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Position Paper of Marianas Political Status Commission
In Response to U.S. Presentation on Various Land Issues

In presentations to the Commission on May 24 and May 25, the U.S. Delegation provided its views on the following assorted issues related to land:

1. Future U.S. land requirements in the Marianas for non-military agency use;

2. Method of acquisition (purchase or lease);

3. Method of payment (lump sum or periodic payments);

4. Determination of fair market value;

5. Land alienation; and

6. Emminent domain.

This position paper sets forth the Commission's response on each of these topics.

1. Future U.S. Land Requirements for Non-Military Agency Use.

The Commission does not anticipate any problem in making land available to the Federal Government for use by civilian agencies, such as the U.S. Coast Guard or Post Office. As indicated in the U.S. presentation, the land required for these and similar purposes is expected to be relatively small. Furthermore, the Commission appreciates the fact that these civilian agencies will be providing services which are of value to the people of the Marianas. With respect to the terms on which such land will be made available, the Commission promises that the U.S. Government will be treated on a non-discriminatory basis and

that the terms will be fair.

2. Method of Acquisition (Purchase or Lease). The Commission appreciates the further explanation provided by the U.S. Delegation for its preference to acquire land in the Marianas for military purposes by purchase rather than by lease. Even if the Members of the Commission were fully persuaded by your presentation, we could not agree to sell this land to the United States. It is our unanimous view that the status agreement we are now negotiating would not be approved by the people if it involved a sale of land to the United States. This is true, we believe, even though there could be a guaranty of reversion in the event the land is no longer needed for military purposes. This is true, we believe, even though the practical difference between a sale and a 50-year lease (with an option to renew for another 50 years) may be difficult for the United States Officials to appreciate. For our people, however, this is a very important distinction which the Commission must respect. If this is made clear to Members of Congress, we are confident that they will agree to authorized the proposed military activity in the Marianas even though the land is leased, for there seems to be no significant advantage to a purchase insofar as the security interests of the United States are concerned.

3. Method of Payment (Lump Sum or Periodic Payments). The United States has indicated a clear preference to make a lump sum payment for the land it requires. Conceptually, of course, such a lump sum would be equal to the discounted present value of periodic or installment payments which would be the alternative to the lump sum payment. Theoretically, the cost to the United States and the income to the Marianas would be the same regardless of the method of payment.

a practical matter, ho[illegible] sum payment for the lease of land would subject both the United States and the Marianas to considerable risks. Given uncertainties as to future Marianas development, and world and U.S. price and interest rate trends, any lump sum payment could be regarded as having been either too great or too small within only a few years. Accordingly, it is the judgment of the Commission that installment payments, subject to automatic adjustments periodically for inflation and changing Marianas land value, would be the most appropriate form of payment to protect both the United States and the Marianas from an uncertain future.

In general, the Commission does not believe that there are any special advantages associated with a lump sum payment. Not only will installment payments provide a steady and reliable flow of income, but they may also be capitalized by obtaining loans against them whenever large amounts are required for development projects. It should also be noted that installment payments will relieve the Marianas of the distracting responsibility for establishing and managing a large investment portfolio at the same time they are attempting to create and establish a new government.

In addition, there are some important cultural considerations which also support periodic payments rather than a lump sum. Regular payments from the United States for its use of Marianas land for military requirements will provide tangible and continued evidence for future generations that their land is yielding income for the benefit of all the people of the Marianas. No matter how wisely their ancestors may have spent the money, similar reassurances will

be very difficult to provide in the case where payment was in the form of a lump sum. In this sense, periodic and fair payments will produce less -- rather than more -- pressure for renegotiation or misunderstandings than a lump sum payment.

4. Determination of Fair Market Value. The Commission has serious reservations about the preliminary views expressed by the U.S. Delegation regarding the determination of fair market value of land to be made available to the United States for military purposes. We have organized our preliminary thoughts on this in three areas: A) General Observations regarding U.S. approach; B) Specific Comments regarding U.S. indicators; and C) Procedure for determining price.

A. General Observations Regarding U.S. Approach.

First, the Commission does not believe that the fair market value of land in the Marianas to be made available to the United States should be based upon the land's present status as private land, public land, or military retention land. These categories obviously influence the extent to which the land has been available for development or sale, but they do not dictate or even suggest that the fair market value of identical land in each of the three categories should be different. The central factor in determining fair market value can be simply stated: fair market value is that price at which an owner would sell land to a buyer for whatever use the buyer believes would be most profitable. This has nothing to do with whether the land is presently private land, public land or military retention land.

Second, The Commission does not agree that the value of military

retention lands returned to the Marianas should be used to reduce any compensation which the United States pays for land made available to it by the Marianas. These military retention lands belong to the people of the Marianas and must be returned at the termination of the Trusteeship. To the extent that the United States is basing its position upon use agreements entered into years ago at the price of $40 per acre, the Commission will consider offsetting against compensation that portion of $40 per acre which represents the period between the date of our agreement and the projected termination of the Trusteeship. Even this, we believe, is more than either law or equity requires.

Third, The Commission believes that the United States must assume full responsibility for any legal or financial consequences arising from its termination of present leases on public lands or military retention lands. With particular reference to MDC, for example, the Commission expects the United States to assume responsibility for providing whatever compensation to MDC that is required under the terms of the lease. It would be preferable from the Commission's standpoint for the United States to return such lands to the Marianas legal entity free of any claims arising from termination of present leases because of U.S. military requirements in the Marianas.

Fourth, the Commission agrees with the United States that it is impossible to fix a proper price for each piece of land. We agree that average prices for particular types of land should be developed. The Commission believes that such average prices should be calculated in light of the land's possible use for agricultural, grazing, industrial, commercial, residential or other similarly broad purposes.

Factors such as present use and location should obviously be taken into account, as well as the land's potential use if it were not made available to the United States for military purposes. Special considerations would have to be applied in unusual cases, such as Farallon de Medinilla and possibly that portion of the Tanapag Harbor area to be used as a memorial park.

Fifth, the Commission recognizes the complexities involved in the determination of fair market value for these lands. As discussed below, we have some thoughts on the indicators of value identified by the United States. Unlike the U.S. Delegation, however, the Commission believes that these complexities make it desirable for the Commission to have expert assistance. The determination of fair market value for these lands is one of the critical issues in these negotiations. The end result must not only be fair; it must have been arrived at by a process which appears to be fair. Our further thoughts on the subject are set forth later in this presentation.

B. Specific Comments Regarding U.S. Indicators.

The Commission believes that the United States has greatly oversimplified the problems of determining the fair value of land in the Marianas. In particular, the United States has ignored basic factors which have determined land market conditions. It should be obvious to the United States that past and present land uses, and land transactions, have been determined by Trust Territory Government policies which have restricted land development and have artificially depressed land prices. It is the judgment of the Commission that none of the land value indicators mentioned during the U.S. presentation on fair

market values even remotely reflects the fair value of land in the Marianas.

TT Government Development Policies. While paying lip service to the need for economic development, the Trust Territory Government, until the latter part of the 1960s, pursued policies which made significant economic and land development virtually impossible. It did not provide investment resources for local residents and it largely forbid foreign (including U.S.) investment in the Marianas. Restrictive policies in regard to the movements of persons and commodities, and conditions placed on the conduct of commerce limited investment opportunities to a point where the demand for land was almost non-existent. On the few occassions when the Government decided to encourage a particular investment project, the restrictions and risks resulting from Govenment policies were in part offset by making land available at little or no cost to the investor. A case in point is the MDC lease for Tinian and the Royal Taga Hotel.

It may be interesting to the U.S. Delegation to know that the lease for the Taga Hotel was negotiated at a time when the TT Government provided three DC-4 flights per week from Guam to Saipan. Government employees, most of whom lived in Saipan, had priority on all flights. No visitors, including official visitors, were allowed in any part of the Trust Territory, including the Marianas, without a permit from the High Commissioner, and foreign visitors required military security clearance. Most important, there was no intent on the part of the Government to provide or encourage better air service, or to relax restrictions on entry into the Marianas in the foreseeable future. It

surprising that favorable lease terms were required to induce MDC to build a hotel on Saipan under such conditions.

While the TT Government development policy has changed dramatically in favor of development in recent years, many of the land value indicators cited by the U.S. reflect land values during the period of restrictive policies.

TT Government Land Policies. In administering the public lands of the Marianas, the Government has rarely made any attempt to maximize returns from public land use. In earlier periods, land management policies generally supported other restrictive development policies. Public Land either was not made available for development at all, or it was made available at rentals which were at best only token rentals. Most grazing and other leases to local residents, many of which are still in force, were aimed at encouraging small scale agriculture rather than at maximizing income from land.

In recent years, more public land has been made available for development purposes. However, as in the past, low lease payments for public land continue to be a means of providing hidden subsidies to users of the lands. Given past and present public land management policies, there is no basis for accepting public land lease terms as indicators of land value.

Private Land. Given the small amount of private land, and recent and prospective economic development in the Marianas, values of private land have been increasing rapidly. One recent lease in the area near Tanapag Harbor was at the rate of $3,000 per acre per year. However, these values are not generally reflected in public records because of a traditional casualness in recording land transactions. The small number of

recorded recent land transactions does not indicate either the actual volume of private land transactions or the value of land involved in those transactions. Thus, the Commission does not believe that values estimated from recorded transactions are appropriate in establishing the value of private land required by the U.S.

C. Procedure for Determining Price. The United States has proposed that the parties try to agree on a price for all the land which will be made available to the United States for military or civilian government purposes. In general, the Commission is agreeable to this suggestion. If the Commission and the U.S. can agree on a price and put that price into the formal status agreement, then both Congress and the people of the Marianas will know, when asked to approve the agreement, how much the United States will pay for the rights in land it will obtain in the Marianas. This seems to us to be desirable in principle.

As we have already said, we believe that both sides at these negotiations would benefit from professional assistance in determining the price to be paid for the land to be made available to the United States. In addition, if professional opinions are obtained, both the U.S. Delegation and the Marianas Political Status Commission will have a firmer basis for defending their agreement than if no professional assistance is utilized.

Accordingly, we propose to proceed as follows: The Marianas Political Status Commission will hire a professional appraiser to give an opinion as to the proper method of measuring the value of the land which the United States will obtain, and as to its value. The appraiser will

be instructed to complete his work before the next round of negotiations. We strongly recommend that the United States also appoint an independent professional appraiser. If the United States does so, then we propose that the two appraisers be instructed to work together to the maximum extent possible, and to use the same fact-gathering resources whenever possible, in an attempt to agree on valuation. If the two appraisers can agree on price, then we would anticipate that the principals could promptly agree at the next round as well. If the two appraisers did not agree, then each of the parties to these negotiations would receive a report from his appraiser, and we would proceed to negotiate in good faith at the next round in an effort to resolve the difference and agree on a price.

If, for some reason, the United States does not wish to appoint appoint its own appraiser, the Commission will procede as outlined above and will be prepared to give its views on price at the next round.

We believe that both sides should recognize the possibility that it will take a long time for the Marianas Political Status Commission and the U.S. to agree on a price for the land to be made available to the U.S., even after the appraisals are completed. The U.S. presentation indicates that our respective views on land values are far apart, though we hope this is not so. If it turns out that the parties are far apart, then we believe that some thought should be given to a mechanism by which price could be determined outside of these negotiations. For we do not want to delay the successful conclusion of our negotiations simply because of difference in the amount which will be paid for our land.

There are many possible mechanisms which could be developed. Our preliminary thought is that the following mechanism would be a desirable one. The formal status agreement would provide that the price to be paid for the land made available to the United States would be determined by a board, consisting of one (or two) persons appointed by the Marianas Government, an equal number appointed by the U.S. Government, and a chairperson selected by the other appointees. This board would be directed by the status agreement to determine price -- that is, just compensation -- in accordance with general guidelines to be written into the status agreement. The board would hold hearings and take evidence from the interested parties (presumably the Marianas Land Corporation and the U.S. Government) and would make a final determination of price. In many ways this mechanism is similar to the mechanism used to determine just compensation in eminent domain cases in the United States though instead of a jury there would be the equivalent of a commission because of the compexity and uniqueness of the issues involved.

We have raised the question of how a mechanism might be structured now, even though we are going to try to agree on a price at the next round, because we believe that prompt and successful conclusion of the negotiations can be best assured if the parties give some advance thought to alternate ways of proceeding in case there are unanticipated difficulties. We would, as always, appreciate your views.

5. Land Alienation. The Commission appreciates the U.S. Delegation's comments regarding restraints on land alienation. The Commission has no difference of principle with the U.S. Delegation on this subject. Indeed, the Commission is willing to commit that it will recommend to the Constitutional Convention that appropriate restraints on land alienation be written into the Constitution of t

Commonwealth of the Marianas. The only question we have is whether it is wise to make the imposition of restrictions mandatory in the formal status agreement, as the U.S. Delegation is now proposing for the first time. We would like to discuss this matter some more, both within the Commission and with the U.S. Delegation, before we come to a final decision on this point. The following considerations might be usefully discussed.

First, there is an issue of self-government involved here. Restraints on land alienation -- no matter how well-intentioned or desirable -- can succeed only if the people involved truly understand such restrictions and agree with them. We have all had too much experience with unwanted laws, which the people inevitably find ways of avoiding despite the most elaborate enforcement mechanism. The success of such restraints might well depend on whether they are truly desired by the people, rather than imposed solely because they were written into the formal status agreement on a mandatory basis. It might be better, therefore, to preserve the option to the people, as is done in the Commission's draft Commenwealth Agreement, so that a decision to impose such restrictions at the Constitutional Convention will be the result of careful study, widespread public debate, and the exercise of informed leadership.

Second, the Commission is unclear about how the United States intends to enforce the obligation which it would impose on the new Marianas Government. Would the provision be subject to mutual consent? Would the United States have authority to pass legislation on this subject within the Marianas? We would appreciate hearing your views

on these questions and the general subject of enforcement.

Third, the Commission is not as confident as the U.S. Delegation regarding the existence of a "strong Federal interest" in seeing that restraints on land alienation are imposed in the Marianas. The Commission welcomes this strong statement of need and concern for the people of the Marianas. The last time Congress confronted this issue squarely, so far as we know, was in 1950 in connection with Guam. At that time Congress rejected an effort to limit restraints on land alienation (admittedly not well drafted or documented) to Guamanian citizens because it was basically "un-American." Before we come to any decision on this issue, the Commission recommends that representatives of the two delegations confer with members of the U.S. Congress so as to better inform us of the present political sentiments about adopting the mandatory language proposed by the U.S.

With respect to the new U.S. proposal for limiting the extent of land holdings, the Commission is unprepared to make any such commitment at this time. Any such restriction on private land holdings should be imposed only after the most careful consideration of its legal and economic impact. The Commission is considering a wide range

of restrictions regarding the use and disposition of public lands after such lands are returned to the people of the Marianas. Although no decision or recommendation by the Commission has yet been made, it may well be that some limitations will be imposed so as to restrict the access to public land in ways designed to distribute widely the benefits derived from the public lands.

6. Eminent Domain. The United States position is that it "must... have its full power of eminent domain in the Commonwealth." We have previously recognized the interest of the U.S. in being able to exercise eminent domain in the Commonwealth. Our proposal made at the last round, in particular, was designed to recognize this interest of the United States, and at the same time to recognize the special interest of the people of the Marianas in the land which will remain in our hands after U.S. military requirements are met.

The Commission's proposal was based largely on the limitations on the eminent domain power which had been proposed by the U.S. itself in the U.S. Commonwealth Proposal and U.S. Draft Bill for an Unincorporated Territory for Micronesia. These limitations, we are now told, are unacceptable to the United States, apparently because of perceived Congressional opposition. The major aspect of our proposal which was not founded on prior U.S. recommendations was the safeguard against unnecessary takings by eminent domain for military purposes. This safeguard -- under which the U.S. could take land for military purposes if the Commonwealth Government agreed or, in the unlikely event there was no such agreement, then in case it was needed because of an emergency--

was based on the need to assure our people that the agreements we have reached about the extent of land to be used by the military in the Marianas would be respected in the future.

The U.S. response to our proposed safeguard against unnecessary takings for military purposes was to question our willingness "to undertake the same obligations as the States and Territories of the U.S. for the defense of the nation." We cannot understand that attitude on the part of the U.S. Delegation. We have,we believe, again and again recognized the responsibilities which are inherent in joining the American political family. Just a few days ago we agreed to make available for military purposes over 18,000 acres in our scant islands. You have no reason to question our willingness to meet our obligations. Each party in a relationship based on trust must extend his trust to the other.

We wish to point out, moreover, that the U.S. may very well be asking the Marianas to undertake the same obligations with respect to eminent domain as the States and Territories, but without the same practical safeguards. One of the most important practical safeguards against the unwarranted and unnecessary exercise of the eminent domain power in the States is the influence which the Senators and Congressmen can bring to bear on the executive branch -- by the introduction of legislation, for example -- to prevent a taking which a community opposes. Those three territories which have non-voting delegates have a similar, though not identical, recourse. The Commonwealth, however, may be in a different position, for the precise status of our potential non-voting delegate

is not clear. We note that the draft covenant is wholly silent on this issue notwithstanding the June 1973 Joint Commique's statement that "The United States delegation has agreed to support a request by the Marianas for its own non-voting delegate in Congress." If there is no such delegate, then the potential for abuse of the eminent domain power will be greater here then elsewhere.

We are, however, heartened by your statement that we may be able to agree on additional procedural safeguards against abuse of the power of eminent domain. We consider such procedural safeguards very important. For, as the U.S. position paper makes abundantly clear, there are few if any substantive legal safeguards against abuse of the power, since the courts traditionally decline to review the extent of the taking, or the estate in land taken or the necessity of the taking. We have some preliminary thoughts on additional safeguards. We think, for example, that a guarantee of jury trial on just compensation might be appropriate, and that we might be able to develop a procedure by which the Congress would make a special determination whether eminent domain will be exercised when the Commonwealth Government opposes its exercise. We also continue to believe that the idea of expanding somewhat the scope of judicial review might be a desirable procedural safeguard. We would appreciate learning your views on these or other safeguards.

In addition to further exploration of procedural safeguards, we believe that there should be a further exploration of a way in which the United States can make a formal statement, best put in the status agreement, that its foreseeable needs for land for military purposes

Marianas has been met by the agreement, and that there is no anticipation that the power of eminent domain will be used for such purposes. This would provide reassurances to our people and would help to allay fears that the U.S. will promptly take the remaining 1/3 of Tinian or will, if there is agreement on a lease, promptly convert its interest into a fee by use of eminent domain. We also believe that there should be further exploration of methods by which the Commonwealth Government can protect the interests of its citizens when the U.S. attempts to obtain land by negotiation, short of eminent domain.

Since the issues involved in eminent domain are largely legal ones, we propose that eminent domain be one of the issues which counsel for both parties be instructed to work on during their joint working meetings between this session and the next time we meet.