

July 24, 1995

COMMITTEE ON LAND AND PERSONAL RIGHTS

REPORT NO. 6: ARTICLE XI, COMMONWEALTH LANDS (Revised)

The Committee met on Monday, July 10, 1995, Tuesday, July 11, 1995, Wednesday, July 12, 1995, Thursday, July 13, 1995, Friday, July 14, 1995, Monday, July 17, 1995, and Tuesday, July 18, 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.

A subcommittee was appointed to consider the concept of permanent land set-asides into preserves that could not be sold or turned over to private use. The subcommittee met extensively with responsible officials in the agencies with jurisdiction over public lands to ascertain their views.

The Committee presented this report at the plenary session on July 22, 1995 and noted that there would be some revisions to the report before second reading. This is the revised report.

The Committee decided that the constitutional structure for administering the land programs that was put in the Constitution in 1976 should be restored and revised. The 1985 amendments allowed this structure to be changed; and a change was effected by the governor in 1994 by Executive Order 94-3..

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 deals with all public lands except the submerged lands. It is the same as the 1976 version.

Section 4: 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 4(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 one term is imposed. The term limit will not affect the new Bureau because, as a new agency, there will be no directors who have served one term.

The requirement with respect to strict standards of fiduciary duty that was added by the 1985 amendments is retained. The Bureau is not just another administrative agency. The management of the public lands is a public trust that requires high standards of care. The directors have a duty to make the land productive or otherwise use or dispose of it in a manner that is demonstrably beneficial to the people for whom the land is held in trust and administered.

The fiduciary duty has application, for example, in the selection of appraisers. Because the best possible use must be made of the land, it cannot be sold or leased without an appraisal by a competent, independent real estate appraiser. The appraiser must be selected by and acting solely for the Bureau, and not the prospective buyer or lessee.

Section 4(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 requirement for residence in the Commonwealth for five years prior to appointment is not affected by temporary absences for military or educational purposes.

Under the Bureau's general structure and practices, it will not act with regard to matters affecting lands on Rota and Tinian without the presence of directors from Rota and Tinian who are absent for very short medical emergencies because there are relatively few types of acts as to

land on Rota and Tinian that are taken for the first and last time at a single meeting. The Bureau is not required, however, to hold up actions for the presence of directors from Rota and Tinian. It is the responsibility of these directors to get to meetings and participate in actions.

This section requires that the directors be persons who are qualified by virtue of their familiarity with landholding practices, customs and traditions in the Commonwealth. The Committee intends that persons of Northern Marianas descent be appointed to the director positions, although it recognizes the possibility that someone not of Northern Marianas descent who had long exposure to and strong ties with the Marianas might also qualify.

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

Section 4(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 5: This section provides for the fundamental policies that must be followed by the bureau. It follows the same general structure as the 1976 Constitution.

Section 5(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.

Number of grants: The language limiting each person to one agricultural and one village homestead has been deleted. The Bureau will provide for appropriate limitations in its rules. This deletion allows the Bureau to eliminate agricultural homesteads altogether on Saipan where land is scarce but to maintain the availability of agricultural homesteads on Rota and Tinian so long as sufficient land remains available. Nothing in the Constitution limits the grant of homesteads on Rota or Tinian to residents of Saipan who wish to change their residence to Rota or Tinian to take up their homesteads. Those who are denied agricultural homesteads on Saipan may wish to relocate in order to pursue the type of homestead they desire.

Obtaining a freehold interest: The Committee recommends removing the restriction requiring that three years elapse from the grant of the homestead before a freehold interest can be received. Homesteaders need a freehold interest in order to obtain a mortgage. The Committee believes that the Bureau can regulate homesteads effectively to prevent abuses.

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 that 10 years pass before the homesteader may sell or lease the homestead has been increased to 25 years. 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. Homesteads may be leased, before the 25 year period expires, but not for commercial purposes. The Committee intends that a homesteader who goes abroad and is not living in the Marianas during schooling or other training, for example, could rent out his or her homestead for the duration of the stay abroad. The Bureau will provide the necessary guidance in this area.

Mortgages: The former provisions of Section 5(a) with respect to mortgages have been deleted. Because of the title restrictions on homestead grants, it is usually not possible to get a commercial mortgage without compliance with government rules designed to assist in providing security. For that reason, the Bureau can provide appropriate limitations on the use of mortgage funds in its rules. The government agencies that provide mortgage funds, such as the Retirement Fund, also have requirements in their rules which are sufficient to protect the public interest.

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 exclusively to the Bureau. Section 5(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.

**Clearing up conflicts and problems:** The Bureau is given authority over all the land entities necessary to coordinated decisions with respect to public land matters. The Committee heard in public hearings and in its meetings with various agencies about problems that have been caused in the past when there have been conflicting decisions made about land. For example, a number of agricultural homesteads were issued on Rota following the approval of P.L. 7-11. There was a provision in P.L. 7-11 that made the effectiveness of the statute contingent upon the availability of homestead development funds. At the public hearings, Rota homesteaders referred to improvements made on assigned areas that were now in jeopardy because of the conflict with the statute. The Bureau will have a sufficiently broad jurisdiction that it can examine and act with respect to these kinds of conflicts and problems.

**Section 5(b):** This section allows the Bureau to transfer a freehold interest in public lands only to an agency of the Commonwealth government. The term “government agency” in this context includes all departments, agencies, and instrumentalities of the Commonwealth government including regulatory, quasi-judicial, and temporary agencies.

**Government agency use:** This provision covers grants of public land for use for public facilities such as schools, government buildings, roads, and other similar purposes. The government agency that needs public land would make a request to the Bureau stating the public purpose for which the public land would be used and identifying the land to be granted. The request would be processed, a public hearing would be held, and the Bureau would make a decision. All of the current processes for obtaining the necessary approvals and sign-offs would be retained unless changed by the legislature.

**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 recommends the use of a two year limitation period on land exchange applications and a change in the way land exchanges are done.

The Bureau may make public land available to other government agencies under Section 5(b). Government agencies may either use the public land obtained from the Bureau directly to accomplish their public purposes or use the public land as an exchange with a private land owner to obtain private lands they need to accomplish their 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 comprehensive land use 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 with the private landowner. 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 to obtain the necessary private land. A determination by the Bureau not to transfer public land is sufficient under Article XIII for a finding that public lands are not available.

The Bureau would not have the authority to deal with private individuals in land exchanges. Those dealings would be done by the public agency that needs the private land that is the subject of the proposed land exchange.

Once an agency makes a request for public land for a land exchange, the Bureau would have two years to act. After two years, the Bureau would no longer have any jurisdiction and the case would be closed. This is necessary to prevent the accumulation of unresolved land exchanges. When the landowner offers an exchange of private land but asks for too much public land in return, the exchange process simply stops. Neither party goes ahead. The public blames the government agency responsible for land matters for a failure to clear up land exchange matters. But the public agency cannot do so responsibly if the private owners are asking for too much public land in their proposed exchanges. Under this provision, the process would have to be finished within two years, or the landowner would know that the exchange had been denied. Any proposed exchange not completed in two years is closed, and no exchange may be made.

As to pending land exchanges, it is the intent of the Committee that the government agencies and the Bureau give these exchanges priority and get them resolved. All pending land exchange matters will be subject to the two year limitation. If they are not resolved within two years of the approval of these amendments, they will be deemed to be denied and may not be revived. This will give both the government agencies and the landowners an incentive to get the backlog cleared up.

While the land exchange backlog is pending, there is substantial uncertainty as to the amount of public land that will be available for homesteads and commercial leases. The Committee intends that the backlog be reduced before commercial leases consume large additional amounts of the public lands. It is for this reason that the two-year limitation period was adopted. With a concerted effort, the government agencies that need private land, and the Bureau which is in charge of making public land available for exchanges when that is warranted, can get together and dispose of the backlog. The Bureau may also hire private contractors to handle the paperwork involved in land exchanges, to do the necessary investigation and fact-finding, and to provide other support.

When a proposed land exchange has been disposed of, either by denial of the request by the Bureau or by the elapse of two years, then the landowner can go to court to get compensation from any government agency that is using the landowner's private land; or the government

agency can use its eminent domain powers to pay the landowner for the fair value of the land.

The Committee took note that there are old land exchange cases pending from various military confiscations. If these cannot be resolved within the two year time period, the Bureau would send the claimant a notice to that effect, and the claimant would then have to pursue his or her rights in the courts. The sending of a notice is not a requirement, however, for a claimant to pursue these land claims in the courts. Nor would any land exchange request, pending at the time of the approval of these amendments, be extended beyond two years.

It is the intent of the Committee, and it is inherent in the two-year limitation period, that the land exchange problems be resolved before commercial leases are granted. After the two year limitation period expired, and all pending land exchanges are either resolved or expired, then the Bureau could make reasonable judgments about what public lands should be available for leases to private developers.

The Committee intends that the Bureau will take account of the availability of inter-island land exchanges. The public land in the Commonwealth belongs to all the people; not the people of any one island. There may not be any permanent prohibition or moratorium on inter-island land exchanges. Counsel advises that such a permanent bar would be unconstitutional.

Section 5(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 availability of a particular parcel of public land for commercial lease. That notice shall solicit and provide a reasonable opportunity for competing bids. Through this process of competing bids, and by testing the market in appropriate ways, the Bureau must get the best possible price for any commercial lease. To do otherwise 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. This provision is intended to prevent that result. The Committee recommends that the Bureau put in all leases a provision requiring 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, a fully executed 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 obtained.

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. Approval under this section requires the affirmative vote of the members of both houses of the legislature meeting in joint session.

Priorities: The Committee considered a delegate suggestion that no commercial leases be permitted until all land exchange matters are resolved. The Committee believes that it is not necessary to establish a rigid priority for the Bureau. The Bureau must act pursuant to a land use plan (under Section 5(d)) and that provides sufficient discipline with respect to priorities.

Enforcement: The Bureau should involve the office of the Public Auditor, the Attorney General, and other law enforcement agencies as necessary to investigate the compliance with lease terms. If leases require that commercial activity begin within a specified time period, and the necessary level of activity has not begun, the Bureau should take action to cancel the lease. The Bureau should provide sufficient monitoring and enforcement of lease terms to ensure that land is not held for speculation and that land is not held by lessees who do not have sufficient financial means to develop the land in accordance with the lease terms. .

Section 5(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.

The Committee considered various delegate suggestions for a timetable within which the Bureau would have to produce a comprehensive land use plan. The Committee recommends that no requirement be imposed, and that the Bureau be allowed to proceed as quickly as it is able to this end.

The Bureau will not be able to complete any land exchanges without a plan in place, so the two-year limitation on completing pending land exchanges will create sufficient pressure to complete the land use plan.

Section 5(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 and expend funds for administration, for the maintenance of the preserves authorized under Section 6 and for the homestead programs authorized under Section 5(a).

Section 6: 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.

Section 6(a): Permanent preserves are those public lands that cannot be sold or dedicated to private use in any way. They are to be used for a range of public purposes that are included in recreational and cultural uses, preservation of wildlife, preservation of medicinal and plant life, and conservation of water resources. An example of a cultural use is the traditional use of the sabana lands in Rota as community farmlands.

There is flexibility under this provision with respect to short-term leases on the permanent preserves to provide visitor services and to promote recreational uses. The Committee's intent is that these lands be permanently set aside and not leased for private purposes or used for land exchanges. They could, of course, be affected by subsequent constitutional amendment.

Section 6(b): This section incorporates the section protecting Isleta Managaha (Managaha Island) that was formerly in Article 14, Section 2. (That section now deals only with the islands in the Northern Islands that are permanently set aside as wildlife refuges.)

This section also covers Isleta Maigo Fahang (Bird Island) and Isleta Maigo Luao (Forbidden Island) adjacent to Saipan. It requires that these islands be maintained as uninhabited places, but permits cultural and recreational uses.

Section 6(c): This section covers the sandy beaches, already protected by former Section 5(e) of Article 11. This section does not change the status of the sandy beaches. This covers:

(1) Saipan: Puntan Susupe (Susupe Regional Park), Unai Chalan Kanoa (Chalan Kanoa District #4 San Isidro Beach Park), Puntan Afetna (Afetna Beach Park, San Antonio south of Pacific Island Club Resort), Unai Chalan Kiya (Civic Center Beach, Vietnam Memorial Monument, Kili Beach), Garapan Regional Beach Park (Carolinian Utt), Tanapag Beach Park, Unai Laggua (Cow Town), Ladderan I Maddok (Grotto), Unai Makpe (Wing Beach), Unai Halaihai (Marine Beach), Unai Laolao Kattan (Tank Beach), Unai Peo (Ladder Beach), Unai Dangkolu and Unai Dikike (Denikuio and Coral Ocean Point), Puntan Muchot (Micro Beach), Unai Fanhang (Jeffries Beach), Unai Talufofo (Talufofo Beach), Unai Hasngot (Old Man By The Sea), Unai Nanasu (Hidden Beach), and beach properties occupied by public schools (San Antonio Elementary School, Hopwood Jr. High School, and Gregorio T. Camacho Elementary School).

(2) Tinian: Kammer Beach, Taga Beach, Tachogna Beach, Unai Dankulu, Unai Babui, Unai Chulu, Lasarino, Banzai Cliff Park and Masaolog. Tinian beaches included in the military leased lands are included in the preserves and will be protected under this section at the end of the military lease.

(3) Rota: Tatachog Beach, Taipingot Peninsula, Teteto Beach, Guata Beach, Swimming Hole Beach, Pinatang Beach Park (including the Children's Park), Liyo Beach Park (Tewksbury Beach), and Mochong Beach.

The Bureau has jurisdiction over land surveying and therefore has the necessary capability to complete the required surveys to define these beach areas to be preserved.

Section 6(d): This section covers public land directly contiguous to any beach, whether sandy or not. If public land is connected to a beach, it will become a part of the permanent preserves unless the Marianas Land Bureau acts to exempt all or part of this land from the preserves. The Bureau would likely make these determinations in connection with its comprehensive land use plan. This requires an affirmative action on the part of the bureau to take land out of the preserves. If no action is taken by December 31, 1997, then the land is committed to the preserves.

The Marianas Land Bureau may allow such playground and recreational facilities on these lands as are suitable for public purposes in its judgment.

Section 6(e): This section covers public land that is 500 feet or more above sea level and thus affects the ecology and scenic quality of the islands. This public land is included in the permanent preserves unless the Marianas Land Bureau acts to exempt all or part of this land from the preserves. This is similar to Section 6(d).

The Marianas Land Bureau would establish the appropriate uses of these preserves in its rules and regulations.

Section 6(f): This section covers four wildlife areas that have been set aside, and protects them permanently. These are the Kagman Wildlife Conservation Area, the Naftan Wildlife Conservation Area on Saipan; and the Chenchun Bird Sanctuary and Katan Afato Wildlife Conservation Area on Rota, and no permanent structures may be built in these preserves and no leases may be made.

Section 6(g): This section covers the sabana lands in Rota, which are set aside for community farming, conservation, bird and wildlife preservation, recreation, and village homesteads under Section 6(a). The views of the people of Rota could be obtained by the Bureau through a local initiative in the event that a part of the sabana lands were to be used for homesteads.

Section 6(h): This section provides that when the military lands are returned on Tinian, at least 100 hectares will be set aside for a permanent preserve on Tinian. The Bureau is given flexibility in dealing with this part of the preserves.

Section 6(i): This section permits the Bureau to set aside additional lands as part of the preserves. This covers:

Saipan: Garapan Central Park, Kagman Homestead Park, Maddock (Grotto), Navy Hill Softball Field, Garapan Regional Park (Matsui), As Matuis Public Park, Dandan Homestead Park

Tinian: Taga House Park

Rota: Tetnon Park (Old Japanese Cannon Park), Veteran Memorial Park, Tonga Cave Park, Melchor S. Mendiola Municipal Park, Teteto Cliff Line Park, As-Matmos Cliff Line Park, and As Nieves Latte Quarry.

Section 7: This section combines all the land survey and land title functions in the executive branch 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. This section has no effect on the Recorder's Office within the court system.

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 each of 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. This language does not limit the trustees to purchasing bonds issued by the United States government. This includes corporate bonds, municipal bonds, and other bonds that have a sufficiently high rating. The trustees may not deal 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. The trustees may not deal in foreign markets.

Exclusive control: This section also provides that the trustees have the sole power to approve investment of Trust assets. The trustees have a fiduciary responsibility, and in order not to be placed in a situation where they are forced to take actions that are not prudent, the trustees need to have exclusive control of decisions about investments to be made with funds that belong to the trust.

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 5(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 to be appropriated by the legislature for the Council on Indigenous Affairs and capital improvement projects. Article III, Section 20, provides that the Council on Indigenous Affairs submits a budget to the legislature for information purposes; however no funds flow to the Council except by appropriation by the legislature.

The Committee notes that the final version of this section will need to be harmonized with the provisions covering the Council on Indigenous Affairs.

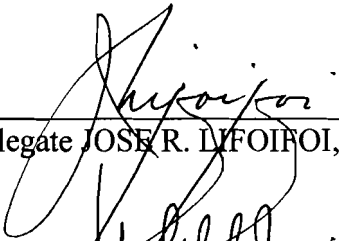
Section 8(d): This is the same as Section 6(d) of the 1976 Constitution.

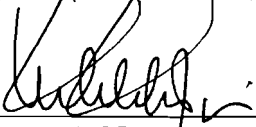
Section 8(e): This section is the same as Section 6(e) of the 1976 Constitution.

Transition: No change in these amendments affects existing leases of government land or leases that have received approvals prior to June 5, 1995. Leases granted after June 5, 1995 must be in conformity with the requirements of these amendments.

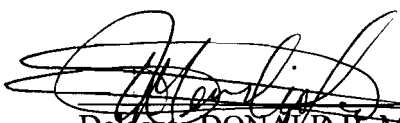
The constitutional language reflecting the Committee's decisions is attached. The Committee recommends this language to the Convention.

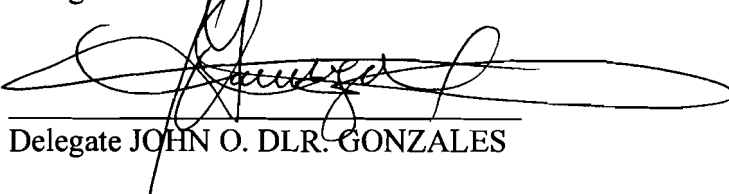
Respectfully submitted,

  
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Delegate JOSE R. LIFOIFOI, Chair

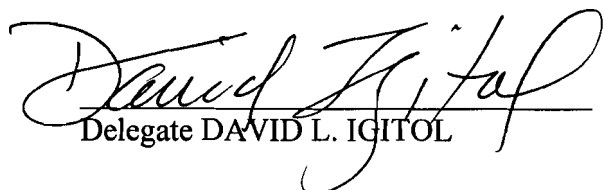
  
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Delegate MARIAN ALDAN-PIERCE, Vice Chair

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Delegate CARLOS S. CAMACHO

  
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Delegate DONALD B. MENDIOLA

  
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Delegate BENJAMIN T. MANGLONA

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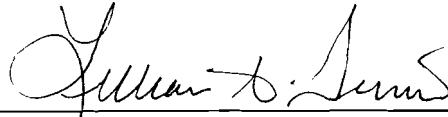
Delegate DAVID Q. MARATITA

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Delegate JUSTO S. QUITUGUA

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Delegate JOEY P. SAN NICOLAS



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Delegate LILLIAN A. TENORIO

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7/21/95

## 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: 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 4: 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 administer the public lands and the affairs of the bureau for the benefit of the people of the Commonwealth who are of Northern Marianas descent. The directors shall serve terms of five years, with one term expiring each year, and shall serve not more than one term.

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, shall have adequate knowledge of landholding practices, customs and traditions in the Commonwealth, 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 five 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 5: 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 freehold interest in a grant may not be sold or leased for commercial purposes for twenty five years after receipt. Other requirements relating to the program under this subsection shall be only as provided by the bureau.

b) The bureau may transfer a freehold interest in public lands only to a government agency for use for a public purpose after reasonable notice and public hearing and within two years of the date of the request.

c) The bureau may transfer a leasehold interest in public lands for commercial or other purposes after reasonable notice, an opportunity 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 calendar days, the lease is deemed approved.

d) The bureau shall administer the public lands 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 and expend the amount necessary to meet reasonable expenses of administration, costs of programs under section 5(a) and maintenance of the permanent preserves under section 6 in accordance with a budget approved by the legislature and the governor.

Section 6: Permanent Preserves

a) There are hereby established permanent preserves to be used for cultural and recreational purposes, to preserve wildlife and medicinal and other plant life, and to conserve water resources. No land designated as a preserve may be sold or dedicated to any private use in any way.

b) Managaha Island, Bird Island, and Forbidden Island in the third senatorial district are permanent preserves which shall be maintained as uninhabited places used only for cultural and recreational purposes.

c) Public lands located within 150 feet of the high water mark of a sandy beach are permanent preserves which shall be maintained as uninhabited places with no structures other than facilities for public recreational purposes.

d) Public lands directly contiguous in any way to any beach are permanent preserves unless exempted by the bureau before December 31, 1997.

e) Public lands 500 feet or more above sea level are permanent preserves unless exempted by the bureau before December 31, 1997.

f) Public lands included in the Kagman wildlife conservation area, the Naftan wildlife conservation area, the Chenchun bird sanctuary, and the Katan Afato wildlife conservation area are permanent preserves upon which no permanent structures may be built and as to which no leases may be made.

g) Public lands in the sabana area of Rota are permanent preserves to be used for community farming, conservation, bird and wildlife preservation, recreation, and as provided by the bureau under section 5(a).

h) ~ At least one hundred contiguous hectares of any land in Tinian under military lease and returned to the Commonwealth shall be designated as a permanent preserve by the bureau.

i) Other permanent preserves may be designated by the bureau.

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. Trustees may not hold government positions while serving as trustee. The trustees shall serve terms of five years, with one term expiring each year, and shall serve not more than two terms.

b) The trustees shall make reasonable, careful and prudent investments. At least forty percent of the assets shall be invested in fixed income securities purchased in the United States with a high rating for quality and security. Up to sixty percent of the assets may be invested in equities purchased in companies listed on the United States stock exchange with the highest requirements for listing. The trustees have the sole power to approve investment of Trust assets.

c) The trustees may fund or guarantee mortgages and loans permitted under section 5(a) and the maintenance of the permanent preserves authorized under section 6 to an amount not to exceed forty percent of interest income each year and the remainder shall be remitted to the general fund to be appropriated by the legislature for the Council on Indigenous Affairs and capital improvement projects as deemed appropriate.

d) The trustees shall carry out the intentions of Article VIII, Section 803(e) of the Covenant by using the interest on the amount received for the lease of property at Tanapag Harbor for the development and maintenance of a memorial park. The trustees shall transfer to the general fund the remaining interest accrued on trust proceeds except that the trustees may retain the amount necessary to meet reasonable expenses of administration.

e) 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 or shall affect leases for which approval was granted prior to June 5, 1995.

Upon ratification of these amendments, the existing departments and agencies with responsibilities for 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.

Determinations to exempt lands from the permanent preserves shall be made as to individual parcels; such determinations may not be made generally.

The Governor shall specify, in appointing directors of the Marianas land bureau, which directors have terms expiring each year.

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