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LEGISLATION REQUIRED TO ESTABLISH A
LEGAL ENTITY TO RECEIVE PUBLIC LAND TITLES IN
THE MARIANA ISLANDS

I. Summary

The District Administrator was required to veto local legislation enacted by the Marianas District Legislature on the grounds it failed to meet the legal safeguards as set out in the U.S. public land transfer policy of November 1973, and as embodied in the TTPI proposed land transfer act. Public lands cannot be transferred to local control until a legal entity is established to meet these requisites; U.S. land requirements cannot be met until the legal entity formally commits future use of requested public lands.

II. Issues

A. What action should the MDL take to establish a public land entity?

B. What guidelines should be followed to assure that appropriate legislation can be enacted?

III. Background

A. U.S. military land needs in the Mariana Islands encompass several areas classified as "public lands". The U.S. public land policy statement of November 1973, envisioned transfer of these lands to local control at which time the local land holding entity would enter into land agreements to meet U.S. land requirements. Until public lands in the Marianas are transferred, the U.S. cannot obtain legally enforceable rights to the public lands required to meet the U.S. military land needs for the Mariana Islands (Tinian Island). It is envisioned that the public lands

would be transferred to a local entity with legal characteristics and that the legal entity would enter into land lease agreements with the U.S. Government to satisfy U.S. military land needs as endorsed and agreed to by the MPSC. As now envisioned, the land lease agreements would not be an integral part of the Commonwealth status agreement to avoid specific review by the MDL or U.S. Congress but would be subject to a separate approval by the Marianas District Legislature. The MDL would approve the status agreement together with a technical land agreement that would authorize the formal lease agreements. The technical agreement would be submitted to the U.S. Congress together with the status agreement for its approval and would constitute formal authorization to obtain the lands. Upon approval by the U.S. Congress, the U.S. Executive would undertake action to implement its military land agreements by obtaining funds for land acquisition and base construction by actual appropriation legislation from the U.S. Congress.

B. The original Marianas legislation to establish the local land holding entity contained the following defects:

- designated the DISTAD as trustee (the entity) responsible to the MD Legislature which conflicted with his function as a representative of the HICOM.
- empowered the trustee (DISTAD) to act to effect implementation of U.S. land policy statement in lieu of specific legislative action to meet the safeguards.
- empowered the trustee (DISTAD) to make formal land agreements for U.S. needs pursuant to status arrangements satis-

factory to the legislature which established a conflict of interest.

- required the trustee (DISTAD) to undertake land management activities but provided no budget support.

- preserved claims to land in a manner that "clouded" title to the lands.

- prohibits further alienation pending "claims disputes" resolution so as to reopen settled land disputes.

C. It has been envisioned that the Secretary of the Interior will issue a Secretarial Order to legally effect the November 1973, U.S. public land policy statement. The HICOM will be specifically empowered to implement the Secretarial Order. The Order may direct the HICOM to follow established policy by incorporating into the Order the essentials and procedures outlined in the Public Land Transfer Act as proposed by the Trust Territory Administration, with some slight modifications to incorporate some limited amendments proposed by the COM during their consideration of the bill. Upon satisfactory local action to establish the legal entities the HICOM would then transfer the public lands to that district.

D. To receive title to local public lands the Mariana Islands District Legislature should undertake the following action:

1. Create or designate a legal entity or entities (any chartered district or municipal government, non-profit corporation, association, partnership, or individual established or designated to receive and hold title to real property) which

shall have among its purposes the return of public lands transferred to it under the authority of the legislature to the rightful owners and shall have the following powers and authority:

a. to receive and hold title to public lands in trust for the people of the district;

b. to administer, manage, and regulate the use of lands and income arising therefrom in trust for the people of the district;

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;

d. to enter into contracts, sue or be sued, and have such other powers and duties as may be necessary or appropriate; and

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

2. Establish an adjudicatory body to resolve claims and disputes as to titles or rights in land transferred to such legal entity or entities; provided, however, that no such body shall have the authority to redetermine any claim or dispute as to right or title to land between parties or their successors or assigns where such claim or dispute has been finally determined or is in the process of being finally determined either by a Land Title Officer, a Land Commission or a court of competent jurisdiction, and all final determinations arising therefrom

shall be res judicata; and provided further, that a certified copy of all determinations of such adjudicatory bodies as to title of lands within a district shall be recorded with the District Registrar and with the Clerk of Courts.

3. Establish procedural rules and regulations for such adjudicatory body which may include use of local, traditional rules not in conflict with applicable law; provided however, that the requirements of due process shall be incorporated therein which shall include the right to a trial de novo upon appeal to the High Court by any party to a dispute involving a claim or right to lands and who has been aggrieved by the adjudication of the district adjudicatory body.

4. Authorize a district legal entity to exercise the power of eminent domain to take land for public purposes and enact laws and establish procedures therefor.

5. Establish a program for homesteading on the land transferred to the legal entity or entities created or designated pursuant to this act and authorize such legal entity or entities to administer such program.

E. It must be noted, however, that the High Commissioner shall not convey to a district legal entity or entities any right, title or interest to public lands in the following categories:

1. Public lands actively used by the central government of the Trust Territory of the Pacific Islands or by agencies or instrumentalities thereof as of the effective date of this act; provided, that such public lands in a district shall be transferred to the district's legal entity or entities upon the cess-

ation of active use of such public lands by the central government.

2. Public lands specifically determined by the High Commissioner with the concurrence of the district legislature to be needed for capital improvement projects extending five years from the effective date hereof; provided, that such public lands in a district shall be transferred to the respective district's legal entity or entities upon determination by the High Commissioner that the lands are no longer needed by the central government.

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

F. It must also be noted that the High Commissioner shall not convey any right, title or interest in public land to any district legal entity or entities until the district legislature shall enact laws satisfactory to the High Commissioner for:

1. reservation of the right of the central government of the Trust Territory of the Pacific Islands to regulate all activities affecting conservation, navigation, or commerce in and to tidelands, filled lands, submerged lands and lagoons.

2. Compliance with all provisions of existing leases and land use agreements previously entered into by the Government of the Trust Territory of the Pacific Islands, or its agencies, instrumentalities or political subdivisions.

3. Continued possession of public land occupied at the effective date of this act, with the concurrence of the Government of the Trust Territory of the Pacific Islands, by tenants of will and tenants by sufferance for a reasonable period of additional years to be determined by the High Commissioner.

4. Receipt of all revenues derived from public lands transferred under this act by a district legal entity or entities upon the transfer and conveyance of title to such lands to that district entity or entities which revenues shall be used and disposed of pursuant to district law for public purposes.

5. All transfers and conveyances to be made subject to all valid and existing claims relating to such land.

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