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MICRONESIAN PUBLIC LAND TRANSFER

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ON _____ UNDER PRO-
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Background

1. USG felt COM should play a major role in the transfer so as to act as a buffer between U.S. action to transfer and actual implementation of the policy.
2. The COM did not pass the necessary legislation to effect U.S. policy. As reported by the Status LNO many COM members evidently felt the U.S. would return public lands without COM action. Substantial amendments (see addendum A & B) to the Administration Bill would have forced TTPI to veto the measure, which would have been grounds for considerable diatribe against the U.S. by the COM in the UNTC and in the districts of Micronesia.
3. The Palau chiefs endorsed the U.S. policy but noted at Round VII that the COM should play no role in the transfer and that the public lands should be transferred by "...some sort of Executive Order". 1973 - November, 5th, Palau District Legislature, Resolution No. 73(S)-3, ratified and confirmed USG policy statement of November 12, 1973, and notes that "... in the event that the Congress of Micronesia, for one reason or another, fails to enact such legislation during said session, the High Commissioner of the Trust Territory of the Pacific Islands, the Secretary of the Interior, and any other responsible and proper authority of the United States Government are hereby most respectfully and urgently requested to consider and act favorably upon said Palau Legislature's statement by returning title to all 'public lands' in Palau through the medium of Executive Action no later than the last day of May, 1974, to its traditional leaders to be held in trust for the people of Palau...".
4. The Palauans, as extrapolated from the Palauan COM delegation remarks, still deem it essential to receive title to the public lands in their district before U.S. military land requirements will be negotiated. No formal communication from the district has yet been received, but the Palau District Legis-

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lature convenes on 2 April. The Palau District Legislature, at this session, may take action to demand an expedited return of public lands.

5. Other districts can be expected to demand U.S. action (except Truk which desires the central government to retain all public lands) to return public lands.

6. The JCFS may precondition future Free Association status talks on U.S. action to effect the U.S. policy statement.

U.S. Interests

U.S. interests can be protected only by full adherence to the U.S. public land policy statement which contained safeguards, and limitations on the transfer. These interests were translated into more precise requisite formulae in the TTPI Administration public land transfer legislation. These U.S. interests remain unchanged.

Issues

1. What action should the USG adopt in response to COM failure to enact the TTPI land transfer approach?
2. Where?
3. How?

Options

I. U.S. ACTION

- A. No U.S. Executive action; require COM to reconsider public land legislation at next session but if a special session have HICOM in his call notify the COM it is to meet U.S. land policy statement and upon failure to do so he will veto the legislation (see Addendum A for guidelines)

PRO

1. Retains U.S. initiative.
2. Forces COM to assume a more responsible role in future Government of Micronesia and in its future dealings with the districts.

3. Isolates USG from direct attack from the district if transfer is effected against local wishes.

4. In consideration of Free Association Compact, U.S. can note internal nature of problem and state it should be a purely Micronesian approach to a Micronesian problem.

5. COM has not yet completely resolved its approach and could still play a constructive role in land transfer policy.

6. Can be used as an example to U.N. and U.S. dissidents in showing U.S. difficulties in dealing with COM by showing COM political scene and COM approach to self-government.

CON

1. COM could enact legislation adopting demands of the districts but requiring U.S. veto.

2. COM could then use U.S. veto to criticize USG to districts on lack of U.S. "good faith" and to U.N. on U.S. failure to respond to Micronesian position

3. Would further delay transfer of public lands and delay negotiations for military land requirements in Micronesia; may delay Free Association status talks.

B. In response to the districts requesting such transfer, transfer by U.S. Secretarial Order or HICOM Executive Order but only on condition of formal compliance by the district legislatures to U.S. policy positions (i.e., districts establish entities and meet safeguards).

PRO

1. U.S. retains full authority and power to transfer public lands as it deems appropriate to the circumstances.

2. Most consistent with prior approaches to involve Micronesians.

3. Would retain a role for Micronesians (via district legislatures) to assume some responsibilities for the land transfer, but the Micronesian role

4. Would enable transfer to be fashioned to meet local circumstances.
5. Would enable U.S. to eliminate any ambiguities about the land transfer without requiring local consent.

CON

1. Transfer might not be uniform consequently giving rise to competition between districts or between power groups in the district on degree and mode of transfer of lands (i.e., a district requesting transfer to chiefs instead of district legislature, requesting additional funds or authorities to conform to particular circumstances in that district).
 2. Would place USG directly and fully responsible for all facets of final public land transfer (i.e., no COM buffer between U.S. and districts).
 3. May require U.S. to veto some aspects of a local request if Micronesian (District Legislature) positions do not conform to U.S. policies.
 4. Would result in delays in transferring public lands as the six district legislatures do not meet at the same time (District Legislature required to take certain steps as a requisite to the transfer).
- C. Full, unilateral U.S. action (U.S. would establish local entities, safeguards and would transfer all lands without further local request and/or without regard to local desires).

PRO

1. Retains full U.S. options to fashion transfer to meet local situations
2. Enables U.S. to fully satisfy land issues in Marianas as U.S. requirements demand.
3. Would not place district "on the record" of how transfer should be effected (so that if exorbitant position taken informally, U.S. response to protect U.S. interests not seem a direct challenge to or repudiation of the district).
4. Most efficient, fastest method.
5. Reflects a strong U.S. posture to solve Micronesian problems and reestablishes U.S. image vis-a-vis COM inaction.

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CON

1. Would place U.S. fully responsible for all methods of transfer.
2. Little opportunity for COM or districts to assume more responsibility for resolution of important Micronesian issues.
3. U.S. would not be able to meet all local expectation, so U.S. will still receive a large amount of criticism in any unilateral effort to transfer public lands.
4. Membership on local boards must still be resolved locally.

II. Timing

A. Prior to a COM special session and prior to UNTC session

PRO

1. Would enable U.S. to resolve this outstanding and most sensitive Micronesian issue at earliest opportunity.
2. Enable U.S. to maintain full initiative and options on mechanics of transfer.
3. Might have favorable impact on MPSC and JCFS status talks.
4. Would enable U.S. to remove a major issue from UNTC consideration.

CON

1. COM not completely addressed the return and U.S. would be obstructing a local initiative.
2. Would remove COM buffer between U.S. and districts.
3. Might establish a precedent for COM to delay important action in favor of U.S. having to assume responsibility for action while COM could claim credit for pressuring U.S. to act in response to COM demand.

B. After COM special session fails to act or passes legislation requiring HICOM veto

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1. Would establish COM failure to act responsibly.
2. Could be used as an example of inability of COM to move toward self-government.
3. Would establish U.S. policy preeminence in contrast to COM action.
4. Desire of U.S. to have Micronesians solve Micronesian problems and COM failure could be used as rationale for delay in transferring land to districts.

CON

1. COM could propagandize public land issue further to undermine U.S. "good faith".
2. COM could convince districts to reject subsequent U.S. approaches to transfer public lands so as to jeopardize expedited and acceptable transfer.
3. COM could use TTPI veto as rationale for more extreme status positions
4. Could delay Palau land survey teams and land negotiations so as to delay status talks.

III. Method to Effect Options

1. Secretarial Order.
2. Secretarial directive or DOTA instruction to HICOM to take action as specified.
3. HICOM Executive Order to effect Secretary of Interior public land policy.
 - A. Secretarial Order - This would attempt to effect the Secretary's policy on Micronesian public lands by setting forth a complete approach to transferring these lands; in essence, the Secretarial Order would adopt the specifics of the TTPI Administration public land bill.

PRO

1. Would be final authoritative approach to resolution of the public lands issue.

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2. Would not be subject to legal challenge by the COM.
3. Would increase, improve U.S. image in Micronesia.

CON

1. Would use unnecessarily high authority for resolution of the issue.
2. Would directly interject USG at the highest levels into a Micronesian issue.
3. Would by-pass U.S. administration for Micronesia - (TTPI-DOTA).
4. May set a precedent for future COM demands for similar U.S. intervention to resolve other issues.

- B. Secretarial Directive or DOTA instruction to HICOM to take action as specified - Secretarial directive would effect U.S. policy by authorizing HICOM to effect transfer; would also set out basic U.S. policy and safeguards and general U.S. approach. HICOM could be directed by Secretary or DOTA to effect basic land transfer by HICOM Executive Order either by adopting U.S. formulae as approached in TTPI proposed legislation or to effect U.S. policies as local circumstances dictate (i.e., transfer as district requests and as it adopts requisite legislation, or to go further and establish local entities by fiat and fully effect transfer as HICOM believes satisfies U.S. safeguards and interests).

PRO

1. Maximum flexibility to effect U.S. policies.
2. Final authoritative action by USG not subject to later COM legislative challenge.
3. Incorporate TTPI into effecting transfer to permit it to accommodate administrative policies and interests as possible.
4. Would retain U.S. initiative.

CON

1. May give HICOM too much latitude so as to permit COM to put local political pressures on HICOM to implement without obstacles but only at expense of compromising other (non-public land) U.S. policies and interests.
2. May not satisfy local demands for immediate transfer in that it may be time-consuming.

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- C. HICOM Executive Order - This would effect the already issued Secretary of Interior's policy on Micronesian lands without further U.S. Executive action or directive and permit HICOM to incorporate the precise formulae proposed in the TTPI land transfer legislation as he deems appropriate to the circumstances.

PRO

1. Would remove USG Executive from transfer; thus COM attacks on U.S.
2. Would confine activities involved in transfer to local government entities.
3. Would enable TTPI to carry out proposed transfer techniques incorporated in legislation given to COM.
4. Most prompt.

CON

1. Authority of HICOM Executive Order may be subject to later challenges by COM legislation on public lands.
2. Would permit HICOM too much latitude in resolving technicalities involved so as to possibly jeopardize U.S. policies.
3. Would not enhance U.S. image as much as a Secretarial Order.
4. Would not be as authoritative and as final as a Secretarial Order.

RECOMMENDATION

The U.S. should undertake to transfer Micronesian public lands to local control as soon as possible, prior to a COM special session. It would not appear practical to further involve the COM in the public land transfer. This is based on the magnitude of changes both COM houses proposed to the original TTPI land transfer act which appear to (1) reject the basic principles of the transfer policy; and (2) jeopardize the minimum safeguards and requisites U.S. interests require (see Addendum A & B).

There are a number of new additional pressures on the COM that would make it appear unlikely that it could, or would, abandon its current approach to the

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public land issue. Among these are: (1) the traditional leadership coalition that is now being formed which will address both its role in the future political status negotiations and in the public land transfer; (2) the Marshall Islands separatist movement; (3) the desire to control military retention areas in Saipan as a lever on the military land requirements and the payments thereto; (4) the fall elections for the COM membership; and (5) the growing awareness of Micronesians about the future political status issues and about the public land transfer.

Several of these basic COM approaches could not be accepted under any circumstances by the TTPI or U.S. Government. Among those are (1) relinquishment of the power of eminent domain; and (2) the inclusion of military retention areas within public lands to be returned. Eminent domain is essential to acquiring lands for the TTPI under its administrative responsibilities for public projects which are not now foreseen but are required for Micronesia and is essential to enable the administering authority to acquire lands for military purposes under emergencies or other conditions short of full national emergencies to carry out U.S. defense responsibilities in the Western Pacific. Furthermore, eminent domain is a power to be held by the U.S. Government in the Mariana Islands Commonwealth and which, if relinquished, would be difficult to reobtain from local control. Military retention areas are located primarily in the Mariana Islands and on Anguar in the Palau district and they form the basic land area required for future use by the U.S. defense establishment. The U.S. has agreed to partially relinquish some of these areas and has agreed to compensate for the continued use of those military retention areas it requires for future use; nevertheless, it would not be in the best interests of the U.S. for negotiating purposes and otherwise to include these areas in the return of public lands. **411236**

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Although there are a number of minor amendments to the TTPI public land bill which could be accepted; if the COM does not abandon its current approach it seems it will adopt legislation which will require a veto by the High Commissioner. The important consideration, it appears, would be to determine the reaction of the COM and the Micronesian people to a High Commissioner veto of the public land legislation. Undoubtedly, a veto would be unpopular and could be used in propaganda against the U.S. and TTPI to attack the credibility and good faith of the USG not only as regards the current administration of the TTPI, but also the future political status negotiations in that the U.S. agreed to undertake to effect the public land transfer policy in response to the JCFS/COM endorsement of the Palauan demands and precondition of further status talks to the transfer. A further delay in transferring the public lands may delay further progress in the status talks and will certainly delay early resolution of the military land requirements.

Consequently, the Secretary of the Interior or DOTA should direct and instruct the High Commissioner to issue an Executive Order to effect the public land transfer policy.

The High Commissioner's Executive Order should follow the basic principles incorporated into the legislation proposed ^{to} by the COM to transfer public lands and should further clarify any ambiguities which may have been brought to light in the course of the COM's Deliberations on the TTPI land transfer bill. The High Commissioner would precondition the transfer, however, on (1) a request by a district for the transfer and (2) the district legislatures effecting certain actions (i.e., establishing the legal entities appointing the membership, and other such matters as are enumerated in Sections 4 and 6 of House Bill 298, attached at Attendum B).

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ADDENDUM "A"

COM AMENDMENTS TO PUBLIC LAND LEGISLATION

Generally

The Senate and House of the COM proposed extensive amendments to the public land transfer bill as proposed by the TTPI Executive Branch. The basic rationale for such changes was put forward as inserting changes to make the legislation conform to the Micronesian perspectives of the general principles of the U.S. public land policy. In reality, however, the COM amendments have gone much further than the principles of the U.S. land policy and in going further appear to directly conflict with the general endorsement of the U.S. policy by the JCFS and Palau leadership. These changes jeopardize basic U.S. interests by deleting certain of the requisite minimal safeguards and procedures to be adopted and followed. Some amendments, however, which do not jeopardize U.S. interests or the ongoing administrative responsibilities, could be accepted. The problem appears to be: how to permit the COM to make some minor amendments and convince it to abandon those proposals that jeopardize U.S. responsibilities and interests?

Specifically

- The following are major COM amendments as made by the Senate or House:
1. The concept of "transferring" is changed to "returning" public lands to reflect that the public lands are "rightfully" Micronesian but have "...been taken from them over the years by a succession of colonial powers". (Senate; could be accepted).
 2. "Military retention" lands are to be included in the transfer. (Senate; could not be accepted).

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3. The legal entities primary purpose is to return the lands it receives to the people ("rightful owners") in the district which subordinates U.S. concept that the legal entities would hold the lands in "trust" for the people of the districts. (Senate; could be accepted).
4. U.S. land requirements: (1) will be negotiated only after approval of the future status agreement by the people of Micronesia (Senate; could but should not be accepted); (2) Authority of local entity to enter into agreement to meet U.S. requirements eliminated, only empowered to negotiate in good faith (Senate; could not be accepted); (3) all public lands which are transferred are to remain subject to restrictions against alienation to non-Micronesian citizens, thus prohibiting ownership of lands by U.S. military (Senate; could be accepted as Marianas will not be subject to TTPI laws under Commonwealth agreement).
5. Adjudicatory bodies are empowered to rehear prior determinations of title to lands (Senate; could but should not be accepted).
6. District Legislatures would be empowered to pass on whether lands are needed for CIP; if not approved the lands would be transferred to the districts. (Senate; could be accepted).
7. Public lands now in use will be transferred to the districts upon the "cessation of active use" by the TTPI rather than authorizing the HICOM to determine whether these lands are no longer needed for use. (Senate; could be accepted). Public lands needed for CIP to be returned after five year period if not in active use (Senate; could be accepted).
8. Deletion of HICOM's authority to pass upon the sufficiency of district legislature action as a requisite to transferral of title (Senate; could not be accepted).
9. Recognition by District Legislature of reservation of paramount power of eminent domain with TTPI is eliminated (Senate; could be accepted); **411239** eminent

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domain can be exercised only after district legal entity refused to exercise eminent domain power or failed to act within one year on a request from TTPI for land (Senate; could but should not be accepted); TTPI eminent domain power eliminated and only a district legal entity can hold and exercise eminent domain powers (House; could not be accepted).

10. Elimination of provision to hold USG and central TTPI "harmless" from claims (other than for which U.S./TTPI directly responsible) arising after conveyance of public lands (Senate; could not be accepted).

11. The transfer of lands is to be made within sixty days after the district legislature has complied with the act (Senate; could be accepted).

12. The High Commissioner is to compile within thirty days specified information on public lands use for use by the district legislatures (Senate; could be accepted).

13. Chartered municipalities are included as entities empowered to receive public lands (House; could be accepted).

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