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MEMORANDUM

To: Director, Office of Territorial Affairs
From: U.S. Deputy Representative for Micronesian Status Negotiations
Subj: Micronesian Public Land Transfer Bill, Proposed U.S. Position

We have reviewed the Trust Territory Public Land Transfer Bill as amended by the Senate and House of Representative of the Congress of Micronesia against Secretary Morton's Public Land Policy Statement and against the original objectives forming the basis for the public land transfer policy.

In the interest of facilitating the early transfer of these lands we believe that those amendments which do not jeopardize U.S. interests in the Trust Territory or in the status negotiations can be accepted. As a general rule we believe the proposed land transfer legislation must not contravene the public land policy statement. To the extent the legislation conflicts with this established policy it will require a veto. Specifically, the legislation cannot contain provisions which:

1. abrogate existing land use agreements held by the United States Government;
2. impede current political status negotiations involving future land use required by the United States in Micronesia;
3. authorize adjudicatory bodies to rehear prior determinations of title to lands or otherwise reopen land title hearings or determinations which are res judicata;
4. restrict the executive authority of the High Commissioner over public lands beyond the terms set forth in the U.S. public land policy statement;

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5. impose restrictions on the ultimate authority of the Trust Territory Executive to exercise eminent domain powers;

6. attempt to make the Trust Territory or the United States liable for claims arising after the transfer of public lands other than for which the United States or Trust Territory Governments are directly responsible;

7. create multiple legal entities within a district to receive title to public lands to the extent that the general guidelines set forth in the public land policy statement might be exceeded; and

8. prevent or otherwise impede the United States from fulfilling its obligations under the Trusteeship Agreement.

The following Congressional amendments meet with our approval:

1. Amendments by the Committee on Judiciary and Governmental Operations of the Senate contained in Standing Committee Report No. 221, March 1, 1974, (pp. 9-15):

a. amendments 1 through 10;

b. amendments 11-12, with the proviso that it is understood that the transferred lands remain subject to all retention rights now held by the United States;

c. amendment 13;

d. amendment 14, with deletions so as to read: "among its purposes the return of public lands transferred to it under the authority of this act to the rightful owners thereof, and to that end shall have...";

e. amendment 15, with the proviso that it is understood that the amendment will not impede the political status agreements to satisfy U.S. land requirements and that the Compact of Free Association will supercede the public land legislation which is not consistent with it;

f. amendments 20-21;

g. amendments 23-39;

h. amendment 40, with the proviso that the words "providing for" are deleted and after the word "laws", the words "complying with the criteria of this section as follows" are inserted;

i. amendments 44-48;

j. amendments 52-54;

k. amendments 59-60;

l. amendments 63-71;

m. amendments 76-88.

2. Amendments by the Committee on Judiciary and Governmental Relations of the House of Representatives contained in Standing Committee Report No. 293, March 4, 1974 (pp. 2-3):

a. amendment 1;

b. amendments 5-7;

c. amendment 10.

The following provisions are in conflict with the policy statement and are not acceptable:

1. Amendments by the Committee on Judiciary and Governmental Operations of the Senate contained in Standing Committee Report No. 221, March 1, 1974 (pp 9-15):

- a. amendments 16-19;
- b. amendment 22;
- c. amendments 41-43;
- d. amendments 49-51;
- e. amendments 55-58;
- f. amendments 61-62;
- g. amendments 72-75.

2. Amendments by the Committee on Judiciary and Governmental Relations of the House of Representatives contained in Standing Committee Report No. 293, March 4, 1974, (pp 2-3):

- a. amendments 2-4;
- b. amendments 8-9.

It is our view that this U.S. approach to the transfer of Public Lands in the Trust Territory should be conveyed as a Trust Territory Policy Statement by the High Commissioner in his message to the Congress of Micronesia in calling a special session to consider this legislation. The High Commissioner should make clear that the administration has reviewed the COM proposals and rationale and is sympathetic to the suggestions raised by the Congress to facilitate the transfer in a manner more conforming to local desires; that the COM changes in certain specific respects, however, go beyond the official U.S. policy position in transferring public lands to Micronesian control as expressed by Secretary Morton; and, that if the new Trust Territory accommodations are not accepted, the bill will contain provisions which are inconsistent with the responsibilities of the United States in the administration of the Trust Territory and will

require that the measure be disapproved. He should be prepared to enumerate specifically those items which if retained in the legislation would subject it to a veto.

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