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May 6, 1975

MEMORANDUM FOR THE MARIANAS LAND CORPORATION FILE

Subject: Meeting at the Department of Interior

Eleanor O'Hara and I met with Emmett Rice, Al Smith and Adrian deGraffenried in Rice's office on May 5. The following is a summary of the major issues discussed at that meeting.

1. Rice read to us a cable that had been sent to the Trust Territory by the Department of Interior. A copy is attached. The cable states the changes in the Articles of Incorporation Interior wants the incorporators of the Corporation to make. I told Rice that I anticipated no problems in complying with the points raised in the cable because they were all based on the secretarial order, with which we thought the legislation fully complied in any event. I told them we would have to review the matter in more detail, however, and consult with the client. I promised to send to Rice copies of the changes in the Articles of Incorporation after the client approved them.

2. Rice told us that at the Hawaii meeting in December Brewster Chapman had stated publicly (apparently in response to a question raised by representatives of the Marshalls) that roads, airports and ports could be returned to the Districts under the Secretarial Order, notwithstanding the fact that these properties appeared to be "actively used" by the Trust Territory. The public statement having been made Interior had decided to stick with it. However, two additional requirements will be imposed with respect to such property, though these are not in the Secretarial Order. First, the District will have to agree (or at least understand) that the Department of Public Works will no longer have financial responsibility for maintenance or improvement of these properties once title has passed. Such revenues as the properties may produce, of course, will go to the titleholder; but in general it seemed unlikely that these would match expenses. Second, at least with respect to airports and ports the Trust Territory will insist on a reversionary clause which will permit it to take over the property in the public interest if the District is not maintaining it adequately or running it properly.

3. We discussed the mechanics of the return of public land. Rice said that much of the land in the Marianas could be returned right now, but other land must be surveyed, and adjudications completed. He wanted us to agree that it was not necessary to return all the land at the same time. I told him that we had always anticipated that land would come back at different times but that we wanted it all back as quickly as possible. Rice thought that it might take another three to four years until all the land could be returned -- the problem is particularly acute in the center portion of Saipan because of the mix of public and private land. I said that I certainly could not approve such a delay but that nobody wanted to wait until all land was ready to be returned before having any of it returned.

4. Smith said that the Federal Surplus Property Act had recently been amended to apply to the Trust Territory and that this would complicate the return of military retention land. The United States interest in this land must now be offered to other agencies before the land can be returned. Smith emphasized that the land would be returned and that the Surplus Property Act was a formality which would delay the return by only "a matter of a few weeks or months." I told him that I was not at all certain, in view of the kind of interest that the United States had in this land, that there was anything to offer to other agencies; and that in no event did we think it appropriate for the return of military retention land to be delayed. Smith and Rice both assured us that the land would in fact be returned as quickly as possible.

5. Rice said that the United States was prepared to continue to fund the land management office through the TTPI government on a gradually decreasing basis, to assist the land entity. Funding will continue for a time even beyond separate administration. The specifics are yet to be worked out. Rice also said that the land commissions can and will continue and that the relationship between such commissions and adjudicatory bodies, if any, established by the local government will have to be worked out. The land commissions will continue in effect so long as the available money (\$5.8 million) lasts.

6. We discussed whether the corporation had yet been formed and whether the incorporators had been chosen. I told Smith that I did not know and would get back to him as soon as possible on this point. I said I thought there were at least two problems which might be delaying matters: first, the lack of funds with which the incorporators could accomplish

the necessary legal and accounting tasks; and second, the upcoming plebiscite. Smith emphasized that the Ambassador was interested in getting the return of public lands started prior to the plebiscite. We asked if there was any money available to assist the incorporators, and Rice said there was not, suggesting that incorporators borrow money from the District Legislature. We pointed out that the Legislature would not meet again until August. (We subsequently asked Rice whether the district administrator had appointed his two incorporators, and found that he did not know, but would check into the matter.)

7. In the discussion of revenues, Rice said that there were many leases with respect to which rents had not been collected for a long time. We asked Smith to provide us with a list of the rents which were being collected in the Marianas, and he said that he would attempt to do so. There was a brief discussion of certain properties with respect to which the Trust Territory holds a leasehold, title resting in private hands. Apparently, none of this property would be granted to the Marianas in any event since it is actively used by the government; but it may meet the definition of public lands. If any of this land is valuable, then perhaps the matter warrants further exploration. Finally, Rice suggested that the incorporators or their representatives attempt to get as much information as possible from Manny Sablan, an elderly Saipanese who was involved in the land office under the Japanese administration. This, said Rice, might be helpful in settling land disputes with respect to that land as to which the land commission has made no determination.

Michael S. Helfer

Attachment

cc: H. P. Willens  
E. O'Hara  
J. Leonard  
J. White

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MARIANAS DISTRICT LEGISLATURE ACT NO 100-1975 HAS BEEN REVIEWED. THERE ARE NO DEFICIENCIES OF SUFFICIENT GRAVITY TO MERIT VETO. WE RECOMMEND APPROVAL. MDL SHOULD HOWEVER BE FORMALLY ADVISED BY THE ATTORNEY GENERAL THAT SOME ADDITIONAL REMEDIAL ACTIONS ARE REQUIRED AND THAT THESE ACTIONS CAN BE DONE BY THE ENTITY. INCORPORATORS SHOULD BE ADVISED TO INSERT REQUIREMENTS INTO THE ARTICLES OF INCORPORATION TO OBLIGATE THE ENTITY TO UNDERTAKE SPECIFIED POSITIVE ACTIONS TO MEET THOSE MANDATORY POWERS AND DUTIES FOR WHICH LEGISLATURE DID NOT PROVIDE. THESE ACTIONS SHOULD IN NO WAY PREVENT EARLY FORMATION OF THE ENTITY NOR PREVENT DRAFTING OF BY LAWS AND ARTICLES OF INCORPORATION. IN PARTICULAR THE ENTITY MUST FORMALLY AGREE THAT LAND TRANSFERS ARE SUBJECT TO VALID AND EXISTING CLAIMS AND EXISTING LAND AGREEMENTS. TTPI SHOULD ISSUE QUITCLAIM DEEDS WITH COVENANTS TO CONTAIN LANGUAGE TO THIS EFFECT AS WELL. THE LEGAL ENTITY MUST ALSO FORMALLY AGREE TO HOLD THE US AND TTPI HARMLESS FROM ALL CLAIMS ARISING AFTER TRANSFER AS REQUIRED BY SECRETARIAL ORDER NOTWITHSTANDING DOCUMENTATION REQUESTED FROM TTPI AS TO CLAIMS, SURVEYS, ETC. TTPI QUITCLAIM DEEDS MUST ALSO CONTAIN LANGUAGE TO THIS EFFECT. PROVISIONS OF SECTION 6 (B AND C) RECOGNITION BY THE ENTITY OF THE POWERS OF EMINENT DOMAIN AND THE AUTHORITY TO REGULATE COASTAL ACTIVITIES SHOULD BE RECOGNIZED TO EXTEND AFTER SEPARATE ADMINISTRATION OF TTPI CENTRAL GOVERNMENT. ATTORNEY GENERAL SHOULD WORK CLOSELY WITH INCORPORATORS AND WITH ENTITY TO IMPLEMENT THE ABOVE. ACTING DOTA SENDS.

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