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ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

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INSTALLATIONS AND LOGISTICS

22 JAN 1975

MEMORANDUM FOR DEPUTY SECRETARY OF DEFENSE

SUBJECT: Micronesian Status Negotiations - Marianas District Land Acquisition, ACTION MEMORANDUM

The enclosed memorandum from the Assistant Secretary of Defense (ISA) recommends your concurrence with a proposed memorandum to the President which provides to him the NSC Under Secretaries Committee's comments and recommendations regarding Ambassador Williams' report on the progress of the fifth round of negotiations with the Marianas Political Status Commission. We have been requested to coordinate on the ASD(ISA) memorandum but do so with the following reservations of which you should have benefit.

a. Our basic desire through the entire negotiation process has been the acquisition of fee title to the lands needed for Defense purposes in the Marianas. This is consistent with the expressed position of the Congress that substantial investments for Defense facilities on leased land be avoided. As you may recall, this was the thrust of your personal note appended to our November 19, 1974 letter to the Ambassador and your subsequent meeting with him. We are disappointed with this aspect of the fifth round negotiations since we were convinced that, if pressed hard, the Marianas leaders would still opt to sell their land. We are realistic enough to recognize that from the standpoint of a political settlement, leasing, ultimately, may have been the only acceptable compromise. However, since the DoD must justify the land package to four cognizant Committees of the Congress and obtain a specific authority and appropriation to lease, we must show that every DoD effort was made to advocate the fee purchase concept. We should point out also that a leasing policy in favor of the Northern Marianas Islands could be construed by the other five Micronesian Districts and Guam as establishing a precedent for this area with attendant problems in future negotiations with these entities. This could be especially troublesome for us in Guam where, as you know, we own the land in fee and there have been attempts to have us reduce our holdings.

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b. We are also concerned with the lease consideration of $17,500,000 for the Tinian land specified in Article VIII of the proposed covenant which equates to the approximate fee value of $1,000 per acre and the collateral consideration in leasing back to the Government of the Northern Mariana Islands 6,400 acres of this same land for only $1 per acre per year. While we respect the importance of land to the native population, we are concerned that our business judgment might be questioned when the leaseback proposal is eventually reported to the Armed Services Committees of the Congress. In this regard, it must be made clear to all concerned that the DoD will be in a difficult position to support the leaseback arrangement except on the basis of a political decision. Here again, as in the case of the lease versus fee arrangement, the precedence of such a leaseback arrangement could cause the DoD very serious future problems in the TTPI, Guam and elsewhere.

c. Although not specified in the Covenant, the Ambassador's letter to the President addresses also the necessity of the President having to direct the DoD to waive its regulations and institute a flexible leaseback policy which would place the Defense lands not immediately needed in the hands of the new government or "selected private individuals." Our existing policy is sufficiently flexible in this regard in negotiating with state and local governmental bodies; however, we do not concur that we should be discriminating in favor of certain selected individuals. Leasebacks are also risky in that the lessee becomes dependent on the land, such as in developing an economic farm unit. After a lessee's long term occupancy the land interest we have purchased may become obscured by passage of time and extremely difficult to assert. It could then degenerate to a situation akin to the "retention" lands which were once paid for through Congressional appropriations. (The fact that the United States will again expend funds for the previously acquired "retention" land rights under the proposed lease can also be expected to be objectionable to the Armed Services Committees.) Cancellation of such outleases could be politically infeasible. Termination in toto or in part of the outlease to the Northern Marianas Islands government will be most troublesome when that government realizes that its income from the difference between the token $1 per acre being charged by the United States and the fair market rental under their sublease will terminate and this "subsidy" effectively ceases.

d. The leasing of 177 acres of land in the Tanapag Harbor area of Saipan at a cost of $2,000,000 and the immediate return of 133 acres of this land to the Government for a park is another unusual aspect of the agreement. We do not believe that the DoD should be in the park

business nor do we believe that this payment should be related to the DoD program as you discussed with Secretary Morton last May. Realistically, we could probably delete the entire 177 acres requirement at Tanapag Harbor rather than attempt to support this grossly over priced acquisition.

e. Review of the Technical Agreement which supplements the Covenant, reveals that despite the payment of $17,500,000 for the Tinian property the United States does not acquire an unencumbered leasehold since the Marianas Government, upon obtaining title to the public lands and the United States "retention" lands, would pass to the United States the problem and cost of extinguishing the leasehold interest of the Micronesian Development Corporation (Jones Ranch et al) in the lands required by the DoD. The cost of extinguishing this encumbrance could range from $1,000,000 to $2,000,000 extra depending on the settlement of the question of whether the TTPI Government had the earlier legal right to lease to Jones the "retention" lands previously paid for by the United States. Not resolved also is the issue of the right to the rental income from the current Jones leases and whether continual accrual to the Northern Marianas Government will result in a bonus to them under the proposed Covenant. Our position is that the Marianas Government should itself resolve this problem within the $17,500,000 consideration being paid by the United States.

f. Article VIII of the Covenant and more particularly Sections 802, 803(a) and (e) on the one hand and Section 806 on the other appear to be in contravention to one another. While the latter section expresses the right of the United States to exercise its eminent domain authority, the earlier two sections appear to limit any estate the United States may acquire to that of a leasehold. While leasing may be politically feasible at this time, we believe that it is essential that the Covenant not be constructed so as to limit us to the adoption of a special policy of only leasing lands in the new Commonwealth. We understand from the Office of General Counsel that the legal advisors to the Marianas delegation apparently believe that any exercise of eminent domain in the Marianas by the United States must be limited under the Covenant to the acquisition of a leasehold interest. We strongly support the revised language to Section 802(b) of the Covenant provided by the General Counsel - a copy of which is enclosed for your reference.

We appreciate the sensitivity of the Commonwealth question and the essentiality of the Ambassador's mission. However, we believe that the above real and potential problem areas are worthy of your consideration and possible discussion with the Under Secretaries Committee or the Ambassador.

A. I. Mendolia

ARTHUR I. MENDOLIA
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(Installations & Logistics)

Enclosure

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