

6/22/95

## COMMITTEE ON LAND AND PERSONAL RIGHTS

### SUMMARY OF ISSUES WITH RESPECT TO ARTICLE XI: PUBLIC LANDS

#### Section 1. Public Lands

##### 1. Definition

- Should the broad general scope of the definition of what constitutes public lands be retained?
- Should the reference to submerged lands be made more specific to directly reference the CNMI's EEZ claims or is the general language of the current provision sufficiently inclusive?

#### Section 2. Submerged Lands

##### 1. Definition

- Same definitional issues as under Section 1.

##### 2. Local Control

- What are the permissible limits of CNMI control of submerged lands and the resources contained therein?
- How much is controlled preempted by federal law and how much by international law?
- Are there silent or ambiguous areas where CNMI control may be successfully asserted?
- How much control can be or should be asserted and enforced by local law?

### **Section 3. Surface Lands.**

#### **1. Re-establishment of MPLC or similar entity**

The current constitutional language vests management and control of public lands in MPLC. The effect of Executive Order ("EO") 9-3 is unclear: EO 9-3 purported to abolish MPLC and transfer its functions to a newly created Division Of Public Lands within the Department of Lands and Natural Resources.

- Do the powers of the former corporation survive to the successor entity which is not a corporation?
- Should the Convention reinstate MPLC, ratify the transfer to the Division of Public Lands or create a new entity possibly along the lines of a Chamolinian Land Trust?
- If an entity is established should it be limited in duration or should it exist in perpetuity?

### **Section 4. Marianas Public Lands Corporation.**

The following issues are only relevant if MPLC or a similar entity is established:

1. Number of Directors. Former MPLC had five directors appointed by the governor and confirmed by the Senate. This was a reduction from the original nine members established by the 1975 Constitution.

- If MPLC or a similar entity is reinstated, should the number of directors (5) be retained?
- Should it be increased?
- Should the appointment confirmation process be retained or should election be substituted?
- If there is to be an election should it be Commonwealth wide or by Senatorial District?

2. Composition of Board. The provision that governed the MPLC board required one director each from Tinian and Rota and three from Saipan.

- Should that allocation or any allocation based on island of residence be retained?

- If the Board is increased, how are the seats to be allocated among the islands?
- Should the provision for at least one female and at least one Carolinian board member be retained?
- Should the provision to include women and Carolinians be increased if the Board is increased in size?

### 3. Qualifications of Board Members

Formerly, to qualify as a candidate for MPLC Board member required:

- U.S. citizenship;
  - five year Commonwealth residency immediately prior to taking office;
  - at least two years management experience;
  - no crime carrying a more than six months' sentence;
  - speaking Chamorro or Carolinian; and
  - Northern Marianas descent.
- If MPLC or a similar entity is reestablished, should any or all of these qualifications be retained?
  - Should others be added, such as one member to be under 25 years of age to represent the interest of the future generations?

4. Term of Directors. The term for MPLC directors was a staggered term of four years, this was reduced from the single six year term established by the Constitution of 1975.

- What should the term of office be for a Director?
- Should there be a limit on the number of terms any one person may serve?

5. Executive Manager. MPLC was managed by an Executive Director who was appointed by and served at the pleasure of the Board.

- Should the position of Executive Manager/Director be established by the Constitution?
- Should the Executive Manager/Director be appointed by the Governor and subject to Senate confirmation?
- Should the Executive Manager be appointed by and serve at the pleasure of the Board?

6. Budget. In the past, the budget of MPLC was submitted to the Legislature for approval as a public corporation pursuant to 1 CMC section 7206 (c). The Corporation retained revenues of the Corporation sufficient for administration and certain mandated duties under section 5 (g); the Legislature did not appropriate additional funds for MPLC.

- Should such a scheme be retained?
- Should any entity that is put in the place of MPLC be required to go through the regular legislative appropriation process?

7. Nature of Entity.

- If some entity other than the Division of Public Lands is established to manage and dispose of public lands, what should be the nature of the entity?
- An executive branch department?
- An autonomous agency?
- A government corporation with specified or general powers?

8. Sunset Provision. EO 95-3 derived its authority to dissolve MPLC from a prior sunset provision for the duration of the Corporation.

- If a successor entity is established should there be a sunset provision?
- If so, how long?
- Should the successor entity be established in perpetuity?
- If there is a sunset provision, how is it to be triggered?
- The Governor alone?
- The Legislature alone?
- The Governor and the Legislature together?

9. Annual Report. MPLC was required to make an annual report under section 5 (e) regarding the effect of the prior year's transfers of public lands.

- Should this practice be retained?
- Should the Board be required to make an annual report to the legislature at the time of the Governor's State of the Commonwealth Address or in some other way?

## **Section 5. Fundamental Policies.**

### **1. Homestead Program.**

- Should the homestead program be continued in light of the diminishing supply of public lands for the purpose?
- Should it be further limited, for example, based on income or land ownership or expectancy?
- Should the right to one village and one agricultural homestead be retained?
- Should eligibility criteria be established by the Constitution or should it continue to be provided by law and regulation?
- Should the limitation of three years to perfect title and ten years before the ability to convey a freehold interest be maintained?
- Should these requirements continue to be waived for those who can show continuous occupation of the public land for 15 years prior to 1976 or should that provision be eliminated as having outlived its usefulness?
- Should there be a restriction for what purpose a homestead parcel may be collateralized?
- Should the homestead program in Saipan be closed within a particular period of time such as two years, and if so, should a homestead program in the Northern Islands be initiated?
- Should a Northern Islands homestead program be limited to any particular group such as those who lost land as a result of World War II?

2. Permissible Uses of Public Lands. Currently, the only permissible uses of public lands are: village homestead, agricultural homestead, public purpose by another agency of government and for land exchanges. This limitation will expire in 1996.

- Should these use limitations be retained?
- Should they be further limited?
- Expanded?
- Should other uses such as conservation areas and public parks be specified?
- Should certain lands be dedicated as conservation areas in perpetuity?
  - All remaining public lands?
  - All current parks and beaches?

- All remaining public lands within 500 feet of any beach ?
- Should sabana areas in Rota be preserved as conservation land and community farmland for at least a certain number of years?

4. Land Exchanges

- Should land exchanges be continued?
- Should exchanges be limited in value or size?
- Should exchanges be limited to land on the same island?
- How should wetlands exchanges be treated?

5. Term Limit on Leases. Currently, public land cannot be leased for longer than 25 years including renewal rights but a 15 year extension may be had by approval of 3/4 of the Legislature.

- Should these term limitations be retained?
- Should they be extended in light of the fact that private land leases are permitted for a longer term of 55 years?
- What are the economic, social and political implication of a longer permissible lease?
- Should the Legislature's approval function be retained?

6. Commercial Use of Public Lands. Currently, no lease of public land of more than five hectares may be had for a commercial purpose without legislative approval.

- Should this or some other size limitation be retained?
- Should the legislative approval process be triggered by less than five hectares?
- By more than five hectares?
- By any lease of public land regardless of size for a commercial purpose?
- Should a public hearing be required for all leases of public land?
- Should a public hearing be required only over a certain size, such as five hectares?

7. Sandy Beach Restrictions. Currently, no permanent structure may be built within 150 feet of the high water mark of a sandy beach other than facilities for a public purpose.

- Should this restriction be retained?
  - Narrowed?
  - Extended?

8. Land Use Plan. Currently, there is a requirement to adopt a comprehensive public land use plan.

- Should such a provision be retained?
- Should some enforcement and penalty provisions be mandated or enacted to give the plan some teeth?
- Should there be a broader mandate for planned land use that would include private lands?
- If there is a mandated land use plan, should there be a requirement that there be coordination with any comprehensive land use or generalized development plan?

9. Revenues. Currently, MPLC's successor entity is entitled to receive "all moneys from public lands." This is a very broad based mandate. Under the current provision, all moneys are to be turned over to MPLT at the end of the year except for such administrative and specified management expenses as are retained by MPLC or its successor entity.

- Should this scheme be retained?
- Has it been successful?
- How much of the revenues derived from public lands have actually been funneled over to MPLT?
- What was MPLC's annual budget?
- What is the balance of the Trust?
- Could the Commonwealth fund the necessary activities and operations of a successor agency out of the general fund?
- Should or could the cost of operating a successor agency be funded in some new way such as a special tax on land transfers, for example?

10. Change in Fundamental Policies.

- Should the Constitution specify that the fundamental policies of public land management endure regardless of the administrating entity?
- Should there be a restriction in what manner fundamental policies may be changed, for example, by popular initiative?

**Section 6. Marianas Public Land Trust.**

1. Composition and Terms of the Board. Currently, the Board has five Trustees who are appointed by the Governor for a staggered term of six years, subject to confirmation by the Senate. One member is from Tinian, one from Rota, and three from Saipan including at least one woman and one Carolinian.

- Should this process of selection be retained or should Trustees be elected?
- Should the number of Board members be retained?
- Should the current composition of the Board be retained?
- Should current terms be retained?

2. Limitations on Investments. Investment of trust funds for the first ten years after the effective date of the Constitution are limited to U.S. government securities or as capital in a Marianas development bank under section 6 (c). Because the Constitution has now been in effect for more than 10 years, this provision is moot.

- Shall it be eliminated?
- Shall it be reinstated with a different timeline?

3. Marianas Development Bank. Current section 6 (c) authorizes MPLT to contribute a percentage of its annual receipts to a Marianas development bank, if one is ever authorized by the Legislature. No Marianas development bank was ever established; the CNMI chose to fund its development in other ways.

- Should this provision be eliminated as moot?
- Should a development bank be constitutionally mandated?



4. Tanapag Harbor Funds. Section 6 (d) required that interest on the funds received by the CNMI for the federal government's lease of Tanapag Harbor be used for the development and maintenance of a memorial park. The balance of the interest was to be transferred to the general fund less expenses of administration?

- Did the CNMI government or MPLT place \$2 million of Covenant funds in a perpetual trust for a memorial park in accordance with Section 803 (e) of the Covenant?
- If so, was the interest used as required by section 6 (d)?
- If these purposes have been accomplished, is there any remaining reason to retain the provision?

5. Annual Report. Current provision requires an annual financial report.

- Should this practice be continued?
- Should there be specific requirements as to the content, time and place of the report:
  - content: annual revenues and expenses? Investment schedules? Future plans? Other transactions authorized by Trustees?
  - venue: joint session of Legislature? Within six months of the end of the fiscal year?

6. Fiduciary Care: Disclosure by Trustees. Current provision holds Trustees to strict standards of fiduciary care. Trustees are also required to make annual financial disclosure statements.

- Should this provision be retained in its present form?
- Should it be enhanced by creating a taxpayer's cause of action?
- Should the practice of financial disclosure be continued?

7. Trust Purpose. Currently there is no clearly stated trust purpose.

- Should the purposes of the Trust be defined?
- Should the purposes for which trust proceeds may be spent be limited?
- If so, what purposes?
  - Education/scholarships?
  - Safety?

- Welfare?
- Medical referral?
- Affordable housing?
- Home loan program for persons of Northern Marianas descent?
- Operations of the administrating authority for public lands?
- Memorial Park improvement and maintenance?
- Fair compensation under eminent domain powers?
- Should expendable trust proceeds be limited to interest income alone?
- Should a popular initiative be required to change the terms on which trust funds may be expended?