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DEFENSE ADVISERS POSITION ON MPSC LAND PROPOSAL

I. The inclusion in the Covenant of the specified amounts of land, the method of arriving at the price and the method of acquisition and payment are acceptable. However, if the Covenant is expected to be an "operative legal document" the eminent domain provisions must be completely unfettered and the "cosmetic" section 806.a. should be removed or drastically altered to eliminate a probable basis for lawsuits in the future. If rewritten, 806.a. should provide no substantive rights only procedural guidelines.

II. The MPSC position in Part III must be resolved before this section can be fully answered.

a. Any change in Tinian acreage would have to be referred to Washington.

b. Out-grants, including Ken Jones lease, may be acceptable; however leases must be restrictive to include:

- Compatible use (no permanent structures) which would minimize damages on condemnation/recapture.

- Subject to the power of unfettered eminent domain, to terminate out-grants wherever necessary.

c. The more hinderances and encumbrances on the land make it less useful to DOD (and raise the same problems the military is encountering in foreign countries).

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III. METHOD AND LAND PRICE

MPSC recognizes that we appear to be stuck on expert opinions that cannot be compromised. This opinion is not shared by U.S. There are areas of compromise. We have zeroed in on main problem. If the MPSC wants to conclude in a hurry they should reconsider an attempt at compromise.

For a solution MPSC offers binding arbitration. The procedures for the commission were generally outlined. three or more well qualified people with U.S. selecting one; the MPSC one and Chairman by the two selected. Scope of work to be defined by delegation. Legal as well as value to be decided. Minimum reliance on rules of evidence was suggested which contradicts the opening statement that the arbitration would be same as adjudication.

As for method lease is again suggested except that the term would be longer.

We must agree on lease versus fee and the determination of price. If arbitration is an acceptable means to resolution that it should be without limitation. The legal questions could be separated out and the Commission could decide in the alternative. Our \$11 million offer should not be the floor and the value of the lease-backs should be considered.

Summary

1. We cannot agree on reduction of land.
2. We cannot agree on binding arbitration on (1) legal questions, (2) payment of funds not appropriated.

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3. We can suggest an independent review of their consultants report by Professional Organization.
4. We have identified the large differences in value.
5. If they are serious we should make an attempt at compromise.
6. Ken Jones lease was to be continued without further diversification.
7. Lease-backs and price are related.
8. Must agree on fee versus lease or we will prolong the argument.

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LAND REQUIREMENTS

In this field the Commission offers two methods of taking care of the changed situation.

1. Reduction of the land requirement by approximately 5,000 acres, to account for the changed short term needs of U.S. In this event the MPSC would accept the U.S. version of Section 806, Eminent Domain.

The MPSC would accept restrictive covenants on some of the portions of the lands which might be needed in the future.

Acceptance of this plan would require change in instructions.

2. Lease-back of approximately 4,000 to 5,000 acres, apparently about the same figures as the restriction of the land made available under the first alternative.

The land would have to be leased to the Government of the Northern Mariana Islands at a minimal rate for at least ten years.

Problem: (1) there must be a possibility to terminate the lease if land is needed for immediate military uses, (2) status of U.S. eminent domain power, (3) would lease-back certain areas under same restrictive covenant as under alternative #1 (acreage reduction).

We assume you have that power, and that your authority is not limited by DOD regulations.

ECONOMIC SUPPORT

MPSC seeks to make compensation for the loss of economic opportunities and tax revenues by increasing the Phase II support by \$1,000,000 per annum.

This figure would appear justifiable in the light of the negotiating history and does not appear excessive. However, there is no authority for making such

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BINDING ARBITRATION

This proposal appears to be attractive and to be similar to a suggestion previously made by you.

There is, however, the question whether the U.S. can agree to submit to arbitration without statutory authorization. Was this problem examined when you made your suggestion? Defense may know whether arbitration is authorized in this area. In any event does your specific authority permit you to acquire the land for whatever an arbitration board may determine? Paragraph 3(c) dealing with the arbitration of legal issues, could create procedural complexities. It would be preferable not to submit such issues to arbitration.

Proposal to waive second fifty year payment on lease, suggests that this amounts to a straight 100 year lease. Trouble with two successive leases is not only double payment but also possibility of imposition of new onerous conditions at time of renewal.

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1. Technical Agreement

The MPSC proposes that the Covenant include: A commitment by the Marianas to provide specified amounts (not specified parcels) of land; the method of arriving at price; and the method of acquisition and pay-
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ment. Section 802 already covers/amounts of land we require and the the means of acquisition. Addition of the other provisions should not present a problem.

It is unclear what the MPSC means when it says the Covenant "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." It appears that Section 802 now does this. But there should be no question that the technical agreement, once approved by the District Legislature, also is to be regarded as binding.

2. Response on Tinian

(a) Land Requirements

The MPSC offers us a choice between (reducing the amount of land we wish to acquire on Tinian by 5,000 acres or (2) providing "meaningful guarantees regarding expanded leasebacks.

(1) Reduction of land needs by 5,000 acres

You do not now have authority to agree to any reduction of acreage on Tinian. The Commission's offer to enforce appropriate restrictive covenants with respect to land which would be required for a future base and to accept our proposed eminent domain provisions in Section 806 in return for such a reduction are attractive and might provide an adequate basis for obtaining a change in your instructions

if necessary. First, however, an effort should be made to obtain these same concessions in return for agreement to the Commission's expanded leaseback alternative.

(2) Increased Leasebacks

Assuming no reduction in our Tinian land requirement, this alternative would call for leaseback of 4,000 to 5,000 acres - presumably the same land the MPSC would like to see dropped from our requirements - at a nominal rate, for at least ten years. The Commission's paper does not discuss what they would view as acceptable conditions and restrictions in these leases. Assuming agreement could be reached on this matter we see no difficulty in your agreeing to the alternative. Of course, any long term lease should provide for cancellation in the event of a national emergency requiring immediate military use of the land.

(b) Compensatory Economic Support

The available record of our discussions of economic support in Rounds II, III, IV does not give a clear picture of what we then considered a justifiable level of U. S. grant assistance if one did take into account the economic impact of the proposed base on Tinian. At the attached documents indicate, we criticized the MPSC requests as based on both an inflated view of its needs and a deflated view of its resources, including the economic impact of the base on Tinian and, in particular, the \$14 million in direct tax rebates that we estimated the base would yield once completed (see U. S. presentation of 5/23/73 and Joint Communique of Round III).

In defense of a refusal to increase direct assistance you could point to the additional income to be derived from expanded leasebacks (if appropriate). You might also wish to say something to the effect that the same considerations which required the deferral of our planned base on Tinian make it most unlikely that we could obtain approval from OMB or the Congress for any more money for the Northern Marianas. You might even preface this by telling the Commission that your instructions don't permit you to raise the assistance level.

The Commission will certainly respond that it was only on the basis of the money to come from the base that they agreed to \$13.5 million indirect assistance. They may also point out that the U. S. ^{during the first years of Phase II} will be saving/around \$1 million per year (and up to \$4 million later) in revenues that, instead of being rebated to the Marianas, will now go to the U. S. Treasury.

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