

July 14, 1995

COMMITTEE ON LAND AND PERSONAL RIGHTS

REPORT NO. 6: ARTICLE XI, COMMONWEALTH LANDS

The Committee met on Monday, July 10, 1995, Tuesday, July 11, 1995, Wednesday, July 12, 1995, Thursday, July 13, 1995, and Friday, July 14, 1995 to consider proposed amendments to Article XI: Public Lands. The Committee considered Delegate Proposals 24, 27, 90, 94, 101, 103, 116, 117, 150, 151, 152, 153, 161, 164, 165, 183, 192, 220, 256, 257, 275, 285, 359, 360, 361, 368, 407, 408, 425, 432, 437, 460, 461, 462, 491, 496, 500, 531, 533, 559, 562, 563, and 571 which had been referred to it by the Committee on Organization and Procedures. In addition, the Committee held five public hearings on land matters. The first hearing was held at the House chamber on June 16, 1995. The second and third hearings were held at Garapan Elementary School and San Vicente Elementary School in the evenings. The fourth hearing was held on Rota on June 28, 1995. The fifth hearing was held on Tinian on July 7, 1995.

The Committee decided that the constitutional structure for administering the land programs that was put in the Constitution in 1976, but was permitted to be removed by the 1985 amendments, should be restored.

Each of the sections is discussed below.

The title of this section has been changed from "Public Lands" to "Commonwealth Lands" to accommodate the change in the scope of coverage, as explained below.

Section 1: This section identifies the public lands. It is the same as the 1976 version.

Section 2: This section deals with submerged lands. It is the same as the 1976 version.

Section 3: This section is new. The Committee recommends that some lands on each of the islands be set aside in permanent preserves. This is the only way that land will be available for the enjoyment of future generations. The Committee has appointed a subcommittee to define the precise lands to be set aside in preserves and will report further with respect to this.

The Committee asks the Convention to approve this concept in principle, subject to further definition when the subcommittee finishes its work. The Committee also seeks input from all delegates as to the precise lands that should be included in the preserves.

Section 4: This section is an adaptation of former Section 3. It provides that the preserves, and the remainder of the public lands, are the responsibility of the Marianas Land Bureau.

Section 5: This section restores the former Section 4 in the 1976 Constitution, and renames the Marianas Public Land Corporation as the Marianas Land Bureau. The Committee recommends that the former name not be used for the new entity. The new section contains some different provisions, and it might be confusing to use the old name for the new entity.

Section 5(a): This provision deals with the governance of the bureau. The bureau has five directors who are appointed by the Governor with the advice and consent of the Senate. The directors serve five-year terms, with one term expiring every year so that the Governor will have an opportunity to appoint four of the five members during his first term of office. A limit of two terms is imposed. The term limit will not affect the new Bureau because, as a new agency, there will be no directors who have served two terms. The requirement with respect to strict standards of fiduciary duty that was added by the 1985 amendments is retained.

Section 5(b): This provision deals with the qualifications of the directors. It retains the requirements of the 1976 Constitution with respect to representation of the three islands and the Carolinian community. It also retains the requirement, added in 1985, with respect to a woman member. It retains the requirement of U.S. citizenship, but deletes U.S. national status. It retains the five-year residency requirement. The requirement with respect to felony convictions has been deleted because there is an overall provision in this regard that has been added to Article VII.

The Committee notes that conditions with respect to the availability and priority of uses of public lands varies among the senatorial districts. For this reason, the representatives of the three senatorial districts on the board of directors likely will want to involve advisory councils from their respective senatorial districts in order to obtain input from and to be responsive to the public with respect to land decisions.

A new requirement has been added that all directors must come from the private sector. The Committee recommends this requirement as a balance against the viewpoints of senior government employees who staff the bureau and as a means of infusing the necessary top management talent into the bureau.

Section 5(c): This section is the same as Section 4(d) of the 1976 Constitution.

Section 5(d): This section is the same as Section 4(e) of the 1976 Constitution, with the added proviso that the annual report must be delivered by the chair, in person, to a joint session of the legislature.

Section 6: This section provides for the fundamental policies that must be followed by the bureau.

Section 6(a): This section provides for the homestead program. It broadens the

authority of the homestead program to include a homestead housing component. The Committee recommends this broader authority as a practical way to meet the shortage of land that will cause the end of the homestead program in the foreseeable future.

When the Commonwealth was founded, nearly 80% of the land in the Commonwealth was public land. The homestead program was begun as a way to get this public land into the hands of the people and to create a stable class of landowners with a stake in the future of the Commonwealth. In the intervening 20 years, much of that public land has been transferred to homesteaders or to commercial lessees.

Housing: By empowering the Bureau to provide homesteads that are essentially condominium interests in buildings on public lands, the Constitution allows the Bureau to have the flexibility to meet the demand for homesteads and to continue the basic underlying purpose of the homestead program. The constitutional provision does not require the Bureau to get into the housing business in any particular way. It provides the authority; and allows the Bureau to implement the program in the manner most suitable to requirements in the community.

One grant: In the past, the homestead program has allowed for two grants to each person, one village homestead and one agricultural homestead. There is no longer enough land to allow two homesteads per person. For that reason, a limitation of one homestead or homestead housing grant has been imposed. The Bureau may grant land homesteads or housing homesteads. A person who receives a land grant is not eligible for a housing grant, and visa versa.

Limitation on sale or lease: The purpose of providing homesteads is not to enrich the homesteader, but to provide a stable place for the homesteader to live and an incentive for persons of Northern Marianas descent to continue to live in the Commonwealth and to help it prosper. For that reason, the requirement of three years before title vests has been retained. This requirement was included in the 1976 Constitution. The requirement that 10 years pass before the homesteader may sell or lease the homestead has been increased to 25 years for the same reason. Homesteads may be transferred by inheritance at any time, but the inheriting person must continue to fulfill the homestead requirements that originally applied. For example, if a homesteader died six years after title is granted, the inheriting person may not sell or lease the homestead for 19 years, which, when combined with the initial 6 years, reaches the total of 25 years.

Assistance with mortgages: The provisions of Section 6(a) with respect to mortgages are the same as in the 1976 Constitution. Because of the title restrictions on homestead grants, it is usually not possible to get a commercial mortgage. For this reason, the Committee recommends that Marianas Public Land Trust funds be made available to fund or guarantee homestead mortgages, and the Committee's draft has so provided.

Governance: The governance of the homestead program is left to the Bureau. Section 6(a) provides for requirements relating to the program by issuing rules and regulations. The

Legislature may not pass laws imposing priorities, qualifications, requirements, waivers, or any other conditions with respect to the homestead program.

Section 6(b): This section allows the Bureau to transfer a freehold interest in public lands to another agency of the Commonwealth government for use for a public purpose. This kind of transfer may be done only after reasonable notice and a public hearing.

Land exchanges: The Committee took note of the public dissatisfaction with the current land exchange program. The pending land exchanges could absorb a significant portion of the remaining public lands. One proposal suggested a five-year moratorium on land exchanges while the pending situation was cleaned up. Instead, the Committee decided to take the Bureau out of the land exchange business altogether. The Bureau may make public land available to other government agencies under Section 6(b) and those government agencies may use the public land obtained from the Bureau for the land exchanges it needs to accomplish its public purposes. Under this provision, the government agency that needs the land exchange would request land from the Bureau. If the Bureau found that the request could be accommodated within the Bureau's overall plan, and that the request was a reasonable use of the land, then the Bureau could exercise its discretion to provide the necessary land to the requesting agency. That agency would be responsible for all details of the actual exchange. The Bureau would be permitted to require payment by the requesting agency for the land to be transferred. If the Bureau decided against the transfer, the public agency would then have to use the eminent domain power. The Bureau would not have the authority to deal with private individuals in land exchanges.

Section 6(c): This section governs all leases of public lands.

Conditions: This section requires that before a lease is approved by the Bureau, that a public notice be issued stating the precise terms of the lease that the Bureau proposes to enter and identifies the party with whom it will contract. That notice shall solicit and provide a reasonable opportunity for competing bids. If a better bid is received, the Bureau may not go ahead with the original lease. To do so would violate the fiduciary responsibilities of the directors. The Committee recommends this new policy as an effective means of preventing leases at concessionary terms.

Length: The Committee recommends that the term of the lease on public lands be increased to 40 years. The current constitutional provision allows 25 years with a renewal of 15 years with the approval of a 3/4 vote in the legislature.

The Committee took note of the problems that occur when foreign investors get leases, do not develop them, and hold the land for speculation. The Committee recommends that the Bureau be required to put in all leases a provision defining the expiration of the lease in three years if the commercial purpose has not been accomplished.

Approval by the Legislature: The Committee noted the extensive revisions of major

leases that are required by the Legislature; in effect a separate appropriation process. This practice is undesirable. For this reason, the Committee recommends that the Legislature be required to vote, to approve or reject, on a lease and that no alterations or additional conditions be allowed. Under the language recommended by the Committee, any additions or changes by the Legislature would be of no effect.

The Committee has provided that the Legislature must approve leases of more than 25 years or more than 5 hectares.

The Committee has taken note of the possible evasion of the 5-hectare requirement that might occur if developers acquired separate parcels of less than 5 hectares and then joined them. The fiduciary responsibility of the directors requires that they investigate this possibility and require, as a lease term, that if any parcels are subsequently joined, in fact or in practical effect, to a lease of less than 5 hectares that would make the total parcel greater than 5 hectares, then the lease shall automatically expire and the legislature's approval must be sought.

The Committee has also taken note of the complaints of developers that their projects are often held hostage by the Legislature. There is no public purpose to be served by delay. For this reason, the Committee recommends a provision that if the Legislature does not act within 60 session days, the lease is deemed to be approved.

The Committee is mindful that approval of leases can take up a considerable amount of the Legislature's time. For that reason, the Committee has required that the Legislature act in joint session when it approves leases.

The 1976 Constitution contained a requirement of a 3/4 vote of the Legislature to approve an extension of a lease from 25 to 40 years. Due to the downsizing of the Legislature, and the safeguards explained above, the Committee does not recommend retaining this super-majority requirement.

Section 6(d): This section covers the comprehensive land use plan. A requirement for such a plan has been in the Constitution since 1976, but it has not been very effective. The Committee recommends that this requirement be strengthened in two ways: First, the Bureau should be required to act only in accordance with a plan. Second, the Bureau should adopt or amend the plan only after reasonable notice and public hearings.

Section 6(e): This section provides for the disposition of any proceeds from the leases or sale (to other government agencies) of public lands. As in the 1976 Constitution, the moneys are to be deposited with the Marianas Public Land Trust.

The Bureau is required to submit a budget to the legislature, to be approved by the Governor, and may spend money for its administration or programs only as authorized by this budget. Once authorized, the Bureau may retain funds for administration, for the maintenance of the preserves authorized under Section 3, or for the homestead programs authorized under

Section 6(a).

Section 7: This section combines all the land survey and land title agencies under the Bureau. The Governor's reorganization effected this consolidation, and it is preserved here. The functions of the Land Commission and the functions of surveying lands are consolidated within the Bureau. This has no effect on the jurisdiction of the Superior Court to hear land cases. The adjudication function of the Bureau is an administrative one.

Section 8: This section provides for the Marianas Public Land Trust in essentially the same way as the 1976 Constitution.

Section 8(a): This section maintains the current Marianas Public Land Trust. The trust has five directors, with representation from the senatorial districts, the Carolinian community, and the women's constituency. The only substantive change made to this section is a term limit of two terms. The term limit applies retroactively, so that any current trustee who has served two terms would not be eligible to serve a third term.

Section 8(b): This section controls the kinds of investments that the trustees may make with the principal of the trust.

Bonds: This section provides that 40% of the investments must be in bonds purchased in the United States market. The trustees may not speculate in foreign markets. The bonds must be of high quality. This requires the trustees to purchase only bonds of A grade or better under the current rating system.

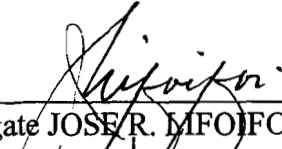
Stocks: This section provides that when the trustees buy stocks, they must purchase shares of companies listed on the stock exchange in the United States that has the highest qualifications for listing. At present, that is the New York Stock Exchange. This means that the trustees will be investing in companies that have a relatively high asset value. The trustees may not speculate in commodities, stocks listed on other exchanges, or foreign stocks.

Section 8(c): The trustees may retain the interest earned on the principal of the trust if they elect to invest in mortgages or loans permitted under Section 6(a) which covers the homestead and homestead housing program. Up to 40% of the interest earned in any year may be allocated to this purpose. If the trustees do not allocate interest proceeds to this purpose, they are turned over to the general fund.

Section 8(d): This section is the same as Section 6(e) of the 1976 Constitution.

The constitutional language reflecting the Committee's decisions is attached. The Committee recommends this language to the Convention.

Respectfully submitted,

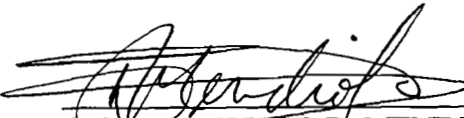


Delegate JOSE R. MFOIFOI, Chair



Delegate MARIAN ALDAN-PIERCE, Vice Chair

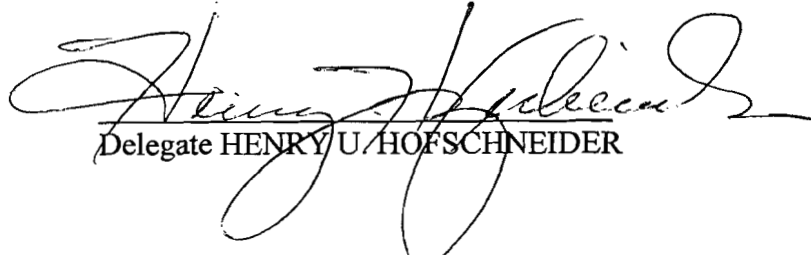
Delegate CARLOS S. CAMACHO



Delegate DONALD B. MENDIOLA



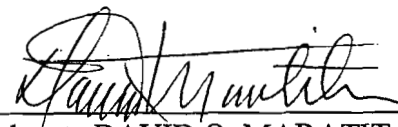
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Delegate LILLIAN A. TENORIO

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ARTICLE XI: COMMONWEALTH LANDS

Section 1: Public Lands.

The lands as to which right, title or interest have been or hereafter are transferred from the Trust Territory of the Pacific Islands to any legal entity in the Commonwealth under Secretarial Order 2969 promulgated by the United States Secretary of the Interior on December 26, 1974, the lands as to which right, title or interest have been vested in the Resident Commissioner under Secretarial Order 2989 promulgated by the United States Secretary of the Interior on March 24, 1976, the lands as to which right, title or interest have been or hereafter are transferred to or by the government of the Northern Mariana Islands under article VIII of the Covenant, and the submerged lands off the coast of the Commonwealth to which the Commonwealth now or hereafter may have a claim of ownership are public lands and belong collectively to the people of the Commonwealth who are of Northern Marianas descent.

Section 2: Submerged Lands.

The management and disposition of submerged lands off the coast of the Commonwealth shall be as provided by law.

Section 3: Permanent Preserves

There are hereby established permanent preserves which shall be maintained as uninhabited areas to be used for cultural and recreational purposes, to preserve wildlife and medicinal and other plant life, to conserve water resources, and to provide community farm lands. No permanent structure may be built in the preserves. No land designated as a preserve may be sold, leased, or dedicated to any private use in any way.

- a) [description of land on Saipan]
- b) [description of land on Tinian]
- c) [description of land on Rota]

[Note: This section is new. The lands to be put in the preserves are being defined by a subcommittee.]

Section 4: Other Public Lands.

The management and disposition of public lands other than those provided for by Section 2 shall be the responsibility of the Marianas Land Bureau.

Section 5: Marianas Land Bureau.

There is hereby established the Marianas Land Bureau.

a) The bureau shall have five directors appointed by the governor with the advice and consent of the senate. The directors shall be held to strict standards of fiduciary care and shall direct the affairs of the bureau for the benefit of the people of the Commonwealth who are of Northern Marianas descent. The directors shall serve staggered terms of five years, and shall serve not more than two terms.

b) At least one director shall be a resident of each senatorial district, at least one shall be a woman and at least one shall be a representative of the Carolinian community. Each director shall be a citizen of the United States and a resident of the Commonwealth for five years immediately prior to appointment, and shall not hold any other government position.

c) The bureau shall have the powers available to a corporation under Commonwealth law and shall act only by the affirmative vote of a majority of the directors.

d) The chair shall make an annual report in person to the people at a joint session of the legislature describing the management of the public lands and the nature and effect of transfers of interests in public land made during the preceding year and disclosing the interests of the directors in land in the Commonwealth.

Section 6: Fundamental Policies.

The bureau shall follow certain fundamental policies in the performance of its responsibilities.

a) The bureau shall use some portion of the public lands for a homestead and homestead housing program. A person is not eligible for more than one homestead or homestead housing grant. A person may not receive a freehold interest under this subsection for three years after a grant and may not sell or lease a freehold interest in a grant for twenty five years after receipt. At any time after receiving the freehold interest, the grantee may mortgage the grant provided that all funds received from the mortgage be devoted to the improvement of the grant. Other requirements relating to the program under this subsection shall be provided by rules and regulations issued by the bureau.

b) The bureau may transfer a freehold interest in public lands for use for a public purpose by another agency of government after reasonable notice and public hearing.

c) The bureau may transfer a leasehold interest in public lands for commercial or other purposes after reasonable notice, a solicitation for competing bids, and public hearing. A leasehold interest shall not exceed forty years including renewal rights and shall expire within three years if the commercial purpose is not accomplished. Leasehold interests of more than twenty five years, or more than five hectares, shall be submitted to the legislature. The legislature acting in a joint session may approve or reject, but may not alter, the lease presented by the bureau. If the legislature fails to act within sixty session days, the lease is deemed approved.

d) The bureau shall operate in accordance with a comprehensive land use plan with respect to public lands including priority of uses and shall adopt or amend the plan only after reasonable notice and public hearing.

e) The bureau shall receive all moneys from the public lands and shall transfer these moneys promptly to the Marianas Public Land Trust except that the bureau may retain the amount necessary to meet reasonable expenses of administration, costs of programs under section 5(a) and maintenance of the permanent preserves in accordance with a budget approved by the legislature and the governor.

Section 7: Land Titles

The bureau is vested with jurisdiction to investigate, survey, consider, adjudicate, and resolve land titles.

Section 8: Marianas Public Land Trust.

There is hereby established the Marianas Public Land Trust.

a) The trust shall have five trustees appointed by the governor with the advice and consent of the senate, who shall be held to strict standards of fiduciary care. At least one trustee shall be a resident of each senatorial district, at least one trustee shall be a woman and at least one trustee shall be a representative of the Carolinian community. The trustees shall serve staggered terms of five years, and shall serve not more than two terms.

b) The trustees shall make reasonable, careful and prudent investments. At least forty percent of the investments shall be in obligations purchased in the United States with

a high rating for quality and security. Investments in equities shall be purchased in companies listed on the United States stock exchange with the highest requirements for listing.

c) The trustees may fund or guarantee the maintenance of the permanent preserves under section 3 and mortgages and loans permitted under section 6(a) to an amount not to exceed forty percent of interest earnings each year.

d) The trustees shall make an annual written report to the people accounting for the revenues received and expenses incurred by the trust and describing the investments and other transactions authorized by the trustees.

Schedule on Transitional Matters

Section ____: Public Lands

Leases of public lands after June 5, 1995 shall be in accordance with Article XI.

Nothing in these amendments shall impair rights under existing contracts.

Upon ratification of these amendments, the existing departments and agencies with responsibilities for the land matters covered by Article XI and all their employees; all existing administrative policies, rules, and regulations; all pending matters; and all laws with respect to these departments and agencies shall continue to exist, remain in effect, and continue to operate as if established pursuant to this Article XI if consistent with this Article XI.

Upon ratification of these amendments, all laws pertaining to the homestead program, land exchanges, and other land programs remain in effect until such time as they are inconsistent with a rule or regulation adopted by the bureau. Rules and regulations adopted by the bureau within its jurisdiction supercede existing legislation.