

11/16/72

U.S. RESPONSE TO MICRONESIAN DELEGATION
VIEWS ON PUBLIC LAND TRANSFER

I. General Observations

A. The Micronesian paper refers to the U.S. policy paper as the "U.S. Delegations Position Paper". Let me state again what I have previously said to your Chairman on this score: This is a U.S. Government policy determination approved by the Secretary of the Interior, formulated on our recommendation, as a response to your request for an early transfer of public lands to the districts.

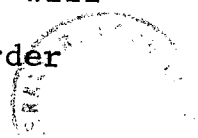
It is not a "position paper" but an answer. It agrees with your request. It does so subject only to a very few basic limitations which apply during the remainder of the trusteeship.

After that you are free to do as you please, but before that the U.S. Government as administering authority must retain certain minimal safeguards. We are of course ready to do our best to explain these and to answer questions about the basic policy.

We are also flexible about how it is to be implemented, but note this as a responsibility of the TT Administration and Interior who should properly be included in any discussion of these problems.

B. Aside from the foregoing clarification, as we understand the U.S. Delegation has very few real problems with the Micronesian response. We suggest that the points raised by the Micronesian response be considered jointly by the two delegations. We will proceed to comment on the specific items raised in the order presented.

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As retyped with changes:JMW:ml:11/16/73

II. Eminent Domain

Eminent Domain will be shared with the districts if the districts so desire, but cannot be given up entirely so long as the U.S. Government continues to have its responsibilities under the U.N. Trusteeship.

The exercise of eminent domain both in U.S. practice and under the TT Code is already strictly limited by the rigid requirements of due process of law. These are designed to protect the rights of the individual property holder and to assure fair compensation for any taking of land.

It is a power rarely used. Indeed in the 25 years of the Trusteeship the central Government has used it only a couple of times without the consent of the land owners involved and then only in extreme cases. This ultimate power must however, be maintained in the U.S. Government's view in the interests of effective administration. There is little or nothing that can really be changed in the code on this score.

It will be exercised on the other hand as a matter of policy most sparingly. The central Government as a matter of policy will move first to the district and ask the district to acquire any land needed in the future for central government purposes. If the district has its own power of eminent domain this would be relied on first. The Central Government's authority thus would probably never be used. But in our view the ultimate authority must remain.



III. Military Land

The U.S. Government would certainly be satisfied with a formal commitment to negotiate its land needs in good faith as those needs have been agreed thus far in the negotiations. It does not insist that an actual lease be executed as a precondition to the return of title.

Such a formal commitment to negotiate should, however, either precede or accompany the actual transfer of title. It should be executed by the actual prospective titleholders. We would be happy to discuss the form this commitment might take.



IV. Military Retention Land

The new U.S. policy does not as a matter of definition address the problem of military retention land one way or the other. It is being handled separately in another negotiation.

(If pressed further) The U.S. is already on record as saying that military retention lands will be returned to the Marianas' District with the exception of those agreed to for U.S. military use of for related civilian programs such as civilian resettlement. This is a matter outside the present policy determination, however...the 14 1/2 acres in Anguar are used by the Coast Guard and will be returned when the Coast Guard no longer needs them. (See attached fact sheet).



RETENTION LANDS

Current = --- 14, 078 acres (all in Marianas)
 14.45 acres (Coast Guard - Anguar)

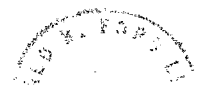
In addition to the military retention, the U.S. Government leases:
 ---- 1320.33 (Kwajalein)
 280. acres (elsewhere in TTPI
 Coast Guard & Weather Ser.)

LANDS ALREADY RETURNED
 to Public Domain

Marianas (Retention)	19,558.
Truk (all lands)(Retention)	84.
Palau (Retention)	45.
Yap (all lands) (Retention)	70.
Marshalls (leased) (Bikini, Ebeye, Eniwetok)	<u>3,092</u>
TOTAL	22,849

POINTS

U.S. has already announced closure of Coast Guard Loran A installations at Anguar, Ebeye and Marianas and return of those lands to public domain or private owners.



V. Trust Territory Leases

We are unaware of any TT leases of unused private property. Any pieces of land not actually in use now are expected to be used in the very near future.

So far as we are aware the leases entered into by the TT Administration provide that in the event the property is unused it will revert to the private owner.

If, contrary to our information, there are genuinely unused pieces of land leased from private owners, this situation will be corrected immediately.

VI. Manner of Negotiation

We have no difficulty with the idea of leasing military use land from or through the Congress of Micronesia or the districts so long as that lease is legally sufficient to bind the actual owner and any future government of Micronesia according to its terms. As we have agreed earlier we cannot finally sign off on a compact until there is agreement on all its provisions, including those dealing with U.S. requirements to carry out the defense provisions of the compact.

