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October 3, 1974

MEMORANDUM FOR MR. WILLENS AND MS. O'HARA

Subject: Marianas Public Land Corporation, Deceased

There is attached for your information a copy of the High Commissioner's message which accompanied his veto of the Congress of Micronesia Land Bill. I have requested that Adrian De Graffenried send me a copy of the bill itself.

I spoke to Stephen Sander yesterday concerning the Marianas District Legislature's Land Bill. He told me that he had not yet reviewed it. He has, however, cabled to the Marianas to determine whether or not the bill has been received by the District Administrator. He is to call me at the beginning of next week to discuss the bill.

Michael S. Helfer

DEPARTMENT OF STATE
TRANSMITTAL SLIP

CLASSIFICATION
UNCLASSIFIED

DATE September 25, 1974

TO OMSN

For the Attention of Capt. Scott

FROM Status LNO Saipan

TO THE FOREIGN SERVICE	TO THE DEPARTMENT
☐ For Transmittal to Addressee at the Discretion of Post ☐ Post Information Only ☐ Transmit to Foreign Office ☐ Submit Report ☐ Reply to the Individual	☐ Dept. Information Only ☐ CERP Publications ☐ Enclosure to Previous Airgram ☐ Reply to Department Request

☐ Transmit to: (U.S. Agency)
☐ Inform:

REFERENCE

ITEMS/REMARKS

Attached is the High Commissioner's letter of September 21 containing the veto message of the Land Return Bill.

IN REPLY REFER TO FILE NUMBER AND DRAFTING OFFICE

FILE NO.	SIGNATURE
	Alf E. Bergesen
CLASSIFICATION UNCLASSIFIED	OFFICE Status LNO

FORM 12-64 DS-4

11171

Identical letter to:
The Honorable Bethwel Henry
Speaker, House of Representatives

September 21, 1974

The Honorable Tosiwo Nakayama
President of the Senate
Congress of Micronesia
Saipan, Mariana Islands

Dear Mr. President:

Returned herewith is Senate Bill 296; S. D. 1, H. D. 4, C. D. 1, an Act "To allow the transfer and conveyance of certain public lands from the Government of the Trust Territory of the Pacific Islands to legal entities in each of the six districts; to empower the High Commissioner to transfer and convey such lands; to prescribe certain limitations, reservations, and conditions to such transfers and conveyances; and for other purposes.", as enacted by the Fifth Congress of Micronesia, First Special Session, 1974, and transmitted to and received by me on August 22, 1974.

My disapproval of the bill is shown thereon. This action is necessary due to the many substantive and technical deficiencies in the bill. A detailed analysis of these deficiencies is attached hereto for the information and guidance of the Members of Congress and the public generally.

Sincerely yours,

Edward E. Johnston
High Commissioner

cc: Clerk, Senate
Legislative Council

bc: Attorney General
D/Resources & Development
Status LNO
D/Public Affairs
Chief, Legislative Liaison Division
DOTA

11172

ANALYSIS OF SENATE BILL 296; S.D.1, H.D.4, C.D.1, AN ACT "TO ALLOW THE TRANSFER AND CONVEYANCE OF CERTAIN PUBLIC LANDS FROM THE GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS TO LEGAL ENTITIES IN EACH OF THE SIX DISTRICTS: TO EMPOWER THE HIGH COMMISSIONER TO TRANSFER AND CONVEY SUCH LANDS: TO PRESCRIBE CERTAIN LIMITATIONS, RESERVATIONS, AND CONDITIONS TO SUCH TRANSFERS AND CONVEYANCES: AND FOR OTHER PURPOSES."

In the United States policy statement on the return of public lands to the districts, there were several conditions placed on the return. These were:

1. Lands now being actively used by the Trust Territory and subordinate units thereof, would not have title transferred, but would be retained by the government as long as needed, and afterward, revert to the districts.

2. The central government would retain title to public lands which were specifically identified as needed for capital improvements in previously approved economic development plans for the next five years.

3. Eminent domain authority would be retained by the central government, but would be used only after direct negotiation with property titleholders, for land which would be needed, but not included within that covered by paragraphs 1 and 2 hereof. This authority could be shared with any district if its legislature so decides.

4. Homestead rights acquired by individuals would be respected. Persons who had acquired title would retain that title, and the government would retain title to public lands where applications for homestead had been approved, but full title had not been issued, the title to be turned over to the individual when prescribed by the law. If, however, the applications were not perfected within the time period prescribed by the current law, the land would revert to the district entity, to be disposed of as the district legislatures would prescribe. District legislatures could initiate homestead programs of their own in regard to public lands acquired by the district entity by the return of the public lands.

5. Land subject to leases and other interests acquired by public entities (including United States agencies), individuals, businesses or private concerns, prior to the effective date of transfer, would not be transferred to the district entity until

that entity had agreed to respect the terms of the arrangements previously entered into by the government. Lands occupied by tenants at will and by sufferance with the concurrence of the government, would not pass to the district entity until that entity had formally agreed to respect that arrangement for a reasonable term of years, which would be determined. In both the case of use agreements and tenants at will and sufferance, the district entity would be entitled to receive the rents previously paid the government.

6. Public lands to be used to meet the defense needs of the United States would not be transferred until the district entity had formally committed itself to accommodate those needs in good faith on terms to be mutually agreed with United States authorities.

7. The title to public lands transferred to the district entity would be subject to unresolved claims. Those claims could then be determined under procedures and means prescribed by the individual district legislatures including traditional means, subject to the claimants having right of access to the courts of the Trust Territory. Before title would pass, the titleholder would have to agree to hold the Trust Territory Government and the United States Government harmless from claims other than those resulting directly from the actions of either or their authorized agents.

8. The government of the Trust Territory would retain the right to control activities that affect the public interest within areas comprised of tidelands, filled lands, submerged lands and lagoons.

In addition to the above conditions, the administration draft of the proposed bill included one other significant condition. This was that all prior final adjudications of title to land would be held to be res judicata by the title determination agencies to be created by the district legislatures.

The act, as passed, meets the above-numbered conditions, as follows: No. 1 in Sections 6(1) and 6(2); No. 2 in Section 6(2); No. 4 in Sections 6(3) and 4(5); No. 5 in Sections 7(1), 7(2) and 7(3); and No. 7, in part, so far as transfer to the district entity subject to all existing claims is concerned, in Sections 7(4), 4(2) and 4(3).

The other conditions are not, perhaps with one exception, covered satisfactorily by the terms of the act. These are: First, No. 3, the requirement that the central government retain the power of eminent domain, is met only partially by the final version of the act, under the name of "acquiring

land for pu c purposes." It is circumscribed by the following limitations: (a) before exercise of the power, there must be a good faith negotiation with the land owner for purchase of the land; (b) that failing, there must be an attempt to use traditional and customary methods of obtaining land for public use prevailing in that district; (c) that failing, the central government must then ask the district legislature to exercise the power; and (d) if the district legislature refuses to use the power, or fails to act on the request for one year, the central government may then use such power to obtain land for public purposes.

Second, No. 6, the condition that public lands to be used to meet the defense needs of the United States would not be transferred until the district entity had agreed to accommodate those needs in good faith on terms to be mutually agreed upon with the United States, is not truly met. Land which is under existing lease or use agreements between the Trust Territory and the United States would remain available by Section 7 of the act. As to additional requirements, the district legislatures are empowered to establish by district law legal entities that would have the power to "negotiate in good faith to meet the land requirements of the United States." This, of course, would only be from the public lands to which the legal entity, if created, would hold title. Such lands would include the "Military Retention Lands", under the final version of the act. By Section 4 of the act, however, the legal entity could not accommodate the land needs of the United States except with the approval of the district legislature, expressed by a resolution, and with subsequent approval of the Congress of Micronesia. In essence, this could mean that if the United States wants or needs to acquire any land in addition to that which it presently has under a lease or use agreement, it may have little or no assurance that it will ever be able to obtain it, particularly in a timely manner, by negotiation. It is conceivable that the United States could obtain land through the Trust Territory Government by its "acquiring land for public purposes." However, the restrictive conditions on the proposed condemnation process have already been noted. Thus, it is extremely doubtful that this limited right to obtain lands needed by the United States would be sufficient to meet its requirements.

Third, the condition, No. 8 above, that the government of the Trust Territory would retain the right to control activities that affect the public interest within areas comprised of tidelands, filled lands, submerged lands and lagoons has been eliminated. This was originally put into the administration draft of the bill as:

"re[illegible]ation of the right of the central government [illegible] the Trust Territory of the Pacific Islan[illegible]o regulate all activities affecting conservat[illegible], navigation, or commerce in and to tidelan[illegible], filled lands, submerged lands and lagoons."

The congress completely deleted this language from the act, and added no other. However, it is felt that despite the deletion the central government still retains, under other pertinent portions of the Trust Territory Code, adequate authority to regulate conservation, navigation and commerce in marine areas. The inclusion or exclusion of the quoted language should have no effect on the ultimate authority of the central government to regulate those activities.

Fourth, the requirement, part of No. 7 that the legal entity be required to agree to hold the Trust Territory and the United States governments harmless from claims other than those resulting directly from the actions of either was not met. This language was completely deleted from the final version of the bill. To immediately require the transfer of title to unadjudicated lands and to hold the Administration responsible for any defect in their title is clearly not in the best interests of this Government.

Finally, the language of Section 4(2) and (3) and the amendment of Section 12, Title 67, Trust Territory Code, in the act as passed deprive final title adjudications of Land Title Officers or similar administrative process, prior to the establishment of the land commissions, of res judicata effect. This conflicts with the established policy of not reopening land determinations which are res adjudicata. On most of the heavily populated islands in the Trust Territory, land titles are based in large part on determinations made by Land Title Officers. At this late date to reopen claims put to rest long ago would not serve the people of the Trust Territory. It would only serve to reopen old wounds and rekindle the bitterness of the past.

The Committee on Judiciary and Governmental Relations in Standing Committee Report No. 316, dated August 7, 1974, Re: S.B. No. 296, S.D.1, H.D.1, H.D.2 charged that errors in title determinations were the rule, notice was practically nonexistent, etc. These charges cannot be accepted. The sheer number of determinations made is an overwhelming indication that the citizens of the Trust Territory were aware of the program and its consequences. Additionally, a good number of Land Title Officer's Determinations were appealed to the High Court indicating understanding of the appeal process.

The majori of the Determinations were upheld by the High Court, which indicates that proper decisions and procedures were followed in the administrative hearing process. The record clearly refutes the charges made by the Committee on this issue.

District Land Title Officer adjudications have been reopened and examined by the United States Court of Claims and by the Trial Division of the High Court of the Trust Territory. It would appear better for all concerned that any reopening be on an individual rather than on a blanket basis as District Land Commissions, or for that matter any tribunal, are not staffed to handle this type of proceeding.

There are other portions of the act which are undesirable. Among these, as examples, are:

1. The language of Section 12, which would require the Lands and Surveys Division to furnish technical assistance at the request of the district legal entity or entities. The Land and Surveys Division may not have the manpower or the budget to furnish such assistance.

2. The language of Section 8, which requires conveyance within 120 days after the district legislature has complied with the applicable provisions of the act. This is probably insufficient time within which to even prepare the necessary legal documents.

3. The language of Section 9, requiring that the High Commissioner compile and publish certain information within 90 days after the effective date of the act also probably allows an inadequate compliance period.