



The Senate
Nineteenth Northern Marianas Commonwealth Legislature
P.O. Box 500129
Saipan, MP 96950

SEN. COMM. 19-231
(HOUSE)

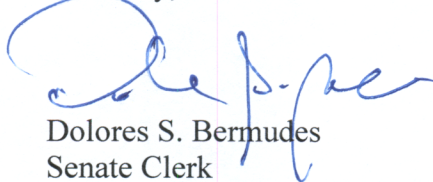
October 06, 2016

The Honorable Rafael S. Demapan
Speaker
House of Representatives
Nineteenth Northern Marianas Commonwealth
Legislature
Saipan, MP 96950

Dear Speaker Demapan:

I have the honor of transmitting Senate Legislative Initiative No. 19-02, SS1, entitled, "To authorize the Department of Public Lands to reserve funds for the development of roadways, water and power infrastructure on homestead developments by repealing and reenacting § 5 of Article XI of the Constitution of the Northern Mariana Islands." The Senate passed the legislative initiative on First and Final Reading with the affirmative vote of three-fourths of the members, present and voting, in its 3rd Day, Fourth Regular Session on October 05, 2016.

Sincerely,



Dolores S. Bermudes
Senate Clerk

Attachment

Transmitted to HOUSE:

Received by: J. Shorro Date: 10/06/16 Time: 3:20pm

NINETEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FIRST REGULAR SESSION, 2015

S. L. I. NO. 19-02, SS1

S-Passed 10/5/16

A SENATE LEGISLATIVE INITIATIVE

To authorize the Department of Public Lands to reserve funds for the development of roadways, water and power infrastructure on homestead developments by repealing and reenacting § 5 of Article XI of the Constitution of the Northern Mariana Islands.

BE IT ENACTED BY THE NINETEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 **Section 1. Legislative Finding.** The Legislature finds that it is in the public's
2 interest to authorize the Department of Public Lands (DPL) to reserve funds for the
3 development of roadways, and water and power infrastructure on homestead
4 developments. The Department of Public Lands has developed several homestead
5 subdivisions on Tinian, Rota, and Saipan but the department does not provide the water
6 and power infrastructure necessary to construct houses and other dwellings.

7 Currently, the West San Jose Village, Kanadan Magpo, and Marpo Heights Phase
8 II homestead subdivisions in Tinian lack water and power infrastructure. In Rota, Finafa
9 and Dugi village homesteads do not have water and power infrastructure. In Saipan, a
10 portion of Kagman IV homestead subdivision still lacks the water infrastructure necessary
11 for the homesteaders. Due to the lack of water and power infrastructure, homestead
12 permits are sometimes withheld or homesteaders are unable to construct houses on their
13 homestead lots.

14 The Legislature finds that the funds available for capital improvement projects are
15 insufficient to pay for all the necessary costs involved in installing the water and power
16 infrastructure necessary for all the homestead developments. The Legislature further finds
17 that it is not in the public's best interest for DPL to open a homestead subdivision but not
18 include the water and power infrastructure necessary to construct homestead dwellings
19 especially if the department has the funds to do so.

1 The Legislature further finds that in 2010, the CNMI Supreme Court held that the
2 fundamental policies in § 5 in Article XI are no longer constitutionally operative. *See*
3 *Dept. of Pubic Lands v. Commonwealth*, 2010 MP 4 ¶ 23. Therefore, it would not be in
4 order to amend § 5(g) instead, Section 5 of Article XI should be repealed and reenacted to
5 reflect the new language. Accordingly, the purpose of this legislation is to authorize the
6 Department of Public Lands to reserve funds for the development of roadways, water and
7 power infrastructure on homestead developments by repealing and reenacting Section 5
8 of Article XI of the Constitution of the Northern Mariana Islands.

9 **Section 2. Legislative Initiative.** The Nineteenth Northern Marianas
10 Commonwealth Legislature, by the affirmative vote of three-fourths of the members of
11 each house present and voting, hereby proposes to repeal and reenact Section 5 of Article
12 XI of the Constitution of the Northern Mariana Islands to be placed before the people for
13 ratification at the next general election:

14 **“A PROPOSED CONSTITUTIONAL AMENDMENT**

15 To authorize the Department of Public Lands to reserve funds for the development
16 of roadways, water and power infrastructure on homestead developments by repealing
17 and reenacting Section 5 of Article XI of the Constitution of the Northern Mariana Islands
18 as follows:

19 **‘Section 5. Fundamental Policies.**

20 a) The Department of Public Lands or its successor shall receive all
21 moneys from the public lands except those from lands in which freehold
22 interest has been transferred to another agency of government, and shall
23 transfer these moneys after the end of the fiscal year to the Marianas
24 Public Land Trust except that the Department shall retain the amount
25 necessary to meet reasonable expenses of administration and management,
26 land surveying, homestead development including establishing roadways,
27 water and power infrastructure, and any other expenses reasonably
28 necessary for the accomplishment of its functions. The annual budget of
29 the corporation shall be submitted to the legislature for approval.’”

SENATE LEGISLATIVE INITIATIVE NO. 19-02, SS1

1 **Section 3. Adoption and Transmittal.** The President of the Senate and the
2 Speaker of the House shall certify, and the Senate Legislative Secretary and the House
3 Clerk shall attest to the adoption of this Legislative Initiative. The Senate Clerk shall
4 then transmit a certified copy of the Initiative to the Governor and the Board of Elections.
5 Pursuant to Article XVIII, Section 5 of the Commonwealth Constitution, the Board shall
6 place this Legislative Initiative, with the Findings and Purpose section herein, before the
7 people of the Commonwealth for ratification vote at the earlier of the next regular general
8 election or the next special election established by law.

Prefiled:

Date: 02/27/15

Introduced By: /s/
Sen. Jude U. Hofschneider

Reviewed for legal sufficiency:

/s/ Antonette R. Villagomez
Senate Legal Counsel



The Senate
19th NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
P.O. BOX 500129
SAIPAN, MP 96950

STANDING COMMITTEE REPORT NO. 19-**123**
September 30, 2016
RE: S.L.I. 19-02

S-Adopted 10/5/16

Honorable Francisco M. Borja
President of the Senate
Nineteenth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

Dear Mr. President:

Your Committee on Resources, Economic Development and Programs, to which was referred Senate Legislative Initiative No. 19-02, entitled:

“To authorize the Department of Public Lands to reserve funds for the development of roadways, water and power infrastructure on homestead developments by amending Article XI, section 5(g) of the Constitution of the Northern Mariana Islands.”

begs leave to report as follows:

I. PURPOSE

The purpose of this legislation is to authorize the Department of Public Lands to reserve funds for the development of roadways, water and power infrastructure on homestead developments by amending Article XI, section 5(g) of the Constitution of the Northern Mariana Islands.

II. COMMITTEE FINDINGS

Your Committee finds that it is in the public’s interest to authorize the Department of Public Lands (DPL) to reserve funds for the development of roadways, and water and power infrastructure on homestead developments. The Department of Public Lands has developed several homestead subdivisions on Tinian, Rota, and Saipan but the department does not provide the water and power infrastructure necessary to construct houses and other dwellings.

Currently, the West San Jose Village, Kanadan Magpo, and Marpo Heights Phase II homestead subdivisions in Tinian lack water and power infrastructure. In Rota, Finafa and Dugi village homesteads do not have water and power infrastructure. In Saipan, a portion of Kagman IV homestead subdivision still lacks the water infrastructure necessary for the homesteaders. Due to

the lack of water and power infrastructure, homestead permits are sometimes withheld or homesteaders are unable to construct houses on their homestead lots.

Your Committee finds that the funds available for capital improvement projects are insufficient to pay for all the necessary costs involved in installing the water and power infrastructure necessary for all the homestead developments. The Legislature further finds that it is not in the public's best interest for DPL to open a homestead subdivision but not include the water and power infrastructure necessary to construct homestead dwellings especially if the department has the funds to do so.

Your Committee further finds that in 2010, the CNMI Supreme Court held that the fundamental policies in § 5 in Article XI are no longer constitutionally operative. *See Dept. of Public Lands v. Commonwealth*, 2010 MP 4 ¶ 23. Therefore, it would not be in order to amend § 5(g) instead, Section 5 of Article XI should be repealed and reenacted to reflect the new language. Accordingly, the purpose of this legislation is to authorize the Department of Public Lands to reserve funds for the development of roadways, water and power infrastructure on homestead developments by repealing and reenacting Section 5 of Article XI of the Constitution of the Northern Mariana Islands.

III. COMMITTEE AMENDMENTS

The Committee amended the title, findings, and text of the constitutional amendment to reflect that the initiative is to repeal and to reenact Section 5 of Article XI of the Constitution not to amend Section 5(g).

IV. PUBLIC COMMENTS

The Committee received written comments from the following:

- A. Marianas Public Land Trust on November 27, 2015.
- B. Martin B. Ada, Trustee of the Marianas Public Land Trust on November 29, 2015.
- C. Department of Public Lands on November 30, 2015.
- D. Office of the Attorney General on December 4, 2015. The Attorney General's comments were incorporated in the Committee amendments.

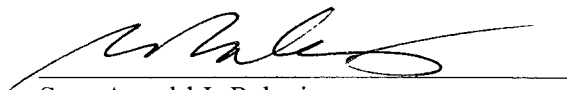
V. LEGISLATIVE HISTORY

Senate Legislative Initiative 19-02 was introduced by Senator Jude U. Hofschneider on February 27, 2015 and was subsequently referred to the Senate Standing Committee on Resources, Economic Development and Programs for further deliberation.

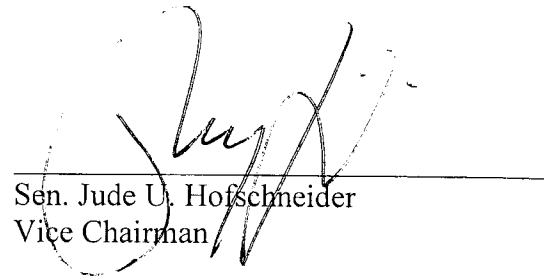
VI. RECOMMENDATION

After considerable deliberation on the initiative, your Committee recommends that Senate Legislative Initiative 19-02 be passed by the full membership of the Senate in the form of Senate Substitute 1.

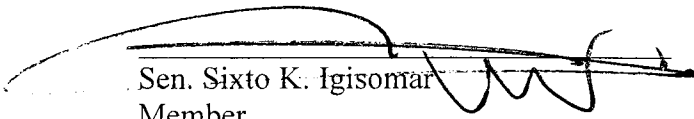
Respectfully Submitted,



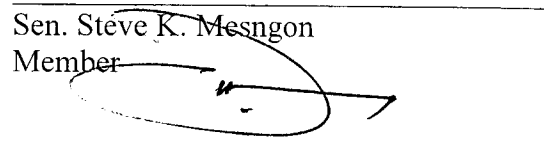
Sen. Arnold I. Palacios
Chairman



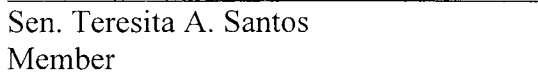
Sen. Jude U. Hofschneider
Vice Chairman



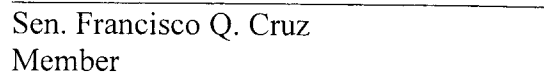
Sen. Sixto K. Igisomar
Member



Sen. Steve K. Mesngon
Member

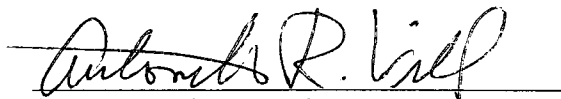


Sen. Teresita A. Santos
Member

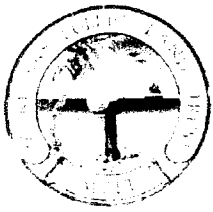


Sen. Francisco Q. Cruz
Member

Reviewed by:



Senate Legal Counsel



MARIANAS PUBLIC LAND TRUST
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

November 27, 2015

Senator Francisco M. Borja
Chairman
Committee on Resources, Economic Development and Program
Nineteenth Northern Marianas Commonwealth Legislature
Saipan, MP 96950

Re: Comments on S.L.I. No. 19-02

Dear Senator Borja:

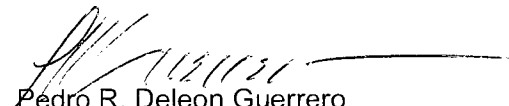
We have reviewed S.L.I. No. 19-02 and agreed with its intent to make it possible for persons of Northern Marianas Descent (NMD) to have adequate infrastructure available in the form of roadways, water and power facilities to their homesteads. While the intent is commendable, it will negatively affect the Marianas Public Land Trust's (MPLT) ability to grow its principal as the annual distribution from the Department of Public Lands (DPL) will be diverted to fund such improvements in the Commonwealth. The question becomes one of setting priorities over the use of CIP funding. Such funding could be used as an alternative to the diversion of principal contributions currently being made to MPLT by the DPL.

Historically, such funds being held by DPL have been used through MPLT as a means to fund critical emergencies such as the Aggreko generator lease, CUC emergencies and most recently, the CUC litigation with EPA and the resulting "stipulated orders" in the amount of \$5M. These emergencies have been met by having DPL make a distribution of principal to MPLT with the assurance that such funds would be lent back to the General Fund as provided by Law. S.L.I. No. 19-02 will restrict the said funds to be used for such emergency purposes in the future.

Your Committee, in addition to this S.L.I. No. 19-02, is reviewing **S.L.I. No. 19-03**, which calls for MPLT's annual distribution to be held in a separate account and once every five years to be distributed to NMDs. This, in our opinion conflicts to each other. Furthermore, S.L.I. No. 19-02 would put a cap on the ability for MPLT's annual distribution to grow and thereby limits funds available for distribution to NMD's, if both Senate Legislative Initiatives (19-02 and 19-03) are ratified by the voters.

We hope these comments are constructive in your deliberation of S.L.I. No. 19-02, and thank you for the invitation to comment on this important Senate Legislative Initiative.

Sincerely,


Pedro R. Deleon Guerrero
Acting Chairman

cc: MPLT Trustees



MARIANAS PUBLIC LAND TRUST

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

November 25, 2015

Senator Francisco M. Borja
Chairman
Committee on Resources, Economic Development and Program
Nineteenth Northern Marianas Commonwealth Legislature
Saipan, MP 96950

Re: Comments on S.L.I. No. 19-03

Dear Senator Borja:

Marianas Public Land Trust (MPLT) agrees that the public lands in the Commonwealth belong collectively to persons of Northern Marianas Descent (NMD); therefore, the income earned from MPLT's investment of funds received from public land leases should directly benefit persons of NMD. However, pursuant to Article 11, Section 6 (d) of the Northern Marianas Constitution, such income is transferred annually to the general revenues of the Commonwealth. The Legislature then appropriates the said funds to support the operations and activities of the Commonwealth Government. S.L.I. No. 19-03 is amending this provision of the said Section 6 (d) by requiring the Trustees to deposit the remaining interest accrued on the trust proceeds in a separate account to be distributed to eligible Northern Marianas Descents every five years, as provided by law. Is Northern Marianas Descent, as mentioned above, a person defined under Article XII, Section 4, as amended, of the Northern Mariana Islands Constitution?

This S.L.I. is silent as to who will maintain this "special" account or how the funds will be invested. We understand that the mechanics of the funds distributions to qualified NMDs will be as provided by law, but the following issues should be addressed and their ramifications assessed:

- **Northern Marianas Descent has to be defined.**
- **Eligibility to receive distribution or benefit has to be clearly stated and defined.**
- **The administration of this program has to be stated or named.**
- **The effective date has to be set for the distributions to eligible persons occurring every five years.**
- **How will the database of qualified NMDs be maintained and up-dated?**
- **What is the estimated cost of maintaining the database and the program's operation cost overall?**
- **What will be the source of operational funding for this program?**

For your committee's information, the income earned from MPLT's investment of funds received from public land leases that the Department of Public Land (DPL) transferred to MPLT, pursuant to Article XI, Section 5(g), has been committed to be withheld by MPLT for the next three or four years, in accordance with **P.L. No. 18-71**; guaranteeing the repayment of the \$5 million loan to the Commonwealth that was made in December 2014, to satisfy the Commonwealth's obligation under the Final Order Re: Joint Stipulation (Final Order") in the United States v. CUC, Civil Case No. 08-0051 (D.N.M.I.).

11/30/15 11:05 am



Francisco Borja <senatorborja@gmail.com>

Comments for SLI 19-02 and 19-03

1 message

Martin Ada <mbada@mplt.gov.mp>

Sun, Nov 29, 2015 at 10:40 AM

To: "senatorborja@gmail.com" <senatorborja@gmail.com>

Cc: Bobbie Reyes <bobbieannreyes@mplt.gov.mp>, "Pedro R. Deleon Guerrero" <pdiguerrero@mplt.gov.mp>, Peter Cruz <pcruz@mplt.gov.mp>, "Maria T. Pangelinan" <fricajp@gmail.com>

Honorable Chairman Senator Borja:

Here is my comments for both proposed initiatives. I do not have any significant comments for SLI 19-02 except that DPL retains the option on how much to put aside for homestead develop-ments. The sky is their limit.

With SLI 19-03 I would like to inject and propose the following amendment in between the heading or purpose of this bill. "one-fourth of the interest earned annually on the trust proceeds invested by MPLT shall be put" IN A SEPARATE ACCOUNT....

This amendment provides flexibility for future and urgent needs of our Commonwealth, whether it be at a Senatorial District level or the entire state. It also satisfies the present annual recipient of MPLT's earned interest - our general fund. In the future a portion of the annually earned interest may be used to replace dilapidated infrastructure like CUC power plant generators, periodic assistance to our Commonwealth Health Care Corporation that MPLT currently assists through a loan, and others like our public school system and public safety in general. All NMDs do deserve a portion of their money through dividends but I also agree to meet the needs collectively for our community and our state.

Thank you Chairman and Senator Borja for this opportunity to comment and I as a trustee for MPLT look forward towards working continuously with you and your colleagues at our legislature.

Martin B. Ada
Trustee

Sent from my iPad



Commonwealth of the Northern Mariana Islands
Office of the Governor
DEPARTMENT OF PUBLIC LANDS

FAXED
11/30/15

November 30, 2015

LG15-0598

Honorable Francisco M. Borja
Chairman
Committee on Resources, Economic Development
and Program
Nineteenth Northern Marianas Commonwealth Legislature
PO Box 500129
Saipan, MP 96950

Re: SLIs 19-02 and 19-03

Dear Chairman Borja:

Thank you for the opportunity to comment on Senate Legislative Initiatives 19-02 and 19-03. As discussed below, the Department of Public Lands is neutral with respect to these initiatives, and offers suggestions for prioritization of funds generated by lands belonging collectively to our indigenous people.

SLI 19-02 places a priority upon infrastructure development by DPL in connection with our homestead program. The Senate is correct in its understanding that DPL lacks authority to use funds generated from public lands for these purposes (*See Marianas Public Land Trust v. Marianas Public Land Corporation* 1 CR 0967 (1984)). The Department of Public Lands does face significant pushback from other departments and agencies including BECQ when attempting to fulfill our statutory mandate with respect to homestead projects, as BECQ opposes any further development without modern infrastructure first in place. However, from a policy perspective we do question whether future homesteads should be prioritized above payment of compensation for lands already taken by the Commonwealth government. Please consider whether we should amend our Constitution to prioritize settling our debts for past takings before expending future revenues on new improvements.

In addition to the prioritization of past debts over future infrastructure, the Senate would be wise to research the current status of Section 5 of Article XI of the Commonwealth Constitution as the Fundamental Policies the initiative seeks to amend have been gutted in large part by our Supreme Court (*See DPL v. Commonwealth*, 2010 MP 14), and it would be foolish to amend it piecemeal when it should be updated to remove these non-operative provisions.

P.O. Box 500380, Saipan, MP 96950 • 2nd Floor, Joeten Dandan Commercial Building
Website: www.dpl.gov.mp • E-mail: dpl@dpl.gov.mp
Tel.: (670) 234-3751/3752/3757 • Fax: (670) 234-3755

12/1/15 4:40 p.m.

SLI 19-02 addresses the legal fiction that the collective indigenous owners of public lands somehow “exclusively benefit” from the remittance of interest on invested proceeds from public lands to the general fund. While the DPL has no objection to this amendment, we again wonder whether the time is right. Let’s first make good on our existing obligations. Once all claims have been paid, we support this type of initiative. However, it is not fiscally prudent to open the tap to distribute profits when the Commonwealth has insufficient resources to pay for what it has already taken.

Thank you for considering my comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia S. Rasa", with a long, sweeping horizontal flourish extending to the right.

PATRICIA S. RASA
Acting Secretary



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE MAYOR

THE HONORABLE EFRAIM M. ATALIG

Mayor of the Municipality of Rota

Mailing Address: Post Office Box 537 Rota, MP 96951

Phone: 670.532.9451/9452 * Fax No.: 670.532.9454 * Email: mayorefraimatalig@gmail.com



November 30, 2015

Senator Francisco M Borja
Chairman, Committee on Resources, Economic
Development & Program
19th Commonwealth Legislature
P.O. Bo 500128
Saipan, MP 96950

Dear Mr. Chairman,

Thank you for requesting for my comments of S.L.I 19-02, S.L.I 19-03 and S.B. 19-67 in your letter of November 18, 2015. My comments on the bills are as follow:

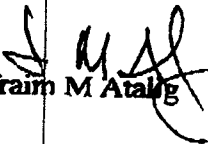
- S.L.I. 19-02: The timely construction of roadways, water and power projects in village homesteads would, of course, benefit the homesteaders who are Northern Marianas Descent. However, all residents, including non-northern Marianas descent because these projects would infuse hundreds of thousands, if not millions into the economy. When an economy develops it does not discriminate between northern Marianas descent and non-northern Marianas descent. After all, must hardware stores are owned by non-northern Marianas. With that said, it behooves the non-northern Marianas descent voters to support this proposed initiative, as its intent would benefit everyone.
- S.L.I. 19-03: The distribution of income every five years earned from the investment of the Trust vested on the MPLT would, of course, directly benefit NMD as proposed by this legislation. Putting money into the pockets of NMD's would also spur economic development as there will be spending/buying power of the vast majority of people in the CNMI, namely the NMD's. However, I would like to suggest that funds from the interest of the Trust be also used to help address the imminent phasing out of foreign labor. Perhaps, we can set up a trade school for NMD's financed by these funds with the same structure as the Kamehameha school in Hawaii, which was established for indigenous Hawaiians. The school can initially be placed under the management of PSS or NMC until such time that its operations can be autonomous. NMC was originally established as a training program for teachers under the Department of Education. This recommendation is not to denigrate the intent of S.L.I. 19-03, but I strongly believe that consolidating funds into a particular program would be more

11/20/15

synergetic. Notwithstanding my recommendation, I recommend passage of this proposed initiative.

- S.B. No. 19-67: Understandably, the exclusive casino law was passed with the intent to amend the law as the need arises. The amendment of 4CMC section 2326 is such a need as there is no sunset provision to allow family members of the 18th Commonwealth Legislature. Barring these CNMI residents from working in the casino industry in perpetuity is quite unreasonable, if not outright unconstitutional.

Mr. Chairman, the above proposed legislations have great effect on our people and I am grateful to have a voice in its passage.


Efraim M Atalg

"Nature's Treasure Island"



Commonwealth of the Northern Mariana Islands
Office of the Attorney General

2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

EDWARD MANIBUSAN
Attorney General

LILLIAN A. TENORIO
Deputy Attorney General

December 4, 2015

OAGSLI: 2015-01

Hon. Francisco M. Borja, Chair
Senate Committee on Resources, Economic
Development and Programs
Nineteenth Northern Mariana Islands Commonwealth Legislature
Saipan, MP 96950

Re: Senate Legislative Initiative 19-02

Dear Chairman Borja:

Thank you for requesting comments from the Office of the Attorney General on Senate Legislative Initiative 19-02. We have reviewed the version of the initiative that you transmitted to us on November 18, 2015. We offer the following comments for your consideration.

If enacted, this legislative initiative would amend Article XI of the Commonwealth Constitution to allow the Department of Public Lands to retain funds to build roadway, water, and power infrastructure on homestead lands.

In 2010, the Supreme Court held that the fundamental policies in § 5 in Article XI are no longer constitutionally operative. *Dep't of Pub. Lands v. Commonwealth*, 2010 MP 4 ¶ 23. Rather than amending an inoperative § 5(g), SLI 19-02 should be revised to add instead a new § 5 to the Constitution which would set forth the fundamental policies of public land use in the Constitution inclusive of the use of public land funds. The Committee should take note that this amendment excludes the funding for public sewerage systems in homesteads developments.

If you have any question concerning our comments, please do not hesitate to contact my office.

Sincerely,

EDWARD MANIBUSAN
Attorney General

cc: Acting Governor
Secretary of Public Lands
Secretary of Public Works
SAPLR

Civil Division
Telephone: (670) 237-7500
Facsimile: (670) 664-2349

Criminal Division
Telephone: (670) 237-7600
Facsimile: (670) 234-7016

Attorney General's Investigative Division
Telephone: (670) 237-7625
Facsimile: (670) 234-7016

Domestic Violence Intervention Center
Telephone: (670) 664-4583
Facsimile: (670) 664-4589

12/11/15 2:00 p.m.