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APPLICATION OF NOVEMBER 1, 1973, POLICY PAPER
TO MILITARY RETENTION LANDS

Military retention lands are public and private lands on which the United States holds long term leases for contingency purposes. The question has been raised whether these military retention lands are covered by the Policy Paper of the Department of the Interior on Transfer of Public Lands from the Trust Territory of the Pacific Islands Government to the Districts.

It is concluded that:

- (1) private lands subject to military retention rights are not covered by the Policy Paper;
- (2) it would be difficult to maintain that public lands subject to military retention rights are completely exempted from the scope of the Policy Paper; at best they would not have to be turned over unless the recipient agreed to respect the U.S. leases;
- (3) interpretive problems may arise in those circumstances where the U.S. holds retention leases on about 1,000 plus acres of private property on Saipan and compensated the owner by turning public lands over to him at a ratio of 1.8 acres of public land for 1 acre of private land. It could be argued that those private lands have thereby acquired public character. This appears to be a special problem which apparently has not been raised as yet, and it may be wise not to volunteer any opinion on it at the present time.

The basic answer to these questions is to be found in the definition of public lands in Part I of the Policy Paper which defines the term "Public Lands". The

definition does not make any reference to military retention lands. Hence, it would seem that the question of whether any land is Public Land or not must be determined without regard to Retention character of land - except possibly in the exchanged lands category (#3, supra).

This conclusion could be buttressed by the last paragraph of Part I which states that ninety percentum of the total land area in the Marianas is public land. As far as we know this percentage includes the military retention lands.

Hence, it would follow that private lands subject to military retention rights need not be returned and that public land subject to those rights won't be returned unless the Policy Paper contains a pertinent exception.

Part IV.B. lists a number of Limitations and Safeguards:

Numbers 1, 2 and 3 except from the turnover requirement public lands actively used by the TTPI, lands earmarked for Capital Improvement Projects, and lands turned over to homesteaders. It would seem that these exceptions are not generally pertinent to the military retention land problem.

Paragraph 4 provides that where there are "interests in public lands, including leases [,] and other land uses acquired by individuals or business or private concerns from the Trust Administration", title shall not be turned over unless the new titleholder agrees to respect those interests. Moreover, it is not even certain that this paragraph applies to military retention lands. It is true those lands are held under leases. The paragraph, however, is drafted in such a way that it could be argued that the clause "acquired by individuals or business or private concerns" modifies not only "other land uses" but also leases. Ambiguities of this type are usually resolved against the draftsmen.

Paragraph 5 provides that where public land is to be used to meet U.S. defense needs under future status agreements, the land will transfer simultaneously with the prospective titleholders formal agreement to honor those requirements. Here again the defense needs do not exempt the public lands affected from the turnover provisions as long as the future titleholders undertake to honor the defense needs commitment. There is nothing to indicate that military retention lands are excepted from the operation of paragraph 5.