



Sen. Thomas Ada
Chairman

Committee on Transportation, Infrastructure, Lands,
Border Protection, Veterans' Affairs and Procurement
I Mina Trentai Tres Na Liheslaturan Guåhan • 33rd Guam Legislature

November 18, 2016

The Honorable Judith T. Won Pat, Ed.D.

Speaker

I Mina Trentai Tres Na Liheslaturan Guåhan

155 Hesler Place

Hagåtña, Guam 96910

VIA: The Honorable Rory J. Respicio

Chairperson, Committee on Rules

RE: Committee Report on Bill No. 318-33 (COR) As Substituted

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill No. 318-33 (COR) As Substituted, **“AN ACT TO AMEND § 61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE SUPPORT OF MUNICIPAL PLANNING COUNCILS FOR VARIANCE APPLICATIONS AND ZONE CHANGES.”**

Committee votes are as follows:

- 1 TO DO PASS
- 2 TO NOT PASS
- 3 TO REPORT OUT ONLY
- TO ABSTAIN
- TO PLACE IN INACTIVE FILE

2016 NOV 21 AM 11:30

Si Yu'os ma'ase'.

Thomas C. Ada



Sen. Thomas Ada

Chairman

Committee on Transportation, Infrastructure, Lands,
Border Protection, Veterans' Affairs and Procurement

I Mina Trentai Tres Na Libeslaturan Guåhan • 33rd Guam Legislature

**COMMITTEE REPORT
ON**

**Bill No. 318-33 (COR)
As Substituted**

**AN ACT TO AMEND § 61105 OF ARTICLE 1,
CHAPTER 61, DIVISION 2, TITLE 21, GUAM
CODE ANNOTATED, RELATIVE TO
REQUIRING THE SUPPORT OF MUNICIPAL
PLANNING COUNCILS FOR VARIANCE
APPLICATIONS AND ZONE CHANGES.**



Sen. Thomas Ada


Chairman

Committee on Transportation, Infrastructure, Lands,
Border Protection, Veterans' Affairs and Procurement
I Mina Trentai Tres Na Libeslaturan Guahan • 33rd Guam Legislature

November 15, 2016

MEMORANDUM

To: **All Members**
Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement

From: **Senator Thomas C. Ada**, Committee Chairperson 

Subject: **Committee Report on Bill No. 318-33 (COR) As Substituted**

Transmitted herewith for your consideration is the Committee Report on Bill No. 318-33 (COR) As Substituted, **"AN ACT TO AMEND § 61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE SUPPORT OF MUNICIPAL PLANNING COUNCILS FOR VARIANCE APPLICATIONS AND ZONE CHANGES."**

This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Copy of Bill No. 318-33 (COR), As Introduced
- Copy of Bill No. 318-33 (COR), As Substituted
- Public Hearing Sign-in Sheet
- Written Testimonies
- Copy of Fiscal Note Request
- Copy of Fiscal Note
- COR Referral of Bill No. 318-33 (COR)
- Notices of Public Hearing
- Public Hearing Agenda

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.



Sen. Thomas Ada
Chairman

Committee on Transportation, Infrastructure, Lands,
 Border Protection, Veterans' Affairs and Procurement
I Mina Trentai Tres Na Libeslaturan Guahan • 33rd Guam Legislature

COMMITTEE VOTE SHEET

Bill No. 318-33 (COR) As Substituted, "AN ACT TO AMEND § 61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE SUPPORT OF MUNICIPAL PLANNING COUNCILS FOR VARIANCE APPLICATIONS AND ZONE CHANGES."

COMMITTEE MEMBERS	SIGNATURE AND DATE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
SENATOR THOMAS C. ADA Chairperson			yes			
SENATOR RORY J. RESPICIO Vice Chairperson	<i>Rory Respicio</i>		no 11/18/16			
VICE SPEAKER BENJAMIN J.F. CRUZ Member						
SENATOR FRANK B. AGUON, JR. Member	<i>Frank Aguon, Jr.</i> 11/18/16					
SENATOR DENNIS RODRIGUEZ, JR. Member	<i>Dennis Rodriguez, Jr.</i>			✓ 11/18		
SENATOR NERISSA UNDERWOOD Member	<i>Nerissa Underwood</i>			✓		
SENATOR FRANK BLAS, JR. Member						
SENATOR MARY TORRES Member	11/18/16 <i>Mary Torres</i>			✓		
SENATOR JAMES V. ESPALDON Member						



Sen. Thomas Ada Chairman

Committee on Transportation, Infrastructure, Lands,
Border Protection, Veterans' Affairs and Procurement
I Mina Trentai Tres Na Libeslaturan Guåhan • 33rd Guam Legislature

COMMITTEE REPORT DIGEST

I. OVERVIEW

Bill No. 318-33 (COR) was introduced on May 13, 2016 by Senator Frank B. Aguon, Jr. and Senator Thomas A. Morrison and was subsequently referred on May 13, 2016 by the Committee on Rules to the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement.

The Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement convened a public hearing on June 9, 2016 at 5:00 pm in *I Liheslaturan's* Public Hearing Room to receive public testimony on Bill No. 318-33 (COR).

Public Notice Requirements

Public Hearing notices were disseminated via email to all senators and all main media broadcasting outlets on June 1, 2016 (5-Day Notice) and again on June 7, 2016 (48-Hour Notice). Publication was conducted in the June 1, 2016 issue and June 7, 2016 issue of the **Guam Daily Post**, a newspaper of general circulation, fulfilling the 5-Day Notice and 48-Hour Notice of the Open Government Law requirement.

Senators Present

Senator Thomas C. Ada	<i>Committee Chairperson</i>
Senator Frank B. Aguon, Jr.	<i>Committee Member</i>
Senator Mary C. Torres	<i>Committee Member</i>
Vice-Speaker Benjamin J.F. Cruz	<i>Committee Member</i>
Senator V. Anthony Ada	<i>Legislative Member</i>
Senator Thomas A. Morrison	<i>Legislative Member</i>

The public hearing was Called-to-Order at 5:00pm.

II. SUMMARY OF TESTIMONY AND DISCUSSION

Chairperson Ada calls the Public Hearing to order and yields to the sponsor for introduction of Bill 318.

Senator Frank Aguon: The existing process already includes requirements by law that Municipal Planning Councils (MPC) would have to submit a resolution for variances within 20 days. For zone changes, it's 40 days. This bill would require the MPC to render an approval or consent before that application moves forward to the Guam Land Use Commission (GLUC) for their final decision. If the MPC says no, then the GLUC would have to cease and desist in entertaining that application. The Application Review Committee (ARC) would be required,

after the public hearing, to provide the packet to the MPC so they can render a decision and proceed to present it to the GLUC. This legislation would empower the MPC and the residents in that area to have a say of what kind of development they want. The developer and MPC members would have to work out an amicable agreement so that their development can benefit that vicinity and not negatively impact the quality of life of the residents in that area.

Chairperson Ada calls those who have signed up to provide testimony.

Robert Cruz (oral testimony): **He is in support** of Bill 318-33. This bill is saving our island and the peoples' opinion will matter. Putting a building near the beach would close it off for the locals and would only make it for people who can afford it.

Ken Leon-Guerrero, *Community Advocate* (oral testimony): **I like this bill** but it doesn't include the Legislature in the approval process of the application. My concern is that if you pass this law, it's going to drive more developers to bypass the GLUC and come directly to the Legislature for their approval and I think that would be a bad thing. If you think land zoning should be one of your responsibilities, then I think we should eliminate the GLUC and Land Management.

Adrian Gogue, *Save Southern Guam, Inc.* (written testimony): He reads his testimony **in support** of the bill (see attached testimony).

Randel Sablan (oral and written testimony): **He is in support** of Bill 318 (see attached testimony). The MPC can do zoning ordinances on a municipal level. They would just need on-the-job training. Eventually, we can de-authorize the GLUC from this kind of work and use their expertise to develop long range planning of the island.

Jason Biggs, Faculty, *University of Guam Marine Laboratory* (written testimony): He reads his testimony (see attached testimony). The **position** espoused by Biggs **seems to be not in support** of Bill 318-33, however is not crystal clear; he said: "...the UOG Marine Lab feels compelled to extend this offer of support to the Guam Land Use Commission in time to mitigate developments such as these from expanding from our ability to effectively manage these precious ..."

Bill Cundiff, *Resident of Agat* (oral testimony): He **supports Bill 318**. No developer can take any action without engaging the people first. We are tired of the people coming to Guam telling us what to do and we must ensure that what is right is right for the people of Guam.

Tom Diego (oral testimony): **He is in support** of the bill. We looked on the internet and the municipalities that have landfills, they get benefits such as free trash for the residents and ensured by the government if anything happened. But the only thing that Inarajan and Piti got was \$150,000. He then recalled a case when the MPC denied a condominium development because it didn't benefit the community. The landfill was passed, even though we disagreed with it and were not allowed to negotiate.

Ken Joe Ada, Mayor of Yona, *Mayors' Council of Guam* (oral testimony): **He is in support** of the bill. There is no real support system for the MPC to truly engage with the developer and we

should have the developer engage more with the community written into the law as well as creating the parameters for the MPC to produce and execute their resolution in addition to the Legislature.

Doris Flores Lujan, Mayor of Inarajan, *Mayors' Council of Guam* (oral testimony): She is **in support** of the bill. It will give us more power to disapprove developments that doesn't fit in our community. How does this bill affect Public Law 33-145 relative to the Southern Development Master Plan Task Force and each relevant MPC?

Senator Thomas Morrison: It's a separate issue that we're focusing on with the Southern Development Master Plan initiative and we are working to convene that task force by the end of this month. If done right and we adopt a Southern Master Plan, it will minimize the potential for spot zoning, zone changes, variances, etc. This bill would complement the process.

Sen. Aguon: The two of you [Mayors] represent your village who have requested for infrastructure. For any major development to come in, the infrastructure can be negotiated for your villages. There's one statement that the Director had mentioned in KUAM: "*It empowers an organization of people who are not elected nor are they appointed and confirmed by the Legislature to make very important decisions that are completely out of their subject area expertise.*" Can I get some feedback or comments from you?

Mayor Ada: On an expertise level, I believe he's correct but on a village level, he's wrong.

Mayor Lujan: As Mayors, we feel the pain of our constituents. In the Ija subdivision, we are still waiting for infrastructure for the 305 families that want to establish a home there. He's wrong as far as the village level is concerned.

Sen. Aguon: I believe Mr. Sablan mentioned the MPC having access to the government's expertise who sit on the ARC and that is the proposed process here. MPCs should make the decision for the best interest of their municipality.

Mr. Diego: I'm part of the MPC and I don't have any expertise in any one subject but I will do research. We should be empowered and the village people can do the job.

Diane Strong (oral and written testimony): She is **in support** of the bill (see attached testimony). I am very disgusted with the process as it exists now for people to have input into developments in their own villages. The Yona Public Hearing was poorly managed and I know we can do better so this is the first step.

Lasia Casil, *Save Southern Guam, Inc.* (oral testimony): She is **in support** of the bill. Neither I nor *Save Southern Guam* are anti-development. We believe that development in our southern villages should preserve our historic resources which is our unique landscape. Empowering the MPC to approve or reject these projects is not an unusual request; this is a common practice across the world.

Jonita Kerr, *Save Southern Guam, Inc.* (oral and written testimony): She is **in support** of the bill (see attached testimony). I urge the Committee and the Legislature to approve the bill because it will give residents a measure of control over projects that will profoundly affect the quality of life and surrounding ecosystem. Any area that can be bought by big money is vulnerable because of the Pago Bay Hotel project. *Save Southern Guam, Inc.* is currently taking legal action to prevent these towers in Pago Bay. Did the GLUC ever ask the developer if he consulted the Army Corps of Engineers to build the promised boat ramp? If so, there was nothing in their proposal stating that they would be responsible for maintenance and repairs in the event of a storm.

Jose Untalan, *CU Holdings* (written testimony): I am here in place of my boss, Richard Untalan, and I will read a letter from him (see attached testimony). He is **not in support** of the bill because giving the MPC veto power will create chaos and uncertainty without legal standards, precedents, restrictions, expertise and checks and balances.

Linda Tatreau (oral and written testimony): She reads her testimony **in favor** of the bill (see attached testimony). Our northern and central villages already have a Public Law in place which requires these public hearings in the villages to occur. This public law did not include the southern villages. Department of Land Management (DLM) conducts these hearings and reports to the GLUC meetings. That law didn't protect us nor will it protect other areas of Guam.

Burt Cruz (oral testimony): It's disheartening that we are here again after we voiced our opposition to the Pago Bay Hotel project. I'm not against development, but I'm against over-development. My voice is all you need and not the voice of the corporations.

Joanne Brown, *Resident* (oral testimony): I've been an advocate for most of my life to protect Pago Bay. We want quality development. I sat at those three meetings and saw the consultant lie and didn't produce the requirements. We have the commission members making decisions on our lives and devalue the properties that we've invested. We had no say except for an initial testimony. I want you senators to understand the impact to all of us.

Rodney Webb (written testimony): He reads his testimony **in support** of the bill (see attached testimony).

Ike Peredo (oral testimony): This bill provides a balance in the way developments are approved by our government and will ensure developers are held accountable on required projects promised for the good of the community.

Ernest Chargualaf, Mayor of Merizo, *Mayors' Council of Guam* (oral testimony): He is **in support** of the bill. Everyone in that community will be impacted so the MPC helps the Mayor decide on matters that serve the best interests of the community. I welcome this bill because the Mayor alone doesn't have all the answers. Planned progress, development and something that the residents will agree to is what we want.

Jessy C. Gogue, Mayor of Ordot Chalan-Pago, *Mayors' Council of Guam* (oral testimony): He **supports the bill**. Most zoning, internationally, occurs at the municipal level; the state

government doesn't get involved in that kind of activity. I'm pro-development, but we're in favor of responsible development which wasn't done in the case of the Pago Bay project. We have a myriad of expertise on my council and the Mayors make an effort to ensure the quality of the residents in our village are represented. Bill 318 is allowing and empowering them to have a voice. We're not trying to veto development or the GLUC, but we want to make sure that we have a voice at the table when these decisions are made. That's all we're asking for.

Zita Pangelinen, *Resident of Yona* (oral testimony in Chamorro): Generally, she **supports the bill**.

John Arroyo, Chairman, *Guam Land Use Commission* (written testimony): He **opposes the bill** and reads his testimony (see attached testimony). "*The Bill shifts away from a level playing field by granting near absolute authority in land use issues solely in the MPC. The Bill provides no recourse for those negatively impacted by MPC decisions other than to challenge the measure's suppression of private property rights.*"

Michael Borja, Director, *Department of Land Management* (written testimony): He **doesn't support the bill** and reads his testimony (see attached testimony). "*Bill 318-33 is a significant shift in authority to an unelected and unconfirmed body with no corresponding staff or safeguards to appeal or override their decisions.*"

Tricee Limtiaco, Member, *Guam Land Use Commission* (oral testimony): She **opposes the bill**. This bill doesn't fix the system and process from the ground up. I do not object to the MPC's involvement. Whether it's the GLUC or MPCs making the decisions, we still have a problem with the system, process, and a very outdated law. Senator Morrison, I respect that you have ushered in the Northern and Central Master Plan and to form a Southern Master Plan but why are you dividing the island of Guam? We need to look at Guam as an entire system. You [Senators] have the power to change all the laws that we try to implement.

Conchita Bathan, Member, *Guam Land Use Commission* (oral testimony): She is **opposed to the bill**. The nomination process that the MPC members go through is different from the process that I went through. I don't know if they have to submit financial disclosures every year or have conflicts of interest in MPC meetings.

Victor Cruz, Vice-Chairman, *Guam Land Use Commission* (oral testimony): He is **not in favor** of the bill. The Mayors are one of the first to know of what proposed development are going on in their village. So it gives ample time for the Mayors to get their MPC members together and hold their own public hearings. It's already in the books. They're supposed to be attending the ARC. I respect every village input and I vote based on it.

Sen. Aguon: By law, it's required that resolutions be adopted by MPCs and feedback be provided. MPC resolutions from Yona and Chalan-Pago provided their opposition to the proposal and then it was approved. This legislation proposes to empower the representatives of the MPC and the Mayor. These MPC members have the credibility and are concerned about what is happening in their village and how it will benefit from the development. Let's give the people

of the villages a voice in the process. I certainly hope that my colleagues and I will look at it from that perspective.

Vice-Chairman Cruz: This Pago Bay project is not a hotel; we never voted for a hotel. The residents' concerns were that utilities must be there. The process that we gave made sure that utilities will be there. Senator, I am from the South and I'm not ashamed of how I voted on this proposal.

Chairman Arroyo: We take every opportunity to listen to the public's concerns and we take that very near and dear to our hearts. When we don't have a letter from the Mayor or the MPC, we postpone the hearing until we receive the letter. With respect to the Pago Bay project, when it came to the public comment period, we let every individual say what they wanted to say for as long as they wanted. After we closed the public comment period, we continued to receive written testimony and the opposition was so great. We wanted to make sure we took in everybody's perspective. We even stopped a meeting mid-way and told the developer to go back and get the information that we requested for. There were so many conditions that were attached to that approval that I highly doubt the project will get off the ground. On top of that, we threw in other conditions that we've never put in before. There is a condition that they have to provide a bond to dismantle any part of that structure that doesn't get completed. I've never seen that happen anywhere, but at the same token, we have to listen to the property owner. They have rights as well and everything that they wanted to do was justified. We gave them what the law said they deserve in spite of the public opposition. We threw in tremendous amounts of very restrictive conditions and we hope that that was a win-win situation for everybody.

Sen. Aguon: Our peoples' voices were still not heard.

Sen. Morrison: I'm a co-sponsor of this measure not because of what has transpired at Pago Bay. First of all, I wanted to make sure that the Northern and Central Land Use Plan was a standing document and I wrote to the Attorney General to give clarity on that and submitted to the Guam Land Use Planning Council. With the Southern Development Master Plan, that's an existing law; I'm trying to have that law executed. Perhaps, we wouldn't be here if that law was executed. Our job is to ensure that we don't have these types of uproars or backlashes in our communities such as Pago Bay and Agat. I'm not against your positions that you take as commissioners, but because this measure is trying to build upon and expand a process that has to connect with our people.

Director Borja: I'd like to reiterate that any of our comments concerning MPC qualifications were not meant as disrespect. We have great respect for them; I've worked with many of these different MPCs. I believe that this bill lacks a lot of guidance for the MPC members that steers them into the same kind of direction that the Land Use Commission also has to take. It gives them latitude that may not be the best approach to go. I'd be happy to sit down with either of the authors, Senator Aguon or Senator Morrison, and help to develop this to be a much stronger bill. If there's modifications to the law that you Senators can make to make it a better process, then we're always behind that. In this case, empowering the MPC is something we're against but it's the process in which there's no latitude that's given to them except an open field and no direction. It could lead to a lot of unintended consequences.

Senator Mary Torres: I want to express my appreciation to everyone that came out tonight and gave testimony. It certainly helps to have a broad array of perspectives presented here. Thank you for taking the time to be here tonight.

Ed De La Peña: He is **in support** of the bill. The voice of the people is very important. It was good to hear from the decision makers as well. The voice of the people and process improvements need to go into the forty-nine-year-old plan.

Mayor Gogue: We do have citizens in our community that are more than capable of serving on the MPC. He goes on to explain, with supporting evidence from the developer's application and KUAM, how the Pago Bay hotel project is going to end up being a hotel. The Guam Land Use Commission is not beholden to the MPC resolutions. Our voices were suppressed. I thought it was unfair of the GLUC to give the developer to go back and produce more research to provide new information, but yet we could not review that and counter it at the meeting because we were told that there's no public comments. We were not given the opportunity to speak. If they are truly listening to the voice of the people, we should've been given the same opportunity. Bill 318-33 is a step in the right direction.

Mr. Sablan: I really would like to get a copy of Chairman Arroyo and Director Borja's testimonies. I have some concerns on how private property rights are expressed within the context of what the law requires. I think we need to have a roundtable and vet some issues about how the process works and doesn't work very well. This commission is comprehensively planning and master planning our island one variance and one zone change at a time. The TPC is the GLUC and they have a mandate to do comprehensive planning, but they're in the village weeds. We need a Land Use Plan and we're so far off from what we should be doing.

Ms. Strong: The same conditions were set in 2008. I do not believe there's a water production well in Laguna Estate. There were a bunch of conditions in 2008. Your ancestor remains are at UOG and in the Guam Museum. They have not been re-buried. Let's look at the whole development; they have a lot of plans.

Ms. Kerr: I was disturbed that the heartfelt experience and knowledge of people were ignored. Four people [Commissioners] ignored hundreds.

Ms. Casil: To sit here and be dismissed by the GLUC; it's heartbreaking. Thank you Senator Aguon for recognizing that. I've lived in a lot of cities and I've seen great things being built over there and we have the same opportunities here.

Ms. Brown: There are many of us that have more experience than they do because of the work that we've done in the past history. They weren't there to face the people in the village of Yona. They already had the conditions set by the third meeting at the ITC building. You need to go look at what those conditions are. What is the enforcement? If we don't change the system to give us a say in the quality of development on Guam, what's the purpose Senators?

Mr. Webb: It's true that the GLUC did impose very stringent conditions upon the developers of the Pago Bay Hotel. What weight does the GLUC give to the resolutions from the 2 MPCs and Mayors' Council? It's an onerous approval but are these conditions going to be enforced? I don't think so.

Mayor Gogue: The GLUC is established by law and let's not forget that the duties of Mayors and the MPC is also established by law. There could actually be a law introduced, because we're not created as a part of the Organic Act, to get rid of the Mayors in the MPCs and keep everything at the state level. It could be done. The concerns of the MPC in Ordot Chalan-Pago is that how can they propose to build an 11-12 story building on a R2 zoned lot without the ARC recommending the DLM providing guidance to the Commission and to the developer that they should rezone? If you take a look at the Zoning Law and the Seashore Protection Act, it talks about limiting the construction of buildings to three stories high; maybe six stories high but a maximum of seventy-five feet. In this case, they granted something far exceeding seventy-five feet. That's one of the fundamental reasons why Ordot Chalan-Pago was opposed to this project because of the impact to the quality of life to our community. Finally, Victor said that the Mayors are expected to attend these ARC meetings. We're never invited or informed. If you take a look at the law about the ARC and its functions, it doesn't include the Mayors of the relevant districts being a part of the discussion at the ARC level to vet these issues to come before the GLUC. He's a Commissioner and he should know these things. Now we've got the Mayor's Office asking for judicial review and a citizen taking money out of their pocket in a lawsuit regarding this project. Like Senator Morrison said, this is a process that brings these types of developments down to a municipal level and afford better opportunity for people impacted to have a voice.

Ms. Pangelinen: At this point, it requires a review because the public hearings at GLUC were all videotaped. When they [Commissioners] come and say that they went through the process, is this the abuse of their power? They've been serving in the Commission so why haven't they done anything about this forty-nine-year-old plan?

Ms. Kerr: We checked for these recordings for the GLUC and they're not there. I think by law, they're supposed to be posted on their website within seven days and they're not there.

Chairperson Ada adjourns the Public Hearing for Bill No. 318-33 (COR).

Written Testimonies Received:

1. Adrian Gogue, *Save Southern Guam*
2. Aileen Ramiro, *Resident of Pago Bay*
3. Bobby Shringi, Vice Chairman, *Guam Chamber of Commerce*
4. Cara Flores-Mays
5. Christa Juliana C. Gogue
6. Diane Strong, *Save Southern Guam*
7. Michael J.B. Borja, Director, *Department of Land Management*
8. Felix Dungca, *Certified Financial Planner*

9. Jason Biggs, *University of Guam Marine Laboratory*
10. Jimmy Camacho
11. Joanna Gogue
12. John Arroyo, Chairman, *Guam Land Use Commission*
13. Jonita Kerr
14. Linda Tatreau, Retired GW Teacher, *Resident of Merizo*
15. Louise Rivera, Mayor of Tamuning, *Mayors' Council of Guam*
16. Nicolas F. Borja, *Resident of Pago Bay*
17. Oliver Weston Bordallo, Esq.
18. Randel Sablan
19. Richard Untalan, *CU Holdings*
20. Rodney C. Webb, *Resident of Pago Bay*
21. Ron de Guzman, Realtor, *Ellen's Realty*

III. Findings and Recommendation

The Committee finds that the proponents of Bill No. 318-33 far outweighed the opponents of the bill because it proposes to give the residents, affected by large scale developments, a voice in the land approval process currently vetted by the Guam Land Use Commission (GLUC) and the Application Review Committee (ARC). The introduced version of the bill gives authority to the Municipal Planning Councils of each village to approve or disapprove any project application, by resolution, even if the Guam Land Use Commission decides otherwise.

The opponents of the bill argued that the approval authority of land use applications are shifted to an unconfirmed and unelected Municipal Planning Council members may have legal consequences.

A Roundtable Hearing was conducted on July 28, 2016 and various stakeholders were invited to further discuss the bill. The Chairman of the Guam Land Use Commission suggested to combine the two meetings between GLUC and MPC into one in order to save time, energy and effort. Other suggestions and ideas were to mandate the GLUC to oversee and facilitate land use master plans and leave the zoning and variance administration to the Municipal Planning Councils of each municipality. Rules and regulations can be developed similar to the *Hagåtña* Restoration and Redevelopment Authority and transition zoning administration to the Municipal Planning Council level.



Bill 318 has been substituted by the Sponsor to require all land use approvals by the Guam Land Use Commission be accompanied by an affirmative resolution from the relevant Municipal Planning Council. Otherwise, the approval is invalid.

The Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement, hereby reports out **Bill 318-33 (COR) as substituted**, with the recommendation report out only

I MINA'TRENTAI TRES NA LIHESLATURAN GUÁHAN
2016 (SECOND) Regular Session

Bill No. 318-33 (COR)

Introduced by:

FRANK B. AGUON, JR. 
T.A. Morrison 

AN ACT TO AMEND § 61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY THE GUAM LAND USE COMMISSION.

2016 MAY 12 11:46 AM
VABOR

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** § 61105 of Article 1, Chapter 61, Division 2, Title 21, Guam
3 Code Annotated, is hereby *amended*, to read:

4 “§ 61105. **Vote Requirements for the Commission; Approval of**
5 **Municipal Planning Councils Required.**”

6 In any action by the Commission under this Title, including but not
7 limited to approvals of zone, changes in zones, variances, appeals, and all
8 other actions, four (4) affirmative votes of the members of the Commission
9 shall be required. The Chairperson of the Commission shall vote on all
10 matters before it.

11 For each variance application, zone change, government lease,
12 conditional use application, and other proposed project reviewed by the
13 Guam Land Use Commission involving land in Guam, the relevant
14 Municipal Planning Council of Guam’s respective villages shall register its

1 approval or disapproval with the Commission. No project application shall
2 be approved by the Guam Land Use Commission unless it has received the
3 approval of the relevant Municipal Planning Council through a resolution
4 adopted pursuant to § 40128(f) of Article 1, Chapter 40, Division 4, Title 5,
5 Guam Code Annotated.”

6 **Section 2. Severability.** *If any provision of this Act or the application to*
7 *any person or circumstance is found to be invalid or contrary to law, such*
8 *invalidity shall not affect other provisions or applications of this Act which can be*
9 *given effect without the invalid provision or application, and to this end the*
10 *provisions of this Act are severable.*

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

Bill No. 318-33 (COR)

As Substituted by the Primary Sponsor

Introduced by:

FRANK B. AGUON, JR.
T.A. Morrison

**AN ACT TO AMEND § 61105 OF ARTICLE 1, CHAPTER
61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED,
RELATIVE TO REQUIRING THE SUPPORT OF
MUNICIPAL PLANNING COUNCILS FOR VARIANCE
APPLICATIONS AND ZONE CHANGES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** § 61105 of Article 1, Chapter 61, Division 2, Title 21, Guam
3 Code Annotated, is hereby *amended*, to read:

4 **“§ 61105. Vote Requirements for the Commission; Municipal**
5 **Planning Council Support Requirement for Approval of Variance**
6 **Applications and Zone Changes.**

7 In any action by the Commission under this Title, including but not
8 limited to approvals of zone, changes in zones, variances, appeals, and all
9 other actions, four (4) affirmative votes of the members of the Commission
10 shall be required. The Chairperson of the Commission shall vote on all
11 matters before it.

12 All approvals by the Commission for variance applications and zone
13 changes shall be accompanied by affirmative support in the form of a
14 resolution by the Municipal Planning Council of each municipal district to

1 be affected by such action(s) pursuant to 4 GCA § 40128(f) and 21 GCA §§
2 61623 and 61638. Any approval by the Commission not accompanied by an
3 affirmative resolution from the relevant Municipal Planning Council *shall* be
4 invalid.”

Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement
 Public Hearing
 June 09, 2016
 5:00pm
 I Liheslaturan Guåhan, Hagåtña

Bill No. 318-33 (COR) – T.C. Ada

An act to amend § 61105 of Article 1, Chapter 61, Division 2, Title 21, Guam Code Annotated, relative to requiring the approval of municipal planning councils for proposed projects under review by the Guam Land Use Commission.

	NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER	EMAIL ADDRESS
✓1	Kerlem Greaves	Community advocate	X		X		689-3000	kerlemgreaves @yahoo.com
✓2	Adrian Gogue	Save Southern Guam, Inc	X		X		488-6578	magahetz@gmail.com
✓3	Randy Sablan	self	X		X		898-1295	rsablan@yahoo.com
✓4	Jason Biggs	UOGML	X	X			735-2190	biggs.j@gmail.com
✓5	Bill Crawford	Agat	X		X		565/561	
✓6	Tom Diego	PRIVATE	X		X		687-4997	tomdiego_guam@yahoo.co.
✓7	Ken Joe Ada	Yona Mayors Office	X		X		777-6072	
✓8	DORIS F. Lujan	Inarayan Mayor	X		X		482-8945	mayorinmayorsoffice @gmail.com
✓9	Dianne Strong	self	X		X		687-9647	
✓10	Asia Sison	self			X		686-6250	asia.sison@hotmail.com

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23
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115

Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement
 Public Hearing
 June 09, 2016
 5:00pm
 I Liheslaturan Guåhan, Hagåtña

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	NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER	EMAIL ADDRESS
2ND X 4	JONITA KERR	SAVE SOUTHERN GUAM	✓	✓			797-1477	jonikerr@gmail.com
✓ 12	JOSE VINTANIN	CU HOLDINGS	✓	✓			635-3097	jose@compadres.com
X 13	LINDA TATREAU	NA	✓	✓			828 7704	lindian@teleguam.net
✓ 14	BURT CRUZ	GUAM!	✓				988-5865	BERUZ253@msn.com
✓ 15	LASIA CASI	Save southern Guam	✓	✓			688-1139	lasia@me.com
X 16	Joanne Brown	Resident	✓				789-4233	j-m-brown@jvaco.com
17	SANDY YEE	Resident					797-0885	makamasty@gmail.com

Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement
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	NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER	EMAIL ADDRESS
19	MICHAEL BORJA	DLM						
19	JOHN ARROYO	GLUC						
20	VICTOR CRUZ	GLUC						
21	CHIT BATHAN	GLUC						
22	TRICEE LIMTIACO	GLUC						
27	Zota Fongeline	Yona Resident	Request to be called later.					

Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement

Public Hearing

June 09, 2016

5:00pm

I Liheslaturan Guåhan, Hagåtña

Bill No. 318-33 (COR) – T.C. Ada

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NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER	EMAIL ADDRESS
✓ Rodney Webb	Personal	✓	✓	✓		488-7738	webb.rodney@gmail.com
✓ IKE Peredo	"		✓	✓		789 0980	igperedo@hotmail.com
✓ Jessy O. COGVE	Mayor	✓				472-8302/3	ocp.wmayor@guam.gov
✓ ERNEST CHANGALAF	MERIZO MAYOR	✓		✓		828-8312	mayorernestced@yahoo.com

Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement
 Public Hearing
 June 09, 2016
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I Liheslaturan Guåhan, Hagåtña

Bill No. 318-33 (COR) – T.C. Ada

An act to amend § 61105 of Article 1, Chapter 61, Division 2, Title 21, Guam Code Annotated, relative to requiring the approval of municipal planning councils for proposed projects under review by the Guam Land Use Commission.

NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER	EMAIL ADDRESS
Ed dela Peña		X		X		727-4579	eddelapena@- cysho.com

Randel Sablan
P.O. Box 3593
Hagatna, Guam 96932

Senator Thomas C. Ada
33rd Guam Legislature
Chairman, Committee on Transportation, Infrastructure,
Lands, Border Protection, Veteran's Affairs and Procurement

16 June 2016

Ref: Testimony on Bill 318-33

Dear Chairman Ada and members of the Committee,

I support Bill 318-33 to empower municipal government to decide on zone variances and changes.

Most zoning ordinances in the country are directly administered at the municipal level of government. Guam might well be one of the last places in the nation where the state or territory makes decisions for towns, cities, counties and villages. Any claim that Guam's municipal planning councils could not effectively administer zoning is simply short-sighted, demonstrates a lack of confidence in our people, and threatens to deny communities direct involvement to shape their future. I believe Municipal Planning Councils can compliment the Guam Land Use Commission (GLUC) by more directly connecting community concerns and knowledge to protection of public welfare in our villages and Guam as a whole. In time MPCs could assume full responsibility to administer zoning. There are bound to be capacity gaps and growing pains but the ability to exercise such authority must start somewhere. Do all of the Guam Land Use Commission (GLUC) members have zoning administration experience when they first get appointed?

The Department of Land Management (DLM) Planning Division provides technical assistance to the GLUC including application administration, land use and zoning analysis and reporting on each application. The same service can and should be provided to MPCs. We do not need to create a separate administrative body to support application processing through MPCs.

For comparative insight to municipal governance I submit that the City of Fort Meade Florida population 5,669 (2010) and the Municipality of Yona population 6,480 (2010) is useful.

Fort Meade administers a Unified Development Regulation. The city's Board of Adjustments and Appeals entertains requests for variances like the GLUC. From my perspective, Fort Meade's regulations are more comprehensive than Guam's Zoning Law. This is remarkable in that it is a city smaller in population than the village of

Yona. I encourage you to briefly review the regulations online at http://www.cityoffortmeade.com/document_center/CITY_OF_FORT_MEADE_UNIFIED_LAND_DEVELOPMENT_REGULATION11.pdf

The regulation's major sections include the following with comprehensive and detailed requirements therein that are nothing short of impressive for very small city.

Some of the more interesting parallels and differences from §7.11.00 and 7.11.01 of the Regulation are listed below:

- Variances if approved are adopted by **Resolution** which is similar to Bill 318-33
- **Reasonable use** (not highest use) cannot be deprived
- “The granting of a Variance shall be based on a determination by the Board of Adjustment and Appeals that the request will **not be contrary to the public interest** and the intent of this Code, and that strict enforcement of the regulation in question would create an undue and unnecessary hardship for the applicant. **Considerations of health, convenience or economics shall not be considered as justification for a variance.**”
- “Approval of a Variance shall be based solely on the following criteria, **all of which must be fully satisfied:** (This emphasis in bold is from the regulation and is exactly the requirement of the Guam Zoning Law at §61617)
- **The special conditions and circumstances do not result from the actions of the applicant.** This is often referred to as “self-imposed hardship” in the land use and zoning. There is no treatment of this in Guam zoning so landowners can fabricate hardship and use it to obtain variances. The Pago Bay developer did just this for wetlands by consolidating and parceling to the point that wetlands occupied about 32% of the last and smallest parcel – where the towers are proposed.
- **That the variance granted is the minimum variance that will make possible a reasonable use of the land or structure.** (The Chairman of the GLUC testified that Bill 318-33 “has the potential to restrict land ownership rights to use and develop private property to the maximum extent allowed by law. It also runs the risk of stifling economic growth brought by real estate investment and development.” The maximum height allowed by the Guam Zoning Law for multi-family residential buildings is three stories or about 35 ft. It is not clear if the Chairman is referring to the actual maximum allowed by law or if he believes the maximum extent is subject to interpretation by the GLUC via a variance request.

I'm concerned that the Chairman believes the GLUC is mandated to facilitate economic growth as a major objective of the Guam Zoning Law. I can't find this objective in the law. The basic purposes of Guam's zoning laws are identified at §61102:

“ . . . establish certain minimum regulations for the protection and promotion of the public health, safety and general welfare of the people of the Territory of

Guam, which regulations are deemed necessary in order to encourage the most appropriate use of land, to provide adequate open spaces about buildings for light and air, to prevent undue concentration of population, and to assure adequate provisions for community utilities and facilities such as water, schools, parks and other public requirements.”

I would prefer that zoning administration focus on the stated purposes of the law and the GLUC instead get directly involved in comprehensive or master planning as they are authorized to do by P.L. 12-200. The GLUC would then be free to invite GEDA, GVB, the Chamber of Commerce and other stakeholders to define parameters to encourage growth as **one objective** of such a comprehensive plan. Given limited government resources would it not be appropriate for the Legislature to enact policy shifting zoning administration responsibilities to the MPCs and free the GLUC to move forward with a new master plan?

- That the granting of the variance will be in harmony with the general intent of this Code, and that such variance will not be injurious to the area involved or otherwise detrimental to the **public welfare**. Black’s Law Dictionary Free Online Legal Dictionary 2nd Ed. “This means for the good of society”. The requirements for a variance under the Guam Zoning at §61617(c) also covers public welfare and at §61102, the basic purpose of the law is to protect and promote the “general welfare of the people of the Territory of Guam.

MPCs are the closest official representatives to their communities. Again, regarding §61617 of the Zoning Law, who better than a MPC should determine the potential for “detriment” to “public welfare” (in the village), or “injury” to nearby “property”, or even know best if “detriment or injury” would occur “to improvements” in the “neighborhood” than those who represent the neighborhood directly and experience adequate or poor service?

Residents and their respective MPCs can accurately assess detriment to public welfare at the village level where impacts are typically greatest. If a community comes out and says a development variance is not compatible with or is detrimental to community or neighborhood (based on fact) then that finding should be adequate to deny a variance request. Material detriment can be physically manifest in increased traffic, property devaluation, or even the visual change and use of land (to name a few) both near and distant.

Increased density adds to concentration and intensity of impact. Population increases almost always induce impacts to services, pressure resources natural and built, and quality of life. Social patterns are often expressed in the built environment or lack thereof (open space) and so where and how we build should be harmonious in the content of existing uses and patterns and a vision for growth but the latter is not possible with a 49 year-old master plan. Are we to pass judgment that residents of Yona and Chalan Pago or any other village are less qualified and knowledgeable about growth and change at the village level than members of the

GLUC? I'm only guessing but some members of the GLUC may not have even lived on Guam for 49 years much less lived in the municipality of Yona. This is why the zoning limits or requirements should not be considered for exceptions and additional allowances without intense scrutiny and local perspectives are valid and important. If a master or comprehensive land use or "development" plan is properly developed with input from the community then the change that happens incrementally should be acceptable – it's growth and development. A 49-year old master plan is not likely to adequately express growth policy. It is one thing provide due process to **hear** public concerns and another thing altogether to **listen** to public concerns and act accordingly. The former simply checks the box while latter is meaningfully inclusive of place-based knowledge.

Shifting decision-making authority to locally elected and appointed officials to represent those with direct interest in community is appropriate. The critical nature of this proposed shift in decision-making is even more compelling given that our government has failed to provide for a comprehensive development plan for southern Guam since the **repeal** of I' Tanota Land Use Plan nearly 20 years ago.

I believe that in 3-5 years we can develop MPC capacity to assume full duties to administer the Zoning Law and de-authorize the GLUC from those particular duties.

What does the Zoning Law represent?

In most jurisdictions the zoning law expresses the strict limits of acceptable change under the framework of a "comprehensive plan" or "master plan". The zoning law should preserve the expressed vision of and plan for community growth and in fact states at §61617(d) that a grant of a variance "will not be contrary to the objectives of any part of the Master Plan adopted by the Commission or the Legislature;". In the case of southern Guam, I cannot find a Master Plan adopted by either entity. Could it be that the GLUC considers the official zoning map of Guam to be the Guam Master Plan? That would loop the analysis right back to the zoning standards for height, density, setback, etc. How can a height variance of approximately 133 ft. (400% of the maximum allowed by law) such as in the case of the Pago Bay towers not be contrary to the objectives of the Guam Master Plan?

Zoning administration on Guam turns out to be a form of de facto comprehensive planning. The GLUC has for decades used this form of planning which is a piece-meal and precedence setting.

Whose vision are we following?

I think it's bad practice to shape our development one variance or zone change at a time by a Territorial-level commission especially for unplanned/rural and residential areas. The process we have now sets up community conflict on major development proposals. Residents get concerned and show up at the end of the application process desperately trying to save the day, sometimes to no avail. Without a master plan developers are the primary designers and visionaries for community growth. Zoning applications to the GLUC over the past 25 years rarely if

ever (I can't recall even one) include a development scheme that reflects what **compliance with the law would look like**. Instead **developers only present their desires** and not surprisingly describe those as "enhancing the neighborhood or vicinity". The problem is the neighbors don't always agree.

Is the GLUC also the Territorial Planning Commission (TPC) and the Central Planning Council (CPC)?

The Comprehensive Planning Act (P.L. 12-200 from 1975) created a Central Planning Council (CPC) to undertake comprehensive and long-term planning for the Territory. 18 GAR §3107 identifies that the TPC has the power to administer the provisions of P.L. 12-200. Essentially, the TPC is the CPC. The TPC/CPC is tasked to *include village commissioners* and other civic organizations by encouraging them to form advisory committees and "**organize at their own discretion and meet on their own initiative** or at the request of the council". The Legislative Intent of P.L. 12-200 reads:

"The people of Guam finding that the island is experiencing unprecedented economic, physical and population growth **without any comprehensive planning program**, that this undisciplined growth jeopardizes the historic, cultural and natural aspects of their island heritage, threatens to lower their quality of life, exploits their natural resources and often misdirects their fiscal resources, hereby declare that the Government of Guam shall initiate a **systematic, continuous, farsighted planning policy...**". (Emphasis added)

§62011 B. adds that Guam needs "to plan for the preservation of the natural charm and character of Guam within the framework of a growing population and modern technology" and according to §62011 G..."to plan for the development of infrastructure and transportation facilities", among others.

It appears that the GLUC, TPC and CPC are all the same entity. **Guiding** comprehensive and long-term development planning as Guam law and regulations dictate is assigned to Territorial government with the intent for robust participation and shaping of such plans as a community-based undertaking. The GLUC is and has been in our village "weeds" for far too long undertaking comprehensive planning one zone change and variance at a time and evidently ignoring their overarching mandate to lead comprehensive planning. This is a grave disservice because it is really not "farsighted planning...". Where does the GLUC derive its authority, as evidenced in Pago Bay recently, shape southern Guam one action at a time?

I'm of the opinion that the GLUC sometimes loses sight of the fact that the zoning requirements are legal maximums that can only be exceeded in compliance with all requirements of §61617 of the Zoning Law. A land owner/developer does not have a right to a variance and we should not be granting such by piling on numerous "conditions" from agencies or the GLUC. That's where we get into trouble with enforcement. The longer the list of prerequisite conditions the greater the case for denying a variance. Variance requests should not be decided as negotiated

economic development projects. Our decision-makers have created a system of conditioning which seems to provide an expedient way to wash their hands of what is likely incompatible development. If that's the way we do business then let the MPCs in on the action. They will act in the interest of the village and the village will surely hold them accountable, much more so than GLUC members who may live and invest elsewhere.

Bill 318-33 is an important step in the right direction. I believe that the main intent of the bill, which is municipal-level decision making, is legitimate. If modifications are necessary to address accountability, appeals, and adherence to the same requirement the GLUC must comply with then let's work on that language.

Senseramente,

A handwritten signature in black ink, appearing to read 'RS', with a stylized flourish extending to the right.

Randy Sablan

June 9, 2016

Senator Thomas Ada – Chairman, Committee on Transportation, Infrastructure, Lands,
Border Protection, Veterans Affairs and Procurement
33rd Guam Legislature

Ref: Bill No. 318-33 (COR) – F.B. Aguon, Jr. /T.A. Morrison

Dear Chairman Ada,

Hafa adai and thank you for allowing me to submit this written testimony regarding the proposed bill aforementioned.

I have taken the time to read through the initial legislation and I hope you will take my testimony into consideration in your deliberations.

Please allow me to give a little of my background regarding real estate and development on Guam. My background is in banking and finance, beginning with Bancorp Hawaii, GE Capital and a short stint with PATICO as COO. I was also Executive Director of GHURA 2002-2008 and served on the Guam Land Use Commission during Gov. Gutierrez administration for 6 years as Vice-Chairman. All of these companies and agencies I served on dealt specifically with land and real estate development issues. I currently am a Realtor with Ellen's Realty.

I am writing in opposition to the current proposed legislation and language of Bill#318-33. I completely understand the impetus of this bill and that it is in response to the recent Pago Bay Development controversy. However, I am concerned about the negative impact this bill will have on future real estate investment and development on Guam. I believe it may have a stifling affect on the real estate industry.

During my tenure with the Land Use Committee, we deliberated many different proposals and a myriad of zoning and variance requests. Each case was thoroughly reviewed by the ARC and public testimony always played a major factor in my personal decisions and voting. Were some of our decisions controversial? Yes, because as you know, it's impossible to please all of the people all of the time. But, we made the decisions based on the best information available and keeping the public's best interest at heart. I still believe this is the best process available to keep the interests of all concerned in balance.

I whole-heartedly agree that the general public should be given a voice and allowed to share their concerns on any project that directly impacts them and their neighborhoods. However, I am concerned that by giving the respective MPCs of each village blanket veto power of any project within their village, negates the very necessity of the GLUC and ARC. Their voice should be a major part of the process, but not the judge and jury of any proposed development.

Unfortunately, I am unable to provide personal testimony during this evening's hearing due to previous commitments. I would like to make myself available to your committee in case you decide on any round table discussions in the near future.

Thank you so much for the opportunity to provide this written testimony. I am hopeful the proposed bill can be modified to allow for all interested parties to be considered in all future land development on our beautiful island.

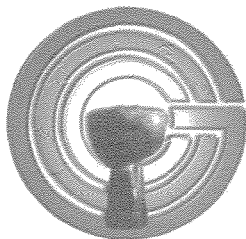
Respectfully submitted for your consideration.

Ron de Guzman
Realtor

Ellen's Realty
Telephone: (671)647-0888
Mobile: (671)727-6331
Fax: (671)647-0890
Email: ellensrealty.rdg@gmail.com
Website: www.ellensrealtyquam.com



BUYING, SELLING, LEASING
property management & development



GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS

June 14, 2016

THE HONORABLE THOMAS C. ADA
Chair, Committee on Transportation, Infrastructure, Lands,
Border Protection, Veterans Affairs and Procurement
I Mina' Trentai Tres Liheslaturan Guahan
Suite 301, 155 Hesler St.
Hagåtña, Guam 96910

RE: Bill 318-33. An act to amend § 61105 of article 1, chapter 61, division 2, title 21, Guam Code Annotated, relative to requiring the approval of municipal planning councils for proposed projects under review by the Guam Land Use Commission

Dear Mr. Chairman,

Thank you for the opportunity to present our comments and position on Bill 318-33, which we oppose as written. The Guam Chamber of Commerce feels strongly that this legislation creates another layer of bureaucracy that will ultimately impede development and economic progress.

We recognize the importance of controlling development, and in assuring that certain sectors of our island maintain its serenity and cultural significance for future generations to enjoy. Bill 318-33 requires the municipal planning councils (MPC) from respective villages to have the final vote pertaining to proposed projects before the Guam Land Use Commission (GLUC). It is important to note that these projects are not proffered just days prior to a GLUC meeting. Rather, many of these proposals go through a rigorous process requiring thorough planning, application processing (which necessitates visiting a number of government entities), financing, and essentially in some cases, years of preparation.

It would be illogical to provide one body the full authority to override the decisions and actions of many individuals and entities who have been involved with the evolution of a project from its inception. The Guam Chamber recognizes the importance of public input when it comes to discussions on development, and encourages the public's participation, including members of the MPC, at public hearings held by the GLUC. However, it would not be prudent to allow the MPC the full discretion to approve or deny any actions of the GLUC, as this increases the potential of questionable decisions while delaying the process if the MPC is unable to field a quorum.

Members of the GLUC are appointed by the Governor and confirmed by the Guam Legislature, and while they may not be experts in all aspects of development, they are provided months, if not years of data and recommendations, including input from the public, prior to making their final decision on a project. There are no assurances that members of the MPC would be provided a similar degree of information (and if so, the question would arise if this would be in a timely manner), other than public sentiments, to make a similar informed decision as the GLUC.

In closing, the Guam Chamber of Commerce opposes Bill 318-33 for the basic concern that this legislation creates an additional layer of bureaucratic red tape that could stall development. We believe that the MPC's voices should be heard, and their concerns considered, as we would with all members of the public, however that forum should be in the form of a public hearing and not in having the final say of approving or vetoing the decision of the GLUC. Thank you very much for the opportunity to submit our testimony.

~~Senseramento~~

BOBBY SHRINGI
Vice Chairman

----- Forwarded message -----

From: 'Aileen' via Office email forwarding <office.fwd@senatorada.org>

Date: Thu, Jun 16, 2016 at 11:10 AM

Subject: Testimonies Supporting Bill No. 318-33 COR

To: "office@senatorada.org" <office@senatorada.org>

Dear Senator Ada,

I am writing in support of Bill No. 318-33 proposed by two good men, Senators Morrison and Aguon. This bill should've been written and passed years ago. Sadly, however, people like me whose input seems to be significant only during election time, have been ignored.

I strive to live a quiet and productive life as a wife to my beloved husband and mother to my three wonderful children. There were nevertheless several trials. Through God's grace, I faced cancer and death twice within the last seven years, and triumphed. All praise to my Lord and Savior Jesus Christ. Treatments off-island were stressing, but coming home to my peaceful sanctuary helped tremendously in my recovery. However, greed and corruption intruded. Now that sanctuary is threatened by a development that was approved by our government whose input from people like me who will be directly impacted by this irresponsible development was disregarded.

I urge you and the rest of our island's senators to stop representing only the privileged few. Stop focusing largely on your own self-promoting political agenda. We, the people, want and need Bill 318-33 to pass. We want our voices and input on things which will impact our lives,

environment and community.


In closing, actually passing a bill which will empower small people like me maybe going against big people with deep pockets. However, remember what an 18th century Irish Statesman, Edmund Burke said, "The only thing necessary for the triumph of evil is for good men to do nothing." Do an honorable thing senator, pass Bill 318-33.

Sincerely,

Aileen Ramiro
Chalan Inda, Pago Bay
cell #: 487-2525

P.S.

Attached is a petition I gathered from friends and strangers.

 Scanned from a Xerox Multifunction Device (52).pdf
338K

June 14, 2016

To: Senator Thomas C. Ada, Chairperson, Committee on
Transportation, Infrastructure, Lands, Border Protection,
Veterans' Affairs, and Procurement

From: Christa Juliana C. Gogue

Subj: BILL 318-33 (COR): AN ACT TO AMEND SECTION 61105 OF
ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE
ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL
PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY
THE GUAM LAND USE COMMISSION

1. Hello Chairman Ada. I attended the public hearing on June 9, 2016 at the Legislature for Bill 318-33. My dad spoke at the hearing in favor of 318-33 and I am proud of him. I was also proud to hold up my sign and participate in the process to save our island. I hope the Legislature will listen to our voices and approve this bill.
2. Thank you and have a great day.

Sincerely,
/S/ Christa Juliana C. Gogue

June 14, 2016

To: Senator Thomas C. Ada, Chairperson, Committee on
Transportation, Infrastructure, Lands, Border Protection,
Veterans' Affairs, and Procurement

From: Joanna Gogue

Subj: BILL 318-33 (COR): AN ACT TO AMEND SECTION 61105 OF
ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE
ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL
PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY
THE GUAM LAND USE COMMISSION

1. Hafa Adai Chairman Ada. I am writing in support of Bill 318-33. This bill will give us, the people of Guam, a voice via our respective Municipal Planning Council (MPC) and requiring MPC approval for proposed projects that will impact our communities.
2. I attended the public hearing on June 9, 2016 at the Legislature for Bill 318-33. The support for this bill was overwhelming. The public hearing also provided an opportunity for my daughter and I to witness first hand our community's involvement and right to stand up and have our voices heard.
3. Thank you Chairman Ada for your time. Un Dang'ka'lu Na Si Yu'us Ma'ase.

Sincerely,
/S/ Joanna Gogue



GLUC Rules of Operation

2 messages

Strongdiver44 <strongdiver44@gmail.com>

Wed, Jun 15, 2016 at 10:37 AM

To: office@senatorada.org

Cc: Jessy Gogue <ocp.mayor@gmail.com>, Jason Tedaotao <jason@senatormorrison.com>, "Frank Aguon, Jr." <aguon4guam@gmail.com>

Hafa a'dai! Senator Ada:

In reference to Bill 318-33 and Bill 335-33, I would like to recommend close scrutiny of the rules and regulations that govern the Guam Land Use Commission (GLUC).

The Operating Procedures for the GLUC are not easy to locate. They are **not** included on their web site, but are buried in the AAA.

My copy of these rules and regulations indicates these rules were adopted by a meeting of the GLUC in **June 2006**.

I therefore sent a Freedom of Information Act (FOIA) Request on 8 June 2016 to the Department of Land Management for all minutes of their **June 2006 meetings**.

I received:

(1) Minutes of the Guam Seashore Protection Commission Meeting on **June 8, 2006**, 1:40 p.m.- 2:20 p.m.

These were recorded as Instrument No., 756066 with the entry by AT Bautista for the year 07, Month 05, Day 29, Time 1:36.

That would be May 29, 2007.

(2) Minutes of the Guam Land Use Commission Meeting on **June 29, 2006**, 1:40 p.m.- 3:30 p.m.

These were recorded as Instrument No., 751745 with the entry by _____ for the year 07, Month 03, Day 9, Time 7:00.

That would be March 9, 2007.

Item **GLUC/GSPC Rules and Regulations** appears on **page 14 of 17**. GLUC Chairman Jay Lather commented that "this supersedes the March version...which [had] a lot of problems...One thing that is new here is that these rules now address what happens when you don't get four votes... Also there is a thing called reconsidered..."

On page 16 "Chairman Lather moved to amend 2.1, the deletion of 7.9 and the editing of 7.8 to remove 'reconsidered' and that we adopt these as our new rules and procedures of the Land Use Commission effective at the next meeting. Commissioner [Lisa] Arriola seconded the motion." *[underlining emphasis]*

added]

"Vice-Chairman Flynn inquired if is necessary for the ARC to review the justification on 7.3..."

On page 17 of 17, **"There were no objections to the motion. MOTION PASSED (unanimous)."**

The motion was not repeated in the minutes.

These minutes were transcribed by Teresa T. Topasna, WPSII, on 2/2/97.

Approval or adoption of these Rules and Regulations and does NOT appear on the stated agenda. This is a violation.

My question is: what is the Guam law pertaining to approval of rules and regulations of government commissions? What public hearings are required to assure opportunities for the public input?

GLUC Rules & Regs

Submitted to Legis. Nov. 2011, adopted _____

http://www.guamlegislature.com/Mess_Comms_31st/Doc.%2031GL-11-1100%20From%20the%20Guam%20Land%20Use%20Commission%20submitting%20the%20Transmittal%20of%20Rules%20and%20Regulations%20of%20the%20GLUC..pdf

These rules are made under the authority of 21 GCA, Section 60405.

Article 7, Rules and Regulations of the Development Review Committee

Thank you, senator.

Dianne M. Strong, Ed.D.
130 Chalan Ayuyu
Yona, GU 96915

(671) 789-4500

strongdiver44@gmail.com

Staff member Can Untalan commented okay.

- **GLUC / GSPC Rules and Regulations**
 Chairman Lather commented that this is supercedes the March Commission corrected alot of the problems that they had on it. Issue said that we couldn't do conditional zoning and that hasl we've determined that we can do condorsal zoning. One thin these rules now address what happens when you don't get for rule was that if an action does not receive 4 affirmative votes happens to it? It wasn't really clear what happens after that. states that if you don't get 4 votes then the Chairperson can c For example the motion would be restated as a motion for de action if not then it goes back on to the unfinished business & reconsideration. Also there is this thing called reconsidered, a standard action that basicaly is that the Commission can o

GLUC.regs.June29.2006.jpg
1965K

Tom Ada <tom@senatorada.org>
To: Joe Borja <JBorja@senatorada.org>

Wed, Jun 15, 2016 at 3:17 PM

Joe,
Pls digest, then we can sit and discuss.

 Sen. Tom Ada
 Chairman, Committee on Transportation, Infrastructure, Lands,
 Border Protection, Veterans' Affairs, and Procurement
 33rd Guam Legislature
 Tel: (671) 473-3301
 [Quoted text hidden]

Staff member Can Untalan commented okay.

- **GLUC / GSPC Rules and Regulations**
 Chairman Lather commented that this is supercedes the March Commission corrected alot of the problems that they had on it. Issue said that we couldn't do conditional zoning and that hasl we've determined that we can do condorsal zoning. One thin these rules now address what happens when you don't get for rule was that if an action does not receive 4 affirmative votes happens to it? It wasn't really clear what happens after that. states that if you don't get 4 votes then the Chairperson can c For example the motion would be restated as a motion for de action if not then it goes back on to the unfinished business & reconsideration. Also there is this thing called reconsidered, a standard action that basicaly is that the Commission can o

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... in other jurisdictions. ... we can have staff do research

Staff member Carl Untalan commented okay.

- **GLUC / GSPC Rules and Regulations**

Chairman Lather commented that this supercedes the March Commission corrected a lot of the problems that they had on it. The issue said that we couldn't do conditional zoning and that has been changed. We've determined that we can do conditional zoning. One thing these rules now address what happens when you don't get four votes. One rule was that if an action does not receive 4 affirmative votes it happens to it? It wasn't really clear what happens after that. The rules state that if you don't get 4 votes then the Chairperson can call for a vote. For example the motion would be restated as a motion for reconsideration. If not then it goes back on to the unfinished business for reconsideration. Also there is this thing called reconsidered, which is a standard action that basically is that the Commission can call for a vote.

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June 14, 2016

Honorable Thomas C. Ada
Senator, 33rd Guam Legislature
173 Aspinall Ave., Ste. 207
Hagåtña, GU 96910

RECEIVED by the
Office of Senator
Thomas C. Ada

Johns
JUNE 14, 2016
10:58am

Re: Bill 318-33 (COR)

Dear Senator Ada:

I. INTRODUCTION

Thank you for giving me this opportunity to provide input on the subject legislation. As you know, I attended the hearing last Thursday with my aunt, Mrs. Leonora F. Bordallo. After listening to all the testimony for over four hours, it being already 9:30 p.m., we mercifully decided not to prolong the drama by offering opposing testimony and instead just submit written comments.

I am not a “special interest” or a “big money” or an “outside investor”. But I am a landowner and I have many relatives and clients who also own properties in Asan, Piti, Agat, Umatac, Merizo, Inarajan, Talofofu and Yona. As a lifelong resident and taxpayer who cares as much about the future of our island as anyone, I have the right to speak out. The views expressed in this letter are my own.

I am also an attorney in private practice. During the “variance wars” of the 1990s I pursued litigation to rein in the TPC and TLUC (now called the GLUC) and succeeded in stopping or delaying two large hotel projects in Tumon which had received massive height, density and parking variances. I feel an obligation to share my knowledge and experience in this field and hope this testimony will be of assistance to you and other members of *I Mina'Trentai Na Liheslaturan Guahån*.

II. DISCUSSION

I. The Public Hearing.

The testimony was lively, passionate and enlightening, if not always respectful. Young Robert Cruz impressed everyone with his handsome appearance, creative artwork and eloquent oration about the need to protect Guam’s precious lands and marine resources (Tano Y Tasi). Many others shared their own concerns about “indiscriminate development” and the potentially harmful impacts of unregulated growth on the environment and on the quality of life in southern Guam. Alarms were sounded to warn the public of an approaching tsunami wave of foreign investment. If

not restrained, the GLUC could be expected to issue permits and variances allowing “monstrous” high-rise buildings to be erected along the southern coastline destroying the natural scenic beauty of this region. If no action is taken to stop runaway development, iconic bays and villages will surely become concrete jungles, just like in Tumon.

There was another thread running through the public testimony – major projects were being approved by government bureaucrats who only seemed interested in accommodating off-island developers. The rights and feelings of local residents were being ignored, as if they were “a bunch of nobodies”. If a proposed development might adversely affect the quality of life of an entire village, shouldn’t the people of that village have a say in the matter?

A large part of the evening was spent discussing a single controversial project. Several residents of Yona and Chalan Pago testified that they and their neighbors had vigorously objected to the proposed Pago Bay Marina Resort. Despite their objections, a massive height variance had been granted by the GLUC allowing twin towers (158' and 168') to be erected in an R-2 zone where building height is normally limited to 30'. The Yona and Chalan Pago municipal planning councils (MPCs) had also recommended disapproval but their resolutions were disregarded by the GLUC.

Aside from the unsightliness of twin concrete towers dominating the Pago Bay shoreline, the likelihood of other adverse impacts were noted including over-taxing of water, wastewater, roadway and other infrastructure. Several witnesses reported the resort had been advertised online as a future hotel, which, if true, meant there would be even more noise and traffic congestion than the developer and its planners had let on. Irretrievable damage to Pago Bay’s fragile marine ecosystem was also forecast, including possible endangerment of whales and turtles, according to science teachers and environmental activists who appeared at the Legislature.

The most passionate testimony came from former senator Joanne Brown, who attended the hearing with her mother. Being lifelong residents of Pago Bay with a home adjacent to the proposed Pago Bay Marina Resort, Sen. Brown was absolutely livid that the GLUC would dare approve a high-rise building over her, and her mother’s, objections. She was sure there would be a diminution of property values; that infrastructure would be strained; adverse environmental impacts would be much greater than estimated; and the quality of life in her neighborhood would deteriorate as a result of this project. Although the GLUC imposed a large number of conditions precisely to avoid or mitigate impacts, Sen. Brown had little faith these conditions would be enforced. In her many years of employment at regulatory agencies, including as head of Guam EPA, she had rarely seen the GLUC’s permit conditions enforced by building officials at DLM and DPW.

In a dramatic conclusion to her testimony, Sen. Brown announced that she knew for a fact that several legislators were not going to vote for passage of Bill 318-33(COR). They had already received calls from the rich and powerful. Extremely disappointed, tears streaming down her face, she accused these unidentified senators (in so many words) of being stooges of Big Business who cared more about the Special Interests than the well being of the people of Guam. In an angry tone, with both arms lifted and fingers pointing to the gallery behind her, Sen. Brown sternly warned that

if the bill isn't passed, "you will be facing THIS in the next election," as if she had a large army of supporters behind her. AND THE NUMBERS WILL GROW! Sen. Brown even threatened to get back into politics, if a hotel resort is built in her back yard over her mom's objections.

2. The Bill.

Because Guam's zoning law is woefully outdated – most rural parcels are default-zoned "A" (agricultural) – any proposed development in Southern Guam will require either a re-zoning or major height and density variances. If Bill 318-33 passes, then after agreeing to satisfy a multitude of conditions imposed by the GLUC landowners will also have to obtain a resolution approving their development plans from the relevant or local municipality's planning council (MPC).

No project application shall be approved by the Guam Land Use Commission unless it has received the approval of the relevant Municipal Planning Council through a resolution . . .

According to proponents of this measure, requiring project approval at the village level will ensure not only that local residents' voices are heard but, moreover, their voices will matter. If a large majority of residents objects to a proposed project, the MPC, composed of 10 village leaders appointed by the Mayor, presumably will disapprove the project and it will never be built.

No rules, standards or guidelines are set forth in Bill 318-33. Nor does the proposed legislation require each MPC to adopt a land use plan, although proposed building improvements normally are evaluated by reference to a land use plan and zoning ordinances. Instead, each MPC will simply take a vote and decide on a case by case basis whether to allow a particular project to go forward. Proposed hotel resort developments could be blocked for any reason, or for no reason at all. No findings would be required to support or explain the MPC's disapproval, and no higher agency or court would have jurisdiction to review their decisions.

Several mayors testified in favor of the bill. They didn't think there would be any problems with implementation. To secure the consent of a local MPC, all the developers have to do is offer to make some concessions such as donating land for a park or baseball field. Alternatively, a developer could agree to make infrastructure improvements in the village, or provide funding for special projects, the amount of which would be determined on a case by case basis though "negotiations".

Senator Aguon affirmed his bill is intended to encourage developers to reach "accommodations" with local residents through the MPC approval process. Sen. Morrison believes Bill 318-33 will be good for developers because it will provide more "transparency". By "accommodating" local village leaders, investors can ensure their hotel resort plans will be approved.

3. Overview of Guam's Zoning Law.

The basic purposes of Guam's zoning laws are to:

. . . establish certain minimum regulations for the protection and promotion of the public health, safety and general welfare of the people of the Territory of Guam, which regulations are deemed necessary in order to encourage the most appropriate use of land, to provide adequate open spaces about buildings for light and air, to prevent undue concentration of population, and to assure adequate provisions for community utilities and facilities such as water, schools, parks and other public requirements.

21 GCA §61102.

Generally speaking, the Zoning Law consists of three components:

i. Permitted Uses: Based on a comprehensive plan, all land parcels within a delineated area are given a zone designation (i.e., one-family residential, multiple dwelling residential, commercial, industrial, etc.) and the land uses or activities permitted within each zone are listed. Example: Hotels are permitted in the R-2 zone.

ii. Conditional Uses: In each zone, a short list of additional land uses or activities are permitted, but only if the landowner agrees to certain conditions designed to minimize adverse impacts. Example: health clinics and car rentals are conditionally allowed in the R-2 zone.

iii. Structural Limits: For each zone, there are height and density ceilings, setback and parking requirements and other building regulations. Example: In most zones the building height limit is 30 feet. However, there are many exceptions. For hotels in the R-2 zone, 21 G.C.A §61402 provides:

The following buildings, structures and equipment may be erected and maintained above the permitted height limit:

(e) Hotels, provided, that for every foot in elevation exceeding the standard limitation, two feet shall be added to each of the required yard depths and widths; and provided, further, that the height limit for any such hotel shall be six (6) stories (the six (6) stories shall not exceed a height of seventy-five (75) feet).

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/

4. Overview of Guam's Variance Law.

In some cases, strict application and enforcement of zoning regulations is not possible. Some land parcels have special problems or characteristics (i.e., odd shapes; drainage easements) which make it impractical or unfair to strictly apply building height, density or setback restrictions. In such cases, the landowner is entitled to a variance or exception from the uniform zoning rules.

For height variances, Guam's zoning law (21 GCA § 61616) provides:

Where practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of this Chapter would occur from its strict literal interpretation or enforcement, the Territorial Land Use Commission shall have authority to grant such variances therefrom as may be in harmony with its general purpose and intent, so that the spirit of the law shall be observed, public safety secured, and substantial justice done, including the following:

* * * *

(d) Permit such modification of the height regulations as may be necessary to secure an appropriate building or structure on a lot which has such physical characteristics or is so located with relation to surrounding development that it cannot be properly improved without such modification;

Variances are not to be handed out lightly. The landowner must prove his case at an administrative proceeding. Evidence must be taken and a factual record made and preserved for purposes of judicial review. Expert analysis must be considered and, in contested cases, cross-examination allowed. If a variance is granted, a written decision containing detailed findings of fact must be prepared and adopted. Certain special findings demonstrating that a departure from the uniform zoning laws is warranted, and that the variance granted will not be detrimental to the surrounding area, must also be made pursuant to 21 GCA §61617:

No variance shall be granted by the Commission unless it finds:

(a) That the strict application of the provisions of this Chapter would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the law;

(b) That there are exceptional circumstances or conditions applicable to the property involved or to the intended use thereof that do not apply generally to other property in the same zone;

(c) That the grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located; and

(d) That the grant of such variance will not be contrary to the objectives of any part of the Master Plan adopted by the Commission or Legislature;

(e) That, as to variances from the restrictions of § 61504 of this Chapter [for seashore setback], the proposed building will substantially enhance the recreational, aesthetic or commercial value of the beach area upon which the building is to be constructed, and that such building will not interfere with or adversely affect the surrounding property owners' or the public's right to an untrammelled use of the beach and its natural beauty.

5. The Pago Bay Litigation.

The GLUC's findings for the Pago Bay Marina Resort indicate that approximately 32% of the total land area of Lot 164-4NEW-1, Yona, consists of wetlands. Setbacks in excess of 100' and 120' on the north and west sides of the property also arguably reduce the amount of useable land for building improvements. Wanfang Construction requested a density variance allowing it to build 304 residential units – 65 more than would normally be allowed for the size of its lot. This request was denied by the GLUC.

However, to compensate for wetlands and setback areas which would remain open spaces and in consideration of other costly conditions imposed by the GLUC, the following height variances were granted for the proposed twin towers: 168' for Tower 1 and 158' for Tower 2. While the GLUC's findings do facially appear to justify a departure or variance, the reasonableness of the amount of deviation allowed from the R-2 zone's height limit of 75' is debatable. Two petitions for judicial review have been filed in the Superior Court of Guam challenging the propriety of the height variances. The reasonableness of other findings, including the GLUC's certification that the variances will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the proposed resort is located, will also have to be litigated.

6. Due Process and Equal Protection.

Whether a landowner or developer is entitled to variance – and how much of a variance should be granted – are difficult decisions that must be made by an impartial tribunal. When the GLUC makes these decisions, it acts in a quasi-judicial capacity similar to a board of equalization responsible for deciding appeals challenging the fairness of property tax assessments.

Zoning laws are a valid exercise of the Legislature's power to protect the public's health and the environment. However, because landowner rights are also involved basic notions of due process and equal protection require that these laws be applied in a uniform or comprehensive manner. "A zoning ordinance must operate uniformly on those similarly situated." *Northwestern College v. City of Arden Hills*, 281 N.W.2d 865, 869 (Minn. 1979).

"[T]he equal protection clauses of the Minnesota Constitution and of the Fourteenth Amendment of the United States Constitution require that one applicant not be preferred over another for reasons unexpressed or unrelated to the health, welfare, or safety of the community or any other particular and permissible standards or conditions imposed by the relevant zoning ordinances."

Id. (quoting *Hay v. Township of Grow*, 206 N.W.2d 19, 24 (Minn. 1973)). See also, *Shelton v. City of College Station*, 754 F.2d 1251 (5th Cir., 1985)(parking variance may not be denied on arbitrary or discriminatory basis; zoning board may be held liable under Federal Civil Rights Act, 42 U.S.C.A. §1983, for deprivation of due process rights protected by the Fourteenth Amendment).

7. Bill 318-33 (COR) is Constitutionally Deficient.

To put it bluntly, a landowner's right to obtain a variance or a conditional use permit cannot be subject to veto by a council of village chiefs. MPCs cannot be allowed to block permit or variance applications for any reason, or no reason whatsoever, as this will deprive landowners and developers of fundamental due process and equal protection under the law.

8. MPC Decisions are Likely to be Arbitrary and Capricious.

Certain testimony at the public hearing provided a frightening picture of how re-zoning and variance decisions are likely to be made if Bill 318-33(COR) is enacted in its present form.

a. NIMBY Motives and Mob Rule.

Guam's tourism industry provides job opportunities for thousands of residents and generates hundreds of millions in badly needed tax revenue. If new hotel resort projects can be vetoed at the "municipal" level by a group of village leaders handpicked by a mayor, none of whom are appointed, elected or otherwise responsible for protecting the public's interest, there will be chaos and corruption, and investors will disappear.

An example of this chaos was on display at the hearing. An influential personality with impressive powers of persuasion threatened to launch a protest movement unless the condo project next door to her house is nixed. According to news reports, the public hearing conducted by the GLUC's staff in Yona was even more acrimonious. Sen. Brown demanded to know why no GLUC members were present at the Yona Community Center to hear the voices of local residents. She was

also upset that the GLUC met and decided Wangfang Construction Ltd.'s application in their offices at the ITC Building during working hours, when most village residents were at work.

These complaints are misplaced. An objective evaluation of the costs and benefits of a development project, the rights of landowners and developers to a re-zoning or a variance under Guam law, and what is best for the people of Guam, cannot be influenced by angry next door neighbors suffering from NIMBY, or dictated by a mob of protesters.

The number of persons who are for or against the granting of a variance is neither relevant nor a proper consideration in determining the merits of an application. One court observed that if this were not true, the result would be a government of men rather than one of law. It is improper for a board of adjustment to place weight upon the number of protestants rather than on the merits of an application. The strenuous objection of residents is not a legitimate basis for the denial of a variance. Revocation of a variance is not adequately supported when the principal reason for such action is that 1,000 persons signed a petition protesting the variance. The quality of the protest and not the quantity of its signers must guide the discretion of the board.

The purpose of a public hearing is to provide an opportunity for persons interested in a particular matter to express their opinions concerning the merits of the cause. It is not intended as an opportunity to poll the neighborhood. A Rhode Island court said: "A mere poll of the neighboring landowners does not serve to assist the board in determining whether the exception applied for is consistent with the public convenience or welfare or whether it will tend to devalue the neighboring property." . . . **Public notice of the hearing of an application for an exception . . . is not given for the purpose of polling the neighborhood on the question involved, but to give interested persons an opportunity to present facts** from which the board may determine whether the particular provision of the ordinance, as applied to the applicant's property, is reasonably necessary for the protection of . . . public health . . . **The board should base their determination upon facts which they find to have been established, instead of upon the wishes of persons who appear for or against the granting of the application.**

American Law of Zoning §20.82, pp. 617 - 618 (case citations omitted). [Emphasis added].

The GLUC uses the same procedures as other government boards and commissions. Meetings are conducted in a manner allowing the Commission to weigh evidence and consider the merits of each application free of undue influences and undistracted by well organized protests.

Project applications are reviewed and decided in an orderly fashion, in accordance with applicable zoning laws and regulations. How will they be decided at the village level?

b. Favoritism.

Another colorful character who testified in favor of Bill 318-33(COR), Mr. Ken Leon Guerrero, recommended that both the GLUC “and the legislature” should be barred from approving re-zonings absent prior MPC approval. Otherwise, he explained to loud laughter and applause, developers whose permits are stalled at the MPC level will simply “run to the Legislature”. There was something odd about his suggestion; it seemed rather flippant and tongue in cheek. I couldn’t put my finger on it until I remembered that the Estate of Jose P. Leon Guerrero, dec., represented by Mr. Leon Guerrero’s brother, Franklin, had recently bypassed both the GLUC and the MPC by “running to the Legislature”. See P.L. 30-231, which re-zoned Lot 165-R4, Piti, from A to M-1 (light industrial).

I personally have nothing against zoning legislation in appropriate cases. If the GLUC is backlogged, a compelling reason exists for the Legislature to step up. Thousands of acres of ancestral property are still sitting idle, creating no jobs and generating no tax revenue. These land parcels must be expeditiously zoned so they can be put to commercial or industrial use, just base closure properties on the mainland were re-zoned in rapid fashion to replace lost federal jobs and grow the economy. In the Leon Guerrero estate’s case, M-1 property near the Commercial Port was urgently needed for warehousing in anticipation of the military buildup. Detailed conceptual plans for an industrial park were submitted, the land was ideally situated with no residential units within 1/3 mile and adequate notice of the proposed development was reportedly given.

What is not right or fair is the old system of *familia* whereby government permits and approvals are handed out in a discriminatory manner, based on who the landowner knows. If it was okay for the Leon Guerrero estate to “run to the Legislature” for expedited relief from an outdated zoning designation so that land partly owned by Mr. Leon Guerrero could be put to its highest and best use, other less fortunate or less connected landowners should not be discouraged from pursuing the same remedy.

Guam cannot afford to return to the ‘good old days’ when pervasive corruption and favoritism plagued the permitting process. If Bill 318-33(COR) passes, multimillion dollar hotel resort projects will be stalled, developers will be held hostage at the village commissioner level, and it will be *deja vu* all over again.

c. Extortionate Permit Conditions.

Although the 5th Amendment prohibits regulatory “takings” of private land without payment of just compensation, land use exactions have become commonplace. Yona’s mayor mentioned that his village was still waiting for Leo Palace to turnover a promised baseball field. Another hotel developer was required to construct and operate a power plant of sufficient size to supply emergency

power for off-site municipal facilities. In the Pago Bay Marina Resort case, the GLUC's variance conditions are five pages long in small print.

In California (and probably Guam as well), property development is considered a privilege and not a right. *Associated Home Builders, Inc. V. City of Walnut Creek*, 4 Cal.3d 633, 638 (1971). Reasonable conditions designed to mitigate, or compensate for, a project's impacts are not unlawful "takings." Unless, of course, too much is taken by regulatory officials. Examples: *Loretto v. Teleprompter Manhattan CATV Corporation*, 458 U.S. 419 (1982)(state law requiring property owners to allow cable company to install cable facilities on apartment buildings is invalid regulatory taking); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)(regulation barring development on beachfront lots is a taking); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)(permit condition requiring beachfront owner to dedicate lateral access easement is a taking); *Bowman v. California Coastal Commission*, 230 Cal.App.4th (2014)(permit requirement to dedicate beach access easement prohibited); *Dolan v. City of Tigard*, 512 U.S. 374 (1994)(requirements to dedicate land for a drainage facility and an additional 15-foot wide strip for a pedestrian/bicycle path was disproportional to the development's minor impacts).

Will village leaders serving on an MPC have the expertise needed to distinguish between valid permit conditions and unlawful takings? Based on some of the mayors' testimony last Thursday, there is little doubt but that if Bill 318-33(COR) passes excessive demands will be made on resort developers and conditions imposed which have no nexus or proportionality to project impacts.

d. Development Projects Should Not Be Overburdened.

If ecologically sensible resort development is allowed in Southern Guam, these projects are likely to be located in areas with no existing (or inadequate) roadway access and utilities. Developers will be required to invest several millions just to install infrastructure which of course will have to be dedicated for the public's use and benefit. Anti-development activists believe new resorts will strain water and wastewater capacity in the Southern Villages. This may have been a problem in the past, but it is not likely to happen in the future for two reasons. *First*, if an existing waterline is near capacity, GWA will not permit the new connection unless the developer agrees to pay the entire cost of upgrading the line to increase capacity. *Secondly*, every developer is required to pay a huge system development charge (SDC) which GWA collects to ensure that all new users pay their fair share of system upgrades.

In addition to massive infrastructure and utility costs, developers are required to pay a multitude of fees and assessments before any dirt is turned. Control of soil erosion during and after construction, environmental mitigation studies, archeological studies, and the one-percent (1%) fee for local artwork are just a few of the burdensome costs imposed on developers. Is it prudent for the Legislature to add yet another layer of cost to these projects?

III. CONCLUSION

The GLUC might not be perfect, but they are in a much better position to resist corrupt influences from the rich and pressure tactics from the “nobodies” than a council of village chiefs. Each and every member of the GLUC is vetted by the Governor and Legislature during the confirmation process. In every administrative action, conflict of interest rules are strictly applied. Their proceedings are conducted in an open and transparent manner, on the record. They can be trusted to properly interpret land use laws and enforce zoning regulations in a fair and impartial manner, protective of the public’s health and welfare while also mindful of the rights of landowners and developers.

If Bill 318-33(COR) is enacted in its present form, land use planning will be balkanized and disorganized, investors will be discouraged and we will become a government controlled by village chiefs and angry mobs rather than the rule of law.

III. RECOMMENDATIONS

A. TEMPORARY MORATORIUM ON HEIGHT VARIANCES.

I know for a fact that many landowners, including yours truly, actually agree with some of the positions taken by Save Southern Guam, Inc., and others whose concerns were voiced at the hearing. I wholeheartedly agree that:

- The natural scenic beauty of Guam’s southern coastline absolutely must be protected and preserved.
- No high-rise buildings should be allowed anywhere in the south.
- No unsightly developments should be allowed to destroy priceless scenic views and vistas between Facpi to Malesso.
- Iconic bays and villages should never become ugly concrete jungles.

I am not as worried about runaway development. However, if some action must be taken in response to the outcries of so many residents, I recommend that Bill 318-33(COR) be amended to impose a temporary moratorium on the issuance of any height variances in the municipalities of Asan, Piti, Agat, Umatac, Merizo, Inarajan, Talofofu and Yona. The moratorium would remain in effect until the Southern Guam Master Development Plan is adopted.

B. EXPEDITE SOUTHERN GUAM MASTER DEVELOPMENT PLAN.

Much of the anger, frustration and distrust of zoning officials can be traced to a decades long failure of Guam’s political leadership to perform one of their most important duties, which is to

facilitate the creation of a master plan for Southern Guam and then update zoning laws to fit that plan. The sooner a master development plan is approved, the sooner appropriate, area-specific zoning ordinances can be tailored to prohibit unsightly development along the southern coast.

C. APPROPRIATE FUNDS AND RETAIN A CONSULTANT.

There is no need to reinvent the wheel. Many other islands have enacted land use controls to allow environmentally responsible and sustainable development so the economy can grow without destroying paradise. I recommend a close look at the updated zoning laws in Hawaii, where in addition to the usual zones there are P (preservation), C (country) and R (resort) zones to protect the North Shore and other coastal areas.

Last month at my request, GVB sent VIP invitations to all the mayors of Southern Guam to attend the PATA Summit and United Nations World Tourism Organization debate. Since they are now responsible for drafting the Southern Guam Master Plan, I thought they might wish to attend these conferences to gain information and insight from renowned experts including the Executive Director for Programme and Coordination at the UNWTO, the Minister of Tourism and Culture, Seychelles, and other top government and tourism industry officials from throughout Asia. The theme of the PATA Summit was “*Exploring the Secrets of the Blue Continent*”. The UNWTO debate focused on sustainable development of Pacific island economies.

Almost every expert emphasized two points: (a) residents must be involved; and (b) tourism-related developments should not be approved in an ad-hoc manner. You need a plan.

Regrettably, to my knowledge not one mayor bothered to attend. I was glad to see you, Speaker Won Pat, Vice-Speaker Cruz and Senator Muna-Barnes were there.

D. ALLOW EVERYONE TO PARTICIPATE.

Landowners have property rights, but the People of Guam will decide on a collective basis what kind of developments should be allowed in Southern Guam. Some residents are opposed to any development. Some want to exclude “outside investors”. Fortunately, the vast majority of Guam’s residents are not opposed to economic development *per se*. But they are concerned about uncontrolled or runaway development.

The sooner a planning process can be commenced, the sooner all points of view can be discussed and debated. The final product, a comprehensive land use plan, is not as important as the discussion and debate to get there. If done properly with multiple hearings in all villages and further input sought from village organizations, trade associations and other interest groups, it will soon become evident that the power to decide Guam’s future is indeed vested in its residents.

E. DON'T BALKANIZE THE ISLAND.

It makes no sense to have eight (8) separate municipal zoning boards, one for each southern village, with each establishing their own land use plan and enforcing their own ordinances. The GLUC's chair and DLM's director both testified that it often takes several phone calls and reminders to get MPCs to submit their resolutions. In the meantime building permits are delayed. How long will it take if each village has their own zoning officials, and how much will this cost? Will each municipality be authorized to charge a permit fee or assessment?

Growing and sustaining Guam's tourism-based economy is an island-wide priority. Protecting the environment and preserving the natural scenic beauty of Guam's southern coastline are also island-wide issues. If a major 5-star resort development is sited on Guam, the entire community will either win or lose depending on the terms and conditions of permit approval, which is why I believe all decisions concerning these projects should be made at the highest level by responsible officials.

Proponents of Bill 318-33(COR) assume that if all development projects must be approved at the local level by MPCs, municipal authorities will be more protective of the environment. This in my humble opinion is naive thinking. Mayors unable to fund urgently needed improvements, or even meet payroll, are likely to be easy prey for shrewd investors. What environmental "trade-offs" will they *not* be willing to make in return for a big fat check. Allowing mayors and local village councils to demand "accommodations" from resort developers is not good policy.

RESPECTFULLY SUBMITTED, this June 14, 2016.

/S/
OLIVER WESTON BORDALLO, ESQ.

cc: All Senators

June 11, 2016

Senator Tom Ada
Committee on Land
Ada Plaza Center, Suite 207
173 Aspinall Ave.
Hagatna, GU 96910

Dear Senator Ada:

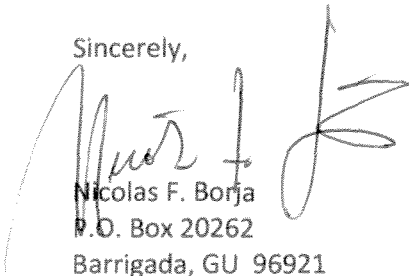
My name is Nicolas F. Borja, a resident of Pago Bay who strongly opposed the Pago Bay Marina Resort's request for height variance. My concerns were not just the heavier traffic, water, power and sewer issues, but more importantly, the destruction of the natural beauty of Pago Bay. I wanted my children and their children to continue to enjoy the greeneries and the unobstructed ocean view that I enjoy today.

Despite the large number of testimonies to include written, oral, online petitions and two village Municipal Planning Council resolutions opposing the project, the Guam Land Use Commission went ahead and approved the height variance allowing the Pago Bay Marina Resort to build 11-story and 12-story structures. This approval planted the seed for more high rises not just within the Pago Bay area, but on our beautiful southern coastal seashores as well.

I really felt "let down" by the decision of the Guam Land Use Commission when they approved the height variance that fateful day of April 28, 2016. Evidently, the voices of the many opposing the project weren't loud enough. Bill 318-33 requiring the Approval of the Municipal Planning Councils for Approval of Projects Under Review by the Guam Land Use Commission gives greater voices to the people. For that reason, I ask for your support on the passage of this bill.

Thanking you in advance.

Sincerely,



Nicolas F. Borja
P.O. Box 20262
Barrigada, GU 96921
789-2136 (h)
483-3388 (c)

005T-6/13/16
3:31 PM
RECEIVED by the
Office of Senator
Tom C. Ada

Analysis of Bill No. 318-33(COR)

1. Section 61105 states on line 11....*For each variance application, zone change, government lease.....*

Comment: The GLUC does not review or grant Leases on government lands. Only the CLTC (Chamorro Land Trust Commission) does that pursuant to their many mandates. It should be also noted that numerous government departments and agencies including autonomous agencies have government lands under their jurisdiction and have in the past issued leases for specific purposes. The Dept. of Recreation, Dept. of Agriculture, UOG, GCC, GPA, GWA to mention a few.

Present problems with the GLUC-ARC-Public Hearing Process: As it stands today and in the past a public hearing shall be conducted in the municipality where the subject lot requesting a zone change or other application.

Problem: In the past the assigned case planner to the application works with the respective Mayor's Office to lock in a date for the public hearing following the ARC hearing. Upon conclusion of the ARC hearing each ARC member (GPA, GWA, GEPA, Dept. of Agriculture, Dept. of Recreation, BSP) to mention the critical ones are required to submit their department's official Position Statement on the proposed application to DLM.

Unfortunately in many cases those position statements are not received by DLM nor the Mayor's Office prior to the scheduled public hearing. Therefore the MPC as well as the residents in the respective village that attend the public hearing DO NOT have that critical information that is very important. Thus the MPC will make a decision on their approval or dis-approval without the benefit of verifying the availability or adequacy of infrastructure...or the potential impact to water, power, traffic generation, wetlands, etc.

This is a serious situation that deprives the residents of information.

Problem #2: A previous law or executive order was established that mandates that DLM shall transmit the application on the next available GLUC hearing within 60-90 days if all position statements are not received by DLM. Again, this is counter productive in not allowing the public-at-large comprehensive and important information on the potential impact of any development in their villages.

2. Page 2, lines 1-5: *"No project application shall be approved by the GLUC unless it has received the approval of the relevant MPC through a resolution....."*

Analysis: This language as written applies to all 19 municipalities on Guam. My personal concern rest with the people afforded this authority.....The Mayor is an elected official., The GLUC are appointed. Both are entrusted with making decisions that should be fair, un-bais, and protect the people of Guam., but given the scenario I just elaborated earlier the questions then becomes...."How can any official in their capacity render a

final decision and faith of any proposed development when not all the relevant facts are presented to them in a timely manner ?

Inserting this particular language could potentially have negative “un-intended consequences” and discourage future developers because it basically applies to the entire island !

I could go on but I think you understand these important points I discussed with the present review and approval of land use applications before the GLUC., therefore,

My short term recommendations are as follows:

1. The Executive Order that mandates DLM to forward an application up to the GLUC within 60-90 days without receiving and attaching all ARC position statements should be rescinded. No application shall be placed on the GLUC agenda until such time that all position statements are made a part of the application., particularly GPA, GWA, BSP, Dept. of Recreation, Dept. of Agriculture, GEPA, etc.
2. No public hearing shall be scheduled within the municipality until such time that all official position statements are received by DLM-Planning Division and transmitted together with the application to the Mayor’s Office;
3. The Mayor shall afford all residents of their village sufficient time to review the complete application prior to the MPC submitting their official Resolution to DLM relative to the application;

The above three short term recommendations are designed to afford all residents of the affected village sufficient time to review the application.

Lastly it should be noted that a zone change in other jurisdictions (i.e. Hawaii, California) can take up to five years for review and approval. Our laws, executive orders and rules and regulations appear to favor the developer by “fast tracking” the process. I believe this is wrong.

Best Regards,

Felix R. Dungca, CFP
Certified Financial Planner

Former Chairman, Application Review Committee, Guam Chief Planner and Director of Land Management

----- Original message -----

From: Linda Tatreau <lindian@teleguam.net>

Date: 03/06/2016 08:58 (GMT+10:00)

To: aguon4guam@gmail.com

Subject: Bill 318-33

Linda Tatreau
P.O. Box 2696
Hagåtña, Guam 96932
(671) 828-7704

Dear Senator Aguon,

Thank you for introducing Bill 318-33. This bill shows again that you really have the interests of the people at heart. I understand that big business (big money/big development) is against this bill as it may impede the implementation of their plans for rapid and uncontrolled development.

As you well know, the need for this bill came to light with the approval of the Pago Bay Hotel by the Guam Land Use Commission. Four commissioners decided the fate of Pago Bay without concern for the wishes of the people of Yona, Pago Bay or Chalan Pago. The people spoke but the powers that decide our fate did not listen.

As an eternal optimist, I never expected the Pago Bay Hotel to be approved by the GLUC after the people voiced their opposition in person, in letters and via petition. I was losing faith in our government, but then you and Senator Morrison introduced the bill "***Requiring the Approval of Municipal Planning Councils for Proposed Projects Under Review by the Guam Land Use Commission.***"

Please stand by your bill and continue the fight as the voice for the people. Don't let the voices of big-money sway you.

Thank you for all you do,

Linda Tatreau
GW Teacher, retired
Merizo



Re: Submitted testimony regarding Bill 318-33 (COR) Public Hearing - June 9, 2016, 5:00 p.m

Buenas Honorable Speaker and Distinguished Senators,

Coming from a world where the pressures of economic growth and foreign ideals exert enormous influence on our ability to sustain the very ocean that defines us as an island people. The University of Guam Marine Laboratory is faced with an almost insurmountable challenge of supporting the people on Guam and throughout Micronesia in ways that enable us to make informed decisions, and achieve our goals of effectively managing our ocean resources, and the perpetuation Chamorro cultural practices and ideals. And after what happened as a result of our participation in the review of the Draft Environmental Impact Statement submitted for the US Guam Military Buildup, we remain committed to providing our technical and scientific expertise in support of our sister Gov. Guam agencies. BUT, after watching this process unfold for other various proposed developments all over this beautiful island that we call home, the UOG Marine Lab feels compelled to extend this offer of support to the Guam Land Use Commission in time to mitigate developments such as these from expanding beyond our ability to effectively manage these precious and vulnerable resources. So the People of Guam can rest assured once again, that those tasked with sustaining the beauty and uniqueness of the island of Guam have to tools and support they need to do just that.

Dangkulu Na Si Yu'tus Ma'ase,



Jason S. Biggs

University of Guam Marine Laboratory

Testimony submitted for Bill 318-33, 9 June 2016

To the Committee on Infrastructure and Land:

My name is Jonita Quenga Kerr and I am a resident of Dededo. I teach marine biology and chemistry at Guam Community College where I am also a faculty advisor of the student organization known as the GCC Ecowarriors. Last year, the Ecowarriors, along with Marine Mania from George Washington Sr. High School, Sharks M.A.D.E. from Simon Sanchez High School, and many grassroots supporters were involved in the effort to prevent stormwater from being diverted into Tumon Bay.

Being heavily invested in ensuring that our island is protected, I followed the developing story of the proposed Pago Bay Marina Hotel. I was present at the hearing held in Yona where over a hundred people showed up – most of them protesting the project. I was also present at a GLUC meeting during which I thought there was no way that this project would ever get approved. There were many who opposed the project who raised valid concerns and submitted strong, cogent oral and written testimonies. Frankly, I thought that the engineer and architect presented a case full of holes and broken agreements to the Commission.

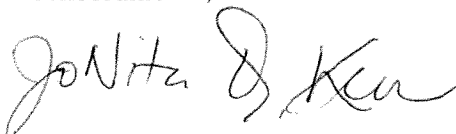
When only four members of the GLUC voted to approve the Pago Bay Marina Hotel, DESPITE the intense public opposition, it was clear to me that the people were ignored. This called for immediate collaborative action with the incorporation of Save Southern Guam. As one of the founding members of Save Southern Guam, Inc., I urge the Committee and the Legislature to approve Bill 318-33, which will provide residents a measure of control over projects that would profoundly affect their quality of life and the surrounding ecosystem. Because, apparently the Guam Land Use Commission, which was charged with upholding the law, cannot be trusted to do so.

I conclude with two points:

1. Because the Pago Bay Marina Hotel was granted an R2 zone change - when in fact the developers should have sought an H zone change - and a height variance, this will effectively open the floodgates to development on our beautiful southern coastlines. Any developer with land on the coast would be able to apply for a simple R2 zone change. Not just in our beautiful south, but anywhere a developer can picture a concrete tower. Think of the Tanguisson area in Dededo or coastal Mangilao. Any area that can be bought by Big Money is vulnerable because of the approval of the Pago Bay Marina Hotel project. It is for this reason that Save Southern Guam, Inc. is currently taking legal action to prevent the construction of the monstrous towers on Pago Bay.

2. Apparently developers can make empty promises and still get approved. The Pago Bay Marina Hotel promises a boat ramp, however, did the GLUC ever ask them if they had consulted the Army Corps of Engineers? Installing a boat ramp in that area of Pago Bay would involve dredging because of the large sand bar. In an area which is already affected by sediment carried to the bay from inland areas, dredging would increase the sediment load in the water and intensify the threat to the nearby coral reef. If the coral reef dies, there go the fish, a source of sustenance for fishermen who frequent the area. And, even if the developer were successful in obtaining approval from the Army Corps of Engineers, there is nothing in their proposal stating that they would be responsible for maintenance and repairs in the event of a storm, including re-dredging. Do they intend to leave GovGuam responsible for maintenance? We all know that is not something that our government can handle, let alone afford.

Senseramente,

A handwritten signature in black ink, appearing to read "Jonita Q. Kerr". The signature is written in a cursive, flowing style.



Tommy Morrison <tommy@senatormorrison.com>

Bill 318-33

Mayor Louise C. Rivera <mayorlcrivera.tatuha@gmail.com>

Thu, Jun 9, 2016 at 3:14 PM

To: tommy@senatormorrison.com

Hafa Adai Senator,

Unfortunately, I am unable to attend your public hearing due to a conflicting program here in Tamuning.

I Just want you to know that I am in full support of your wonderful bill. It is about time. However, please include to stop the Administrative Authority and going through legislation for short cut.

Not too long ago, former DLM Director Mr. Monte Mafnas, (God rest his soul) used his authority to approve a zone change based on his planners lie that no one opposed the zone change. At that previous public hearing, all the residents of Paseo de Oro and many others in the neighboring area loudly and clearly opposed it. Yet he made it go through.

Thank you for having our people's best interest at heart.

Louise

--

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Rodney C. Webb
141 Chalan Tasi, Pago Bay
Ordot Chalan-Pago, Guam 96910

June 9, 2016

The Honorable Senator Thomas C. Ada
Chairperson, Committee on Transportation, Infrastructure, Lands, Border Protection,
Veterans' Affairs and Procurement
I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN / 33rd GUAM LEGISLATURE
155 Hesler Place
Hagåtña, Guam 96910

RE: Bill No. 318-33 (COR) - An act to amend § 61105 of article 1, chapter 61, division 2, title 21, Guam Code Annotated, relative to requiring the approval of municipal planning councils for proposed projects under review by the Guam Land Use Commission.

Hafa Adai Chairman Ada:

Thank you for the opportunity to comment on the above-referenced bill. I testify here today that I am in full support of Bill No. 318-33 (COR).

I wish to first reference an event directly related to the hearing of this Bill. As you may know, on April 28, 2016, the Guam Land Use Commission granted conditional approval for a height variance to a developer that proposes to build two towers (an 11-story and a 12-story tower) on a property adjacent to the Pago River entrance to Pago Bay. This application was approved despite:

- Overwhelming public opposition expressed by local residents at the one and only public hearing on this application held at the Yona Community Center on January 6, 2016. Notwithstanding the hundreds of people in attendance, only 21 people were able to testify in person at this hearing because of mismanagement of the conduct of this meeting by the Department of Land Management;
- Municipal Planning Council Resolutions passed by each of the villages of Yona and Ordot Chalan-Pago opposing this application;
- Numerous written submissions to the Department of Land Management opposing this application; and
- More than one thousand people signing an on-line petition opposing this application.

Senator, in spite of our best efforts, our voices were not heard.

It was at this time that a group of concerned citizens came together, and decided to form an advocacy group, Save Southern Guam, Inc. I am a founding member of this organization. We have since pooled our resources, hired a private law firm, and filed a Petition for Legal Review and Injunctive Relief against the Guam Land Use Commission.

Senator, what choice did we have? There is an extremely limited planning regime in place for Guam, and these planning rules are being abused. In this particular case, the proposed development was presented as a residential condominium development. That is a ruse. It is not. It is, and always has been, a hotel development. It has been referred to as such by the developer's representatives on numerous occasions in different public forums. Therefore, the developer should have responsibly applied for a zone change for this development, and not a zone variance.

Bill No. 318-33 (COR) is a logical response to government not listening to our voices, and to developers manipulating planning rules to their own advantage. The current planning regime is clearly not working to advance the interests of the people of Guam.

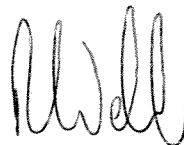
Bill No. 318-33 (COR) is simple, straight forward, and easy to understand. I appreciate that. It clearly states that the relevant Municipal Planning Council shall approve any and all applications for variance, zone change, government lease, conditional use application, and other proposed projects in their village before the Guam Land Use Commission can considered them.

Senator, I support responsible development. And Bill No. 318-33 (COR) is huge step forward to enforce responsible development. Why would any responsible developer not want the support of the people of the village in the form of an approval by the relevant Municipal Planning Council?

Senator, I support Bill No. 318-33 (COR) because it gives the local community greater control over future development proposals that will directly impact their quality of life. And I urge you and your colleagues to listen to the voices of the people you represent, and pass Bill No. 318-33 (COR).

Thank you for your support.

Senseramente,



Rodney C. Webb



DIPATTAMENTON MINANEHAN TANO'
 (Department of Land Management)
GUBETNAMENTON GUAHAN
 (Government of Guahan)



EDDIE BAZA CALVO
 Governor of Guahan

MICHAEL JB BORJA
 Director

RAY TENORIO
 Lieutenant Governor of Guahan

DAVID V. CAMACHO
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Street Address:
 590 S. Marine Corps Drive
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 Tamuning, GU 96913

Mailing Address:
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 Hagatña, GU 96932

Website:
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 671-649-LAND (5263)

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 671-649-5383

June 6, 2016

Senator Thomas C. Ada
 33rd Guam Legislature
 Chairman, Committee on Transportation,
 Infrastructure, Lands, Border Protection,
 Veteran's Affairs and Procurement
 173 Aspinall Ave, Ste 207
 Hagatna, Guam 96910

SUBJECT: Bill No. 318-33 – AN ACT TO AMEND §61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL FO MUNICIPAL PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY THE GUAM LAND USE COMMISSION.

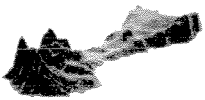
Buenas Yan Hafa Adai!

Bill No. 318-33 appears to be an immediate reaction to a recent decision taken by the Guam Land Use Commission (GLUC). While the bill is short on dialog, its ramifications are extensive with severe long-term unintended consequences.

Bill 318-33 would significantly change the way the Guam Land Use Commission operates because it would change the law to require *approval* of the relevant Municipal Planning Council before any "project application" could be approved by the Commission. There already exist five other statutory sections of the Guam Code Annotated regarding the respective mayors' municipal planning councils to participate and express their position in applications submitted to the Guam Land Use Commission for zone changes or zone variances.

In every action taken by the GLUC or the Director of Land Management regarding zone changes or zone variance, there is a corresponding remedy available by the Governor of Guam, the Guam Legislature, or the Superior Court to either reject the action or have an availability for an appeal of the decision.

It must be noted, the Guam Land Use Commission is a body empowered by law and with corresponding staff to assist with the processing and review of applications. The



commissioners are appointed by the Governor with the advice and consent of the Legislature. The commissioners' decisions are based on the comments and recommendations from a host of other government regulatory agencies and departments who are subject area experts in their field. In almost every decision made by the commissioners, their Notice of Action includes a series of conditions which the applicant is obligated to adhere with most of the conditions set forth by the regulatory agencies.

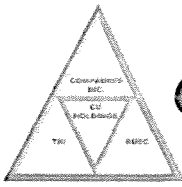
While the mayors' municipal planning councils play a role as set forth in existing statutes, these members are neither elected nor are they appointed the Governor and confirmed by the Legislature. Their role is to express the opinion of its members in the form of a resolution adopted by the majority of its members. Since 2011, the GLUC extended sixty-seven notifications to mayoral councils on matters regarding their municipality. In return, only twenty-one resolutions were received and in many instances it was after repeated follow-ups by the GLUC staff.

Bill No. 318-33 is a significant shift in authority to an unelected and unconfirmed body with no corresponding staff or safeguards to appeal or override their decisions. The municipal planning councils would then effectively block any project, no matter how beneficial to the community or the island based on their subjectivity by simply failing to transmit its approval. Bill 318-33 does not account for circumstances where the MPC is unable to meet or to agree to a resolution. If Bill 318-33 becomes law, this type of situation would result in blocking all development in a community, even where residents supported a project.

The Department of Land Management does not support Bill No. 318-33 and recommends it not be reported out of committee nor approved by this Legislature.

Senseramente,


MICHAEL J.B. BORJA
Director



CU HOLDINGS, INC.

562 Harmon Loop Road, #200 Dededo, Guam 96929
Telephone: (671) 635-3093/4/5/6 ■ Fax: (671)632-3678 ■ E-mail: rumc@ite.net

June 9, 2016

Dear Senator Ada:

I am the president of CU Holdings. My partner Ed Camacho and I have developed projects such as Flora Pago Gardens, Compadres Mall, Cost U Less Complex in Dededo, Paradise Estates, and Paradise Meadows.

This bill proposing to give each Village Municipal Planning Council “veto” power over proposed developments in their villages will create havoc and chaos in the land use planning and approval process. It is bad for development, it is bad for planning, and it is bad for Guam. We recommend that this bill be rejected in its entirety.

We know from first-hand experience that it is difficult to get things approved by the GLUC. The GLUC closely scrutinizes every aspect of a proposed development extracting concessions that will be for the good for Guam, all at the expense of developers and their proposed projects. The System Development Charge that has been established substantially taxes a project as it is. It at least takes the guessing out of how much a developer has to contribute to the overall island fund for improvements in the infrastructure of water and sewer.

The GLUC reviews every project on a macro and micro point of view. It has legal standards that every developer has to meet. These standards were also designed to keep the GLUC from being arbitrary, capricious, and unreasonable. The GLUC are typically composed of members who have the knowledge, expertise, and experience to be able to review a project. These are members who have been appointed by the governor and carefully scrutinized by the Legislature, whose confirmation is required. The GLUC has the professional staff, tools and resources to review a project in accordance with the law. Each project that goes before the GLUC has to go through the ARC and be able to meet each agency’s standards and demands. All of these steps in this long and arduous process were designed to keep the process fair and reasonable. Finally, the GLUC seriously and significantly does factor in the concerns and recommendations of residents who gave their

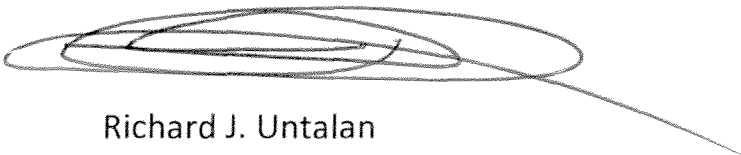
input at the public hearing on the village level and the Village Municipal Planning Council. The GLUC, from its perch, then assimilates and digests all the information presented to them, analyses the pros and cons, weighs the competing interests, and then makes a decision based on the statutory legal standards mandated by law. This is a process that while not perfect, ensures that the process is fair and reasonable to all competing interests based on the rule of law.

Giving the Village Municipal Planning Council the power to veto any project will destroy this carefully designed review process creating absolute chaos and uncertainty. Every developer will be subject to the whims and capriciousness of every member of a Village Municipal Planning Council, none of whom go through a confirmation process. They can make unreasonable (and even illegal!) demands on a developer and are not bound by any legal standards under the law. They can say NO to a project merely because they do not like the color of a developer's eyes or because the developer refuses to pave the road of a friend or relative in the village. You can see where I am going with this. It will be like the Wild Wild West. Nothing is set and anything goes.

If any person or group does not like the decision of the GLUC, then let him or them appeal it to the Superior Court. It will be heard fairly and rationally. That is how the democratic process works with a system of checks and balances that prevents the process from devolving into a game of crab shoot, black jack, and poker and where the house always wins.

Giving a Municipal Planning Council veto power is like creating another layer of the GLUC, on a village level, but without any of the legal standards, precedents, restrictions, expertise, and checks and balances. This is bad law.

Si Yuus Mase.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Richard J. Untalan
President

CC: Eduardo G. Camacho, Chairman

9 June 2016

To: Senator Thomas C. Ada, Chairperson, Committee on
Transportation, Infrastructure, Lands, Border Protection,
Veterans' Affairs, and Procurement
From: Adrian Gogue, Vice Chairperson, Save Southern Guam, Inc.
Subj: BILL 318-33 (COR): AN ACT TO AMEND SECTION 61105 OF
ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE
ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL
PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY
THE GUAM LAND USE COMMISSION

1. Buenas Noches Senator Thomas Ada, Senator Frank Aguon Jr.,
Senator Tommy Morrison, and fellow islanders. I am Adrian
Gogue, resident of Ordot-Chalan Pago, and a member of Save
Southern Guam, Inc.
2. Save Southern Guam, Inc. unequivocally and fully supports Bill
318-33. Our presence here today is to say:
 - YES to Saving Our Island
 - YES to Responsible Development
 - YES to The People and Village Voices
 - YES to Government Accountability
 - NO to The Pago Bay Hotel
 - NO to Overdevelopment
 - NO to Special Interest Groups that promote their
financial gain contrary to the permanent protection of
the natural, scenic, and historical resources of the
seashore reserve
3. Save Southern Guam, Inc. is a grass roots movement advocating
the protection of the seashore and coastal beauty of southern
Guam. Our group further advocates responsible development
along the seashore and coastal areas in accordance with Guam
Code Annotated (GCA), Title 21 (Real Property) that include
but not limited to Chapters:
 - 61 (Zoning Law),
 - 63 (Guam Territorial Seashore Protection Act of 1974),
 - 64 (Ocean Shores: Territory Beach Areas), and
 - 65 (Public Access to the Ocean Shore).

The protection of our seashores is more than a novel idea. It's
important to us, otherwise the aforementioned chapters would
never have been signed into law.

Subj: BILL 318-33 (COR): AN ACT TO AMEND SECTION 61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY THE GUAM LAND USE COMMISSION

4. Bill 318-33 is consistent with our movement and message. This bill will provide the people of Guam a seat at the table and have our voices heard via the villages' Municipal Planning Councils. Bill 318-33 empowers the people of Guam to hold the Guam Land Use Commission accountable and responsive to the will of the people, because on 28 April 2016, the Guam Land Use Commission acted contrary to this and granted conditional approval for a height variance to the Pago Bay Marina Resort developer to build 11-story and 12-story towers in the area adjacent to the Pago River. These towers make up a hotel and certainly do not complement Pago Bay's seashore reserve, natural beauty and surrounding neighborhood. Instead, these towers will be twin monstrosities that will stick out as eyesores in this serene coastal part of our island.

This shocking approval was granted despite 2 Village Municipal Planning Councils passing resolutions opposing the variance, a huge turnout at a public hearing opposing the project, written comments that were submitted to the Department of Land Management, and over a thousand people signing an on-line petition opposing the project.

5. The Guam Land Use Commission's approval plants the seed that can wildly grow out of control. This approval sets the precedence for outside investors to target our southern pristine and iconic bays for development. Already on the horizon is another hotel outside investors are considering, as reported by local media on 2 December 2015:

"A multinational group of investors has acquired 22,500 square meters of land across from the Agat Marina as part of a plan to build a five-star hotel in southern Guam. The proposed 144-room, 15-story Sirena Grand Hotel will be developed across from the Agat Marina, a spokesman for the group said. The group is led by Pacific Asian Developments Ltd., or PADL, a hotel and resort development corporation registered in the Bahamas."

6. As a result of the announcement in December, Save Southern Guam quickly formed and voiced their opposition to this proposal. We encourage fellow islanders and anyone who shares our message and passion to join our cause. You could visit us on Facebook. The time has come to save what remains of our southern seashores and coastal beauty. The stakes are too high

Subj: BILL 318-33 (COR): AN ACT TO AMEND SECTION 61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY THE GUAM LAND USE COMMISSION

for us to just sit idle and remain silent. Instead, we need to stand up against big money and special interest groups. Groups, for example, which are operating 8,556 miles away in the Bahamas or 2,323 miles in Asia. Groups that want to impose their way and decide the future of our island with little to no regard to the people of Guam and the protection of our island's beautiful seashores and iconic scenic bays. Our beautiful seashores will become concrete jungles, as developers will turn their sights toward Ylig, Talofoyo, Inarajan, Merizo, Umatac, Cetti, Sella, and Agat. Future generations will only have digital images, stored somewhere in the virtual cloud, of what was once a beautiful southern Guam. We will be reminded of that popular Chamorro song Southern Comfort by Marianas Homegrown, with the following lyrics, "There's a village down in the southern end of my island, she lies along the sea, below the virgin mountains of Guam. Oh how I yearn to return there."

7. Honorable Senators and fellow islanders, we need to pass Bill 318-33 and return power to the people and stop indiscriminate development across the island. We need to pass Bill 318-33 to empower a Village's Municipal Planning Council and hold the Guam Land Use Commission accountable to the will and voices of the people of Guam.

8. In closing, let us remind ourselves of the Inifresi Pledge:

Ginen i mäs takhilo' gi hinasso-ku
I mäs takhalom gi kurason-hu,
Yan i mas figo' na nina'siña-hu,
Hu ufresen maisa yu'
Para bai prutehi yan hu difende
I HINENGGE,
I KOTTURA,
I LENGGUÄHI,
I AIRE,
I HANOM yan I TANO' CHAMORU
Ni' irensiã-ku direchu ginen as Yu'os Tãta,
Este hu afitma gi hilo' I Bipblia yan I Banderã-hu,
-I Banderan Guãhan.

From the inner-most recesses of my mind,
From deep within my heart,
And with all my might,

Subj: BILL 318-33 (COR): AN ACT TO AMEND SECTION 61105 OF
ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE
ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL
PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY
THE GUAM LAND USE COMMISSION

This I offer.
To protect and defend
The Beliefs
The Culture
The Language
The Air
The Water and The Land of the CHamoru.
My heritage comes directly from God,
This I affirm on the Bible and my Flag
The Flag of Guahan.

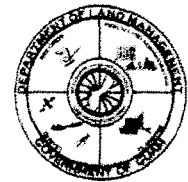
9. Senators, Un Dang'ka'lu Na Si Yu'us Ma'ase para un Satba y
Haya Guahan para fan gosa y generasion agupa. Thank you
Senators for wanting to Save Southern Guam for generations to
enjoy.

Senseramente,

A handwritten signature in black ink, appearing to be "Antonio S. G. ...", written in a cursive style.



**GUAM LAND USE COMMISSION
GUAM SEASHORE PROTECTION COMMISSION**



Street Address:
90 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

GLUC COMMISSIONERS

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CHAIRMAN

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June 7, 2016

Senator Thomas C. Ada
33rd Guam Legislature
Chairman, Committee on Transportation,
Infrastructure, Lands, Border Protection,
Veteran's Affairs and Procurement
173 Aspinall Avenue, Ste 207
Hagatna, Guam 96910

RE: Bill No. 318-33 – AN ACT TO AMEND §61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY THE GUAM LAND USE COMMISSION

Hafa Adai Senator Ada,

Bill No. 318-33 (hereafter "the Bill") will introduce significant confusion and puts into question the role and authority of the Guam Land Use Commission (hereafter "GLUC"). It has the potential to restrict landownership rights to use and develop private property to the maximum extent allowed by law. It also runs the risk of stifling economic growth brought about by real estate investment and development.

It has been stated publicly that the Bill is needed because the public, through the relevant Municipal Planning Council (hereafter "MPC"), needs to be heard in matters before the GLUC. Yet there currently exists multiple opportunities for public and MPC input on these matters. These opportunities, together with other provisions in the law, create a level playing field for landowners and the public. Additionally, the law currently allows those negatively impacted by a GLUC decision an avenue to have the decision reviewed or reversed.

The Bill shifts away from a level playing field by granting near absolute authority in land use issues solely in the MPC. Furthermore, the Bill provides no recourse for those negatively impacted by MPC decisions other than to challenge the measure's suppression of private property rights.



Members of the GLUC are appointed by the Governor and are confirmed by the Legislature. Members of the MPC are not. GLUC decisions are supported by the technical, professional and legal assistance of experts in their fields. Those resources are not available to the MPC thus increasing the risk that decisions will be based on subjective reasoning. How does the Bill afford a greater level of comfort than that which already exists?

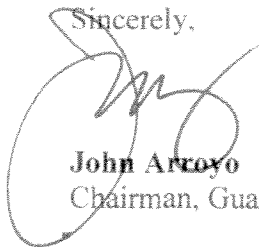
It has also been stated publicly that the Bill is needed to increase transparency in the sense that landowners and prospective property owners are put on notice that development of their property requiring zone changes, conditional uses and variances will need public approval via the MPC. The implication being that they potentially may not be able to develop their real estate to its highest and best use. This uncertainty will drive away real estate investment and its beneficial economic value. Additionally, a prohibition on maximizing the value of real property allowed by law is a constraint of private property rights. It should be noted that this would affect commercial real estate developers and owners of single family properties equally.

The GLUC is often faced with difficult situations. As GLUC Chairman I know our decisions may not always be the most popular but they have been and will continue to be fair, objective, based soundly on expert advice, and open to challenge by those so inclined to do so.

The Bill does not improve existing laws. It creates an uneven playing field, provides no recourse for those aggrieved, increases the probability of subjective decisions, increases investor uncertainty, can potentially restrain property ownership rights, and places undue pressure on landownership.

I oppose the Bill for these reasons.

Sincerely,



John Arroyo
Chairman, Guam Land Use Commission

June 9, 2016

Senator Thomas C. Ada, Chairperson

Committee on Transportation,
Infrastructure, Lands, Border Protection,
and Procurement

Subject: **Testimony in Support of Bill 318-33**

Although Bill 318-33 is noteworthy in its attempt to require the approval of Municipal Planning Councils (MPC) for proposed changes to land use regulations, it fails to remedy the existing and inadequate review and deliberation processes undertaken by the Guam Land Use Commission, and actually makes existing processes more convoluted. Moreover, it assumes: (1) there exists an organized MPC in each village; (2) that the MPC, given its composition (§ 40125, Title 5, Chapter 8) is representative of the community; (3) that there exists a process for deliberations, and specifically how and when the decision by the MPC is conveyed to the GLUC; and (4) that they possess the required technical information and other resources required to deliberate effectively, efficiently and in the interests of all residents of Guam.

It is clear the authors, Senators Frank Aguon, Jr. and Tommy Morrison, introduced the bill in reaction – and rightfully so – to the recent approval of the proposed Pago Bay development by Wanfang Construction, LTD.¹ Despite the following, the GLUC unanimously approved the request:

(1) formally adopted opposition by the Municipal Planning Councils of Chalan Pago and Yona;

(2) findings by government agencies that the proposed project may result in significant and substantial harm to the public's health, safety, welfare and morals; and

(3) documented public opposition by community leaders, elected representatives, surrounding property owners, and in general, the public, whom expressed concern regarding the negative impacts on (a) property values, (b) subpar water and wastewater infrastructure, (c) historic and cultural resources, (d) existing traffic congestion, and (e) ecological resources, including wetlands and coral reefs.

¹ <http://senatormorrison.com/bill-requires-village-approval-for-gluc-projects/>

They did so, however, without properly and responsibly reviewing the proposal and exploring alternatives. That is, the GLUC in stating its justification for granting the variance, as required by law, and as part of the Notice of Action, copied and pasted verbatim the discussion of certain requirements directly from the applicant's proposal.² One could presume the decision to approve the request was determined before the review and deliberation processes began.

Unfortunately, the proposed legislation does very little to prevent such hastily, irresponsible and bias decision making from occurring in the future.

If the authors aspire to ensure the "needs and desire of every resident" are considered in land use review and deliberation processes, and that those decisions are transparent, representative of the community's needs and morals, and equitable, **the legislation should be amended to:**

(1) change the composition of board to include at least two (2) members elected during the General Election;

(2) standardize review and deliberation processes for zoning changes, to include conditional and variance decisions, notification requirements, and regular GLUC meetings standards; and

(3) create a repeal process that does not require the Supreme Court of Guam, which is already burdened, to deliberate on such matters.

For purposes of time, and the fact that the latter two proffered recommendations are clear in their purpose, I will only address the first proposed amendment. Although, I welcome any questions regarding the latter two.

The existing composition of the GLUC is inadequate because the decisions made, like those by Consolidated Commission on Utilities, have a bearing on all island residents; the existing number and employer of certain members raises questions regarding the ability to make decisions impartially; and antiquated land use regulations and policies inhibit the ability of the GLUC to make decisions that meet existing demands and reflect community morals.

² Save Southern Guam, Inc., et al., vs. Guam Land Use Commission, et al.

While negative impacts impair adjacent and surrounding land owners directly, decisions that diminish aesthetical qualities that we value as a community, negatively affect air and water quality, or destroy cultural resources, impact us all. Although the GLUC commission is comprised of seven members who are appointed by the Governor and then confirmed by the Legislature, the commission currently consists of five members – two of which are employed by the Office of the Governor, garnering more than \$90,000 annually each. Surely this raises questions of impartiality and representation in decisions that have longstanding impacts on individuals, neighborhoods, villages and the island as a whole. It is not unreasonable that a governing body tasked with such a critical role – one that impacts us all – be made up of representatives other than those appointed by the governor.

Furthermore, antiquated land use regulations, along with the lack of land use plan inhibit the GLUC from making sound decisions. A land use plan is critical to land use decisions because it provides a systematic assessment of existing social, ecological, economic and cultural resources, and proposes land use alternatives appropriate for advancing the well-being of island residents now while safeguarding resources for future generations. Instead, the GLUC evaluates projects incrementally, resulting in undesired land use changes, such as the proposed Pago Bay development. To date, the government of Guam has yet to identify, for example, land suitable for agriculture production; land required to reduce erosion and correlated damage to marine and coral resources; land that could be used to teach and practice cultural traditions; land required to protect our already diminishing aquifer; and so on.

By changing the composition of the GLUC, you allow for the community via two elected members to express their interests, in addition to those appointed members who are inarguably beholden to the governor, not the community. Additionally, standardizing the review and deliberation processes, and creating a process that does not require the Supreme Court of Guam to intervene, provides for a more transparent, equitable and efficient process for the GLUC, developers and residents. It's clear by the recent decision to approve the request by Wanfang Construction, LTD., that the GLUC is so narrowly focused on economic development that it ignores all other aspects of life on Guam, largely to the detriment of those less well off, or those unwilling to "vote with their feet" and relocate. The responsibility to decide how land, Guam's most valuable resource, is best used should be shaped by the community, and not a select few that "serve at the will of the governor."

Jimmy T. Camacho

Camacho.JimmyT@gmail.com

Testimony on Bill 318-33

Submitted by Cara Flores-Mays

Bill 318-33 was proposed after the GLUC approved the Wanfang Construction, LTD Pago Bay development in spite of negative findings of potential harm to the public by public agencies and massive opposition by Yona and Chalan Pago residents, both village municipal planning councils and numerous community members and public leaders.

While the intent of Bill 318-33 is a good one, hasty enactment of this legislation could further convolute the process while failing to protect the public and community from similar developments. While there are a multitude of issues to consider, I list the following three as items that should be addressed in revisions or in a subsequent bill:

1. A business/individual/entity, just because they have purchasing power, should not be able to develop land without the consent of the neighborhood and surrounding community if the development threatens the resources and quality of life of community members.
2. Businesses/individuals/entities that seek to develop within a community should obtain consent of the community through some means which places burden on the proposer vs on the community to fight the proposal. Before GLUC ever sees a proposal, there should be some indication from the community which will be impacted that it is in support of the project proposed.
3. The GLUC members must clearly understand that their decisions should be made within certain values, I would suggest, of protecting community, culture and resources -- and that failure to do this is a breach of obligation.
4. If the GLUC is to be a body that votes on developments that affect the resources and quality of life of an entire community, these members should be elected and/or appointed by a fair vote / board rather than by a process in which they are beholden to their appointor (the governor). These members should also be qualified or trained to consider the safeguarding of community, culture and resources.

Additionally, I echo concerns of other community members who are concerned that GLUC continues to make decisions in a vacuum, without a long-term plan that addresses the current needs of the community while honoring culture and protecting resources for future generations:

"Furthermore, the antiquated land use regulations, along with the lack of land use plan, which would assess systematically, existing social, ecological, economic and cultural resources, and propose land use alternatives appropriate for advancing the well-being of island residents now while safeguarding resources for future generations, inhibit the GLUC from making sound decisions. Instead, the GLUC evaluates projects incrementally and in isolation from future needs and land use alternatives. To date, the government of Guam has yet to identify, for

example, land suitable for agriculture production; land required to reduce erosion and correlated damage to marine and coral resources; land that could be used to teach and practice cultural traditions; land required to protect our already diminishing aquifer; and so on.”

(Testimony submitted by Jimmy T. Camacho)

I would encourage the authors of this bill to consult community members and to form a thinktank before finalizing such legislation. This would ensure that the systemic and moral failure of the GLUC to make decisions that prioritize our community and protect our resources are adequately addressed.

With Respect,
Cara Flores-Mays



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature
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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muna Barnes
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
Nerissa Bretania Underwood
Member

V. Anthony Ada
MINORITY LEADER

Mary C. Torres
MINORITY MEMBER

May 20, 2016

Memorandum

To: Rennae Meno
Clerk of the Legislature

From: Senator Rory J. Respicio
Chairperson of the Committee on Rules

Subject: Fiscal Notes and Fiscal Note Waiver

Hafa Adai!

Attached please find the fiscal notes and fiscal note waiver for the bill numbers listed below. Please note that the fiscal notes and fiscal note waiver are issued on the bills as introduced.

FISCAL NOTES:

- Bill No. 300-33(COR)
- Bill No. 303-33(LS)
- Bill No. 304-33(LS)
- Bill No. 305-33(LS)
- Bill No. 306-33(LS)
- Bill No. 307-33(LS)
- Bill No. 308-33(LS)
- Bill No. 313-33(COR)
- Bill No. 314-33(COR)
- Bill No. 315-33(COR)

FISCAL NOTE WAIVER:

- Bill No. 318-33(COR)

Please forward the same to MIS for posting on our website. Please contact our office should you have any questions regarding this matter.

Si Yu'os ma'åse'!

2016 MAY 20 11:25 AM



BUREAU OF BUDGET & MANAGEMENT RESEARCH

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

EDDIE BAZA CALVO
GOVERNOR

RAY TENORIO
LIEUTENANT GOVERNOR

JOSE S. CALVO
DIRECTOR

LESTER L. CARLSON, JR.
DEPUTY DIRECTOR

MAY 19 2016

The Bureau requests that Bill No. 318-33 (COR) be granted a waiver pursuant to Public Law 12-229 as amended for the following reason(s):

Bill No. 318-33 (COR) is an Act to amend §61105 of Article 1, Chapter 61, Division 2, Title 21, Guam Code Annotated, relative to requiring the approval of municipal planning councils for proposed projects under review by the Guam Land Use Commission (GLUC).

The cited amendment stipulates that variance applications, zone changes, government leases, conditional use applications, and other projects involving the land in Guam can only be approved by the GLUC after the GLUC has received the approval from the relevant Municipal Planning Council through a resolution adopted pursuant to §40128(f) of Article 1, Chapter 40, Division 4, Title 5, Guam Code Annotated.

The intent of the Bill is administrative in nature and poses no fiscal impact upon any funds of the Government of Guam.


JOSE S. CALVO



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature
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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

May 16, 2016

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

VIA E-MAIL
joey.calvo@bbmr.guam.gov

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Jose S. Calvo
Director
Bureau of Budget & Management Research
P.O. Box 2950
Hagåtña, Guam 96910

Vice-Speaker
Benjamin J.F. Cruz
Member

RE: Request for Fiscal Notes – Bill Nos. 316-33(COR) through 318-33(COR)

Legislative Secretary
Tina Rose Muna Barnes
Member

Hafa Adai Mr. Calvo:

Senator
Dennis G. Rodriguez, Jr.
Member

Transmitted herewith is a listing of *I Mina'trentai Tres Na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Senator
Frank Blas Aguon, Jr.
Member

Si Yu'os ma'dse' for your attention to this matter.

Senator
Michael F.Q. San Nicolas
Member

Very Truly Yours,

Senator
Nerissa Bretania Underwood
Member

Senator Rory J. Respicio
Chairperson of the Committee on Rules

V. Anthony Ada
MINORITY LEADER

Attachment (1)

Mary C. Torres
MINORITY MEMBER

Cc: Clerk of the Legislature

Bill Nos.	Sponsor	Title
<p>316-33 (COR)</p>	<p>V. Anthony Ada</p>	<p>AN ACT TO ADD A NEW ARTICLE 24 TO PART 2 OF CHAPTER 12, 10 GCA RELATIVE TO AUTHORIZING ACCESS TO AND USE OF EXPERIMENTAL TREATMENTS FOR PATIENTS WITH AN ADVANCED ILLNESS; TO ESTABLISH CONDITIONS FOR USE OF EXPERIMENTAL TREATMENT; TO PROHIBIT SANCTIONS OF HEALTH CARE PROVIDERS SOLELY FOR RECOMMENDING OR PROVIDING EXPERIMENTAL TREATMENT; TO CLARIFY DUTIES OF A HEALTH INSURER WITH REGARD TO EXPERIMENTAL TREATMENT AUTHORIZED UNDER THIS ACT; TO PROHIBIT CERTAIN ACTIONS BY PUBLIC OFFICIALS, EMPLOYEES, AND AGENTS; AND TO RESTRICT CERTAIN CAUSES OF ACTION ARISING FROM EXPERIMENTAL TREATMENT.</p>
<p>317-33 (COR)</p>	<p>Dennis G. Rodriguez, Jr. Brant T. McCreddie T. R. Muña Barnes R. J. Respicio</p>	<p>AN ACT TO APPROPRIATE UP TO SEVENTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$72,500) FROM THE FISCAL YEAR 2017 GENERAL FUND REVENUES FOR GUAM'S MEMBERSHIP INTO THE WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION (WICHE) RELATIVE TO PROVIDING AFFORDABLE TUITION RATES FOR GUAM'S UNDERGRADUATE STUDENTS AT OVER 150 INSTITUTIONS WHO ARE PART OF THE WICHE NETWORK.</p>
<p>318-33 (COR)</p>	<p>FRANK B. AGUON, JR Tommy Morrison</p>	<p>AN ACT TO AMEND § 61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY THE GUAM LAND USE COMMISSION.</p>



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature

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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

May 13, 2016

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

MEMORANDUM

Speaker
Judith T.P. Won Pat, Ed.D.
Member

To: **Rennae Meno**
Clerk of the Legislature

Vice-Speaker
Benjamin J.F. Cruz
Member

Attorney Therese M. Terlaje
Legislative Legal Counsel

Legislative Secretary
Tina Rose Muna Barnes
Member

From: **Senator Rory J. Respicio**
Chairperson of the Committee on Rules

Senator
Dennis G. Rodriguez, Jr.
Member

Subject: **Referral of Bill No. 318-33(COR)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 318-33(COR)**.

Senator
Frank Blas Aguon, Jr.
Member

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Tres Na Liheslaturan Guåhan*.

Senator
Michael F.Q. San Nicolas
Member

Should you have any questions, please feel free to contact our office at 472-7679.

Senator
Nerissa Bretania Underwood
Member

Si Yu'os Ma'åse!

V. Anthony Ada
MINORITY LEADER

Attachment

Mary C. Torres
MINORITY MEMBER

I Mina'Trentai Tres Na Liheslaturan Received
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
318-33 (COR)	FRANK B. AGUON, JR Tommy Morrison	AN ACT TO AMEND § 61105 OF ARTICLE 1, CHAPTER 61, DIVISION 2, TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE APPROVAL OF MUNICIPAL PLANNING COUNCILS FOR PROPOSED PROJECTS UNDER REVIEW BY THE GUAM LAND USE COMMISSION.	05/13/16 4:46 p.m.	05/13/16	Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement			



Office of
Senator Tom Ada

Peter Tran <peter@senatorada.org>

1st Notice of Confirmation/Public Hearing: Thursday, June 9, 2016 at 5:00pm

1 message

Blaine Dydasco <bdydasco@senatorada.org>

Wed, Jun 1, 2016 at 9:44 AM

To: phmaterials@guamlegislature.org, phnotice@guamlegislature.org, Media <media@senatorada.org>, franksantos1914@hotmail.com, Marge Duenas <mduenas@portguam.com>, jbrown@portguam.com, mdrtaitano@gmail.com, Cristina Gutierrez <Cristina.Gutierrez@land.guam.gov>, dlmdir@dml.guam.gov, michael.borja@land.gov, jarroyo@tggua.net, "Mayor Paul M. McDonald" <mayor.mcdonald671@gmail.com>, Agat <agatmayorsoffice@hotmail.com>, ksusico@yahoo.com, Asan Maina <hamiasanmaina@gmail.com>, Barrigada <bmomayor@gmail.com>, Barrigada <jessie.bautista007@gmail.com>, Jessy Gogue <ocp.mayor@gmail.com>, MELISSA SAVARES <melissa.savares@gmail.com>, peter_daigo@hotmail.com, hagatnamayor@hotmail.com, Doris Lujan <mayordorisfloreslujan@gmail.com>, inarajan municipality <inarajanmayorsoffice@gmail.com>, nblas_magilaomayor@yahoo.com, vicemayor_allan.ungacta@yahoo.com, mayorernestc@yahoo.com, mtmmayorsoffice1@yahoo.com, pitimayor@yahoo.com, Dale Alvarez <daleealvarez@gmail.com>, guammayor@gmail.com, rudyiriarte@gmail.com, talofofomayor@gmail.com, "Mayor Louise C. Rivera" <mayorlcrivera.tatuha@gmail.com>, vicemayorsantos.tatuha@gmail.com, umatacmo@gmail.com, yigomayorsoffice@gmail.com, yigovice@gmail.com, kenjoeada@yahoo.com, Committee members <committee@senatorada.org>, "Frank Blas Aguon, Jr." <aguon4guam@gmail.com>, Tommy Morrison <tommy@senatormorrison.com>
Cc: Joseph Borja <jborja@senatorada.org>, Peter Tran <peter@senatorada.org>, Charlene Flores <flores@senatorada.org>, Blaine Dydasco <bdydasco@senatorada.org>, Coy Torres <coy@senatorada.org>

June 01, 2016

MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson*

Subject: **1st Notice of Confirmation / Public Hearing: Thursday, June 09, 2016 at 5:00 p.m.**

Please be advised that the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affair, and Procurement will be conducting a confirmation/public hearing on **Thursday, June 09, 2016 at 5:00 p.m.** This meeting will take place in the public hearing room of *I Liheslaturan Guahan*. The agenda is as follows:

5:00 PM

Executive Appointment of **Ms. Maria D.R. Taitano** to serve as a **member** of the **Guam Port Authority Board of Directors**.

Bill No. 318-33 (COR) – F.B.Aguon, Jr./T.A. Morrison

An act to amend § 61105 of Article 1, Chapter 61, Division 2, Title 21, Guam Code Annotated, relative to requiring the approval of municipal planning councils for proposed projects under review by the Guam Land Use Commission; to give the municipal planning council the veto power on applications for zone change, variances, government leases, conditional use and other proposed projects normally reviewed by the GLUC involving land on Guam.

Testimony on the **Executive Appointment of Ms. Maria D.R. Taitano, and Bill No. 318-33 (COR)** should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to office@senatorada.org, or via facsimile to (671) 473-3303 until **5:00pm Thursday, June 16, 2016**. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Tom Ada at 473-3301.

--

Blaine Dydasco

Policy Analyst

Office of Senator Tom C. Ada

I Mina' Trentai Tres Na Liheslaturan Guahan-33rd Legislature



Office of
Senator Tom Ada

Peter Tran <peter@senatorada.org>

2nd Notice of Confirmation / Public Hearing: Thursday, June 09, 2016 at 5:00 p.m.

1 message

Charlene Flores <flores@senatorada.org>

Tue, Jun 7, 2016 at 8:25 AM

To: Media <media@senatorada.org>, phnotice@guamlegislature.org, franksantos1914@hotmail.com, Marge Duenas <mduenas@portguam.com>, jbrown@portguam.com, Maria Taitano <mdrtaitano@gmail.com>, Cristina Gutierrez <Cristina.Gutierrez@land.guam.gov>, dlmdir@dlim.guam.gov, michael.borja@land.gov, John Arroyo <jarroyo@tggguam.net>, "Mayor Paul M. McDonald" <mayor.mcdonald671@gmail.com>, Agat <agatmayorsoffice@hotmail.com>, ksusico@yahoo.com, Asan Maina <hamiasanmaina@gmail.com>, Barrigada <bmomayor@gmail.com>, Barrigada <jessie.bautista007@gmail.com>, Jessy Gogue <ocp.mayor@gmail.com>, MELISSA SAVARES <melissa.savares@gmail.com>, peter_daigo@hotmail.com, hagatnamayor@hotmail.com, Doris Lujan <mayordorisfloreslujan@gmail.com>, inarajan municipality <inarajanmayorsoffice@gmail.com>, nblas_magilaomayor@yahoo.com, vicemayor_allan.ungacta@yahoo.com, mayorernestc@yahoo.com, mtmmayorsoffice1@yahoo.com, pitimayor@yahoo.com, Dale Alvarez <daleealvarez@gmail.com>, Robert Hofmann <guammayor@gmail.com>, rudy iriarte <rudyiriarte@gmail.com>, talofofomayor@gmail.com, "Mayor Louise C. Rivera" <mayorlcrivera.tatuha@gmail.com>, vicemayorsantos.tatuha@gmail.com, Umatac Mayor <umatacmo@gmail.com>, Mayor Rudy <yigomayorsoffice@gmail.com>, Anthony Sanchez <yigovoice@gmail.com>, kenjoeada@yahoo.com

June 07, 2016

MEMORANDUM

To: All Senators, Media, and Stakeholders

Fr: Senator Thomas C. Ada, *Chairperson*

Subject: **2nd Notice of Confirmation / Public Hearing: Thursday, June 09, 2016 at 5:00 p.m.**

Please be advised that the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affair, and Procurement will be conducting a confirmation/public hearing on **Thursday, June 09, 2016 at 5:00 p.m.** This meeting will take place in the public hearing room of *I Liheslaturan Guahan*. The agenda is as follows:

5:00 PM

Executive Appointment of **Ms. Maria D.R. Taitano** to serve as a **member** of the **Guam Port Authority Board of Directors**.

Bill No. 318-33 (COR) – F.B. Aguon, Jr./T.A. Morrison

An act to amend § 61105 of Article 1, Chapter 61, Division 2, Title 21, Guam Code Annotated, relative to requiring the approval of municipal planning councils for proposed projects under review by the Guam Land Use Commission; to give the municipal planning council the veto power on applications for zone change, variances, government leases, conditional use and other proposed projects normally reviewed by the GLUC involving land on Guam.

Testimony on the **Executive Appointment of Ms. Maria D.R. Taitano** should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to office@senatorada.org, or via facsimile to (671) 473-3303 until **4:00pm Friday, June 10, 2016**.

Testimony on **Bill No. 318-33 (COR)** should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Main Legislature Building at 155 Hesler Place, Hagåtña, Guam 96932, via email to office@senatorada.org, or via facsimile to (671) 473-3303 until **5:00pm Thursday, June 16, 2016**.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Tom Ada at 473-3301.

--

Charlene Flores

Policy Analyst

Office of Senator Thomas C. Ada

I Mina'trentai Tres na Liheslaturan Guåhan - 33rd Guam Legislature

671-473-3301



2nd Notice.pdf

400K

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Updated: May 23, 2016

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Updated: May 23, 2016

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Sen. Thomas Ada

Chairman

Committee on Transportation, Infrastructure, Lands,
Border Protection, Veterans' Affairs and Procurement
I Mina Trentai Tres Na LiheSlaturan Guåhan • 33rd Guam Legislature

AGENDA

CONFIRMATION / PUBLIC HEARING

Thursday, June 09, 2016

Public Hearing Room, *I LiheSlaturan Guåhan*

The agenda is as follows:

5:00pm

Executive Appointment of **Ms. Maria D.R. Taitano** to serve as a **member of the Guam Port Authority Board of Directors.**

Bill No. 318-33 (COR) – F.B. Aguon, Jr./T.A. Morrison

An act to amend § 61105 of Article 1, Chapter 61, Division 2, Title 21, Guam Code Annotated, relative to requiring the approval of municipal planning councils for proposed projects under review by the Guam Land Use Commission; to give the municipal planning council the veto power on applications for zone change, variances, government leases, conditional use and other proposed projects normally reviewed by the GLUC involving land on Guam.

Guam Daily Post, 01 June 2016



Sen. Thomas Ada

**Committee on Lands and Transportation
Confirmation / Public Hearing Notice**

Thursday, June 09, 2016, 5PM

I Liheslaturan Guahan, Public Hearing Room

AGENDA

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Individuals requiring special accommodations should submit request to Elaine Dydasco at 473-3301.

Paid for by funds of the Committee on Lands and Transportation

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Guam Daily Post, 01 June 2016



Sen. Thomas Ada

**Committee on Lands and Transportation
Confirmation / Public Hearing Notice**

Thursday, June 09, 2016, 5PM

I Liheslaturan Guahan, Public Hearing Room

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Sen. Thomas Ada

**Committee on Lands and Transportation
Confirmation / Public Hearing Notice**

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Guam Daily Post - 07 June 2016