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MEMORANDUM FOR THE MARIANA ISLANDS
DISTRICT LEGISLATURE

*Subject: Summary of the Proposal to Organize a Non-profit Corporation
to Receive the Public Lands of the Mariana Islands*

At the request of the Marianas Political Status Commission, we have undertaken the necessary legal analysis to determine how the people of the Mariana Islands District might most appropriately secure the return to them of the public lands in the District pursuant to the commitment set forth by the United States in its Public Land Policy Statement of November 2, 1973. After review of our study and recommendations, the Commission has recommended that a non-profit membership corporation, broadly representative of the Marianas people, should be organized and designated as the legal entity to receive and administer the public lands of the Mariana Islands in trust for the people. The purpose of this memorandum is to summarize (1) the reasons for the recommendation of a non-profit membership corporation; and (2) the steps required to organize such a corporation.

I. RECOMMENDATION OF A NON-PROFIT MEMBERSHIP CORPORATION

In order to accomplish the transfer of public lands contemplated by the United States Policy Statement dated November 2, 1973, an individual or entity must be designated as the titleholder to the public lands that will be returned. The reasons for recommending that a non-profit membership

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corporation be established and designated for this purpose are explained in this part of the memorandum.

The entity to be designated as titleholder to the public lands must meet four important criteria. First, it must be broadly representative of the people of the Marianas and must take into account the interests of the municipalities. Second, the entity must be structured so as to hold and administer the lands in trust for the people of the Marianas, and not for its own benefit. Third, the entity must be so structured that it can utilize the best available management in order to maximize the benefits which will flow to the people of the Marianas from the return of the public land. Fourth, the entity must not be subject to control or interference by the Administering Authority during the duration of the Trusteeship Agreement.

Various alternative titleholders are available; e.g., the Mariana Islands District Legislature, a business corporation, a public corporation, a non-profit membership corporation, a common law trust, an express trust, or an association.

While it would be possible to designate the District Legislature as the titleholder to receive the public lands, the Commission does not believe that the District Legislature is the entity that most clearly would satisfy the criteria set forth above, among other reasons because its actions are subject to veto by the administrators of the Trust Territory. Indeed, until a constitution is approved by the people of the Mariana Islands

providing for a government of, by and for the people, it seems inappropriate to transfer the public lands of the people to any existing governmental entity. Consequently, the Commission concluded that a special legal entity designed exclusively to receive and administer the public lands in trust for the people should be created.

We believe that of all the types of legal entities which might be created for this purpose, the non-profit membership corporation is the most suitable. The corporate form assures certain advantages not embodied by a trust, common law or express, or by an association of individuals. The law governing corporations is more certain of application than that which has been developed for trusts and associations. Neither trusts nor associations possess those essential characteristics of the corporation that provide for continuity of interest and changes in management. The corporate form provides advantages in allowing such fundamental decisions as choice of management and determination of basic operating policy to be made in an orderly, flexible, established manner by a large group of individuals who participate in decision making. Moreover, the limited liability of the corporate form permits qualified individuals to agree to serve as managers of a corporation without thereby exposing themselves to the risk of potentially serious personal liability in connection with corporate actions.

The Commission has also considered whether or not the corporation should be a public corporation, a business corporation

or a non-profit membership corporation. A public corporation is organized under governmental authority, operates under comprehensive governmental regulation and fulfills a public function that could be performed directly by government. The continued existence of a public corporation is dependent upon the will of the governmental body that created it. No particular advantages would be derived from a decision to create a public corporation ultimately controlled by the United States as the vehicle for land management and development. Until such time as the executive of the Mariana Islands is elected in a representative manner pursuant to a constitution promulgated by the people, it would seem unwise to administer and develop the lands through a public corporation.

Although the business and activities to be carried out by the corporation could be conducted by an ordinary stock corporation, we do not recommend that the administration and management of the public lands and revenues derived therefrom be delegated to an ordinary business corporation. The business corporation's key characteristic is private ownership and private profit. Although stock in such a business corporation could be issued to all Marianans, sale or other transfer of the stock would have to be prohibited -- at least for many years -- in order to prevent outside speculators from gaining control of the public lands. In any case, moreover, such a decision would result in the profits of the corporation accruing exclusively to the present generation of citizens, rather than preserving the lands and revenues generated by the lands for all citizens, now and in the future.

We have recommended that a non-profit corporation be selected because we have concluded that a non-profit corporation is the legal entity that comes the closest to meeting the four criteria set forth above. Non-profit corporations have members rather than stockholders, and the members do not own the assets of the corporation but rather act to authorize transactions consistent with the corporate purposes. We are further recommending that the membership of the corporation be limited to the Mayors of Saipan, Tinian and Rota and persons appointed by the Mariana Islands District Legislature and the municipal councils of Saipan, Tinian and Rota, including members of these legislative bodies. This will assure representation of the people of the Marianas in the management of the affairs of the corporation.

In the United States non-profit membership corporations have evolved as a major vehicle through which concerned citizens can band together in order to work for social, economic, philanthropic and causes designed to benefit the common good of all citizens. Non-profit membership corporations are often used in the United States to protect the public's interest in land, in the "new towns" and in "homeowners' associations" controlling parks, recreational and other such facilities within a neighborhood.

II. STEPS REQUIRED TO ORGANIZE THE CORPORATION

We recommend that a non-profit membership corporation be organized under the provisions of Title 37 of the Trust Territory Code as a corporation of the Trust Territory of the Pacific Islands. When separate administration is ordered, the corporation would, by operation of such order, become a corporation of the Mariana Islands.

Section 3 of Title 37 governs the organization of the corporation. It requires that two or more individuals be designated as incorporators and that incorporators file on behalf of the corporation an application requesting the grant of a charter, pursuant to Section 1 of Title 37, from the High Commissioner. The application would consist of the proposed Articles of Incorporation and proposed By-laws.

Corporate existence would commence on the date the High Commissioner granted the Charter of Incorporation. Thereafter the proposed Articles of Incorporation require the incorporators to call the first meeting of members. At that meeting, the members are required to take all actions necessary to complete the organization of the corporation. The members would adopt the By-laws, elect the first Board of Directors, and elect, or delegate to the Board of Directors the right to elect officers. In addition, the members would be required by Article VIII of the proposed Articles to adopt the first guidelines that will govern all actions by the agents of the corporation in connection with the development of the public lands. ^{*/} At the first meeting, the members would also receive reports and recommendations by economic and other consultants with respect to the initial activities and funding of the corporation.

^{*/} Incorporators traditionally assist at the first meeting by recommending by-laws and candidates for directors and officers; in this instance it would also be necessary for the incorporators to recommend adoption of such guidelines.

In order to begin the process of securing the return of public lands in the Mariana Islands District, it is necessary for the District Legislature to pass an appropriate law or resolution. The Commission has reviewed draft legislation on this subject for consideration by the District Legislature. This legislation (1) responds to the United States Policy Statement dated November 2, 1973, by requesting the transfer of the public lands from the Trust Territory of the Pacific Islands to the people of the Mariana Islands; and (2) designates a non-profit membership corporation to be named the Marianas Public Land Corporation as the legal entity to receive, hold and administer the public lands in trust for the people; and (3) authorizes certain designated persons to act as incorporators of the Marianas Public Land Corporation. After the District Legislature enacts an appropriate law or resolution, the incorporators can proceed to organize the corporation through the preparation and filing of the required Articles and By-laws, to have the first meeting of the members and elect the Board of Directors, to enter into negotiations with the Trust Territory Government for the return of the public lands, to secure funding for its initial operations, to hire the necessary staff, and to begin to plan its land development programs.

Enactment of appropriate legislation during the current session of the District Legislature does not require final approval by the Legislature of the detailed provisions of the draft Articles of Incorporation. These draft Articles have been prepared by counsel in order to provide the members of the Marianas Political Status Commission

and the Legislature with as specific indication as possible of the proposed non-profit membership corporation. These draft Articles reflect the views of the Commission with respect to all important policy questions, e. g. the identity of the members of the corporation, the degree of protection to be afforded to the three separate municipalities, the powers of the corporation, the distribution of the corporation's net income for the benefit of the people, and the desirability of strong provisions defining certain prohibited transactions and preventing any violation of the duty of undivided loyalty to the corporation on the part of each member, officer, or director.

The responsibility for completing the Articles of Incorporation and By-laws (now being prepared by counsel in draft form) rests with the incorporators to be designated by the District Legislature. It will be the assignment of these incorporators (and their counsel) to obtain the views of all interested parties, reflect those views to the fullest extent possible, and to assure that the Articles are legally sufficient in all respects before filing them with the Registrar of Corporations. This process will undoubtedly take several weeks, although the Commission hopes that the final Articles and By-laws can be filed no later than October 15, 1974. If this schedule can be met and the charter is granted promptly by the High Commissioner, it might be possible to have the organizational meeting of members held before December 31, 1974. After this organizational meeting and the election of the Board of Directors, the corporation

would be prepared to enter into initial discussions with the Trust Territory Government regarding the return of public lands. A full report regarding the organization of the corporation and its initial activities would be made to the District Legislature at its next regularly scheduled session.

August 17, 1974

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Political Status Commission