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June 18, 1974

MEMORANDUM FOR HPW, PJM, AND MSH

RE: Marianas Public Land Corporation
Legislation Pending in the Congress of Micronesia

After reading HPW's memorandum of June 12, 1974, I reviewed Senate Bill No. 296, S.D. 1, which reflects the amendments to the Administration Bill recommended by the Senate Standing Committee and discussed in Standing Committee Report No. 221. As we discussed, the purpose of this review was to determine whether or not any of the amendments would interfere with the activities in which the Marianas Public Land Corporation proposes to engage. Although most of the amendments recommended by the Standing Committee would not interfere with the operations of the Marianas Public Land Corporation[1/] or the Marianas Status Negotiations, two groups of amendments appear to be totally unacceptable and another amendment would require

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1/ Certain amendments contain provisions that were either included in the draft legislation introduced by Senator Pangelianan or had been eliminated from that draft as a result of the negative reaction to such provisions by representatives of the Interior Department during our January conference on the proposed legislation. E.g., setting a time certain after qualification of a district legal entity for conveyance; requiring the High Commissioner to compile and publish information about the lands being transferred subject to limitations of the lands being reserved; and qualifying the entity as a citizen of the Trust Territory.

revision if the Marianas Public Land Corporation hopes to commence activities as early as possible. The unacceptable theories embodied in the amendment are

> (1) The prohibition on negotiations with the United States prior to ratification of a status agreement by the Congress and people of Micronesia and the related requirement that the Congress of Micronesia specifically approve any sale or disposition of lands to the United States.
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> (2) The change in emphasis of the purpose of the legislation from a transfer of lands in trust for the people of a district to a return of lands to be transferred to their "rightful owners."

The first theory is reflected in the amendments to Subsections (c) and (e) of Section 4(1).[1/] Section 4(1)(e) can be construed as a denial of the power to conduct such negotiations

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1/ "(c) to sell, lease, exchange, use, dedicate for public purposes, or make other disposition of such public lands pursuant to the laws of the district in which the land is located, ;PROVIDED, HOWEVER, that the laws of the Trust Territory regarding ownership of land shall apply in connection with any disposition of lands under this paragraph, and PROVIDED FURTHER, that no lands may be sold, leased, exchanged, or in any other way disposed of to the United States or any agency or political subdivision thereof except upon authority specifically granted by resolution of the Congress of Micronesia.

". . .

"(e) to negotiate in good faith to meet the land requirements of the United States as designated under the terms of an agreement [sic] the Congress of Micronesia and the United States which has been ratified by the people of Micronesia;"

prior to the ratification of a single status agreement governing all of Micronesia. The amendments set forth in Section 4(1)(c) would require the Congress's approval of at least this term of any status agreement with the Marianas. I realize from reading HPW's memorandum that Mr. Berg does not share my concern about these amendments to Section 4(1). However, before we determine not to advise our client to resist enactment of the Bill with such amendments, we should assure ourselves that the Joint Status Commission will not be able to resort to the High Court to attempt to restrain negotiations.

The second theory is embodied in the restatement of the purpose clause in Section 2 of the Bill[1/] and in the text of Section 4(1).[2/] The Standing Committee Report makes it clear that "rightful owners" refers to individual Micronesians with claims of ownership in the public lands:

> "Paragraph (c) of the same subsection grants the district entities the power to alienate

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1/ "Section 2. Purpose. The purpose of this act is to provide for the return of public lands to the people of Micronesia, who are the traditional and rightful owners thereof;"

2/ "Section 4. Authority of District Legislatures. Each district legislature is hereby empowered to enact laws to: (1) create or designate a legal entity or entities which shall have as its primary purpose to which all other powers and duties are subordinate the return of title to public lands transferred to it under the authority of this act to the rightful owners thereof, and to that end shall have the following powers and duties:

> land. It is our intention that these lands should be returned to the rightful owners, which is the primary obligation of the district entity. Upon a determination that there is no rightful private owner, however, there is no objection to the alienation of land if the district entity so chooses; we read into this paragraph, however, the requirements of due process and equal protection of the laws so that the land may not be disposed of except in accord with procedures granting all persons eligible to own or lease land the opportunity to participate in offers therefor on an equal footing with all others similarly situated. We intend that the law require no less." 1/

These amendments would create two problems for the Marianas Public Land Corporation:

(1) The Corporation will have to quiet title prior to entering into any transaction in which an interest in public lands would be alienated; and

(2) The Corporation would have to offer all persons eligible to own or lease land a right of first refusal in connection with any proposed transaction.

Both of these requirements would increase the expenses of the Corporation's operations and the second requirement could destroy potentially advantageous business deals.

1/ Standing Committee Report No. 221 at 3.

The phrase "return of public lands to the people of Micronesia, who are the traditional and rightful owners thereof" raises questions which I had not considered before. Although I assume our client recognizes the possibility that a Micronesian who is not a resident of the Mariana Islands, could have a valid claim to title in lands presently designated as "public lands" or "alien property," I doubt if our client would be satisfied with a system that would permit Micronesians who are not residents of the Mariana Islands to bid on a competitive basis against residents seeking to purchase lands from the Corporation. The amended Bill, when read in the light of the comments in the Standing Committee Report, raises the latter possibility.

Finally, the Marianas Public Land Corporation's operations could not commence, if the amended Bill were enacted in its present form, until the district legislature had enacted laws regulating activities affecting conservation, navigation, or commerce in and to tide lands, filled lands, submerged lands and lagoons (Section 7(l)). We should advise our client to offer a technical amendment restoring the words "reservation of the right" and substituting for the phrase "regulation of" the words "to regulate."

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