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December 13, 1974

POSITION PAPER
OF THE
MARIANAS POLITICAL STATUS COMMISSION
ON LAND ISSUES

The Marianas Political Status Commission has prepared this position paper in response to recent statements of the U. S. Delegation on various important issues relating to future U. S. military needs in the Marianas. We have divided our paper into three sections: (1) Comments regarding the draft technical agreement prepared by the U. S. Delegation; (2) Response to revised U. S. plans for Tinian; and (3) Response to current U. S. position on method of acquisition and price.

1. Comments Regarding the Draft Technical Agreement

The Commission agrees that there should be a separate technical agreement concerning the details of the land use arrangement. We also believe that some aspects of the land use arrangement are sufficiently important to be included in the Covenant, whether or not included in the technical agreement. In particular, provisions which commit the Marianas to provide specified amounts of land, and a few of the most critical terms of the land use arrangement, such as method of arriving at the price, method of acquisition and payment, should be in the Covenant. We have reviewed your draft technical agreement and we believe that, assuming the remaining proposals we will make today to the United States are accepted, the few problems we see with it can be resolved readily.

We agree, of course, that the technical agreement should be given to the District Legislature along with the Covenant. But we think that the Covenant itself should be the operative legal document, and should contain all that the United States wants in the way of legal assurances that the land it needs will be made available to it. We are prepared to have the Covenant written so that approval by the District Legislature is a binding commitment to provide the land upon the establishment of the new Government of the Northern Marianas. But we think it important that the

entire political status-agreement package be voted on by
the District Legislature at one time.

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2. Response to Revised U. S. Plans for Tinian

The U. S. Delegation by now must be well aware of the Commission's deep concern prompted by the recent announcement by the United States of its sharply curtailed plans for military activity on Tinian. Needless to say, this came as a complete surprise to members of the Commission. We appreciate your candor in making the information available to us, although we wish it had been communicated before our recent public statements and meetings with members of the Tinian Municipal Council and other interested elected officials.

It should be obvious to the U. S. Delegation that this recent announcement places the members of the Commission in a difficult political position. Time after time during the past eighteen months, we have joined with the U. S. Delegation in public meetings on Tinian and elsewhere concerning your immediate and pressing military requirements for two-thirds of Tinian. Time after time, we have accommodated your changes in plans and tried to explain them to our people. Finally, last spring, after the most difficult deliberation, the Commission tentatively agreed to make two-thirds of Tinian available to meet U. S. military requirements. We were persuaded by two factors. First, we were influenced by your repeated statements that the proposed joint service facility was critical to the national defense. Second,

we were persuaded that the construction and operation of the base during the near term would provide substantial new employment opportunities for the people of Tinian, new sources of income for all the people of the Marianas, and dramatically improved public services on Tinian.

In view of your revised plans, what is the situation now? Now, we are told, there will be no permanent military base--not for 10 years, 20 years, or perhaps never. Now, we are told, there will be no employment opportunities, increased income, or improved public services. But, we are told, the U. S. still needs the full two-thirds of Tinian, even though the planned uses in the near term (or ten years) are far less than originally presented to us.

The Commission is prepared to continue these negotiations, and to reaffirm our commitment to making land available on Tinian for U. S. military requirements. We feel strongly, however, that the U. S. Delegation must respond satisfactorily in the following two areas of concern to the Commission.

(a) Land Requirements

The Commission believes that the United States must alter its present land requirements on Tinian in view of its changed plans. There are two ways to accomplish what the Commission desires in this respect: (1) by reduction

in the acres presently to be taken by the United States,
or (2) by meaningful guarantees regarding expanded leasebacks,

(1) Reduction in land needs

The Commission is prepared to make sufficient land available on Tinian under the Covenant for the present and near term needs of the United States. As we understand those needs, this area would include, principally, San Jose Harbor, West Field, most of the area north of West Field for training purposes, and that land required to connect these various areas. It seems to us that substantial acreage, previously included in the approximately 17,800 acres requested by the United States, is not presently required. In particular, the Commission sees no reason why the United States should presently require the land originally planned as the location for the permanent base, the land within the one mile protective area bordering the proposed new runway on the south, or the land to the east of the runway and extending north which is presently leased to MDC. Although we obviously need your input, the Commission believes that the United States, without impairing its present or near term (10 year) needs on Tinian, could reduce its land requirements by approximately 5,000 acres.

The Commission recognizes that the United States may eventually decide to build the joint service base as originally proposed and therefore require the full 17,800

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acres. We are prepared to provide the necessary assurances in the Covenant that this can be accomplished at the necessary time. The additional land could be made available through voluntary agreement with the Government of the Northern Marianas or through exercise of the eminent domain power by either the Government of the Northern Marianas or the United States. Indeed, if the United States reduces its land needs on Tinian as suggested above, the Commission is prepared to accept the United States version of Section 806 in the Covenant dealing with the power of eminent domain.

If the United States agrees to reduce its present land requirements, the Commission will commit to adopt and enforce appropriate restrictive covenants on some portions of the land which might in the future be required by the United States. For example, the Commission could undertake to prohibit construction of permanent structures, unrelated to airfield operation, in the area bordering the proposed new runway on the south. In other areas, however, the land remaining with the Marianas should remain as unencumbered as possible in order to permit maximum economic development.

Reduction by the United States of the number of acres to be taken on Tinian under the Covenant would serve two important objectives.

First, it would enable the people of Tinian to have more land available for non-military economic development.

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Since the United States will not be building and operating a base on Tinian in the foreseeable future, the encouragement of other kinds of economic activity is even more important than it previously was. There is a serious question whether or not this kind of activity can take place on land leased back by the United States under its traditional practices. It is particularly important, for example, not to disrupt the current MDC operation or its plans for future growth and diversification. In light of the United States change in plans, MDC is likely to be for many years the most substantial employer on Tinian. Under the changed circumstances, it would be most unfair to the people of Tinian if the United States were to take land presently being used by MDC which is not absolutely essential to the training mission of the U. S. military during the near term.

Second, a reduction in present U. S. land requirements would provide tangible evidence that the United States means what it says in Section 806 of the proposed Covenant. This section states that the United States "recognizes and respects the scarcity and special importance of land in the Northern Mariana Islands" and that it will "seek to acquire only the minimum area necessary to accomplish the public purpose for which the real property is sought." A significant reduction in present land requirements by the United States will go a long way towards reassuring the Commission--and the people

of Tinian--that the United States plans to honor its commitment in the Covenant and need not be feared by the people of the Northern Marianas.

(2) Increased Leasebacks

With respect to the land to be taken by the United States under the Covenant, the Commission believes that the United States is obligated to provide the people with meaningful guarantees regarding expanded leasebacks of land to the civilian community.

Although the acreage available for leasebacks obviously depends on the results of the United States reassessment of its present land needs, it seems clear that the Commission is talking about substantially more than the 1200 acres discussed at length previously in these negotiations. In view of the revised U. S. plans for Tinian, it may be that as much as four or five thousand acres could be made available for leaseback. In the Commission's opinion, these leasebacks must be at a nominal rate (\$1.00 per acre), must be back to the Government of the Northern Marianas, and must be for at least ten years. In the absence of such conditions, we do not regard leasebacks as even a partial solution to the serious problems which the Commission is facing because of the United States change in plans for Tinian.

The Commission does not want to hear any more discussion about "applicable United States regulations"

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controlling such leasebacks. In the course of these negotiations, we have negotiated exceptions to the U. S. Constitution. Surely we are able to negotiate exceptions to DOD regulations governing the leaseback of land held by the U. S. military!

(b) Compensatory Economic Support

As the U. S. Delegation recognizes, the loss of the Tinian base clearly reduces the economic opportunities available to the people of Tinian. It has an equally clear adverse effect on the future revenues of the Government of the Northern Marianas. The Commission believes that the United States has an obligation to recognize this impact and to provide compensatory economic support for the Marianas.

As the history of these negotiations shows, the Commission was skeptical from the very beginning regarding the economic benefits expected to flow to the people of the Marianas from the planned base on Tinian. We continually emphasized only the resources available to the future Government from non-military sources. We framed our requests for Phase II support without regard to income which might be anticipated through increased economic activity resulting from Tinian base construction and operation or through rebates of Federal income taxes paid by U. S. military and civilian personnel permanently stationed at the Tinian facility. The U. S. Delegation, however, repeatedly criticized our economic

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analysis for ignoring these additional sources of income. Finally, the Commission deferred to your persistent and persuasive representations concerning the Tinian base and the income which the Marianas Government would certainly derive from it. On this basis, we reached agreement on the level of Phase II support reflected in the draft Covenant. In hindsight, we were mistaken in departing from our original position in reliance on your well-meaning representations.

It is admittedly difficult to estimate the financial loss to the future Government of the Northern Marianas which results from cancellation of United States plans to construct a joint service facility on Tinian during the next seven years. Eventually, you said that about \$3 million in Federal taxes would be rebated each year from U. S. personnel working on the base. Recognizing that this figure would not have been reached until near the end of the planned seven-year Phase II period, the total loss in rebated taxes probably ranges between \$10 and \$15 million during these seven years. Revenues raised by local taxes from the increased economic activity on Tinian and the Marianas generally resulting from the Tinian base would be an uncertain amount on top of the estimated \$10 to \$15 million. On the other hand, the Commission is aware that the probable expenses of the future Government are somewhat reduced by the decision of the United States not to build the base.

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Given the uncertainties involved, the Commission believes that the United States should increase its level of Phase II support in the amount of \$1 million per year-- \$500,000 for economic development and \$500,000 for government operations. We believe this amount is roughly equivalent to the estimated net loss in revenues to the future Government resulting from this recent change in the U. S. plans for Tinian. It is the Commission's view that the economic development allocation should be largely earmarked for spending on the needs of the people of Tinian, and the other municipalities who have lost job opportunities because of the change of the U. S. plans.

Provision of this compensatory support will provide tangible assurance to the people that the future Government of the Northern Marianas can--and will--expend the money necessary to stimulate the private sector of the economy and to improve public services on Tinian. We are particularly concerned that this money be available to improve housing on Tinian and elsewhere in the Marianas. A community development corporation could be established with this as its prime emphasis during Phase II. The exact mechanism to be used, however, should be considered during the Phase I planning period, as well as the amounts to be allocated to the different municipalities. The underlying objective is clear: to provide both a mechanism and the necessary funds to compensate the people for the loss in economic

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opportunity and income resulting directly from the decision of the United States not to build a base on Tinian within the foreseeable future. The United States was solely responsible for arousing the expectations of the people on Tinian; certainly it can share in the effort to fulfill them!

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3. Method of Acquisition and Land Price

The Commission was disappointed, but not surprised, by the U. S. response to our counter-offer. It would be possible, of course, to respond to Mr. Wilson's presentation point by point, but we see no reason to believe that you are any more ready to accept our contentions than we are to accept yours. Unless the U. S. Delegation desires to see these negotiations be prolonged on an indefinite basis into the future, the Commission believes that some new approach is required.

The Commission recommends that the two parties seek to resolve their differences on land valuation through some form of adjudication or binding arbitration. If this were a more ordinary situation, the matter could be decided by a court in an eminent domain proceeding. Assuming that no court is available, the technique of binding arbitration seems quite comparable and is well designed to solve our present difficulties in this area. We have nothing very mysterious in mind. Although the details should be worked out together if there is agreement in principle, the Commission would like to suggest the following preliminary indications of an acceptable form of binding arbitration.

(a) The decision would be rendered by an odd-numbered panel of arbitrators. If the number were three, then one would be selected by the Commission, one by the

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United States, and the Chairman by the two appointed arbitrators. If they were unable to agree, then the facilities of a recognized organization in the field, such as the American Arbitration Association, would be used to select an impartial and qualified Chairman of the panel.

(b) The qualifications of the arbitrators would be decided by our two delegations. We expect that the panel should include persons with outstanding credentials in the relevant fields, such as land economics, development, and real estate valuation.

(c) The exact question or questions to be decided by the panel would be decided by our two delegations. It could include any relevant legal issue, such as the nature of U. S. right in military retention lands after termination of the Trusteeship, in which event the panel of arbitrators should include an impartial lawyer or have access to one whose decisions on this issue would be accepted by both parties. On the central issue of land valuation, the panel could be given a range of values within which to make a decision, such as the U. S. position of approximately \$11 million and the Commission's position of approximately \$34 million.

(d) The procedure to be followed by the panel would be decided by the two delegations or based on the rules of an established organization in the field. The

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emphasis would be on rapid exchange of all relevant data and other relevant material relied upon by the parties, minimum reliance on technical rules of evidence, presentation of oral testimony subject to cross-examination, filing of appropriate proposed findings and legal briefs, oral argument if it appears desirable, and a prompt decision by the panel.

(e) If the parties would agree, the panel and the parties would be given a very precise timetable within which to complete the arbitration. In the Commission's view, the Covenant could be signed before the arbitration process has resulted in a price for the land. It might not be necessary to even complete the arbitration before approval of the Covenant by either or both sides, although this need not be resolved at this time.

(f) The panel's decisions would be accepted by both parties to these negotiations and binding on them. It would provide an objective mechanism for resolving this very important issue which could be defended by both delegations to their respective constituents.

We urge the most careful consideration of this proposal by the U. S. Delegation. If you are confident of your own expert valuation of land in the Marianas, why not submit the question to an impartial tribunal? If you are firm in your contentions regarding military retention land, why not agree to abide by the decision of a competent

panel? If you are interested in ending these negotiations, why not take this opportunity to put one of the few remaining issues behind us?

Recognizing the reluctance of the U. S. Delegation to accept anything except the most traditional approach to these negotiations, the Commission has decided to advance the following proposition. If the U. S. Delegation agrees to a lease of the land required for military requirements and to binding arbitration, the Commission will drop its request for a second payment after 50 years and will move promptly to resolve all outstanding status agreement and technical agreement issues.

We are prepared to bring these negotiations to a successful conclusion. If the U. S. Delegation wants a status agreement, the Commission believes that the above offer is one which you cannot afford to refuse. We await your prompt response.