

April 4, 1975

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MEMORANDUM

Subject: Compliance of the Mariana Islands District Legislature Public Land Act with the Requirements of the Secretarial Order

This memorandum explains the manner in which the Mariana Islands District Legislature Public Land Act, Act No. 100-1975 (March 4, 1975) (the "Act") complies with the prerequisites to the return of public land imposed by the Order of the Secretary of Interior concerning the transfer of Trust Territory public lands to District control, Order No. 2969, 40 Fed. Register 811 (January 3, 1975) (the "Secretarial Order").

1. Formal Request. Taken together Section 1 and Section 4 of the Secretarial Order appear to require a formal request from the District Legislature that public lands in the District be conveyed to a legal entity established by the District Legislature for that purpose. Such a formal request is found in Section 8 of the Act.

2. Creation of a District Legal Entity. Section 6(a) of the Secretarial Order requires the District Legislature to enact laws satisfactory to the High Commissioner providing for a District legal entity with the powers, duties and characteristics set forth in the Secretarial Order. Section 3 of the Act establishes the Marianas Public Land Corporation, which is a District legal entity as defined in Section 2(d) and as further explained in Section 3(a) of the Secretarial Order.

3. Central Government Eminent Domain. Section 6(b) of the Secretarial Order requires the District Legislature to enact laws satisfactory to the High Commissioner providing for the reservation of the paramount authority of eminent domain in the central government of the Trust Territory. This requirement is met in Section 2 of the Act, under which the District Legislature "recognizes that the Secretarial Order reserves to the central government of the Trust Territory, until separate administration or termination of the Trusteeship, whichever shall sooner occur, (a) the paramount power of eminent domain to take lands for public purposes pursuant to law . . . ." The reference in this Section of the Act to separate administration of the Mariana Islands District is plainly intended to reflect the fact that upon separate administration what is now

the central government of the Trust Territory will not have eminent domain power with respect to the Marianas -- at that time, the entity representing the Administering Authority would have such power as will presumably be set forth in the document providing for separate administration. The Section fully complies with the requirement of Section 6(b) of the Secretarial Order by recognizing the authority of the central government for so long as that government has or requires such authority.

4. Reservation of Power over Navigation.

Section 6(c) of the Secretarial Order requires that the District Legislature enact laws satisfactory to the High Commissioner providing for the reservation of the right of the central government to regulate all activities affecting conservation, navigation or commerce in and to the navigable waters and tidelands, filled lands, submerged lands and lagoons. This requirement is met by Section 2 of the Act, which follows precisely the wording of the Secretarial Order in this regard.

5. Existing Leases.

Section 6(d) of the Secretarial Order requires the District Legislature to enact laws satisfactory to the High Commissioner providing for compliance with all provisions of existing leases and land use and occupancy agreements previously entered into by the central or district governments of the Trust Territory. This requirement is met by Section 3(g) of the Act which provides that the Corporation shall not have the power to fail to comply with, or to take actions inconsistent with, Section 6(d) of the Secretarial Order.

6. Other Use Rights.

Section 6(e) of the Secretarial Order requires the District Legislature to enact laws satisfactory to the High Commissioner providing for continued possession of certain public land actually occupied and used by tenants at will and tenants by sufferance, for a reasonable period of additional years to be agreed to by the legal entity and the High Commissioner. Section 3(g) of the Act meets this requirement by providing that the Corporation shall not have the power to fail to comply with, or to take actions inconsistent with, Section 6(e) of the Secretarial Order.

7. Disposition of Revenues.

Section 6(f) of the Secretarial Order requires the District Legislature to enact laws satisfactory to the High Commissioner providing for receipt, use and disposition of all revenues derived from public lands by the district entity for public purposes

pursuant to District law. This requirement is complied with by Sections 3(g) and 5 of the Act, dealing with the power of the Corporation and the disposition of revenues, respectively.

8. Transfer Subject to Claims. Section 6(g) of the Secretarial Order requires the District Legislature to enact laws satisfactory to the High Commissioner providing for all transfers and conveyances to be made subject to valid and existing claims relating to the land. This requirement is complied with by Section 3(b) of the Act, which states that the Corporation is being "created to receive . . . all right, title and interest in and to public lands to be returned pursuant to the Secretarial Order" (emphasis supplied). See also Section 8 of the Act. Under Section 4 of the Secretarial Order, the High Commissioner must return public land "subject to valid existing rights." Since the Act states that the very purpose of the Corporation is to receive those "lands to be returned pursuant to the Secretarial Order", the requirement of Section 6(g) of the Secretarial Order is met. Note too that Section 3(j) recognizes that there may be claims to and litigation pending relevant to the right, title and interest in such lands, and that the Trust Territory government will convey only such right, title and interest as it has. Since the Trust Territory cannot transfer greater title than it has to the Corporation, any further statements than those already in the Act would be entirely formal and meaningless.

9. Hold-Harmless. Section 6(h) of the Secretarial Order requires the District Legislature to enact laws satisfactory to the High Commissioner providing for holding the United States and the central Trust Territory government harmless for certain claims. This requirement is met by Section 3(j) of the Act, which authorizes the Corporation to agree to "hold-harmless" provisions required by the Secretarial Order. This Section of the Act fully protects the United States and the central Trust Territory government as required by the Secretarial Order because the land presumably will not be transferred until a satisfactory "hold-harmless" provision is agreed to by the Corporation, which has specifically been authorized to bind itself in this regard by the District Legislature.

For the reasons stated above, the Act meets the requirement of a formal request for the return of public land imposed by the Secretarial Order, and meets as well the requirement -- applied, as it must be, in a manner which is not arbitrary or capricious -- that the District Legislature enact

certain laws "satisfactory to the High Commissioner."<sup>\*/</sup>  
Accordingly, under Sections 4 and 7 of the Secretarial Order,  
the High Commissioner is required to convey the public lands  
to the Corporation "without unreasonable delay."

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\*/ The Secretarial Order does not require that the District Legislature establish adjudicatory bodies to resolve claims and disputes as to titles or rights in the land transfer to the legal entity. Section 3(b) of the Secretarial Order merely gives the District Legislature authority to establish such bodies. Section 7 of the Act specifically reserves the authority of the District Legislature to create such adjudicatory bodies. Moreover, that Section goes on to designate the interim adjudicatory body: "until the District Legislature shall establish or designate an adjudicatory body for the settlement of claims to title or rights in the trust lands, the Corporation is hereby empowered to settle title in any portion of the Trust Lands in proceedings in the High Court of the Trust Territory of the Pacific Islands."