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August 20, 1976

DGL-T: CBC 115001

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Memorandum

**To: Assistant Solicitor, National Capital Parks
Division of Conservation and Wildlife**

**From: Assistant Solicitor, Territories
Division of General Law**

**Subject: Proposed Letter to Louis S. Wall re Micro Beach, Saipan,
Mariana Islands, Trust Territory of the Pacific Islands**

The subject proposed letter contains errors that preclude its approval by my office.

1) The Covenant--not covenants--did not confer commonwealth status upon the Mariana Islands. The Mariana Islands, albeit now under separate administration, are still a part of the Trust Territory of the Pacific Islands and will remain so until the 1947 Trusteeship Agreement with the United Nations Security Council under which the United States administers Micronesia is terminated, hopefully, in 1981.

2) Although the wording of the Covenant--again, not covenants--does not specify a particular kind of park, it does refer to "an American memorial park to honor the American and Marianas dead in the World War II Marianas campaign." During the negotiations for future political status between the Northern Mariana Islands and the President's personal representative, it was clear that the park under consideration would be a "living" memorial with primary emphasis placed on community oriented recreational facilities; such as tennis courts, playing fields, a swimming pool, and picnic accommodations; and it was against the background of this type of possible park development that the Covenant was presented to the people of the Northern Mariana Islands for approval.

3) The \$2,000,000 trust fund will not be administered by the Office of Micronesian Status Negotiations under the auspice of the Office of Territorial Affairs. The \$2,000,000 will be taken from the larger fund paid to the Northern Marianas by the United States by the Northern Marianas and placed in trust by them. Thereafter, the only involvement of the Department would be to provide advice and assistance in planning the park.

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and to concur in expenditures from the interest earned by the fund for purposes other than for the park.

Attached hereto is a proposed draft of a letter for your client's review and use if they are so disposed. We feel that this more accurately explains the situation.

Please let me know if we can be of further assistance.

C. Brewster Chapman, Jr.

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D R A F T

JBERG: oa:8/16/76 / CBCHAPMAN, Jr.:bb:8/24/76

This is in response to your letter of April 13, 1976 in which you requested the Department's assessment of the applicability of Executive Order No. 11593 to its potential undertakings with regard to the proposed Micro Beach Park at Tanapag Harbor on Saipan Island in the Northern Mariana Islands. A preliminary assessment can be made at this time.

As you know, P.L. 94-241 was signed by the President on March 24, 1976. This law, officially known as the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," sets out the transitional steps and legal and political authorities by which the Northern Mariana Islands will become a self-governing territory of the United States.

The Northern Mariana Islands are not yet a United States territory or commonwealth. Rather, the islands are still a part of the Trust Territory of the Pacific Islands which is administered by the United States pursuant to a 1947 Trusteeship Agreement with the United Nations. The Northern Mariana Islands will not be elevated to their new political status, as described in P.L. 94-241, until that Agreement is terminated, probably in 1981.

An integral part of P.L. 94-241 is a Technical Agreement which relates to certain lands in the Northern Mariana Islands which the Department of Defense may lease for contingency military purposes. One section of this land is located at Tanapag Harbor on Saipan Island.

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The entire Tanapag Harbor area which may be leased by Defense consists of 177 acres. Of this, 133 acres would be leased back to the Northern Mariana Islands government for the express purpose of developing and maintaining the park in question. Part I(5)(B) of the Technical Agreement (section enclosed) provides this authority.

It should be noted that the park will come about under those auspices only if the Department of Defense exercises its option to lease the land in question and secures funding from Congress for same. If the land is leased by Defense, several factors relevant to the applicability E.O. 11593 surface. First, the land in question is not now nor will it by virtue of P.L. 94-241 or the potential DOD lease become federal land. Title will be held by the Government of the Northern Mariana Islands. Secondly, the \$2,000,000 trust fund for development and maintenance of the park to which you refer in your letter will not be administered by the Department of the Interior. Rather, by the terms of the Technical Agreement, the trust fund, together with full responsibility for developing and maintaining the park, will lie with the government of the Northern Mariana Islands. Third, the \$2,000,000 is part of a larger lease payment and will be in the form of Congressional appropriation to the Department of Defense. Upon payment to the government of the Northern Marianas, it loses its identity as federal funding. Fourth, the only subsequent involvement of the Department of the Interior will be to provide "assistance in planning and technical advice." Fifth, and most importantly, the use of the 133 acres in question as a locally developed and maintained park has been sanctioned by the United States Congress and the people of the Northern Mariana Islands in a plebiscite. Both actions occurred after passage of historic preservation legislation.

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We believe it is also important to note here that the 133 acres in question are not now listed on the National Register of Historic Places. The eligibility of this land for inclusion on the National Register is questionable since whatever relevance it has to American history has only been achieved in the past 30 to 35 years (See, 36 CFR 800 § 800.10(6)).

During the political status negotiations leading to the Commonwealth Covenant, the elected representatives of the Northern Marianas people made clear their desire that the park be a "living memorial" with primary emphasis placed on recreational facilities. When the people of the Northern Marianas voted in their United Nations-observed plebiscite on June 17, 1975, they did so with the express understanding that if the land at Tanapag Harbor was to be leased by Defense, the Marianas would have the authority to develop a park which may include small memorials but would be primarily dedicated to community oriented recreational purposes. Documents outlining specific proposals for a recreational park and which establish this intent have been made a part of the official record of the Northern Marianas Commonwealth negotiations.

If Interior is called upon to provide technical assistance to the Northern Mariana Islands government in the area of park development, you may be assured that the Department will comply with the wishes of the local people in terms of the type of assistance it provides. We will further make an assessment to at that time as the applicability of E.O. 11593 to any Departmental activities, and do everything we can to assure that the historical values of the area are preserved. We feel confident that any utilization of the area for a "living park" can be made compatibly with the preservation of its historically significant features.

Sincerely,

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