

TALKING POINTS - - - EMINENT DOMAIN AUTHORITY

1. The United States has studied carefully the eminent domain proposals forwarded by the Marianas Political Status Commission during the closing days of the third session of these Commonwealth status negotiations.

2. We note that the Marianas Political Status Commission recognizes the need for federal eminent domain authority and that the United States has a legitimate interest in being able to exercise this authority. At the same time several features of the proposal cause great difficulties. Specifically these are:

a. that after a change in status, the United States would not be authorized to acquire lands to fulfill its national security obligations except in time of war and then only to a limited extent.

b. that the United States would not be authorized to deal directly with private land owners for acquiring private lands.

c. that U.S. eminent domain authority could be exercised for non-military purposes only after a complex and lengthy process involving both the legislative and the judiciary branches of government.

d. that the judiciary be empowered to review basic executive branch policy determinations that form the basis for the land acquisition under eminent domain.

These are unacceptable because it would impose specific limitations on the federal authority not enjoyed by any other state or territory, to wit:

a. The United States cannot be impeded in any manner in protecting the national security interests.

b. The United States must be authorized to deal directly with the individual members of its political family, in this instance, private land owners, so as to avoid, to the greatest extent possible, protracted legal controversies which could otherwise be settled by negotiation.

c. Involving the Marianas Commonwealth legislative branch in a review of basic United States executive and legislative policy determinations controvenes the paramount authority of the United States in its exercise of inherent sovereign powers. (The MPSC proposal would be the equivalent of providing a local veto over basic policy determinations of the United States Government, which must not be impeded if it is to provide basic governmental support and social and economic development services to the Commonwealth government.)

d. The MPSC authorization of the judiciary to involve itself in eminent domain determinations established by executive policy such as the amount of land, the need to which the land is to be put, and the interest to be held exceeds the fundamental concepts of the doctrine of separation of powers established for the American political family and violates established judicial precedents.

3. We appreciate that the underlying purpose of the Commission's proposal is to protect against abuses of the exercise of eminent domain authority. We recognize that the Mariana Islands as an island area have special circumstances surrounding land acquisition and use. This recognition is evidenced by our earlier agreements to provide special protections for the Mariana Islands against land alienation.

4. The United States believes that the concerns of the MPSC as to the exercise of eminent domain authority can be met by the proposal contained in the United States draft Covenant for the Northern Mariana Islands Commonwealth.

5. The United States proposal was formulated on the long standing precedents in the federal-state and federal-territorial relationships regarding eminent domain and on the need to be consistent in those relationships. In the latter case those are territories which, like the Marianas, are island areas.

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6. Our proposal would obligate the United States to follow federal eminent domain procedures now established in the federal system in obtaining lands for use by the United States in the several states and in all the territories.

7. This procedure would extend the same safeguards to the Marianas against abuse of federal eminent domain power as all the members of the American political family now enjoy. Among these are:

- a. that the United States Congress must authorize the land acquisition by authorizing and appropriating funds;
- b. that the executive branch must justify its request to the Congress;
- c. that local opponents to the acquisition may petition the United States Congress to disapprove the acquisition;
- d. that if Congress authorizes the acquisition, then the executive branch must follow the procedures set forth in federal statutes. Specifically those statutes are: 20 USC §1358; 20 USC Appendix Rule 71a; and 40 USC § 257 and 258(a) - (f). Briefly, these provide:
 - (1) that notice must be given locally;
 - (2) that a complaint must be filed in a U.S. district court which has original jurisdiction;
 - (3) that the federal rules of procedure must be followed in the judicial process;
 - (4) that the U.S. must not act arbitrarily and capriciously but for the public interest; and
 - (5) that just compensation must be paid for all interests acquired.

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8. The Marianas would be protected by the federal judicial system and the procedural elements set forth in federal legislation and in many legal precedents that have been established in the states and territories.

9. The Mariana Islands would likewise be no less obligated to share in the same kinds of sacrifices for the national security of the United States as all members of the American Political Family are required.