

5/1/73

PROPOSED SECRETARIAL ORDER TO EFFECT THE UNITED STATES POLICY OF
TRANSFERRING TRUST TERRITORY PUBLIC LANDS TO DISTRICT CONTROL

18/4/91

F(6)(5)

1 WHEREAS, the United States Government as administering
2 authority for the Trust Territory of the Pacific Islands has
3 always considered public lands in the Trust Territory to be
4 the property of the peoples of the Trust Territory, and

5 WHEREAS, the United States responded to a formal request
6 by the Joint Committee on Future Status of the Congress of
7 Micronesia for the early transfer of public lands in each
8 district to the control and management of the peoples of each
9 of the six administrative districts by issuing a formal policy
10 statement on November 4, 1973, consistent with the position
11 of the Joint Committee on Future Status; and

12 WHEREAS, the Congress of Micronesia was invited to particip
13 in the transfer by enacting enabling legislation to effect this
14 policy, but was unable to enact legally enforceable guidelines
15 to fully implement this policy,

16 NOW THEREFORE, the following basic Order respecting the
17 Government of the Trust Territory of the Pacific Islands
18 is issued:

19

20

21

22

23

24

25

F. TTP/

21

04

427735

1 PART I. Purpose. The purpose of the Order is to
2 implement the provisions of the United States Policy Statement
3 of November 1, 1973; to authorize and empower any of the
4 district legislatures to create or to designate a legal entity
5 within its district to hold title to public lands within that
6 district in trust for the people thereof and to manage or
7 dispose of the same; to authorize and empower any district
8 legislature to enact laws providing for the exercise of the
9 power of eminent domain and to establish adjudicatory bodies
10 which may utilize traditional means, when desired, for
11 settlement of claims to title or rights in the lands
12 transferred; and to authorize the High Commissioner to convey
13 certain public lands within a district to such a legal entity.

14 PART II. Definitions. As used in this Order, unless
15 it is otherwise provided or the context requires a different
16 construction, application or meaning:

17 (1) "District" means any administrative district
18 of the Trust Territory of the Pacific Islands as described
19 in Section 1, Title 3, of the Trust Territory Code.

20 (2) "District Legislature" means any chartered
21 district legislature of the Trust Territory of the Pacific
22 Islands.

23 (3) "Public Lands" means:

24 (a) Those lands defined as public lands by
25 Sections 1 and 2, Title 67, of the Trust Territory Code

1 except those lands designated as military retention lands
2 leased by the United States and not returned to the public
3 domain, and,

4 (b) Those lands placed under control of
5 the "Alien Property Custodian" as defined by Section 1,
6 Title 27, of the Trust Territory Code, except those lands
7 designated as military retention lands leased by the United
8 States and not returned to the public domain.

9 (4) "Legal Entity" means any chartered municipal
10 government, chartered district government, nonprofit
11 corporation, association, partnership, or individual
12 established or designated by a district legislature to
13 receive and hold title to real property.

14 PART III. Authority of District Legislatures. Each
15 district legislature is hereby empowered to enact laws to:

16 (1) create or designate a legal entity which
17 shall have the following powers and duties:

18 (a) to receive and hold title to public lands
19 in trust for the people of the district.,

20 (b) to administer, manage, and regulate the
21 use of lands and income arising therefrom in trust for the
22 people of the district,

23 (c) to sell, lease, exchange, use, dedicate
24 for public purposes, or make other disposition of such
25 public lands pursuant to the laws of the district in which

1 the land is located;

2 (d) to enter into contracts, sue or be sued,
3 and have such other powers and duties as may be necessary or
4 appropriate to further the purposes of this Order, and

5 (e) to make formal agreements upon mutually
6 satisfactory terms to meet the land requirements of the
7 United States as designated under the terms of a future status
8 agreement.

9 (2) establish an adjudicatory body to resolve
10 claims disputes as to titles or rights in land transferred to
11 such legal entity; provided, however, that no such body shall
12 have the authority to redetermine any claim or dispute as to
13 right or title to land between parties or their successors or
14 assigns where such claim or dispute has been finally determined
15 or is in the process of being finally determined either by a
16 Land Title Officer, by a Land Commission or a court of
17 competent jurisdiction and all final determinations arising
18 therefrom shall be res judicata; and provided further, that a
19 certified copy of all determinations of such adjudicatory bodies
20 as to title of lands within a district shall be recorded with
21 the District Registrar and with the Clerk of Courts;

22 (3) establish procedural rules and regulations for
23 such adjudicatory body which may include use of local, traditic
24 rules not in conflict with applicable law; provided however,
25 that the requirements of due process shall be incorporated

1 therein which shall include the right to a trial de novo
2 upon appeal to the High Court by any party to a dispute
3 involving a claim or right to lands and who has been
4 aggrieved by the adjudication of the district adjudicatory
5 body;

6 (4) authorize a district legal entity to exercise
7 the power of eminent domain to take land for public purposes,
8 and enact laws and establish procedures therefor;

9 (5) establish a program for homesteading on the
10 land transferred to the legal entity created or designated
11 pursuant to this Order and authorize such legal entity
12 to administer such program.

13 PART IV. Authority of the High Commissioner. The High
14 Commissioner is authorized and directed to transfer and
15 convey, pursuant to the provisions of this Order, to a
16 district legal entity all right, title and interest of the
17 Government of the Trust Territory of the Pacific Islands in
18 public lands.

19 PART V. Reservations. Notwithstanding the provisions
20 of PART IV of this Order, the High Commissioner shall not
21 convey to a district legal entity any right, title or interest
22 to public lands in the following categories:

23 (1) Public lands actively used by the central
24 government of the Trust Territory of the Pacific Islands or
25 by agencies, instrumentalities, or political subdivisions

1 thereof as of the effective date of this act; provided,
2 that such public lands in a district shall be transferred
3 to the district's legal entity upon a determination by the
4 High Commissioner that such lands are no longer needed for
5 use by the central Government;

6 (2) Public lands specifically determined by the
7 High Commissioner to be needed for capital improvement projects
8 extending five years from the effective date hereof; provided,
9 that such public lands in a district shall be transferred to
10 the respective district's legal entity upon determination by the
11 High Commissioner the lands are no longer needed by the
12 central Government;

13 (3) Public lands as to which there are valid
14 homestead entry permits, or certificates evidencing compliance
15 with such permits, and as to which deeds have not been issued,
16 as of the effective date hereof.

17 PART VI. Limitations. Notwithstanding the provisions
18 of PART IV of this act, the High Commissioner shall not convey
19 any right, title or interest in public land to any district
20 legal entity until the district legislature shall enact laws
21 satisfactory to the High Commissioner, providing for:

22 (1) reservation of the paramount power of eminent
23 domain in the central government of the Trust Territory of
24 the Pacific Islands to take lands for public purposes
25 pursuant to applicable law,

1 (2) reservation of the right of the central
2 government of the Trust Territory of the Pacific Islands
3 to regulate all activities affecting conservation,
4 navigation, or commerce in and to tidelands, filled lands,
5 submerged lands and lagoons;

6 (3) compliance with all provisions of existing
7 leases and land use agreements previously entered into by
8 the central or district Government of the Trust Territory
9 of the Pacific Islands, their agencies, instrumentalities, or
10 political subdivisions;

11 (4) continued possession of public land occupied
12 at the effective date of this act, with the concurrence of
13 the Government of the Trust Territory of the Pacific Islands,
14 by tenants at will and tenants by sufferance for a reasonable
15 period of additional years to be determined by the High
16 Commissioner;

17 (5) receipt of all revenues derived from public
18 lands transferred under this Order by a district legal entity
19 upon the transfer and conveyance of title to such lands to
20 that district entity which revenues shall be used and
21 disposed of pursuant to district law for public purposes;

22 (6) all transfers and conveyances to be made
23 subject to all valid and existing claims relating to such
24 land;

25 (7) holding the United States Government and the

1 central Government of the Trust Territory of the Pacific
2 Islands and their agencies or political subdivisions
3 harmless from any and all claims arising after the conveyance
4 of public land other than those resulting directly from the
5 actions of the United States Government, the Government of
6 the Trust Territory of the Pacific Islands or their duly
7 authorized agents.

8 PART VII. Time of Transfer and Conveyances. Conveyance
9 of rights, titles or interests to public lands under this act
10 to any particular district legal entity may be made at any
11 time after a district legislature has complied with all the
12 applicable provisions of this act, provided, however, that
13 such conveyance shall be made without unreasonable delay.

14 PART VIII. Amendments to Trust Territory Code.

15 (1) Section 2, of Title 10, of the Trust
16 Territory Code, is amended to read as follows:

17 "Section 2. Power denied private corporations.
18 No private corporation except as may be authorized by a
19 district legislature pursuant to the provisions of this Order
20 shall have the right of eminent domain in the Trust
21 Territory."

22 (2) Section 3, of Title 10, of the Trust Territory
23 Code, is amended to read as follows:

24 "Section 3. Definitions. As used in this
25 Chapter, the following terms shall have the meanings set

1 forth below:

2 (1) (") Eminent Domain (").

3 (a) "Eminent domain" is the right of the
4 central government or a district legal entity as may be
5 provided for by district law in accordance with this Order
6 to condemn private property for public use and to appropri-
7 ate the ownership and possession of such property for such
8 public use upon paying the owner a just compensation to be
9 ascertained according to the law.

10 (2) "Public use." "Public use" shall be construed
11 to cover any use determined by the High Commissioner to be
12 a public use.

13 (3) Section 112 of Title 67 of the Trust Territory
14 Code is hereby amended to read as follows:

15 "Section 112. Conduct of hearings. In
16 conducting hearings, each Land Commission and each land
17 registration team shall be guided by, but need not conform to
18 the Trust Territory Rules of Civil Procedures and the Rules
19 of Evidence. Each Commission and each registration team
20 is authorized to consider such evidence as will be helpful
21 is reaching a just decision. Neither a Commission nor a land
22 registration team, however, shall endeavor to redetermine
23 any matter already decided between the same parties or
24 those under whom the present parties claim, by a Court,
25 Land Title Officer's Determination of Ownership or a

427743

1 determination of a Land Commission. All Commissions and
2 land registration teams shall accept such prior determination
3 as binding on such parties without further evidence than
4 the judgment or determination of ownership. All hearings
5 shall be public and every person claiming an interest in
6 land under consideration shall be given an opportunity to
7 be heard. Hearings must be held in the municipality in
8 which the land involved lies and when practicable shall be
9 held in the village in which or near which the land lies.
10 All parties, including any representative (appointed under
11 Section 113 of this Chapter or by a court or other proper
12 authority) of a minor or incompetent, may be represented
13 and assisted by counsel."

14 PART IX. Citizenship of district entity. A district
15 entity shall be deemed to be a citizen of the Trust Territory
16 for the purposes of Section 11101 of Title 57 of the Trust
17 Territory Code.

18 PART X. Powers and duties of Chief of Lands and
19 Surveys. The statutory powers and duties of the Chief and
20 Division of Lands and Surveys shall not extend to public
21 lands transferred to district legal entities pursuant to
22 this Order.

23 PART XI. Effective date. This Order shall take
24 effect upon the date of its approval by the Secretary of the
25 Interior.

427744

PROPOSED SECRETARIAL ORDER TO EFFECT THE UNITED STATES POLICY OF
TRANSFERRING TRUST TERRITORY PUBLIC LANDS TO DISTRICT CONTROL

WHEREAS, the United States Government as administering authority for the Trust Territory of the Pacific Islands has always considered public lands in the Trust Territory to be the property of the peoples of the Trust Territory, and

WHEREAS, the United States responded to a formal request by the Joint Committee on Future Status of the Congress of Micronesia for the early transfer of public lands in each district to the control and management of the peoples of each of the six administrative districts by issuing a formal policy statement on November 4, 1973, consistent with the position of the Joint Committee on Future Status; and

WHEREAS, the Congress of Micronesia was invited to participate in the transfer by enacting enabling legislation to effect this policy, but was unable to enact legally enforceable guidelines to fully implement this policy,

NOW THEREFORE, the following basic Order respecting the Government of the Trust Territory of the Pacific Islands is issued:

PART I. Purpose.

The purpose of this Order is to authorize and make provision for the transfer, ownership, and management of certain of the public lands within each administrative district to the peoples of each respective administrative district and to authorize each of the six district legislatures to make provision for the exercise of the power of eminent domain, creation of legal entities to hold title to such lands and to manage and control the same, and for homesteading programs pursuant to the provisions

427745

of the United States Policy Statement of November 4, 1973, notwithstanding any provisions or inconsistencies in the Trust Territory Code.

PART II. LEGISLATIVE AUTHORITY.

Any of the six district legislatures within the Trust Territory is granted legislative jurisdiction over all necessary subjects of legislation to effect implementation of the United States Policy Statement of November 4, 1973, notwithstanding any prohibitions or inconsistencies in the Trust Territory Code, including, but not limited to creation of legal entities to own, manage, control and dispose of such lands, provision for the exercise of the power of eminent domain by such entities, provision for homesteading programs, and provision for land title adjudicatory bodies.

PART III. Authorization for Transfer of Title and the Management Function.

The High Commissioner of the Trust Territory of the Pacific Islands is hereby authorized and directed to effect the transfer of such public lands in each administrative district of the Trust Territory in accordance with the policies and provisions of the United States Public Land Transfer Policy Statement of November 4, 1973, upon formal request from a district and upon compliance with the provisions thereof by legislative enactment, notwithstanding prohibitions and inconsistencies in the Trust Territory Code. Lands subject to existing United States Military Use and Occupancy Agreements are not considered to be public lands for purposes of this Order.

(ii) Recommendation: In line 6 of the definition of eminent domain delete "private".

Reason: Those public lands transferred to district legal entities probably will not become "private" property. This recommendation will enable the central government at some future time to exercise the power of eminent domain over property held by a district legal entity.

RW Fruchterman
for

RICHARD L. FRUCHTERMAN, Jr.
Captain, JAGC, U.S. Navy
Deputy Assistant Judge Advocate
General •
(International Law)