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August 23, 1974

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Mr. James M. Wilson
U. S. Deputy Representative
Office of Micronesian Status Negotiations
Room #3358
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Jim:

Enclosed for your information are the materials submitted recently to the Marianas District Legislature on the subjects of separate administration and the return of public lands. I would appreciate receiving any comments which your office or the Department may have on these proposals as soon as possible.

Sincerely,

Howard P. Willens

MARIANAS POLITICAL STATUS COMMISSION P. O. Box 825 Saipan, Mariana Islands 96950

August 14, 1974

The Honorable Vicente N. Santos President, Fourth Marianas District Legislature Fourth Regular Session Saipan, Mariana Islands 96950

Dear Mr. President:

As indicated in the recent report of the Marianas Political Status Commission to the District Legislature, the subject of separate administration for the Mariana Islands District was discussed preliminarily during the Fourth Session of Status Negotiations with the United States Delegation.

Since the conclusion of the Fourth Session of Negotiations, the Commission has given further thought to this very important subject. Enclosed for your consideration is a draft resolution requesting separate administration for the Mariana Islands District, apart from the other districts, as soon as possible after the future political status for the Mariana Islands has been approved by the people. The Commission recommends that the Marianas District Legislature adopt this, or a comparable resolution, on the subject of separate administration during the current session of the Legislature.

The members of the Commission are available at your convenience to discuss this proposed resolution with the members of the District Legislature. Thank you for your consideration of this recommendation.

Very truly yours

Edward DLG. Pangelinan, Chairman MARIANAS POLITICAL STATUS COMMISSION

Enclosure

cc: Members of the District Legislature

FOURTH MARIANA ISLANDS DISTRICT LEGISLATURE

FOURTH REGULAR SESSION

	RESOLUTION	NO.	
INTRODUCED	BY:		

A RESOLUTION REQUESTING THAT THE MARIANA ISLANDS DISTRICT BE ADMINISTERED SEPARATELY FROM THE OTHER DISTRICTS OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS

WHEREAS, the Charter of the United Nations and the Trusteeship Agreement between the United Nations and the United States of America require that the inhabitants of the Trust Territory be promoted toward self-government or independence as may be appropriate to the particular circumstances; and

WHEREAS, the people of the Mariana Islands

District have for many years expressed their desire

for a close and permanent political relationship with

the United States; and

WHEREAS, the Reports received by the Mariana
Islands District Legislature from the Marianas Political
Status Commission show that the Commission and the United
States Delegation are close to completing their work
on an Agreement which would establish, upon termination
of the Trusteeship, a self-governing Commonwealth of
the Northern Mariana Islands in political union with
the United States of America; and

WHEREAS, the Mariana Islands District Legislature believes that if the issues before the Marianas Political Status Commission and the United States Delegation are satisfactorily resolved, the Agreement will be approved overwhelmingly by the Mariana Islands District Legislature and the people of the Mariana Islands District; and

WHEREAS, approval of the Agreement will be an exercise of the inalienable and sovereign right of self-determination by the people of the Mariana Islands District conclusively demonstrating their desire for a close and permanent political relationship with the United States; and

WHEREAS, the future political status desired by the people of the Mariana Islands District is far different from that which has been chosen by the people of the other districts of the Trust Territory as expressed by their representatives in the Congress of Micronesia; and

WHEREAS, it has been repeatedly recognized within the Mariana Islands District, in the other districts of the Trust Territory, and within the United Nations that the people of the Mariana Islands District desire a political status which is far different from that desired by the people of the other districts of the Trust Territory; and

WHEREAS, in order to make the transition to their respective new political relationships and responsi-

bilities as successful as possible for both the Mariana
Islands District and the other districts of the Trust
Territory it is necessary to prepare for the new political
relationships and responsibilities before they come
into effect; and

WHEREAS, the administration of the Mariana
Islands District separately from the other districts
of the Trust Territory, after approval of the Agreement,
is a necessary and appropriate step by which the Mariana
Islands District can prepare for and move toward its
future political status; and

WHEREAS, the Mariana Islands District has been previously administered separately from the other districts of the Trust Territory by the United States,

NOW, THEREFORE, BE IT RESOLVED that the Mariana Islands District Legislature requests, on behalf of the people of the Mariana Islands District, that the United States, as the Administering Authority of the Trust Territory of the Pacific Islands, take all steps which are necessary and appropriate for the administration of the Mariana Islands District separate and apart from the administration of the other districts of the Trust Territory including: establishing a separate executive authority for the Mariana Islands District; terminating all of the responsibility and authority of the Congress of Micronesia respecting the affairs of the Mariana

Islands District, and granting such responsibility and authority to the Mariana Islands District Legislature; terminating the participation of representatives of the Mariana Islands District in the Congress of Micronesia; providing for the retention of locally raised revenues by the Mariana Islands District and for their appropriation by the Mariana Islands District Legislature; assuring, in order to prepare for the full measure of local self-government which will exist under the future political status, maximum participation by the people of the Mariana Islands District in all aspects of local government; and taking all such other steps as may be proper to administer the Mariana Islands District separate from the other districts of the Trust Territory in accordance with the wishes of the people of this district; and

BE IT FURTHER RESOLVED, that the separate administration for the Mariana Islands District should occur as soon as may be possible after the approval of the Agreement concerning the future political status of the district by the people thereof; and

BE IT FURTHER RESOLVED, that the precise date on which separate administration will take effect and the terms of the separate administration for the Mariana Islands District should be determined in full consultation and cooperation with the Committee on Separate Administration created hereunder; and

BE IT FURTHER RESOLVED, that the President of the Mariana Islands District Legislature, in consultation with the Chairman of the Marianas Political Status Commission, should appoint a Committee on Separate Administration to consist of five persons, including the District Administrator of the Mariana Islands District (or his representative) and one representative from each of the three municipalities; and that the Committee on Separate Administration, on behalf of the Mariana Islands District Legislature, should take such steps as are necessary and appropriate to secure and prepare for the separate administration of the Mariana Islands District, including consultation and coordination with the Marianas Political Status Commission, making such studies as it may deem necessary or appropriate concerning the achievement of, and the efficient exercise of government responsibilities under, separate administration, and entering into such discussions as it may deem necessary or appropriate concerning the issue of separate administration with persons and organizations within the Trust Territory and the United States; and that the Committee on Separate Administration should submit reports to each regular session of the Mariana Islands District Legislature concerning its activities until separate administration has been achieved; and

BE IT FURTHER RESOLVED, that the President should certify to, and the Legislative Secretary attest

to, the adoption hereof and thereafter transmit copies of the same to the General Assembly of the United Nations, the Trusteeship Council of the United Nations, the Security Council of the United Nations, the President of the United States, the Secretary of the Department of State, the Secretary of the Department of Interior, members of the Senate Committee on Interior and Insular Affairs and members of the House Committee on Interior and Insular Affairs, the High Commissioner, the President of the Senate of the Congress of Micronesia, the Speaker of the House of the Congress of Micronesia, the Marianas delegation to the Congress of Micronesia, and the District Administrator for the Mariana Islands District.

PASSED	BY	THE	FOURTH	MARIANA	ISLANDS	DISTRICT	LEGISLATURE
ON THE		D.	AY OF		, 1974	•	

Vicente N. Santos, President MARIANAS DISTRICT LEGISLATURE

Legislative Secretary

MARIANAS POLITICAL STATUS COMMISSION P. O. Box 825 Saipan, Mariana Islands 96950

August 19, 1974

The Honorable Vincente N. Santos President, Fourth Marianas District Legislature Fourth Regular Session Saipan, Mariana Islands 96950

Dear Mr. President:

During the meeting on August 16, 1974, between the District Legislature and the Marianas Political Status Commission, we summarized the Commission's recommendation regarding the creation of a non-profit membership corporation to receive, hold and administer the public lands in the Mariana Islands District in trust for the Marianas people. As promised, I am submitting the following materials on this subject to the District Legislature for its consideration:

- (1) A memorandum prepared by the Commission's counsel summarizing the reasons underlying the Commission's recommendation and the steps required to organize such a non-profit membership corporation;
- (2) Draft legislation requesting the return of the public lands, designating a non-profit membership corporation named the Marianas Public Land Corporation to receive, hold and administer the public lands, and authorizing certain persons to act as incorporators to organize the Marianas Public Land Corporation in accord with the provisions of the proposed legislation; and
- (3) Eraft Articles of Incorporation for the proposed Marianas Public Land Corporation.

The Commission respectfully requests that the District Legislature consider this proposed legislation during its current session. We believe that favorable action by the District Legislature on this subject during the current session is both timely and appropriate. Regardless of the High Commissioner's action on the public land legislation enacted by the Congress of Micronesia during its recently concluded special session, it is necessary for the District Legislature on behalf of the people of the Mariana Islands District to request the return of public lands and to designate an appropriate legal entity to receive these lands in accord with the provisions of the Public Land Policy Statement issued by the United States on November 2, 1973. Favorable action by the District Legislature, therefore, is required to ensure the prompt return

of public lands to the people of the Marianas so that this most precious resource can be secured and managed for the benefit of the Marianas people.

The Marianas Political Status Commission recognizes that this subject is complicated as well as important. The members of the Commission and their counsel are available at your convenience to discuss the enclosed materials with the members of the District Legislature. Thank you for your consideration of this recommendation.

Very truly yours,

Edward DLG. Pangelinan, Chalkman MARIANAS POLITICAL STATUS COMMISSION

Enclosures (3)

cc: Members of the District Legislature

WILMER, CUTLER & PICKERING 1666 K STREET, N. W. WASHINGTON, D. C. 20006

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

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

Indeentity 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.

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

Howard P. Willens
Counsel to the Marianas
Political Status Commission

4TH MARIANA ISLANDS DISTRICT LEGISLATURE

FOURTH REGULAR SESSION

ACT NO.	
INTRODUCTED BY:	

AN ACT TO STATE THE POSITION OF THE PEOPLE OF THE MARIANA ISLANDS DISTRICT WITH RESPECT TO PUBLIC LANDS LOCATED THEREIN, AND TO DESIGNATE A LEGAL ENTITY TO RECEIVE, HOLD AND ADMINISTER THE PUBLIC LANDS IN TRUST FOR THE PEOPLE OF THE MARIANA ISLANDS DISTRICT

BE IT ENACTED BY THE 4TH MARIANA ISLANDS DISTRICT LEGISLATURE THAT:

The purposes of this Act are to state the Section 1. Purpose. position of the people of the Mariana Islands District regarding the return of all right, title and interest in and to public lands presently held by the Government of the Trust Territory of the Pacific Islands pursuant to the Public Land Policy Statement issued by the United States as the Administering Authority on November 2, 1973; to designate an appropriate legal entity to receive, hold and administer the public lands in trust for the people of the Mariana Islands District; and to authorize such other actions as may be necessary and appropriate to enable the legal entity to secure the return of public lands as soon as possible to the people of the Mariana Islands District.

- Section 2. <u>Designation of Legal Entity</u>. A non-profit membership corporation to be named the "Marianas Public Land Corporation" and to be incorporated in accord with the provisions of this Act is hereby designated within the meaning of the Public Land Policy Statement of November 2, 1973, to receive, hold and administer the public lands within the Mariana Islands District in trust for the people of the District.
- Section 3. Incorporation of Non-Profit Membership Corporation.

 The following persons are hereby authorized and requested to associate themselves as and act as incorporators for the purpose of forming a nonprofit membership corporation under and by virtue of the laws of the Trust Territory of the Pacific Islands:
 - Two persons appointed by the Marianas District Legislature:
 - Two persons appointed by the Marianas Political Status
 Commission;
 - Two persons appointed by the Municipal Council of Tinian:
 - Two persons appointed by the Municipal Council of Rota; and
 - Two persons appointed by the Municipal Council of Saipan.

The above designated incorporators are requested to and

should take all steps necessary and appropriate to form a non-profit membership corporation with the purposes and members specified in this Act.

- Purposes of Non-Profit Membership Corporation. The purposes Section 4. of the Marianas Public Land Corporation should include the following: to receive, hold and administer the public lands of the Mariana Islands District in trust for the people of this District; to administer, manage and regulate such land and to collect and apply the revenue income derived therefrom in trust for the people of the Mariana Islands District; and to do everything necessary, desirable, advisable and convenient for the furtherance and accomplishment of such purposes. purposes of the Marianas Public Land Corporation should not \dot{z} include the pecuniary gain or profit, director indirect, of its members, directors, officers or employees; and no member, director, officer or employee of the Marianas Public Land Corporation should receive any pecuriary gain or profit from the operations thereof other than reasonable compensation for services rendered or reimbursement of reasonable and proper expenses incurred in its services.
- Section 5. Members of Non-Profit Membership Corporation. In order to assure that the non-profit membership corporation is broadly representative of the people of the Mariana Islands

 District, the following individuals and no others

should be eligible to become members of the Marianas
Public Land Corporation:

- the Mayors of Saipan, Rota and Tinian;
- sixteen persons appointed by the Marianas District

 Legislature, no more than eight of whom shall be

 members of the Legislature and at least two of whom

 shall be representatives of the United Carolinian

 Association;
- fifteen persons appointed by the Municipal Council

 of Saipan, no more than seven of whom shall be members

 of the Council;
- nine persons appointed by the Municipal Council of
 Pota, no more than four of whom shall be members of
 the Council; and
- seven persons appointed by the Municipal Council of

 Tinian, no more than three of whom shall be members of

 the Council.
- Section 6. Implementation of Return of Public Lands. Upon enactment of this

 Act the President of the Marianas Islands District Legislature or his designee is hereby authorized to request the

 United States and the Government of the Trust Territory of

 the Pacific Islands to take all steps which are necessary

 and appropriate to effectuate the return of public lands

 within the Mariana Islands District as hereinbefore stated,

 including:

--causing necessary alterations to be made in the laws of the Trust Territory of the Pacific Islands to permit a legal entity designated by the District Legislature to hold title to land, to grant the District Legislature the power of eminent domain, to permit the District Legislature ture to authorize a legal entity to exercise the power of eminent domain in the public interest, to grant the District Legislature the power to establish adjudicatory bodies to resolve claims and disputes as to titles or rights in lands held by the legal entity, and rules and regulations therefor;

and location of each parcel of public land within the
Mariana Islands District, including information as to
whether the Government of the Trust Territory of the
Pacific Islands intends to refrain from returning its rights,
title and interest in such parcels in accordance with the
Public Land Policy Statement of November 2, 1973, and
information as to whether the land is subject of a lease
or land use agreement or of a tenancy at will or by sufferance;

--entering into discussions with the Marianas

Public Land Corporation after its incorporation leading to

the transfer of all right, title and interest of the Govern
ment of the Trust Territory of the Pacific Islands in and to

the public lands within the Mariana Islands District to the Marianas Public Land Corporation;

--completing the cadastral program on public lands as quickly as possible; and

--taking such other steps as may be proper to
effectuate the prompt return of public lands within this
District in accordance with the limitations and safeguards
set forth in the Public Land Policy Statement.

Report to the Legislature. At or before the next regularly-Section 7. scheduled session of the Mariana Islands District Legislature the President of the Mariana Islands District Legislature or his designee should cause to be transmitted to the Legislature copies of the Charter, Articles of Incorporation, By-Laws and all other documents relating to the method by which or the circumstances under which the Marianas Public Land Corporation may dispose of any of its right, title and interest in and to the public lands in the Mariana Islands District, together with any and all agreements made or proposed to be made by the Marianas Public Land Corporation with the Government of the Trust Territory of the Pacific Islands or with the United States with respect to the transfer of public lands in the Mariana Islands to the Marianas Public Land Corporation in trust for the people of the District.

Section 8. Effective Date. This Act shall take effect upon approval by the District Administrator, or upon its becoming law without such approval.

PASSED	BY	THE	4TH	MARIANA	ISLANDS	DISTRICT	LEGISLATURE	, 19	74.
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