an "advance" from the United States on any lease or purchase payments contemplated by the overall agreement on military land use.

3. As required by its commitment made on first receiving public land, the land corporation will convey to the United States such interests in the land required for military use, in such amounts and on such terms and conditions as are set forth in the Status Agreement, as approved by the United States Congress and the people of the Marianas. If a lease is involved, the land corporation would remain the lessor until termination of the Trusteeship, after which the new Commonwealth government could assume that role.

D. Specific Requests for Assistance and Support from the United States Delegation.

Over the next months, the Commission will be preparing draft enabling legislation for consideration by the Congress of Micronesia, legislation for the District Legislature and the Articles and By-Laws of the corporate entity. We will also be aiding the District Legislature in establishing the land corporation and preparing for the receipt of public land. The Commission would like to make the following specific requests for assistance and support from the United States delegation:

1. We request the United States to establish a joint working group (to include representatives of the Commission, the Trust Territory Government and the United States delegation) to meet beginning in January to serve the following three functions:

- a. to review the Articles and By-Laws of the corporation so that the United States may be satisfied that the corporate entity will be organized in accordance with the Policy Statement;
- b. to review the draft contract or agreement between the corporation and the United States providing for the transfer of land and for the necessary commitments to comply with the Policy Statement;
- c. to plan for the transfer of land and the eventual administration of such land by the corporation and to ensure a smooth transition.

2. The Commission requests the United States delegation to assist the Commission in assembling information on the public lands in the Marianas including: location and use of lands; outstanding leases, tenancies at will and by suffrance, and other uses; present rents; nature of machinery of present administrative

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operations. It would be most helpful if this information could be assembled before this session of the negotiations is concluded.

3. The Commission would appreciate the assistance of the United States delegation in coordinating the efforts of its consultants with the appropriate personnel in the Trust Territory Government who are charged with the responsibility of preparing enabling legislation for consideration during the forthcoming session of the Congress of Micronesia.

4. Although the Commission fully expects the corporate entity to be economically viable in its operations, there will be certain start-up costs associated with the organization period. These costs will include staff salaries, equipment, lease of quarters and legal expenses. Until the cash-flow of the corporation is established after receipt of the land, these costs must be funded from outside sources. The Commission requests the United States delegation to assist our efforts to secure advances, loans or guarantees from appropriate public or private sources. One such source for a loan or loan guarantee would be the Saipan District Trust Fund which is under the direct control of the High Commissioner. We ask the United States delegation to support our requests for financial assistance from this or other appropriate sources.

5. The Commission believes that the rents received after January 1974 from public lands in each of the districts should be held in trust and returned with the public land. The Commission will suggest that such a provision be included in the enabling legislation to be enacted by the Congress of Micronesia. The Commission requests that the United States delegation lend its support to the inclusion of such a provision.

6. After the transfer of public land occurs, the Commission believes that the funds now expended by the Trust Territory Government for management of the public lands in the Marianas ought to be rebudgeted for disposition by the District Legislature in furtherance of its new responsibilities in this area. We ask the United States to ensure that appropriate adjustments along these lines are made in future Trust Territory budgets.

CONCLUSION

The Commission hopes that this paper will be of assistance to the United States, particularly in focusing on the relationship of the public land issues to the satisfaction of future United States military requirements in the Marianas. The Commission looks forward to the response of the United States delegation to each of the topics addressed in this paper.