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WASHINGTON, D.C. 20240

July 2, 1974

MEMORANDUM

To: Director, Office of Territorial Affairs

From: U.S. Deputy Representative for Micronesian Status Negotiations

Subject: Micronesian Public Land Transfer Bill, Proposed U.S. Position

We have reviewed the Trust Territory Public Land Transfer Bill as amended by the Senate and House of Representatives of the Congress of Micronesia against Secretary Morton's Public Land Policy Statement and against the originial objectives forming the basis for the public land transfer policy.

In the interest of facilitating the early transfer of these lands we believe that those amendments which are not incompatible with United States interests in the administration of the Trust Territory or in the ongoing political status negotiations can be accepted. As a general rule we believe the proposed land transfer legislation must be consistent with the public land policy statement. If the legislation conflicts with this established policy it will have to be vetoed.

Broadly speaking legislation to be enacted by the Congress of Micronesia to effect the transfer of Micronesian public lands should not contain provisions which:

1. Impair current political status negotiations involving future land use required by the United States in Micronesia;

2. Restrict the executive authority of the High Commissioner over public lands as set forth in the U.S. public land policy statement;

3. Alter existing land use agreements entered into by the Trust Territory of the Pacific Islands or held by the United States Government;

4. Authorize adjudicatory bodies to reopen land title hearings or determinations which are <u>res judicata</u>;

5. Impose restrictions on the ultimate authority of the central government to exercise eminent domain powers;

6. Attempt to make the Trust Territory or the United States liable for claims arising after the transfer of public lands other than for those which the United States or Trust Territory Governments are directly responsible; and

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7. Prevent or otherwise impede the United States from fulfilling its obligations under the Trusteeship Agreement.

In reviewing the proposed amendments to the land legislation against these criteria, we find that the following Congressional amendments are unobjectionable:

1. Amendments by the Committee on Judiciary and Governmental Operations of the Senate contained in Standing Committee Report No. 221, March 1, 1974 (pp. 9-15):

a. amendments 1 through 10; these are considered to be technical changes to clarify the legislative purpose;

b. amendment 13; this is a technical change and deletion of these words would have no substantive effect;

c. amendment 14 if modified so as to read: "among its purposes the return of public lands transferred to it under the authority of this act to the rightful owners thereof, and shall have...". The revised amendment would recognize local desire, but such a transfer should not be considered to be the "primary" purpose of the district legal entity's activity. In our view it is most important that the public land be held in trust for the people of the district to be disposed of under terms determined by the district legislature;

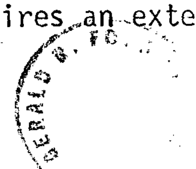
d. amendments 20-21; these are technical corrections;

e. amendments 23-39; these are primarily technical changes and do not substantively conflict with the policy paper; amendments 32, 35 and 39 are major substantive changes in developmental policy but are acceptable to the administering authority;

f. amendment 40, with the proviso that to insure a modicum of flexibility for the executive branch which is charged with executing this legislation, the words "providing for" are deleted in the proposed amendment and after the word "laws" the words "complying with the criteria of this section as follows" are inserted;

g. amendment 41; the primary power of eminent domain may be shared with the districts in accordance with the policy paper and with the changes to the definition of "eminent domain" in section 10; explicit recognition of this power by the legal entities is not required;

h. amendments 43-48; 50-55; 58-73; these changes do not materially alter and are generally in keeping with the intent of the public land transfer policy as endorsed by the JCFS. As regards amendment 59, the sixty day time limitation unduly restricts the executive branch to meet unforeseen contingencies and must therefore be changed to 120 days to be acceptable. As regards amendment 61, "compilation of information" requires an extension of time to at least 90 days to be acceptable;



i. amendment 74 with the proviso that the words "within one year of the date of such request" are deleted so as to reflect the subsequent agreements on the public land policy during the seventh round of status negotiations with the Joint Committee on Future Status and to insure that the ongoing administrative responsibilities under the trusteeship agreement and eminent domain authority are not impaired in cases of emergency;

j. amendments 75-88; these changes are acceptable and are generally in keeping with the intent of the public land transfer policy as endorsed by the JCFS.

2. Amendments by the Committee on Judiciary and Governmental Relations of the House of Representatives contained in Standing Committee Report No. 293, March 4, 1974 (pp. 2-3):

a. amendment 1; including a chartered municipal government as another legal entity to receive and hold public lands is a Micronesian determination and would appear to interpose no conflict with the policy paper;

b. amendments 4-7; these are technical corrections.

The following provisions are in conflict with the public land transfer policy statement and are not acceptable:

1. Amendments by the Committee on Judiciary and Governmental Operations of the Senate contained in Standing Committee Report No. 221, March 1, 1974 (pp. 9-15):

a. amendments 11-12; the United States has indicated its intent to relinquish its use rights on all remaining military retention land in Micronesia that will not be covered by the new status agreements now under negotiations and to return these areas to the public domain at a time to be agreed but no later than the date when the formal status agreements become effective; these amendments thus conflict with the public land policy relating to military retention areas as endorsed by the Joint Committee on Future Status;

b. amendment 15, to apply the restriction to "any" disposition of lands to be transferred would violate the rights and obligations of the United States as administering authority set forth under the Trusteeship Agreement to acquire lands for security purposes and to exercise eminent domain powers to promote the economic and social development of Micronesia;

c. amendments 16-17, to meet the criteria established under the public land transfer policy it is essential that the legal entities be empowered to accommodate in good faith and on terms agreeable to the United States the land requirements of the United States; it would not be acceptable to permit the Congress to ratify each land agreement as this would, as in

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amendment 15, violate the eminent domain authority. It should be noted that we have accepted the JCFS position that agreements entered into by the legal entity for land designated under the status agreement will be approved by the Congress of Micronesia, and the Mariana Islands District Legislature in the case of the Commonwealth status agreement and by the people as part of the approval process of the status agreements themselves. Nevertheless, the legal entities must have the authority to enter into agreements to meet United States land requirements during the period between the effective date of this legislation and the effective date of the status agreements in the event of emergency needs;

d. amendments 18-19, these are not matters related to the status negotiations, but it is essential to retain consistency in the resolution of the land disputes and these changes conflict with the established policy of not opening land determinations which are res judicata;

e. amendment 22, this is not a status matter, but it is a technical matter that is best resolved as orginially proposed;

f. amendment 42; this is not a status matter but would violate the policy that the central government would retain the right to control activities within those areas affecting the public interest;

g. amendment 49; this would impose limitations on the authority of the Trust Territory executive beyond the terms of the transfer policy and may impose limitations on the administering authority that interfere with the Trusteeship obligations. This amendment also impinges on the current status negotiations involving satisfaction of U.S. land requirements in the Mariana Islands and in the remainder of Micronesia;

h. amendments 56-57; these changes conflict with the public land policy of holding the United States harmless from liability for damages suffered after the land transfer other than for which the United States is directly responsible.

2. Amendments by the Committee on Judiciary and Governmental Relations of the House of Representatives contained in Standing Committee Report No. 293, March 4, 1974 (pp. 2-3):

a. amendment 2-3; these are basic changes to Senate proposals which themselves cannot be accepted as proposed as they may conflict with political status agreements now being negotiated;

b. amendments 8, 9 & 10; these would eliminate the power of eminent domain from the central government and thus contravene the public land transfer policy.

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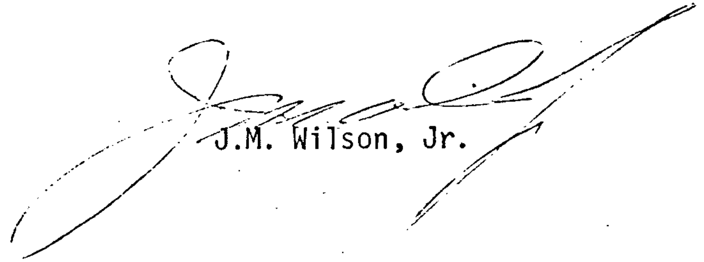
It is our view that this U.S. position on the transfer of public lands in the Trust Territory should be conveyed as a High Commissioner statement of policy to the Congress of Micronesia at the special session in July. The implementation should otherwise be left to his discretion. The High Commissioner should make clear that the administration has reviewed the COM proposals and rationale and is sympathetic to and will accept, as contained herein, some of the suggestions raised by the Congress to facilitate the transfer in a manner more conforming to local desires; that certain of the COM amendments to the proposed land transfer legislation, however, go beyond the official U.S. policy position as approved by Secretary Morton and thus are unacceptable; and, that if the proposed United States concessions to the COM amendments are not accepted, the bill will contain provisions which are inconsistent with the responsibilities of the United States in the administration of the Trust Territory and will require that the measure be disapproved. He should be prepared to enumerate specifically those items as listed herein which if retained in the legislation would subject it to a veto.



J.M. Wilson, Jr.

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