Mr Mantel Comments

03/9

MEMORANDUM

TO: Howard P. Willens, Esq.
FROM: Howard N. Mantel
SUBJECT: Further Comment on Briefing Paper No. 8: Natural Resources (Draft September 2, 1976)
DATE: September 15, 1976

State-wide zoning, because it is still relatively novel in American practice, perhaps deserves special mention in the briefing paper. For the Northern Mariana Islands constitution, two persuasive arguments might be: (1) Given the relatively small size and population of the islands, functions that might otherwise be handled (in an American state) at the county or municipal level may be more suitably handled at the commonwealth level; and (2) the large amount of publicly held land gives the Commonwealth both the opportunity and the challenge of assuring orderly and efficient use of the land. The briefing paper makes the point quite well that the zoning power is inherent in a state's police power and therefore need not be articulated in the constitution. The counter argument is that a specific statement in the constitution could establish the parameters of zoning authority as between the Commonwealth government and any political subdivisions that may be established.

It might be useful to emphasize in the first sentence on p. 16 and then in the section immediately following on pp. 16 and 17 that state-wide zoning, as instrument of controlled land-use planning by the Commonwealth government, could involve such arrangements as the following:

> 1. Large lot zoning which ". . . involves designating areas which are deemed valuable for their natural resources, agricultural potential or simply as open space, for very low density (minimum one lot to five acres) single family or agricultural use. This approach is legitimately useful for areas which are difficult to service with public water and sewer, at least in the near future,

16878

and/or which would become environmentally degraded through high-density development."*

2. Exclusive agricultural zoning. In a local ordinance the agriculture zone is established

> . . . as a zone in which agriculture and certain related uses are encouraged as the principal uses of land. The specific intent of the Agricultural Zone is to facilitate the long-term use of lands best suited to agricultural production by preventing a mixture of urban and rural uses which often create incompatibilities and conflict with agricultural pursuits, which place unbalanced tax loads on agricultural lands and which may result in speculative or inflated land values which encourage the premature termination of agricultural pursuits.**

3. Conservation zones, again quoting from the Harristown ordinance, are established

> . . . to prevent the construction on or alteration of rural or natural environments which have natural conditions of soil, slope, susceptability to flooding or erosion, geological condition, vegetation, or an interaction between the aforesaid, which makes such lands unsuitable for urban development. Further, this zone is established to protect areas of the environment that, if altered, would cause health or pollution problems and environmental deterioration. The Conservation Zone will also ensure adequate areas for future conservation and recreation pursuits.***

The same issue of Natural Resources Journal, which contains an extended symposium on land use planning including practices in England and the Federal Republic of Germany, also contains a note: "Administration of Grazing Leases of State Lands in New Mexico: a breach of trust."**** The

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* Edward J. Kaiser and Peggy A. Reichert,"Land Use Guidance System Planning for Environmental Quality," Fifteen Natural Resources Journal, pp. 529-565 at p. 546.

** Harristown, Ill., zoning ordinance Sec. 3.1 (1972) quoted in Kaiser and Reichert, p. 547.

*** Ibid, p. 548.

**** Ibid., pp. 581 et seq.

16879

comment cites the New Mexico-Arizona Enabling Act of 1910,* which states, inter alia, that

> Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than that for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this Act, shall be deemed a breach of trust. . . All lands, leaseholds, timber, and other products of land before being offered shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained. . .

The comment states that "The State of New Mexico has breached its fiduciary duties in three ways: by failing to appraise the grazing lands, by failing to charge sufficient rents for the grazing leases, and by failing to take reasonable steps to safeguard the capacities of the lands to grow grasses and forbs."

Although there is no similar trust requirement in the covenant, which for this purposes is roughly equivalent to the New Mexico-Arizona Enabling Act of 1910, the concept of trust responsibility on the disposition by Commonwealth government officials of public lands may well be an issue for the delegates to the Constitutional Convention to consider. A point implied on p. 9 of the briefing paper, and more explicitly beginning on p. 13, paragraph 2, the trust concept might be added in some more detail, if that appeared to be appropriate, in the cited pages.**

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* 36 Stat. 557, 564, 565, Sec. 10 (1910).

** The Law Review Comment uses as its standard of the trust concept statements contained in the restatement of trust, Sections 169 and 175. *Ibid.*, p. 582.

16880