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July 20, 1971

MEMORANDUM FOR
ACTION

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THE CHAIRMAN, UNDER SECRETARIES COMMITTEE

SUBJECT: Future Political Status of the Trust Territory of the Pacific Islands--Negotiating Scenario and Dr. Williams' Terms of Reference

The President has approved (a) a negotiating scenario for the next stage of negotiations on the future political status of the TTPI, and (b) the Terms of Reference for his Personal Representative in the negotiations, Dr. Hayden Williams.

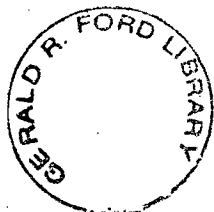
Negotiating Scenario

The negotiating scenario will contain an initial position and three successive fall-back positions. If the problem cannot be resolved through any of these four approaches, a new look at the situation and a new authorization for a negotiating position will be sought from the President.

Position I - Offer a modified commonwealth relationship, with our concessions over our last negotiating position limited to restraint on the exercise of eminent domain and federal supremacy.

-- We will agree to limit our right of eminent domain by not exercising it to take private land for public use, provided that our long-term needs for land--particularly in the Marianas and the Marshalls--are assured by pre-negotiated arrangements.

-- We will agree to limit Federal supremacy by limiting the application of U. S. Federal laws, regulations and programs where practicable, legal, and not in derogation of U. S. interests. We will also agree to exercise Federal powers only in the fields of foreign relations and defense, except as agreed by the Micronesians or as required by national emergency. This will also allow for increasing self-government among the Micronesians.



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Position II - The same as Position I, except to offer in addition a provision for unilateral termination of the relationship, the offer being carefully circumscribed possibly through a complex procedure and becoming effective only after a specified period of years.

-- Will depend on (a) Micronesian acceptance of the provisions of Position I and of this offer of unilateral termination as a basis for final agreement, and (b) pre-negotiation of strategic arrangements (denial and basing rights) that will legally survive termination of the association.

Position III - If the Marianas District (and possibly one or more other districts) separately opt for some form of permanent association with the U. S. (territorial or commonwealth association), we will offer to the remaining districts as a group (a) a modified commonwealth association as defined in Positions I or II, or (b) a relationship of "free association" as defined in Position IV below.

Position IV - Offer a relationship of "free association" which will include negotiation of a compact terminable only by the consent of the U. S. and Micronesia.

-- We will insist on exclusive control over foreign relations and defense and will seek a close relationship similar to that under a modified commonwealth to build up vested Micronesian interests in the association-- participation in Federal domestic programs, access to the U. S. judicial system, rights of U. S. nationality, etc.

-- We will insist on pre-negotiated arrangements which will provide for denial and basing rights and which will survive any termination of the "free association" relationship.

Ambassador Williams' Terms of Reference

The President has specifically approved the following as Ambassador Williams' Terms of Reference:

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-- His negotiating authority is provided by the President's approval of the above positions, of these terms of reference, and of any subsequent negotiating instructions. His negotiating authority will extend to include tactics, composition of the U. S. delegation, and procedural arrangements.

-- He will make recommendations on the negotiations directly to the President through the office of the Assistant to the President for National Security Affairs and conduct the negotiations on behalf of the Executive Branch.

-- He will consult with the Congress on the political status issue in coordination with the Under Secretaries Committee.

-- He will coordinate with the Departments of State, Interior, and Defense and report back to them, as well as to the President, the progress of the negotiations. He will be administratively supported by the Department of Interior and draw on the three Departments for staff. In effect, he will work more closely with Interior than the others, though their interests will also be protected.

In addition, and insofar as they do not conflict with the above, Ambassador Williams will also be guided by the Terms of Reference submitted by Assistant Secretary of the Interior Loesch May 25, 1971, and concurred in by the Departments of State and Defense.

Consultations with Congress




The President's Personal Representative and such other representatives of State, Defense, and Interior as necessary will consult with the House Interior Committee and other appropriate Congressional committees and leaders before proceeding with the next stage of negotiations or whenever such consultation is deemed appropriate in the judgment of the Under Secretaries Committee.

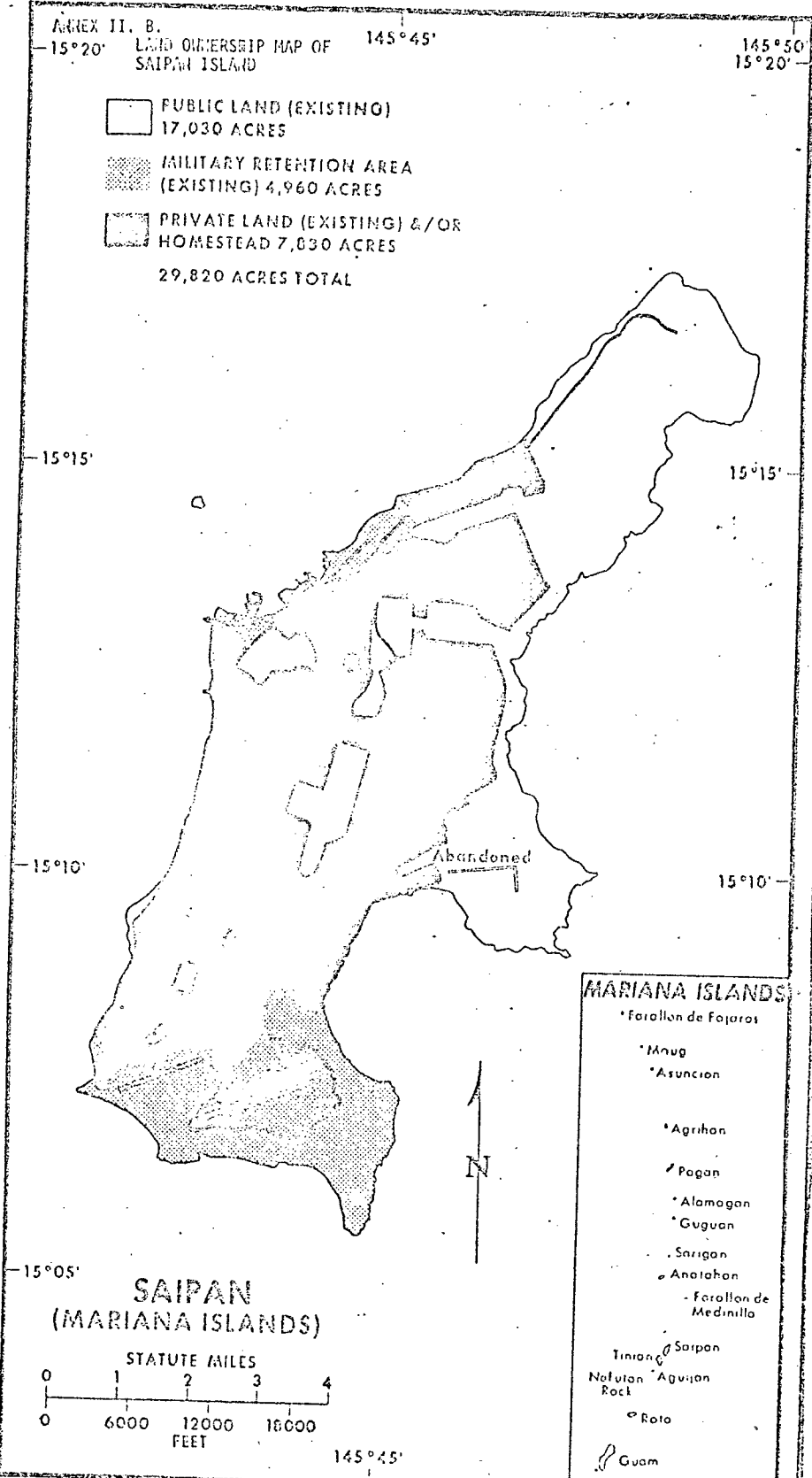
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Henry A. Kissinger



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ANNEX II. B.
LAND OWNERSHIP MAP OF
SAIPAN ISLAND

-  PUBLIC LAND (EXISTING)
17,030 ACRES
 -  MILITARY RETENTION AREA
(EXISTING) 4,960 ACRES
 -  PRIVATE LAND (EXISTING) &/OR
HOMESTEAD 7,830 ACRES
- 29,820 ACRES TOTAL



- MARIANA ISLANDS
- * Farallon de Fojoros
 - * Mnug
 - * Asuncion
 - * Agrihan
 - * Pagan
 - * Alamogan
 - * Guguan
 - * Sarigan
 - * Anatahan
 - Farallon de
Medinilla
 - Tinian & Saipan
 - Nofutan * Aguihan
Rock
 - * Rota
 - * Guam

Compiled from H. O. L. Part 6060

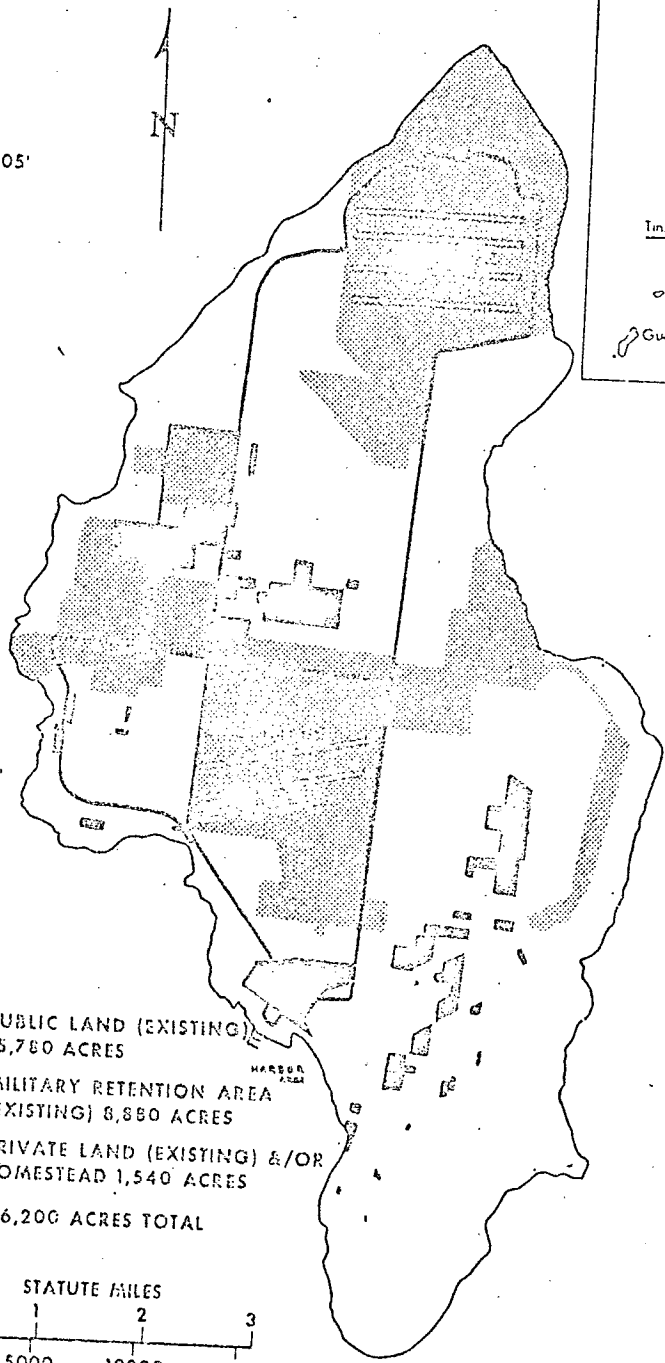
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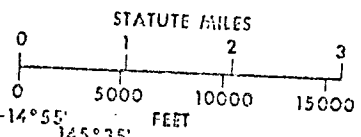
145° 35'

ANNEX II. C.
LAND OWNERSHIP MAP OF TINIAN ISLAND
TINIAN
(MARIANA ISLANDS)

- Farallon de Fajitas
 - Maug
 - Asuncion
 - Agrihan
 - Pagan
 - Almogan
 - Guguan
 - Saipan
 - Anatahan
 - Farallon de Medinilla
 - Tinian
 - Agaña
 - Nalutan Rock
 - Rota
 - Guam
- MARIANA ISLANDS**



PUBLIC LAND (EXISTING)
15,780 ACRES
 MILITARY RETENTION AREA
(EXISTING) 8,880 ACRES
 PRIVATE LAND (EXISTING) &/OR
HOMESTEAD 1,540 ACRES
26,200 ACRES TOTAL

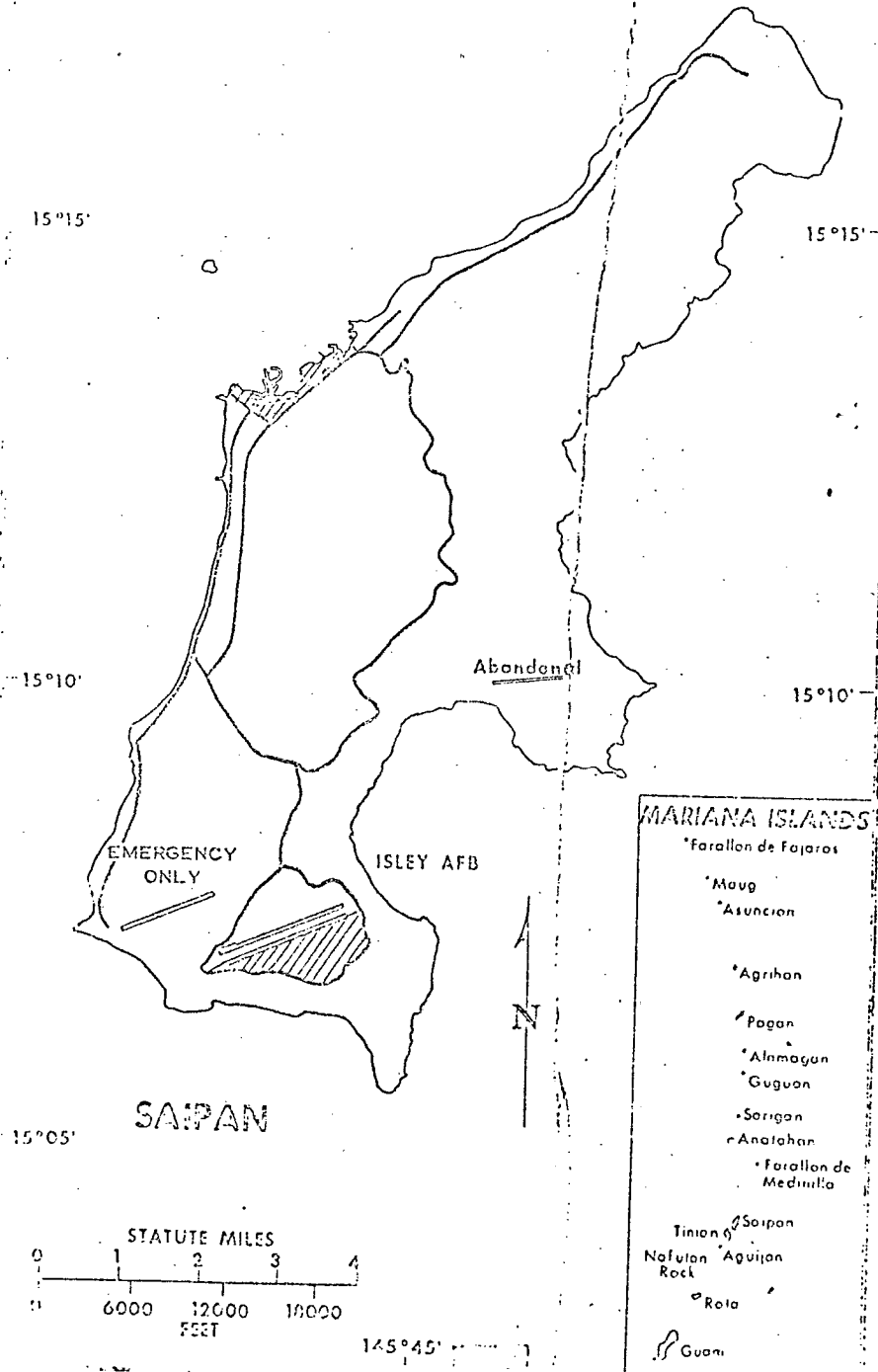


14° 55' 145° 35' 145° 40' 14° 55'

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ANNEX 11.D.
 MAP OF SAIPAN DEPICTING U.S. MILITARY LAND REQUIREMENT



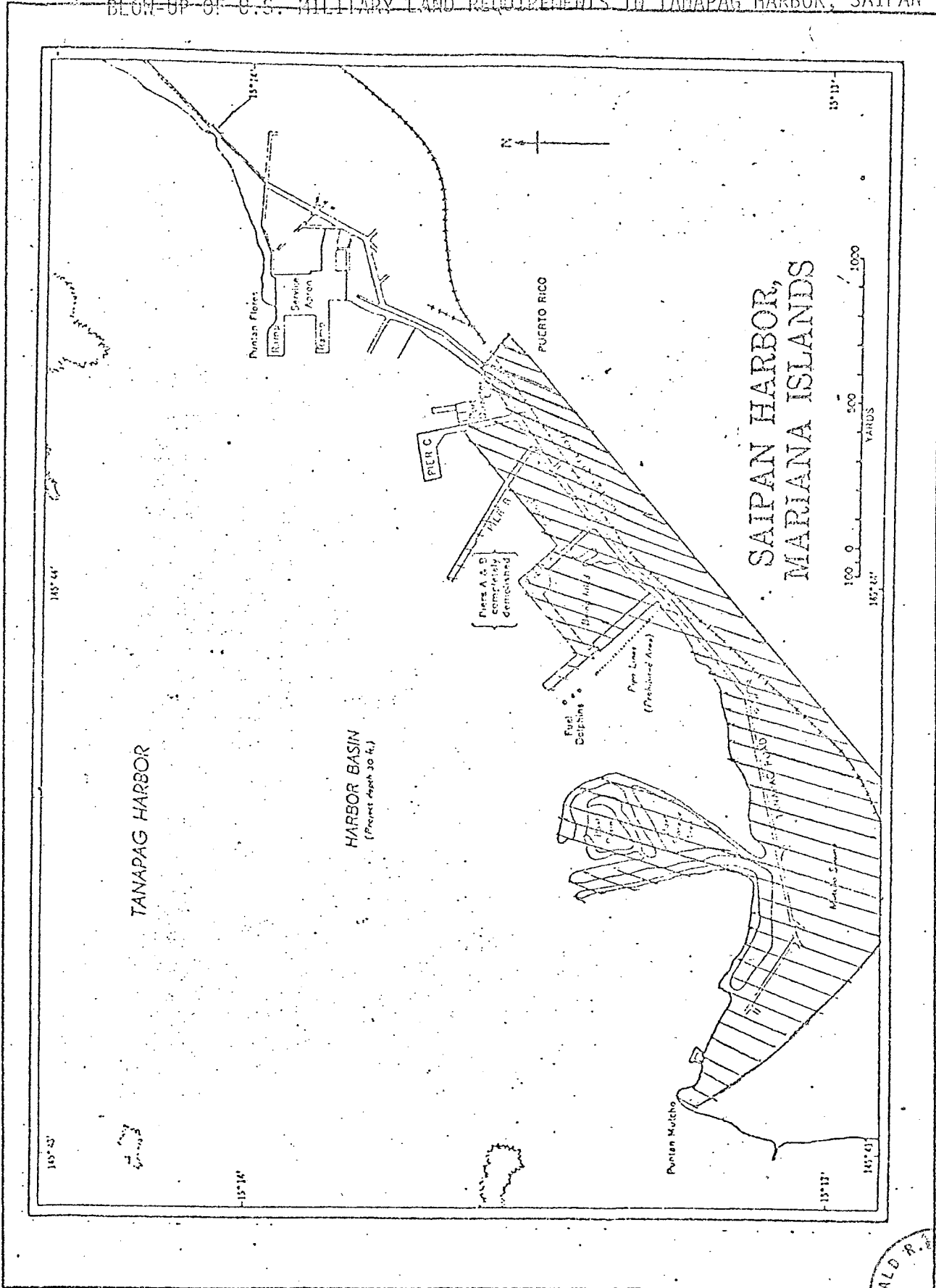
MARIANA ISLANDS

- *Farallon de Fajaro
- *Maug
- *Asuncion
- *Agrihan
- *Pagan
- *Almagan
- *Guguan
- *Sarigan
- *Anatahan
- *Farallon de Medinilla
- Tinian
- Nafutan
- Rock
- Rota
- Guan

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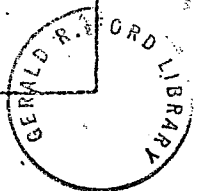


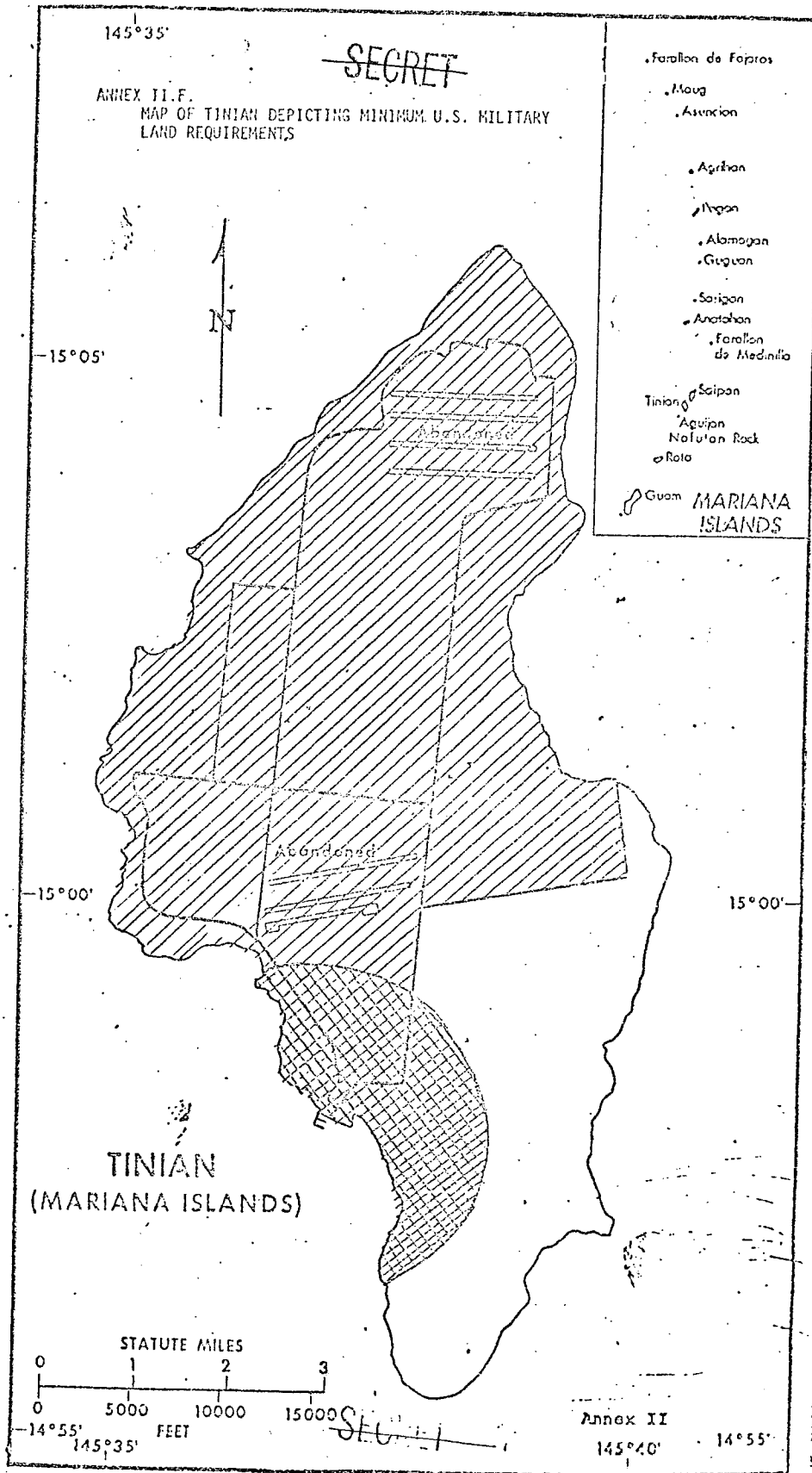
ANNEX II.E.
 BLU-UP OF U.S. MILITARY LAND REQUIREMENTS IN TANAPAG HARBOR, SAIPAN



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BY KJR NLF, DATE 6/15/00 4/3/00



NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 009337

REASON FOR WITHDRAWAL National security restriction
TYPE OF MATERIAL Plan
TITLE Department of Defense Plan for Tinian
Development, Annex III
CREATION DATE 1971?
VOLUME 7 pages
COLLECTION/SERIES/FOLDER ID . 033700014
COLLECTION TITLE NATIONAL SECURITY ADVISER. NSC STAFF
FOR EAST ASIAN AND PACIFIC AFFAIRS:
CONVENIENCE FILES
BOX NUMBER 36
FOLDER TITLE Marianas (Working File), (4)
DATE WITHDRAWN 10/12/1999
WITHDRAWING ARCHIVIST HJR

Declassified with portions exempted

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DEPARTMENT OF DEFENSE *
PLAN FOR TINIAN DEVELOPMENT

1. CINCPAC was tasked to provide an integrated plan for Tinian development that would incorporate the requirements of each Service; the plan has received Service and Joint Staff concurrence. The JCS have authorized the Services to proceed with facility programming actions for the near term Tinian requirements defined in the plan.

2. Many factors combined to lead to the Tinian Development Plan. The reversion of Okinawa led to an immediate requirement [REDACTED] and associated activities from that forward base. The President's Peking Trip, the Shanghai Communique, the Nixon Doctrine, and the Growing confidence of Asian allies leading to increased nationalism, all indicate a reduction of US force levels on the Asian periphery, nevertheless the US is resolved to support its strategic interests in the Pacific. The Marianas, having indicated a desire for a close political alignment with the US, represent a viable alternative for relocation of some of the forward based military activities; but by no means, all of them.

3. In a review of the topography of the Mariana Islands, Tinian and Saipan were found to be the only islands suitable for developing an airfield large enough to accommodate strategic operations and other military activities. The relatively large population and concentration of civil activities on Saipan indicate that is not a promising location, so attention has thus focused on Tinian in terms of military development.

4. In support of US strategic interests in the Pacific, the Secretary of Defense has stated that acquisition of the entire island of Tinian, for development into a joint military complex, is the desired objective. The development of a multi-service military complex is required; to provide a relocation site for [REDACTED] activities previously situated on Okinawa; to support the surveillance and defense of Micronesia and the lines of communication

* This paper has not been coordinated with the Departments of State and Interior.

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By TPI NARA, Date 4/19/00

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in the Pacific; to provide a Joint Service area for combined air-ground maneuvers; and to preserve an alternate location in the Western Pacific in the event of basing restrictions in forward areas, such as Japan, Taiwan, and the Philippines.

5. These strategic objectives result in the near term requirements for an airfield, a port facility, a logistics complex, and a Joint Service maneuver and training area.

a. The airfield should be capable of supporting the following activities:

[REDACTED]

[REDACTED] the airfield will provide enroute support for airlift aircraft on trans-Pacific missions during peacetime and in support of contingencies such as fighter deployments and weather and carrier diverts. As a staging base for US Navy anti-submarine patrol missions, it will accommodate logistic and transient aircraft; and will have a digital data link capability to support deployment of US Navy anti-submarine aircraft; it will provide support for US Marine Corps aviation units deployed in training exercises; and it will provide a safe haven for aircraft evacuated or diverted from other Pacific bases due to severe weather.

b. The port facility, when developed, should be capable of berthing a T-5 class tanker and a cargo ship simultaneously; off loading and storing bulk cargo; transferring petroleum, oil and lubricants from tankers to storage facilities; off loading and transferring munitions to storage facilities; supporting Joint Service training requirements; and expansion to accommodate cargo handling for future operations.

c. A logistics area, when completed, should accommodate: storage and maintenance of the PACAF Vehicle Reserve Set (VRS) positioned in readiness in case of war or contingency operations in the Western Pacific, storage of the War Reserve Materiel (WRM) Contingency Assets including equipment and supply items excessed by base closures in SEA and other Pacific areas; storage of petroleum, oil and lubricants (POL) to offset current Air Force and Navy in-theater deficits; storage of conventional weapons for contingency operations supported from Tinian; [REDACTED] to offset current in-theater shortages.

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d. The Joint Service maneuver and training area should be large enough to provide sufficient area for amphibious and subsequent training ashore of up to brigade size. By necessity, such an area would be larger than all of Tinian; however, less acreage can be successfully used with some training degradation by reducing either the scope of the exercise or the task organization of using units.

6. In reviewing these near term requirements, it is apparent that, for the above reasons and due to recent developments in the international arena, acquisition of the entire island is the priority objective.

7. While utilizing Tinian as a B-29 base during World War II, the Air Force recognized its strategic geographic importance and secured retention rights to almost 9,000 acres of public land on the island. This acreage includes North and West Fields and the related support areas. Additionally, about 5,000 acres are under retention on Saipan; this includes Isley Airfield and some adjacent land. With the returning US presence, near term construction actions will be primarily oriented toward air operations.

8. The Secretary of Defense designated the Secretary of the Air Force as Executive Agency for near term Tinian facility requirements development. In discharging this responsibility, Air Force planning will reflect maximum joint use of facilities, and accommodate the near and long term requirements of the other Services. Air Force planning will be completely in harmony with overall US Government objectives.

9. The Service programmers have refined the above requirements and are currently considering the development of Tinian in seven phases to satisfy the near term requirements. The cost of Tinian development through Phase VI is estimated to be \$114 million at the minimum. Each phase is programmed so that the function supported by that phase can be performed without the completion of subsequent phases. Each phase is planned to be completed in sequence; an exception is Phase VI, Logistical Support Base, which may be initiated any time after the completion of Phase II.

a. During the first phase, certain actions are necessary to obtain rights to use the land and plan for the development of the island.



(1) The Micronesian Status Negotiations have resulted in the Marianas District negotiating separately with the United States. The result will most probably be a close alignment with the US with a relationship akin to territory or commonwealth status. The US land requirements are expected to constitute a major portion of the negotiations. The acquisition of the entire island of Tinian is the priority objective, in that it would allow accommodation of the near term requirements and many of the long term requirements.

(2) The Marianas negotiations will establish the political relationship, the availability of land, and US commitments. Detailed planning by the Services will proceed when these parameters are established.

(3) The Air Force will program for land acquisition of the entire island and out-grant required areas to other Services. The Naval Facilities Engineering Command, acting in its capacity as Department of Defense Land Acquisition Agent for the Marianas, will acquire the land according to the terms negotiated. Congressional funding will be required.

(4) The Air Force will direct the development of the installation master plan. All facilities will be sited in accordance with that plan and designed for joint use to every degree possible. Duplication of facilities will be carefully avoided to allow maximum use of available land.

(5) The politically undesirable necessity for relocation of at least some of the current population is dictated by ammunition safety requirements, as well as our actual basing requirements, and is therefore mandatory. It is believed that the small Tinian population could be resettled on Saipan, thus leaving Tinian uniquely free of local political encumbrances. The island is far enough away from the heavily inhabited islands to be a separate entity, but close enough (3 miles from Saipan) to draw on Saipan's labor force. This would preclude the development of one of our greatest problems, here and abroad, that of a developing civilian population which, in time, forces out the military activity which originally brought it there. A classic example is Mitchell Field on Long Island.



(6) If the acquisition of the entire island proves possible, the Department of Interior probably will be requested to manage the relocation program.

(7) The Air Force will prepare the Environmental Impact Statement.

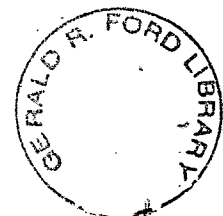
b. During Phase II, the preparation phase, the existing harbor and airfield will be upgraded sufficiently to permit transportation of construction materials and personnel support supplies to the island. Initial logistic support will be staged through Guam.

(1) The breakwater and causeway protecting the harbor have been damaged by typhoons. Their repair is necessary to prevent damage to the wharf facilities and shipping in the harbor. Portions of the wharf area are incapable of supporting heavy loads and require repair.

(2) The existing runway at West Field will be upgraded to provide frequent use by airlift for resupply missions and emergency evacuation and training. Aircraft will be staged through Andersen AFB, Guam.

(3) A construction camp to incorporate a batch concrete plant, aggregate plant, asphalt plant, storage areas and living quarters will be initially developed for use by contractor forces during the duration of the near term period.

c. At the completion of Phase II, the complex will be capable of supporting construction required in Phase III. While this phase is necessary to permit subsequent phases, completion of this phase will also provide a facility which could be quickly expanded during contingencies. When Phase III is completed, the complex will include port facilities, airfield pavements, utilities, and POL facilities. These are the basic requirements necessary to conduct combat operations. The runway, taxiways, and parking aprons will be constructed to meet strategic aircraft requirements. The port will be upgraded to permit offloading of supplies and equipment necessary to support



contingency requirements. Utilities will be developed to the point where they can be expanded to accommodate subsequent requirements. POL systems capable of de-fueling tanker ships, storage transfer and truck or aircraft refueling will be developed.

d. Phase IV, the dispersal base phase, includes construction of facilities necessary to support [REDACTED] [REDACTED]. The base will be a satellite of Andersen AFB, Guam. The home base will provide all maintenance, administrative and logistic requirements. Necessary communications will be provided. Only limited personnel support facilities will be developed. WRM storage areas will be developed and port warehouses will be constructed.

e. At the completion of Phase V, the Main Base phase, the base complex will be capable of operations independent of Andersen AFB support. Aircraft maintenance capability will be developed. Administrative and personnel support facilities will be completed. The airfield will be capable of supporting normal daily operations by strategic, tactical, and airlift aircraft.

f. Phase VI, Logistical Support Base, may be initiated at any time after completion of Phase II. Weapons Storage Areas will permit use of the weapons during operations conducted from Tinian or movement to forward bases by airlift or sealift. Vehicles required during contingencies, will be taken from the consolidated vehicle storage and maintenance facility. This logistical support base could be supported by upgrading the harbor and airfield and may be developed to provide an initial military presence consistent with the political negotiations. This construction phase provides the greatest opportunity to use local and national labor from Saipan, if this is deemed desirable.

g. Dependent support will constitute the final phase of near term construction. This will permit accompanied tours for military personnel.

10. With the foundation provided by the near term construction, many of the long term requirements of PACOM can be accommodated as required. In the long term, CINCPAC has indicated, in his requirements, that the Army may relocate a depot supply and maintenance unit, a NIKE artillery defense



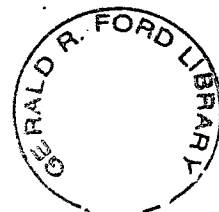
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battery, and a Special Forces unit; the Navy may position a complete anti-submarine patrol squadron; the Marines may base 2/3 of a Marine Amphibious Force, and the Air Force may station airlift and fighter wings, all on Tinian. The acquisition of the entire island, therefore, becomes much more than just a nice-to-have item. It is a definite and real requirement, whose attainment may very well be possible now, but extremely difficult if not impossible in the future.

11. In summary, the changing political environment in Asia, to including Okinawa reversion, is causing changes in the US Pacific basing structure. The Marianas currently present an excellent opportunity for relocating some vital forward based activities. While Tinian cannot accommodate all the activities and forces that are now forward based, it can accommodate many of them. It is envisioned that Tinian will become one of the most valuable US defense installations in the Pacific area. Additionally, acquisition of the entire island of Tinian would provide the US with the availability of future options to cover unforeseen events not currently available. In a constantly changing and evolving political military world atmosphere it would likewise be a positive US base planning asset, in that it would be US vice foreign soil in a forward strategic location.

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DEPARTMENT OF DEFENSE *
CONTINGENCY OPTIONS FOR UTILIZATION OF SAIPAN
MILITARY LAND REQUIREMENTS

1. If the desired acreages are obtained on Saipan it is envisioned that the land could be used as follows in the long-term, if future contingency developments require utilization of the land.

a. Isley Field: Because of its location, Isley Field presents a range of options for possible military use. It has the capability to accommodate certain ancillary activities from Tinian and support possible relocation of industrial, training, and supply facilities currently located in other countries such as specified below:

(1) From a strategic point of view, it is suitable for enroute staging/support of aircraft to Asia and for recovery of aircraft back to the United States during contingencies. This enroute support could be extended to fighter, airlift, and tanker aircraft. This would require facilities for parking, servicing, and minor maintenance for the aircraft. Facilities such as housing, messing, processing, and administration would be required for the support personnel and aircrews.

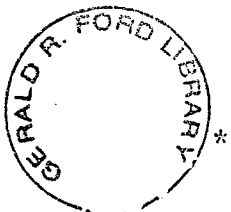
(2) From a tactical standpoint, the field could be used as an emergency airfield, weather alternate, and safe haven for aircraft evacuated from other Pacific bases. Tactical aircraft could also be staged from the airfield during training exercises.

(3) Certain permanent type installations of an logistical/industrial or training nature could reasonably be located on Isley Field such as listed below:

(a) An expandable logistics complex which would include a facility for storage of non-munition type war reserve material, installation and operation

(b) An aerial port building to handle the overflow of logistics throughput from Tinian.

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(c) An air operations support building.

(d) Part of the area adjacent to the field could be developed as an aviation oriented industrial area that could house such activities as an IRAN facility for military aircraft based on Tinian and other PACOM bases.

(e) Training location for the US Army Security Assistance Force, Asia (SAFASIA) which includes an Engineers Detachment, Civil Affairs Battalion, Military Intelligence Detachment, Army Security Agency, and Psyops element.

(f) Other satellite activities from Tinian as needed, such as maintenance, communications, and storage facilities.

b. Tanagpag Harbor: Contingency requirements for the harbor area are based on the need to support any future development of the Isley Field area, to support fleet activities and to provide a military logistics handling facility in the event of further restrictions to or losses of existing WESTPAC bases. Examples of such activities are listed below:

(1) POL off-loading facility and tank farm for forward storage of reserve fuel and lubricants.

(2) An expandable logistics complex which could include a vehicle rehabilitation and storage facility, permanent storage facilities and temporary storage facilities for throughput material for other PACOM areas.

(3) Ship/small craft repair facility through the use of afloat repair facilities.

(4) Bunkering facilities for ships.

2. It must be emphasized that the contingency options contained in this Annex are conceptual in nature.



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Means of Resolving Legal and Political Problems

Associated with Acquisition of Land in the Mariana

Islands District

Section IV E of this study discusses land acquisition problems in the Marianas which we face in attempting to negotiate and implement our land requirements. Of particular concern are those of a legal/political character. Three possible courses for resolving these problems are briefly outlined in that section. The following discussion elaborates more fully on each of the proposed courses and also touches on the issue of acquisition of private land.

(1) Transfer of Title of Public Lands in the Marianas to the Marianas District. Elsewhere in this study, it is proposed that the Mariana Islands be administratively separated from the balance of the Trust Territory as a transitional measure leading to that district's ultimate permanent and close association with the United States. This administrative separation would logically include a provision for transfer of title of TTPI public lands in that district to the Mariana Islands District Government or some other receiving government entity. Since there presently is no corporate entity within the district legally capable of accepting title to TTPI public lands, the transfer can be effected only when the Marianas District Government is chartered (subsequent to a constitutional convention), or when the present district legislature establishes another but appropriate body to accept and administer the public lands (e.g., a "Marianas District Public Lands Trust Board"). The corporate entity accepting title to the public lands would have to have full authority to negotiate leases of public lands for U.S. land requirements.

However, the above course of action may take one or two years to implement with consequent considerable delay in negotiation of leases, and implementation of operational plans for Tinian. A variant on the above, which would permit earlier negotiation of leases, would be to urge the present Marianas District Legislature to establish a receiving corporate entity, and transfer title to public lands immediately to that entity by Department of the Interior Secretarial Order.

(2) Temporary acquisition through TTPI Administration Lease. Pending an ultimate transfer of public lands to the

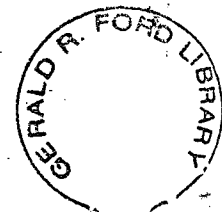
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Marianas District, the U.S. could negotiate temporary leases through the TTPI Administration. To avoid charges of bad faith, this course could be taken only with the full consent of the Marianas leadership, and with the leadership's participation in the negotiations. In effect, the TTPI Administration would act as an agent for the Marianas. The U.S. negotiating goal would be early satisfaction of its land requirements in the form of leases which could subsequently be transferred from the TTPI Administration to the Marianas District.

One serious problem could arise from this course. Any U.S. rental payments for TTPI Administration leases would, by law, go to the Congress of Micronesia pending transfer of public lands and leases to the Marianas. This would be deeply resented by the Marianas and could cause them to refuse to go along with this course. As a practical matter, probably no more than one or two years' rental monies would be involved. A solution possibly acceptable to all concerned parties would be to earmark all rental monies, paid while the leases are with the TTPI Administration, for the future relocation and establishment of a Micronesian Capital. Separation of the Marianas from the Trust Territory will ultimately require the transfer of the Micronesian capital from Saipan to some other district. This will be a major project costing tens of millions of dollars, and one which all concerned parties (the U.S., the Marianas, and the other five districts of Micronesia) share a responsibility for.

(3) Memorandum of Understanding with the Marianas Leadership. Pending transfer to the Marianas of TTPI public lands, the terms of leases could be negotiated with representatives of the Marianas and agreed to by a memorandum of understanding. The Marianas leadership would agree to effect such leases upon transfer to the Marianas of the public lands. To the extent that it may be necessary to proceed in the interim with development of some facilities on Tinian Island, this could be accomplished under a short-term lease with the TTPI Administration, with nominal rental payments, and with the consent of the Marianas leadership.

Private Lands -- The above discussion relates to overcoming legal and political obstacles concerning U.S. requirements in areas which are presently TTPI public domain. The need for the whole of Tinian Island also requires leases of

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something over 1,000 acres of many parcels of private land. However, these land negotiations should be conducted jointly with those for the public lands, with the Marianas Political Status Commission representing the landowners. The private lands on Tinian ultimately may have to be acquired through condemnation proceedings instituted by either the TTPI Administration or the Marianas Government (the latter assuming administrative separation and establishment of a Marianas Government with eminent domain authority -- in addition to that of the TTPI Administration -- prior to termination of the Trusteeship Agreement).

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POWER OF MARIANAS TO LIMIT TRANSFERS OF
LAND TO PERSONS OF MARIANAN ANCESTRY

It is planned that the Mariana Islands will enter into a close and permanent affiliation with the United States. One of the problems arising from this proposed relationship is the potential effect of the exposition of the basically agricultural culture of the Marianas to the economy of the United States. The experience throughout the Pacific, e.g., in Hawaii, Western Samoa, and most recently in Guam, has shown that such encounter is likely to affect adversely the economic status of the indigenous population and to leave it landless, unless adequate precautions are taken. 1/ One of the possible protective measure would be the enactment of legislation by the Marianas which would preclude or limit the holding of interests in land by persons who are not of Marianan ancestry. The question has been raised whether such legislation would be permissible under the Constitution of the United States, especially if United States citizenship should be conferred upon the inhabitants of the Marianas. It is concluded that, in principle, this question is to be answered in the affirmative. 2/

Legislation limiting the holding of interests in real estate by persons who are not of Marianan descent presumably would take three principal aspects: First, it would limit the capacity of persons not of Marianan ancestry to acquire interests in land, and, second, it would limit the ability of owners of real property in the Marianas to transfer their interests in land to persons not of Marianan ancestry. These two categories, however, are relatively unimportant since only about 5% of the land in the Marianas is held privately.

1/ In Hawaii, the Hawaiian Homes Commission Act of 1920 was enacted after the harm had become virtually irreparable. Changes in the status of American Samoa have been stalled for fear that they might destroy the Samoan culture.

2/ In the absence of a concrete draft it is, of course, impossible to determine in advance whether specific provisions of the prospective legislation would violate any constitutional prohibition.

The proposed legislation, moreover, may be contrary to federal statutory law, especially the Civil Rights laws. Hence, necessary precautions will have to be taken when federal laws are made applicable to the Marianas.



The remaining 95% are public lands, most of which presumably will be turned over to the Government of the Marianas. The bulk of the proposed legislation thus would relate to the disposition and administration of the public lands by the future Government of the Marianas. Such legislation could take many forms. For example, it could provide that title to public lands could be conveyed only to persons of Marianan descent, but that the land could also be leased to others. The deeds could contain covenants to prevent evasion of the restrictions against the holding of interests in land by persons other than of Marianan descent. The legislation could also follow the pattern of Hawaiian legislation and provide that all or a part of the public lands could be leased only to persons of Marianan descent, and limit the acreage which any individual may hold. There are many other potential legal devices which could be utilized in the legislation designed to administer or dispose of the public lands to insure that such lands will continue to benefit persons of Marianan descent and not fall permanently into outside hands.

Legislation designed to protect landholdings of the indigenous population has several drawbacks. It may discourage or retard the economic development of the Marianas. By limiting non-Marianan investors to lease interests it may result in inefficient methods of economic development. These drawbacks are compounded by the relative ease with which these restrictions can be evaded. This is demonstrated by the current experience in Micronesia with respect to the legislation prohibiting foreign investment. Hence, in enacting such legislation it should be kept in mind that it may have an adverse effect on the economic development of the Marianas, and still not protect the indigenous population from losing its land to outside economic interests.

I.

Legislation preferring one group of inhabitants of an area over another or over nonresidents primarily comes under the headings of the equal protection clause of the Fourteenth Amendment and of the Privilege and Immunity Clauses of Article IV, Section 2 of the Constitution^{3/} and of the Fourteenth Amendment. The application of those provisions, however, is limited to States and the Marianas would not be a State.

This, however, does not mean that the Marianas would be absolutely free to discriminate against persons who are not of Marianan ancestry. Presumably the Marianas will enter into a close relationship with the United States, which, if not identical, will be similar to the status now held by the Commonwealth of Puerto Rico. With respect to the latter, it was held in Mora v. Mejias, 206 F. 2d 377, 382 (C.A. 1, 1953):

^{3/} Should the Privileges and Immunities Clause of Article IV, section 2, be given statutory effect in the Marianas, as in Puerto Rico, Guam and the Virgin Islands (see 48 U.S.C. 737, 1421b(u), 1561), it would be necessary to make an exception authorizing the enactment of the proposed legislation.



"* * * For our present purposes it is unnecessary to determine whether it is the due process clause of the Fifth Amendment or that of the Fourteenth Amendment which is now applicable; the important point is that there cannot exist under the American flag any governmental authority untrammelled by the requirements of due process of law as guaranteed by the Constitution of the United States." 4/

The court did not explain the precise manner in which the due process requirements of the Fifth or Fourteenth Amendment would apply to commonwealths such as Puerto Rico and presumably the Marianas. Such commonwealth is not a State, nor is its government intended to be an agency of the Federal Government. The Supreme Court has not as yet spoken on this issue. Fornaris v. Ridge Tool Co., 400 U.S. 41, 43-44 (1970), however, suggests that the Court is troubled by this problem.

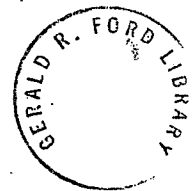
In spite of this conceptualistic problem it must be assumed as a practical matter for the purposes of this memorandum that the Marianas will be subject to some kind of due process restrictions analogous to, if not identical with, those imposed on the Federal Government and the States, even if the more specific Equal Protection and Privileges and Immunity Clauses are not applicable in terms to the Marianas, since they are not States.

II.

The due process requirement does not contain an explicit prohibition against a denial of equal protection. Nevertheless a discrimination may be so unjustifiable or so "invidious" as to constitute a denial of due process. Bolling v. Sharpe, 347 U.S. 497, 499 (1954); Schneider v. Rusk, 377 U.S. 163, 168 (1964); Shapiro v. Thompson, 394 U.S. 618, 641-642 (1969). And any classification based on race or ancestry is "inherently

4/ Balzac v. Porto Rico, 258 U.S. 258, 312-313 (1922), decided before Puerto Rico had acquired Commonwealth status, observed:

"* * * The guaranties of certain fundamental personal rights declared in the Constitution, as for instance that no person could be deprived of life, liberty or property without due process of law, had from the beginning full application in the Philippines and Porto Rico, * * *."



suspect and subject to close judicial scrutiny." Graham v. Richardson, 403 U.S. 365, 372 (1971).

The question thus is whether discrimination on the basis of ancestry would be justifiable in the situation here involved. The purpose of the proposed restrictions on land tenure in favor of persons of Marianan descent would be to protect the persons of Marianan ancestry from exploitation by economically more advanced outside groups, and to prevent them from becoming a landless society before they have an opportunity to attain the level of the economic development which attains in the rest of the United States. Such legislation would discriminate against nonresidents of the Marianas, and residents of the Marianas who are not of Marianan ancestry and even would interfere with the freedom of persons of Marianan ancestry to alienate their property to any willing purchaser (see Buchanan v. Warley, 245 U.S. 60 (1917)). Still it would not appear to constitute an "invidious" denial of due process.

Due process prohibits such discrimination as would prejudice minority groups. It does not command, however, an equality of treatment that would leave them defenseless to the superior political and economic power of prevailing groups. In this field too, "a page of history is worth a volume of logic." New York Trust Co. v. Eisner, 256 U.S. 345 (1921).

III.

The foremost pertinent example of statutes designed to protect minorities is presented by the Indian legislation which since the earliest days of the Republic has restricted the alienation of Indian lands. See the Indian Trade and Intercourse Act of 1790, sec. 4, 1 Stat. 138, now 25 U.S.C. 177. The rationale and constitutionality of this legislation was restated relatively recently by the Supreme Court in Board of Commissioners v. Seber, 318 U.S. 705, 715-718 (1943). The Court pointed out that these laws were required to protect the Indians from the selfishness of others, i.e., the pressures of the white man's economic civilization, and to enable them ultimately to find their place in the modern body politic. The Court also reaffirmed older holdings that the power to



shield the Indians from the rest of the economy of the United States did not terminate when the Indians were granted citizenship (at p. 718). ^{5/} The rationale of Seber was reaffirmed as recently as Poafpybitty v. Skelly Oil Co., 390 U.S. 365, 369 (1968). Kills Crow v. United States, 451 F. 2d 323 (C.A. 8, 1971), certiorari denied, 405 U.S. 999, dealt with a challenge to special procedural provisions applicable to the criminal prosecution of Indians. The court held that although racial classifications are "constitutionally suspect" they do not violate the equal protection and due process clauses if they are generally beneficial to the minority (at pp. 325-326).

A more recent example of legislation designed to prevent an indigenous group of people from becoming landless is the Hawaiian Home Lands Legislation of 1920, 42 Stat. 108, 48 U.S.C. 691-716. This legislation was designed to check the extinction of the Hawaiians as a distinct group by returning Hawaiian families to the land. (See S. Rept. 123, 67th Cong., 1st Sess., p. 2). It provided in effect that certain public lands in Hawaii could be leased only to persons of Hawaiian descent and limited the amount of the land that could be demised to a single person. The Hawaiian Statehood Act contains a provision in the nature of a compact between the United States and the State of Hawaii pursuant to which the Home Lands legislation became a part of the Constitution of the State of Hawaii. The Hawaiian Home Lands legislation, which started out as federal territorial legislation, now has the status of State legislation. Moreover, at the time it was originally enacted, Hawaiians had been citizens of the United States. Act of April 30, 1900, section 4, 31 Stat. 141. There does not appear to have been any challenge to the constitutionality of the Hawaiian Home Lands legislation.

On the basis of those historical precedents, it would appear safe to assume that the appropriate legislation ^{6/}

^{5/} Simmons v. Eagle Seelatsee, 244 F. Supp. 808, 813 (E.D. Wash., 1965), aff'd, 384 U.S. 209, also holds that the power to enact legislation based upon Indian ancestry did not terminate when citizenship was conferred upon the Indians.

^{6/} See fn. 2 supra.



designed to restrict land holdings in the Marianas to persons of Marianan ancestry will equally withstand attacks based on constitutional grounds.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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April 6, 1973

MEMORANDUM FOR MR. SEYMOUR WEISS
Acting Staff Director
NSC Under Secretaries Committee
Department of State
Washington, D.C. 20520

Subject: Comments on draft memorandum to the President re negotiations on the future status of the Marianas

This is in response to your March 27, 1973, memorandum requesting our comments and/or concurrence in the draft memorandum to the President. Our March 30, 1973, memorandum outlined two objections we have to the study and draft negotiating instructions and made recommendations to overcome those objections. Subsequently, Office of Management and Budget staff have met with staff of the Office of Micronesian Status Negotiations and staff representatives on the working group to discuss the recommendations we made in the March 30 memorandum. The following comments are made in light of those discussions.

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Next Steps

We recommend that this memorandum be made an annex to the draft memorandum to the President and that the recommendations we make for changes in the draft negotiating instructions be footnoted in the draft memorandum to the President. We make this recommendation as to the handling of our recommendations in recognition of the high priority which has been placed on the early initiation of the next round of negotiations with the Marianas delegation.

U.S. Objectives

We continue to believe two U.S. objectives should be as stated in our March 30 memorandum and they are the following:



DECLASSIFIED

CLASSIFIED BY F. Haydn Williams
SUBJECT TO GENERAL DECLASSIFICATION
SCHEDULE OF EXECUTIVE ORDER 11652
RECLASSIFIED AND DOWNGRADED AT TWO
STARS AND DECLASSIFIED ON DEC. 31

Authority: OMB Guidelines, May 3, 1979

By HR NLF Date 9/13/99

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- (1) To acquire no more interest in lands in the Marianas Islands than is absolutely essential for military requirements clearly defined in the context of our overall Asian strategy.
- (2) To keep United States financial arrangements and amounts of appropriations for the Marianas in balance with other United States territories, especially in the Pacific, in order both to avoid providing an economic windfall to the Marianas and to avoid resulting pressure for higher Federal appropriations for the other territories.

Overall Assessment of the Recommendations

We are concerned with the items in the draft memorandum to the President as well as the underlying draft negotiating instructions and the recommendations in the study in the following ways:

1. Negotiation for the maximum land alternative (item (c) on page 2 of the draft memorandum for the President).
 - (a) The recommendations for purchase or long-term lease for U.S. military land requirements appear excessive in light of the small total land area of the Marianas. The total land area of the Marianas is 117,440 acres of which the total recommended purchase or lease is 27,240 acres (23% of the total land area). Further, the recommendation would require purchase or lease of all of Tinian (land area 26,200 acres). This package, (Land Acquisition Alt. #1) if presented as the opening U.S. Government position, could produce a strongly negative reaction from the Marianan negotiators. Alternatively, it might cause them to raise their demands for a quid pro quo to a much higher level than the Ambassador is authorized to negotiate. In either case, a conclusion of the negotiations could be delayed with adverse impact on other U.S. objectives.
 - (b) The utility of bases in the Marianas -- assuming the U.S. retains full utilization of current base facilities on Guam which is only 120 miles from Tinian --

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is questionable. Alternatives to a major base development in the Marianas should be defined and compared on a cost-effectiveness basis prior to a U.S. commitment to build a base complex in the Marianas.

- (c) In view of the restricted budgetary outlook for the Department of Defense and the requirement to maintain adequate force levels with modern equipment, new land acquisitions for military use should be kept to the minimal essential requirements.
2. Federal financial assistance for the Marianas (item (d) on page 2 of the draft memorandum for the President).
- (a) We recognize that the financial assistance to be offered is an integral part of the negotiating strategy to achieve the overall U.S. objectives for the future status of the Marianas Islands.
- (b) The financial assistance offered to the Marianas ought not be in amounts or be in forms that cause budgetary problems. However, two features of the financial assistance proposed potentially would cause those kinds of problems.
- (i) The recommended flexibility for the Ambassador to negotiate an increase in direct grant assistance from the present amount of about \$7 million annually up to as much as \$12 million annually and to guarantee that amount for up to five years, all subject to congressional actions, could eliminate the President's budgetary flexibility on the amounts budgeted for the Marianas for at least the next five years. After the five-year period, it probably would be difficult to budget less than \$12 million annually regardless of any objective assessment of the need for the funds. The overall effect, therefore, potentially would be to establish a priority for funding the Marianas without regard to priorities for funds for other programs, including those in other territories, for at least the next five years.

- (ii) Although it is not referred to either in the draft memorandum to the President or the draft negotiating instructions, we are very concerned about the idea raised on page 43 of the study which is stated as follows:

"Local revenues, now about \$2 million annually, could be significantly increased by application of Federal income tax laws with the rebate of resulting revenues and institution of other revenue measures."

The rebate of Federal income tax revenues would be objectionable because it would mandate the use of specific Federal revenues and thereby would reduce the President's control over budget outlays. Further, such a rebate of revenues commits those revenues, of an uncertain amount, without review of the justification for the purposes for which the funds are to be used. Rebates of Federal tax revenues are now made to both the Virgin Islands and Guam; however, because of the problems outlined above, the existence of those precedents does not justify agreeing to tax revenue rebates to any other territory.

- (c) We believe it is essential for the Federal Government to determine the amount of financial assistance provided to the Marianas on an assessment of needs rather than on a quid pro quo basis. Therefore, we concur in that part of the negotiating instruction on financial assistance (page XXV, item 4) which states that direct assistance would be "... based on mutually agreed program needs..."

Recommendations

To overcome the concerns outlined above, we recommend that the draft memorandum to the President be amended as follows:

- 1) On page 2, item c, place a footnote (a) after the words "... begin the negotiation with maximum land alternative," and insert at the bottom of page 2 the following footnote:



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"(a) OMB recommendation. That the Ambassador be instructed to negotiate the lease or purchase of the least amount of land required for military purposes."

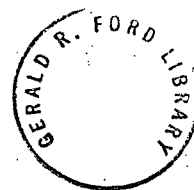
- 2) On page 2, item (d), place a footnote (b) at the end of the last sentence and insert the following footnote at the bottom of the page:

"(b) OMB Recommendations. That the Ambassador negotiate the minimum amount of direct grant assistance consistent with mutual agreement on program needs and that any guarantee of a specific amount of direct grant assistance for any year or years can be made only after approval by the Director of OMB. Further, that the Ambassador be specifically instructed not to negotiate any rebate of Federal income tax revenues to the Marianas. Finally, that the Secretary of the Treasury review any variation in the ordinary application of Federal tax laws to U.S. citizens that the Marianas delegation might propose before a U.S. position on any such proposal is taken in the negotiations."



Donald E. Crabill
Chief, Natural Resources
Programs Division

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