Q3

January 29, 1975

MEMORANDUM FOR MR. WILLENS

FOR: Marianas Political Status Commission
Proposed Draft Bill For District Legislature

During our conference this afternoon, it became clear that a memorandum summarizing the reasons we have prepared the draft bill for the Mariana Islands District Legislature might be of use to you in presenting the draft bill to the Political Status Commission.

We propose the approach embodied in the draft legislation for the following reasons:

(1) The veto by the District Administrator of the Act passed at the Special Session indicates clearly that the United States Government recognizes the weakness inherent in any system whereby the Trust Territory Government continues to have control over the entity that will be holding and administering the public lands to be returned. The 1974 Act was inadequate because it designated an official of the Trust Territory Government, namely the District Administrator, to act as the legal entity. Insofar as the Mariana Islands District Legislature is also subject to the veto power of the Trust Territory Government, we believe that the United States Government might be

troubled by an Act designating as the legal entity the District Legislature.

(2) Designation of the District Legislature as the legal entity could hamper the operations of the corporation. First, whenever the Administering Authority chose to disagree with a policy decision of the District Legislature the inherent veto authority could come into play in order to frustrate the intent of the people of the Northern Mariana Islands with respect to the development and administration of the public lands. Second, the corporation needs a broader membership so that its operations can profit from the wide range of skills of its members.

(3) The membership corporation, a quasi-public corporation, that we recommend insures full participation by the popularly representatives of the people of the Mariana Islands in the Corporation. In effect, popularly elected officials will control the membership of the corporation (51 out of 61). On any measure that requires approval by 75% of the members, the District Legislature itself would have veto power (17 out of 61).

(4) The members of the District Legislature should prefer the exploitation of the public lands through a body other than the District Legislature. From time to time, it seems likely that the entity which receives and administers

the lands will be forced to make controversial decisions. By the virtue of the fact that these decisions will be made by a corporation, members of the District Legislature should be more secure during election periods from popular attack for decisions respecting the land.

(5) Your negotiations with the United States Government have made it clear that the United States Government is not prepared to yield on any of the key points that are reflected in the limitations, reservations and definitions embodied in Secretarial Order No. 2969. Thus it is important that the Mariana Islands District Legislature pass an Act that meets all the technical and political requirements of that Secretarial Order. Our draft bill does so. The failure of the District Legislature to enact adequate legislation has delayed for seven months the return of the public lands. That has meant a loss of revenues in the range of $50,000 to $100,000, related to existing leases and royalty agreements on the lands to be returned. It would seem imprudent to delay the return further. The draft bill should not be read as a statement of the will of the people with respect to public lands. Should it become necessary or expedient the District Legislature could pass a resolution in which it expresses the view of the people that military retention lands should be returned, that the

return should not have been conditioned upon provisions that prevent the adjudication of certain existing disputes, etc.

Following is a brief summary of certain matters that we discussed this afternoon:

(1) The "Whereas" clauses have been drafted to make clear the intent of the people as expressed in the 1974 Act that they wish the return of all public lands. In addition they recognize the commitment in the draft Covenant to return all public lands no later than termination of the Trusteeship. Finally, they acknowledge the intent of the United States to release certain public lands. It should be noted that they do not approve the limitations on land release imposed by the United States.

(2) Section 1 has been drafted to make it clear that the only purpose of the Act is to take the steps required by the Administering Authority as a prerequisite to return of the lands that the Administering Authority is willing to release.

(3) Section 2 of the Act merely constitutes a recognition that the Secretary of the Interior has reserved the powers specified in Section 6(b)(c) of the Secretarial Order to the Central Government. It should be noted that the Secretarial Order has been expanded by the inclusion of the phrase "until separate administration."

(4) Section 3 and Alternate Section 3. Assuming that members of the District Legislature are convinced that a quasi-public membership corporation should be designated as the entity to receive lands from the High Commissioner, three courses would be open to the District Legislature. First, the District Legislature could follow the course of action recommended in August and organize a membership corporation under the law of the Trust Territory. In that event a new Section 3 should be drafted which designates a corporation and names its incorporators. Second, the course of action contemplated by Section 3 could be pursued. By the Act, the Legislature would create the corporation, specify its powers, incorporators and eligible members and the limits on its powers. Finally, the approach embodied in the alternative Section 3 could be followed. The effect of alternative Section 3 is to provide for the creation of the corporation upon the taking of certain acts by incorporators.

(5) Section 4. The draft Act requires the members to adopt the policy guidelines. The members of the District Legislature acting in concert have a veto power because the Articles require the approval by 75% of the members. The second sentence is necessary in order to satisfy the requirement of the Secretarial Order.

(6) Section 5. The provisions dealing with the revenues of the corporation have been drafted with full awareness of the language of Section 6(f) of the Secretarial Order and of Section 4 of the 1974 Act. As you observed, the District Legislature may well insist that the corporation be funded annually from the General Fund and that all revenues be paid over from time to time to the General Fund. My principal reason for rejecting this approach is based on the experience that I have had with corporations in a developmental stage which try to make accurate forecasts of income and expense of future periods. It would be unfortunate to set up a corporation that would be unable to enter into an attractive project because of an absence of funds and that would seem a likely possibility so long as the District Legislature is inadequately funded and meets only semi-annually. In addition, and more significantly, power over the expenses would essentially give the District Legislature the semi-annual opportunity of overriding corporate judgment. In making such decision, the District Legislature would be acting behind the mask of an appropriations measure while the corporation, by virtue of the Trust Policy Guidelines, would be required to act under public scrutiny of the specific terms of a particular proposal. If the District Legislature returns to a "General Fund"

approach, the draft Act should contain a sizable appropriation for the initial period of corporate activity and express recognition of the propriety of incurring expenses for legal and accounting services.

(7) Section 6. The 1974 Act contemplated the submission of an annual budget and report to the District Legislature. The draft Act substitutes an annual report to the people, a copy of which would be sent to the District Legislature.

(8) Section 7. This provision merely reserves the power to enact legislation in the future providing for eminent domain and designating the adjudicatory body to be used to settle claims. The proviso would enable the corporation to settle such claims in the High Court, or its successor, until such an adjudicatory body is established. The selection of the High Court should be precleared with the Trust Territory officials before the draft is submitted.

(9) Section 8 satisifies the requirement of Section 1 that a formal request for return be made.

EO'H