



July 1, 2024

Ref: LEG 24-0309

Honorable Therese M. Terlaje

Speaker

and

Honorable Sabina F. Perez

Chairperson and Senator

Committee on Education, Public Safety and the Arts

Mina'trentai Siette Na Liheslaturan Guåhan

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

Subject: Bill 175-37

Hafa Adai:

Recently our Office received communications regarding the above legislation. In 2023 we conducted a roundtable meeting on the issue regarding the Guam Environmental Protection Agency's (GEPA's) withholding building permit clearances from landowners. The complaints came from various persons, including residential landowners and public officials. We understood that their reason(s) not to do so were because of residential lot size requirements in Guam law, and the possible polluting of the Northern Aquifer by septic tanks on those lots (density concern). Before that roundtable meeting, the undersigned AG was in discussions with Lt. Gov. Joshua Tenorio regarding this building permitting problem and working together to solve it. The AG's Office left off with requesting more information from our assigned Assistant AG to GEPA.

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"Guam's Toughest Law Enforcers"

Recently, a request for opinion was submitted to us regarding the above Bill 175-37. Several messages with 3 Senators were exchanged via Whatsapp wherein this Office recommended to all the Senators referring it back to Committee and not changing the lot sizes. The reason included because we did not believe increasing the real property lot sizes set forth in Guam law was a proper solution to a problem that did not have sufficient data to react to. Further, based upon our 2023 meeting, the costs between the existing septic tanks and Mark IV system were not much, and the Mark IV system was an acceptable resolution we understood to GEPA's refusals to give building permit clearances to many families trying to build upon their residential properties, yet had no immediate GWA sewer line connection available, and required a septic tank with leaching field.

The following was what was sent to Senator Sabina Perez on June 28, 2024 ¹.

AG: Senator we recommend Bill 175 be sent back to Committee. There are technical concerns that need to be properly vetted.

Sen.: Si Yu'os ma'åse

Are they different from what Attorney Botha testified?

This is the sub is being debated

It incorporated Attorney Botha's recommendations, I believe.

AG: Hi Senator. Our position was limited to the MarkIV septic system not touching any lot sizes. I disagreed that GEPA properly provided the reporting data and science about any contamination and sources.

GWA was suspected as well as being the source of well readings. More testing was needed.

GWA sewer lines may be leaking.

We do not agree with modifying existing laws on property lot sizes under Parental Subdivision or decedent estates. Thank you.

The above was also forwarded to several other concerned Senators, such as Senator Chris Duenas and Senator Telo Taitague, who both inquired with the undersigned AG. The communications manifested their concerns about this issue.

¹

Upon contacting these 3 Senators, they freely consented for its disclosure in this legal opinion release, and constitutes the complete communications on Bill 175 with this AG.

The following was what was sent to Senator Chris Duenas on 6/25/24 & 6/28/24.

Sen.: A new § 48104 (e) is hereby added to Chapter 48, Title 10, Guam Code Annotated, to read:

“(e) Only for land covered by 21 GCA §62104(a) (land which is an asset of the estate of decedent) that is located within the Groundwater Protection Zone (GPZ) as established under 10 GCA §47108.1:

(a) The minimum lot size on which a Type 2 facility serving a single dwelling unit shall be nineteen thousand two hundred (19,200) square feet;

(b) The minimum lot size on which a Type 4 nitrate reducing system facility serving a single dwelling unit shall be nine thousand six hundred (9,600) square feet.

General this is the ammendment that I proposed meeting all recommendations from EPA and waterworks.

AG: Is this on Session Floor now?

Sen.: Going to be debated soon. It's in the session agenda.

AG: Let me see how fast we can review and possibly issue legal opinion.

Sen.: Great thanks!

(June 28, 2024, below)

AG (fwd fr. Sen. S. Perez comm.): Senator we recommend Bill 175 be sent back to Committee. There are technical concerns that need to be properly vetted.

Sen. (fwd fr. Sen. S. Perez comm.): Si Yu'os ma'åse

AG (fwd fr. Sen. S. Perez comm.): Are they different from what Attorney Botha testified?

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Sen. (fwd fr. Sen. S. Perez comm.): Excellent

AG: Sen Duenas, above conv with Sen Perez.

Sen. Duenas: Great thanks General!

What concerns this AG is the amount of confusion about why residential property sizes needed to be changed through legislation due to a perceived environment pollution issue. Upon checking our records, the AG's Office does not have the data or reports available from GEPA supporting reduction of lot sizes (density reductions).

The following was what was sent to Senator Telo Taitague on June 28, 2024.

AG (fwd fr. Sen. S. Perez comm.): Senator we recommend Bill 175 be sent back to Committee. There are technical concerns that need to be properly vetted.

Sen. (fwd fr. Sen. S. Perez comm.): Si Yu'os ma'åse

AG (fwd fr. Sen. S. Perez comm.): Are they different from what Attorney Botha testified?

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AG (fwd fr. Sen. S. Perez comm.): Hi Senator. Our position was limited to the MarkIV septic system not touching any lot sizes. I disagreed that GEPA properly provided the reporting data and science about any contamination and sources.

GWA was suspected as well as being the source of well readings. More testing was needed.

GWA sewer lines may be leaking.

We do not agree with modifying existing laws on property lot sizes under Parental Subdivision or decedent estates. Thank you.

Sen. (fwd fr. Sen. S. Perez comm.): Excellent

AG: Sen Taitague, above conv with Sen Perez.

I explained to Sen Duenas we do not endorse changing lot sizes past legis allowed parental subdivisions and decedents estates. I recommended bill go back to committee for that type legal analysis. All we earlier endorsed since last year was changing to upgrading law to Mark IV septic tanks now required.

Sen.: Thank you. He said in the floor that you said this

AG: Thank you.

Chris called me and we discussed. He misunderstood what I thought was clearly explained. Sent him above also.

Sen: [sent Video Session, not included]

He starts off saying this, just so you know. It was different from what he said.

AG: Miscommunication. Thank you.

Clarified with him and sent writing I sent Sen Perez.

Sen: Ok

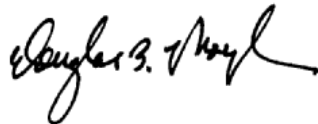
AG: I know I did not say to increase lot size requirements. Simple misunderstanding. Complicated matter hence my recommending sending back to Committee if they r trying to change (ie increase) existing lot sizes allowed for parental subdivisions or decedents estates. That will hurt Mr Santos and others.

Increase to Mark IV septic tank only so people can get building permit clearances EPA not allowing, supposedly. EPA wants to increase min lot size that we do not support. Needs further research.

Our legal position is that *more research and substantiation* from experts is needed before the existing scheme of lot sizes should be modified. We understand that GEPA's refusal to issue permits is based upon the premises that residential lot owners on smaller approved lot sizes are contaminating the Northern Aquifer because of their older septic tanks, and that GEPA does not want new permits approved for these smaller lot sizes. However, we have not seen actual testing done that shows this is the proximate cause for the alleged contamination, and a question exists that GWA's leaking sewer lines may have been the reason. Bottom line is that further data substantiation is necessary to understand the cause.

The former AG I understood provided to GEPA a draft legislation changing to the upgraded Mark IV septic system that would have allowed for their building permit approval. Hence if Bill 175 were to pass, we would only endorse the improved Mark IV system, as it would have environmental friendly impact, which is a policy decision by the Guam Legislature. However, we would not endorse reducing the residential family lot sizes already reasoned by former Guam legislators based upon an unsubstantiated allegation that the old septic tanks per the old lot sizes created a polluted drinking water condition. A further oversight hearing by the Legislative Committee appeared to be the best and most reasoned approach. Our position remains open pending further data. Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read "Douglas B. Moylan". The signature is fluid and cursive, with a prominent loop at the end.

Douglas B. Moylan

Attorney General of Guam