

FEB 22 1998

Refer to Legislative Secretary Office of the Speaker
ANTONIO R. UNPINGCO
Date: 2-23-98
Time: 10340.4.
Rec'd by: 4-1415
Print Name: Facil Coffee

The Honorable Antonio R. Unpingco Speaker Twenty-Fourth Guam Legislature Guam Legislature Temporary Building 155 Hesler Street Agana, Guam 96910

Dear Speaker Unpingco:

Enclosed please find a copy of Bill No. 400 (COR), "AN ACT TO AUTHORIZE THE GOVERNOR TO LEASE THE AIR SPACE OVER GOVERNMENT LAND TO THOMAS AND HELEN LEE; TERMS AND CONDITIONS THERETO.", which has been enacted into law without the signature of the Governor. This legislation is now designated as **Public Law No. 24-140**.

Very truly yours,

Carl T. C. Gutierrez

Attachment 50067

cc: The Honorable Joanne M. S. Brown Legislative Secretary

ACKNOWLEDGMENT RECEIPT

Received by Jan January

Time 12:05 pm.

Date 2-23-98

OFFICE OF THE LEGISLATIVE SECRETARY

## TWENTY-FOURTH GUAM LEGISLATURE 1998 (SECOND) Regular Session

### CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 400 (COR), "AN ACT TO AUTHORIZE THE GOVERNOR TO LEASE THE AIR SPACE OVER GOVERNMENT LAND TO MR. & MRS. THOMAS AND HELEN LEE UNDER CERTAIN TERMS AND CONDITIONS THERETO," was on the 7<sup>th</sup> day of February, 1998, duly and regularly passed.

Attested:  JOANNE M.S. BROWN Senator and Legislative Secretary	ANTONIO R. UNPINGCO Speaker
This Act was received by the Governor this	day of February, 1997, at  Murulerb  Assistant Staff Officer  Governor's Office
CARL T. C. GUTIERREZ Governor of Guam	
Date:	
Public Law No. 24-140 (Became law wit	hout the Governor's signature)

### TWENTY-FOURTH GUAM LEGISLATURE 1997 (FIRST) Regular Session

Bill No. 400 (COR)

As amended on the Floor.

Introduced by:

1

W. B.S.M. Flores

F. E. Santos

T. C. Ada

F. B. Aguon, Jr.

E. Barrett-Anderson

A. C. Blaz

J. M.S. Brown

Felix P. Camacho

Francisco P. Camacho

M. C. Charfauros

E. J. Cruz

Mark Forbes

L. F. Kasperbauer

A. C. Lamorena, V

C. A. Leon Guerrero

L. Leon Guerrero

V. C. Pangelinan

I. C. Salas

A. L.G. Santos

A. R. Unpingco

J. Won Pat-Borja

AN ACT TO AUTHORIZE THE GOVERNOR TO LEASE THE AIR SPACE OVER GOVERNMENT LAND TO MR. & MRS. THOMAS AND HELEN LEE UNDER CERTAIN TERMS AND CONDITIONS THERETO.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 Section 1. The Guam Legislative Findings and Intent. 2 Legislature finds that the purpose and integrity of a ponding basin can be retained even if the air space over it were to be utilized; provided, that the 3 4 percolation and evaporation functions are not materially compromised. The 5 government of Guam has established precedents for constructing over 6 ponding basins' air space by permitting the construction of the Police Koban adjacent to the Palace Hotel and Guam Visitors Bureau office building at 8 Ypao. The Guam Legislature further finds that while it may not wholly agree with the precedents established, it does recognize the fact that land is a scarce 10 resource and more evident on a small island such as Guam.

It is the intent of the Guam Legislature to obtain the maximum economic benefit on the public's scarce land resources while balancing the need to protect the environment and the public's health, safety and welfare.

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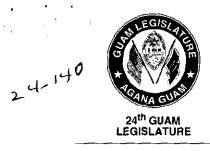
14 Section 2. Authorization to Lease. The Governor is authorized to 15 lease the air space over those government of Guam lands serving as a 16 ponding basin for Route 14 and situated in the Municipality of Tamuning and designated as Lot Number 2150 - 3 - 10, Lot Number 2150 - 3 - 11 and Lot 17 Number 2150 - 3- 12 R1 to Mr. And Mrs. Thomas and Helen Lee for the 18 19 purpose of constructing a raised parking lot to provide the required parking 20 needs for an office/commercial building that the Lees are building on their 21 adjoining property, Lot Number 2150 - 3 - 13 - New, Tamuning, Guam, and subject to the following terms and conditions, at a minimum: 22

(a) that the lease term shall not exceed twenty-five (25) years;

(b) that if the office/commercial building is not completed within three (3) years of the effective date of the lease, then the lease shall be null and void;

- (c) that the percolation and evaporation functions of the ponding basin shall not be materially compromised. The lessee shall coordinate with the Department of Public Works to insure that plans include provisions for: adequate ventilation for evaporation and that the ponding basin substrate is kept clean for maximum percolation; fencing around the perimeter of the ponding basin; landscaping the side of the ponding basin fronting Route 14 (Chalan San Antonio); etc.;
- (d) that the air space over the ponding basin shall be used for parking or access and for no other purpose;
- (e) that the lease is solely for Mr. and Mrs. Thomas and Helen Lee and is neither assignable nor transferable, except with the prior approval of the Guam Legislature;
- (f) that the Lessee shall hold the government of Guam harmless for the duration of the lease and shall demonstrate this by obtaining appropriate liability insurance;
- (g) that the lease contain an escalation clause of a ten percent (10%) increase every five (5) years, including into the option period specified herein;
- (h) that the lease contain an option to renew the lease for an additional term of twenty-five (25) years;
- (i) the lessee will allow Saint Anthony's Church and School and the Tamuning Mayor use of the parking facility at no charge;

1	(j) the government shall determine the lease value based upon
2	a percentage of no less than fifty percent (50%) of the value of the
3	unimproved land; and
4	(k) other terms and/or conditions necessary or beneficial to the
5	public's interest.
6	Section 3. Deposit of Lease Payment. The payment on the lease of
7	these government lands shall be deposited with the Chamorro Land Trust
8	Commission ("CLTC") to be used for infrastructure development on CLTC
9	properties.



# COMMITTEE ON AGRICULTURE, LAND, HOUSING, COMMUNITY & HUMAN RESOURCES DEVELOPMENT

### SENATOR JOHN CAMACHO SALAS CHAIRMAN

January 20, 1998

The Honorable Antonio R. Unpingco Speaker Twenty-Fourth Guam Legislature 155 Hesler Street Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Agricultural, Land, Housing, Community & Human Resources Development to which was referred Bill No. 400, has had the same under consideration and now wishes to report back the same, with the recommendation **TO DO PASS**.

The Committee votes are as follows:

To Do Pass 5
Not To Pass 2
Abstain 0
Other (Off-Island) 2

A copy of the Committee's report and other pertinent documents are enclosed for your reference and information.

Sincerely,

Senator John Camacho Salas

John C. Saler ( Dr.)

Chairman

Attachments



# SLNATOR JOHN CAMACIO SALAS CHAIRMAN

# COMMITTEE ON AGRICULTURE, LAND, HOUSING, COMMUNITY AND HUMAN RESOURCES DEVELOPMENT

# VOTING SHEET

BILL NUMBER 400

TITLE An

An Act to authorize the Governor to lease the air space over government land to Thomas and Helen Lee; terms and conditions thereto.

	TO DO PASS	NOT TO PASS	ABSTAIN	INACTIVE FILE
John C. John				
John Camacho Salas, Chairman				
7.00				
Edwardo J. Cruz, M.D., Vice-Chairman	,			
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Elizabeth Barrett-Anderson, Member		•	6	)
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Karry F. Kasperbauer, Member				
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Felix P. Camacho, Member	,	,		
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Carlotta A. Leon Guerrero, Member				
HC. and				
Thomas C. Ada, Member				
William B.S.M. Flores, Member				
Frank B. Aguon, Jr., Member				

#### Committee on Agriculture, Land, Housing, Community & Human Resource Development Committee Report on Bill 400 Publicly Heard Tuesday, November 4, 1997

Bill 400 - An act to authorize the Governor to lease the air space over government land to Thomas and Helen Lee; terms and conditions thereto.

#### I. ATTENDANCE

- · Senator John C. Salas, Chairman
- Senator Edwardo J. Cruz, M.D.
- Senator Tom C. Ada, Member
- · Senator Frank B. Aguon, Jr., Member
- Senator William B. S.M. Flores, Member
- Senator Carlotta A. Leon Guerrero, Member
- · Senator Mark C. Charfauros, Guest
- · Senator Francis E. Santos, Guest

#### II. MAIN SPONSORS

Senator William B. S.M. Flores Senator Francis E. Santos

#### III. SYNOPSIS

Thomas and Helen Lee are proposing to construct a raised parking lot on government lands serving as ponding basins. The proposed parking facility is to be built on top of Lot Nos. 2150-3-10, 2150-3-11, and 2150-3-12R1, located in the village of Tamuning. This facility will service a commercial building the Lees are constructing on land abutting the ponding basin.

The bill proposes terms and conditions to protect the condition and function of the ponding basin in conjunction with the Department of Public Works. It also allows the Lees to lease the air space over the lots for no more than 50 years. The bill holds the government of Guam harmless for the duration of the lease, and voids any agreement if the commercial building is not completed within 3 years of the effective date of the lease.

The bill also mandates that lease payments shall be deposited to the Chamorro Land Trust Commission for infrastructure development of CLTC properties.

#### IV. TESTIMONY

Senator Francis E. Santos provided an overview of the bill. He emphasized that there are precedents on building over existing ponding basins. He also indicated that the developer had researched the Guam Visitors Bureau's construction plans as a model to follow in constructing over a ponding basin.

Mr. Jordan Kaye, Guam Environmental Protection Agency, testified in support of the bill, noting that in addition to GVB, the Police Koban at the Palace Hotel and the parking structure for a new Police Koban in Tumon all are over ponding basins. He emphasized that as long as there is access to the basin built into the plans, it would most likely not be a problem for GEPA.

Senator William B. S.M. Flores noted that the Tamuning Mayor is asking that revenues from this lease of government land go to his office for village improvements.

Mr. Joe Morcilla of Plan Rite, representing Mr. Thomas Lee, noted that if Mr. Lee had only his lot to utilize, the commercial development would be very small. Further, he testified that the parking structure would be used by churgoers in the area. The plans include landscaping for the sidewalk areas, access to the ponding basin, and other elements to improve the

aesthetics of the area. Plans presented were conceptual, and detailed plans were being prepared. The building will follow all set-back requirements.

Senator Tom C. Ada asked Mr. Morcilla to explain how water would flow into the basin once the area is covered. Mr. Morcilla noted that the plan calls for a system of slots around the development to allow for water flow into the basin. Further, in response to Senator Ada's concern about the size of the ponding access, Mr. Morcilla noted that the access would be large enough for machinery and equipment to continue maintenance of the basin.

Mr. Thomas Lee noted that the government of Guam conducts maintenance of the area only 2-3 times annually. He stated that he expects the government to continue maintaining the basin at its expense, but is willing to negotiate this issue. Senator Flores noted that it might be in the interest of the government to continue maintaining the basins.

**Chairman Salas** asked what would happen to the structure after the 50 year lease is expired. Senator Ada responded that like other leases, it would have to be renegotiated.

Senator Carlotta A. Leon Guerrero asked that if during the construction phase it is evident that the ponding basin is in danger, would the developer have a problem with changing plans. Mr. Morcilla and Mr. Lee responded that if the construction does negatively affect the ponding basin, they would be willing to change the plan and alter construction.

Mr. Carlos Camacho, Y'Tanota Partners, testified that he is in support of this concept, but questioned why the availability of this government land was not made known to the general public. He stated that his firm had approached the government of Guam about 1.5 years ago to use the same lots for a development. However, the government of Guam could not specifically identify what agency was responsible for the lots, and subsequently Y'Tanota dropped their project. He stated that if there was no notice of the availability of these lots, then he would oppose the bill, but not the concept of this bill.

Senator Edwardo J. Cruz asked Mr. Lee what his timeframe was to build. Mr. Lee responded that he expects it will take 1-1.5 years to complete the project. Senator Cruz advised Mr. Lee that if he expects to secure a lease from the government, be prepared to wait and plan for more time than he expects. Senator Cruz also expressed his concern that a lease would have to come back to the Legislature for approval. However, the committee clarified that all leases must receive legislative approval before enactment.

**Senator Mark Charfauros** stated, for the record, that at no time had any member of the Legislature ever approached anyone offering air rights for lease, that no solicitation was ever undertaken.

**Senator Carlotta Leon Guerrero** asked the sponsors of the bill at what rate would these lots be leased. **Senator William B. S.M. Flores** noted that in other U.S. jurisdictions, air rights usually are leased at 50% of the value of land lease rates. There is no prior legislation on Guam to determine a rate.

**Howard Hemsing** testified that as long as there is no question on who owns the land, that Mr. Lee will not charge a fee for the use of parking spaces, and that lease revenues are used for improvements.

Norbert Perez, President of the Republic of Guahan, testified that he is concerned that this bill, although good in concept, may open the floodgates and create overdevelopment of Guam's limited land area. He felt that a government to government use is customary, but a government to private lease may be subject to exploitation.

The sponsors of the bill noted that this type of government-private relationship is a good way to lessen the impact of commercial development on Guam's limited private land resource while providing a revenue stream for programs such as the Chamorro Land Trust.

#### V. COMMITTEE FINDINGS

The committee finds that Mr. Thomas Lee, while engaging in private enterprise, can and will benefit the community with his project by providing retail services, needed parking for church goers, and beautification of the area. Further, revenues collected will benefit the Chamorro Land Trust program by providing much needed funding to improve infrastructure in various CLTC sites. The committee felt that this is a good example of how the government and private sectors can work together and best utilize scarce government and private land resources.

#### VI. COMMITTEE RECOMMENDATION

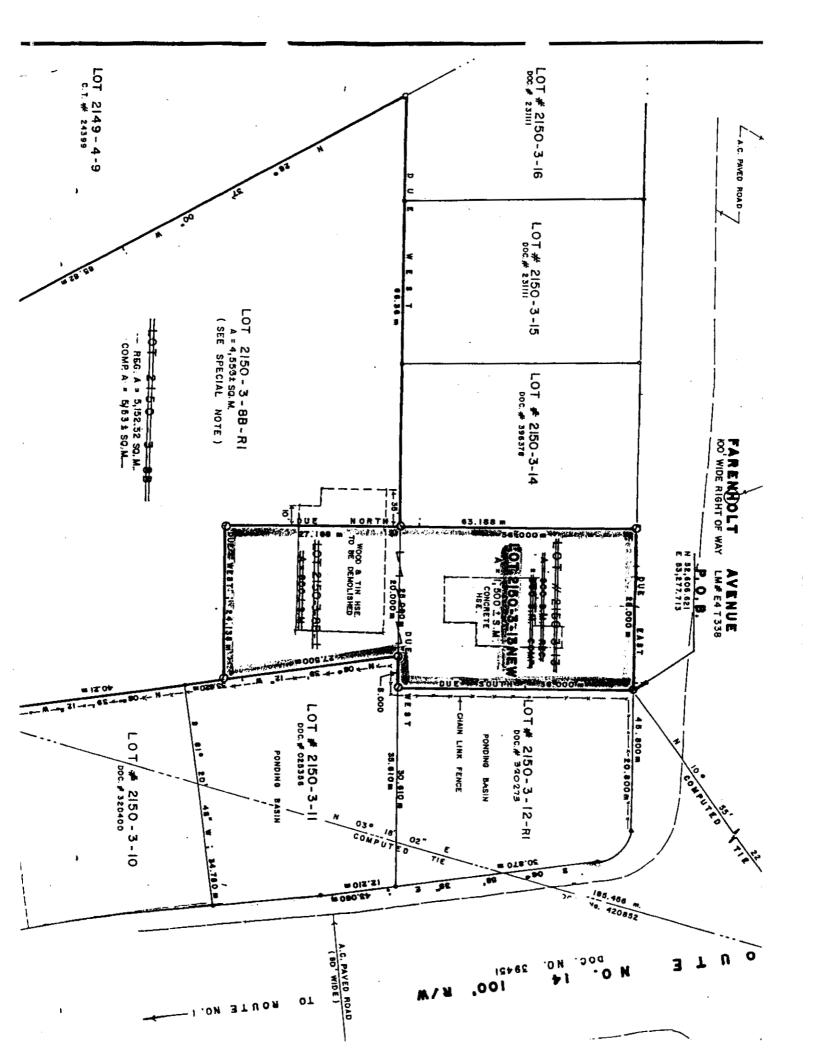
Therefore, the committee recommends TO DO PASS Bill 400.

# FISCAL NOTE BUREAU OF BUDGET AND MANAGEMENT RESEARCH

BBMR-F7

Bill Number:4	00 (COR)		Date	Received:	11/13/97		
Amendatory Bill: N	Ó		Date	Reviewed:	11/13/97		
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**FOOTNOTES:** 1/ The fiscal impact resulting from enactment of Bill No. 400(COR) involves generating revenues for the Chamorro Land Trust based on an air space lease structure to be established. The bill language references that revenue generated shall be committed to development of CLTC properties, additionally, it is uncleap as to who has responsibility over the maintenance of the ponding basin. With a parking structure over the ponding basin, maintenance cost may increase, and may have to be absorbed by the government.





# SENATOR JOHN CALLACHO SALAS CHAIRMAN

COMMITTEE ON AGRICULTURE, LAND, HOUSING, COMMUNITY AND HUMAN RESOURCES DEVELOPMENT

# TESTIMONY SIGN IN SHEET

Tuesday, November 4, 1997

Bill Number 400

Please complete address a contact number

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Guam 96931 Telephone: (671) 649-9892 Fax: (671) 649-5203

November 4, 1997

The Honorable John C. Salas
Senator
Chairman, Committee on Agriculture, Land, Housing,
Community Development, Planning and Human Resources
Development
Twenty-Fourth Guam Legislature
T.S. Tanaka Bldg.
Rte. 4, Suite 210
Agana, Guam 96910

Hafa Adai Mr. Chairman and members of your Committee:

I am Thomas Lee a twenty-five year resident of Guam and a local businessman. My wife, Helen and I have been in the golf pro shop business for nine years and we would like to expand our family business by hopefully leasing air space over a ponding basin owned by the Department of Public Works. I own the adjacent property next to this ponding basing but I am restricted from building my building due to the parking requirements under Guam law. The only way I could build the building necessary to expand our family business is to lease the adjacent air space of which the mentioned ponding basin is located.

Public Works have no opposition to this proposal so long as the ponding basin remains functional. I will work closely with Public Works and any government entity to ensure that the design of this proposed parking lot will in no way hamper or impede the function of the ponding basin. The design of this parking lot will have all the necessary safeguards in keeping the ponding basin functional as those already incorporated by two government buildings built over existing ponding basins. These two government buildings are the Guam Visitors Bureau building next to Ypao Beach Park and the Guam Police Koban next to the Palace Hotel.

If Bill 400 is approved there will be several advantages for the people of Guam. These advantages are:

- 1. There will be an added revenue source for the Chamorro Land Trust Commission;
- 2. A major improvement in the beautification of the area since there will be maintenance and upkeep of the grounds to include sidewalk benches and professional landscaping;
- 3. It will provide for additional parking for St. Anthony Church;
- 4. Is not only an environmentally sound project but will also reduce the public's exposure

to existing unsafe hazards associated to the existing condition of the ponding basin. A few years ago a small truck almost plunged down the steep embarkment of the ponding basin due to the lack of safety devices around the ponding basin.

- 5. This project will allow for the growth of a family owned business that is 100% local. Every penny earned will be spent and invested here on Guam. The additional taxes and government revenue will all go to the Government of Guam.
- 6. This project will not take any land away from the Government of Guam since the proposal is to leased unused air space.

Si Yu'os Ma'ase', for your time and I hope that your Committee supports the passage of Bill 400.

Thomas Y. Lee



#### DEL RTMENT OF LAND MANAG MENT

(DIPATTAMENTON TANO')

Government of Guam P.O. Box 2950 Agana, Guam 96910

Tel: (671) 475-LAND • Fax: (671) 477-0883



CARL J. C. AGUON
Director

MADELEINE Z. BORDALLO

Lieutenant Governor

FRANCISCO P. SAN NICOI

Deputy Director

November 7, 1997

Senadot John C. Salas
Chairman, Committee on Agriculture, Land, Housing,
Community & Human Resources Development
24th Guam Legislature
155 Hesler Street
Agana, Guam 96910



Re: Comments on Bill No. 400 - An act to authorize the Governor of Guam to lease the air space over government land to Thomas and Helen Lee, terms and conditions thereto.

Hafa Adai Senadot Salas,

Please excuse our late comment on this bill and appreciate the opportunity to present our comments.

The Department supports the concept of multiple use of lands particularly in areas where it is at a premium. The ponding basin is located in just such an area. This drainage basin can certainly be transformed into a functional and attractive facility just like the Guam Visitors Bureau office in Ypao.

However, it is important that the existing use of this land is not compromised by any improvements above it. Second, its disposal does not supplant any present or future public need for it. It would be very expensive to acquire real estate in this area. Third, its disposal (leasehold) does not violate federal highway laws or regulation or jeopardize pending/future federal highway funds. This is the Department of Public Work's determination.

Air rights disposal while done in many other jurisdictions will be a first for our government. It is suggested that a comprehensive Land Planning and Administration processes be developed from enabling land laws and its implementing rules and regulations. The department suggests that a broader law be devised to address the disposal of air rights over public land in general. This would preclude a piece meal approach reflected in Bill 400.

Our public land laws particularly in land administration needs to be comprehensively addressed. There is no clear, consistent, coherent, etc. public land disposal policy with which this government

Commonwealth Now!

Memo to Sen. John C. Salas Subj: Comments on Bill No. 400 November 7, 1997 Page 2 of 2

can "manage" our fast decreasing and increasingly sought public lands. For example, Bill 400 is silent on rental, "consideration" as well as other parameter for disposal vary greatly from legislation to legislation. This variation has been a considerable source of public indignation against this government.

In summary, the department discourages the passage of Bill 400 and urges the Committee to look at public land disposal from a more broader perspective. The department offers its assistance in this regard.

Senseramente,

CARL J. C./AGUON



Governor Cari T.C. Gutierrez
Lt. Governor Madeleine Z. Bordallo
Acting Director Anthony T. Quinata, P.E.
Deputy Director J.A. "Tony" Martinez

SEP 03 1997

Joe Morcella, President Plan Rite GCIC Building Suite 414 West Soledad Avenue Agana, Guam 96932

#### Hafa Adai Joe:

We are in receipt of your letter requesting lease of Lot number 2150-3-13 New Municipality of Dededo, village of Tamuning presently used as a ponding basin for the Route 14 roadway system located across the Saint Anthony Church parking lot.

We have no objection to your proposal as long as the capacity of the ponding basin is not reduced. Also, the lease of the property requires approval by the Guam Legislature.

Please contact my office should you have any questions.

Sincerely,

**Acting Director** 

Department of Public Works



#### **PUBLIC UTILITY AGENCY OF GUAM**

#### **Government of Guam**

Post Office Box 3010, Agana, Guam 96910 Phone: (671) 647-7611 / 7823 Fax: (671) 649-0158

Senator John Camacho Salas, Chairman Committee on Agriculture, Land, Housing, Community & Human Resources Development 155 Hesler Street Agana, Guam 96910 Ph. 472-3585: Fax 472-3583

Subject:

Bill 400

The Guam Waterworks Authority presently does not anticipate an immediate or future need for the ponding basins on property lots 2150-3-10, 2150-3-11, and 2150-3-12R1 or for-that-matter, the "air space" directly over the ponding basins.

However, these ponding basins in the village of Tamuning serve as storm water collection ponds and, as such, also serve as rechargers to the Tumon System water aquifer. Disruption to or the restricting of these storm waters to the ponds are a main concern of GWA.

We have no objection to this bill provided the responsibility to protect the condition and function of these ponding basins is properly addressed.

Sincerely,

General Manager

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Commonwealth Now!