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Committee on Land & Personal Rights:

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Preliminary Draft
July 24, 1995

REPORT OF THE COMMITTEE ON LAND AND PERSONAL RIGHTS

REPORT NO. 7: ARTICLE 12, RESTRICTIONS ON ALIENATION OF LAND

The Committee met on June 12, 1995; June 14, 1995; July 10, 1995; July 12, 1995; July 14, 1995; July 17, 1995; July 18, 1995; July 19, 1995; July 20, 1995; and July 21, 1995 before first reading on July 22, 1995. The Committee also had public hearings on June 16, 1995 at the House Chambers; on June 26, 1995 at the Garapan Elementary School; on June 27, 1995 at the San Vicente Elementary School; on June 30, 1995 on Rota; and on July 7, 1995 on Tinian. In addition, the Committee sent members of the legal team to consult with lawyers who work with Article 12 cases on both plaintiff and defendant sides, collected all the relevant opinions in court cases, and reviewed leases. Former Justice Jose Dela Cruz consulted with the delegates about certain aspects of the language used in drafts discussed by the delegates.

Article 12 contains 6 sections. The Committee recommends amendments with respect to 5 of the 6 sections. The Committee's amendments do not affect the fundamental purpose of Article 12. The amendments are for the purpose of strengthening Article 12 so that its purposes can be achieved with a minimum of litigation, expense, family disputes, and division in the community.

ARTICLE 12 - SECTION 1

No language has been deleted from Section 1. There is no change to the fundamental requirement that the acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.

The language added to Section 1 requires disclosure by the buyer to the seller. This has no effect on the fundamental requirement that only persons of Northern Marianas descent can own land. The seller has no additional obligations of disclosure under Section 1 beyond any statutory or common law obligations that already exist or are created in the future. The disclosure requirement applies to all land sales, not just those in which persons who are not of Northern Marianas descent are or may be involved. Disclosure applies only to sales. It does not apply to leases up to 55 years. Leases within the 55 year limit are not transfers of permanent or long-term interests.

Disclosure is a statement made by a means that is effective for communication with the recipient; it may be oral or written. The Committee recommends that this requirement follow

current Commonwealth law. 2 CMC Section 4534. If the disclosure statement is provided in writing in either Chamorro or Carolinian (depending on the language used by the recipient) as well as in English, the statement is effectively communicated for purposes of this constitutional provision.

Fairness: The requirement of disclosure is limited. The buyer is not required to disclose all the facts known to the buyer about the transaction. Disclosure is required to the extent that it ensures fairness as described in this legislative history. The Committee has found in its public hearings and other fact investigations that disclosure of four facts will ensure fairness.

Agent: There is concern that when a buyer is acting for a third person, that the seller may be misled if the seller does not know that the agent is acting at the request, behest, or direction of a third person. The term "agent" as used in this context may mean the the buyer or a person acting on behalf of the buyer, such as a broker or "middleman". This rule does not require the buyer to disclose the identity of the third person for whom he or she is acting. If the owner wants that information, he or she can request it. If the buyer refuses further disclosure, the owner may decide not to sell.

For example, the statement: "The buyer is acting for another person in acquiring the land described in this document." would satisfy this requirement.

Commission, fee or profit: If the buyer has or intends to have an arrangement under which any interest in the land purchased from the owner will be the subject of a subsequent transaction in which the buyer will obtain a commission, fee, or profit, the fact of such commission, fee, or profit should be disclosed. This provision does not require the buyer to disclose the amount to be paid. If the owner wants that information, the owner can ask for it. If the buyer is unwilling to provide the requested information, then the owner may decide not to go ahead with the transaction.

For example, the statement: "The buyer will earn a commission, fee, or profit in connection with this transaction." would satisfy this requirement.

Purchase money: There has been a considerable amount of litigation in the Commonwealth about situations in which the purchase money was provided to the buyer by a third person. Many people regard this arrangement as a critical fact to the owner. Therefore, the Committee recommends that if the buyer has obtained the purchase money, or any part of it, from a third person that fact should be disclosed. This provision does not require the buyer to disclose the amount of purchase money that was obtained from a third party. If the owner wants that information, the owner can ask for it. If the buyer is unwilling to provide the requested information, then the owner may decide not to go ahead with the transaction.

For example, the statement: "The money necessary to purchase the real property that is the subject of this transaction has been obtained by the buyer from another person." would satisfy

this requirement.

Subsequent transactions: In some cases, land is purchased so that it can be leased or sold to others. In the event that the buyer has any intent of using the land for this purpose in the foreseeable future, that intent should be disclosed.

For example, the statement: "The buyer may decide, based on circumstances and considerations prevailing now or in the future, to sell or lease this property to another person. This sale or lease may occur immediately after the acquisition of the real property that is the subject of this transaction." would satisfy this requirement if the buyer wanted to turn around and sell or lease the property the same day or within a few days.

The intent of the addition to Section 1 is to require only the information from the buyer that is necessary for the seller to know in order to achieve a basic fairness. The buyer will always know more about his or her plans for the land or possible developments than the seller will know. It is the intent of Section 1 to put the seller in a position to make a reasonable judgment about the proposed sale. It is not intended to give the seller perfect knowledge or as much knowledge as the buyer has. The disclosure required is limited to these types of information that the delegates considered in voting on this change.

Timely enforcement: Section 6 permits a six year period during which transactions may be challenged. The buyer must provide the seller with the information as to when this period begins, when it ends, what rights the owner has to bring an action, and what the consequence is of not acting before the expiration of the time period.

For example, the statement: "This transaction is governed by a provision of the Constitution of the Commonwealth of the Northern Mariana Islands that provides a six-year period in which transactions such as this one may be challenged in the courts. The six year period begins to run on [INSERT DATE] and the six year period ends on [INSERT DATE]. Actions brought after the ending date will be barred." would satisfy this requirement when the correct dates are inserted.

Transactions which comply with these straightforward disclosure requirements as to basic facts about the circumstances in which the transaction is done will be safe from attack.

For example, a U.S. citizen, who is not a person of Northern Marianas descent, wishes to lease land in the Commonwealth. That U.S. citizen requests a person of Northern Marianas descent to purchase the land and then to turn around and give a 55 year lease. The U.S. citizen provides all of the money to purchase the land, and that purchase money plus a $20,000 fee is the total price for the lease. The person of Northern Marianas descent contacts the owner of the land. The owner of the land is willing to sell.

Prior to the time that the owner of the land formally agrees to sell (which means sign or

otherwise enter any enforceable agreement requiring transfer of the land), the person of Northern Marianas descent who is proposing to buy the land provides the owner with a document that includes the statements set out above:

(1) "The buyer is acting for another person in acquiring the real property described in this deed."

(2) "The buyer will earn a commission, fee, or profit in connection with this transaction."

(3) "The money necessary to purchase the real property that is the subject of this transaction has been obtained by the buyer from another person."

(4) "The buyer may decide, based on circumstances and considerations prevailing now or in the future, to sell or lease this property to another person. This sale or lease may occur immediately after the acquisition of the real property that is the subject of this transaction."

(5) "This transaction is governed by a provision of the Constitution of the Commonwealth of the Northern Mariana Islands that provides a six-year period in which transactions such as this one may be challenged in the courts. The six year period begins to run on [INSERT DATE] and the six year period ends on [INSERT DATE]. Actions brought after the ending date will be barred."

The landowner then has an opportunity to consider this disclosure and, in light of those facts, decide whether he or she still wants to sell. The disclosure requirement is intended to give the landowner adequate opportunity to consider the facts disclosed. Some landowners may not want to sell to someone who is going to turn around and lease the land. In that case, the landowner might refuse to go ahead with the deal. Some landowners may not care whether the land will be leased. In that case, the landowner would go ahead with the deal.

The document that is signed by the landowner will be used as evidence that the landowner had the necessary disclosure before the transaction was completed. That evidence can be defeated only by the traditional common law means such as a showing of fraud or undue influence. The Committee believes this will limit the litigation about these transactions.

While the lease is in effect, the land is owned by a person of Northern Marianas descent, and after the lease is over, the land will be returned to that person of Northern Marianas descent. This fulfills the requirements of Section 1.

This disclosure provision also gives the owner an opportunity to ask for more facts, if the owner thinks he or she needs more facts. For example, the owner could ask the person of Northern Marianas descent who wants to buy the land to tell the owner who will be leasing the

land and how much is being paid as a fee to the buyer. If the owner makes that request, the buyer has the option to provide the information or to refuse to provide the information and take the risk that the owner will refuse to sell. If the buyer provides the additional information, the seller is in a position to decide whether to go ahead with the transaction. The seller may decide, at his or her sole option, not to go ahead with the transaction. The purpose of Section 1 is to give the landowner that option.

Prospective effect: The disclosure requirement is new. It takes effect upon ratification of these amendments and has no retroactive application.

ARTICLE 12 -SECTION 2

Section 2 defines the term "acquisition" as used in Section 1. The changes to this section do not disturb the current jurisprudence about what is an acquisition other than to revise the exceptions. The structure of the section has been changed to make clear that there are only three exceptions. All other acquisitions of any sort are covered.

Transfer by inheritance to a child or grandchild. Transfers by testate or intestate succession to a child or grandchild is not an acquisition. If the child or grandchild does not qualify as a person of Northern Marianas descent because he or she is not 25% Northern Marianas Chamorro or Carolinian under Section 4, that child or grandchild can still acquire permanent and long-term interests in real property in the Commonwealth, so long as the transfer is by inheritance. The terms "child" and "grandchild" have the normal meaning.

A child or grandchild who inherits land and takes title under this exception can also leave this land to his or her children or grandchildren, regardless of whether they qualify as persons of Northern Marianas descent. The intent of this exception is that persons of Northern Marianas descent as of the date of this amendment may ensure that their land remains in their family regardless of whether their children and grandchildren decide to marry persons who are not of Northern Marianas descent.

Children may inherit land through either parent or both parents.

It is important to understand that children who are not qualified as persons of Northern Marianas descent cannot take title from their parents by gift or transfer while the parents are living. They can only take title after their parents die. That means that children who are 25% Northern Marianas Chamorro or Carolinian can take land by gift or sale from their parents while their parents are alive. Children who are 12 1/2% Northern Marianas Chamorro or Carolinian cannot take land by gift or sale from their parents. They can only take by inheritance after their parents die.

This exception does not cover brothers, sisters, nieces, nephews, aunts, uncles, or any relatives other than children and grandchildren. A person of Northern Marianas descent may designate by will a brother, sister, niece, nephew, aunt, uncle or other relative as the person to whom lands should go, but those persons must qualify as persons of Northern Marianas descent under Section 4 in order to own the land. A transfer to one of these relatives who is not of Northern Marianas descent would be of no effect.

Transfer by inheritance to an adopted child: An adopted child who is adopted before the age of six years is treated the same for purposes of this exception as a natural child. An adopted child who is not a person of Northern Marianas descent does not become a person of Northern Marianas descent by virtue of the adoption. However, children and grandchildren who are not

persons of Northern Marianas descent can inherit land under this exception.

As is the case with natural children, the adopted child can leave land to his or her children and grandchildren regardless of whether they are persons of Northern Marianas descent. As is the case with natural children, no other relatives are included in the exception.

Under current law, all adopted children are treated the same as natural children for purposes of inheritance. 8 CMC Section 2107(c), 8 CMC Section 1703(c). All children, natural and adopted, can inherit a fee simple interest from their parents. The proposed constitutional amendment will treat adopted children differently. Those who were adopted before age 6 will be able to inherit; those who were adopted after their 6th birthday will not be able to inherit.

Transfer by inheritance to a spouse: A spouse who is not a person of Northern Marianas descent may obtain a life interest in real property, but may not obtain fee simple title. A life interest would allow the spouse to lease the land and to use the funds from the lease for the spouse's support. However, it is important to understand that the spouse will not be able to give a 55-year lease, which probably would extend beyond the spouse's life and therefore beyond the spouse's life interest. A life estate has absolutely no commercial value as its indeterminate length prohibits any leasing whatsoever. The spouse will only be able to lease what he or she has, and that is an interest for an indeterminate number of years. If the spouse dies one year after getting the life interest, then the life interest is extinguished.

Under the current statute, 8 CMC Section 2601, spouses are permitted to obtain fee simple title to the primary home and lot. If this constitutional provision is adopted, the courts will continue to hold this statute unconstitutional and will deprive spouses who are not of Northern Marianas descent of the benefit under the statute. This may result in equal protection problems because spouses are treated differently based on Northern Marianas descent.

Under the current statute, 8 CMC Section 2903, spouses get a ½ interest in property other than the primary home and lot. The other ½ goes to the children. If a spouse takes a life estate under the constitution (instead of the ½ interest in fee simple under the current statute), then the children get a ½ interest in the land other than the primary home and lot in fee simple, and they get the remainder interest (after the life estate is over) in fee simple. In this case, no one will have an interest that can be sold or leased in the part of the land covered by the life estate. The spouse cannot lease a life estate because it has no definite term. It ends when the spouse dies and no one knows when that will be. The children cannot lease their reversionary interest (which comes into being after the spouse dies and the life estate ends) because no one knows when that will occur. It is, of course, possible for the spouse and children to get together and lease all of their collective interest for 55 years. This may lead to intra-family difficulties, however.

[Note: the proposed change in the language to "a transfer by inheritance to a spouse who is not of Northern Marianas descent as provided by law" which would make a 55-year

lease possible.]

[Alternative: It is the intent of the Committee to allow the Legislature to provide that a spouse may receive a permanent interest or may receive a life interest plus the power to grant a 55-year lease. That power would allow the spouse to provide for his or her old age and general support. Without specific authorization from the Legislature, however, this would not be possible. Under the current statute, 8 CMC Section 2601, the primary home and lot goes in fee simple to the spouse automatically.

The class of persons who are affected by this provision is relatively small. There is a concern about fairness with respect to spouses who are not of Northern Marianas descent. These people may have worked for 30 years with their spouses who are of Northern Marianas descent and invested all their work and earnings in the jointly occupied real property which is the family home. If the spouse who is of Northern Marianas descent dies, and the surviving spouse who is not of Northern Marianas descent takes nothing, after a lifetime of work and sacrifice, this is not a result that brings credit to the Commonwealth.

The 1976 Constitution allowed spouses to inherit permanent and long-term interests in real property. Transfers to spouses by inheritance were excepted. The 1985 amendments to the Constitution changed the rule so that spouses could not inherit unless there were no children qualified to inherit. The rule adopted by the 1985 amendments also works a hardship. If the spouse who is not of Northern Marianas descent does not inherit anything, then he or she can be removed from the land by one of the children who may be acting for personal reasons unrelated to anything that supports this result as a matter of public policy. The language added by the 1985 amendments was as follows: "if the owner dies without issue or with issue not eligible to own land in the Northern Mariana Islands." That language has been deleted.

The Convention recognizes that there may be abuses. A spouse who is not of Northern Marianas descent may marry just to gain access to valuable land and may have been married only a short time before the spouse who is of Northern Marianas descent dies. A spouse who is not of Northern Marianas descent may not get along with children and grandchildren because of past unfairness to those children and grandchildren.

In order to achieve the best result under circumstances of these conflicting possibilities, the Convention has provided that the surviving spouse who is not of Northern Marianas descent can take whatever the Legislature, in its wisdom, permits. That might be a permanent interest; it might be a life estate, that is, the use of the property for life, but not title; and it might be nothing at all. This provision would allow the Legislature the flexibility to curb specific abuses. That kind of detail is beyond the capability of a constitutional provision. The Legislature can provide that ultimate ownership of the land must stay with a person of Northern Marianas descent or a child or grandchild of a person

of Northern Marianas descent or their heirs. The surviving spouse would thus have the choice of living on the land in the family home until he or she died; or the choice of leasing the land for up to 55 years and using the money from the lease for support and to ensure a comfortable old age. The surviving spouse could leave the money obtained in connection with the lease to any person. Inheritance or use of those proceeds is not restricted.]

Transfer by foreclosure on a mortgage: The provisions for transfer by foreclosure on a mortgage were in the 1976 Constitution and were amended by the 1985 amendments. The only change from these 1985 amendments is to substitute the phrase "for more than 10 years after foreclosure" for the phrase "for more than 10 years beyond the term of the mortgage." Foreclosure is an event that has a date certain. The period of 10 years beyond that date certain is easy to measure. It is likely that the event of foreclosure was the marker date for measuring the 10 year period under the 1985 amendments, but this is not entirely clear and, for that reason, the substitute language should be better.

None of these exceptions, which permit permanent and long-term interests in real property to be owned by persons who are not qualified under Section 4, are contrary to the requirements of the Covenant. Section 805 of the Covenant permits the Commonwealth Constitution to define the term "acquisition" and these exceptions are a reasonable exercise of that power.

Prospective effect: The exceptions provided in Section 2 have prospective effect only. They do not affect pending litigation or inheritance from persons deceased before the effective date of these amendments.

ARTICLE 12 -- SECTION 3

This section defines the term "permanent and long-term interests in real property" used in Section 1. This section deals with two general kinds of interests -- freehold interests and leasehold interests. These are common law terms.

Freehold interest: One matter raised with the delegates was the problem perceived by some to arise if one person acts for another. If one person obtains title to property at the request of another, some have asserted that the person making the request is the real owner. If, setting Article 12 aside, a person who is not of Northern Marianas descent has an enforceable legal right to compel a person of Northern Marianas descent to transfer a freehold interest in real property, then the person who is not of Northern Marianas descent is the owner of the property. An unrecorded deed, a power of attorney, a power of appointment, a power of substitution or succession (allowing a qualified person to take title in place of the lessee), a lien in favor of the lessee that may be foreclosed to force a sale of the landowner's interest, a joint venture or other side agreement may give this power. In these cases, transfers violate Article 12. If, setting Article 12 aside, a person who is not of Northern Marianas descent cannot compel directly or use enforceable obligations to compel indirectly a person who is of Northern Marianas descent to dispose of real property in a certain way, then the person of Northern Marianas descent who acts at the request of a person who is not of Northern Marianas descent is still the owner and the person who is not of Northern Marianas descent does not become the owner. This is the result under current law.

For example, if a U.S. citizen, who is not a person of Northern Marianas descent, requests a Chamorro, who is a person of Northern Marianas descent, to buy land and grant a lease, and the Chamorro buys the land, the Chamorro is the owner. If the U.S. citizen asks the Chamorro to transfer the land to someone else, but cannot compel the Chamorro to do so, then the Chamorro is still the owner. If the U.S. citizen provides a loan to the Chamorro, and asks the Chamorro to transfer the land to someone else providing that if the Chamorro does not do what is asked then the loan will become due, then the U.S. citizen is the owner because the U.S. citizen has a legally enforceable means of forcing the Chamorro to transfer the land.

If, however, the person of Northern Marianas descent acts on a consensual basis and the person who is not of Northern Marianas descent has no means of compulsion whatsoever to get the person of Northern Marianas to act or not act, then the person of Northern Marianas descent is the real owner and the person who is not of Northern Marianas descent is not the owner, no matter how the person of Northern Marianas descent decides to act.

Leasehold interests: The only change with respect to Section 3 as it applies to leasehold interests is to add the term "and related obligations" to add to the definition of the 55 year lease term.

The 1976 Constitution provided for a 40 year lease term including renewal rights. The 1985 amendments provided for a 55 year lease term including renewal rights. The phrase "and related obligations" has been added to cover any contractual or other obligations that might be used to require or pressure the landowner to extend the lease. The intent is to cover any and every kind of obligation.

From 1978 through 1985 there were a number of clauses used in lease agreements that had the practical effect of extending the term of the lease. These included buy-back clauses requiring the landowner to buy the improvements on the property made during the term of the lease; change of law provisions requiring the landowner automatically to surrender title if the law changed to permit persons who are not of Northern Marianas descent to own land in the Commonwealth; and other similar measures. These are all efforts to extend the lease and therefore fall within the term "renewal rights." They are rights that the lessee has that are intended to force or persuade the landowner to go beyond the 55 year term of the lease. They are all violations of Section 3 as it stands, without amendment. And to the extent these types of lease clauses are not violations of the "renewal rights" provision, they certainly are violations of the "related obligations" standard.

The Committee recommends that the litigation about past lease clauses of this sort be ended by a general provision in the Schedule on Transitional Matters that allows all lease clauses up through the date of ratification to be severed and to be of no further force and effect, without any court action. This rule, allowing severability in past leases, would apply to all leases, regardless of when executed, and the result is that the provision is automatically severed from the lease. The language would be self-executing. These matters will not be brought into court cases. This could be thought to be an impairment of contract. It is not. These lease clauses never were effective because they violated Article 12 when they were written. For that reason, nothing is being taken away from lessees except the dubious pleasure of being sued. This result would not impact any rights of the landowner, because that person or his heirs will get the land back after the 55 year term without any of the possible problems and claims attendant to these clauses.

The Committee's recommendation is based on current law. The court held in Diamond Hotel v. Matsunaga [INSERT CITE] that these provisions are severable if they are not essential to the lease. The Committee's recommendation is also consistent with a change from a "void ab initio" standard to a "voidable" standard in Section 6.

The principal question addressed by the "related obligations" language is the extent to which agreements outside the lease itself can be used to get beyond the 55 year term. The intent is to reach all unrecorded deeds, powers of attorney, agreements, contracts, or arrangements that could be or are used to get beyond the 55 year term. The constitutional rule is very simple. A lease agreement may have a term of up to 55 years. The landowner may not grant more than that, and the lessee may not take more than that. After 55 years, the land must be returned to an owner who is a person of Northern Marianas descent or a child or grandchild of a person of Northern Marianas descent or their direct lineal descendents. Those persons, after the 55 years

are up, must have an unfettered opportunity to decide what they want to do with the land. They must not be obligated in any way, by the lease agreement or by any other contract or enforceable form of agreement, to make a particular decision about keeping or disposing of their interests in the land.

For example, a landowner and a U.S. corporation that does not qualify as a person of Northern Marianas descent enter a lease for 55 years. The lease agreement requires that the landowner buy back all improvements at fair market value at the end of the lease and requires the landowner to mortgage the fee interest for the lessee to obtain construction financing. A contract, entered at the same time, requires the landowner to leave the land by will to a second son under condition that the second son maintain all improvements on the property. Another contract, entered at the same time, is an agreement to employ the second son for life at a certain monthly salary. The landowner dies 2 years after the lease is signed and there has been nothing done with the land as yet because the corporation acquired the land for speculation. The first son claims that the transaction violates Article 12.

This transaction violates Article 12 in several respects. First, the lease clause that requires a buy back of improvements is a violation because it falls under the "renewal rights" clause and is an attempt to get beyond the 55 years. If the landowner has to buy back the improvements and does not have the means to do so, then it is likely the landowner will grant another lease. Otherwise, the lessee could sue to get the value of the improvements and, if successful, attach the landowner's property and force another lease for a time period commensurate with the value of the improvements.

Second, the lease clause that requires the landowner to mortgage the fee interest to finance construction costs is a violation because it involves a permanent interest. If the mortgage is foreclosed, the mortgagee can take title and hold it for 10 years after the foreclosure. This also involves renewal rights. A bank that held the mortgage would have an opportunity to foreclose, hold title, lease the property for another 55 year term while holding title, and then dispose of title to a person of Northern Marianas descent subject to the lease. Under some circumstances, the most likely recipient of the second lease would be the corporation that held the first lease, albeit after reorganization due to the financial difficulties that caused the foreclosure in the first place.

Third, the side agreement about the will is a violation of the "related obligations" clause. The purpose of the limit on the lease term is to ensure that after the 55 years is over, the land goes back to a person of Northern Marianas descent under circumstances that give the landowner an unfettered, unrestricted, and unobstructed opportunity to use the land or dispose of the land as the landowner sees fit. Requiring the landowner to dispose of the property by will in a certain way imposes restrictions on the use of the land after the 55 years are up, and these restrictions are in contract that is "related" to the lease. The limit on the lease term is important. The Covenant restricts the acquisition of permanent and long-term interests in real property to persons of Northern Marianas descent. If the application of the "long-term interests" under Commonwealth law is not consistent with the intent of the Covenant, then they must fall. A term of 55 years

cannot be extended in any way without going over the boundary into "permanent and long-term interests in real property" as provided in the Covenant.

Lease clauses that are completed within the 55 year maximum term and do not affect the landowner's decisions upon return of the land do not violate Section 3. For example, provisions that assign to the lessee any compensation for improvements or the value of the remaining leasehold taken by eminent domain do not violate Section 3. Provisions that permit insurance proceeds to be paid to the lessee in the event of damage to the improvements by fire or natural disasters do not violate Section 3. Provisions that require a subsequent lease for the remainder of the 55 year term in the event that the lessor breaches the lease agreement do not violate Section 3 because this provision will be accomplished within the 55 year term and will not extend it.

A lessee who is not of Northern Marianas descent can have no claim upon the reversionary interest of the landowner. The purpose of Article 12 is to allow the landowner and his or her heirs to obtain complete control of the land after the 55 year maximum lease term is over and to be able to make a fresh decision about what to do with the land at that time.

Successive leases may be an evasion of the 55-year limit and as such may violate Section 3. If the lessee regularly enters successive leases with the landowner, for example every year or every five years, each of which is 55 years long, then the true nature of the transaction is a not a 55 year lease. It is a longer lease and violates Section 3. If the lessee enters a new lease with the landowner after 45 years have elapsed and for the purpose of building a new office building on the property which needs to be amortized over a period of more than the 10 years remaining on the lease, then the new lease is not in violation of Section 3 because it is not for the purpose of evading the 55-year limit. The Committee intends that the courts would scrutinize successive leases to determine whether there is a necessary business purpose or other circumstances to support a conclusion that it is not evasion of Article 12.

The control of the maximum term of a lease of land in the Commonwealth is very important. The Covenant requires protection with respect to permanent and long-term interests in land. If the 55-year term is not strictly enforced, longer terms would get into the protected area of "long-term interests" and Article 12 itself would not be consistent with the Covenant.

Condominiums: The 1985 amendments added the following language to Section 3: "except an interest acquired above the first floor of a condominium building. Any interests acquired above the first floor of a condominium building is restricted to private lands. Any land transaction in violation of this provision shall be void. This amendment does not apply to existing leasehold agreements." This language has been deleted.

It is unclear why the delegates to the 1985 Convention thought that an interest above the first floor would be useful if the owner of the land and the ground floor decided to deny access or whether they had in mind permanent transfers of easements that would protect the owners above the first floor. This amendment apparently was urged on behalf of those who wanted to develop

condominiums and thought that they would be more marketable to persons who are not of Northern Marianas descent if this provision were included in the Constitution. The Committee recommends that this language be deleted. Condominium units can be marketed and sold under Article 12 without this exception, and the exception is probably not workable.

This deletion would not affect rights obtained in condominium units above the first floor after the effective date of the 1985 amendments and prior to the effective date of these amendments, if those rights exist or have any value under Commonwealth law.

ARTICLE 12 -- SECTION 4

The 1976 Constitution provided that an adopted child, if adopted under the age of 18, could become a person of Northern Marianas descent. That language has been deleted.

Adopted children are provided inheritance rights under Section 2 if they are adopted under the age of 6. Those rights are explained under Section 2 above.

The deletion of the language with respect to adopted children in Section 4 means that they are not eligible for homesteads and they do not acquire any rights accorded under the Constitution to persons of Northern Marianas descent.

ARTICLE 12 -- SECTION 5

Section 5 permits corporations to qualify as persons of Northern Marianas descent so that they are able to hold title to permanent and long-term interests in real property.

Corporate location: Under the 1976 Constitution, in order to qualify, a corporation had to be incorporated in the Commonwealth and have its principal place of business in the Commonwealth. This subjects the corporation to the Commonwealth's laws and regulations. This requirement was not changed in the 1985 amendments, and is not changed by the proposed 1995 amendments.

Corporate ownership: Corporate ownership is accomplished through the ownership of shares. Shares may be voting or nonvoting. Voting shares govern the corporation. The owners of voting shares are entitled to cast one vote for every share when questions are put to the shareholders. Nonvoting shares often have equity interests. For example, if the corporation earns money, dividends may be paid to nonvoting shares. If the corporation sells assets, like its equipment or patents or trademarks, and the proceeds of the sale are distributed to shareholders, the nonvoting shareholders may receive shares in these proceeds. The way that these voting and nonvoting shares are structured is set out in the incorporation papers. The incorporation papers must be filed in the Commonwealth and therefore the information about voting and nonvoting shares is available within the Commonwealth.

Percentage of shares: The 1976 Constitution required the owners of 51% of the voting shares to be persons of Northern Marianas descent. The 1985 amendments changed this to 100%. The Committee recommends that this be returned to 51%.

The issuance of voting shares is one of the important ways that corporations raise capital to expand their facilities or their business. It is not the only way to raise money. An alternative to "equity" interests, which are the ownership of voting or nonvoting shares, is "debt" financing which usually means borrowing from a bank or from private sources.

The 100% requirement enacted in 1985 works well for persons of Northern Marianas descent who have ample cash resources because they generally do not need to raise money by selling shares. The 100% requirement does not work well, however, for persons of Northern Marianas descent who have limited cash resources. When 100% of the voting shares of the corporation must be held by persons of Northern Marianas descent, then the people who can be turned to for additional investments in voting shares are other persons of Northern Marianas descent. One alternative is to offer non-voting shares, which may not be attractive to potential investors. Another alternative is to get a bank loan or some other debt financing.

The 51% requirement allows some leeway, up to 49%, for investment by persons who are not of Northern Marianas descent. This means that the persons of Northern Marianas descent who want to expand their corporation have a larger pool of potential investors. They can raise

capital by selling some shares to persons or corporations who are not of Northern Marianas descent. The Committee believes that this additional opportunity for investment will benefit individual entrepreneurs who are persons of Northern Marianas descent and will also benefit the overall economic development of the islands.

An important factor in the Committee's consideration is the ease with which well-financed foreign corporations can compete with local corporations owned by persons of Northern Marianas descent. These foreign corporations are not hampered by the 100% restriction. They take their leases from individual landowners who are persons of Northern Marianas descent. The real impact of the 100% restriction is on local owners who want to expand their corporate activities by attracting investment from persons who are not of Northern Marianas descent. In order to do that, under the current restrictions, they have to divest the corporation of any land so that the corporation does not fall under Article 12 at all.

For these reasons, the Committee recommends going back to the requirement in the 1976 Constitution of 51% ownership.

Degree of "ownership": The 1976 Constitution said that the voting shares had to be "owned" by persons of Northern Marianas descent. This was a clear statement that 51% of those who exercised votes with respect to the corporation's affairs by virtue of their ownership shares had to be persons of Northern Marianas descent. If anyone other than a person of Northern Marianas descent had any power at all to vote shares, they counted in the 49% that could be owned by persons not of Northern Marianas descent. When the "voters" who were not persons of Northern Marianas descent reached more than 49%, the corporation no longer qualified under this Section and could not own land.

The 1985 amendments said the voting shares had to be "actually owned" by persons of Northern Marianas descent. This was an effort to give more guidance to corporations as to how to comply.

The 1985 amendments provided further that "trusts or voting by proxy by persons not of Northern Marianas descent" were not permitted. Trusts are a device in which the owners of shares put their shares in a trust, which is a legal entity, and empower the trust to vote the shares. Then the directors of the trust, who may or may not be persons of Northern Marianas descent, vote the shares. Proxies are an agreement under which a who owns the shares allows another person to vote in his or her place. This use of trusts and proxies was permitted under the 1976 Constitution, if persons who are not Northern Marianas descent vote through the trust device or the proxy device, only up to the level of 49% of the votes. The delegates to the 1985 convention, however, thought that it would be useful to provide a flat rule on trusts and proxies. Again, their purpose was to give guidance to corporations as to how to act.

The 1985 amendments also provided that "beneficial title shall not be severed from legal title." This amendment was addressed to a variety of arrangements under which those who

owned the voting shares were under obligations to others to vote them in a particular way. This use of contract or other arrangements to impair or limit the owner's right to vote shares was also covered by the 1976 all-encompassing requirement that 51% of the shares be "owned" by persons of Northern Marianas descent. Such obligations could be used only up to the limit of 49% that was permitted to persons who were not of Northern Marianas descent under the 1976 formulation..

The amendment proposed to this section deletes the language added by the 1985 amendments and substitutes new language. The new language requires that 51% of the shares be actually, completely, and directly owned and voted by persons of Northern Marianas descent. This is a "control" test. It applies only to 51% of the voting shares. As to the remaining 49% of the voting shares, many other ownership arrangements are permitted. Trust arrangements and proxy votes are not permitted within the 51%, although they are permitted within the 49% ownership.

The intent of this amendment is that actual, complete, and direct control of 51% of the shares be with persons of Northern Marianas descent. Control of the shares is different from control of the outcome. On any question put to the shareholders, some of those in the 51% Northern Marianas descent group may vote with or against those in the 49% group not subject to the Northern Marianas descent requirement. The decision of the shareholders is valid either way.

For example, the question put to the shareholders may be whether to approve a lease of part of the corporation's land. If the corporation has 100 shares, then the ownership of 51 shares must be held by persons of Northern Marianas descent. And the ownership of 49 shares may be held by others. There are five persons who hold the 51 shares, four of whom own 10 shares each and 1 of whom owns 11 shares; and there are seven persons who own the 49 shares, each of whom owns 7 shares. When the question of the lease approval is voted on, all the shareholders attend the meeting, two of the five persons of Northern Marianas descent, holding 10 shares each, vote for the lease; and all seven of the others, holding seven shares each, vote for the lease. So the proponents win, because 69 shares out of 100 shares voted for the lease. But only two of the five persons of Northern Marianas descent voted for the lease, which is not a majority within that group. That approval of the lease is effective.

The intent of the 51% requirement is to put control in the hands of the persons of Northern Marianas descent if they choose to exercise it voting together.

Corporate governance: The governance of corporations may be vested in the same persons who own the shares or in different persons. The highest level of corporate governance is the voting power of the shareholders. But most corporate actions are not subjected to a shareholder vote. The next highest level of corporate governance is the directors. A corporation that owns land in the Commonwealth must be governed by a board of directors. There may be other ways to govern corporations that do not own land, but there is no option for a corporation that qualifies as Northern Marianas descent. In most corporations, the shareholders elect the

board of directors who govern under the corporate bylaws. If a corporation is to be qualified as Northern Marianas descent, then at least 51% of its directors must be individual natural persons who are of Northern Marianas descent. The other 49% of its directors may be other persons who do not qualify as persons of Northern Marianas descent. Each director may have only one vote because the intent of Section 5 is that 51% of the directors and 51% of the voting power be with persons of Northern Marianas descent.

The 1976 Constitutional Convention selected the 51% requirement to allow leeway for locally-owned corporations to have persons who are not of Northern Marianas descent as directors in order to get special expertise or special knowledge that is important to the success of the corporation.

For example, if a corporation is formed to develop a mining operation and the corporation is to own the land where the mining operation is conducted, then the corporation must qualify as Northern Marianas descent. In order to make informed decisions about investments in mining equipment and hiring a knowledgeable president and operating officers, the board of directors needs to know a lot about the mining business. But because this mining opportunity is new, there is no one of Northern Marianas descent who has the necessary knowledge. The leeway allowed by the 51% limitation would permit the owners to put on the board of this company a mining expert from Utah who has excellent credentials and who is also serving on the board of directors of Anaconda Inc., one of the world's largest mining corporations. This mining expert would have one vote as a director. So long as there are three or more directors, there is compliance with Section 5 of Article 12. Although the mining expert is not a person of Northern Marianas descent, at least 51% of the director positions and at least 51% of the votes on matters within the powers of the directors are in the hands of persons of Northern Marianas descent.

The intent of this amendment is that actual, complete, and direct control of 51% of the votes on the board of directors be with persons of Northern Marianas descent. Control of the votes on the board of directors is different from control of the outcome. On any question put to the shareholders, some of those in the 51% Northern Marianas descent group may vote with or against those in the 49% group not subject to the Northern Marianas descent requirement. The decision of the board of directors is valid either way.

In the example given above, the question before the board of directors may be whether to lease part of the corporation's land to another corporation that is not of Northern Marianas descent as a part of the development of the mining operation. If there are nine members of the Board, at least five must be persons of Northern Marianas descent and four may be persons who are not of Northern Marianas descent. Commonwealth law requires adequate notice of meetings. The corporation's bylaws provide that a majority is a sufficient quorum. At the meeting to consider the question of the lease, 1 of the 5 directors of Northern Marianas descent vote attends and votes no and all 4 of the other directors attend and vote yes. Five directors are present, which constitutes a quorum, and four of the five voted yes, which constitutes a majority of the quorum. The lease is approved. That operation of the board is consistent with the intent of

Section 5. A corporation operates under Commonwealth law as a participatory democracy. If those who hold voting power fail to use it, then their votes do not count. Any abuses that result from the operation of Commonwealth law as it applies to corporations can be corrected by the Legislature.

The intent of the 51% requirement is to put control in the hands of the persons of Northern Marianas descent if they choose to exercise it voting together.

Corporate officers: The requirements of Northern Marianas descent apply to directors not to officers. The normal functions of officers and directors under corporate law are not affected by Article 12.

Age limits: The directors who are of Northern Marianas descent must be at least 21 years of age. This is to ensure that no minors serve as directors. The owners of shares, however, may be minors. The person who acts for a minor must himself or herself be a person of Northern Marianas descent unless the minor's voting power is to be considered a part of the 49% that may be held by others.

Conditions imposed by lenders: Lenders who are financial institutions may impose conditions on a corporation in order to lend the corporation money. Those conditions, if made as a part of normal lending procedures, should not be construed to take complete control out of the hands of the persons of Northern Marianas descent so as to have the effect of disqualifying the corporation. Normal lending procedures are not affected by Article 12. Article 12 specifically allows transfers in foreclosure of mortgages and that exception has been maintained since 1976.

Paper records: The Committee has heard a great deal of testimony and received comments about the paper records of corporation transactions and relying on the paper record rather than allowing a court to look behind the paper record and determine what are the facts. If the corporation abides by Article 12, then the fact record and the paper record should be the same and the corporation will have no problem. If the fact record and the paper record are different, then the corporation should not be permitted to rely on a correct paper record. The purpose of Article 12 is not to create perfect paper records; it is to keep the ownership of land with persons of Northern Marianas descent. It is evident that while paper records may say that a person of Northern Marianas descent is a shareholder who owns and votes his or her shares, that may not be the case in fact. The Northern Marianas descent shareholder may be required, by legally enforceable obligations, to follow the wishes of a person who is not of Northern Marianas descent. In that case, the person who has legally enforceable control is the real owner.

The Committee recognizes that allowing plaintiffs to go behind the corporate paper record may involve additional costs for corporations. The Committee recommends, however, that the balance of interests between those who want to save money and rely on the paper record and those who want to enforce Article 12 should be made in favor of enforcement of Article 12. The amendments recommended by the Committee permit a court to examine how the corporation

actually works in order to make a fair determination. The court will control discovery and will be sensitive to costs in this regard, but will have the flexibility to allow whatever discovery is reasonably necessary to assist in the presentation of relevant facts so that the decision to be made by the court will be an informed one. This is a constitutional requirement.

For example, a corporation has three shareholders. One is a U.S. citizen who is not a person of Northern Marianas descent who owns 34 of 100 shares. Two are persons who are of Northern Marianas descent each of whom owns 33 shares. Each of the three shareholders pays $1 for each share they own. The corporation is formed to purchase land, develop the land, and perhaps lease a portion of the land to others. The U.S. citizen provides all of the money to purchase the land. The U.S. citizen has no control over the two shareholders who are persons of Northern Marianas descent. They may vote their shares in any way that they want. The two persons of Northern Marianas descent respect the wishes of the U.S. citizen, and generally vote to do what she wants because she has put up all the money. The corporation buys land and develops it. This transaction is permitted under Article 12.

If, however, the U.S. citizen has side agreements, powers of attorney, or other legally enforceable (Article 12 aside) mechanisms to force the two persons of Northern Marianas descent to vote the way the U.S. citizen wants, then the U.S. citizen is the owner of those shares and the transaction violates Article 12 because more than 49% of the shares are held by a person who is not of Northern Marianas descent.

Northern Marianas descent qualifications: The Committee has considered a number of proposed changes to the definition of "Northern Marianas descent" which were supported by those who are concerned about persons born here, raised as Chamorros, and who honestly believed they were persons of Northern Marianas descent but, because one or both of their parents were moved by the Japanese from Saipan and did not make it back to the Northern Marianas by 1950, are not within the constitutional definition.

For example, if some of those persons serve on the boards of corporations or own shares and, when the true facts of the date on which their parents returned to the Marianas come to light, they are disqualified from being a part of the 51% (formerly 100%) that is required to be of Northern Marianas descent. If an honest mistake has been made about qualification, the acts of the corporation that were done while this person was a shareholder or director are voidable by the corporation itself and can be rescinded and done over again when a person who does qualify replaces the person who does not qualify. Such actions, if subsequently repeated or ratified by a group of shareholders or board of directors that does qualify under Section 5, would not be vulnerable to challenge in the courts.

Subsequent changes in ownership: Some delegates are concerned about a situation in which a corporation is set up, with 51% of the owners and directors who are persons of Northern Marianas descent, so that the corporation can own land. Then, after the land is acquired and subsequently leased out for 55 years, the 49% shareholders who are not of Northern

Marianas descent somehow get rid of the Northern Marianas descent persons and take over the corporation. In that event, when the corporation is in the hands of persons who are not of Northern Marianas descent, the corporation ceases to be qualified by deliberate effort and the corporation's interests in the land would be forfeited to the Commonwealth.

Sham corporations: The Committee expects that the courts will be vigilant in dealing with corporations to ensure that the corporate form is not hiding transactions that otherwise would violate Article 12. If the directors and shareholders are not persons of Northern Marianas descent and there is no honest mistake involved, then the Committee expects that the courts will use the strictest standard and make the actions of the corporation void ab initio. The corporate lands would be returned to the Commonwealth government. The directors and shareholders of Northern Marianas descent must be able to exercise independent judgment in acting or voting, and must have done so. If persons who are not of Northern Marianas descent are using a corporation in order to accomplish land transactions and the actions of directors and shareholders have been predetermined or controlled in a legally enforceable way for this purpose, then the corporate form will not shield the transaction from enforcement under Section 6. The Committee expects that the courts will return the lands of such a corporation to the government.

Prospective effect: The Committee's recommendation as to the language on corporations would be given effect prospectively, not retroactively. Corporations and corporate transactions in the period from the effective date of the 1976 Constitution through the 1985 amendments would continue to be governed by the rules in the 1976 Constitution; and corporations and corporate transactions in the period from the effective date of the 1985 amendments through the effective date of these amendments in February 1996 would be governed by the rules in the 1985 amendments. Corporations and corporate transactions in the period after these amendments are ratified would be governed by these rules.

ARTICLE 12 -- SECTION 6

This section deals with enforcement of the requirements of Section 1. The new language has three parts, each of which is explained below.

Remedy: Transactions that violate Section 1 are voidable. This means that a court that finds a violation of Section 1 has a range of remedies that may be applied. One remedy is to declare the transaction void ab initio. The voidable standard includes the prior standard of void ab initio and this would be applied by the court in cases where that remedy was appropriate. Another remedy is to declare parts of the transaction void and to uphold other parts. Restitution may be ordered in connection with any remedy. The courts may reform the transaction to make it comply with Section 1. Or the courts may elect to divest the person who violated Article 12 of the profits brought about by the violation and require payments to plaintiffs or others. The voidable standard includes all prior remedies with respect to corporations, including the return to the government of land owned by a corporation that violates Article 12. These are only examples. The courts may exercise the full range of their powers to achieve an effective and fair enforcement of Article 12. No particular remedy is required under the Constitution. The Committee intends that the courts reach fair results.

Nothing in the changes to Section 6 in any way authorize the courts to allow persons who are not of Northern Marianas descent to own land in the Commonwealth. No remedy can reach that result, as that is prohibited by the Covenant and by Section 1.

The 1976 Constitution required that if the court found a violation of Section 1, then the only remedy available was to declare the transaction void ab initio. The 1985 amendments left this single remedy in place. The void ab initio remedy provided certainty of outcome when Article 12 first came into existence. At that time, there were no Commonwealth courts. There was a High Court of the Trust Territory staffed by judges from the United States appointed by the Department of the Interior. In 1976, there were very few persons of Northern Marianas descent who were qualified as lawyers, and there were none who had been appointed as judges. The void ab initio rule provided a specified result that could not be changed by judges who were not themselves persons of Northern Marianas descent. The void ab initio rule came into effect in January 1978 with the first Constitution.

By 1985, there had been only seven years of experience with land transactions under Article 12. The void ab initio rule was then being applied by the Commonwealth Superior Court. Appeals from the Commonwealth Superior Court were being heard by the United States Circuit Court for the Ninth Circuit, sitting in California. When the void ab initio rule was applied, it typically unraveled only one layer of transactions. For example, if the landowner sold to a person who was not of Northern Marianas descent, and that transaction were determined to be void ab initio, the transaction was of no effect and the original landowner was vested with the title once again.

After 1985, however, there were an increasing number of instances in which a bona fide purchaser took title after the first transaction. This might be the second, third, or fourth layer of transactions, which is to say that the person who was not of Northern Marianas descent had sold all or part of the land acquired from the original landowner to others who did qualify as persons of Northern Marianas descent, and they in turn had sold the land to yet more people. None of the people after the initial transaction knew that the buyer in the first transaction was not a person of Northern Marianas descent. Yet when the transaction was challenged and the void ab initio rule was applied, every layer of transaction after the first one was undone and bona fide purchasers of Northern Marianas descent stood to lose their land and their investment.

After 1985, the Commonwealth Supreme Court was created, and it was given the authority to review decisions of the Commonwealth Superior Court. Every justice of the Supreme Court was a person of Northern Marianas descent. Under the Covenant, the appellate authority of the Ninth Circuit will expire in 2004, fifteen years after the creation of the Commonwealth Supreme Court. After that time, appeals from the Commonwealth Supreme Court will go only to the United States Supreme Court. That is the same arrangement as pertains to all state Supreme Courts. The United States Supreme Court is not required to hear cases coming from the Commonwealth. That court hears only the cases it selects as having considerable importance to the system of justice in the United States. Therefore, within 8 years after these constitutional amendments are ratified, the Commonwealth Supreme Court will be, in effect, the last stop for appeals on Commonwealth matters.

Under these circumstances, with judges of Northern Marianas descent making the decisions, and with challenged transactions increasingly involving innocent purchasers who are of Northern Marianas descent, the Committee recommends that a more flexible standard be adopted. The void ab initio standard is not flexible enough for current circumstances. There can be no subsequent bona fide purchasers under the void ab initio standard. Once an Article 12 violation comes into the chain of title, that and everything after that is void ab initio. The voidable standard places the responsibility for effective and fair enforcement of Article 12 with the Commonwealth courts. It allows the court to use the void ab initio standard when that is appropriate; and it allows the court to fashion other remedies when it is not.

Transfers to cure defects: Because there may be honest mistakes made about the status of Northern Marianas descent, and because the policy underlying Article 12 is to keep land in the hands of persons of Northern Marianas descent, transfers to cure defects should be allowed if the court finds they are not part of any scheme to evade the requirements of Article 12. A person whose status as Northern Marianas descent is questioned should be permitted to transfer land to a person whose status as Northern Marianas descent is not questioned, thus keeping the land in the hands of persons with the required status.

Severance: Under the voidable standard, clauses in existing leases that violate Article 12 are void and may be severed from the rest of the lease. The court is permitted to sever prior to determining whether the interest is a permanent or long-term interest. The purpose of

Article 12 is not to punish. It embodies a social policy and it is not intended to make land transactions uncertain. To the contrary, Article 12 is part of a Constitution that seeks to make the Commonwealth a secure and beneficial place in which to live and conduct business activities.

In the future, it is the intent of the Committee that the courts will apply a stringent test for severing clauses that violate Article 12. There should be no misunderstandings after the amendments made to Article 12 that any device of any kind that attempts to get beyond the 55 year term in any way is in violation of Article 12. The Committee expects that the courts will use the void ab initio standard to deal with leases in the future that contain clauses of this kind, unless unusual circumstances lead the court to conclude that the clause was included in the lease in good faith. There is no reason for any such clause to appear in any lease in the future. The term of leases is 55 years. No device may be used to pressure, influence, or predetermine the actions of a landowner when land is returned after the 55 year term is completed.

Many leases executed prior to 1995 contain severability provisions. These clauses typically provide that if any clause in the lease agreement is deemed unlawful or in violation of Article 12 or any other law that the clause shall be stricken and the lease continued as if no such clause was ever made a part of the lease agreement. Under the voidable standard, the courts may give effect to severance clauses. But, in the future, the determination should not be automatic. No severance clause should defeat a deliberate attempt to get around the requirements of Article 12. The courts may apply the full range of remedies made available under the voidable standard regardless of whether the lease at issue contains a severability clause. It is very important that lawyers have an incentive to live up to the requirements of Article 12. Lawyers are the primary enforcers of Article 12. If lawyers require the documents they draft to comply completely with Article 12, then the enforcement process will be much less expensive, time consuming, and difficult for all concerned. In order that the incentives be in the right place, lawyers must be aware that a severance clause in their lease agreement will not necessarily save the lease agreement. A severance clause written after 1995 will not be given effect, under the voidable standard, when it protects clauses that were plain violations when written. This is not intended to be applied with respect to honest mistakes or genuine questions as to the state of the law.

Effect of failure to disclose: If title to the real property involved in the transaction in which there was a failure to disclose remains in the hands of the person who failed to disclose, the court may find the transaction void ab initio or may order payment of money damages. If the title to the real property in which there was a failure to disclose is no longer in the hands of a person who failed to disclose, the remedy is payment of money by the person who failed to disclose to the person to whom disclosure should have been made. It is difficult to ascertain from title searches whether the proper disclosures have been made. The Committee does not intend uncertainty with respect to titles to flow from the adoption of a disclosure requirement.

Prospective effect: The voidable standard applies only to actions brought after the effective date of these amendments.

Forfeit of land held by corporations: In the event that a corporation is divested of land for violation of Section 1, that land is forfeited to the government. A provision for forfeiture to the government has been in the Constitution since 1976. If a corporation that is ineligible to own land actually manages to acquire a permanent or long-term interest in land, and the court divests the corporation of that land, then the land is returned to the government. The same result occurs if a corporation buys land while it is eligible to do so and then becomes ineligible because persons who are not of Northern Marianas descent push out the persons of Northern Marianas descent or persuade them to leave. Title should not go back to the original owner of the land because the purchase was legal when it was made. Therefore, since 1976, the Constitution has provided that title to the land should pass to the government. These amendments do not affect this long-standing rule that when corporations are divested of land, the land goes to the government.

If a corporation knowingly and intentionally becomes ineligible to own land by forcing out the owners and directors who are persons of Northern Marianas descent or allowing them to voluntarily resign without replacing them with other qualified persons of Northern Marianas descent who actually, completely, and directly govern the affairs of the corporation, then the government has standing to bring an action to obtain the land that the corporation owns because that land will be forfeited to the government if the corporation has intentionally acted illegally. No amount of good works in the community, payment of taxes, or contribution to the economic development of the Commonwealth would allow such a corporation to continue to hold its land.

Deletions: The proposed provision deletes the following language: "Whenever a corporation ceases to be qualified under Section 5, a permanent or long-term interest in land in the Commonwealth acquired by the corporation after the effective date of this amendment shall be immediately forfeited without right of redemption to the government of the Commonwealth of the Northern Mariana Islands. The Registrar of Corporations shall issue regulations to ensure compliance, and the legislature may enact enforcement laws and procedures." This provision was included in the Section 6 to deal with situations created by the void ab initio standard. If that standard is changed, this language is not needed. The courts have the power to order land owned by corporations returned to the government if that is the appropriate remedy. Deletion of this language does not imply that land may no longer be forfeited or escheat to the government.

Attorney General: Section 6 requires the Attorney General to set up an office to assist landowners, to monitor land transfers, and to assist in enforcement.

Landowner assistance: The intent of this amendment is that landowners have an office where they can go to get free legal advice with respect to land transactions affected by Article 12. Many of the current problems in litigation could have been avoided if landowners had had competent legal advice before entering the transaction. The lawyers staffing this office must be Chamorro speakers. Effective advice cannot be given to Chamorro speaking landowners of Northern Marianas descent without Chamorro speaking lawyers. Landowners should be able to bring sale documents and lease documents to be analyzed and explained. Because the

Attorney General's office has no stake in land transactions between one Chamorro owner and another under Article 12, the advice will be neutral and informed. The Attorney General's office may give advice to landowners, but may not represent any private landowner in any transaction.

Monitoring land transfers: The Attorney General's office on land matters would monitor land transfers occurring in the Commonwealth, from public records and other sources, to determine whether there were legal problems that might affect the effective and efficient enforcement of the intent of Article 12. The Attorney General's office may publish such handbooks or guidelines as it believes might be helpful for those involved in land transactions.

Assisting in enforcement: The government has an interest in land transactions as it is the landowner of last resort. If there is no one to inherit or a corporation that owns land fails to qualify in a way that brings with it the result that its land is lost, then land is forfeited or escheats to the Commonwealth. The Attorney General's office would act in cases where the government has this kind of interest to protect those interests. The Attorney General may seek leave to intervene in pending actions, may appear as amicus curiae in trial or appellate matters, and may bring declaratory judgment actions as permitted under court rules or Commonwealth law. The Attorney General's office does not replace private rights of action in any way. Any landowner who has a cause of action under Article 12 may pursue that action with the lawyer of his or her choice.

Statute of limitations: This section provides a six year statute of limitations for Article 12 actions. The purpose of constitutionalizing the statute of limitations is to import common law considerations of fairness into this aspect of Article 12 enforcement.

Fraud exception: If there has been fraud in a transaction, the statute of limitations does not start to run until the fraud has been discovered or reasonably could have been discovered.

Disability exception: If a party who has a cause of action under Article 12 is disabled in a way that prevents bringing the cause of action through no fault of that party, the statute of limitations does not run during the period of disability.

The Commonwealth courts would apply existing and future common law to determine the exact limitations under Article 12.

The disclosure requirement in Section 1 provides that the six year statute of limitations must be explained to the landowner prior to the completion of a sale transaction. The landowner must be told when the statute starts to run and when the six year period will be up. With this focus from the beginning, the Committee believes that the six year period will not be a barrier to the effective enforcement of the rights of persons of Northern Marianas descent under Article 12.

At the same time, there will be a point at which land transactions become final and beyond challenge. This stability is important in the Commonwealth. The economic well being of all resident citizens is improved when investments are made that create jobs and opportunities for persons of Northern Marianas descent.

DRAFT

7/27/95

ARTICLE XII: RESTRICTIONS ON ALIENATION OF LAND

Section 1: Alienation of Land

The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent. Disclosure sufficient to ensure fairness and timely enforcement under this article shall be provided.

Section 2: Acquisition

The term acquisition used in Section 1 includes acquisition by sale, lease, gift, inheritance or other means except a transfer by inheritance to a child or grandchild or a person who was adopted before age six [sixteen], a transfer by inheritance [of a life interest] to a spouse who is not of Northern Marianas descent [as provided by law], and a transfer to a mortgagee by means of foreclosure if the mortgagee is a full service bank, federal agency or governmental entity of the Commonwealth and does not hold the permanent or long-term interest in real property for more than ten years after foreclosure.

Section 3: Permanent and Long-Term Interest in Real Property

The term permanent and long-term interests in real property used in Section 1 includes freehold interests and leasehold interests of more than fifty-five years including renewal rights and related obligations.

Section 4: Persons of Northern Marianas Descent

A person of Northern Marianas descent is a person who is a citizen or national of the United States and who is of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof. For purposes of determining Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands by 1950 and was a citizen of the Trust Territory of the Pacific Islands before the termination of the Trusteeship with respect to the Commonwealth.

Section 5: Corporations

A corporation shall be considered to be a person of Northern Marianas descent so long as it is incorporated in the Commonwealth, has its principal place of business in the Commonwealth, has directors at least fifty one percent of whom are persons of Northern Marianas descent over the age of 21 years who actually, completely, and directly govern the affairs of the corporation, and has voting shares at least fifty one percent of which are actually, completely, and directly owned and voted by persons of Northern Marianas descent.

Section 6: Enforcement

Any transaction made in violation of Section 1 shall be voidable. If a corporation is divested of land for violation of Section 1, the land shall be forfeited to the government. The attorney general shall establish an office to assist landowners, to monitor land transfers, and to assist in enforcing this article. Any action challenging a transaction shall be filed within six years of the transaction.

Third Northern Mariana Islands Constitutional Convention

Delegate Amendment No. 43

Date: July 31, 1995

ARTICLE AND SECTION TO BE AMENDED: Article 12, Section 6

COMMITTEE ASSIGNED: Committee on Land and Personal Rights

It is proposed that the article passed on first reading be amended as follows:

Article XII: Restrictions on Alienation of Land

Section 6: Enforcement

Any transaction made in violation of Section 1 shall be voidable. If a corporation is divested of land for violation of Section 1, the land shall be forfeited to the government. The attorney general shall establish an office to assist landowners, to monitor land transfers, and to assist in enforcing this article. Any action challenging a transaction shall be filed within 15 years of the transaction.

Submitted by: _____
Delegate JOAQUIN P. VILLAGOMEZ

Notes: This amendment reinstates the void ab initio standard that was present in the article passed on first reading, but which has been deleted by the Committee. This amendment also increases the statute of limitations from the 6 years presented by the Committee to 15 years

Third Northern Mariana Islands Constitutional Convention

Delegate Amendment No. 44

Date: July 31, 1995

ARTICLE AND SECTION TO BE AMENDED: Article 12, Section 6

COMMITTEE ASSIGNED: Committee on Land and Personal Rights

It is proposed that the article passed on first reading be amended as follows:

Article XII: Restrictions on Alienation of Land

Section 6: Enforcement

Any transaction made in violation of Section 1 shall be voidable. If a corporation is divested of land for violation of Section 1, the land shall be forfeited to the last qualified land owner. The attorney general shall establish an office to assist landowners, to monitor land transfers, and to assist in enforcing this article. Any action challenging a transaction shall be filed within six years of the transaction.

Submitted by: _____
Delegate VICTOR B. HOCOG

Notes: This amendment revises the provision with respect to corporations that was passed on first reading. It would put the land back to the last qualified owner rather than allowing the land to go to the government.

July 24, 1995
VIA FAX AND U.S. MAIL

Herman T. Guerrero, President
Third Northern Marianas
Constitutional Convention
Legislature Building, Capitol Hill
Saipan, MP 96950

Re: Article XII § 2

Dear Herman:

I have read the July 17, 1995, proposed draft of Article XII, and I have read the transcript of Delegate Lillian A. Tenorio's presentation of the proposed draft on Article XII.

I am writing regarding the proposed change to Section 2 of Article XII which, according to Ms. Tenorio, is to provide "an exception for transfers by inheritance to a child or grandchild."

She said,

> This means that children who are not 25 percent Northern Marianas descent can inherit family land no matter what percentage they are. Under this exeption family lands will be kept within the family regardless of the operation of Article 12. Thus, for generations on to come, even if Article XII is never amended again, all our children, their children, and their children's children will be able to inherit the family lands.

I support this position. I am sure that there are many persons who were Trust Territory citizens (and who are not of Northern Marianas descent) who purchased land here legally prior to the effective date of the Commonwealth Constitution and whose children and grandchildren are not of Northern Marianas descent. Those children and grandchildren should be able to inherit the land from their parents so that the land remains in their families.

However, the proposed draft of Article XII § 2 does not say this.

It says, "[a] transfer by inheritance to a spouse or child who was adopted before six years of age is not an acquisition under this section."

This says nothing about a transfer by inheritance to a natural child.

Under this proposed draft, a child adopted before six years of age could inherit land but a natural child could not.

Please be kind enough to bring this to the attention of the delegates so that they can consider an amendment to Section 2 of Article XII that would include all children, not only adopted children.

Sincerely yours,

SAPURO J. RAYPHAND

July 21, 1995

Memorandum for the Delegates

From: The Committee on Land and Personal Rights

Re: Article 12

Attached are copies of the current Article 12 and the draft Article 12 that the Committee has prepared incorporating proposed changes.

The copy of the current Article 12 is marked in yellow to show portions deleted. The copy of the proposed Article 12 is marked in pink to show the portions added.

The Committee would like to explain its proposed changes in the Committee of the Whole today and have the Delegates ask any questions that may be raised by the Committee's draft.

con0721d

DRAFT - PRELIMINARY

July 20, 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, 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 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.

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.

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 in 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 where sufficient land is available. Nothing in the Constitution limits the grant of homesteads on Rota or Tinian to residents of Saipan who wish to move 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.

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.

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 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) and those government agencies may use the public land obtained from the Bureau for the land exchanges 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. 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.

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 precise terms of the lease that the Bureau proposes to enter and identifying 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.

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.

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 funds for administration, for the maintenance of the preserves authorized under Section 3, or 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 be in danger of being leased for private purposes or sold 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 (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. The Committee decided to transfer Anyota Island adjacent to Rota from Article 14, which covers uninhabited islands preserved entirely as wildlife conservation, to Article 11 which allows 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, Kilili Beach), Tanapag Beach Park, 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), and 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 .

(2) Tinian: Kammer Beach, Taga Beach, Tachogna Beach, Unai Dankulu, Unai Babui, Unai Chulu, Lasarino, 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, 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 3(d).

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

Section 6(f): This section covers three 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, and As Nieves Latte House.

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 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.

Exclusive control: This section also provides that the trustees have to 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 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.

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 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. LIFOIFOI, Chair

Delegate MARIAN ALDAN-PIERCE, Vice Chair

Delegate CARLOS S. CAMACHO

Delegate DONALD B. MENDIOLA

Delegate JOHN O. DLR. GONZALES

Delegate HENRY U. HOFSCHNEIDER

Delegate DAVID L. IGITOL

Delegate BENJAMIN T. MANGLONA

Delegate DAVID Q. MARATITA

Delegate JUSTO S. QUITUGUA

Delegate JOEY P. SAN NICOLAS

Delegate LILLIAN A. TENORIO

Con0720e

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 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 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 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. Other requirements relating to the program under this subsection shall be 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, 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 calendar 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 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, and Anyota Island in the first 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 6(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 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. The trustees have the sole power to approve investment of Trust assets.

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 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.

con0721g

DRAFT - PRELIMINARY

July 20, 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, 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 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.

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.

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 in 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 where sufficient land is available. Nothing in the Constitution limits the grant of homesteads on Rota or Tinian to residents of Saipan who wish to move 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.

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.

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 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) and those government agencies may use the public land obtained from the Bureau for the land exchanges 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. 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.

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 precise terms of the lease that the Bureau proposes to enter and identifying 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.

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.

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 funds for administration, for the maintenance of the preserves authorized under Section 3, or 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 be in danger of being leased for private purposes or sold 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 (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. The Committee decided to transfer Anyota Island adjacent to Rota from Article 14, which covers uninhabited islands preserved entirely as wildlife conservation, to Article 11 which allows 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, Kilili Beach), Tanapag Beach Park, 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), and 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 .

(2) Tinian: Kammer Beach, Taga Beach, Tachogna Beach, Unai Dankulu, Unai Babui, Unai Chulu, Lasarino, 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, 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 3(d).

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

Section 6(f): This section covers three 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, and As Nieves Latte House.

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 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.

Exclusive control: This section also provides that the trustees have to 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 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.

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 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. LIFOIFOI, Chair

Delegate MARIAN ALDAN-PIERCE, Vice Chair

Delegate CARLOS S. CAMACHO

Delegate DONALD B. MENDIOLA

Delegate JOHN O. DLR. GONZALES

Delegate HENRY U. HOFSCHNEIDER

Delegate DAVID L. IGITOL

Delegate BENJAMIN T. MANGLONA

Delegate DAVID Q. MARATITA

Delegate JUSTO S. QUITUGUA

Delegate JOEY P. SAN NICOLAS

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 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 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 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. Other requirements relating to the program under this subsection shall be 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, 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 calendar 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 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, and Anyota Island in the first 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 6(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 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. The trustees have the sole power to approve investment of Trust assets.

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 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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Third Northern Mariana Islands Constitutional Convention

Delegate Amendment No. 35

Date: July 27, 1995

ARTICLE AND SECTION TO BE AMENDED: Article 12, Section 2

COMMITTEE ASSIGNED: Committee on Land and Personal Rights

It is proposed that the article passed on first reading be amended as follows:

Article 12

Section 2: Acquisition

The term acquisition used in Section 1 includes acquisition by sale, lease, gift, inheritance or other means except a transfer by inheritance to a child or grandchild or a person who was adopted before age sixteen, a transfer by inheritance of a life interest to a spouse who is not of Northern Marianas descent, and a transfer to a mortgagee by means of foreclosure if the mortgagee is a full service bank, federal agency or governmental entity of the Commonwealth and does not hold the permanent or long-term interest in real property for more than ten years after foreclosure.

Submitted by: Herman T. Guerrero
Delegate HERMAN T. GUERRERO

Notes: This amendment would permit children who were adopted up to age 16 to inherit family lands. Because the adopted children language has been taken out of Section 4, defining persons of Northern Marianas descent, adopted children do not become persons of Northern Marianas descent able to buy land on their own or to have homesteads. The age 16 requirement applies only to family lands and allows the families to include these adopted children among those who inherit land if they so desire.

Third Northern Mariana Islands Constitutional Convention

Delegate Amendment No. 34

Date: July 27, 1995

ARTICLE AND SECTION TO BE AMENDED: Article 12, Section 2

COMMITTEE ASSIGNED: Committee on Land and Personal Rights

It is proposed that the article passed on first reading be amended as follows:

Article 12

Section 2: Acquisition

The term acquisition used in Section 1 includes acquisition by sale, lease, gift, inheritance or other means except a transfer by inheritance to a child or grandchild or person adopted before age six, a transfer to a spouse who is not of Northern Marianas descent as provided by law, and a transfer to a mortgagee by means of foreclosure if the mortgagee is a full service bank, federal agency or governmental entity of the Commonwealth and does not hold the permanent or long-term interest in real property for more than ten years after foreclosure.

Submitted by: Herman T. Guerrero
Delegate HERMAN T. GUERRERO

Notes: This amendment would permit the legislature to set the rules for inheritance by spouses who are not persons of Northern Marianas descent. There are details about life estate interests and whether 55-year leases can be granted by the holder of a life estate that the legislature is best suited to handle. Abuses may come into the system over time, and the legislature could act to correct them.

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, Kilili 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,

Delegate JOSE R. LIFOIFOI, Chair

Delegate MARIAN ALDAN-PIERCE, Vice Chair

Delegate CARLOS S. CAMACHO

Delegate DONALD B. MENDIOLA

Delegate JOHN O. DLR. GONZALES

Delegate HENRY U. HOFSCHNEIDER

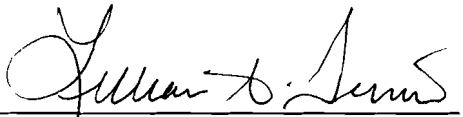
Delegate DAVID L. IGITOL

Delegate BENJAMIN T. MANGLONA

Delegate DAVID Q. MARATITA

Delegate JUSTO S. QUITUGUA

Delegate JOEY P. SAN NICOLAS



Delegate LILLIAN A. TENORIO

Con0727n

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~~ Up to 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 interst 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.

con0721g

Third Northern Mariana Islands Constitutional Convention

Delegate Amendment No. 34

Date: July 27, 1995

ARTICLE AND SECTION TO BE AMENDED: Article 12, Section 2

COMMITTEE ASSIGNED: Committee on Land and Personal Rights

It is proposed that the article passed on first reading be amended as follows:

Article 12

Section 2: Acquisition

The term acquisition used in Section 1 includes acquisition by sale, lease, gift, inheritance or other means except a transfer by inheritance to a child or grandchild or person adopted before age six, a transfer to a spouse who is not of Northern Marianas descent as provided by law, and a transfer to a mortgagee by means of foreclosure if the mortgagee is a full service bank, federal agency or governmental entity of the Commonwealth and does not hold the permanent or long-term interest in real property for more than ten years after foreclosure.

Submitted by: Herman T. Guerrero
Delegate HERMAN T. GUERRERO

Notes: This amendment would permit the legislature to set the rules for inheritance by spouses who are not persons of Northern Marianas descent. There are details about life estate interests and whether 55-year leases can be granted by the holder of a life estate that the legislature is best suited to handle. Abuses may come into the system over time, and the legislature could act to correct them.

THIRD NORTHERN MARIANAS CONSTITUTIONAL CONVENTION
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CAPITOL HILL
SAIPAN, MP 96950

July 16, 1995

TO : Secretary, Department of Land and Natural Resources
Director, Marianas Public Land Corporation
Director, Coastal Resources Management Office
Director, Parks and Recreation
Managing Director, Marinas Visitor Bureau

FM : Chairman, Subcommittee on Land

SUBJ : CONCON/DLNR/MVB/DPO Meeting

This is to remind you of our next meeting on **Tuesday, July 18, 1995, at 5:00 P.M.** at the MPLC Main Office Conference Room. I will like to request that Mr. Ray Salas with the MPLC Homestead Office and Mr. Arnold Palacios (Division of Fish and Wildlife) to attend the meeting in view of the added agenda for our next meeting. (see copy) Homestead and wildlife conservation issues are major concern of the 3rd Concon and we will appreciate your assistance in these matter.

Attached is a summary of the issues that were discussed during our Friday meeting. I will like to extend our sincere appreciation for the productive meeting and we look forward to seeing you or your representatives at our next meeting.

If you have any documents that you will like to share with us, please bring them to the meeting.

Thank you in advance for your attention and cooperation.

DELEGATE JOEY P. SAN NICOLAS
Chairman
Subcommittee on Public Land

attachments

cc: Delegate Joaquin P. Villagomez
Delegate John Oliver DLR. Gonzales
Delegate Benjamin T. Manglona
Delegate Jose R. Lifoifoi
President, 3rd Concon
Members, 3rd Concon
Mr. Herman Q. Guerrero, MPLC
Mr. Ben Santos, MPLC
Mr. Ray Salas, MPLC
Mr. Mark I. Palacios, DLNR
Mr. Manny M. Pangelinan, DLNR
Mr. Arnold I. Palacios (DFW)
Mr. Tony T. Benavente, Parks
Mr. Peter Barlas, CRMO
Ms. Evelyn J. Tenorio, private citizen

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. LIFOIFOI, Chair

Delegate MARIAN ALDAN-PIERCE, Vice Chair

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Delegate LILLIAN A. TENORIO

Con0715a

7/15/95

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: 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.

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.

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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,

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ARTICLE XI: COMMONWEALTH LANDS

Section 1: Public Lands.

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Section 2: Submerged Lands.

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

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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.]

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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.

AMENDMENT TO SECTION 5, 5B., 5C., 6C. AND 6F. of ARTICLE XI: PUBLIC LANDS

Section 5: Oficinan Tano.

There is hereby established the Ofinan Tano.

b) At least one director shall be a resident of each senatorial district, at least one director shall be a woman and at least one shall be 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. Each director must have at least two years of management experience and one who has not been convicted of a crime carrying a maximum sentence of imprisonment of more than six months.

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

Section 6: Fundamental Policies.

c) The bureau may transfer a leashold interest in public lands for commercial purposes or other purposes after reasonable notice, a solicitation of competing bids, and public hearing. A leasehold interest shall not exceed twenty-five years including renewal rights. An extension of not more than fifteen years may be given upon approval by three-fourths of the members of the legislature. A leasehold interest shall expire within three years if the commercial purpose is not accomplished. Leasehold interests of more than one year or more than 200 square meters shall be submitted to the legislature. The legislature shall conduct a joint public hearing to review the lease. The legislature may approve or reject the lease, 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. The bureau shall not transfer a leasehold interest in public lands larger than 15 hectares for commercial purposes.

d) The bureau shall operate

3. To add a new Section 6 f. to read:
Section 6: Fundamental Policies.
f) Any transfer of leasehold interest in public land by the Division of Public Land (Department of Land and Natural Resources) between June 5, 1995 and the ratification of this article shall be declared null and void.

2. To delete the words on Section 6 c. which read "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." and replace them with the words,

Submitted: DELEGATE JOAQUIN P. VILLAGOMEZ

Date:_____

AMENDMENT TO SECTION 9 OF ARTICLE I: PERSONAL RIGHTS

Section 9: Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. The legislature shall no law infringing this right or permitting the storage or dumping of any nuclear or radioactive material in the lands or waters of the Commonwealth. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

Submitted:_____

Date:_____

AMENDMENT TO SECTION 5, 5B., 5C., 6C. AND 6F. of ARTICLE XI: PUBLIC LANDS

Section 5: Oficinan Tano.

There is hereby established the Ofinan Tano.

b) At least one director shall be a resident of each senatorial district, at least one director shall be a woman and at least one shall be 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. Each director must have at least two years of management experience and one who has not been convicted of a crime carrying a maximum sentence of imprisonment of more than six months.

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

Section 6: Fundamental Policies.

c) The bureau may transfer a leashold interest in public lands for commercial purposes or other purposes after reasonable notice, a solicitation of competing bids, and public hearing. A leasehold interest shall not exceed twenty-five years including renewal rights. An extension of not more than fifteen years may be given upon approval by three-fourths of the members of the legislature. A leasehold interest shall expire within three years if the commercial purpose is not accomplished. Leasehold interests of more than one year or more than 200 square meters shall be submitted to the legislature. The legislature shall conduct a joint public hearing to review the lease. The legislature may approve or reject the lease, 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. The bureau shall not transfer a leasehold interest in public lands larger than 15 hectares for commercial purposes.

d) The bureau shall operate

3. To add a new Section 6 f. to read:

Section 6: Fundamental Policies.

f) Any transfer of leasehold interest in public land by the Division of Public Land (Department of Land and Natural Resources) between June 5, 1995 and the ratification of this article shall be declared null and void.

2. To delete the words on Section 6 c. which read "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." and replace them with the words,

Submitted: DELEGATE JOAQUIN P. VILLAGOMEZ

Date:_____

AMENDMENT TO SECTION 9 OF ARTICLE I: PERSONAL RIGHTS

Section 9: Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. The legislature shall no law infringing this right or permitting the storage or dumping of any nuclear or radioactive material in the lands or waters of the Commonwealth. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

Submitted:_____

Date:_____

THIRD NORTHERN MARIANAS CONSTITUTIONAL CONVENTION
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CAPITOL HILL
SAIPAN, MP 96950

July 16, 1995

TO : Secretary, Department of Land and Natural Resources
Director, Marianas Public Land Corporation
Director, Coastal Resources Management Office
Director, Parks and Recreation
Managing Director, Marinas Visitor Bureau

FM : Chairman, Subcommittee on Land

SUBJ : CONCON/DLNR/MVB/DPO Meeting

This is to remind you of our next meeting on **Tuesday, July 18, 1995, at 5:00 P.M.** at the MPLC Main Office Conference Room. I will like to request that Mr. Ray Salas with the MPLC Homestead Office and Mr. Arnold Palacios (Division of Fish and Wildlife) to attend the meeting in view of the added agenda for our next meeting. (see copy) Homestead and wildlife conservation issues are major concern of the 3rd Concon and we will appreciate your assistance in these matter.

Attached is a summary of the issues that were discussed during our Friday meeting. I will like to extend our sincere appreciation for the productive meeting and we look forward to seeing you or your representatives at our next meeting.

If you have any documents that you will like to share with us, please bring them to the meeting.

Thank you in advance for your attention and cooperation.

DELEGATE JOEY P. SAN NICOLAS
Chairman
Subcommittee on Public Land

7/17/95

Attached Summary will be provided tommoro 7/18/95.
By Del. San Nicolas/Villagomez.

joe

attachments

cc: Delegate Joaquin P. Villagomez
Delegate John Oliver DLR. Gonzales
Delegate Benjamin T. Manglona
Delegate Jose R. Lifoifoi
President, 3rd Concon
Members, 3rd Concon
Mr. Herman Q. Guerrero, MPLC
Mr. Ben Santos, MPLC
Mr. Ray Salas, MPLC
Mr. Mark I. Palacios, DLNR
Mr. Manny M. Pangelinan, DLNR
Mr. Arnold I. Palacios (DFW)
Mr. Tony T. Benavente, Parks
Mr. Peter Barlas, CRMO
Ms. Evelyn J. Tenorio, private citizen

Third Northern Mariana Islands Constitutional Convention

Second Floor, Joeten Dandan Center
Caller Box 10007, Saipan, MP 96950
Tel. No.: (670) 235-0843 • Fax No.: (670) 235-0842

July 12, 1995

TO : Secretary, Department of Land and Natural Resources
Director, Marianas Public Land Corporation
Director, Coastal Resources Management Office
Director, Parks and Recreation
Managing Director, Marianas Visitor Bureau

FM : Chairman, Committee on Land and Personal Rights

SUBJ : Designation of Public Parks and Conservation Areas

This is to inform you that I have established a Subcommittee on Public Land to review and recommend which of the public land in the Northern Marianas deserved to be protected in our Constitution as public parks and conservation areas. I will like to invite you to a meeting this Friday, July 14, 1995, at 8:00 a.m. at MPLC Main Office, Capitol Hill. Members of the subcommittee are:

1. Delegate John Oliver DLR. Gonzales - Saipan
2. Delegate Benjamin T. Manglona - Rota
3. Delegate Joey San Nicolas - Tinian
4. Delegate Joaquin P. Villagomez - Saipan

Thank you in advance for your attention and cooperation.

for DELEGATE JOSE R. LIFOIFOI
CHAIRMAN

cc: Delegate Joaquin P. Villagomez
Delegate John Oliver DLR. Gonzales
Delegate Benjamin T. Manglona
Delegate Joey San Nicolas
Mr. Herman Q. Guerrero, MPLC
Mr. JohnFurey, CRMO

COMMITTEE ON LAND AND PERSONAL RIGHTS

REPORT NO. 5: ARTICLE XIV, NATURAL RESOURCES

The Committee met on Monday, June 26, 1995 and Monday, July 10, 1995 to consider proposed amendments to Article XIV, Natural Resources. The Committee considered Delegate Proposals 159, 160, 219, 274, 345, 377, 398, 530, and 534 which had been referred to it by the committee on Organization and Procedures. In addition, the Committee sent letters to the current departments and agencies with jurisdiction over natural resources and received written submissions.

The Committee decided that the existing Article XIV is entirely adequate in nearly all respects, and proposes changes only to clarify or extend in certain respects the existing provisions of Article XIV.

Each of the changes is described below:

Section 1: Marine Resources

The only change to Section 1 is to delete the phrase "under United States law." The intent of this section is to extend the claim of the Commonwealth as far as possible. This is not a substantive change. The Commonwealth has always claimed all of the jurisdiction available to it. This claim includes the 200-mile exclusive economic zone, and extends beyond 200 miles if that becomes available. This claim includes everything available under the United Nations provisions for jurisdiction over area waters, and again, will extend beyond the United Nations provisions where available. This article does not apply or otherwise affect United States law. The phrase "under United States law" was included in the 1976 Constitution as a description to help with the understanding of how the Commonwealth's jurisdiction is defined. The Commonwealth is committed under the Covenant to the recognition and application of U.S. law that is set out there.

Section 2: Uninhabited Islands

The only change to Section 2 is to add coverage of Bird Island as an island that will be maintained as an uninhabited place used only for cultural and recreational purposes.

Section 3: Places and Things of Cultural and Historical Significance

This section is unchanged.

Section 4: Natural Resources

This is a new section. It parallels Section 1 which preserves marine resources in its waters under the jurisdiction of the Commonwealth. Section 4 covers the natural resources

located on public lands. This section requires that these mineral, water, and other resources on public lands be protected and preserved for the benefit of the public, but leaves the details of the program to the Legislature. This section declares that the public natural resources of the Commonwealth are the common property of all the people, including the generations to come. The Commonwealth shall, as trustee for these resources, conserve and maintain them for the benefit of the people.

Respectfully submitted,

Delegate Jose R. Lifofoi
Chair

Delegate Marian Aldan-Pierce
Vice Chair

Delegate Carlos S. Camacho

Delegate John O. DLR Gonzales

Delegate Henry U. Hofschneider

Delegate David L. Igitol

Delegate Benjamin T. Manglona

Delegate David Q. Maratita

Delegate Donald B. Mendiola

Delegate Justo S. Quitugua

Delegate Joey S. San Nicolas

Delegate Lillian A. Tenorio

7/10/95

ARTICLE XIV: NATURAL RESOURCES

Section 1: Marine Resources.

The marine resources in waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.

Section 2: Uninhabited Islands.

Managaha Island and Bird Island shall be maintained as an uninhabited places and used only for cultural and recreational purposes. The islands of Maug, Uracas, Asuncion, Guguan and other islands specified by law shall be maintained as uninhabited places and used only for the preservation and protection of natural resources, including but not limited to bird, wildlife and plant species.

Section 3: Places and Things of Cultural and Historical Significance.

Places of importance to the culture, traditions and history of the people of the Northern Mariana Islands shall be protected and preserved and public access to these places shall be maintained as provided by law. Artifacts and other things of cultural or historical significance shall be protected, preserved and maintained in the Commonwealth as provided by law.

Section 4: Natural Resources

The mineral, water, and other natural resources located on public lands shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.

Commonwealth of the Northern Mariana Islands
Division of Environmental Quality
P.O. Box 1304, Saipan, MP 96950

Tels.:(670) 234-6114/6984
Fax: (670) 234-1003

June 26, 1995

Jose R. Lifoifoi, Chairman
Committee on Land and Personal Rights
Third Northern Mariana Island Constitutional Convention
Caller Box 10007
Saipan, MP 96950

Dear Mr. Chairman:

Thank you for the opportunity to provide comments on the proposal of the formation of the Commonwealth Environmental Protection Board. In general, we agree with the intent of the proposal for the formation of a Commonwealth Environmental Protection Board but we are also concerned about the potentially large direct impact this proposal may have on our agency. Our comments are as follows:

1) As we understand it, one of the principal goals of the Environmental Protection Board is to provide the public with one-stop permitting. Although this idea has merit, it will be difficult to implement. The permitting for the affected agencies involves different areas of expertise. For example, the Historical Preservation Office will examine its permit from a completely different perspective from that of the Division of Environmental Quality. There will be no practical time-saving aspect of the revised permit issuance process.

2) The closest way to create a "one-stop" permitting process is to physically relocate all of the affected agencies to one structure or location. There are very definite advantages to this arrangement but this proposal should be examined from a cost-effective basis. The advantages are that the public will be able to inquire on the status of their permits in an expedited manner and the permitting agencies can coordinate when overlapping jurisdictions arise on an affected project. The disadvantage of this proposal is identifying funding for each of the affected agencies to perform the office and lab moves. Other than physical relocation, we can see no real advantage to combining these agencies under one Board for the purposes of permitting. Without physically relocation, the public will view the Board as another layer of bureaucracy.

3) We are concerned about the combining of personnel, assets, and funds from the different agencies into one Board. There may be both legal and programmatic difficulties if the federal funds were to be used for anything

Rec'd 6/27/95

other than its intended purpose. We suggest that the Committee seek clarification and guidance from each agency on what restrictions there may be with their federal funding. We will be willing to discuss the restrictions we receive from the United States Environmental Protection Agency.

4) We also believe that the Committee should consider the affect of direct politics on the role of a regulatory agency. Ideally, the regulatory agency is mandated by specific laws and regulations with responsibilities to perform regardless of the changes in the political climate. It is quite conceivable that the elected Board will be comprised of members of different political parties. The elected members will represent conflicting agendas and the result may be a political gridlock of the regulatory process.

It is our understanding that the Third Constitutional Convention is in the process of reviewing quite a large number of proposals. We appreciate the effort you have put into seeking our input into this single proposal and we will be willing to explain to the Committee in greater detail, some of our thoughts on this matter. I can be reached at 234-1011 or by fax at 234-1003.

Sincerely,

JOHN I. CASTRO, JR.
DIRECTOR

cc: Secretary, DPW

Commonwealth of the Northern Mariana Islands
Department of Natural Resources
Division of Parks & Recreation
Saipan, Mariana Islands 96950

Cable Address:
Gob. NMI Saipan
Tel: (670) 234-7405
Fax: (670) 234-6480

June 26, 1995

Jose R. Lifoifoi
Chairman
Committee on Land and Personal
Rights
Third Northern Mariana Islands
Constitutional Convention
Saipan, MP. 96950

Dear Chairman Lifoifoi:

I received your letter in regards to the Committee on Land and Personal Rights for the proposal of the Third Northern Marianas Constitutional Convention.

I am honored to solicit comments on this proposal from the Division of Parks & Recreation. As a newly appointed Director for this Division, I am not too familiar with the functions of Board Members in implementing policies affecting potential resources of our island public lands. I do however, would like to see more of the Boards Functions in addressing public lands that will result in economic development and recognize the importance of our tourism industry in the CNMI.

My opinion for this Board proposal is highly recommendable. My only suggestion is better to have 4 more additional members, so that they may properly address future management plans and regulations of all permit policies.

I believe, that it is also important that all Board Members does not have any conflict of interest in their position. That each Board Members have knowledgable backgrounds towards our CNMI Government policies. This, I would like to see in each Board Members.

I would like to thank you, Mr. Chairman and your Committee Members. I honestly feel that your proposal and decision as Delegate of the 3rd Constitutional Convention will surely benefit our local people.

Should you have any questions, please call me at 234-7405.

Si Yuus Maase.

ANTHONY T. BENAVENTE
Director
Division, Parks & Recreation

Rec'd 6/30/95 - am

6/19/95

COMMITTEE ON LAND AND PERSONAL RIGHTS

SUMMARY OF ISSUES WITH RESPECT TO ARTICLE XVI: CORPORATIONS

ARTICLE XVI: CORPORATIONS now reads:

Section 1: Corporations

No private business corporation shall be organized and no existing corporate charter shall be extended or amended except by general laws.

There are no delegate proposals to amend Article XVI.

Legal counsel knows of no reason why it should be amended.

The Chair might be authorized to report to the Convention that the Committee has considered Article XVI and decided that no amendments are necessary.

6/19/95

COMMITTEE ON LAND AND PERSONAL RIGHTS

SUMMARY OF ISSUES WITH RESPECT TO PREAMBLE

The Preamble now reads:

We, the people of the Northern Marianas Islands, grateful to Almighty God for our freedom, ordain and establish this Constitution as the embodiment of our traditions and hopes for our Commonwealth in Political Union with the United States of America.

There is one proposal to revise the Preamble. It is attached.

Third Northern Mariana Islands Constitutional Convention

Delegate Proposal No. 48

Date: May 2, 1995

It is proposed that a constitutional amendment be prepared that does the following:

Amends the preamble to present the overriding philosopy of the Constitution that the CNMI government is government by the people, of the people, and for the people and that all government is founded on this authority.

Amends the preamble to make clear that the Constitution guarantees the people certain rights and at the same time these rights cannot endure unless the people recognize their corresponding obligations and responsibilities.

Submitted by: _____
Delegate JUSTO S. QUITUGUA

CONSTITUTIONAL ARTICLE THAT WOULD BE AMENDED: Preamble

CONSTITUTIONAL ARTICLES THAT WOULD BE AFFECTED: Reflects the philosophy on which all constitutional articles are based.

6/19/95

COMMITTEE ON LAND AND PERSONAL RIGHTS

SUMMARY OF ISSUES WITH RESPECT TO ARTICLE XIV: NATURAL RESOURCES

ARTICLE XIV: NATURAL RESOURCES now reads:

Section 1: Marine Resources.

The marine resources in waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction under United States law shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.

Section 2: Uninhabited Islands.

The island of Managaha shall be maintained as an uninhabited place and used only for cultural and recreational purposes. The islands of Maug, Uracas, Asuncion, Guguan and other islands specified by law shall be maintained as uninhabited places and used only for the preservation and protection of natural resources, including but not limited to bird, wildlife and plant species.

Section 3: Places and Things of Cultural and Historical Significance.

Places of importance to the culture, traditions and history of the people of the Northern Mariana Islands shall be protected and preserved and public access to these places shall be maintained as provided by law. Artifacts and other things of cultural or historical significance shall be protected, preserved and maintained in the Commonwealth as provided by law.

The issues raised by delegate proposals to amend Article XIV are as follows:

Section 1: Marine resources

1. Reference to U.S. law

. The 1976 Constitution included a reference to U.S. law.

. Should this be deleted?

2. Reference to the 200-mile Exclusive Economic Zone

. The 1976 Constitution asserted a claim to everything, not limited to the 200-miles included in the EEZ.

. Should a specific reference to the 200-mile zone be included?

3. Provision for mining or other recovery of marine mineral resources

. The 1976 Constitution asserts a claim to all marine resources (including fish and minerals) but does not specifically provide how they should be regulated.

. Should the Constitution provide that mining or other recovery of marine mineral resources can be done only as authorized (licensed) by the CNMI, and put the licensing authority in the executive branch?

. Should a percentage of any revenues generated from this source be earmarked for public education and public health?

Section 2: Uninhabited islands

1. Protection of uninhabited islands

. The 1976 Constitution protected Managaha, Maug, and Sariguan as uninhabited islands.

. The 1985 amendments added Uracus, Asuncion, and Guguan in place of Sariguan

. Should Bird Island be added as a marine sanctuary?

. Should the Grotto area on Saipan be added as a marine sanctuary?

. Should the mining or other recovery of mineral resources be regulated in the Northern Islands, so that it can only be done under a permit issued by the CNMI?

- Should the authority to regulate mining in the Northern Islands be placed in the executive branch

- Should a percentage of the proceeds from mining in the Northern Islands be earmarked for construction and improvement of physical infrastructure in the CNMI?

Section 3: Places and Things of Cultural and Historical Significance

There were no delegate proposals to amend this section.

Other proposals

1. Should a new section be created with respect to natural resources

. To provide that all natural resources shall be conserved and managed for the benefit of present and future CNMI residents?

. To declare that the people have a right to the preservation of the natural, scenic, historic, and esthetic values of the environment?

. To declare that the public natural resources of the Commonwealth are the common property of all the people, including the generations to come; and that the Commonwealth shall, as trustee for these resources, conserve and maintain them for the benefit of all people.

2. Should an elected Commonwealth Environmental Protection Board be established to replace the Coastal Resources Management Office and all related executive branch agencies (Division of Environmental Quality, Division of Fish and Wildlife, Division of Plant Industry, Division of Animal Industry, Division of Sanitation, Division of Parks and Recreation, Division of Historic Preservation, and Office of Forestry.)

6/19/95

COMMITTEE ON LAND AND PERSONAL RIGHTS

SUMMARY OF ISSUES WITH RESPECT TO ARTICLE I: PERSONAL RIGHTS

Changes have been proposed to five sections of Article I.

No changes have been proposed to the remaining seven sections of Article I.

Counsel is not aware of any reason to amend the remaining seven sections of Article I.

Section 6: Equal protection

Section 6 now reads:

No person shall be denied the equal protection of the laws. No person shall be denied the enjoyment of civil rights or be discriminated against in the exercise thereof on account of race, color, religion, ancestry or sex.

1. Should Section 6 be expanded to prohibit discrimination on account of national origin or nationality?

2. Should Section 6 be expanded to prohibit discrimination on account of physical and mental disability?

Section 7: Quartering soldiers

Section 7 now reads:

No soldier in time of peace may be quartered in any house without the consent of the owner, nor in time of war except as provided by law.

1. Should Section 7 be expanded to cover quartering militia as well as regular soldiers?

2. Should Section 7 be expanded to cover occupants as well as owners?

Section 9: Clean and healthful environment

Section 9 now reads:

Each person has the right to a clean and healthful public environment in all areas, including the land, air, and water. Harmful and unnecessary noise pollution, and the storage of nuclear or radioactive material and the dumping or storage of any type of nuclear waste within the surface or submerged lands and waters of the Northern Mariana Islands, are prohibited except as provided by law.

1. Should the second sentence, that was added in 1985, and that has been identified by counsel as legislative language, be deleted.

2. Should this provision make clear that the legislature has no authority to allow placing of any type of nuclear waste for any purpose in the waters or submerged lands under the jurisdiction of the Commonwealth.

3. Should there be added to this provision a declaration that each person shall have the right of accessibility entrance and egress to be able to enjoy the benefits of such environment.

4. Should there be substituted or added a declaration that the people have a right to clean air and pure water.

Section 11: Victims of crime

Section 11 now reads:

The right of the people to be secure in their persons, houses, and belongings against crime shall be recognized at sentencing. Restitution to the crime victim shall be a condition of probation and parole except upon a showing of compelling interest.

1. Should Section 11 be deleted from the Constitution?

6/19/95

COMMITTEE ON LAND AND PERSONAL RIGHTS

SUMMARY OF ISSUES WITH RESPECT TO ARTICLE XII
INCLUDING ISSUES RAISED AT PUBLIC HEARING

ARTICLE XII: RESTRICTIONS ON ALIENATION OF LAND

Section 1: Alienation of Land

1. Section 805 of the Covenant requires the provisions of Section 1 remain in effect until 25 years after the termination of the Trusteeship. After that time, a constitutional amendment could elect to eliminate Article XII. The 25-year period is still running, however, so that this Convention cannot take action that will be effective now.

. Should the Convention include in its legislative history a statement of the importance of Article XII and this Convention's expectation that it will remain in effect after the 25 years expires. (After the 25-year period expires, Article XII will automatically remain in effect for as long as it remains in the CNMI Constitution.)

. Should the Convention decide now to lift the restrictions in Article XII after the 25-year period runs out?

Section 2: Acquisition

1. Transfers by inheritance

. Should spouses who are not persons of Northern Marianas descent be permitted to obtain title to real property by inheritance?

- Should the limitations imposed by the 1985 Constitutional Convention be continued (spouses may inherit only if there are no children who are persons of Northern Marianas descent)

- Should there be an alternative such as a 55-year lease to the spouse in the event there is no will

. Should children who are not persons of Northern Marianas descent and who are adopted by persons of Northern Marianas descent be permitted to obtain title to real property by inheritance?

- Should there be an age limit on adoption in order to qualify (such as 5 years, 10 years?)

- Should there be a residence requirement for children, at the time of inheritance, in order to qualify? (only adopted children who reside the the CNMI are qualified?)

. Are there other kinds of inheritance problems that have come up over the past 10 years that should be addressed in the Constitution?

2. Transfers as a result of foreclosures on mortgages

. Who should be covered by an exception that allows mortgage holders (who are not persons of Northern Marianas descent) to obtain title to real property in the event of a foreclosure on the mortgage?

- The 1976 Constitution provided that mortgage holders (such as banks and government agencies) could obtain title to real property as the result of a foreclosure on a mortgage if they did not hold the real property for more than five years.

- The 1985 amendments limited qualified mortgage holders to full service banks, federal government agencies, or CNMI government agencies.

- Is there any need to increase or decrease the kinds of mortgage holders who are qualified?

. How long should mortgage holders (who are not persons of Northern Marianas descent) who take title to real property after a foreclosure on a mortgage be permitted to hold that real property?

- The 1976 Constitution permitted 5 years, within which the mortgage holder would have to sell the land to a qualified buyer (a person of Northern Marianas descent)

- The 1985 Constitutional Convention permitted 10 years after the term of the mortgage (which could be 40 years, on a 30-year mortgage on which there was an early default) in order to permit mortgage holders to continue any long term leases in effect as to the land that they took in the foreclosure (or to make new long-term leases)

- Is there any need to change the current rule?

3. Transfers as a result of divorce

. Under current law, divisions of marital property in divorces cannot violate Article XII, so non-Marianas spouses who are involved in a divorce cannot receive title to land in a property settlement.

. Should this be changed?

4. Other exemptions

. Is there any need for other kinds of transactions to be exempted (other than the transfers by inheritance, the transfers as a result of foreclosures on mortgages, and transfers as a result of divorce)?

Section 3: Permanent and Long-Term Interests in Real Property

1. Term of leases

. The 1976 Constitution allowed 40 year leases

. The 1985 constitutional amendments allowed 55 year leases

. Should the length of time for long-term leases be changed?

. Should any other kinds of interests be included as permanent and long-term interests in property (which are subject to Article XII)?

2. Renewal rights

. Both the 1976 and 1985 conventions included all renewal rights in the term when measuring the maximum permitted length of time.

. Are additional protections necessary to ensure that leases do not go beyond the permitted limit?

- Should transactions be prohibited that require the owner to pay, at the end of the lease, for improvements made by the lessee during a lease

- Should transactions be prohibited that include loan obligations of the owner that come due at the end of the lease and include forfeiture rights if the loan is not paid

. Should the Constitution prohibit transactions in which the owner promises that if the law changes and sales are permitted to persons who are not of Northern Marianas descent that the owner will transfer title to the land covered by the lease?

. Should the Constitution prohibit successive leases, which may not be renewals (because the promise is not contained in the original lease) but are new transactions between the same persons or interests?

3. Condominium rights

. The exception for condominiums above the first floor, added by the 1985 amendments, is a legislative matter.

. Should it be deleted?

. Should any provision be made for condo transactions?

Section 4: Persons of Northern Marianas Descent

1. Percentage Chamorro or Carolinian blood

. In 1976, the Constitutional Convention elected to protect three generations of persons of Northern Marianas descent who married outsiders. The protection of further generations was left to the decision of later Constitutional Conventions.

- Everyone who was born or domiciled in the Northern Marianas by 1950 and who was a citizen of the Trust Territory before termination of the Trusteeship in 1986 is deemed to be 100% Northern Marianas Descent.

- Using the starting point of 1950, and assuming every generation marries an outsider (non-Northern Marianas descent), the percentages are:

1950	First generation	100%
1970	Second generation	50%
1990	Third generation	25%
2010	Fourth generation	12.5%
2030	Fifth generation	6%
2050	Sixth generation	3%

. Should this Constitutional Convention extend the protection to another two generations to cover the time until the next constitutional convention?

. Should the protection be extended infinitely to anyone who can demonstrate any Northern Marianas blood, no matter how small a percentage and no matter how long the family members have lived outside the CNMI?

2. Treatment of adopted children

. The 1976 and 1985 Constitutional Conventions allowed adopted children, who were adopted while under the age of 18, to acquire the status of Northern Marianas descent

. Should adopted children be protected?

. Should the age limit be lowered (to children adopted before age 5, 10)?

3. Treatment of pre-1950 Chamorros from Guam

. Some Chamorros who came from Guam before or after WWII and settled in the Northern Marianas were domiciled in the Northern Marianas by 1950 but never became citizens of the Trust Territory. Guam was not a part of the Trust Territory, so these people did not have Trust Territory citizenship. They do not meet the definition of persons of Northern Marianas descent in the Constitution. Their children, born after 1950, although they are Chamorros and have always lived in the CNMI, are not persons of Northern Marianas descent (or have a lesser percentage Chamorro blood than otherwise would be the case).

. Should the definition of Northern Marianas descent be expanded to include these Chamorros?

4. Treatment of post-1950 Chamorros from Yap

. Some Chamorros who came from Yap arrived on Tinian in 1951 and 1952. They have lived ever since in the CNMI. They were Trust Territory citizens, but because they did not reach the Northern Marianas by 1950, they are not persons of Northern Marianas descent. Their children, born after 1950, are not persons of Northern Marianas descent even though they are Chamorros who have lived all their lives in the CNMI.

. Should the definition of Northern Marianas descent be expanded to include these Chamorros?

5. Establishing Northern Marianas descent

. Should there be a registry or other official way of establishing Northern Marianas descent so that future generations will have the necessary records for land transactions?

6. Other problems

. Are there other problems with the definition of Northern Marianas descent that should be addressed by constitutional amendment?

Section 5: Corporations

1. Place of business

. The 1976 Constitution requires that businesses be incorporated in the Commonwealth and have the principal place of business in the Commonwealth to qualify as Northern Marianas descent.

. Are any changes needed in these requirements.

2. Directors

. The 1976 Constitution required that 51% of the directors be persons of Northern Marianas descent

. The 1985 amendments required that 100% of the directors be persons of Northern Marianas descent.

. Is any change needed in this requirement?

. The 1985 amendments provided that minors may not be directors

. Are other limitations on qualifications to be directors needed?

3. Stock ownership

. The 1976 Constitution required that 51% of the voting shares be owned by persons of Northern Marianas descent

. The 1985 Constitution required that 100% of the voting shares be owned by persons of Northern Marianas descent.

. Is any change needed in this requirement?

4. Prohibited types of stock ownership transactions

. The 1985 amendments added some prohibited transactions with respect to stock ownership to try to prevent any circumvention of the 100% ownership requirement.

- Trusts were prohibited

- Voting by proxy was prohibited

- Severing beneficial title from legal title was prohibited.

. Are there changes or additions needed with respect to these prohibited stock ownership transactions?

5. Equity ownership

. Does it make any difference that equity ownership may be entirely different from stock ownership?

Section 6: Enforcement

1. Transactions in violation of the restrictions

. The 1976 Constitution provided that transactions in violation of Article XII are void ab initio.

. Should the standard be changed to voidable instead of void ab initio in order to protect persons of Northern Marianas descent who are innocent purchasers of land with bad title due to Art. XII defects.

. Should there be a statute of limitations put into the Constitution that protects transactions after they have been completed for 5 years, 6 years, 7 years?

. Should there be a provision for severability, so that if one part of an agreement violates Article XII only that part of the agreement is void and other parts of the agreement (which are lawful) are not affected.

. Should there be any provision in the Constitution for the award of equitable adjustments for an adversely affected party whose transaction is set aside as void pursuant to the restrictions in Article XII or for other equitable remedies?

2. Corporations that lose qualification as Northern Marianas descent

. The 1976 Constitution provided that if a corporation owns land, and then loses its qualification as Northern Marianas descent (because it no longer has 100% of its directors and 100% of its stockholders qualified as persons of Northern Marianas descent), then the land is forfeited to the government.

. The 1985 amendments added a requirement for immediate forfeiture, and added a prohibition on any right of redemption. Should these changes be deleted?

. Are any additional or different protections appropriate?

3. Registrar of Corporations

. This is a legislative provision.

. Should it be deleted.

4. Government enforcement office

. Should lawsuits by landowners be the only way that Article XII is enforced?

. Should there be a government office for the enforcement of Article XII

Proposed new limitations on commercial transactions

1. Middlemen and brokers

. Should transactions be prohibited that involve middlemen and brokers who are of Northern Marianas descent acting for lessees who are persons not of Northern Marianas descent.

. Should transactions be prohibited where persons who are not of Northern Marianas descent provide the financing for persons who are of Northern Marianas

descent who acquire land in order to be able to lease it to persons who are not of Northern Marianas descent.

. Should option contracts be prohibited?

2. Disclosure

. Should a person of Northern Marianas descent who seeks to acquire land in order to lease it to a third party who is not of Northern Marianas descent be required to disclose that intent to the owner prior to the acquisition?

3. Private attorney general litigation

. Should any person of Northern Marianas descent be able to challenge a land transaction that may violate Article XII (acting as a private attorney general) because the purpose of Article XII is to preserve the land and heritage of the people.

4. Advisory opinions

. Should an owner or a prospective lessee be able to seek an advisory opinion from the courts finding that a proposed transaction is permissible under Article XII before entering into the transaction?

5. Attorneys fees

. Should lawyers' fees in connection with land transactions involving persons of Northern Marianas descent be controlled in any way in the Constitution?