

November 1, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON FINANCE,
LOCAL GOVERNMENT AND OTHER MATTERS

Subject: Committee Recommendation Number Five:
Commonwealth Taxation

The Committee on Finance, Local Government and Other Matters recommends that the Convention adopt in principle the attached constitutional provisions with respect to taxation.

The Committee has considered what provisions, if any, respecting taxation should be included in the Constitution of the Commonwealth of the Northern Mariana Islands. The Committee recognizes that taxation is a critical function of the government since it provides the means by which the Commonwealth delivers important services to its citizens. Funds must be raised, appropriated, spent and accounted for in responsible, controlled ways. The legislature's basic grant of power in the draft Constitutional provision on the legislative branch includes the right to raise revenue and appropriate funds. The Committee's concern is with special limitations or controls on such matters. The Committee's basic consideration was whether the Constitution should include provisions to guide the legislature and set the proper course for the new Commonwealth. The Constitution is neither the exclusive source of the law on the subject of taxation, nor a document intended for short-term use. It

should contain those critical basic matters that govern legislative and executive performance.

The Committee reviewed the current Trust Territory Code and Mariana Islands District Code, the briefing materials on taxation and taxation provisions in constitutions of the states and Puerto Rico.

The Committee decided that the Constitutional article on taxation should contain two provisions. The first provision makes clear that no tax shall be levied or appropriation shall be made except for a public purpose. This provision recognizes the general principle that public funds derived from tax revenues cannot be used for private purposes. This restriction does not apply to appropriations for assistance to industrial development projects in which private investors also participate when the undertaking serves a public purpose and the benefits to the community are direct and substantial. The Committee believes that the term "public purpose" is sufficiently well understood to enable the legislature to determine appropriate benchmarks for such matters.

The second provision on taxation recommended by the Committee is a requirement that every five years the governor submit to the legislature a report analyzing the impact of statutory tax exemptions. The Committee felt that the legislature's power to grant tax exemptions should not be limited by the Constitution, but that a mechanism should be provided for consideration periodically of the effect of

such exemptions, their continued viability, and their cumulative impact on the tax base. In many states exemptions were granted by laws over the years for what appeared to be worthy purposes (for example, homesteading, religious or educational activities and industrial development) but their cumulative effect subsequently posed serious handicaps to a balanced budget. In addition, the original social or economic purpose had changed but the exemption was not reconsidered. The Committee recognizes the need to avoid these problems but prefers not to place in the Constitution specific exemptions or prohibitions on them. The legislature should make such judgments with a constitutionally mandated review by the governor every five years.

The Committee considered further whether the Constitution should include a uniformity provision, limitations on tax rates, or details of specific taxes such as those on income, property, corporate income, sales of merchandise and exports and imports. The Committee decided that these subjects were better left to the discretion of the legislature.

Finally, the Committee considered "earmarking" of funds, that is, tying the revenue from a specified tax to the financing of a particular governmental project or function. The Committee decided that the disadvantage of limiting legislative control (and the possible creation of an imbalance

in financial planning) argued persuasively for the exclusion of earmarking from the Constitution. The Committee considered a prohibition on earmarking, but this too was seen as unduly limiting legislative discretion. The Committee believes that it is desirable to maximize the legislature's power to adjust the changing resources of the Commonwealth to meet its changing needs and the draft constitutional provisions recommended by the Committee reflect this decision.

Members of the Committee were concerned with the danger that funds appropriated by law would be reprogrammed for purposes not authorized in the appropriation act. The Committee concluded that the executive budget process should specify programs and geographical appropriations, and the legislature should control administrative discretion with regard to use of funds and reprogramming.

The Committee may reconsider its recommendations after completing its consideration of local government such as local property taxes and related matters.

Respectfully submitted by the
Committee,

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Pedro Dela Cruz, Vice Chairman

Pedro M. Ogo

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November 1, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON FINANCE
LOCAL GOVERNMENT AND OTHER MATTERS

Subject: Committee Recommendation Number Six:
Commonwealth Debt

The Committee on Finance, Local Government and Other Matters recommends that the Convention adopt in principle the attached Constitutional provisions with respect to public debt.

The Committee recognizes that bond issuance is an indispensable device to fund important capital projects undertaken by the Commonwealth or its political subdivisions. Borrowing is a well established means by which states and local governments secure funds for capital improvements such as public buildings, schools, health centers and the like. Given the high capital outlay required for construction, it is usually not feasible to finance such improvements directly from current tax receipts or other operating funds. Two types of bonds were considered by the Committee: general obligation bonds, in which the principal and interest for sums borrowed are repaid from annual appropriations from the general revenues of the Commonwealth; and revenue bonds, in which the principal and interest are repaid solely from the revenues derived from the capital improvement itself.

It is the Committee's view that under careful controls and safeguards both of these types of bonds can

serve a useful function in the economic development of the Commonwealth of the Northern Mariana Islands. In its review of constitutions of United States jurisdictions the Committee found that only a few states prohibit governmental borrowing. It was decided that a constitutional ban on Commonwealth debt is not a realistic alternative, since it would be impractical otherwise to finance capital improvements.

The Committee recognizes, however, that overborrowing can lead to undesirable results. The Committee's proposal includes two limitations on borrowing: (1) a limitation already contained in the Covenant, which is based on a percentage of the property valuation within the Commonwealth; and (2) a limitation that prohibits the use of debt for the regular operating expenses of the government of the Commonwealth. As a further control, the Committee recommends that no general obligation or revenue bond issue be authorized unless approved by a two-thirds vote of each house of the legislature.

The Committee decided that it would be appropriate to include in the Constitution not only a limitation on the amount of debt that could be incurred, but also a limitation on the means by which it could be incurred and the purpose for which it could be incurred.

Regarding the limitation on amount, several alternatives were discussed: a flat dollar amount; a limitation based on a percentage of the revenues received by the Commonwealth; a limitation based on percentage of the assessed valuation of property within the Northern Mariana Islands. The last approach is contained in the Covenant and is mandatory for the first seven years of federal financial assistance, and any subsequent periods of United States financial support. The Committee decided that this limitation would be suitable for the Commonwealth after the Covenant provision ceases to be applicable.

With respect to the means by which debt can be incurred, the Committee considered a requirement for approval by an extraordinary majority of one or both houses of the legislature, and the alternative of a requirement of the consent of the electorate through popular referendum. The Committee decided that an extraordinary majority of two-thirds of the members of each house would be sufficient protection while permitting the Commonwealth the flexibility to enact debt provisions promptly when the need arose.

The Committee believes it is appropriate to set a "live within our means" course for the Commonwealth. This is accomplished in the Committee's proposed Constitutional provision by a prohibition on borrowing to meet operating expenses because these should be paid from current tax receipts. There are some operating expenses normally

encompassed as a part of the actual construction of a capital improvement. These would not be prohibited but ordinary operating expenses of government would be.

The Committee analyzed another method to control debt used in a few jurisdictions: the regulation of bond maturities and repayment. The Committee decided not to utilize this approach because of the intricacies involved and possible fluctuations in the bond market.

Respectfully submitted by the
Committee,

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November 4, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON
PERSONAL RIGHTS AND NATURAL RESOURCES

Subject: Committee Recommendation No. 5:
Public Lands

The Committee on Personal Rights and Natural Resources recommends that the Convention adopt in principle the attached constitutional article with respect to public lands.

The Committee's proposed constitutional article contains six sections. The first section defines the public lands as including both surface lands and submerged lands in which the Commonwealth has any right, title or interest. The second section delegates to the legislature the responsibility for submerged public lands. The third section delegates to the Marianas Public Land Corporation the responsibility for surface public lands. The fourth section sets out the basic organization of the Corporation. The fifth section sets out the fundamental policies under which the Corporation must operate. The sixth section provides for a Marianas Public Land Trust to hold and invest the funds derived from the public lands.

In order to gather information with respect to the present system of land management, the Committee invited five witnesses to appear before it and present their views: Elmer L. Gay, Supervisor for Cadastral Surveying, Office of Land Management; Robert W. Green, Senior Land Commissioner

for Yap; Dennis Pacht, Division of Lands and Surveys, Department of Resources and Development; Gregorio Camacho, Land Registration Team Chairman, Land Commission Office; and Joseph Vosmik, Senior Land Commissioner, Land Commission Office. The Committee heard from each of these witnesses with respect to the utility of forming a public land corporation and the functions that might be assigned to such a corporation.

The Committee's reasons for recommending its proposed constitutional article are as follows:

Section 1: Public Lands. This section defines the public lands as including lands in three categories: (1) lands that will be returned to the Commonwealth Government by the Trust Territory pursuant to the Secretarial Orders and the Covenant; (2) lands that the Commonwealth government may hereafter purchase, lease, or receive by other means; and (3) the submerged lands off the coast to which the Commonwealth government now has or may in the future have a claim under international law or United States law. This section also specifies that the ownership of these lands rests collectively with the people of the Commonwealth who are of Northern Marianas descent. The term "Northern Marianas descent" will be defined by the Committee's proposed constitutional article dealing with land alienation.

Section 2: Submerged Lands. This section provides that the legislature shall have discretion to deal with the submerged lands. The Committee believes that there is great uncertainty with respect to how much of the submerged lands the Commonwealth will come to own in the future, and there is also no clear indication at this time as to precisely what form of development will be most appropriate for the submerged lands. For these reasons, the Committee believes that the legislature should be given discretion to deal with this subject in the future without constitutional restriction.

Section 3: Surface Lands. This section provides that the responsibility for the surface public lands will be placed in a corporation created specially for this purpose by the Constitution. The Committee considered several alternative ways of protecting the public lands; creating a special corporation; using the existing corporation created in 1974 by the District Legislature; creating a special agency in the Executive Branch; and leaving the matter to the legislature.

The Committee decided that the creation of a special corporation was the best alternative. The corporate structure permits flexibility and consistency in policy-making while at the same time maintaining a responsibility to the people. The corporation created by the Committee in Section 4, as explained below, is not entirely separate from the executive branch or the legislative branch and cannot function totally independently. It will coordinate closely with the executive

branch because the governor may appoint executive branch officials to sit as directors. It will coordinate closely with the legislative branch because the legislature may approve or disapprove certain actions taken by the Corporation and set policy for the homestead program. The legislature may dissolve the corporation after ten years.

The Committee found that placing the responsibility for the public lands in a department of the executive branch would involve questions of the management and disposition of the public lands in the political process to a degree that might be detrimental to long-term planning and stability. If an executive branch agency were created, each time a new governor were elected, the key agency officers would be replaced and a new policy might be begun. The Committee believes that it may be desirable to phase out the special staff function devoted to public lands after ten or more years if many of the problems of the public lands have been solved and many of the lands have been transferred. The Committee believes it would be easier to accomplish this phase-out if it were applied to a special corporation rather than to a regularly established part of the executive branch of government. The Committee also believes it may be desirable to permit the staff that handles public land matters to be assembled without regard to civil service rules. This would be particularly true if civil service rules required long

residency in the Northern Marianas because the staff then might not be able to attract experts needed only for a short term.

The Committee decided that the corporation created by the Marianas District Legislature in 1974 was inappropriate for permanent use for a number of reasons: it is too large; it contains a number of provisions that are relevant to an interim period only; and it does not contain appropriate grants of power or limitations on power.

The Committee decided that the alternative of leaving public land matters to the legislature was not appropriate because the public lands represent the most important natural resource of the new Commonwealth and the Constitution should contain the basic guidelines as to the use of this natural resource.

This section provides that the Corporation shall have responsibility for the management and disposition of the public lands. It is the Committee's intention to leave the adjudicatory functions to the special land division of the Commonwealth trial court created by the proposed article on the judicial branch.

Section 4: Marianas Public Land Corporation. This section establishes a special public corporation to deal with public lands and sets out the basic organizational structure of the corporation. Organizational matters not specified by the Constitution are left to the Corporation.

Section 4(a): Appointment of Directors: This provision specifies that the affairs of the Corporation shall be directed by nine directors. Each of the directors will be appointed by the governor with the advice and consent of the Senate. It is the Committee's intent to keep the Corporation's structure small and efficient. The Committee believes that nine persons are an adequate body to reflect the diversity of views within the Marianas with respect to public lands. It is the Committee's intent that the directors serve part-time and be compensated on a per diem basis. Compensation matters are left to the discretion of the Corporation. It is also the Committee's intent that some of the directors may serve on the full-time staff and be compensated accordingly.

If any director fails to serve a full term for any reason, under the Committee's recommended provision, the governor would appoint a successor.

The Committee did not provide for removal by the governor, for impeachment, or for recall of the directors because it believes there are sufficient safeguards in the eligibility, appointment and administration process and the Corporation should not become involved in the political process. If the governor could remove a director without cause, the directors might be removed every time a new governor was elected. That would defeat the purpose of having an independent body to deal with public land matters and would adversely affect the stability and long-term planning capability of the Corporation.

The Committee's recommended provision does not limit the governor from requesting that a director resign or from accepting a resignation if offered. If the governor could remove a director only for cause there would be some difficulty in defining the reasons for removal sufficiently to prevent removal for political reasons. Impeachment was not included because the functions of the directors are limited and the results of their actions can be undone by the legal process. If the directors permit an improper transaction, the details of that transaction must be disclosed in the annual report and it may be challenged in the courts. If the transaction is determined to be illegal, it can be undone and the land will be returned to the public lands. The principal conflict of interest problem is dealt with by Section 4(e) that requires the directors to disclose their interests in land. Recall was believed inappropriate because that applies to elected officials who can be removed by the same voters that elected them. The Committee's proposed language in Section 4(b) disqualifies any person who has been convicted of a crime that carries a maximum sentence of six months or more. The Committee intends to exclude minor traffic violations. Under this provision any director who was convicted while in office would be removed automatically and the governor could appoint a successor.

Section 4(b): Qualifications of Directors. The Committee's proposed constitutional provision includes five basic qualifications for the position of director: U.S. citizenship or national status; five years' residency in the Commonwealth;

no conviction of any crime that carries a maximum sentence of six months or more; fluency in Chamorro or Carolinian; and Northern Marianas descent. The Committee believes that these qualifications will help ensure adequate knowledge of the Northern Mariana Islands special circumstances and needs with respect to the public lands. The Committee considered an age qualification and decided it was unnecessary.

The Committee also recommends that representation be secured for each of the municipalities and for the Carolinian community on Saipan. This is accomplished by requiring that two of the directors be residents of Saipan; two be residents of Rota; two be residents of Tinian; and one be a resident of the Northern Islands. There is also a requirement that one of the directors be a Carolinian or a person of Carolinian descent. The director who is a resident of Saipan or the Northern Islands could also be a Carolinian, thus meeting two of the requirements and leaving the governor free to appoint two persons who did not meet these particular residency or descent requirements. It is the Committee's intention to permit the Governor to appoint up to two persons without any restrictions in order to promote coordination with the executive branch and to permit the appointment process to take into consideration special qualifications such as legal or banking experience.

Under the Committee's proposal, these representation requirements would always apply, so that if there is a vacancy

for any reason, it must be filled in a manner that permits these representation requirements to be met. For example, if two directors from Rota were appointed and one died or left office, thus creating a vacancy, that vacancy would have to be filled by another director from Rota.

Section 4(c): Directors' Terms of Office. The Committee's proposed constitutional provision sets a six-year term of office with staggered terms so that only three vacancies occur every two years. The six-year term is intended to put the directors on a different footing than the governor and members of the upper house of the legislature who serve four-year terms, and the members of the lower house who serve two-year terms. It is also intended to promote stability in land use planning by having relatively long-term turnover among directors. In order to effectuate the staggered terms, of the first nine directors appointed, three would be appointed for two-year terms; three would be appointed for four-year terms; and three would be appointed for full six-year terms. The governor would determine which of his initial appointees would serve short terms and which would serve full terms.

It is the Committee's intention that the position of director not be a full-time one. Directors would meet, perhaps monthly to consider policy matters and would be compensated only for their time in attending those meetings.

The day-to-day business of the Corporation would be managed by a small professional staff. The Committee did not include any specific limitation on the number of meetings or amount of compensation because the general provision on retention of funds for expenses of administration (Section 5(g)) should provide adequate protection. If the directors meet too often or if they pay themselves too much, they would not meet the requirements of Section 5(g) that expenses of administration be reasonable. If they did not meet that requirement, legal action could be brought to recover the funds spent and to prevent further such action. The annual report requirement ensures that the people will have adequate information on expenses incurred by the Corporation.

The Committee has included a limitation that prevents a director from serving more than one term in office. The reason for this limitation is to prevent any consideration bearing on reappointment from affecting a director's decisions with respect to any matter that comes before him.

Section 4(d): Vote Requirement. This section provides that the directors may take action by a majority vote of the total number of directors. The Committee believes this will permit the directors to function effectively but will prevent any action from being taken by a small number of directors who might constitute a majority of a quorum.

Section 4(e): Annual Report. This section requires the directors to publish an annual report to the people. The report must include at least three sections: (1) a description of the management of the public lands held by the Corporation

for the people; (2) a description of the nature and effect of any transfers of interests in public lands during the year covered by the annual report; and (3) a disclosure by each of the directors of any interest held in any land in the Commonwealth. The purpose of this section is to provide sufficient information to the public on the activities of the Corporation, to require a public disclosure and description of all of the transfers made by the Corporation, and to require a disclosure by the directors of any interest in land held by them in order to make available information on possible conflicts of interest.

Section 4(f): Dissolution of the Corporation. The Committee believes that much of the work with respect to the public lands may be completed within ten (10) years. Much of the land available for homesteading may have been transferred by that time; other portions of the land may be under long-term leases that will not be renegotiated for some years; and public uses for parks and other recreational, historic preservation, and scenic uses will have been established. The Committee recommends that a Corporation structure be used, in part, because it is easier to dismantle when it is no longer needed. This section provides for that dissolution. At any time ten years after the effective date of the Constitution, the legislature may decide to disband the Corporation. It must take this action by a two-thirds vote of the members of both houses. The Committee considered using a popular

referendum for this purpose but decided that an extraordinary majority of the legislature should be sufficient safeguard that the Corporation will be disbanded only if it is no longer needed.

Section 5: Fundamental Policies. This section sets out the fundamental policies that must be followed by the Corporation in carrying out its responsibilities. All matters not specifically mandated by the Constitution or delegated to the legislature are left to the discretion of the Corporation.

Section 5(a): Homesteading. This provision requires that the homestead program be continued and that the Corporation make land available for that purpose. It puts three limitations on the homestead program. First, a person may have only one homestead. If he is granted a homestead and then sells it, he may not qualify for another. Further, if a person elects to apply for a village homestead and receives it, then he would not be eligible for a farm homestead. Each person would have to make a choice as to the type of homestead for which he will seek to apply. The Committee believes this restriction is necessary because of the scarcity of land and its importance as a natural resource.

Second, the provision requires that a person who is granted a homestead hold it for five years before he will be granted title. Third, it requires that a person who is granted

title to a homestead hold it for ten years after he has been granted title before he may sell it. These two restrictions are necessary to be sure that the land used for the homestead program is used properly and that persons who get land for free actually intend to make use of it rather than call it for a profit.

The Committee's proposed language includes an exception to the second and third of these three limitations for persons who have resided on public lands continuously for 20 years or more at the effective date of the Constitution. This is a one-time exception designed primarily for the benefit of the people of the Northern Islands who have never qualified for the previous homestead programs. The Committee's proposal would permit

these persons to apply for homesteads under the new government's program and, if they met the other requirements, to be eligible to receive title and sell these lands immediately.

The Committee discussed other policy decisions with respect to the homestead program and decided that all other matters with respect to eligibility and the nature of the interest to be transferred to the homesteader be left to the legislature. The Corporation is required to follow the rules that are established by the legislature. The Committee believes that the legislature is best suited to decide who should be eligible for a homestead and what type of interest in land (title, lease or easement) a homestead grant should include. These are not really matters of land management that would be appropriate for the Corporation and are more matters of social policy that are appropriate for the legislature. The Corporation could make policy on matters other than eligibility and the nature of the interest to be transferred if any of those arose in the course of administering the homestead program.

Section 5(b): Transfers of Title. This section provides that the Corporation shall not transfer title to any public lands (except for homestead) for a period of ten years after the effective date of the Constitution. The Committee believes that there is a substantial interest in not selling the public lands. These lands belong to all the people of the Commonwealth who are of Northern Marianas descent. If they are sold to a single individual or corporation, and subsequently resold, the profit from the

value of the land goes only to the individual or corporation. The original owners, the people of the Commonwealth, get little or nothing. However, the Committee recognizes that an outright prohibition on sale of any of the public lands would have adverse social and economic effects. There is a social benefit from having as many people as possible own land. This creates a stable, responsible society that has a stake in the continued well-being of the Commonwealth. Another consideration is that if all of the public lands were removed from the possibility of outright sale, the existing private lands would increase greatly in value because of their relative scarcity thus restricting their availability to the relatively wealthy. In addition, there may be some kinds of investment that are practical only if ownership of the land is available.

The Committee has sought to meet both types of concerns by recommending a prohibition on sales for a limited period of time. During this period the Corporation can negotiate leases of the public lands so that economic development will not be stalled; and the Corporation and the people can assess the social and economic advantages and disadvantages of a prohibition on sale. At the end of the ten-year period the Corporation could continue the no-sale policy if it found that to be of substantial benefit or the people could require such a continuation by constitutional amendment.

Homesteads are specifically excluded from this section because they are provided for in Section 5(a).

Section 5(c): Transfers of Leaseholds. This section limits the leasehold interest that the Corporation can transfer to 25 years, including all rights of renewal. It requires that after 25 years, the lands come on the market again and be subject to competitive bidding. It may be that the original lease holder will be granted another lease for an additional 25 years, but he will have no automatic right to that lease and a competitor may receive it instead. The Committee believes that the 25-year period is sufficiently long not to hamper economic development, and sufficiently short to ensure that the Commonwealth maintains maximum control over and gets the maximum benefit from its public lands.

Section 5(d): Transfers of Large Parcels for Commercial Use. This section provides that the Corporation may not transfer any interest (title or leasehold) in large parcels for commercial use without the advice and consent of the Senate. During the first ten-year period, this section would be limited to leaseholds because of the prohibition on sales in Section 5(b). After the ten-year period, if sales were permitted, such sales would also be covered by this section. The Committee believes that transfers of large parcels of public lands are particularly sensitive because they take the land out of circulation and have a more limiting effect on the amount available for other purposes than do transfers of relatively small parcels. For this reason, the Committee believes it is appropriate for the Senate to exercise its

judgment with respect to the wisdom of the proposed transfer. The Committee intends that the term "commercial" would not apply to the homestead program.

Section 5(e): Transfers of Sandy Beaches. This section prohibits the transfer of any public lands that are within 150 feet of the high water mark of any sandy beach within the Commonwealth. This section applies only to transfers of public land in the future. The Committee recognizes that there is a present statute governing the use of land adjacent to public beaches. However, the Committee believes that the principle of protecting the availability of sandy beaches is important to the commercial interests of the Commonwealth for promoting tourism and to the interests of the people of the Commonwealth in access to these important natural resources.

Section 5(f): Land Use Planning. This section requires the Corporation to prepare a comprehensive land use plan with respect to the public lands including priority of uses. This plan will permit the public and the legislature to be informed of the Corporation's overall goals for the public lands. The Committee does not intend that such a land use plan would remain in effect indefinitely and the Committee's recommended provision permits the Corporation to amend the plan from time to time as changed circumstances require.

Section 5(g): Disposition of Funds. This section provides for the disposition of funds to be derived from the public lands. These funds include the payments made by the

United States for property leased under Article VIII of the Covenant. The Committee recommends that the funds from the public lands be placed in a trust fund that is an entity separate from the Corporation. The Committee believes that the functions of land management and money management should not be combined. Therefore this provision requires that the Corporation turn over the proceeds from the public lands to the Trust. The Committee's recommended provision does not include any timetable that the Corporation would have to follow but does include a general requirement that the moneys be turned over promptly.

The details with respect to the trust fund are set out in the proposed Section 6 of the constitutional article recommended by the Committee and are explained in the section of this report that deals with that language.

The general provision with respect to the disposition of funds permits the Corporation to retain a portion of the funds for administration purposes. There are two restrictions: the funds must be necessary for administration and the expenses of administration must be reasonable. The Committee discussed specifying a percentage limitation on the funds that could be withheld for administration but decided that since the amount of revenues might vary from year to year, and since there may be start-up costs for the Corporation, there should be no specific limit.

Section 6: Marianas Public Land Trust. This section establishes the Marianas Public Land Trust to hold and invest the proceeds from leases (and sales, if authorized in the future) of public land. The Trust would hold the proceeds from the lease of military lands and any other private or commercial leases made in the future.

The Committee considered several alternatives with respect to the proceeds from the public lands: turning the proceeds over to the general revenues to be appropriated by the legislature, earmarking the proceeds for certain public purposes, putting the funds into a development bank, and putting the funds into a trust.

The Committee recommends that a trust be used because this is an effective way of preserving the assets created by the public lands. Like the lands themselves, the moneys from the lands belong to the people. The Committee believes that these moneys should be preserved for the benefit of the people now and in the future. In order to achieve this goal, the moneys should not be dispersed, but should be invested and only the interest should be expended.

The Committee provided an incentive for the establishment by the legislature of a development bank by providing that such a bank could receive up to 55% of the trust funds accumulated in any given year or a total of

\$10 million, whichever is less. The Committee believes that if the legislature establishes such a bank, the United States financial assistance earmarked for economic loans by Section 702(c) of the Covenant should be placed in that bank. There should not be two separate government entities dispersing economic loan funds. Therefore, the constitutional provision specifies that the Trust will contribute capital to the development bank only if all of the United States economic assistance for loan funds is directed by the legislature to the bank. If this is done, the bank will receive \$1.75 million per year for seven years or a total of \$12.25 million at the end of seven years. The Committee believes that the bank may need more capital at the outset than is provided in U.S. economic assistance. Therefore the Committee's recommended provision permits the Trust to deposit funds in the bank to provide the bank with a total capitalization of \$10 million. As the bank accumulates its own funds from U.S. economic assistance or other sources, it would repay the Trust. The Committee did not recommend a constitutional provision that would establish the bank directly since that is more efficiently done by legislation.

The Committee did not provide for earmarking of the interest from the public land funds because it believes that needs may change in the future and the legislature should be given the flexibility to allocate these funds as new needs arise.

Section 6(a): ; Trustees. This section provides that the Trust shall be administered by three trustees. The Committee recommends a small number because the administrative duties are not extensive. The Committee intends that these positions would be part-time and compensated on a per diem basis. The trustees would not have any full-time staff and could hire financial counsel and legal counsel as required.

This section also provides that the trustees shall be appointed and removed by the Commonwealth trial court. The position of trustee is a fiduciary one. Courts have substantial experience with fiduciaries because they must appoint custodians, receivers, trustees and guardians in many different types of cases. The position of trustee should be entirely removed from politics and does not need to have a fixed term of office. The Court could remove a trustee for any breach of fiduciary or legal duty and would have the responsibility to do so if a trustee engaged in any improper conduct.

Section 6(b): Investments. The main function of the trustees is to invest the funds derived from the public lands. The Committee's recommendation is that the trustees be limited to investing in United States government bonds for the first ten years of the Trust. This would guarantee a safe investment, but would permit the trustees to select among the various types of United States bonds or similar debt instruments that may become available in the future. The Committee's provision sets a standard of reasonable, careful and prudent investment for the period after the initial ten years.

Section 6(c): Contribution to Development Bank. As explained above, the Committee believes it desirable for the Commonwealth to have its own bank. This provision of the Constitution would provide an incentive for the legislature to establish such a bank and would provide for the Trust to make a contribution to the bank so that it would have sufficient capital to operate effectively. The Committee intends that the contribution to the bank be repaid to the Trust out of funds to be provided by United States economic assistance grants. In this way, the bank will be aided, but the Trust will be maintained for the benefit of the people now and in the future.

Section 6(d): Disposition of Interest. This section requires the trustees to transfer the interest on the Trust funds to the general revenues of the Commonwealth that are available for appropriation by the legislature. The Committee rejected any earmarking of these funds because the legislature is in the best position to allocate funds among the competing needs of the people of the Commonwealth.

There are two limitations on this general direction. First, the trustees may retain sufficient funds for the administration of the Trust. This provision makes the Trust totally independent of either the executive or legislative branches of the government. Second, the trustees must make available the interest and principle of the funds received pursuant to Section 803(e) of the Covenant. That section earmarks the \$2.0 million received from the lease of the lands

at Tanapag Harbor for a memorial park. It is not the intent of the Committee that the trustees would have anything to do with the establishment or maintenance of the park. They would simply make these funds available to the executive branch department that has this responsibility.

Section 6(e): Annual Report. This section requires the trustees to prepare and publish an annual report to the people of the Commonwealth. This report would contain the following information: (a) an accounting of all revenues received by the Trust; (b) an accounting of all expenses of administration incurred by the Trust; and (c) a description of all investments and other transactions authorized by the trustees.

Section 6(f): Trustees' Duty. This section provides that the trustees shall be held to strict standards of fiduciary care. Under this section, after the ten-year limitation on the type of investments expires, the trustees will have to exercise great care not to invest in anything that will cause a loss to the Trust or that will not maximize the income that can be safely made by the Trust.

Delegate Proposals: The Committee considered delegate proposals numbered 23, 46, 81, 92, 112, 122, 129, 137 and 140 that pertain to the article on public lands.

Proposal number 23 is covered by the Committee's proposed constitutional provision section 5(a)..

Proposal number 46 is covered by section 1.

Proposal number 81 is covered by section 1.

Proposal number 92 is covered by section 3.

That places the responsibility for all public lands in the Marianas Public Land Corporation.

Proposal number 112 is covered by the homestead program authorized by section 5(a).

With respect to proposal number 122, sections 1, 2, 3 and 4 were deferred until the Committee discusses the subject of land alienation. Section 5 of the proposal is covered by section 4 of the Committee's proposed constitutional article establishing the Marianas Public Land Corporation. Section 6 of the proposal is covered by section 5(g) of the Committee's proposed constitutional article.

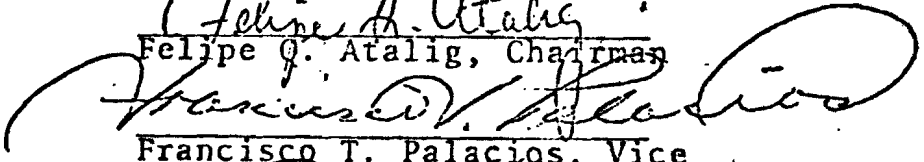
Proposal number 129 is covered by section 4.

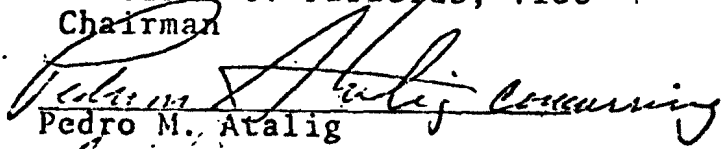
Proposal number 137 is covered by section 5(b).

Proposal number 140 is covered by section 5(e).

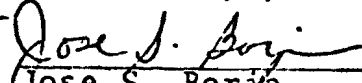
Respectfully submitted,



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