MICRONESIAN LEGAL SERVICES PROGRAM

OFFICE MEMORANDUM

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1, 2

TO: MLSC Marshalls October 11, 1974

FROM: Dan MacMeekin DM

SUBJECT: Military use of land in Micronesia

I will try to arrange what I have found in chronological order. Some of the included information is marginal at best. (I am using caps to flag documents we need.)

Many of the letters and documents referred to in this memo were obtained in depositions in the Truk land settlement agreement cases and are grouped in a Central Office file Land-Government Claims - Truk - Intra - TT Memos, etc. Despite the file title, these materials often deal with land problems in other districts. Most of the materials relevant to any particular district have previously been copied to the MLSC Office in that district.

* * *

At some time, apparently in 1945, the U.S. Congress appropriated money for military base construction in Micronesia. 3 Richard, United States Naval Administration of the Trust Territory of the Pacific Islands 20 (1957) [Hereinafter Richard]:

> During the summer of 1946 the Navy continued with its plans for the development of postwar bases in the former Japanese Mandated Islands and in other parts of the Pacific as had been requested in the fall of 1945. Congress had appropriated funds for fiscal year 1946 for bases on Saipan, Tinian, Eniwetok, Kwajalein, Truk, Palau and Majuro. . . .
>
> In September 1946, however, it was decided to abandon a considerable number of these bases. . . . The bases to be abandoned were not specified

at this time.

WE SHOULD TRY TO OBTAIN A COPY OF THE U.S. CONGRESS BILL, TOGETHER WITH ANY LEGISLATIVE HISTORY, TO SEE IF ACQUISITION OR USE OF LAND WAS MENTIONED.

* * *

Early Navy administration, date uncertain:

> Early measures of the Naval Administration also included two land exchange programs: a military retention exchange program, totaling 258 private parcels of land, and a war damage exchange program, involving 119 parcels. The military executed indefinite use and occupancy agreements for the retention of 34,406 acres of land on Saipan, Tinian and Pagan. The U.S. Congress appropriated $1,000,000 for this acreage - $40.00 an acre on Saipan and Tinian and $10.00 on Pagan. This money created a trust fund for the benefit and welfare of the people. And at the same time, individuals whose lands were damaged beyond use by military operations during and after hostilities, could exchange those lands for an equal or larger area.

James B. Johnson, Land Ownership in the Northern Mariana Islands: An Outline History (T.T. Div. of Land Mgmt., Mariana Islands District: 1969). Johnson next discusses Policy Letter P-1, dated December 29, 1947, which might indicate where in time he places the quoted paragraph. The Winsor Letter, infra, indicates that the Saipan Trust Fund was established with funds appropriated by the U.S. Congress in 1951, at the end of the Navy's administration.

* * *

A memorandum in early 1947 indicated that property rights in land occupied by the military would not be treated in the same manner as other property rights. Memorandum, dated 24 February 1947, from

Commander Marianas, paragraph 6(a), quoted at 2 Richard, 552, 555:

> The United States in its "Proposed Trusteeship Agreement for the Former Japanese Mandated Islands" offered to protect without discrimination the rights and fundamental freedoms of all elements of the population. It is necessary that the position of Military Government be fully in accord with this policy, particularly where it concerns property rights. During the war, such rights were subordinated to military necessity. Property was seized, requisitioned, or otherwise procured for use of the Armed Forces. Hostilities ceased on 31 December 1946 on proclamation of President Truman. It therefore becomes necessary that the normal rights and freedoms of natives be restored to the maximum extent consistent with the public interest, order, and security. This includes expressly, giving immediate effect to normal property rights in all property not in the present possession of the United States. In instances where land was assigned by a Federal Agency to natives, without regard to ownership or the consent of the owner, such assignments of land will be revoked and the land restored to the legal owner. The fact that the land may be needed at some future date by the United States is not sufficient reason in depriving the owner of its use now. However, legal owners should be warned ofthe risk invovled in efficient long range improvements on such land.

[Emphasis supplied.]

* * *

Several months later, due process rights were extended at least to the future acquisition of land for military purposes. Interim Directive for Military Government for the Former Japanese Mandated Marshall, Caroline, and Marianas Islands and for the Bonin and Volcano Islands, Including Marcus Island, Approved by Joint Chiefs of Staff on 11 April 1947", Part II, paragraph 3, quoted in 2 Richard at 506, 508:

> Private property will not be confiscated nor condemned for public or military use except by due process of law and the payment of just compensation.

[Compare the assertion in Alig v. Trust Territory, 3 T.T.R. 603 (App. Div. 1967), that these protections did not become effective until May 8, 1948.]

* * *

July 18, 1947 - Entry into effect of Trusteeship Agreement; President Truman's Executive Order No. 9875, transferring TTPI from military to civilian administration, still under the Navy. This executive order is reproduced at 3 Richard 47 and in Trust Territory Code (1959 revision of 1952 edition), preface (unpaginated.) It contains no reference to land.

* * *

December 21, 1947 - "Deed" reciting that people of Enewetak Atoll gave up use and ownership rights to Enewetak Atoll to U.S. Deed is not for Enewetak, but to people of Enewetak for Ujelang. A portion of the deed is quoted in 3 Richard at 549-50.

* * *

December 29, 1947 - Issuance of Trust Territory Policy Letter, P-1. Paragraphs 14-18 are entitled "Lands required by government activities":

> 14. Public interest during the war and the immediate post war period required seizure of private property, and in some cases the construction of military and government establishments thereon. Occupation of private property without compensation to lawful owners still continues in some localities. This

condition must be rectified as soon as possible, for it is the policy of the United States that the owner or owners of private property required for public use shall be properly compensated for the loss of property taken.

15. When possible, government activities shall be concentrated on government owned land, and private property returned to the owners at the earliest possible date.

16. In case there are compelling reasons for retention of privately owned lands, such as the construction of essential facilities thereon, survey shall be promptly made to determine whether it is in fact necessary to retain all of the land now occupied, including areas which are classified as "restricted" for the native people. The determining factor shall be necessity, not convenience.

17. When it is necessary to retain privately owned land for government purposes, it is preferable from all points of view that the owner or owners, including those holding remainder or reversionary rights, be compensated by award of title to other land, rather than by cash payment. Government owned lands, including public domain, may be used for thispurpose, after determination of the extent of the government interest and of any private interests remaining therein, if an agreement fair to the former owner and to the government can be reached. When such an agreement cannot be effected, cash compensation from date of seizure is in order. Civil Administrators are authorized to initiate payments of rental, at reasonable rates, for lands occupied by Civil Government activities.

18. Each Civil Administrator will report:

(a) Privately owned lands now occupied by governmental agencies. Marked maps, if available, shall accompany the report. If no accurate maps exist, sketches shall be submitted, indicating the location of the properties. The report must show the nature of the governmental activity, the pgysical installations which must be retained,

> and the reasons for including land areas not occupied by installations. Ownership of the lands, and nationality of owners, if non-natives, shall be stated.
>
> (b) Whether the owners can be compensated by transfer to them of government owned lands. If affirmative the location, extent, and history of acquisition of such lands should be set forth.
>
> (c) If exchange of lands is not practicable, what would be a fair annual rental? Indicate whether owners concur. Is it possible to assign public lands to the owners on a permit-to-use basis in lieu of paying cash rental?

The language quoted seems to include land used or retained for military purposes.

* * *

July 21, 1949 - Memo to Deputy Chief of Naval Operations (Logistics) from Office of the Judge Advocate General, Subject: "Acquisition of Titles to land within the Trust Territory of the Pacific Islands." A copy is attached as Exhibit A to this memo. [From copy in Central Office file: Land-Military Use.] OBTAIN REFERENCE AND ENCLOSURE.

* * *

August 4, 1949 - Memo to Acting Deputy Chief of Naval Operations (Logistics) from Office of the Judge Advocate General, Subject: "Acquisition of Titles to land within the Trust Territory of the Pacific Islands." A copy is attached as Exhibit B to this memo. [From copy in Central Office file: Land-Military Use.] OBTAIN REFERENCES AND ENCLOSURES.

* * *

September 21, 1949 - Memo to Chief of Naval Operations from Office of the Judge Advocate General, Subject: "Acquisition of Titles to Land within the Trust Territory of the Pacific Islands." A copy is attached as Exhibit C to this memo. [From copy in Central Office file: Land-Military Use.] OBTAIN REFERENCES AND ENCLOSURES.

* * *

September 23, 1949 - Truman approves memorandum of understanding between Navy and Interior regarding transfer of TTPI administration to latter. Approval is recited in Executive Order 10265. See infra. The memorandum of understanding is reproduced (in its entirety?) in Trust Territory Code (1959 revision of 1952 edition), preface (unpaginated). This document does not mention military use of land, although paragraph 8 (q.v.) may be of some relevance.

* * *

March 14, 1950 - Memo from Chief of Naval Operations to Commander in Chief, U.S. Pacific Fleet, Serial 297P4C, Subject: "Acquisition of titles to land within the Trust Territory of the Pacific Islands." This memo was circulated by the High Commissioner under his memo of July 21, 1950, Serial 1265. A copy is attached as Exhibit D to this memo. [From copy in Central Office file: Land-Military Use.] OBTAIN REFERENCES. (We have enclosures.)

* * *

1950 - 3 Richard, at 503, quoting the T.T. Attorney General of 1950:

> In 1950 the military requirements [for use of land in the Trust Territory] had become more firm and, recognizing the responsibility of the United States to compensate the natives for the past use of land, the Navy Department, as agent for the Department of Defense, started procedure [sic] to set up a land and claims commission to process the American occupation claims. Late in 1950, specific military requirements were established and authorization was received to begin returning land.
>
> * * *

Id. at 504-05 (not from quotation, however):

> Prior to the close of the period of naval administration, some lands in the Saipan District had been returned to their owners. Other Micronesians, however, continued to be without arable land either because they had previously been sold to the Japanese, or they were in areas designated for military use, or they had been completely destroyed by war or military occupation. . . .
>
> . . . [In the Truk and Marshall Islands Districts, the] administration therefore directed that landowners who did not regain their previously held land be allocated appropriate land in other areas. ... Where privately or publicly owned lands were required for military purposes, the owners would be compensated for the use of the land.

[Emphases supplied.]

* * *

June 29, 1951 - Truman's Executive Order No. 10265, transferring administration of TTPI from Navy to Interior, entre alia reciting Navy-Interior memorandum of understanding approved by Truman on September 23, 1949. The executive order is reproduced at 3 Richard 1327-28, and in Trust Territory Code (1959 revision of 1952 edition) preface (unpaginated).

A letter from Assistant Secretary of the Navy for Air, John J. Floberg, to Secretary of State John Foster Dulles, dated 29 May 1953 [Copy attached as Exhibit E to this memo; hereinafter Floberg Letter], states:

> When the President by Executive Order 10265 of June 29, 1951 directed the transfer of the administration of the Trust Territory from the Secretary of the Navy to the Secretary of the Interior, an agreement between the Secretaries covering the transfer was executed and included therein a reference listing of the military land requirements in the Trust Territory.

We do not know whether this is the same agreement referred to in the executive order or another document. IF IT IS NOT WE SHOULD OBTAIN A COPY AND IN ANY CASE SHOULD OBTAIN THE REFERENCED LIST OF MILITARY LAND REQUIREMENTS IN THE TRUST TERRITORY.

* * *

September 28, 1951 - Passage of Military and Naval Construction Act of 1951, Public Law 155, 65 Stat. 336. This legislation is referred to, infra, in Letter, Acting Deputy High Commissioner Paul L. Winsor to Mrs. Elizabeth P. Farrington, Director, Office of Territories, Department of Interior, dated May 6, 1971 [copy attached as exhibit F to this memo; hereinafter Winsor Letter]. [A copy of the statute and excerpts from its legislative history pertinent to the T.T. are in the Central Office file: Land-Military Use - Docs - Military & Naval Construction Act of 1951.]

The statute provides in the pertinent parts of Title II, Section 201, as follows:

[65 Stat. 343]

The Secretary of the Navy, under the direction of the Secretary of Defense, is authorized to establish or develop naval installations and facilities by the construction, conversion, insllation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, and utilities, as follows:

. . .

[65 Stat. 350]
Trust Territories, Pacific: Acquisition of land: $1,772,000.

Title V, Section 501, provides:

(a) The Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, under the direction of the Secretary of Defense, are respectively authorized, in order to establish or develop, the installations and facilities as authorized by this Act, to acquire lands and rights pertaining thereto, or other interests therein, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, without regard to section 3648, Revised Statutes, as amended [31 U.S.C. § 529]. When necessary, construction of a public works project authorized by this Act may be commenced prior to approval of title to the underlying land by the Attorney General as required by section 355, Revised Statutes, as amended. [33 U.S.C. § 733 and note.]
(b) The Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force are respectively authorized, to the extent Administratively determined by each to be fair and reasonable under regulations approved by the Secretary of Defense, to reimburse the owners and tenants of land acquired by their departments pursuant to the provisions of this Act for expenses and other losses and damages incurred by such owners and tenants, respectively, in the process and as a direct result of the moving of themselves and their families and possessions because of such acquisition of land, which reimbursement shall be in addition to but not in duplication of, any payments in respect

> of such acquisition as may otherwise be authorized by law: Provided, That the total of such reimbursement to the owners and tenants of any parcel of land shall in no event exceed 25 per centum of the fair value of such parcel of land as determined by the Secretary of the military department concerned. No payment in reimbursement shall be made unless application therefor, supported by an itemized statement of the expenses, losses and damages so incurred, shall have been submitted to the Secretary of the military department concerned within one year following the date of such vacating. The authority conferred by this subsection shall be delegable by the Secretary of the military department concerned to such responsible officers or employees as he may determine within the Department of Defense. All functions performed under this subsection shall be exempt from the operation of the Administrative Procedure Act of June 11, 1946 (ch. 324, 60 Stat. 237), as amended (5U.S.C. 1001-1011), except as to the requirements of section 3 of such Act (60 Stat. 238; 5 U.S.C. 1002). Any funds appropriated pursuant to this Act, to the extent available, may be used to reimburse the owners and tenants of such acquired lands for such incurred expenses, losses and damages.

(Subsection (b) was substitute language developed in the Senate-House Conference Committee. We don't know the original language.)

Section 503 provides:

> Any of the approximate costs enumerated in titles I, II, and III of this Act may, in the discretion of the Secretary concerned, by varied upward 10 per centum and, with the concurrence of the Director of the Bureau of the Budget, by such further amounts as may be necessary to meet unusual cost variations, but the total cost of all work so enumerated under each of such titles shall not exceed the total appropriations authorized in respect of such title by section 502 of this Act.

Of the legislative history we have, the only semi-informative item is the following quotation from the testimony of Admiral

Thurber before the Senate Armed Services Committee:

> Authorization is included in the bill for the acquisition of land in the Marianas Islands and the trust territory amounting to $2.2 million. This completes a program previously partially authorized for the Island of Guam, and also includes requirements for the armed services in the trust territory. Only that land required for defense installations is being acquired by purchase. Other land requirements are covered by leases.

Hearings on H.R. 4914 Before the Senate Comm. on Armed Services, 82d Cong., 1st Sess., at 135 (1951).

* * *

February 21, 1952 - Memo from Land Titles and Claims Administrator [R.H. Goodrich] to Director Political Affairs [Donald Heron], excerpt:

> 1. Settlement of land claims arising out of the use of lands by the government. My thoughts on this subject are based upon the premise that our offer to the Navy for guaranteeing the acquisition and title of lands, as submitted by you and Pony, is accepted.

"Pony" is H.G. Marshall, T.T. Attorney General at the time. [Copy in Central Office file: Land-Government Claims-Truk-Intra-TT Memos, etc.]

* * *

July 16, 1952 - Letter from Robert H. Goodrich [Land and Claims Administrator] to Donald Heron, Director of Political Affairs, excerpt:

> An analysis of the land situation in the Saipan District leads me to believe that we cannot at present institute a wholesale program for land exchanges. . . . Another factor is the increase in size of the proposed retention areas by the Navy in the South district which, if allowed, will deprive us of practically the whole Southeast portion of the island and which [sic] land was extensively cultivated during Japanese time.

[Copy in Central Office file: Land-Marianas; copy to Marianas MLSC April 3, 1974.]

* * *

August 11, 1952 - Letter from R.H. Goodrich (Land & Claims Administrator] to Donald Heron, Director of Political Affairs, excerpt:

> The feeling of the Washington office concerning the claims for damages or the expropriation of lands to the effect that it is improper for us to reimburse these losses with public lands certainly changes our whole approach to the settlement ofland problems. I note that you state that these claims must be met by the military activity responsible and I inquire at this time whether the Trust Territory itself will be permitted to exchange public lands for these private lands which we are using for administration purposes. I raise this question primarily because we have previously negotiated with a property owner on Saipan for his land upon which to construct the new intermediate school. We had proposed to give him an equal area of land immediately South of his present holdings and he was very agreeable to this proposition. However, in view of your letter I have held the completion of this transaction although Public Works has been constructing and working upon his land.

[Copy of letter in Central Office file: Land-Government Claims - Truk - Intra - TT Memos, etc.]

* * *

November 10, 1952 - Truman's Executive Order No. 1048, returning Tinian and Saipan from Interior to Navy administration. General mention of strategic provisions of trusteeship, but no specific mention of military land use. A copy may be found in Trust Territory Code (1959 revision of 1952 edition), preface (unpaginated).

* * *

* * *

November 1952 - Approximate date of creation of the Saipan Trust Fund. See High Commissioner Special Order No. 2, of September 18, 1962, in volume 2 of the T.T. Manual of Administration.

April 25, 1953 - Letter, Acting Secretary of State, mentioned in Floberg Letter (Exhibit E to this memo), as follows:

> Reference is made to the Acting Secretary of State's letter of April 25, 1953 inquiring as to policies, plans and programs for acquiring rights for the use of land in the Trust Territory of the Pacific Islands for military purposes. The Chief of Naval Operations in accordance with my instructions has provided the information on which this reply is based.
>
> The Department of the Navy is ever mindful of the reference in your letter to Article 6, paragraph 2 of the Trusteeship Agreement and shall give every consideration to principles outlined therein in perfecting such arrangements as are indicated in Article 5.

WE SHOULD OBTAIN COPY

* * *

May 29, 1953 - Floberg Letter (Exhibit E to this memo). It appears possible that a page or pages have been omitted from our copy. The text does not flow smoothly from the first to last page, and our copy contains no reference to the attachment. CHECK FOR ACCURACY OF COPY.

* * *

1953 - Precise date uncertain. Quote is from I Hambleton Appraisal, § 5, ¶ 25, at pp. 16-17:

> File Memo 1953 written by Midkiff regarding Land Program states that no Micronesian who needs land for subsistance farming is without land but that many do not have title to the land they are occupying, or their alleged titles are in doubt. The cause of the situation has been an almost complete loss of land records or population shifts due to both Japanese and military occupation and construction requirements, and subsequent permanent military and civil administration requirements. Seven

principal steps being employed included: (7) "Negotiating with the Armed Forces for those lands being retained on a permanent basis for military purposes. This also includes that retained by the Atomic Energy Commission." The author cites his understanding with respect to the Transfer Agreement between Navy and Interior:

1) Navy will undertake to compensate Government of Trust Territory for military use of land up to date of transfer (July 1, 1951).

2) High Commissioner shall transfer the title or other interest in the land (to be retained for military purposes) to the United States upon payment of compensation therefor.

3) Department of Interior will be granted such reasonable use of retained areas as will not interfere with military functions.

Navy letter of November 1, 1951 sets out areas to be arranged. Meetings were held in late 1951 and 1952 to arrive at a formula for accomplishing items 1-3 inclusive. Office of Territories is negotiating directly with the Navy in Washington to establish basic patterns. "Correspondence indicates that agreements may be reached along the following lines:"

1) Retained areas will be held under lease from the Trust Territory to the United States and be reviewable at periodic intervals for purpose of determining continued need by Military.

2) Trust Territory will acquire title to land to be leased by condemnation or otherwise.

3) Trust Territory and its inhabitants to be given reasonable use of areas leased without charge.

4) Amounts of rental will be based on productivity of land, etc.

5) At the time of leasing, all other claims arising from prior Military use of land will be settled.

> Writer's comments on the above include one stating that it may appear best to have areas set aside for apparent strategic purposes, such as Saipan and Tinian, to have such areas actually declared strategic areas. Auto [sic] notes that Kwajalein is such a strategic area.
>
> Writer also states that the best policy would be to avoid acquiring title in fee simple by the United States Government; that long-term leases should be acquired, and that areas of public domain, especially areas acquired by the Japanese after 1937, be returned to Micronesians who could acquire the right to ownership by successful homesteading.

OBTAIN NAVY LETTER OF NOV. 1, 1951.

* * *

March 18, 1954 - Memo, Land and Claims Administrator [R.H. Goodrich] to High Commissioner [F.E. Midkiff], Serial 173, Subject: "Return of lands to former owners and Homestead Laws", excerpt:

> We should also take into consideration the commitments made by the Navy together with the statements contained in the following letters: Restricted letter serial 647240 dated April 6, 1951 from CNO to Chief, Bureau of Yards and Docks; Restricted letter serial 916P40 dated June 20, 1950 from CNO to the High Commissioner via Chief of the Bureau of Yards and Docks together with Department of the Navy letter serial 507P40 dated March 23, 1951. All of which refer to public domain lands which have been, and will continue to be occupied by our armed forces and for the payment by them into the Treasury of the Trust Territory for such use and occupation.

This correspondence may be among that mentioned in 1955 Navy-Interior Agreement, infra. IN AN APPROPRIATE CASE, WE MAY BE ABLE TO OBTAIN DISCOVERY OF THIS CORRESPONDENCE. [Copy of memo in Central Office file: Land-"Wrongs of Prior Administrations"]

* * *

August 10, 1954 - Letter, Truk District Administrator Willard G. Muller to High Commissioner Frank E. Midkiff, Serial 0762 (excerpt):

> The total acreage being held [in retention on Moen] is 230.32, which includes Navy Security retentions of 84.30 acres

Deputy High Commissioner D.H. Nucker approved this retention in an undated letter without serial number to Muller. [Copies of both letters are in the Central Office file: Land-Government Claims - Truk - Intra - TT Memos, etc.]

* * *

August 12, 1954 - Memorandum by High Commissioner, Frank E. Midkiff, "Concerning Land For Public Uses, Including Lands Reserved For the Military." [Central Office file: Land-Government Claims; sent to all MLSC Offices, April 3, 1974]. This memo is of note for two reasons: (1) it does not provide any different regimen for military use lands than for other public lands; and (2) it states that [w]e believe that we are in a position at present to aid in making a settlement for all lands needed for military uses...."

* * *

August 19, 1954 - Memo from High Commissioner Frank E. Midkiff to all District Administrators and Land Title Officers, Serial 2870, Subject: "Priorities in Land an Claims Work". [Copy of memo in Central Office file: Land-Government Claims-Truk-Intra - TT Memos, etc.] This memo lists the fifth priority as "Survey of

areas to beused by the military to determine and describe private ownership therein" and the sixth priority as "Survey of claims by private owners against the military and other federal agencies for land previously occupied or held by such agencies but no longer retained by them." (The higher priorities deal with T.T. government land use and homesteading.)

* * *

January 24, 1955 - Memo from [M.S. Picard] Land & Claims Administrator to Deputy High Commissioner, Serial 0280, Subject: Land and Claims Report. An excerpt follows:

> To date, no compensation has been paid to any land owner in the area presently occupied by the Government of the Trust Territory of the Pacific Islands [DHM-i.e., not including the area then administered by the Navy] for claims arising out of or pertaining to the use or occupation of private lands by the United States Government or any of its agencies. Since this is true throughout all the Districts, this lack of payment understandably has caused much unrest. ...

[Central Office file: Land-Government Claims; copies to all MLSC Offices April 3, 1974.]

* * *

September 15, 1955 - "Land Agreement Trust Territory of the Pacific Islands "between Secretary of Navy and Secretary of Interior," (effective date: December 23, 1955) [Central Office file: Land-Military Use - Navy/Interior Agreement (1955); sent to MLSC Marshalls April 16, 1974]. Under this agreement, the TTPI is to conduct negotiations on behalf of the Department of Defense, Coast Guard, and Atomic Energy Commission, with TT landowners. This

agreement refers to a "Interdepartmental Transfer Agreement", but does not specify when or by whom signed. It may be the agreement referred to in Truman's Executive Order of June 29, 1951 and/or the agreement referred to in the Floberg Letter of May 29, 1953. The Interdepartmental Transfer Agreement [ITA] is apparently complex and lengthy since the 1955 Navy-Interior Agreement refers to "Article I, Section C, paragraph 4(c). OBTAIN ITA.

The 1955 agreement also refers to correspondence between Navy, Interior, and the High Commissioner between May 22, 1951 and September 15, 1955 regarding "using agencies" land requirements. IN AN APPROPRIATE CASE, THIS CORRESPONDENCE MAY BE OBTAINABLE THROUGH DISCOVERY.

* * *

November 26, 1955 - Letter from William G. White, District Land Titles Officer [Marshalls] to D.H. Nucker, Acting High Commissioner, with attachments purporting to show U.S. government usage of Marshalls District land from date of secure to date of letter, but not mentioning Bikini or Enewetak. A copy of this letter with attachments, which was obtained during depositions in the Truk land settlement cases, is attached as Exhibit G to this memo.

* * *

December 22, 1955 - Memo from [G.C. Shumard], Assistant Land & Claims Administrator [Truk] to Acting High Commissioner [Nucker], Subject: "Land Evaluation in Saipan" herein quoted in full:

From information received, I understand the following:

1. The $40.00 per acre land evaluation on Saipan was based upon alleged purchases made by the Japanese from the Saipanese during period 1936-1941. This figure takes into consideration post war inflation and is a conversion from yen to dollars using the rate of exchange at the time of these purchases.

2. That the $40.00 per acre evaluation is considered high by the Saipanese when used as a basic value upon which rental charges are quoted (At 6%) to Saipanese requesting permission to lease Public Domain lands.

3. None of the monies authorized by Congress to the Navy was to be considered for the settlement of use, occupation, control or damage claims in the past or for future use, except for those areas then considered permanent military retention. This authorization of funds was for the acquisition of land on a long-term use basis by the United States Government as a separate entity from the Government of the Trust Territory. The Government of the Trust Territory acquired these lands through exchanges and now, will offer such lands as required for United States military purposes to the United States Government at the rate of $40.00 per acre with that money being paid into the Treasury of the Government of the Trust Territory, Saipan District.

4. That a separate appropriation should be requested for the settlement of past use, occupation, control and damage claims - as well as for lands required by the Government of the Trust Territory for administrative purposes.

5. In Saipan claims for use, occupation, and control were settled in their entirety by an exchange of land thereby bringing all administrative and retention areas into the Public Domain status.

6. That land exchanging were not necessarily on an acre for acre basis, but rather on an estimated value for value exchange. The dollars and cents evaluation did not enter the claim settlement picture.

> 7. During conversation, it was indicated to me that after deductions from the original amount in payment for land to be acquired for Saipan and Tinian, there will remain approximately $300,000 for acquisitions throughout the rest of the Trust Territory.
>
> I was informed that the Navy realizes that this amount is not sufficient and could result in considerable embarrasment to the Acting High Commissioner. Also, those same representatives realize that the Acting High Commissioner was not in agreement, but did not state what action he was going to take; but they seem to feel that it would be better if only one agency requested further appropriation.

[Copy of memo (too dim for xeroxing) in Central Office file: Land - Government Claims - Truk - Intra - TT Memos, Etc.]

* * *

February 8, 1956 - Memo from George Shumard, Assistant Land and Claims Administrator [Truk] to [M.S. Pickard,] Land and Claims Administrator, Subject: "Administration Areas, Truk":

> Beginning in 1953, and settling upon a firm plan for the Administration area in mid 1954, Administration was confined to a total of 230 acres with approximately 89 acres in that area held as security retention.

Emphasis supplied. [Copy of memo in Central Office file: Land-Government Claims - Truk - Intra - TT Memos, Etc.] This memo also refers to military use of about 400 acres of land in Truk [Moen?] during 1946-48.

* * *

July 6, 1956 - Interior - Navy Agreement signed by D.H. Nucker, Acting High Commissioner, and J.I. Jelley, Director, Pacific Division, Bureau of Yards and Docks. [Central Office file: Land-

Military Use - Navy - Hicom Agreement (1956); sent to all MLSC Offices August 7, 1974.] This agreement provides for the transfer of funds from the Navy to the T.T. to cover "Use and Occupancy AGreements" for the lands covered in the 1955 agreements, sets price maximums for lands to be acquired, and provides that the Use and Occupancy Agreements shall run to the TT, and that the TT shall then execute, in the form shown in an attached exhibit, which our copy does not include, land use agreements with the United States. WE SHOULD OBTAIN COPY OF EXHIBIT.

The copy of this agreement we have has noted on the first page "copy in L-C 13-1 (agreement w/Navy Dept)." "L-C" probably means Land + Claims. POSSIBLE DISCOVERY: FIND OUT OTHER CONTENST OF THIS FILE.

We do have a copy of an executed T.T.-U.S. Use and Occupancy Agreement for the Truk Radio Station. A copy is attached to this memo, as exhibit H. [From copy in Central Office file: Land-Government Claims - Truk - Intra-TT Memos, Etc.] See also the similar agreement for Bikini Atoll [Central Office case file 0039-M BIKINI REHAB- DOCS # 1]. The Bikini agreement shows no date of execution, but an effective date of April 15, 1946, before the creation of one of the parties to the agreement. ~~was created.~~ It was signed for the T.T. by High Commissioner Nucker, who held the position after Midkiff, i.e., 1954 or 1955 and afterwards. The instrument was recorded on June 20, 1957, which is probably also the actual date of execution.

In our Roi-Namur case files, we have the T.T.-U.S. similar agreement for Roi-Namur, dated February 7, 1944, but recorded and probably in fact executed on May 6, 1960.

* * *

August 8, 1956 - Letter from F.E. McGrail, Surveyor, Truk, to J.C. Putnam, Chief Counsel, TTPI. Enclosures to this letter indicate that [sic:] "Navel Airfield", "Seaplane Base" and "Navcl Radio STation" were at that time or previously "Military Retention Areas." [Copy of letter and enclosures in Central Office file: Land-Government Claims-Truk-Intra-TT Memos, etc.]

* * *

November 19, 1956 - "Agreement in Principle Regarding the Use of Enewetak Atoll." [Central Office Enewetak case files]. See generally Dennis Olsen's 26-page memo of July 10, 1972, "Analysis of the Documents Conveying Land on Enewetak."

* * *

November 22, 1956 - "Agreement in Principle Regarding the Use of Bikini Atoll" [Central Office case file: 0039-M BIKINI REHAB -DOCS # 1] between TT and people of Bikini, setting up Kili/Bikini Trust Fund and purporting to release all claims against the T.T. and U.S. governments.

* * *

October 28, 1960 - Memorandum from Acting Land & Claims Administrator [R.K. Shoecraft] to High Commissioner, subject "Land Settlements, 1956 to date." [Central Office file: Land-Military Use-Docs - 1960 Land & Claims Summary; sent to all MLSC offices June 12, 1974.]

This memo is a district-by-district summary of claims and payments nade under the 1956 Navy-Interior agreement, supra. Land used by the military at that time [excluding Saipan, Tinian, and the islands north of Saipan, all then under Navy administration,] and its prior status as public or private land is listed as follows.

Rota District - None

Ponape District - None

Palau District

- Anguar - 274.61 acres (ownership disputed)
- Coast Guard use, including airstrip
- Arakabesan - 46.84 acreas (gov't claimed, but ownership disputed)
  - -23.030 acres-"Scatter Site No. 7 (Page Communications)
  - 11.427 acres - "within the original boundary of Scatter Site No. 7"
- 12.378 acres - "Seaplane Ramp area"

Truk District

- Moen ("land settlement agreements" discussed; no acreages given)
  - Naval Airfield
  - Seaplane Base
  - Naval Radio Station

Yap District

- Falalop Island, Ulithi Atoll
  - 61.5 acreas - U.S. Coast Guard Station

"land settlement agreements" with private owners

[No mention of Coast Guard Loran Station on Yap Islands proper.]

Marshall Islands District

- Kwajalein - The memo here degenerates into a discussion of 600 acres [Roi-Namur?] in an "unsettled status" and no longer appears to provide the district-by-district account purportedly intended. Mention is made of the Bikini and Enewetak "settlements," but in the context of calculating "fair compensation" for the disputed Kwajalein lands.

* * *

May 7, 1962 - President Kennedy's Executive Order No. 11021, returning the Northern Marianas from Navy to Interior administration (except for Rota, which stayed under Interior from 1952 to 1962). See 1 T.T.C. Preface, at p. 25.

* * *

June 30, 1968 - Trust Territory of the Pacific Islands, Division of Land Mangement, Land Statistics: Public Land and Private Land [as of] June 30, 1968. [Central Office file: Land-Government Claims - Statistics (1968); all MLSC offices should have copies.] Under the category "PUBLIC DOMAIN", this publication lists four categories of "Military Retention Areas":

(1) "held in use for Public Purposes"

(2) "leased to Micronesian Citizens"

(3) "leased to Non-Micronesian Citizens"

(4) "retained for military use."

The acreage in each of these categories, and the percentage of total land area, for the entire T.T., are listed as:

(1) 1502 acres; .33%

(2) 1473 acres; .32%

(3) 1321 acres; .34%

(4) 9376 acres; 2.09%

For the Marianas district, the figures are:

(1) 1502 acres; 1.28%

(2) 1473 acres; 1.36%

(3) 1321 acres; 1.12%

(4) 9083 acres; 7.74%

[The Marianas total of 13,379 acres jibes with the 1971 Winsor Letter statistic of "slightly less than 14,000 acres.]

For Palau District:

(4) 293 acres; .26%

Thus, as the term "Military Retention Area" is used in this publication, all military retention land is in the Marianas and Palau Districts.

The hooker: lands leased to the military through the T.T. under "Use and Occupancy Agreements" are not military retention areas as the

term is used in this publication. This becomes clear on page 14, where a footnote indicates that the 4299 acres of Enewetak, Kwajalein, and Bikini are included in the category "MICRONESIAN LANDS: Private land leased to the T.T. Government." This category for the entire T.T. includes 5289 acres, 1.18% of the total land area, and probably includes all land obtained under "Use and Occupancy Agreements", "Land Settlement Agreements", and "Indefinite Use Rights Agreements". The figures for each district in this category, and percentages of total land in that district are:

Marshalls	4427	9.90%
Truk	247	.85%
Yap	615	2.10%

There is no land in the other districts in this category, and, as far as I know, the foremention types of agreements were only used in these districts. [Whether the inhabitants of those districts would have been better off or worse off under "Land Exchange Agreements" like those used in the Marianas is an interesting question.]

See also the land statistics in the State Department's annual reports to the United Nations:

1969: pp. 228-32

1970: pp. 285-54

1972: pp. 285-87 ~~294-300~~

1973: pp. 294-300

(These are the only years for which Central Office has copies).

* * *

August 20, 1969 - Letter, U.S. Department of Interior, to Chief Justice [Robert K. Shoecraft], Trust Territory High Court, described and quoted at I Hambleton Appraisal, § 5 ¶ 22, at p. 15 as follows

> ... deals with military retention and use of land in Micronesia, and states in part: "*** regardless of whether the land involved is public domain, or privately owned, the right of the United States in it is through agreement with the Trust Territory government. When the land is not public domain, the Trust Territory first negotiates a lease or use agreement with the owners."

Id. at ¶ 23:

> Reply by Chief Justice to above cited letter: States in part: "To my knowledge, I have never encountered an instance where the United States is holding, using, or occupying land in the Trust Territory *** except through the Trust Territory Government.

* * *

March 17, 1970 - "Agreement Acknowledging the Return of Bikini Atoll to the Trust Territory of the Pacific Islands Subject to Certain Retention Areas and Rights of the United States of America, "executed by High Commissioner Edward E. Johnston for the Trust Territory and J.M. Ahrens, by direction of the Commander, Naval Facilities Engineering Command, acting under the direction of Secretary of the Navy, for the United States.

* * *

Micronesian Reporter, 1st Quarter, 1971 - William A. McGrath, "Resolving the Land Dilemma" - [All MLSC offices have been provided a copy of this article.] - Contains an administration-biased summary account of military land use in the T.T.

* * *

April 29, 1971 - Dispatch P 291120Z, Elizabeth P. Farrington to High Commissioner, "forwarding the request of the staff consultant to the House Foreign Affairs Committee requesting additional background material on war claims hearings." This dispatch is mentioned in Winson Letter (copy attached to this memo). OBTAIN DISPATCH?

* * *

May 6, 1971 - Winsor Letter (copy attached to this memo as Exhibit F). OBTAIN NOTED ENCLOSURES "A", "B", AND "C".

* * *

July 1, 1971 - Passage of Micronesian Claims Act of 1971, 50 App. U.S.C.A. §§ 2018 et seq. Title II, in § 201, 40 App. U.S.C.A. § 2020, provides, in part:

> For the purpose of promoting and maintaining friendly relations by the final settlement of meritorious postwar claims, the Micronesian Claims Commission is ... authorized to consider, ascertain, adjust, determine, and make payments, where accepted by the claimant in full satisfaction and in final settlement, of all claims by Micronesian inhabitants against the United States or the government of the Trust Territory of the Pacific Islands on account of ... damage to or loss or destruction of private property, both real and personal, of Micronesian inhabitants of the former Japanese mandated islands, now the Trust Territory of the Pacific Islands administered by the United States under a trusteeship agreement with the United Nations, including claims for use or retention of such property where no payments or inadequate payments have been made for such taking, use, or retention when such damage, loss, or destruction was taking, use, or retention when such damage,

> loss, or destruction was caused by the United States Army, Navy, Marine Corps, or Coast Guard, or individual members thereof, including military personnel and United States Government civilian employees, and including employees of the Trust Territory government acting within the scope of their employment: Provided, That only those claims shall be considered by the Commission which are presented in writing as provided for in section 103(d) of title I of this Act and the accident or incident out of which the claim arose occurred prior to July 1, 1951, within the islands which now comprise the Trust Territory of the Pacific Islands and within an area under the control of the United States at the time of the accident or incident: Provided further, That any such settlements made by such Commission and any such payments made by the Secretary under the authority of title I or title II shall be final and conclusive for all purposes, nowithstanding any other provision of law to the contrary and not subject to review.

[See generally Central Office files headed War Claims, as well as pertinent Central Office case files.]

Excerpts from Hearings on the Micronesian Claims Act of 1971 Before the Subcomm. on International Organizations and Movements of the House Comm. on Foreign Affairs, 92d Cong., 1st. Sess., at 26-27, 81, are reproduced as Exhibit HH to this memo.

* * *

November 21, 1971 - Franklin Haydn Williams, The Future Political Status of the Trust Territory of the Pacific Islands (Report on the Hana, Hawaii status talks, Oct. 4-12, 1971). Included in this publication is the text of a military land use presentation by Captain William J. Crowe, U.S.N., of the U.S. delegation, which is reproduced as Exhibit I to this memo. Other excerpts follow:

From The Hana Talks: Background and Summary of U.S. Proposals, at p.3:

B. Land

Recognizing the critical role of land in Micronesian history and society, the United States proposed a formula by which the U.S. Government would formally bind itself not to exercise eminent domain to acquire land for U.S. uses. Under the new relationship, all public lands held in trust would be under the control of the people of Micronesia. To satisfy the security requirements of the United States in the Pacific region-- requirements already recognized in principle by the Micronesians --certain limited military needs were outlined. These needs would be negotiated prior to a change in status, and would be recognized in the Compact. It may be noted, parenthetically, that the total land in use or reserved by the U.S. military represents 3.8% of the total land in the Trust Territory of the Pacific Islands. Over the years 21,140 acres of retention lands have been returned to the Trust Territory Government and the U.S. military no longer holds any retention land in Ponape, Yap, Truk, or Palau Districts.

U.S. security requirements for land were limited and were specifically identified. The Department of Defense does not have any requirements for land in the Districts of Yap, Truk, or Ponape. In the Marshalls there would be a continuing need for the existing missile testing facilities at Kwajalein, but no new requirements. In the Marianas some land on Saipan could be returned to Micronesian control, while some additional needs were foreseen on the island of Tinian. In Palau, there are no immediate needs for land; potential U.S. military requirements could be covered by options. Such options would include the right to establish a small facility in Malakal Harbor (about 40 acres of fill land), the use of land on Babelthuap on which to build structures and store materials, the right to hold intermittent training exercises ashore for ground units, and an arrangement for joint use of the civilian airstrip. The U.S. side made it clear that the United States expected to pay fair and adequate compensation for all such privileges. It also proposed

that under a new political status the United States would acquire lands only with the consent of Micronesians and in accordance with Micronesian laws and mutually agreed procedures.

In order to complement this arrangement, the Micronesians were asked to be prepared to negotiate promptly the temporary use of land for security purposes in the event an emergency necessitated such a request. The U.S. Delegation emphasized that even under this procedure no land could be taken without the express prior consent of the Micronesian Government and that all such lands would revert to Micronesian control as soon as the emergency was over.

All in all, the U.S. land proposal contained assurances that the Micronesians would have complete and final control of their land, at the same time making provision for minimum U.S. needs. Special assurances were also given with respect to Micronesians' right to control the sale of their land to aliens.

From remarks of Senator Salii, at p. 85:

... What connection will there be between leases of land for defense purposes and the continuance of the compact? It is our position that, on the coming into force of the compact, all military retention land should be returned to the public domain and leases of private land for military uses shall terminate. Simultaneously, those areas designated by the compact for military use would be leased to the United States. We propose that such leases should end at the same time as the compact. If the compact was to be terminated, the United States and Micronesia could, of course, enter into negotiations for a renewal of these leases; but the original leases should, we suggest, end with the compact itself.

From remarks of Ambassador Williams, at 126-28:

Secondly, concerning military-retention land, you have suggested that all leases be terminated with the end of the Trusteeship, that areas designated by the Compact would then be leased to the United States, and that in the event of termination the new leases would end. You implied

only the possibility of new leases. This approach suggests a series of possible future hurdles and uncertainties in meeting our land requirements. Our proposal requires a binding negotiation of land arrangements before the Trusteeship would be terminated. We are flexible as to the precise means whereby the land requirements would be reassured and have, in fact, asked some questions as to your wishes in this respect. We have also answered some of these same questions. In short, we do require the assurance that our land needs would be met in a manner that would be enduring through the terms of the leases so that our continuing security responsibilities in the Pacific could be carried out.

Thirdly, you have also asked if any provision would be made for prior Micronesian consent on storage of dangerous materials. We have not contemplated such a provision. While advance revelation of such material movement and storage is against U.S. policy and counter to the strategic and tactical interests of the military, your concern is nevertheless recognized. However, I believe some of your apprehensions on this matter can be allayed, if you will consider our land requirements district by district.

(1) In the Marshalls, we do not intend to expand our activities beyond the sphere of research and development.

(2) In the Marianas, our efforts will be concentrated on Tinian, with some activity possibly sited on Saipan. Any plans we might now have for this area, particularly as to units and storage requirements, are by no means complete.

(3) In Palau, the requirement is significantly different as our land needs are by no means immediate. As we searched for ways to satisfy our contingency requirement without any recourse to a land-requisitioning procedure, it was necessary to do some difficult forecasting. The Palau requirements are designed to cover a number of possible contingencies; but we do not know whether we will ever have to exercise these options, or, even if we do, exactly what the sites will be used for. The only exception is the small site in Malakai Harbor, where we are now thinking in terms of a small repair/refueling facility to

> assist naval elements patrolling your waters. I might add that its small size would preclude any consideration of using same for ammunition storage.

From the remarks of Senator Salii, at pp. 137-138:

> In addition to the central issue of the mode of termination of the Compact, which I shall review in a moment, my delegation would like to note for the record other areas of significant disagreement between our positions as stated during our talks.
>
> . . .
>
> 6. The request of our delegation for termination and renegotiation of leases on military-use land, both upon the taking effect of a Compact and upon its termination, was rejected.

* * *

August 1972 - Draft Compact of Free Association, from 5th round of status negotiations (Washington, D.C.), spelling out, in Annex B, U.S. rights in the lands and waters of Micronesia except the Marianas. Through January 1974, at least, this draft annex had not been modified.

* * *

September 28 - October 6, 1972 - 6th Round of Status Negotiations (Barbers Point, Oahu, Hawaii). From the closing remarks of Senator Salii, Proceedings, p. 30.

> We have asked, and ask again, that the United States provide to our subcommittee on land the details of its requirements in the Marianas. As you are aware, the mandate received by this Committee from the Congress of Micronesia requires that our consideration and negotiations encompass the entire present Trust Territory and not only five out of the six districts. The unilateral action of the

> United States in accepting separate negotiations with the Marianas does not, obviously, relieve this Committee from the obligations with which the Congress has entrusted us.

* * *

November 1973 - United States Policy Paper "Transfer of title to public lands from the Trust Territory of the Pacific Islands administration to the districts: U.S. policy and necessary implementing courses of action", excerpt:

> IV. Major courses of action
>
> . . .
>
> B. Limitations and Safeguards.
>
> . . .
>
> 5. Where public land is to be used to meet defense needs under the terms of proposed future status agreements with the United States title to such land will pass simultaneously with the prospective titleholder's formal commitment to accommodate those needs in good faith on terms to be mutually agreed with United States authorities.
>
> . . .

The U.S. background paper accompanying this policy statement merely repeats, with slightly different wording, the passage here quoted.

The policy statement would seem clearly to apply to the public lands in the "Military Retention Areas" category, as the term is used in the 1968 land statistics, supra. It would just as clearly appear not to apply to private Micronesian land held by the U.S. (through the TTPI) under "Use and Occupancy Agreements" and other papers of

that ilk. [Copies of Policy Paper and Background Paper in Central Office file: Political Status - Land Controversy. See also Political Status - Land - Transfer to Districts.]

* * *

January 1974 - Joint Committee on Future Status, Report to the Congress of Micronesia on the Seventh Round of Negotiations: Washington, D.C., November, 1973. Excerpts follow:

From the Joint Committee's "Analysis -- Agreement for Return of Public Lands", at pp. 30-31:

> 2. Military land. Title to lands requested by the United States should be returned without the necessity of a prior commitment from the transferee, since the Joint Committee had already agreed in principle to United States military land requirements and to negotiate in good faith toward the actual leases. These leases could not be allowed to be a precondition to the return of public lands.
>
> 3. Military retention land. Certain land under lease to the United States armed forces were so long as to constitute effective denial of title to the rightful owners of public lands subject to such leases. It is therefore the position of the Joint Committee that such leases should be terminated immediately. As to "military retention lands" which are leases of private lands, it was the Committee's position that such leases should be terminated immediately if the lands were not presently being used by the military. As to lands presently used by the military, it was the Joint Committee's position that all leases of such lands would be renegotiated prior to the termination of the Trusteeship Agreement.
>
> . . .

After a short recess, Ambassador Williams replied to the Joint Committee's response to the United States policy paper, as follows:

Military land - Williams noted that "our two delegations are basically in agreement on this matter." Some clarification was requested as to the nature of the commitment to be made with regard to future military uses of land.

Military retention land - Williams noted that the United States policy did not cover the question of military retention land. He also noted, however, that the United States had promised the release of all military retention land in the Mariana Islands, with the exception of that which the United States had requested for future military use.

From remarks of Ambassador Williams, Nov. 13, 1973, at p. 36:

I think it probably would be useful for me to comment specifically on one aspect of our definition of public lands being returned to district control which has perhaps inadvertently given rise to some misinterpretation and confusion. This relates to the public lands in which the U.S. has expressed an interest for possible military use. I wish to emphasize that all of the lands in the Palau District on which, during previous negotiations, the U.S. has asked options for military use, are in fact included in the lands we are prepared to transfer to district control. In the Marianas, most of the land in which the U.S. has expressed an interest falls within our definition of public lands which will, upon request, be transferred to the district. The rest of the land in the Marianas which the U.S. would like to use is currently military retention land, but even that land, or course, is now under negotiation between the U.S. and the Marianas Political Status Commission.

From remarks of Senator Salii, Nov. 13, 1973, at pp. 38-39:

2. Military Land

The United States Delegation has proposed that title to lands which the United States Delegation

has requested for future military purposes would be returned to the people of the districts only "with the prospective titleholders' formal commitment to accommodate those needs in good faith on terms to be mutually agreed with the United States authorities." We have already told the United States Delegation that we have no objection in principle to United States military land requirements in Micronesia, or to making land available to the United States for that purpose. We are additionally prepared to make a formal commitment to negotiate these matters in good faith with the United States after title to the lands is returned. However, we must hold firm to our previously expressed position that agreement to the lease of lands to the United States military cannot be a precondition to the return of title to public lands.

3. Military Retention Lands

At the present time, there are approximately 18,000 acres of land in Micronesia that are leased to military agencies of the United States Government. These lands are commonly referred to as military retention lands.

A substantial portion of these lands is so-called public land. The length of the leases with regard to these lands is frequently so great as to amount to virtual ownership, and would effectively deprive the transferee of title to these lands of the use and enjoyment thereof. Accordingly, it is the position of our Delegation that all leases of public land to the United States military, which land is not presently used by the military, should be terminated immediately.

The remaining portion of these military retention lands is land which belongs to individuals and is leased through the Trust Territory Government to the United States military. In this case also, it is our Delegation's position that, if such lands are unused, the leases should be terminated in order that the owner of the land might enjoy his full rights of ownership.

Of the lands which are used at the present time by the United States military, it is our Delegation's position, as previously expressed, that all leases of land to the United States military should be

> subject to renegotiation before the termination of the Trusteeship Agreement. This is consistent with our position as expressed above relating to the nature of the commitment of owners of land desired by the United States for future military use.

Remarks of Ambassador Williams, Nov. 13, 1973, at p. 42:

> Let me turn now to military retention land. The new U.S. policy doesn't, as a matter of fact, address the problem of military retention land one way or the other. I did comment a bit on it in my opening remarks, but the U.S. policy on transfer of titles of land to the districts does not touch on this. The United States is already on record as saying that military retention land in the Marianas will be returned with the exception of those lands presently under negotiation. Incidentally, before I leave this subject, I would like to say there may be some difference here. I think you are using 18,000 acres and it is our understanding that today there are 14,000 acres in military retention land, and you might be interested to note that close to 23,000 acres of military retention land have already been returned to public domain.

A close reading of these excerpts makes clear that the Joint Committee considers all land leased by the military through the TTPI, whether from a private landowners or from the "public domain" as military retention land, while the U.S. delegation only considers that land leased from the public domain as military retention land.

* * *

February 12, 1974 - Senator Lazarus Salii introduced in the Senate of the Congress of Micronesia S.B. No. 296, an administration bill for the transfer of public lands to the districts. The bill did not pass at this session. Subsection (3) of Section 3 of this bill excludes from the definition of "public lands," "those lands

designated as military retention lands leased by the United States and not returned to the public domain." This exclusion would appear not to include private lands held by the b.S. (through the TTPI) under the "Use and Occupancy Agreements," etc., and therefore is consistent with the November 1973 policy statement. But, of course, it doesn't make a whole lot of difference whether these lands are included in the exclusion because they are not included within public lands.

Senator Pangelinan's alternative bill, S.B. No. 245, introduced on January 31, 1974, does not include the S.B. No. 296 exclusion in its definition of public lands. This bill also failed to pass.

Ted's analysis of S.B. No. 296, submitted to the Senate Committee on Judiciary and Government Operations on February 26, 1974, at page 2, concludes that private lands leased (or whatever) through the TTPI are within the category of "military retention lands." This is at variance with the terminology of the 1968 land statistics, but is certainly a permissible interpretation if public land is deemed to include less than fee interests. The indefinite use rights under the Use and Occupancy type of agreement are very very close to a fee. The language of S.B. No. 296, "and not returned to the public domain," together with the 1968 land statistics inclusion of these lands under "Private Micronesian Lands" leads me to the conclusion, however, that such lands are not included in the S.B. No. 296 definitions of "military retention lands" or "public lands." [Copies of all materials discussed in this memo

may be found in the Central Office file: Political Status - Land - Transfer to Districts.]

* * *

August 1974 - Marianas Political Status Commission, The Future Political Status of the Mariana Islands District. THis report to the Marianas District Legislature recites an agreement in principle, at pp. 7-9, to make the following lands available, under terms to be negotiated, to the United States for defense purposes:

1. Farallon De Medinilla
2. Tanapag Harbor, Saipan - 197 acres
3. Isley Field, Saipan - 482 acres.
4. Tinian - 17,475 acres. The U.S. also indicated its intention to relinguish 4, 691 acres of other "military retention land" in the Northern Marianas.

* * *

August 1974 - Special session of Congress of Micronesia passed S.B. 296 (see February 12, 1974, supra) in a substantially revised form, and the bill was subsequently vetoed by the High Commissioner. I have not seen a copy of the version passed, and do not know what its provisions regarding military land use were. The High Commissioner in his veto message stated that he would now be willing, at the request of any district legislature, to bypass the Congress of Micronesia in transferring public lands to the districts.

* * *

I hope that this compendium meets at least the spirit of your request of 9/24/74. As we obtain additional materials, we will let you know.

DHM/mp

Attached: Exhibits A-I

xc (w/attachments): File: Land - Military Use
All MLSC Offices
Circulate : Ted/Ed/Ann
Steve Shulman