

shall be elected by the Commission from among its members. The Executive Secretary to the Commission shall be the Director of Land Management.

Section 4. Terms of Office. The terms of office for the Vice Chairman shall be for the calendar year. The term of office of the Chairman and the Executive Secretary shall be concurrent with the directorship of their appointment.

Section 5. Vacancies. Should the office of the Vice Chairman become vacant, the Commission shall fill the vacancy by electing another Vice Chairman from among its members.

Section 6. Duties of Officers. The Chairman shall preside at all meetings of the Commission. At such meetings, he shall submit such proper information and recommendations to the Commission as he may deem proper concerning the policies, administration, and other affairs of the Commission.

The Chairman shall sign all contracts and other important documents and letters of the Commission upon approval of the Commission in accordance with Article V, Section 4, of these Rules and Regulations.

The Vice Chairman shall perform the duties of the Chairman in the absence or incapacity of the Chairman. In the case of the resignation or death of the Chairman, the Vice Chairman shall perform such duties as are imposed upon the Chairman until such time as a new Chairman shall be appointed.

The Executive Secretary shall serve as administrative officer of the Commission, shall be directly responsible to it, and subject thereto, shall have complete control and responsibility for the execution of the Commission policies, the administration of its affairs, and the furnishing of such technical and clerical personnel, and office facilities as may be reasonably necessary.

Section 7. The officers of the Commission shall perform such other duties and functions as may from time to time be appropriately required by the Commission or by the Rules and Regulations.

ARTICLE V. MEETINGS

Section 1. Regular Meetings. Regular meetings of the Commission shall be held on the 2nd and 4th Thursdays of each month at 8:30 a.m. If such meeting falls on a legal holiday, the meeting shall be the subsequent Tuesday.

Section 2. Special Meetings. Special meetings shall be held at such time and place as the Commission may determine, or may be called by the Chairman at such time and place as he may determine, and must be called by him upon the written request of three or more members of the Commission filed with the Executive Secretary. Notice of any special meetings must be given in writing, or in such form as the Chairman may direct. Any and all business of the Commission may be transacted at such a special meeting.

Special meetings shall be held for hearing of appeals from any order, requirement, decision or determination of the Building Official or his authorized representative or any rule, regulations or amendment or repeal thereof, made by the Building Official.

Section 3. Quorum. Four (4) members of the Commission shall constitute a quorum for the purpose of conducting its business, exercising its powers and for all other purposes.

Section 4. Voting. Every official act taken by the Commission shall be adopted by a majority vote of at least four (4) votes. If not less than four (4) affirmative or negative votes are obtained, the action shall be automatically tabled until an affirmative or negative vote of not less than four (4) is obtained. Directions to the Executive Secretary shall be by motion adopted by a majority vote.

Section 5. Order of Business. At the regular meetings of the Commission, the following shall be the order of business:

- (1) Notation of attendance;
- (2) Approval of minutes not previously approved;
- (3) Consideration of Zoning applications for changes or variances as outlined in the Zoning Law;

- (4) Consideration of Subdivision matters as outlined in the Subdivision Law;
- (5) Consideration of Master Plan features requiring detailed discussion;
- (6) Miscellaneous matters; and
- (7) Adjournment.

Section 6. Parliamentary Procedure: The Rules. Parliamentary procedure set forth in Robert's Rules of Order shall govern all meetings of the Commission except as otherwise herein provided.

ARTICLE VI. AMENDMENTS

These Rules and Regulations may be amended by the Commission at any regular meeting by a majority vote, or any special meeting by a majority vote, provided that the proposed amendment to any particular Section is included in the notice of such special meeting.

Adopted on the 21st day of August 1975.

/s/ 8/21/75
CARL PETERSON, CHAIRMAN

I certify that the foregoing is a true copy of the Amended Rules and Regulations of the Territorial Planning Commission as promulgated, effective August 21, 1975. These Rules and Regulations were in effective August 21, 1975 and continue in effect as of the date of this certification.

/s/ 8/21/75
ESTEBAN U. TORRES, EXECUTIVE SECRETARY

TERRITORIAL SEASHORE RESERVE

ZONE CHANGES

THE LAW: Government Code of Guam, Title XVIII, Chapter XIII, Section 17600 states: **Requirements for changes.** The Commission may, with the approval of the Governor, change the zones established under this Title whenever it finds that the public necessity, convenience and general welfare justify such action.

Discussion: Zones are created initially as an answer to community needs and desires, in-depth analysis of infrastructure capabilities, natural resource considerations, and perceived public and private desires for direction, type and quality of future growth. Therefore, any change of zone requested for by a developer must, in some way, address all of these issues.

For purposes of the Commission, requests must answer the following, specific concerns:

1) **What was the purpose for the original zoning?** The answer to this may not be apparant, because Guam utilizes a very few zoning designations, therefore any zoning designation must serve a number of purposes.

For instance; Agricultural zones (A), may signify any one of several things:

- (a) The area represents "prime" agricultural lands who's highest and best use would be for agricultural production.
- (b) The zoning may indicate conservation needs (aquifer areas, wildlife habitat areas, pristine areas, etc.)
- (c) Steeply sloped or otherwise highly erodable areas.
- (d) The area may have been unplanned for in the original zoning efforts.

2) **How will the zone change effect resources and resource inventories?** How will this change, and the development for which the change is being requested, effect water, floral and faunal resources, both within the immediate area of the Tract in question and downstream?

A good example of the potential effects involves a request for change of zone from Agriculture to Light Industrial for a parcel of land situated over the Northern Guam (fresh water) Lens, for the manufacturing of computer chips. The production process involved the on-site storage and utilization of three potentially hazardous chemicals, and a manufacturing by-product of a potentially hazardous (paint) sludge.

While GEPA and the applicant testified that the chemicals would be sufficiently diluted in the sewer system, the following concerns remained:

- (a) There could be no guarantee that a storage accident would not occur, thereby endangering the major source of fresh water.
- (b) There could be no guarantee that a sewer-line breakage or back-up would not occur, thereby endangering the major source of fresh water.
- (c) The question of sludge disposal was not addressed (Guam, at the time had no on-island disposal system for hazardous wastes), and seepage of this material into the ground would endanger the major source of fresh water.

Additionally, and in a large sense more important, the applicant testified that the property in question was chosen because of cost, although there was properly zoned land, away from the water lens area, available. In other words, the zone change was necessary because of the applicants speculative land purchase! Because of all these concerns, the application was denied.

3). **How will the change affect community health and welfare?** There are three elements to this question: The community which presently exists around the proposed development, any new community resulting from the development, and, any future community development which can reasonably be expected as a result of this development.

The existing community should be able to expect that any change they would experience as a result of the zone change and subsequent development would at best be positive, and at the least, neutral. Residential communities should not be bordered by new development, such as industrial usage or objectionable commercial activities (massage parlors, adult book stores, discos, auto repair shops, etc.).

The proposed development, for which the zone change was necessary, should not create a substandard environment for the prospective users of the area. As an example, a zone change was granted (from "A" to "R-1") in 1984, for a subdivision project. The area rezoned was within the designated "crash area" as well as a very high noise area, adjacent to the Guam International Airport/Naval Air Station. This subdivision, it was obvious, would have been hazardous to live within from several standpoints.

First, the obvious danger to the residents from potential airplane crashes. There had previously been such a disaster less than 1000 feet from the subdivision site.

Second, because of the air traffic pattern, any aborted take-off would have required the "dumping" of very large quantities of fuel, from the plane, directly over the subdivision.

Third, because of the extreme noise level resulting from more than 40,000 per annum take-offs at an altitude of only 600 feet above the subdivision, the structural integrity of the proposed, low cost houses, would have been jeopardized.

Fourth, because of all the problems described above, the mental well-being of the residents of the subdivision, would have been endangered.

In spite of the above arguments, the area was rezoned. The U.S. Navy, because of their interests, saw this case through the courts, where the rezoning to the original designation was ordered.

Finally, because of the long process and outcome uncertainty connected with infrastructure funding for the island, the rezoning and subsequent development must be analyzed from the perspective of governmental abilities to provide necessary and desirable services to the proposed development. In the past, developers have left the burden of infrastructure development (from the outer property border), to the government, while the developer reaped the financial benefits. Guam no longer has the capability to continue such improvement development,

therefore, it is becoming incumbent upon the Commission to ensure that developers and land speculators bear a fair share of the burden.

PLANNING CONSIDERATIONS: The law specifies that a zone change request must meet the requirements of public necessity, convenience and welfare. The public, in changes or variances to the law, should translate to "village", at the lowest level, and not only the adjacent landowners.

Currently, on Guam, there is more than sufficient land undeveloped in all zoning categories. Applicant arguments that the land was purchased because of the cheaper price of lower zoned land, should never be allowed. Nor should the argument that the applicant already owned the property before developing the idea for use of the property. Zoning only works if the objectives of zoning are vigorously carried forth.

OTHER REQUIREMENTS: Every application for a zone change must consist of the following items. If any item is not included, the request should be tabled until such time as all required items are submitted.

1) Twenty (20) sets of map showing the existing zoning within 1,000 feet around the outer border of the parcels requested for change.

2) Twenty (20) sets of map showing all parcels within 750 feet of the outer property lines of the subject lot. This map must also contain:

- (a) Lot number on every parcel
- (b) Identify all existing land uses on all parcels, by name as well as by use.
- (c) Show all easements and roads within and adjacent to the property, their widths, plus conditions of surfaces.
- (d) The nearest location of all public utilities to the subject lot.
- (e) The document number of the most recent survey map, recorded in Land Management, showing the subject property.

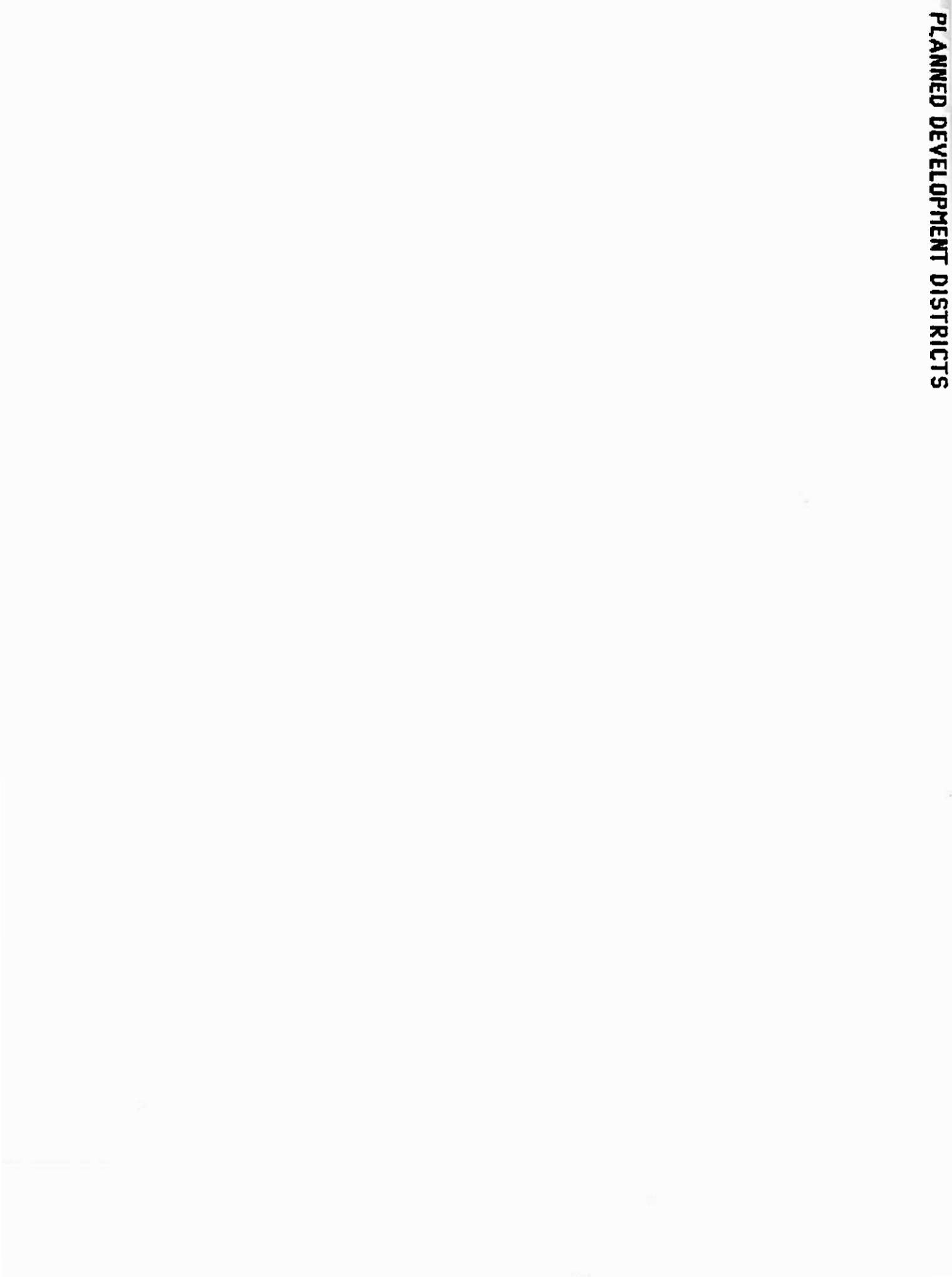
3) Twenty (20) sets of map showing all parcels within 500 feet of the outer property line of the subject lot. Each parcel shall be identified with property lot number. (also, see property owner(s) list).

4) In a letter form to Territorial Planning Commission, the applicant must demonstrate to the Commission (in detail) that this request is for Public necessity, convenience and general welfare.

5) A detailed master plan of the proposed development to include the following: layouts of utilities, drainage, and waste disposal systems; topography; existing faults; sink holes; water courses; reservations; conservations; and historic places, if any.

REMEMBER: Zone changes may dramatically alter existing, nearby communities, can artificially increase property values, and can decrease the governments ability to construct, service and maintain the basic infrastructure needs of the island, in an effective, efficient and economical manner. Because of the potential, major impacts involved, every application for zone change must be very carefully scrutinized before any decision is rendered by the Commission.

SUGGESTED ADDITIONAL REQUIREMENTS: While, under law, every request for zone change must be given a public hearing, the practice has been that such public hearings be held during the Monday - Friday, 9 a.m. - 4 p.m. time frame. This would preclude a great many residents from attending due to work. The Bureau of Planning suggests that the Commission instruct their staff to hold a minimum of two hearings within the affected community for all substantial proposals, with at least one hearing to be conducted in the evening. This would ensure the fullest public participation in the process, which should be the desires of all public workers and decision-makers.



PLANNED DEVELOPMENT DISTRICTS

THE LAW: Section 17605 of the Zoning Law states: **Planned development districts.** A "PD" District enables the unified development of a substantial land area with such combination of uses as shall be appropriate to an integrated plan for the area. The procedure for establishing a "PD" District is the same as that for the rezoning of an area, providing that a detailed plan be submitted to and discussed with the Territorial Planning Commission. The application shall be accompanied by the appropriate fee and the detailed plan, or revision thereof. The Territorial Planning Commission may approve the detailed plan and rezoning, following the required hearing, upon findings that the plan, considering structures, uses, access, regulations and layout fixed in it, comprises:

(a) An area of sufficient acreage to constitute a large planning unit having special attributes for integrated development;

(b) An appropriate development of the area from the viewpoints of its natural features, location and suitability for particular uses;

(c) A combination of structures and uses which are in reasonable association and proportion to make a harmonious unit and likely to continue compatibility with one another;

(d) All structures, including accessory structures, shall not cover more than thirty percent (30%) of the area;

(e) A project adequately serviced by the necessary public services, existing or proposed;

(f) A project consistent with an appropriate development of adjacent areas and not unreasonably detrimental to the existing structures and uses in such areas; and

(g) An appropriate evolution of the comprehensive plan for that portion of the territory.

In approving a detailed development plan, the Territorial Planning Commission may impose such regulations of yards, open space, lot coverage, density and height as are reasonably required to permit the foregoing findings.

Attorney General's Opinion: "In order for a PD to be approved, the Territorial Planning Commission must find in writing that **all** of the standards, procedures and conditions of section 17605 have been met. (Ref: BOP 85-0923, Appendix 1, Page 180, this document).

Discussion: Planned Development Districts, (also known as Planned Unit Development, or PUD), can serve a positive function in community development. Combinations of R-1 and R-2, or Residential with Commercial uses, along with the requirements listed above, can produce semi-self contained communities which could be designed to require less strenuously layed-out infrastructure and in which traffic flow would be more intelligently guided.

It should be noted that the section of the zoning law quoted above, stipulates that a detailed plan (of the development) be provided to the commission for review along with the request for rezoning.

Because applications receiving approval from the Commission (including all categories of requests), will significantly affect the governments ability to provide services and infrastructure, and because such approvals significantly affect property values and community life in surrounding areas, it is incumbent upon the Commission to ensure that requests are made by serious developers, and not just for speculative reasons. This assurance can be guaranteed by conditioning approval with time limits within which construction must begin. If the conditions of such time limits are not met, the property would revert to the legal condition it held prior to the Commissions' approval.

HOTEL ZONE

The Law: Government Code of Guam, Title XVIII, Chapter III, Section 17110 states: (a) **Purpose:** It applies to specific areas where public roads and public utilities are available or where suitable alternative private facilities are assured. It may apply to a single isolated hotel or resort with or without a commercial mall or shopping section.

This zone provides for high-intensity development in a compatible arrangement of structures and uses in a unique setting. It shall be designed to promote a superior level of convenience, comfort, and amenity within the zone; to encourage safe and pleasant pedestrian circulation, to preserve existing attractions and to assure beneficial visual relationships from principal viewpoints.

Development shall be designed to establish an open character, with higher portions of buildings well spaced and oriented with respect to principal views from within the zone. Pedestrian circulation systems shall form a convenient and coordinated network through buildings and landscaped open spaces, supplementing sidewalks along streets; and where extensive areas of the shoreline are in such configuration as to allow it conveniently, walkways and/or bikeways shall be provided along the waterfront on both public and private property.

Since hotels complement other activities in this zone without creating excessive automotive traffic, it is intended to permit higher floor-area ratios for hotel uses than for other uses within the zone.

Since the zone is separated from major parking facilities in adjoining areas, it is intended that off-street parking requirements shall apply within its boundaries. It is further intended in view of the unusual visual exposure that adverse visual influences such as excessive signs, inappropriate lighting and open storage shall be prohibited.

(b) **Permitted Uses.** (1) Cultural and recreational facilities, hotels, restaurants, tourism related shops and offices, dwellings, parks, marinas, zoos, amusement activities and supportive services.

(2) **Permitted Accessory Uses and Structures.** Uses and structures which are customarily accessory and clearly complementary to permitted principal uses and structures shall be permitted. Service stations shall be permitted only within and as accessory to parking garages containing 250 or more parking spaces.

Discussion: The hotel zone provides the basic framework for Guam's tourism industry, the major non-military portion of the island economy. The balance between "offered" (suggested commercial) development, adherence to the rules and regulations for development, and community rights to resource usage, is difficult to achieve, and current conditions in the Tumon Bay area indicate that too often, any and all "offered development" has been accepted, to the detriment of the regulations, planning and community rights.

In reviewing applications for development, the Commission must understand, not only the positive economic results as will be testified by the applicant, but also the negative economic impacts, the impacts on resources and the community, and whether or not the structural design, landscape design and usage compliment or do not detract from surrounding development.

TUMON BAY MASTER PLAN: The Tumon Bay Master Plan was adopted by the Eighteenth Guam Legislature, as Territorial policy for the development of Guam's primary tourism location. This adoption, however, did not include the Rules and Regulations, the zoning, or the implementation of the Environmental Review Committee. Once these three items are adopted, the interim hotel zone rules and regulations will be superceded. The new rules and regulations, once adopted by the Commission, will become the operative guidelines for this section.

RULES AND REGULATIONS: Section IV of the Interim Hotel Zone Rules and Regulations (full text in appendix G, Page 140, this document), iterates the requirements for development in the "H" zone. Those requirements are as follows:

A. Before issuance of any building permit for development proposed in.... (the "H" zone)...., a tentative plan for such development shall be submitted to the Territorial Planner containing the following information as deemed appropriate by the Territorial Planner:

1. The name and address of the owner or owners of record, of the developer and of the person preparing the map.
2. Date, north arrow and scale.
3. A key map locating the development relation to surrounding areas.
4. The exact length and bearing of the exterior boundaries of the development which data shall be referenced to the "Guam Geodetic Triangulation Control Network" or such alternative system of triangulation control as the Territorial Surveyor may direct.
5. The accurate placement and outline of structures existing on the site.
6. The location, names, and existing widths of adjacent street rights of way.
7. The location and dimensions of all known existing easements and reservations.
8. The location of existing utilities, sewers, drainage ditches, and other drainage facilities located in, or adjacent to, the proposed development.
9. The location, width and direction of flow of all water courses within the subdivision area.

10. Topography with contour intervals of two feet (2') where the ground slope is five percent (5%) or less or contour intervals of five feet (5') where the ground slope is more than five percent (5%).

11. The location and widths of all existing or proposed streets in the development.

12. The approximate layout and approximate dimensions of each structure, facility, or use proposed within the development.

13. Areas intended to be reserved for public use.

14. A drainage plan showing methods and facilities for collection and disposal of storm waters. The storm drainage disposal area or channel must have a demonstrated ability to accept additional water in view of capacity of area or channel and of capacity of existing improvements confining the channel.

The tentative plan shall be prepared in sufficient detail for analysis by the Commission as to sufficiency and most suitable location.(continues)...

Discussion: While not all of the above requirements will be necessary for every type of development in the "H" zone, the Commission should be aware of these requirements and ensure that all necessary information has been submitted to the Territorial Planner and so transmitted to the Commission for their review.

Part "D" of this section states: Any proposed use or structure which has not been included in an approved tentative plan must be approved by the Commission or at its discretion, the Territorial Planner, before issuance of any building permits.

Discussion: The assurance that the above part is complied with, is dependent upon knowledgeable zoning inspectors within the Department of Public Works.

Part "E" of this section states, in part: A performance bond or undertaking shall be required for any development undertaken pursuant to an approved tentative plan within an "H" zone as otherwise provided in the regulations. The amount of the bond shall be one hundred and ten percent (110%) of the infrastructure costs of the project, and not less than two thousand dollars (\$2000).

Part "F" of this section states: The Commission shall approve a maximum time period within which all of the improvements authorized in the tentative development plan must be completed. The time period shall be no less than six months, and no more than four years. The time period shall be based on the size, character, and complexity of the authorized improvements. The Commission may, for good cause shown, grant any extension of time.

Discussion: Although the proposed Rules and Regulations for Tumon Bay have not yet been adopted, it is important to remember that the Tumon Bay Master Plan itself and the development philosophy contained therein have been adopted, and all development requests should be reviewed for con-
formances with that Master Plan. Strict adherence to the above procedures can help to guarantee that compliance.

Standards for Development within an "H" Zone: Section V of the "H" Zone Rules and Regulations state, in part: (D) Development and activities within an "H" Resort-Hotel Zone shall:

1. Provide open access to public resources including but not limited to beaches or other parts of the ocean shore, parks, conservation areas, rivers, waterfalls, and other public resources.

Discussion: This is to mean that, even on private property, accesses to the beach areas must be provided. In a 1985 example, one developer, in an effort to discourage vehicles from driving along the beach in front of his property, placed large boulders extending from his property to the water.

Such action was clearly illegal, and points out the importance for the Commission to inform developers of their obligation of access.

2. To the maximum extent possible, assure that all permissible and accessory uses enhance, compliment, and do not detract from the surrounding area.

Discussion: This assurance should encompass both the design and use of the development. While great leeway can and should be given in design, in order to accommodate all the cultures that make up Guam, design can be accomplished so that different cultural styles compliment one another, rather than compete with one another. In the "H" zone area, features and uses should blend from one to the other so as to present a natural progression. For example; design from lot to lot may reflect Chamorro, Japanese, Spanish, Island, Stateside cultures, etc., but they should be so designed so as to compliment each other, rather than compete with each other.

3. When associated with or encompassing such valuable resources as unique land, water, floral, faunal, cultural, historic, archaeological, or other such areas:

a. **Provide interpretive materials, displays, and information as required, reviewed, and approved by the Department of Parks and Recreation.** The Territorial Planner shall certify to the TPC and SDRC that the interpretive materials, displays, and information have been so approved.

b. Assure that such resources remain, to the maximum extent possible, in their natural or undisturbed state.

Discussion: This section of the law has been generally overlooked, or ignored, in the past. Certainly in Tumon there are historic and pre-historic sites on a great deal of the private land, which has not been so marked or identified, as well as certain examples of flora, and other

natural features. This section is important in that adherence to it will help to ensure the continuation of identification with the whole island, as well as to ensure the continued viability of those features, and to foment an appreciation for the island's resources by residents and visitors alike.

(G) Prior to issuance of occupancy permits for any development within an "H" Zone, the developer shall certify to the Territorial Planner that no less than two percent of the total construction cost for development of land oriented facility or structure was expended on landscaping that particular development. Allowable costs under such a requirement include the costs for purchase of landscaping vegetation and labor involved in its planting.

Discussion: The landscaping requirement aids in the perpetuation of the quality of visitor impression both now and in the foreseeable future. While developers devote an impressive amount of money to initial construction, it has been estimated that a fifty million dollar (\$50,000,000) hotel will realize "in-the-black" profits within five years, thus developer commitment to the quality of up-keep may fall off sharply after that period of time, or the development may change hands. This lack of upkeep can be seen in apartment and commercial businesses throughout the island. Landscaping helps to off-set this apparant lack of long term concern, and thus is extremely important from the beginning of a project.

(H) Variance to these regulations may be granted by the Commission only upon issuance of such findings or under such conditions as prescribed under Sections 17501 - 17502 of the Government Code.

Planning Considerations: The current "H" zone (Tumon Bay), is a major economic asset to Guam, and its importance cannot be overemphasized. Development must be of the highest quality, and must be within the guidelines of good planning (Tumon Bay Master Plan), if the island is to

continue to prosper and expand. We must not expect that the numbers and types of tourists we cater to now, will remain the same in the future. World conditions, political considerations, and selling approaches will change over time, and Guam must be prepared for those changes by insisting that development be conducted along the lines of local desire and taste, rather than catering to what ever group happens to be the largest visitor group at the moment. Intelligent use of the plans, rule and regulations and laws can help to guarantee Guam's continued success in the visitor industry.

Territorial Seashore Reserve

The Law: Government Code of Guam, Title XIV, Chapter V-A, Section 13411 states: The people of the territory of Guam hereby find and declare that the Guam Territorial Seashore Reserve is a distinct and valuable natural resource belonging to all the people of Guam and existing as a delicatly balanced ecosystem; that the permanent protection of the natural, scenic, and historical resources of the seashore reserve is a paramount concern to the present and future residents of this island; that in order to promote the public safety, health and welfare, and to protect public and private property, wildlife, marinelife, and other ocean resources, and the natural environment, it is necessary to preserve the ecological balance of the seashore reserve and prevent its deterioration and destruction; that it is the policy of this territory to preserve and protect the resources of the seashore reserve for the enjoyment of the current and succeeding generations, and that to protect the seashore reserve, it is necessary:

(a) To study the seashore reserve to determine the ecological planning principles and assumptions needed to ensure conservation of its resources;

Discussion: Guam is not unique in its creation of laws to address the concerns of seashore degradation, but it is unique in the fact that Guam has the opportunity to successfully determine the future health of the seashores before they are completely developed. In order, though, for any truely responsible decision-making to coalesce and gain the respect and cooperation of both the public and private sectors, it must be demonstrated that the decision-making is based upon a solid knowledge of the resources that exist, the current public need for those resources, the resources abilities to withstand development and remain viable, the long-term public need for the resources, and resource sustainability vs. a wide range of possible development futures. It must be remembered that the seashore is not just the line where water meets land, it is the

convergence zone for two distinct, yet equally important, ecological systems. In this zone, the natural or man-caused activities on one system have an effect and impact on the other.

Additionally; because the seashore occupies such a large extent of Guam's "non-development" related portion of community concern, (including; sustenance fishing, recreation, tourism enjoyment and economy, and resident view-related emotional health), it is imperative that our development of the resource be fully understood before being undertaken.

(b) To prepare, based upon such study and in full consultation with all affected governmental agencies and departments, private interests and the general public, a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation, management and development of the seashore reserve;

Discussion: Although this Title was enacted in 1974, as of 1986 no such plan had been prepared. Because of this, the full investigation of any application for development in the seashore reserve must undergo the most thorough scrutiny by the Commission, and, when doubt exists as to the possible consequences of the development, the Commission should do no less than deny the development application.

(c) To ensure that any development which occurs in the seashore reserve during the study and planning period will be consistent with the objectives of this chapter;

(d) That the Board of Directors, Territorial Seashore Protection Commission is hereby charged with the responsibility of implementing the provisions of this chapter.

Section 13416, subsections (c) through (f) outline the procedures for drafting and adoption of a seashore reserve plan. By the dates given for implementation (by law), it is apparent that the Commission is, as of 1986, in violation of the law, by failure to comply. It is imperative for many reasons, that the authorities of this section be fulfilled.

Section 13417. **Interim permit control.** Subsection (a) iterates the interim authorities pertaining to development in the seashore reserve, as follows:

(1) On or after June 1, 1974 any person wishing to perform any development within the seashore reserve shall obtain a permit authorizing such development from the Commission, and, if required by law, from any other governmental department or agency. No permit shall be issued without the affirmative vote of a majority of the Board members.

(2) No permit shall be issued unless the Board has first found:

(a) **That the development will not have any substantial adverse environmental or ecological effect, and**

(b) **That the development is consistent with the purpose and objectives of this chapter. The applicant shall have the burden of proof on all issues.**

(3) All permits shall be subject to reasonable terms and conditions in order to ensure that:

(a) **Access to beaches, recreation and historical areas, and natural reserves is increased to the maximum extent possible by appropriate dedication.**

Discussion: Because the seashore is a finite resources which cannot be expanded, and private ownership of the resource is limited, and because

the seashore has been recognized and defined as a "public interest resource", it is not only perfectly reasonable, but necessary for the public good that development of the resource return benefits, including dedicated access to the public.

(b) There is no substantial interference with or detraction from the line of sight toward the sea from the territorial highway nearest the coast.

Discussion: From a planning perspective, this means that both development height and lot coverage must be kept to a minimum, in order not to interfere with the public's right to views belonging to the public. There should be substantial view corridors between developments on adjoining lots, or multiple developments on a single lot.

(c) Adequate and properly located public recreation areas and wildlife preserves are reserved.

Discussion: In the absence of the required seashore reserve plan, such areas and preserves should be identified by the Departments of Parks and Recreation, and Agriculture (respectively).

(d) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon coastal reserve resources.

Discussion: No permit should be granted unless concurrence is first obtained from the Guam Environmental Protection Agency and Public Utility Agency of Guam.

(e) Alterations to existing land forms and vegetation, and construction of structures shall cause minimum danger of floods, landslides, erosion or siltation.

Other Powers of the TSPC: Section 13415 of this Title give the TSPC authority as follows:

(c) (1) Through coordination and assistance with other government departments and agencies, acquire lands, waters, and interests therein with the boudaries of the seashore reserve, by donation, purchase with donated or appropriated funds, by exchange for government land, or transfer. All property owned by the territory of Guam within the seashore reserve is hereby dedicated for the purpose of this Chapter.

Section 13420 states: **Authorization for appropriation.** There are hereby authorized to be appropriate such sums as may be necessary to carry out the purposes of this Chapter.

Planning Considerations: The importance of the seashore reserve, and the necessity for extremely careful review and decision-making by the Commission for applications affecting the seashore reserve, cannot be over-emphasized. With Guam's emergence into the mainstream of Pacific activities in 1962, and the subsequent development "boom" periods resulting from that emergence, an ever increasing pressure is being placed on the seashore area.

While it is not expected that the public sector of Guam will ever have the capabilities of fully controlling the seashore area, there can be a much greater degree of control over the types and quality of development than has been exhibited in the past. There can be no allowance for non-site dependent developments such as funeral homes, massage parlors, sporting goods stores, automobile dealerships, etc., etc., etc.

Commercial development should be made to conform to location dependency criteria, which would allow for water related sports rentals, restaurants designed to make full use of views, open-air, island-design bars and gift stores.

The authorities for controlling the growth of the seashore areas are in place, but until such time that the government is willing to utilize those authorities, the seashore reserve will continue to disappear beneath the concrete pillars of personal gratification and greed.

**Guide to Land-Use Decision Making For
Territorial Planning Commission/
Territorial Seashore Protection Commission Members**

June 1986

**This Guide was funded by the
U.S. Department of Commerce
Office of Ocean and Coastal Resource Management
and the
Guam Coastal Management Program
Bureau of Planning
Government of Guam**

Appendix A

Executive Order 78-37

GUAM LAND - USE POLICIES

GOVERNMENT OF GUAM
OFFICE OF THE GOVERNOR
AGANA, GUAM

EXECUTIVE ORDER NO. 78-37

GUAM LAND-USE POLICIES



WHEREAS, Public Law 12-200 requires as part of the Comprehensive Development Plan, a statement of specific policies for at least each of the following areas: social and human resource development, natural resource development, and utilization of environmental protection and quality, historical and cultural heritage preservation; and

WHEREAS, the Comprehensive Development Plan, as now completed by the Bureau of Planning embodies such specific policies; and

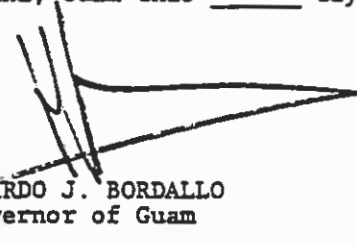
WHEREAS, prompt implementation of these policies is a desirable supplement to the land use districting system as established under Executive Order 78-23; and

WHEREAS, implementation of such policies at this time will facilitate federal approval of Guam's Coastal Management Program; and

WHEREAS, future federal funding of Guam's Coastal Management Program is contingent upon such approval;

NOW, THEREFORE, I, RICARDO J. BORDALLO, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, do hereby order the following policies, as embodied in the Guam Comprehensive Development Plan, to be implemented by all agencies and instrumentalities of the Government of Guam within the scope of their authorities.

Signed and promulgated at Agana, Guam this 15th day of November, 1978.


RICARDO J. BORDALLO
Governor of Guam

COUNTERSIGNED:


RUDOLPH G. SABLAN
Lieutenant Governor

A. Governmental Processes Policy

More effective administration of natural resource related laws, programs, and policies shall be achieved through:

- . revision of unclear and outdated laws and regulations,
- . improved coordination among local agencies,
- . improved coordination between territorial and federal agencies,
- . educational and training programs for local government personnel, and refinement of supporting technical data.

B. Development Policies

1. Shore Area Development

Only those uses shall be located within the Seashore Reserve which: (1) enhance, are compatible with or do not generally detract from the surrounding coastal area's aesthetic and environmental quality and beach accessibility; or (2) can demonstrate dependence on such a location and the lack of feasible alternative sites.

2. Urban Development

Uses permitted only within Commercial, Multi-Family, Industrial, and Resort-Hotel zones; and uses requiring high levels of support facilities shall be concentrated within urban districts as outlined on the Land-Use Districting Map.

3. Rural Development

Rural districts shall be designated in which only low density residential and agricultural uses will be acceptable. Minimum lot size for these uses should be one-half acre until adequate infrastructure, including functional sewerage, is provided.

4. Major Facility Siting

In evaluating the consistency of proposed major facilities with the goals, policies, and standards of the Comprehensive Development and Coastal Management Plans, the Territory shall recognize the national interest in the siting of such facilities including those associated with electric power production and transmission, petroleum refining and transmission, port and air installations, solid waste disposal, sewage treatment, and major reservoir sites.

5. Hazardous Areas

Identified hazardous lands including floodplains, erosion-prone areas, air installation crash and sound zones and major fault lines shall be developed only to the extent that such development does not pose unreasonable risks to the health, safety, or welfare of the people of Guam, and complies with land-use regulations.

6. Housing

The government shall encourage efficient design of residential areas, restrict such development in areas highly susceptible to natural and manmade hazards, and recognize the limitations of the island's resources to support historical patterns of residential development.

7. Transportation

The Territory shall develop an efficient and safe transportation system while limiting adverse environmental impacts on primary aquifers, beaches, estuaries, and other coastal resources.

8. Erosion and Siltation

Development shall be limited in areas of 15% or greater slope by requiring strict compliance with erosion, sedimentation, and land-use district guidelines, as well as other related land-use standards for such areas.

C. Resource Policies

1. Conservation of Natural Resources - Overall Policy

The value of Guam's natural resources as recreational areas, critical marine and wildlife habitats, the major source of drinking water, and the foundation of the island's economy, shall be protected through policies and programs affecting such resources.

2. Air Quality

All activities and uses shall comply with all local air pollution regulations and all appropriate federal air quality standards in order to ensure the maintenance of Guam's relatively high air quality.

3. Water Quality

Safe drinking water shall be assured and aquatic recreation sites shall be protected through the regulation of uses and discharges that pose a pollution threat to Guam's waters, particularly in estuarine, reef and aquifer areas.

4. Fragile Areas

Development in the following types of fragile areas shall be regulated to protect their unique character: historic and archaeologic sites, wildlife habitats, pristine marine and terrestrial communities, limestone forests, and mangrove stands and other wetlands.

5. Living Marine Resources

All living resources within the territorial waters of Guam, particularly corals and fish, shall be protected from over-harvesting and, in the case of marine mammals, from any taking whatsoever.

6. Visual Quality

Preservation and enhancement of, and respect for the island's scenic resources shall be encouraged through increased enforcement of and compliance with sign, litter, zoning, subdivision, building and related land-use laws; visually objectionable uses shall be located to the maximum extent practicable, so as not to degrade significantly views from scenic overlooks, highways, and trails.

7. Recreational Areas

The Government of Guam shall encourage development of varied types of recreation facilities located and maintained so as to be compatible with the surrounding environment and land uses; adequately serve community centers and urban areas, and protect beaches and such passive recreational areas as wildlife and marine conservation areas, scenic overlooks, parks, and historic sites.

8. Public Access

The public's right of unrestricted access shall be ensured to all non-federally owned beach areas and all Territorial recreation areas, parks, scenic overlooks, designated conservation areas and other public lands; and agreements shall be encouraged with the owners of private and federal property for the provision of reasonable access to, and use of, resources of public nature located on such land.

9. Agricultural Lands

Critical agricultural lands shall be preserved and maintained for agricultural use.

APPENDIX B

TERRITORIAL PLANNING COMMISSION

RULES AND REGULATIONS

RULES AND REGULATIONS
TERRITORIAL PLANNING COMMISSION
GOVERNMENT OF GUAM

ARTICLE I. AUTHORITY AND PURPOSE

Section 1. Authority. These Rules and Regulations are promulgated under the authority of Chapter 1, Section 13000, Title XIV, Government Code of Guam.

Section 2. Purpose. The purpose of these Rules and Regulations is to govern the meetings and proceedings of the Territorial Planning Commission, acting pursuant to the Legislative authority mentioned above.

ARTICLE II. THE COMMISSION

Section 1. The official name of the Commission shall be the Territorial Planning Commission.

Section 2. Official Address. The official address of the Territorial Planning Commission shall be c/o Department of Land Management, Government of Guam, Agana, Guam.

Section 3. Place of Meeting. The Commission will hold its regular meeting at a location to be determined by a majority vote at any regular meeting.

ARTICLE III. MEMBERS OF THE COMMISSION

Section 1. Commission Creation, Membership and Compensation. The Commission shall be composed of seven (7) members to be appointed by the Governor by and with the advice and consent of the Legislature for a period of five (5) years; provided, however, that, of the two (2) members first appointed, one (1) shall serve for a term of one (1) year, two (2) shall serve for terms of three (3) years each, and the remaining two (2) shall serve for terms of five (5) years each, as designated by the Governor. The Governor shall appoint a member of the Commission to serve as Chairman. (Enacted 1952, amended by P.L. 9-138, effective February 15, 1968)

Members of the Commission shall receive no compensation as such for duties prescribed by this Title, but shall be reimbursed for their reasonable and necessary travel and incidental expenses incurred in the course of their official duties, as certified by the Treasurer of Guam.

Section 2. Powers. The powers of the Commission shall be vested in the members thereof then in office. Such powers of the Commission are defined under the following:

(1) Chapter III, Title XIV, Government Code of Guam, known as the Public Lands Act.

(2) Title XIX, Government Code of Guam, known as the Subdivision Law of the Territory of Guam.

(3) Title XVIII, Government Code of Guam, known as the Zoning Law of the Territory of Guam.

(4) Title XXXII, Government Code of Guam, known as the Building Law of the Territory of Guam.

(5) Public Law 12-200, known as the Comprehensive Planning Act.

(6) Other laws as may be enacted by the Legislature.

ARTICLE IV. OFFICERS

Section 1. Regular Officers. Regular officers of the Commission shall be Chairman, Vice Chairman and Executive Secretary.

Section 2. Additional Officers and Assistant Officers. The Commission may, by Resolution, appoint such additional officer or officers, or assistant officer or officers, establish the terms of office of such officers, and define the duties of such officers as the Commission may by such Resolution determine necessary or desirable.

Section 3. Appointment and Elections. The Chairman shall be appointed by the Governor with the advice and consent of the Legislature. The Vice Chairman

SUBDIVISION WAIVERS OF IMPROVEMENT (GENERAL)

SUBDIVISION

WAIVER OF IMPROVEMENTS

The Law: Government Code of Guam, Title XIX, Chapter V, Section 18400 states, (in part): **Required Improvements.** The subdivider shall provide the following improvements and improvement areas within time limits specified by the Commission:

(a) Street and Alleys - Planned areas. Where general plans have been or are hereafter duly adopted and show an area as planned for development into urban uses, the following street and alley improvements shall be required:

All street and alleys within the subdivision shall be graded and drained the full width of the right of way. The roadbed portion of the right of way shall be improved with a stabilized coral base and surfaced with a light bituminous surface treatment having a minimum width of twenty-two feet (22'). The roadway centerline gradient and right-of-way cross section including drainage ditches, travelled roadway design and paving and shoulders shall be in conformity to criteria established by the Commission.

Permanent sidewalks having a minimum width of four feet (4') shall be laid out for all streets and shall be dedicated to the Government of Guam. The Commission shall establish criteria relating to width and construction of such sidewalks, and all such sidewalks shall be in conformity thereto.

[full text of this section can be found in appendix E, page 115].

The Subdivision Rules and Regulations, which establish the criteria for all aspects of subdivision development, have been adopted by the Commission. Full text of those rules and regulations can be found in appendix F, page 120.

Variances: (waivers of improvements). Title XIX, Chapter VI, Section 18500 states: **Petition for variances.** The Commission, on its own initiative, or upon the petition of any subdivider stating fully the

grounds of the application and all the facts relied upon by the subdivider, may grant variances to the regulations of the Commission. Such petition shall be filed with the tentative plan of the subdivision. In the event the Commission shall find the following facts with respect to the petition for a variance, it may grant a variance under such terms and conditions as it may prescribe.

(a) That there are special circumstances or conditions affecting said property.

(b) That the variance is necessary for the preservation and enjoyment of a substantial property right of the subdivider.

(c) That the granting of the variance will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is situated.

(d) That the variance, if granted, will conform with the intent and purpose of the general or precise plan for the territory, and of this Title.

Attorney General's Opinion: "In order for a variance to be granted, the Territorial Planning Commission must find that **all** of the requirements of section 18500 are met prior to issuance of the variance. (Ref: DLM 84 - 1088, October 30, 1984....see appendix I, Page 172, this document).

Request Type:

WAIVER OF SIDEWALKS

The Subdivision Rules and Regulations provide that all subdivisions having an average lot size of less than 10,000 square feet shall have sidewalks. This requirement is for the following reasons:

1) Safety of the residents: Activities such as visiting neighbors, roller skating and skateboarding, walking to nearby stores, etc., must be confined to sidewalk areas for safety. A lack of sidewalks forces those activities into

the streets where they compete with vehicle traffic. That competition is dangerous practice in daylight hours, and the danger increases several-fold after sunset.

The Bureau of Planning analyzed the "Traffic Accident Encounter Reports", prepared by the Office of Highway Safety, for the years 1972 through 1978. These reports show, for those years, a total of 399 auto-pedestrian accidents, of which 39 resulted in death. In, what appears to be a typical year, 1978, of 46 such accidents only 4 involved pedestrians crossing a street. The other 42 accidents, (or more than 90%), involved pedestrians walking or standing on the shoulders of roads where no sidewalks existed. These reports go on to show that, by age group, the **majority of accidents involved children between the ages of 5 and 14 years.**

2) Cost to the people of Guam: The addition of sidewalks at the time of subdivision infrastructure development is the most cost-effective time for the placement of these amenities. At that time, land can be delineated for this purpose, and equipment and materials are already in-place.

An example of the cost of "after-the-fact" construction involves Dededo. In the 1960's, when Kaiser housing was being constructed, the developer was granted a waiver of sidewalk improvements. With the growth of the community and increased traffic, the **need** for sidewalks was understood. On February 5, 1985, the Pacific Daily News reported that Senator San Agustin introduced legislation requesting one million dollars, **\$1,000,000**, for the construction of sidewalks along one single street in that village. This is a cost that should have been, and could have more economically been borne by the residents of the area at the time of initial purchase.

In the years 1983 and 1984, the Commission granted a waiver of sidewalk improvements for 14 of 19 subdivision applications, involving a total of 396 homes. If, as is hoped with all development, those subdivisions prove viable in the long run, there can be little doubt that they will experience growth and the need for sidewalks will be understood by the community. At that time, it will fall upon the shoulders of the entire island community to provide the money for their installation.

3) Aesthetic appreciation: The maintenance of community standards depend upon those attributes which instill community pride; such as overall subdivision design. Sidewalks can provide a sense of community identity *as a community* and instill a sense of connection to ones neighbor, rather than a feeling that the community is a series of unconnected dwelling units. This community feeling could translate into lower rates of graffiti and vandalizm, and possibly increase property values.

In requesting for a waiver of sidewalk improvements, developers will utilize reasoning based around one argument: financial costs. In some cases the developer will argue that provision of full improvements will make the development of the subdivision beyond the reach of himself and/or the home buyers.

The Bureau of Planning rejects that financial argument based on cost figures supplied by the Department of Public Works in 1985. According to those figures, the cost of asphalt/concrete sidewalks was \$15 per square yard, and only \$25 per square yard for the more preferrable concrete. Given an average frontage of 50 to 100 feet, concrete sidewalks could certainly be provided for less than \$3000 per lot, added onto the price of the home over a 30 year mortgage. Therefore, a \$65,000 home would increase to \$68,000 (or less), which should only have a minimal effect on purchasability.

Another financial argument raised by developers has been compliance with FMHA financing requirements, which (supposedly) state that "not more than \$16,000 may be spent in acquisition of property and development of all improvements. According to several developers, this requirement cannot be met with the necessity of sidewalks. As of March 1986, not one developer requesting this waiver has provided documentation of that assertion! Also, there have been too many developers who have developed for FMHA housing that **have** met all the requirements of law without waivers, to make the argument valid.

While the Bureau of Planning agrees that federal regulations such as those outlined above, may be a valid argument for entertaining an application for waiver, the Bureau does not believe that this is sufficient

grounds for granting the request. First; the requirements for variance must still be met. For this request, several other steps should be taken by the Commission.

1) The Commission must require written documentation, (from the applicant), showing the total purchase price of the entire subdivision property, and construction estimates of infrastructure costs. These figures, divided by the number of lots in the subdivision will show compliance, (or non-compliances) to the FMHA requirements.

2) The Commission must require that the applicant provide written documentation from FMHA that this subdivision would not receive FMHA financing without the waiver.

3) The Commission should require, from the developer, a notarized statement that a minimum of fifty percent (50%) plus one home, will be priced to meet FMHA financing requirements.

REMEMBER: Subdivisions represent one of the major types of development undertaken on Guam, affecting physical and mental, community health, transportation patterns, location placement of future commercial and industrial development, development or upgrading of educational facilities, and resident attitude toward himself, his community and the island as a whole.

For first hand knowledge which would aid in making decisions on such waivers, it is suggested that the Commission inspect the following sites, in which sidewalks were developed:

- 1) Kaiser housing across from the Harmon Loop School.
- 2) Latte Heights.
- 3) Astumbo Garden.

It is further suggested that the Commission inspect the following sites for which no sidewalks were provided:

- 1) Santa Rosa Subdivision.
- 2) Santos Subdivision.
- 3) Subdivision off Route 16, directly behind the Harmon Loop School.
- 4) Harmon Court Subdivision

Finally, in an apparant effort to give the impression of attempting to fulfill the requirements of the law and reasoning behind sidewalks, some developers have requested for, and been allowed to pour thin layers of asphalt to serve as sidewalks. This is usually requested for as an adjunct to replacement of concrete curbs and gutters with asphalt swale, which is discussed in more detail below.

It is suggested that Commission members inspect examples of these asphalt "sidewalks" in the community of Latte Plantation. That community is graphic proof that such sidewalks are (a) not aesthetically pleasing, and (b) do not last for even a reasonable period of time.

WAIVER OF CURB AND GUTTER IMPROVEMENTS

WAIVER OF CURB AND GUTTER

The Subdivision Rules and Regulations provide that all residential developments having an average lot size of 20,000 square feet or less, shall include concrete curb and gutter. This requirement is for the following reasons:

1) Proper drainage: Curbs and gutters most effectively focus surface runoff, in order that development areas may controll and dispose of storm waters in the most effective manner.

2) Delineation of on-street boundries: In areas where asphalt swales or no form of storm collection has been provided, weeds and grasses from adjoining properties can invade the street system and not only damage that street, but also make boundry lines between travel-ways, parking and pedestrian areas indistinguishable. The results of this can be (a) damage to the aesthetics of the community, (b) decreased safety to children and other pedestrians, (c) decreased property values over a period of time, (d) increased cost to the government in road maintenance, and (e) "fuzzing" of property lines.

3) Community identification and continuity: Communities with full improvements (or more), tend to exhibit a greater group "pride" in the living area, and community involvement in the maintenance of individual yards and common areas is increased. Additionally, because one subdivision development almost always leads to new or expanded development on adjacent properties, clearly delineated curbs and gutters (as well as sidewalks and roadways), aid in the proper development of the new communities. Because of these facts, the governments costs decrease, freeing funds for use in areas of more concern to the entire island.

REMEMBER: Subdivisions represent one of the major types of development undertaken on Guam, affecting physical and mental community health, transportation patterns, location placement of future commercial and industrial development, development or upgrading of educational facilities, and resident attitude toward himself, his community and the island as a whole.

For first hand knowledge which would aid in making decisions on such waivers, it is suggested the the Commission inspect the following sites, in which full curb and gutter were developed.

- 1) Astumbo Garden
- 2) Fern Terrace
- 3) Ypaopao Estates

It is further suggested that the Commission inspect the following sites for which curbs and gutters were waived.

- 1) Santa-Rosa Subdivision
- 2) Santos Subdivision
- 3) Latte Plantation

APPENDIX C

TERRITORIAL SEASHORE PROTECTION
COMMISSION

RULES AND REGULATIONS

RULES AND REGULATIONS
GUAM TERRITORIAL SEASHORE PROTECTION COMMISSION

ARTICLE I. AUTHORITY AND PURPOSE

Section 1. Authority. These Rules and Regulations are promulgated under the authority of Chapter V-A, Title XIV, Public Law 12-108, Section 13415.

Section 2. Purpose. The purpose of these Rules and Regulations is to govern the meetings and proceedings of the Guam Territorial Seashore Protection Commission, acting pursuant to the Legislative authority mentioned above.

ARTICLE II. THE COMMISSION

Section 1. The official name of the Commission shall be the Guam Territorial Seashore Protection Commission.

Section 2. Official Address. The official address of the Guam Territorial Seashore Protection Commission shall be c/o Government of Guam, Agana, Guam.

Section 3. Place of Meeting. The Commission will hold its regular meeting at a location to be determined by a majority vote at any regular meeting.

ARTICLE III. MEMBERS OF THE COMMISSION

Section 1. Commission Creation, Membership and Compensation. The Commission shall consist of the seven (7) members of the Territorial Planning Commission and the members shall hold office so long as they remain members of the Territorial Planning Commission. Commission members shall serve without compensation except that each member shall be paid a per diem of twenty-five dollars (\$25.00) for each day's attendance at a meeting of the Commission. Each member shall also be allowed actual expenses incurred in the discharge of his duties.

Section 2. Powers and Duties. The Commission may:

- (a) Accept grants, contributions and appropriations;
- (b) Employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary;

(c) (1) Through coordination and assistance with other Government agencies, acquire lands, waters, interests therein with the boundaries of the Seashore Reserve, by donation, purchase with donated or appropriated funds, by exchange for government land, or transfer;

(2) Grant land use permits.

(3) Terminate a right of use and occupancy retained pursuant to this subsection upon a determination that such use and occupancy is being exercised in a manner not consistent with the purpose of this Chapter, and upon tender to the holder of the right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination.

(d) Contract for any professional services if such work or services cannot satisfactorily be performed by its employees;

(e) Be sued and sue to obtain any remedy to restrain violations of this Act. Upon the request of the Commission, the Attorney General shall provide necessary legal representation.

(f) Adopt any regulations or take any action it deems reasonable and necessary to carry out the provisions of Chapter V-A, Section 13415, (Public Law 12-108), but no regulations shall be adopted without prior public hearing.

(g) Elect a Chairman;

(h) Appoint an Administrator who shall not be a member of the Commission;

ARTICLE IV. OFFICERS

Section 1. Regular Officers. Regular officers of the Commission shall be Chairman, Vice-Chairman and Administrator.

Section 2. Additional Officers and Assistant Officers. The Commission may, by Resolution, appoint such additional officer or officers, or assistant officer or officers, establish the terms of office of such officers, and define the duties of such officers as the Commission may by such Resolution determine necessary or desirable.

Section 3. Terms of Office. The terms of office for the Chairman and Vice-Chairman shall be concurrent with their terms of office as members of the Territorial Planning Commission. The term of office of the Administrator shall serve at the pleasure of the Commission.

Section 4. Vacancies. Should the office of Chairman and Vice-Chairman be vacant, the Commission shall fill the vacancy by election.

Section 5. Duties of Officers. The Chairman shall preside at all meetings of the Commission. At such meetings, he shall submit such proper information and recommendations to the Commission as he may deem proper concerning the policies, administration, and other affairs of the Commission. The Chairman shall sign all contracts and other important documents and letters of the Commission upon approval of the Commission in accordance with Article VI, Section 4, of these Rules and Regulations.

The Vice-Chairman shall perform the duties of the Chairman in the absence or incapacity of the Chairman.

The Administrator shall serve as administrative officer of the Commission, shall be directly responsible to it, and subject thereto shall have complete control and responsibility for the execution of the Commission policies, the administration of its affairs, and the furnishing of such technical and clerical personnel, and office facilities as may be reasonably necessary.

Section 6. The officers of the Commission shall perform such other duties and functions as may from time to time be appropriately required by the Commission or the Rules and Regulations.

ARTICLE V. INTERIM PERMIT CONTROL

Section 1. General Provisions. The Commission shall adopt a permit application form which shall conform to the General provisions as enumerated in Section 13417 (a), Public Law 12-108, Seashore Reserve Act, and all other applicable laws governing the area defined as the Seashore Reserve.

Section 2. Permit Procedure.

(a) Acceptance of Application. Applications for the Territorial Seashore Protection Commission shall meet all current requirements of the Territorial Planning Commission and Public Law 12-108. Completed applications, with seven (7) additional copies, shall be submitted to the Administrator of the Commission in accordance with the Territorial Planning Commission and Public Law 12-108 requirements.

(b) Filing Fee. The Commission shall require a reasonable filing fee which shall be determined by the estimated cost of the project.

(c) After their acceptance by the Administrator, applications shall be transmitted to the Territorial Seashore Protection Commission. The Commission shall then hold at least one (1) hearing thereon in the municipal district where the project is located, such districts are described in Chapter I of Title XIV of the Government Code, notice of time and place of which shall be given by at least one (1) publication in a newspaper of general circulation, at least ten (10) days before the day of said hearing, and by mail to the Commissioner of the municipal district concerned. The hearing shall be no less than 21 nor more than 90 days after the date on which application is filed. All applications should be submitted and reviewed by the Subdivision and Development Review Committee prior to public hearing. All comments and evaluations of the Subdivision and Development Review Committee should be presented during the public hearing.

(d) The Commission shall act upon the application for permit within sixty (60) days after the conclusion of the hearing

ARTICLE VI. MEETING

Section 1. Regular Meetings. Meetings shall be held on the second and fourth Thursdays of the month. If such meeting falls on a legal holiday, the meeting shall be on the subsequent Tuesday.

Section 2. Special Meetings. Special meetings shall be held at such time and places as the Commission may determine, or may be called by the Chairman at such time and place as he may determine, and must be called by him upon the written request of three or more members of the Commission filed with the Administrator. Notice of such special meetings must be given at least 24 hours prior to the time of said meeting, and is to be given in writing, or in such form as the Chairman may direct. Any and all business of the Commission may be transacted at such a special meeting.

Section 3. Quorum. Four (4) members of the Commission shall constitute a quorum for the purpose of conducting its business, exercising its powers and for all other purposes.

Section 4. Voting. Every official act taken by the Commission shall be adopted by four affirmative votes. Only positive motions will be entertained.

Section 5. Order of Business. At the regular meetings of the Commission, the following shall be the order of business:

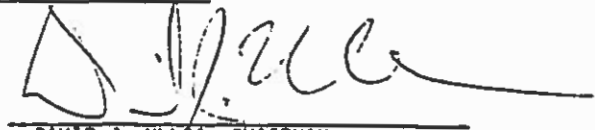
- (1) Notation of attendance;
- (2) Consideration of Seashore Protection Commission applications, governed under the general provisions, Section 1, Article V of these Rules and Regulations;
- (3) Miscellaneous matters;
- (4) Approval of Minutes not previously approved;
- (5) Adjournment.

Section 6. Parliamentary Procedure. The Rules. Parliamentary procedure set forth in Robert's Rules of Order shall govern all meetings of the Commission except as otherwise provided.

ARTICLE VII. AMENDMENTS

These Rules and Regulations may be amended by the Commission at any regular or special meeting by a majority vote, provided that 10 days public notice is provided.

Adopted on the 14th day of August 1975.



DAVID J. ULLOA, CHAIRMAN

I certify that the foregoing is a true copy of the Rules and Regulations of the Guam Territorial Seashore Protection Commission as promulgated, effective August 14, 1975. These Rules and Regulations were in effect August 14, 1975 and continue in effect as of the date of this certification.



ESTEBAN U. TORRES, ADMINISTRATOR

APPENDIX D

ZONING LAW

TITLE XVIII

GOVERNMENT CODE

TITLE XVIII

Zoning Law

- Chapter I. General Provisions.
 - II. Establishment of Zones and Boundaries.
 - III. Use Regulations.
 - IV. Height Regulations.
 - V. Yard and Area Regulations.
 - VI. Accessory Buildings.
 - VII. Nonconforming Buildings and Uses.
 - VIII. Automobile Parking and Loading Space Regulations
 - IX. Sign Regulations.
 - X. Junk Yards.
 - XI. Administration and Enforcement.
 - XII. Appeals and Reviews.
 - XIII. Changes of Zones.
 - XIV. Recording: Submission to the Legislature.
 - XV. Fees.
 - XVI. Penalty for Violation.

CHAPTER I

General Provisions

- § 17000. Title.
- § 17001. Purpose.
- § 17002. Definitions.
- § 17003. Interpretation.

§ 17000. Title. This Title shall be known as "The Zoning Law of the Territory of Guam." [Included in Original Government Code of Guam enacted P.L. 1-88, 1952.]

§ 17001. Purpose. The purpose of this Title is 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. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17002. Definitions. For the purpose of this Title, certain terms are defined as follows:

"Accessory Building." A detached subordinate building located on the same lot with a main building, the use of which is customarily secondary to that of the main building or to the use of the land.

"Apartment House." Same as "dwelling, multiple."

"Automobile Parking Area, Private." An open area, located on the same lot with a dwelling or hotel, for parking automobiles of the occupants of such buildings.

"Automobile Parking Area, Public." An open area, other than a street

or private automobile parking area, designed to be used for the parking of two or more automobiles.

"Building." Any structure built for the support, shelter or enclosure of persons, animals, chattels, or property of any kind.

"Building Height." The vertical distance measured from the average level of the highest and lowest point of that portion of the lot covered by the building to a point midway between the highest and lowest point of the roof.

"Cluster Development." Placement of residential units in close association to each other in order to consolidate required lot area into usable open space for the benefit of those living in such residential units. [Amended by P.L. 10-5, effective February 3, 1969.]

"Commission." Shall mean the "Territorial Planning Commission of Guam."

"Dwelling." A building or portion thereof designed exclusively for residential occupancy, including one-family, two-family and multiple dwellings, but not including hotels.

"Dwelling Unit." One or more rooms and a single kitchen in a dwelling, designed as a unit for occupancy by one family for living and sleeping purposes.

"Dwelling, One-Family." A detached building containing only one dwelling unit.

"Dwelling, Two-Family." A detached building containing two dwelling units.

"Dwelling, Multiple." A building containing three or more dwelling units.

"Family." An individual, or two or more persons related by blood or marriage, or a group of not more than five persons who need not be related by blood or marriage living together as a single housekeeping unit.

"Home Occupation." An occupation, carried on by occupants of a dwelling as a secondary use of such dwelling, in connection with which there is no display, no stock in trade nor commodity sold on the premises, and no other person employed.

"Hotel." A building containing six or more rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes.

"Junk Yard." An open area where waste, scrap metal, paper, rags, or similar materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including the dismantling or storing of wrecked automobiles or other vehicles, and buildings. The terms "dismantling" or "storing" do not include the action of a licensed automobile repairer or garage owner in stripping an automobile or other vehicle of its usable parts as long as such action is accomplished within ten (10) days of the arrival of the motor vehicle being stripped on the premises of the garage or automobile repair business. [Added by P.L. 9-126, effective January 29, 1968.]

"Lot" A parcel of land occupied or to be occupied by a use or building, and accessory buildings and uses, together with such yards, open spaces and lot area as are required by this Title, and having frontage on a street.

"Lot Line, front." The line separating the lot from the street. For the purposes of yard requirements, a corner lot has two front yards and no rear yard. Within a panhandle lot, the front lot line begins at the interior end of the panhandle. [Amended by P.L. 9-252, effective August 29, 1968.]

"Lot Line, rear." The lot line which is opposite and most distant from the front lot line.

"Lot Line, side." Any lot line not a front lot line or a rear lot line.

"Lot Depth." The horizontal distance between the front and rear lot lines, measured in the mean direction of the side lot lines.

"Lot Width." The horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

"Lot Area." The total horizontal area within the lot lines of a lot.

"Nonconforming Building." A building or structure which does not conform to the regulations of this Title and which lawfully existed at the time the regulations, with which it does not conform, became effective.

"Nonconforming Use." A use of a building or land which does not conform to the regulations of this Title and which lawfully existed at the time the regulations, with which it does not conform, became effective.

"Planned unit development district." A substantial area in which development follows an approved plan integrating a combination of uses in an appropriate and unified manner. [Added by P.L. 9-232, effective August 10, 1968.]

"Story." That portion of a building between the surface of any floor and the surface of the floor or ceiling next above it.

"Structure." Anything constructed or erected which requires location on the ground or attached to something having a location on the ground.

"Use." The purpose of which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

"Yard." An open space on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this Title.

"Yard, front." A yard adjoining the front lot line and extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.

"Yard, rear." A yard extending across the full width of the lot between the most rear main building and the rear lot line. The depth of the required rear yard shall be measured horizontally from the nearest part of a main building toward the nearest point of the rear lot line.

"Yard, side." A yard between a main building and the side lot line, extending from the front yard or front lot line where no front yard is required to the rear yard. The width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the main building. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952: amended where indicated herein.]

§ 17003. Interpretation. In interpreting and applying the provisions of this Title, they shall be held to be the minimum requirements for the protection and promotion of the public health, safety and general welfare, and shall be liberally construed in furtherance of these objectives. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

CHAPTER II

Establishment of Zones and Boundaries

- § 17050. Zones.
- § 17050.1 Zoning map: Agaña: adopted.
- § 17051. Zone boundaries.
- § 17052. Church Zone in Dededo.
- § 17053. Zone boundaries Maina.
- § 17053.1 Zone boundaries Maina.
- § 17053.2 Tumon Commercial.
- § 17053.3 Yigo Commercial.
- § 17053.4 Nimitz Hill R-2.

§ 17050. Zones. In order to carry out the purposes and provisions of this Title, areas within the Territory of Guam are hereby divided into nine zones, known as:

- "A" Agricultural Zone
- "R1" One-Family Dwelling Zone
- "R2" Multiple Dwelling Zone
- "P" Automobile Parking Zone
- "C" Commercial Zone
- "M1" Light Industrial Zone
- "M2" Heavy Industrial Zone
- "LC" Limited Commercial Zone
- "H" Hotel Resort Zone

The aforesaid zone symbols and the boundries of such zones shall be shown upon a map or maps which shall be designated as the "Zoning Map."

The "Zoning Map" shall be adopted by the Commission and shall be effective upon its approval by the Committee on Rules of the Legislature and by the Governor. The "Zoning Map" shall be submitted to the Committee on Rules prior to its submission to the Governor and such map shall be deemed approved by said Committee, unless within fifteen (15) days of its receipt thereof, said Committee shall adopt a resolution disapproving the same, in which case the map shall be returned to the Commission. No such map shall be adopted by the Commission except after public hearing, ten (10) days notice of time and place of which shall be given in a newspaper of general circulation.

The "Zoning Map" may be divided into separate parts and separately adopted and approved as the necessary planning and study therefor is completed. [Enacted 1952: repealed and added by P.L. 6-136, effective December 18, 1962.]

§ 17050.1 Zoning map of Agana. The zoning map of Agana identified as Drawing No. GI-54517 and heretofore adopted as part of the "zoning map", is hereby amended by extending the commercial zones appearing on said map, north of Route 8 and south of the Mongmong Maite road, two hundred (200) feet in depth on each such area. Notwithstanding any other provision of law, these two commercial zones may not hereafter be altered or changed except by statute. [Repealed and added by P.L. 10-141, effective March 26, 1970.]

§ 17051. Zone boundaries. Where the zone boundaries indicated on the "Zoning Map," said map, and all notations, references and their extensions; such lines shall be construed to be the zone boundaries.

Where the zone boundaries indicated on said map are not street, alley or lot lines, or extensions thereof, the zone boundaries shall be determined by the use of the scale appearing on the "Zoning Map," unless otherwise specifically shown by dimension.

In any case where there is uncertainty as to the intended location of a zone boundary, the Commission shall have the power and duty to determine its intended location. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17051.1 Zoning Map of Agana. The zoning map of Agana identified as Drawing No. GI-54517 and heretofore adopted as part of the "Zoning map", is hereby amended by extending the commercial zone appearing on said map, north of Route 8 and south of the Mongmong Maite road, two hundred (200) feet in depth on each such area. P.L. 12-160 dated August 29, 1974, further amend the zoning map of Agana by extending the commercial zones north and south of Route 4 from Marine Drive to Lot 83, Sinajana once on the north side and to Lot 3202, Sinajana on the south side, to a depth of two hundred (200) feet where the zones are not already of that depth and by further extending the commercial zone on said map to include the entire area broadened by Route 4, 3rd street south, 1st street east and Cliff Drive. Notwithstanding any other provision of law, these said mentioned commercial zones may not hereafter be altered or change except by statute. (Repealed and added by P.L. 10-141, effective March 26, 1970)

§ 17052. Church Zone in Dededo. As an amendment to the Dededo Zoning Map (Land Management Drawing No. E3-67S39), adopted by the Committee on Rules of the Guam Legislature pursuant to the provisions of § 17050 of this Title, the area in the municipality of Dededo, bounded by West Santa Monica Avenue to the north, Dolores Street to the east, and West San Antonio Avenue to the south and west, is hereby declared to be zoned for church and church-related activities. [Added by P.L. 10-106, effective February 6, 1970.]

§ 17053. Basic Lot Nos. 242, 243 and 269 REM, all in Maina in the Municipality of Asan, are hereby rezoned to R-2, multiple dwelling. (Added by P. L. 12-111.)

§ 17053.1 "Lot Nos. 235-REM-3-1 and 235-REM-3-2 in Maina in the Municipality of Asan are hereby rezoned to C, Commercial." (Added by P.L. 12-111.)

§ 17053.2 Tumon Commercial Zone. All property lying on either side of Route 1 (Marine Drive) between the two intersection of Tumon Loop with Route 1, to a depth of two hundred (200) feet from the edge of the right-of-way along Route 1, is hereby established as Commercial Zone Property. (Added by P.L. 12-160.)

§ 17053.3 Yigo Commercial Zone. All property lying on either side of Route 1 (Marine Drive) between the Old Marbo PX and the Yigo Catholic Church, to a depth of two hundred (200) feet from the edge of the right-of-way along Route 1, is hereby established as Commercial Zone Property. (Added by P.L. 12-160.)

§ 17053.4 Nimitz Hill R-2 Zone. All property lying on either side of the road from Top O' The Mar (Nimitz Hill - Spruance Drive) to the New Piti Elementary School, to a depth of two hundred (200) feet from the edge of the right-of-way along Route 6, is hereby established as R-2 Zone Property. (Added by P.L. 12-160.)

Agat R-1 Zone. Tract 132, Lots 1 through 9, inclusive; Lots 194-2-1 through 194-2-3, inclusive; Lots 195-1-1 through 195-1-3, inclusive; Lot 195-2 and Lot 209-R1-NEW. (Added by P. L. 14-123.)

Tamuning Commercial Zone. All property to a depth of 200 feet from the center of the main thoroughfare beginning at the Good Samaritan Medical Clinic to the nearest boundary of Tamuning Elementary School, and beginning at the Saehan Finishing Studio extending to the nearest boundary of Farenholt Road. (Added by P. L. 15-61.)

Barrigada Commercial Zone. All property to a depth of 200 feet from the center of the main thoroughfare beginning at the Junction of Routes 8 and 16 extending west to the Barrigada Toto Road. (Added by P. L. 15-61.)

CHAPTER III

Use Regulations

- § 17100. Conformance of uses to zone regulations.
- § 17101. Regulations along district boundaries.
- § 17102. Conditional use.
- § 17103. "A" rural zone.
- § 17104. "R1" single family dwelling zone.
- § 17105. "R2" multiple dwelling zone.
- § 17106. "C" commercial zone.
- § 17107. "P" automobile parking zone.
- § 17108. "M1" light industrial zone.
- § 17109. "M2" heavy industrial zone.
- § 17110. "H" hotel-resort zone.

§ 17100. Conformance of uses to zone regulations. No building or structure shall be altered, enlarged, moved or maintained, and no building or land shall be used for any purpose, except for a use permitted in the zone in which such building or land is located, as hereafter provided in this article.

§ 17101. Regulations along district boundaries. Where a commercial or industrial use occurs in zones permitting such uses, but in areas which are located adjacent to rural or residential zones, the yard requirement shall be twice that required of such use or twenty (20) feet, whichever is the greater.

§ 17102. Conditional use. In addition to permitted uses in each of the zones, specified uses will be permitted upon approval by the Commission of the site plan, including, but not limited to, disposal of sewage, access, parking, structure location and accompanying covenants that may include performance standards.

✓ § 17103. "A" rural zone.

(a) Use Permitted

1. One-family dwellings and duplexes.
2. Farming and fisheries, including all types of activities and pursuits customarily carried on in the field of agriculture and fisheries, including the raising of crops and fruits, poultry and livestock, grazing and dairying, tree and other vegetative production, whether for commercial or personal uses.
3. Uses customarily accessory to any of the above uses including home occupations, and private automobile parking areas as well as accessory buildings and structures such as private garages, warehouses, barns, corrals, or other similar structures.

(b) Conditional Use

1. Parks, playgrounds and community centers.
2. Biological gardens.
3. Schools and churches.
4. Hospitals, sanitariums, and institutional uses.
5. Cemeteries.
6. Recreational use including golf courses, cockpits, marinas, beaches, swimming pools, and accessory residential and commercial use.
7. Extractive industry.
8. Utilities and public facilities.
9. Wholesale and retail stores, shops and businesses.
10. Automobile service stations, including service shops.
11. Accessory uses and structures for the above.

✓ § 17104. "R1" one-family dwelling zone.

(a) Use Permitted

1. One-family dwellings.
2. Gardening and the keeping of pets for noncommercial purposes.
3. Use customarily accessory to any of the above uses including home occupations and private parking areas with accessory buildings and structures.

(b) Conditional Use

1. Duplexes.
2. Schools and churches.
3. Parks, playgrounds and community centers.
4. Health service office, outpatient with laboratory.
5. Utilities and public facilities.

✓ § 17105. "R2" multiple dwelling zone.

(a) Use Permitted

1. One-family dwellings.
2. Duplexes.
3. Multi-family dwellings.
4. Hotels, private groups and institutions.
5. Accessory uses and structures for the above.

(b) Conditional Uses

1. Any conditional uses permitted in the "R1" zone.
2. Health clinics.
3. Utilities and public facilities
4. Air, bus, taxi, auto, rental terminals.
5. Accessory uses and structures for the above.
(Amended by P. L. 11-60)

✓ § 17106. "C" commercial zone.

(a) Use Permitted

1. One-family dwellings.
2. Duplexes.
3. Wholesale and retail stores, shops and businesses.
4. Amusement enterprises.
5. Automobile service station, including minor repairs.
6. Bakeries.
7. Mortuaries.

8. Offices, business or professional, and banks.
 9. Personal service shops, including barber shops, beauty parlors, laundromats, and the like.
 10. Repair shops and service shops, including shoe repair shops, plumbing shops, dressmaking shops, and the like, but not including, automobile repair shops for major work.
 11. Restaurants and cafes.
 12. Studios.
 13. Other uses which in the judgment of the Commission, as evidenced by resolution in writing, are similar to those listed herein.
 14. Uses customarily accessory to any of the above listed uses, including only those accessory to manufacturing, storage, compounding, or processing activities which are necessary for the ordinary conduct of said listed uses and which are an integral part thereof.
 15. Accessory structures for the above.
- (b) Conditional Use
1. Hospital and clinics.
 2. Public utility and other public buildings.
 3. Shopping center
 4. Recreation, including cockpits, marinas, amusement centers, drive-in theatres.
 5. Multi-family.
 6. Hotels, motels, tourist accommodations.
 7. Air, bus, taxi, auto rental terminals.
 8. Auto sales and car wash.
 9. Parking garages and lots.
 10. Service vehicle storage.
 11. Laundries and cleaning and dyeing establishments.
 12. Schools and churches.
 13. Parks, playgrounds, community centers.
 14. Utilities and public facilities.
 15. Accessory uses and structures for the above.

✓§ 17107. "P" automobile parking zone.

(a) Use Permitted

1. Public or commercial parking area and garages.
2. Public access to adjoining parking areas.
3. Loading and unloading of automobiles or trucks, but not to use portions of required parking space.
4. Service vehicle storage after commercial hours.
5. Utilities and public facilities.
6. Accessory uses and structures for the above.

✓§ 17108. "M1" light industrial zone.

(a) Use Permitted

1. Any use permitted with or without condition in the commercial zone.
2. The manufacturing, compounding, processing or treating of such products as drugs, cosmetics, and food products (not including fish and meat products nor the rendering of fats and oils).
3. The manufacturing, compounding, assembling or treating of articles or merchandise from previously prepared materials.
4. Automobile repair shops including painting, body and fender work and rebuilding; truck and tractor repairing; and tire re-treading.
5. Bottling and packaging plants.
6. Ceramic products manufacturing.
7. Laundries and cleaning and dyeing establishments.
8. Machine shops and sheet metal shops.
9. Warehouses and cold storage plants.
10. Lumber yards, building material salesyards, contractor's equipment storage yards, and the like.

11. Other uses which in the judgment of the Commissions, as evidenced by a resolution in writing, are similar to those listed herein.
 12. Uses customarily accessory to any of the above listed uses, and accessory buildings.
- (b) Conditional Use
1. Other industrial uses not objectionable, obnoxious or offensive by reason of odor, dust, smoke, noise, gas fumes, cinders, vibration, flashing lights, or water-carried waste.
 2. Utilities and public facilities.
 3. Accessory uses and buildings for the above.
- ✓ § 17109. "M2" heavy industrial zone.
- (a) Use Permitted
1. Any uses permitted in the "M1" zone, excepting residential use.
 2. Junk Yards. Under the special provisions set forth in Chapter X of this Title.
 3. Any other uses not specifically prohibited by law, including those which are or may be objectionable, obnoxious, or offensive by reason of odor, dust, smoke, noise, gas fumes, cinders, vibrations, or water-carried waste.
 4. Uses customarily accessory to any of the uses herein permitted, and accessory buildings and structures.

- (b) Conditional Use
1. All residential uses.
 2. Accessory uses and structures for the above.

✓ § 17110. "H" hotel-resort zone.

- (a) Conditional Use
1. All tourist related activities.

[Original Chapter III, consisting of §§ 17100-17107, enacted 1952; original § 17108 added by P.L. 5-64, effective February 29, 1960; Chapter III was repealed and a new Chapter III added (§§ 17100-17109) by P.L. 9-252, effective August 29, 1968. Original § 17107 had been amended by P.L. 9-126, effective January 29, 1968.]

CHAPTER IV

Height Regulations

§ 17150. Height limit established.

§ 17151. Buildings and structures permitted above height limit.

§ 17150. Height limit established. In the "A," "R1," "LC," "R2," "C," "M1," and "M2" Zones, no building or structures shall be erected or maintained, nor shall any existing building or structure be altered, enlarged, moved, or maintained, to exceed a height limit or two (2) stories (the two (2) stories shall not exceed a height of thirty (30) feet, except that in the "C" Zone within the "New Agana" lot and block system the building height limit shall be six (6) stories (the six (6) stories shall not exceed a height of seventy-five (75) feet). [Enacted 1952; amended by P.L. 7-19, effective May 9, 1963.]

§ 17151. Buildings and structures permitted above height limit. The following buildings, structures and equipment may be erected and maintained above the permitted height limit:

(a) In the "A" Zone, any building may exceed the height limit of two (2) stories or thirty (30) feet, if such building is located at least a distance equal to two (2) times the height of the building from any lot line;

(b) Shelters accessory to roof gardens or decks, providing such shelters are open on two (2) or more sides, occupy less than half the roof area, do not exceed the height limit by more than ten (10) feet, and are set back at least eight (8) feet from each lot line;

(c) Roof structures for the housing of stairways, tanks, ventilating fans, or similar structures and equipment for the maintenance of the building; and

(d) Aerials, flagpoles, skylights, steeples, towers, fire or parapet walls, or other similar structures.

(e) Hotels, provided, that for every foot in elevation exceeding the standard limitation, two (2) 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). [Enacted 1952; subsection (e) added by P.L. 9-197, effective July 1, 1968.]

CHAPTER V Yard and Area Regulations

- § 17200. Minimum yards and lot areas established.
- § 17201. General Yard and area requirements.
- § 17202. Exceptions to yard and area regulations.
- § 17203. Statements of purpose: building and building height restrictions in beach areas.

§ 17200. Minimum yards and lot areas established. No building or structure shall be erected or maintained, nor shall any existing building or structure be altered, enlarged, moved or maintained, on any lot, unless a front yard, a rear yard, and two (2) side yards are provided and maintained on such lot. The depth of such front and rear yards and the width of such side yards shall not be less than the depth and width specified in the following "Yards and Lot Area" table. Further, no lot width or lot area, nor any lot area per dwelling shall be less than that specified in said table. A commercial building to occupy the whole width of a lot must be of four-hour fire-resistive construction. If party walls are to be erected, the written consent of the owners of adjacent lots must be obtained as a prerequisite for the issuance of a building permit to start construction. If the building to be erected is not of fireproof construction, side yards of eight (8) feet wide must be provided. In the Rural (A) Zone all structures shall have front and rear yards of twenty-five (25) feet and side yards of fifteen (15) feet; the width of each lot shall be one hundred (100) feet with an area of not less than twenty thousand (20,000) square feet. The lot area per dwelling unit in the Rural Zone (A) shall be not less than ten thousand (10,000) square feet. (Amended by P. L. 15-57.)

YARD AND LOT AREA

Use	Front Yard Depth	Rear Yard Depth	Side Yard Depth	Lot Width	Lot Area	Lot Area per Dwelling Unit
Single Family	15 ft.	10 ft.	8 ft.	50 ft.	5,000 sq. ft.	5,000 sq. ft.
Multi-Family	15 ft.	10 ft.	8 ft.	50 ft.	5,000 sq. ft.	1,250 sq. ft.
Commercial	. . .	20 ft.	. . .	20 ft.	2,000 sq. ft.	400 sq. ft.
Light Indus.	. . .	20 ft.	8 ft.	50 ft.	5,000 sq. ft.	1,250 sq. ft.
Heavy Indus.	25 ft.	25 ft.	15 ft.	120 ft.	40,000 sq. ft.	

Unless facilities are otherwise provided for loading, the rear yard must be not less than twenty (20) feet in depth. [Enacted 1952; amended by P.L. 9-103, effective August 23, 1967; further amended by P.L. 9-252, effective August 29, 1968.]

§ 17201. General yard and area requirements.

(a) No required yard or other open space provided about any building or structures for the purpose of complying with the provisions of this Title, shall be considered as providing a yard or open space for any other building or structure.

(b) No lot or parcel of land under separate ownership at the time this law became effective shall be separated in ownership or reduced in size below minimum lot width or lot area set forth in the "Yards and Lot Area" table.

(c) Where a lot in the "R1" zone has an area of ten thousand (10,000) square feet or more, a one family dwelling may be erected and maintained

on each five thousand (5,000) square feet thereof, if front, side and rear yards of the depth and width specified in the "Yards and Lot Area" table are provided and maintained for each such dwelling.

(d) In the "C" and "M1" zones, every building hereafter erected on a lot which abuts a primary or secondary highway, as shown on a highway plan adopted by the Commission or Legislature, shall provide and maintain a front or side yard having a depth or width, as the case maybe, of not less than that required to conform to the line of such highway.

(e) A hotel or motel, while considered a multi-family use, requires a minimum of four hundred (400) square feet of lot area per living unit in a commercial zone.

(f) A cluster development may have a reduction of yards and lot width upon approval by the Commission. [Amended by P.L. 10-5, effective February 3, 1969.]

(g) Every building hereafter created on a lot which abuts a primary or secondary highway as shown on a highway plan adopted by the Commission or Legislature, shall provide and maintain a front yard having a depth of not less than that required to conform to the line of such highway. [Enacted 1952; amended by P.L. 9-252, effective August 29, 1968.]

§ 17202. Exceptions to yard and area regulations.

(a) No front yard need be provided on a lot in a hillside area where the topography of the lot is such as to make it unreasonable or impractical to locate a building on the lot and provide a front yard.

(b) No side yard need be provided for a dwelling or hotel erected above the ground floor of a building, where the ground floor is designed for commercial or industrial purposes.

(c) Cornices, eaves, belt courses, sills, canopies or other similar architectural features, may project into a required side yard not more than two (2) inches for each one (1) foot of width of such side yard and may project into any other required yard space not more than thirty (30) inches.

(d) Open, unenclosed stairways or balconies, not covered by a roof or canopy, may project into a required rear yard not more than four (4) feet, and such balconies may project into a required front yard not more than six (6) feet.

(e) Open, unenclosed porches, platforms, places, not covered by a roof or canopy, or landings, which do not extend above the level of the first floor of the building, may project into any required front, side or rear yard, not more than six (6) feet.

(f) A fence, lattice work screen, wall, or hedge, not more than six (6) feet in height, may be located in any required front, side or rear yard.

(g) In computing the lot area of a lot which abuts upon an alley one-half (1/2) the width of such alley may be assumed to be a portion of the lot.

(h) Accessory buildings or structures may be located and maintained in a rear yard, except in the required ten (10) foot rear yard which is that portion adjoining the rearmost main building on the lot. Such building or structures may also be located and maintained in any side yard, except in the required eight (8) foot side yards adjoining each of the side lot lines. When such buildings or structures are to be used exclusively for storage or as outdoor cooking facilities, they may be located in a rear yard walls erected on the rear and/or side lot lines; provided that such buildings or structure shall not exceed sixty (60) square feet of floor space and the roofs thereof shall not project beyond the rear or side lot lines and shall be sloped in such a manner as to prevent rain run-off from flowing to adjacent property. A storage or cooking facility may only be constructed on residential lots which meet the yard requirements provided by Section 17200 of this Code. (Included in original Government Code of Guam, enacted by P. L. 1-88, and amended by P. L. 15-61.)

§ 17203. Statement of purpose: building and building height restrictions in beach areas.

(a) The legislature finds that the indiscriminate building of structures on the beaches of the Territory of Guam creates a menace to the well-

being of the people of the territory by increasing the pollution of tidal waters, that such construction, in addition, deprives the people of Guam of their right to the untrammelled use of beach areas beyond the high water mark, and finally, that such construction destroys the natural beauty of Guam's beaches, one of the territory's greatest natural resources. Accordingly, it is the purpose of the restrictions hereinafter contained to protect the beaches of Guam for future generations, to alleviate the health problems caused by construction near tidal areas, and to make certain that the people of Guam remain free to use the beaches of the territory to the maximum extent not incompatible with private ownership of the lands adjoining said beaches.

(b) Along any beach in the Territory of Guam, no building may be constructed within thirty-five feet (35') of the mean high water mark bounding said beach, nor may any building higher than twenty feet (20') be constructed within seventy-five feet (75') of the said mean high water mark; provided, however, that if thirty percent (30%) or more of the land area of any lot bounded by a beach is affected by the provisions hereof, then as to such lot, the building restriction is reduced from thirty-five feet (35') to twenty feet (20'). For purposes of this section the term "beach" does not include those areas where the shoreline is a cliff or bluff higher than twenty-five feet (25'), nor shall it include those areas where the shoreline is bounded by village lots containing no more than a thousand (1000) square meters in those villages wherein residences have been constructed along the shoreline since prior to the Second World War, and the term "building" includes any structure except a retaining wall that cannot be seen. (Added by P.L. 12-19, effective April 12, 1973.)

CHAPTER VI

Accessory Buildings

§ 17250. Location of accessory buildings.

§ 17250. Location of accessory buildings. In the "A," "R1," and "R2" zones, no accessory building shall be erected or maintained and no existing building shall be enlarged, moved or maintained, unless such accessory building is located on the lot in conformance with following regulations:

(a) Every accessory building shall be located on the rear one-half (1/2) of the lot and shall be not less than eight (8) feet from the side street lot line of a corner lot;

(b) Every accessory building located in a rear yard (between the rear lot line and the rearmost main building on the lot) shall be not less than ten (10) feet from said main building and not less than five (5) feet from any lot line which is not a street line;

(c) Every accessory building located in a side yard (between the side lot line and side of a main building) shall be not less than five (5) feet from such main building and not less than eight (8) feet from the side lot line; and

(d) No accessory building shall be located in a front yard or on the front one-half (1/2) of a lot, except on hillside lots where the topography makes it impractical to conform to the other regulations of this article. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

CHAPTER VII
Nonconforming Buildings and Uses

- § 17300. Nonconforming buildings.
- § 17301. Nonconforming use of buildings.
- § 17302. Nonconforming use of land.
- § 17303. Nonconforming by reclassification or change.

§ 17300. Nonconforming buildings.

(a) A nonconforming building may be maintained and repaired, except as otherwise provided in this section.

(b) A building nonconforming as to use regulations shall not be added to or enlarged in any manner, unless said building, including such additions and enlargements, is made to conform to all the regulations of the zone in which it is located.

(c) A building nonconforming as to height or yard regulations may be added to or enlarged if such addition or enlargement conforms to all the regulations of the zone in which it is located; provided, that a residential building nonconforming as to height regulations may be added to or enlarged notwithstanding the fact that such addition or enlargement may violate yard regulations, and a building nonconforming as to yard regulations may be added to or enlarged notwithstanding the fact that such addition or enlargement violates height regulations. (Added by P.L. 12-160 dated March 29, 1974. The aforementioned provision shall be applied to alterations, addition, or improvements constructed prior to the effective date of this act.)

(d) A nonconforming building which is damaged or partially destroyed by fire, flood, wind, earthquake, or other calamity, to the extent of not more than fifty percent (50%) of its value at the time of such damage or destruction, may be restored if the total cost of such restoration does not exceed fifty percent (50%) of the value of the building at the time of such damage or destruction. Where the damage or destruction exceeds said value, the building shall not be repaired or reconstructed unless the entire building is made to conform to all regulations for a new building in the zone in which it is located.

(e) A building nonconforming as to restrictions set forth in § 17203 of this Title may be maintained and repaired but may not be enlarged, and in the case of its damage or partial destruction by fire, flood, wind, earthquake, or other calamity, to the extent of not more than fifty percent (50%) of its replacement cost at the time of such damage or destruction, then it may be restored if the total cost of such restoration does not exceed fifty percent (50%) of the replacement cost of the building at the time of such damage or destruction. Where the damage or destruction exceeds said cost, the building shall not be repaired or reconstructed. [Enacted 1952; subsection (e) added by P.L. 9-163, effective March 7, 1968.]

§ 17301. Nonconforming use of buildings.

(a) The nonconforming use of a building, existing at the time this law became effective, may be continued.

(b) The use of a nonconforming building may be changed to any other use which is permitted in the same zone as the use for which the building or structure is designed or intended. The use of a non-conforming building may also be changed to any use permitted in a more restricted zone classification. Where the use of a non-conforming building is hereafter changed to a use of a more restricted zone classification, it shall not thereafter be changed to a use of a less restricted zone classification. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17302. Nonconforming use of land. The nonconforming use of land, existing at the time this law became effective, may be continued except that such use shall not be extended either on the same or on to adjoining property. Where a nonconforming use of land is discontinued or

changed, any future use of such land shall be in conformity with the provisions of this Title. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17303. Nonconforming by reclassification or change. The foregoing provisions of this Title shall also apply to buildings, land and uses which hereafter become nonconforming due to any classification or reclassification of zone or to any change in the provisions of this Title. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

CHAPTER VIII.

Automobile Parking and Loading Space Regulations

- § 17350. Automobile parking space.
- § 17351. General requirements.
- § 17352. Loading space

§ 17350. Automobile parking space. Off-street automobile parking space shall be provided as follows:

(a) For dwellings, at least one (1) automobile parking space for each dwelling unit. (P.L. 12-163);

(b) For hotels, at least one (1) automobile parking space for each four (4) guest rooms (P.L. 12-163);

(c) For places of assembly, such as churches, auditorium or theatres with seating facilities, one parking space for each four (4) seats (P.L. 12-163);

(d) For places of assembly such as restaurants or night clubs without fixed seating facilities (P.L. 12-163); one (1) parking space for each one hundred (100) square feet of customers area in such use (P.L. 12-163);

(e) For retail sales of building materials, and goods requiring extensive display areas, industrial buildings and warehouses, one (1) parking space for each eight hundred (800) square feet of area in such use, exclusive of loading requirements (P.L. 12-163);

(f) For retail and wholesale sales and services, exclusive of warehouse activity, at least one (1) space for each one hundred (100) square feet or portion thereof of usable commercial floor area (P.L. 12-163);

(g) For professional and business offices, public administration offices, one (1) parking space for each four hundred (400) square feet or portion thereof of floor area (P.L. 12-177);

(h) For offices and clinics, of healing arts, at least five (5) spaces for each practitioners (P.L. 12-163);

(i) For hospitals and nursing homes, at least one (1) space for each two (2) beds (P.L. 12-163);

(j) Three (3) spaces for every four (4) employees (P.L. 12-163);

(k) Total parking requirements will be a total of all applicable elements in paragraphs (a) through (k) (P.L. 12-163);

(l) Appropriate parking space for open space activities such as swimming, beaches, picnic area, campgrounds, boating areas, shall be determined by the Territorial Planning Commission (P.L. 12-163).

§ 17351. General requirements.

(a) Automobile parking space required by this Title shall be provided at the time of the erection of any main building or at the time any existing main building is enlarged or increased in capacity by adding dwelling units, guest rooms or floor area, and such parking space shall thereafter be maintained (P. L. 12-142);

(b) In the case of a dwelling, the automobile parking space shall be on the same lot and may be provided either in a private garage or in a private automobile parking area (P. L. 12-142);

(c) In the case of multi-residential buildings, churches, theatres, clinics, commercial or industrial buildings, the automobile parking space shall be on the same lot or may be provided in a parking garage available to the public or a private parking area adjacent thereto (P. L. 12-142).

(d) Every automobile parking space shall contain a minimum of one hundred and eighty (180) square feet and shall have adequate access to a public right-of-way (P. L. 12-142).

§ 17352. Loading space. Off-street loading spaces for every commercial or industrial building shall be provided, located and scaled to meet the anticipated needs of all establishments and activities likely to require such space. In general, off-street loading space shall be located in service areas at the rear or sides of establishments in such a way that there will be minimum interference with off-street parking or vehicular movement in off-street parking areas (P. L. 12-142).

CHAPTER IX Sign Regulations

§ 17400. Restriction of use.

§ 17401. Erection of signs.

§ 17400. Restriction of use. No structure of any kind or character erected or maintained for outdoor advertising or identification purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever is placed, including statuary for advertising or identification purposes, and no card, cloth, paper, metal, painted or wooden sign of any character placed for outdoor advertising or identification purposes, on or to the ground or any tree, wall, bush, rock, fence, building, structure or thing, either privately or publicly owned, shall be placed or maintained on property adjacent to any highway, road, street, boulevard, lane, court, place, summons, trail, way, or other right of way or easement used for or laid out and intended for public passage of vehicles or of vehicles and persons except as provided below:

a. In Residential and Agricultural zones no exterior name plate or sign shall be erected, displayed, or maintained, except the following:

- (1) One (1) non-moving, non-flashing sign for each family residing on the premises indicating the name of the resident or pertaining to a permitted occupation provided that each such sign does not exceed three (3) square feet in area.
- (2) One (1) non-moving, non-flashing sign, not exceeding twelve (12) square feet in area, pertaining to permitted buildings, structures, and uses of the premises other than dwellings and occupations permitted therein.
- (3) Temporary unlighted signs aggregating not over twenty-four (24) square feet in area pertaining to the sale or lease of the premises.
- (4) Unlighted directional signs not exceeding three (3) square feet in area pertaining to churches, schools, institutions and other public or nonprofit uses.

b. In commercial zones, no exterior signs shall be erected, displayed or maintained except the following:

- (1) Signs indicating the name of a person or the type of business occupying the premises or the name of the building, provided that:
 - (a) Individual signs shall be non-flashing and non-moving.
 - (b) Individual signs shall be placed flat on the building wall, shall not be higher than the roof line of the building, and shall project no further than eighteen (18) inches from the wall to which they are attached.
- (c) Individual signs shall not cover an area in excess of five percent (05%) of the surface of the wall to which they are attached.
- (2) Free Standing, double-faced signs indicating the name of a person or the type of business occupying the premises or the name of the

building, provided that:

- (a) Such sign shall not exceed forty (40) square feet in area on each face nor twelve (12) feet in height.
- (b) Such structure shall not be placed closer than ten (10) feet to any street or highway right of way; and
- (c) One such sign shall be permitted for each premises or building.

Amended by [P. L. 15-140, September 5, 1980.]

c. In Industrial zones no exterior signs shall be erected, displayed or maintained except the following:

- (1) Signs indicating the name of the person, or the type of industry occupying the premises or the name of the building, provided that:
 - (a) Individual signs shall be non-flashing and non-moving.
 - (b) Individual signs shall be placed flat on the building wall, shall not be higher than the roof line of the building, and shall project no further than eighteen (18) inches from the wall to which they are attached.
 - (c) Individual signs shall not cover an area in excess of ten percent (10%) of the surface of the wall to which they are attached.
- (2) Free standing signs identifying the name of the owner or occupant of the premises, or advertising goods manufactured or produced, or services rendered, on the premises, provided that:
 - (a) Such sign shall not exceed sixty (60) square feet in area nor twelve feet (12) in height.
 - (b) Such structure shall not be placed closer than ten (10) feet to any street or highway right of way.
 - (c) Such signs shall be non-moving and non-flashing.
 - (d) One (1) such sign shall be allowed for each industrial structure, or complex of structures housing a single industrial user.

d. The provisions of this section shall not apply to any sign placed by or for purposes of any charitable, religious and civic organization, individual or entity, if the same remains posted or erected for a period of not more than sixty (60) days.

§ 17401. Erection of Signs. All permitted signs shall be erected in such a manner as not to create a hazard to public safety or property, and shall be resistant to winds, typhoon, earthquake or other natural phenomenon. Engineering design shall be based on applicable sections of the Building Law of Guam (Title XXXII Government Code of Guam).

The Building Official shall set specific engineering design standards. Application, accompanied by detailed drawings and specifications shall be submitted to the Building Official, who will review said plans and grant permit for the erection of said sign, free-standing or attached. The Building Official shall refer said plans to the zoning inspector to assure conformity to the provisions of this Chapter. [Original Chapter IX, consisting of §§ 17400-17403 as enacted in 1952 and added by P.L. 2-12, effective February 17, 1953, was repealed and New Chapter IX (§§ 17400-17401) added by P.L. 8-176, effective August 19, 1966.]

CHAPTER X Junk Yards

- § 17425. Permits required.
- § 17426. Improvement standards.
- § 17427. Application required.
- § 17428. Hearing required.
- § 17429. Permit issued or denied.
- § 17420. Nonconforming junk yards.

§ 17425. Permits required. No person shall establish a junk yard or extend the boundaries of an existing junk yard without obtaining a permit from the Territorial Planning Commission. Junk yards which are established on the effective date of this Chapter shall be governed by the provisions of § 17430.

§ 17426. Improvement standards.

- (a) The minimum enclosed area for a junk yard shall be forty thousand (40,000) square feet.
- (b) The junk yard shall be enclosed by a fence not less than eight (8) feet in height.
- (c) The junk yard enclosure shall be set back forty (40) feet from any public road, and twenty (20) feet from all abutting property lines.
- (d) The exterior yards established by subparagraph (c) above shall be maintained in a sanitary and not unsightly manner.

§ 17427. Application required. The owner shall make application for the issuance of a permit under this Chapter to the Territorial Planning Commission. Such application shall include:

- (a) A statement of intent.
- (b) A map of the general area showing the subject lot and all abutting properties, with names and addresses of owners; and
- (c) A proposed site plan, showing proposed enclosure, access and egress.

§ 17428. Hearing required. Within one (1) month of the first regularly scheduled Territorial Planning Commission meeting after receipt of an application, the Territorial Planning Commission shall hold a public hearing on the proposed junk yard. The Territorial Planning Commission shall cause notice of such application and hearing to be sent to abutting property owners by registered mail, and advertisement of such hearing to appear in a newspaper of general circulation throughout the territory at least ten (10) days prior to the hearing.

§ 17429. Permit issued or denied. After such public hearing, if the Territorial Planning Commission determines that the standards set forth in § 17451 are met, the Territorial Planning Commission shall issue a permit. Any person aggrieved by a decision of the Territorial Planning Commission under this section shall have the right to appeal to the Island Court as provided in § 17506 of this Title.

§ 17430. Nonconforming junk yards.

(a) The nonconforming use of a building or premises for the purpose of operating a junk yard within any Agricultural (A), Residential (R1 and R2), or Commercial Zone (C and LC) shall, within five (5) years after the effective date of this Chapter, be discontinued and the building or premises thereafter devoted to a use permitted in the zone in which such building or premises are located.

(b) The nonconforming use of a building or premises for the purpose of operating a junk yard within a Light Industrial (M1) Zone may continue subject to the provisions of Chapter VII of this Title, provided that it is made to conform to the provisions of § 17426 within the (1) year of the effective date of this Chapter. If such action is not taken, the provisions of subparagraph (a) shall apply. [Original Chapter X, consisting of §§ 17450-17453 renumbered to Chapter XI by P.L. 9-126, approved January 29, 1968, effective March 29, 1968. New Chapter X, consisting of §§ 17425-17430, added by P.L. 9-126, approved January 29, 1968, effective March 29, 1968.]

CHAPTER XI

Administration and Enforcement

- § 17450. Enforcement.
- § 17451. Building permit required.
- § 17452. Building permit not to be issued.
- § 17453. License approval required.

§ 17450. Enforcement. The Building Official designated in Title XXXII of the Government Code of Guam shall have the power and duty to enforce the provisions of this law. All authority granted to him by Title XXXII of this Code may be used in furtherance of these enforcement activities, whenever such authority is necessary and applicable. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17451. Building permit required. Before commencing the construction of a new building or structure, or the alteration, enlargement or moving of an existing building or structure, a building permit authorizing such work shall first be obtained from the Building Official as provided for in Title XXXII of the Government Code of Guam; provided, however, that the Building Official may delegate the authority to issue permits outside of the organized villages to the commissioners referred to in Title XXVI of this Code. [Amended by P.L. 2-21, effective June 23, 1953; included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17452. Building permit not to be issued. No building permit or certificate of occupancy shall be issued by the Building Official for the erection, alteration, enlargement, or use of any building or structure or part thereof, or for the use of any land, which is not in accordance with all provisions of this law. Any building permit or certificate of occupancy issued in conflict with the provisions of this Title, shall be null and void. [included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17453. License approval required. No license pertaining to the use of land or building shall be issued by any department, officer or employee of the government of Guam, vested with such duty, unless the application for such license has been approved by the Building Official as to the conformance of said use with the provisions of this Title. Any license issued in conflict with the provisions of this Title shall be null and void. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.] [Renumbered to Chapter XI from original Chapter X by P.L. 9-126, approved January 29, 1968, effective March 29, 1968.]

CHAPTER XII

Appeals and Reviews

- § 17500. Appeals involving administration enforcement.
- § 17501. Variances.
- § 17502. Variance requirements.
- § 17503. Variance application - form and contents.
- § 17504. Hearing date - notice.

- § 17505. Decision by Territorial Planning Commission.
- § 17506. Decision final - appeal.
- § 17507. Jurisdiction.

§ 17500. Appeals involving administration enforcement. The Territorial Planning Commission shall also have and exercise the following powers:

(a) To hear and decide appeals where it is alleged by the appellant that there is an error in any refusal of a building permit or certificate of occupancy, or other order, requirement, or decision made by the Building Official or other administration official in the administration of this Title; and

(b) To hear and decide appeals from any order, requirement, decision or determination made by the Building Official in the enforcement of the provisions of this Title.

The procedure for filing such appeals as well as the procedure governing the actions of the Commission thereon, shall be similar as that set forth in §§ 31062-31071 inclusive of Title XXXII of the Government Code of Guam. [Enacted 1952; amended by P.L. 7-91, effective February 13, 1964.]

§ 17501. Variances. Where practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of this Title would occur from its strict literal interpretation or enforcement, the Territorial Planning 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:

(a) Permit the extension of an existing or proposed conforming building or use into and adjoining more restricted zone for a distance not exceeding fifty (50) feet;

(b) Permit a building or use (including automobile parking) on a lot immediately adjoining or across an alley from a less restricted zone, upon such conditions and safeguards as will tend to cause an effective transition from the less restricted to the more restricted zone;

(c) Permit the addition, enlargement or moving of a nonconforming building or structure;

(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;

(e) Permit such modification of the yard, lot width or lot area regulations or requirements as may be necessary to secure an appropriate building or structure on a lot which is of such size, shape or topography, or is located in relation to adjacent property or improvements that it cannot be appropriately improved without such modification;

(f) Permit such modifications on the lot area per dwelling unit (density) requirements as may be necessary to secure an appropriate development of a lot in keeping with its size and location;

(g) Permit the modification or waiver of the automobile parking space or loading space requirements where such modification would not be inconsistent with the purpose of this Title;

(h) Permit temporary buildings or uses for a period not to exceed two (2) years in undeveloped areas;

(i) Permit the following uses in zones from which they are prohibited by this Title: Governmental enterprises; public utilities and public

service uses or structures; hospitals or institutions; or development of natural resources.

(j) Permit the construction of buildings in violation of the restrictions of § 17203 of this Title. [Enacted 1952; Subsection (j) added by P.L. 9-163, effective March 7, 1968.]

§ 17501 (k). [§ 17501 (j)]. "Permit the owner of a lot in a rural zone to parcel therefrom one lot not less than ten thousand (10,000) square feet in area to be used for a single family residence, such variance to be conditioned upon a prohibition on any subsequent parcelling of the lot and that the parcelled out lot be served by water and power and a public road." [Subparagraph (k) added as (j) by P.L. 10-173, effective August 15, 1970; relettered to (k) by Editor.]

§ 17502. Variance requirements. No variance shall be granted by the Commission unless it finds:

(a) That the strict application of the provisions of this Title 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 granting 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 granting 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 § 17203 of this Title, 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. [Subsection (e) added by P.L. 9-163, effective March 7, 1968.]

The above requirements need not apply to the types of uses specified in § 17501 (i), and variances for such uses shall only be granted by the Commission where it finds that they are deemed essential or desirable to the public convenience or welfare, are in harmony with the various elements or objectives of the "Master Plan," and will not be materially detrimental or injurious to the property or improvements in the immediate neighborhood. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17503. Variance application - form and contents. An application for variance shall be filed with the Executive Secretary of the Commission upon a form and accompanied by such data and information as the Commission may prescribe. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17504. Hearing date - notice. Upon the filing of variance application the Commission shall fix a reasonable time for hearing the same and shall give notice thereof to the applicant and may give notice to any other parties in interest. All hearings shall be conducted according to rules established by the Commission, but any party in interest may appear in person, or by designated attorney or agent. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17505. Decision by Territorial Planning Commission. If, from the facts presented with the application at the hearing, or by investigation by or at the instance of the Commission, the Commission makes the findings set forth in § 17502, it may grant the variance in whole or in part, upon such terms and conditions as it deems necessary to conform to the general intent and purpose of this law. If the Commission fails to make said findings, it shall deny the application. Each decision by the Commission authorizing a variance from the regulations herein established must be by resolution adopted by a majority of its membership, setting forth in writing the findings required by § 17502, except that no written findings shall be required in granting minor variances from the height, yard, lot width, lot area or lot area per dwelling unit requirements. The Commission shall make its decision on each variance application within a reasonable time and shall forthwith furnish a copy thereof to the applicant and to other parties in interest who have requested to be notified. Additional copies of the decision shall be filed in the records of the Department of Public Works. If the decision filed involves a variance granted by the Commission, said variance shall be the authority for the Director of Land Management to endorse and to issue any building permit or certificate of occupancy in conformance thereto and for the approval of any application for the approval of a required license. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17506. Decision final - appeal. The decision by the Commission on any variance shall be final, except that any party aggrieved by such decision shall be entitled to a judicial review thereof by application to the Island Court within fifteen (15) days after the filing of the Commission's decision in the Department of Land Management and the Department of Public Works. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952.]

§ 17507. Jurisdiction. The Island Court of Guam shall have jurisdiction over all actions arising from the provisions of this Title. [added by P.L. 7-91, effective February 13, 1964.] [Chapter XII renumbered from original Chapter XI by P.L. 9-126, approved January 29, 1968, effective March 29, 1968.]

CHAPTER XIII Changes of Zones

- § 17600. Requirements for changes.
- § 17601. Procedure.
- § 17602. Application - form and contents.
- § 17603. Hearing date - notice.
- § 17604. Decision by Commission.
- § 17605. Planned development districts.
- § 17606. Change of "Zoning Map."
- § 17607. Zone Restricts

§ 17600. Requirements for changes. The Commission may, with the approval of the Governor, change the zones established under this Title whenever it finds that the public necessity, convenience and general welfare justify such action. [Enacted 1952; repealed and added by P.L. 6-136, effective December 18, 1962.]

§ 17601. Procedure. A proposed change may be initiated by the Commission or by an application directed to the Commission by any person owning or leasing real property within the area covered by the zone. [Enacted 1952; repealed and added by P.L. 6-136, effective December 18, 1962.]

§ 17602. Application - form and contents. An application for a change of zone shall be filed with the Commission upon a form and accompanied by such data and information as the Commission may prescribe. [Enacted 1952; repealed and added by P.L. 6-136, effective December 18, 1962.]

§ 17603. Hearing date - notice. Upon the filing of an application for change of zone, the Commission shall hold at least one (1) hearing thereon in the municipal district where the property to be rezoned is located, as such districts are described in Chapter I of Title XVI of this Code, notice of time and place of which shall be given by at least one (1) publication in a newspaper of general circulation, at least ten (10) days before the day of said hearing, and by mail to the Commissioner of the municipal district concerned, and to those landowners owning land within five hundred (500) feet of the property for which rezoning is requested, the mailing addresses for such landowners to be in the Real Estate Tax records. [Amended by P.L. 10-158, effective July 3, 1970.]

§ 17604. Decision by Commission. The Commission shall consider the proposed change of zone and may approve or disapprove the same, in whole or in part. The Commission shall make its findings and determinations within forty (40) days from the date of the hearing thereon and shall forward notice of such decision to the applicant, if any. If the application is approved in whole or in part by the Commission, the same shall be forwarded to the Governor who may approve or disapprove the proposed change in whole or in part. [Enacted 1952; repealed and added by P.L. 6-136, effective December 18, 1962.]

§ 17605. Planned development districts. A "PD" District enables the unified development of a substantial land area with such combination of uses as shall be appropriate to an integrated plan for the area. The procedure for establishing a "PD" District is the same as that for the rezoning of an area, providing that a detailed plan be submitted to and discussed with the Territorial Planning Commission. The application shall be accompanied by the appropriate fee and the detailed plan, or revision thereof. The Territorial Planning Commission may approve the detailed plan and rezoning, following the required hearing, upon findings that the plan, considering structures, uses, access, regulations and layout fixed in it, comprises:

(a) An area of sufficient acreage to constitute a large planning unit having special attributes for integrated development;

(b) An appropriate development of the area from the viewpoints of its natural features, location and suitability for particular uses;

(c) A combination of structures and uses which are in reasonable association and proportion to make a harmonious unit and likely to continue compatibly with one another;

(d) All structures, including accessory structures, shall not cover more than thirty percent (30%) of the area;

(e) A project adequately serviced by the necessary public services, existing or proposed;

(f) A project consisten with an appropriate development of adjacent areas and not unreasonably detrimental to the existing structures and uses in such areas; and

(g) An appropriate evolution of the comprehensive plan for that portion of the territory.

In approving a detailed development plan, the Territorial Planning Commission may impose such regulations of yards, open space, lot coverage, density, and height as are reasonably required to permit the foregoing findings. [Enacted 1952; repealed and added by P.L. 6-136, effective December 18, 1962; repealed and added by P.L. 9-232, effective August 10, 1968.]

§ 17606. Change of "Zoning Map." Any change of zones or approval of comprehensive community plan pursuant to this Chapter shall be endorsed and delineated upon the "Zoning Map" and shall constitute an amendment of said map. [Added by P.L. 6-136, effective December 18, 1962.] [Chapter XIII renumber from original Chapter XII by P.L. 9-126, approved January 29, 1968, effective March 29, 1968.]

§ 17607. No additional land may be established as "Rural Zone" and no land presently zoned "A" may be rezoned without the Commission first having considered by the Director of the Department of Agriculture. This statement shall provide a detailed statement of:

- a) The agricultural impact of the proposed rezoning upon the agricultural components of the Guam Master Plan.
- b) Any adverse conservation or agricultural effects which cannot be avoided should the rezoning be approved.
- c) The Director's opinion whether said rezoning should be approved and reasons therefore. (Added by P. L. 12-208)

CHAPTER XIV

Recording - Submission to the Legislature

- § 17625. Recording.
- § 17626. Inspection.
- § 17627. Submission to the Legislature.
- § 17628. Failure to submit.

§ 17625. Recording. Upon the approval of any "Zoning Map" or amendment thereto, a copy of same shall be recorded in the Department of Land Management.

§ 17626. Inspection. Any "Zoning Map" or amendment thereto recorded pursuant to this Chapter shall be open to public inspection during normal government business hours.

§ 17627. Submission to the Legislature. The "Zoning Map" or amendment thereto adopted by the Commission and approved by the Governor shall be submitted to the next portion of the next regular session of the Legislature convening after the said approval. The "Zoning Map" or any amendments thereto shall remain in effect unless amended or repealed by statute.

§ 17628. Failure to submit. The "Zoning Map" or any amendments thereto not submitted to the Legislature in accordance with this Chapter shall become automatically inoperative and void at midnight of the last day of the session to which it should have been submitted.

[Editor's Note: Chapter XIV was added as new Chapter XIII by P.L. 6-136, effective December 18, 1962. Original Chapter XIII, as enacted in 1952, was renumbered to Chapter XIV by P.L. 6-136, effective December 18, 1962. New Chapter XIII and old Chapter XIV were renumbered to present Chapters XIV and XV respectively by P.L. 9-126, approved January 29, 1968, and effective March 29, 1968.]

CHAPTER XV

Fees

§ 17650. Filing fees for appeals - variances - changes of zones.

§ 17650. Filing fees for appeals - variances - changes of zones. Before accepting for filing any application hereafter mentioned, the Commission shall charge and collect the following filing fees:

- | | |
|--------------------------|----------|
| (a) For Appeals | \$ 10.00 |
| (b) For variances | \$ 15.00 |
| (c) For changes of zones | \$ 10.00 |

[Amended by P.L. 10-156, effective July 3, 1970.]

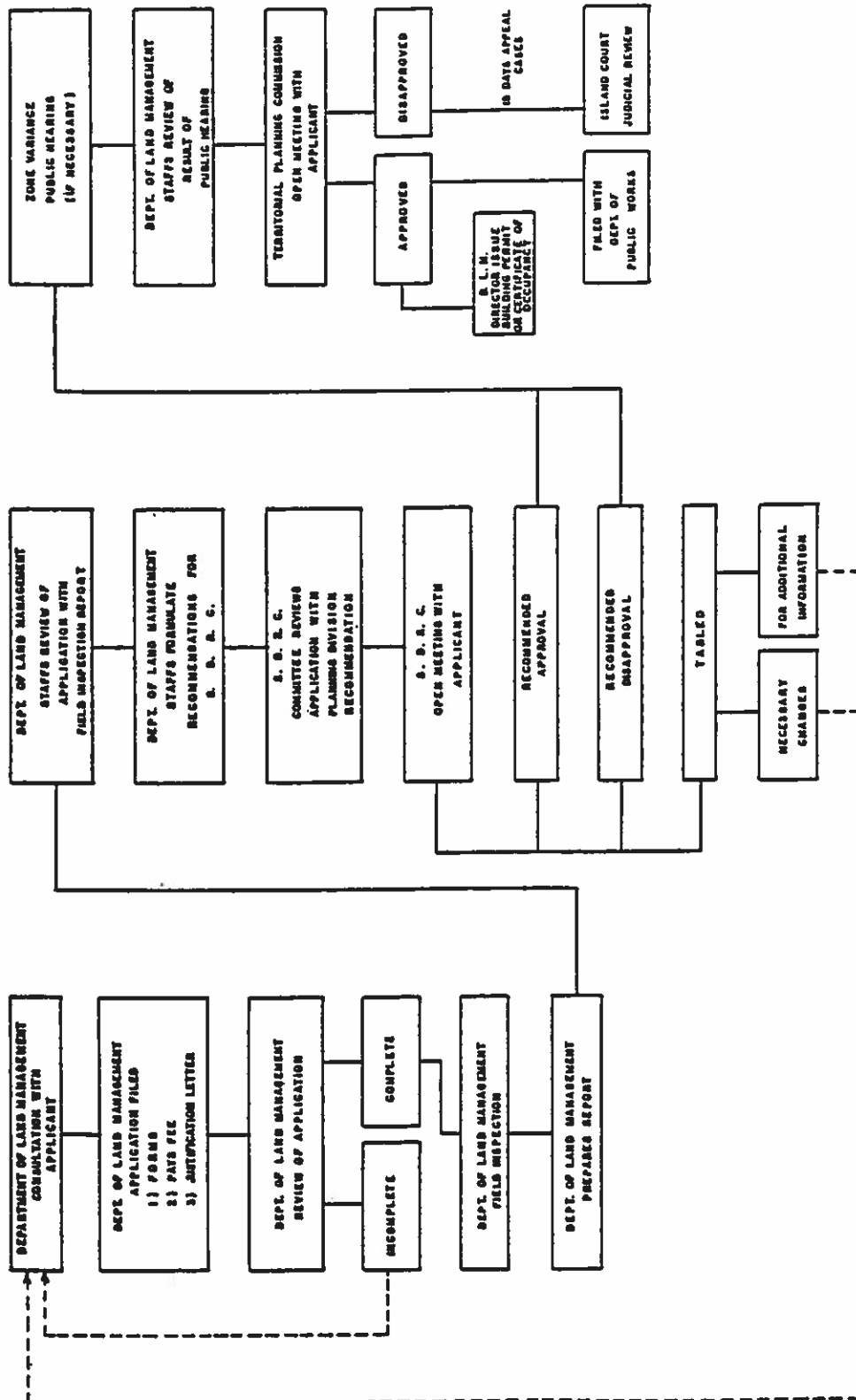
CHAPTER XVI

Penalty for Violation

§ 17700. Penalty

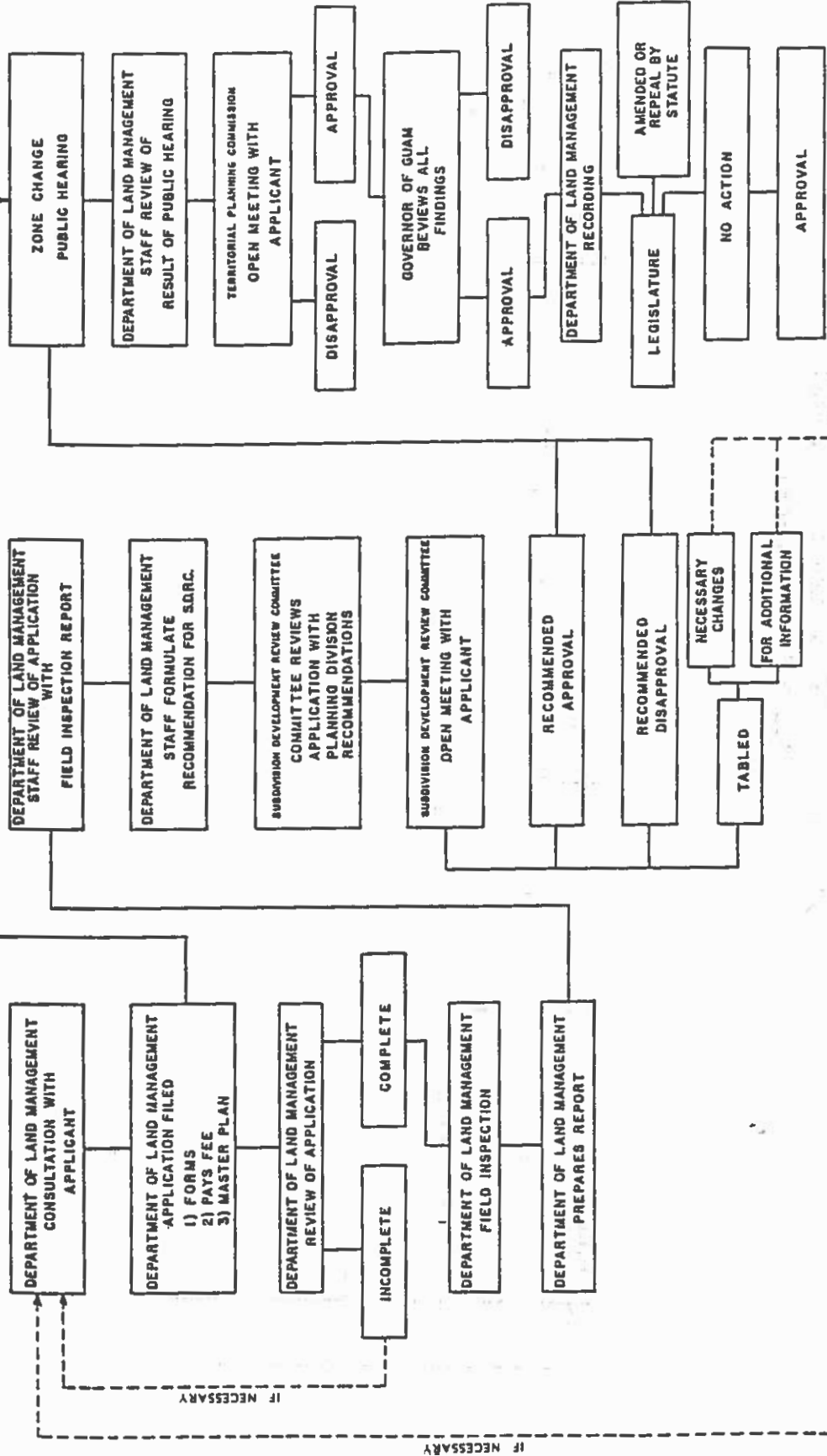
§ 17700. Penalty. Any person, firm, corporation or officer thereof, violating any of the provisions of this Title shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in jail for a period of not more than one (1) month, or by both such fine and imprisonment. Such person, firm or corporation shall be deemed guilty for each day during any portion of which any violation is committed, continued, or permitted and shall be punishable as herein provided. [Included in Original Government Code of Guam enacted by P.L. 1-88, 1952, as Chapter XIV; renumbered to Chapter XV by P.L. 6-136, effective December 18, 1962; further renumbered to Chapter XVI by P.L. 9-126, approved January 29, 1968, effective March 29, 1968.]

ZONE VARIANCE PROCEDURAL FLOW CHART

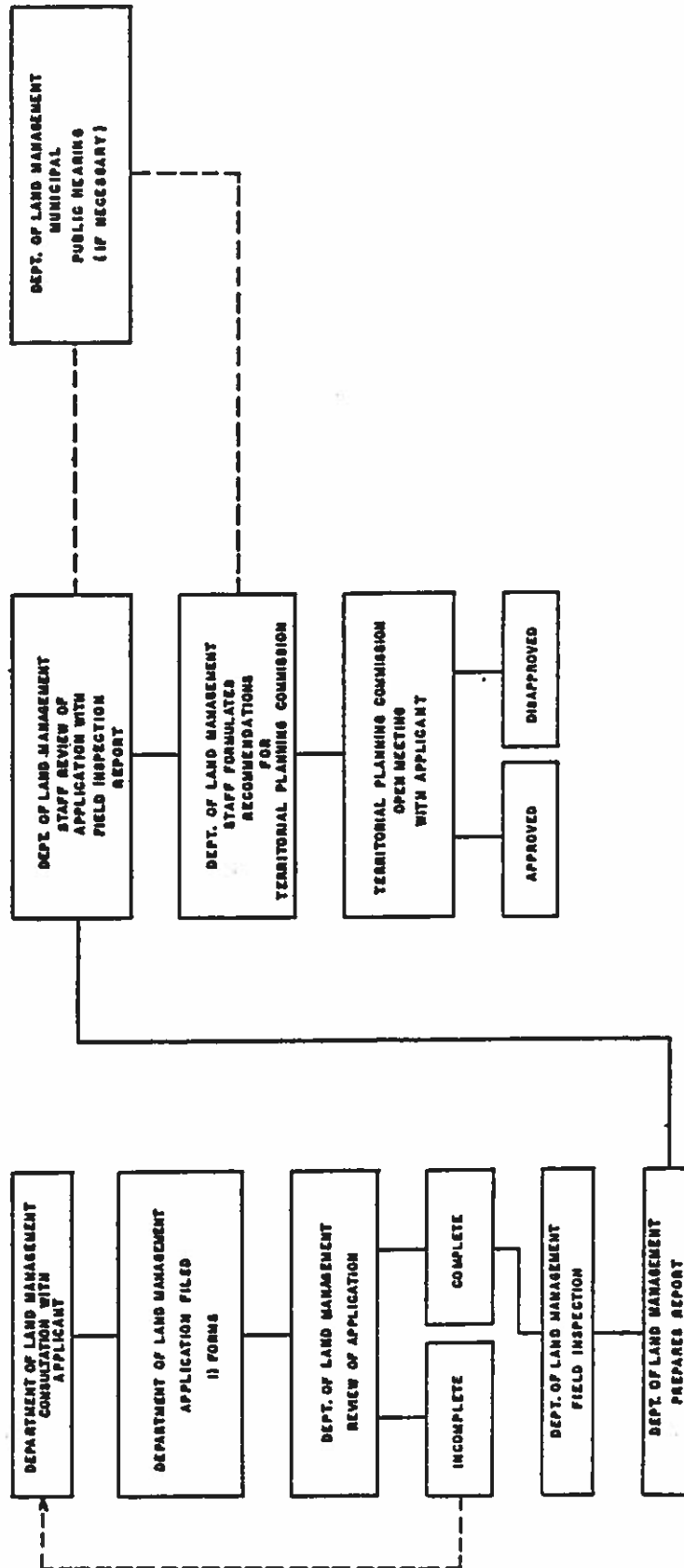


ZONE CHANGE FLOW CHART

AT LEAST 10 DAYS



CONDITIONAL USE (outside of "H" ZONE) PROCEDURAL FLOW CHART



APPENDIX E

SUBDIVISION LAW

TITLE XIX

TITLE XIX
Subdivision Law

- Chapter I. General Provisions.
II. Procedure for Subdividing Land.
III. Lot Parcelling and Agricultural Subdivisions.
IV. Requirements for Plans and Maps.
V. Improvements.
VI. Variances and Appeals.
VII. Penalties, Amendments, Interpretation and Separability.

CHAPTER I
General Provisions

- § 18000. Title.
§ 18001. Purpose and intent.
§ 18001.1 Compliance with Master Plan.
§ 18001.5 Decedents' estates.
§ 18002. Definitions.
§ 18003. Authority of the Commission.
§ 18004. Commission approval.
§ 18005. General requirements for subdivisions.

§ 18000. Title. This Title shall be known as "The Subdivision Law." [Enacted 1952; repealed and added by P. L. 6-134, effective December 18, 1962.]

§ 18001. Purpose and Intent. The purpose of this Title and of any rules, regulations, specifications and standards adopted pursuant and/or subdivision of any land for any purpose whatsoever. Such control and regulation is determined to be necessary to provide for the orderly growth and harmonious development of the territory; to insure adequate traffic circulation through coordinated street, road and highway systems; to achieve property lots of maximum utility, and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage and other health requirements; to permit the conveyance of land by accurate legal description; and to provide logical procedures for the achievement of this purpose. (Amended by P. L. 12-90)

§ 18001.1 Compliance with Master Plan. Development and/or subdivision of all lands and roads shall conform to that land use or road location delineated in the latest revision of the Territorial Master Plan initially approved in April, 1967.

- (a) Construction on land designated for future road or public purposes, contrary to the use indicated in the Master Plan, shall not be authorized, irrespective of land ownership.
- (b) Specifications for construction, repair and/or reconstruction of roads shall conform to Department of Public Works standards and shall follow requirements delineated for that zone in which the subdivision or construction is located.
(Amended by P.L. 12-90)

§ 18001.5. Exemptions: decedents' estates: parental division of property.

- (a) Chapter V of this Title shall not apply to land which is an asset of the estate of a decedent, provided however, that before the distribution of any such land by the Court, the Territorial Planner or the Commission shall require street and utility easements on said land to insured lot division consistent with the general plan; further provided however, that the minimum size of each lot shall be no less than 10,000 square feet.

(b) Chapter V of this Title shall also not apply to land which has been owned in fee simple for a period of not less than five (5) years by a person who divides said land among his living children or their descendants by way of inter vivos gift; provided, however, that such land shall be deeded to said children or descendants in fee simple and said deeds shall contain alienation clauses to the effect that the children or descendants shall not sell, lease or otherwise alienate such lots for a period of at least five (5) years, the Territorial Planner or the Commission shall require street and utility easements on said land to insure lot divisions consistent with the general plan and that the minimum size of each lot shall be no less than 10,000 square feet." (Amended by P.L. 13-153)

§ 18002. Definitions. The following words and phrases, when used herein, shall have the meaning respectively hereto ascribed to them, except where a different meaning may be clearly indicated by the context:

(a) "Agricultural Subdivision" shall mean a subdivision having no lots, parcels or sites smaller than forty thousand (40,000) square feet and in which all lots, parcels or sites are used principally for agriculture, single family residence sites or as an agriculture-homesite combination; except that the term "agricultural subdivision" shall include a subdivision resulting from a distribution by the Court pursuant to Section 18001.5(a) or Section 18001.5(b) of this Title with no lots, parcels or sites smaller than ten thousand (10,000) square feet and in which all lots, parcels or sites are used principally for agriculture, single family sites or as an agricultural homestead combination."

(b) "Commission" shall mean the Territorial Planning Commission.

(c) "Easement" shall mean a grant by the owner of land for a specified use or uses of said land to a person or persons, to the public generally, or to the government of Guam.

(d) "Engineer" shall mean a person who is registered pursuant to Title XLIII, Government Code of Guam, as an Engineer, and holds a current certificate of registration issued by the Board of Engineering and Architectural Examiners or a person exempted under the provisions of said Title XLIII.

(e) "Improvements" shall mean any beneficial or valuable site additions or alterations to a subdivision property including street grading and surfacing, water service, sanitary sewers, facilities provided for drainage and site grading.

(f) "Non-Access Reservation" shall mean the limiting of access between a right of way and the adjacent land. (A non-access reservation shall be provided only when required by the Commission and the right of access to and from such land across the right-of-way boundary shall be dedicated to the government of Guam)

(g) "Plan, General" shall mean the general plan or plans for guiding the physical development of the Territory of Guam as adopted by the Commission and approved by the Governor.

(h) "Plan, Precise" shall mean the detailed plan or plans for guiding and controlling the physical development of specific projects as adopted by the Commission and approved by the Governor.

(i) "Planning Division" shall mean the Planning Division of the Department of Land Management.

(j) "Record Map" shall mean the final subdivision map designed to be placed on record in the Land Records of the Department of Land Management.

(k) "Reservation" shall mean an area of land which the subdivider reserves free and clear of all structures for future specified purpose.

(l) "Resubdivision" shall mean the resubdividing of land in a subdivision or lot parcelling subdivision or portions thereof so as to create a new or different subdivision of such land other than is presently of record, and shall include modifications to lot lines, the creation of one or more additional lots or any other

action of land division which is not consistent with the recorded subdivision or lot parcelling subdivision map.

(m) "Reversion to Acreage" shall mean the voiding of a previous subdivision in order to revert the platted lots contained therein back to the original parcel or parcels which existed prior to the subdivision.

(n) "Right of Way" shall include the entire width between property lines of a highway, street or alley.

(o) "Sanitation Division" shall mean the Sanitation Division of the Department of Public Health and Social Services.

(p) "Subdivide" shall mean the act of creating a subdivision.

(q) "Subdivider" shall mean any individual, firm, association, syndicate, corporation, trust or any other legal entity proceeding to effect a subdivision of land for himself or another.

(r) "Subdivision" shall mean the division of any parcel of land into six (6) or more lots. Subdivision shall include resubdivision and reversion to acreage and, where appropriate to context, relates to the process of subdividing or to the land subdivided regardless of the method used to accomplish such action, whether by sale, design, rent, lease, deed of gift, grant in gift or any other method of transferring title whether for remuneration or not and whether immediate or future.

(s) "Subdivision, Lot Parcelling" shall mean the division of a lot legally existing on the effective date of this Title into no more than five (5) parcels. Lot parcelling of a lot shall include all methods of such action whether by sale, design, rent, lease, deed of gift, grant in gift or any other method of transferring title whether for remuneration or not and whether immediate or future.

(t) "Surveyor" shall mean a person who is registered pursuant to Title XLIII, Government Code of Guam, as a land surveyor, and holds a current certificate of registration issued by the Board of Engineering and Architectural Examiners or a person exempted under the provisions of said Title XLIII.

(u) "Tentative Map" shall mean a preliminary subdivision map for the purpose of showing the design of a proposed subdivision and the existing conditions in and around it.

(v) "Territorial Planner" shall mean the Chief of Planning Division, Department of Land Management, government of Guam.

(w) "Territorial Surveyor" shall mean the person designated as the Territorial Surveyor by the Director of Land Management. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962; (o) amended by editor pursuant to P.L. 7-101, effective July 11, 1964, and P.L. 9-147, effective February 16, 1968.]

§ 18003. Authority of the Commission. The Commission shall have jurisdiction and cognizance of all matters relating to subdividing and subsequent development of land within the territory. The Commission shall prescribe and adopt such rules and regulations, which shall include, but not be limited to, specifications and standards for development of subdivisions, as are, in its judgment, necessary to effectuate the purposes and intent of this Title. Such rules and regulations may provide for delegation of functions of review and inspection of proposed, tentative and final plans and maps, and of subdivisions, to other agencies and departments of the government. Such rules and regulations shall become effective upon approval by

the Governor. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18004. Commission approval. No subdivision map presented for filing as a record in the Department of Land Management shall be recorded without the prior approval of the Commission. The Commission shall not approve the record map of a subdivision unless such map conforms to all the requirements of this Title and any applicable rules, regulations, specifications or standards adopted by the Commission. No subdivider shall subdivide any land except in accordance with this Title, or sell, lease or assign, or offer for sale, any subdivision or a proposed subdivision or any part thereof, or any lot, parcel or site therein until the record map has been officially recorded. [Enacted 1952; repealed and added by P. L. 6-134, effective December 18, 1962.]

§ 18005. General requirements for subdivisions. In all subdivisions presented for recording under this Title, the subdivider shall:

(a) Not subdivide or develop land for any purpose contrary to the provisions of the Zoning Law, Title XVIII, Government Code of Guam.

(b) Cause every lot to abut a roadway right of way having a minimum width of forty (40) feet, except that the Commission may, where circumstances warrant, permit the subdivider to utilize roadway rights-of-way less than forty (40) feet but in no case less than twenty (20) feet in width. [Subparagraph (b) amended by P.L. 10-157, effective July 3, 1970.]

(c) Except as may be provided for pursuant to § 21208.3, Title XXII, Government Code of Guam, provide for the installation of power, water and telephone lines, fire hydrants, roads and highways within the subdivision in accord with any general or precise plan approved by the Commission.

(d) Where an established framework of local streets exists, provide for the uniformity of street widths and alignment thereto with the streets of the subdivision, and for the continuation of existing street names.

(e) Provide for adequate light, air and privacy on all lots regardless of land use, and design the location of streets to prevent excessive grading and scarring of the landscape.

(f) Provide sufficient drainage of the land to provide reasonable protection against flooding.

(g) Provide that streets within residential areas shall not be planned for through traffic in order to insure privacy and safety. [Added by P.L. 6-134, effective December 18, 1962.]

CHAPTER II

Procedure for Subdividing Land

- § 18100. Application to establish subdivision.
- § 18101. Fees.
- § 18102. Review of tentative plans.
- § 18103. Action by Commission.
- § 18104. Submission of final plans.
- § 18105. Final plans approval and recordation.

- § 18106. Reversion to acreage, maps and plats.
- § 18107. Building permits.
- § 18108. Revocation of tentative plans.

§ 18100. Application to establish subdivision. A subdivider desiring to subdivide or develop land pursuant to this Title shall make a written application therefor on a form prescribed by the Commission. The application shall be filed with the Territorial Planner and shall be accompanied by tentative subdivision plans prepared in accordance with § 18300 of this Title. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18101. Fees. The subdivider shall at the time of filing tentative subdivision plans pay a uniform check fee of ten dollars (\$10.00) plus one dollar (\$1.00) for each final lot shown on the subdivision. Such fees shall not be returned in the event the application is not approved. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18102. Review of tentative plans. The Territorial Planner shall within three (3) days after receipt of such application transmit copies of the tentative plans to departments and agencies of the government to which have been delegated responsibility for technical review. Such agencies and departments shall review the plans and transmit their written findings and recommendations to the Territorial Planner within fifteen (15) days after receipt of such plans. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18103. Action by Commission. After review, the tentative subdivision plans shall be transmitted to the Commission at its next regularly scheduled meeting by the Territorial Planner, together with all findings and recommendations. The Commission shall thereafter approve, conditionally approve, or disapprove the plans. When a tentative plan is disapproved, it may not thereafter be reconsidered unless modified and a new application filed. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18104. Submission of final plans. Within one (1) year after approval of tentative subdivision plans, the subdivider shall file with the Territorial Planner the final plans prepared in accordance with § 18301 of this Title. The final plans shall be accompanied by a written application for approval thereof in a form prescribed by the Commission [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18105. Final plans approval and recordation. The Territorial Planner shall review final plan documents as submitted for conformity to the approved tentative plans. At the next regularly scheduled Commission meeting no less than two (2) days following receipt of final plans, the Territorial Planner shall present the plans to the Commission for action. Final plans submitted in strict compliance with approved tentative plans shall be approved. Final plans which are not in strict compliance with approved tentative plans shall, within fifteen (15) days, be approved or a written determination made specifying work necessary for subdivision completion prior

to final Commission approval. After approval by the Commission of the final plan map, the subdivider shall record said map in accordance with Article IV, Chapter II, Title XIV, Government Code of Guam. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18106. Reversion to acreage, maps and plats. When a reversion to acreage is made, no tentative plans shall be required. The subdivider shall prepare a final map showing the existing subdivision and the original parcel or parcels which shall result from the reversion. No engineering plans shall be required. Upon approval of the final map the map may be completed and submitted as a record plat. No as-built surveys shall be required. The plat shall be clearly marked "reversion to acreage" and any variance from the requirements of a subdivision record plat shall be as determined by the Commission. The fee or other interest in any subdivision improvements, easements or road rights of way within the perimeter of the subdivision which has been dedicated to the government may be quitclaimed to the subdivider at the discretion of the government. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18107. Building permits. The Director of Public Works or his designated building official shall issue no building or construction permits for any development within the subdivision or lot parcelling until the tentative plans have been approved, nor issue individual building permits until the record map has been recorded. The Territorial Planner shall notify the Director of Public Works in writing of the approval of the final plans and of the recordation of the record map immediately after such approval is given and after such recording is completed. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18108. Revocation of tentative plans. The Commission shall not consider or approve final plans for a subdivision which are submitted after one (1) year, or after any extension of time granted by the Commission during such year, following approval of tentative plans. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

CHAPTER III

Lot Parcelling and Agricultural Subdivisions

- § 18200. General.
- § 18201. Application to establish lot parcelling or agricultural subdivisions.
- § 18202. Lot parcelling approval.
- § 18203. Parcelling map recordation.
- § 18204. Survey required for parcelling map.
- § 18205. Resubdivisions.
- § 18206. Certificate of ownership required (Repealed).
- § 18207. Action on final map (Repealed).
- § 18208. Effective recordation of final map (Repealed).

§ 18200. General. The requirements of Chapter II and Chapter V of this Title shall not apply to lot parcelling subdivisions and

agricultural subdivisions. [enacted 1952; repealed and added by P. L. 6-134, effective December 18, 1962.]

§ 18201. Application to establish lot parcelling or agricultural subdivisions. A subdivider desiring to parcel lots or subdivide land for agricultural purposes shall make a written application therefor on a form prescribed by the Commission. The application shall be filed with the Territorial Planner and shall be accompanied by the original and two (2) copies of a survey map prepared in accordance with § 18204 of this Title. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18202. Lot parcelling approval. Within fifteen (15) days following receipt of an application to establish a lot parcelling or agricultural subdivision, the Territorial Planner shall approve, conditionally approve, or disapprove the application, or shall submit the application to the Commission for its action. The Territorial Planner or Commission may as conditions of approval require street and utility easement reservations and require modifications to the map to insure lot divisions consistent with the general plan and with provisions of § 18400 of this Title. The Territorial Planner or Commission shall disapprove the subdivision if adopted standards of subdivision cannot be maintained. The applicant may appeal any decision of the Territorial Planner to the next regularly scheduled meeting of the Commission. There shall be no fees required for lot parcelling or agricultural subdivisions for the checking of plans or maps. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18203. Parcelling map recordation. Upon final approval of a lot parcelling or agricultural subdivision map by the Territorial Planner or Commission, the subdivider shall record the map in conformity to Article IV, Chapter II, Title XIV, Government Code of Guam, which map shall not be effective until recorded. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18204. Survey required for parcelling map. The lot parcelling map shall be prepared by a surveyor and shall show all survey and mathematical data necessary to locate and retrace all lines thereon, including bearings and distances of straight lines and radii, arc and tangent lengths for all curves. Any area reserved for utility easements, access easements, and future street areas, and other public improvements, shall be clearly delimited and designated. The survey map shall be endorsed as to its accuracy and for its conformity to standard surveying practice by the Territorial Surveyor. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18205. Resubdivisions. Resubdivisions of regular or lot parcelling subdivision shall be initiated and acted upon subject to the procedures of the Chapter, provided, however, that resubdivisions involving six (6) or more lots or resubdivisions requiring subdivision improvements shall be initiated and acted upon as a new subdivision in accordance with the provisions of Chapter II of this Title. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.] [Repealed by P.L. 6-134, effective December 18, 1962.]

CHAPTER IV
Requirements for Plans and Maps

§ 18300. Form of tentative plans.

§ 18301. Form of final plans.

§ 18300. Form of tentative plans. Tentative plans will include six (6) copies of a subdivision map, two (2) copies of a statement of intent by subdivider, and two (2) copies of subdivision improvement plans.

(a) The subdivider shall cause the tentative subdivision map to be prepared by and engineer or surveyor. The map shall be clearly and legibly drawn on one or more sheets having dimensions of twenty-two inches (22") by twenty-nine inches (29"). The scale of the map shall be as prescribed by the Commission and the map shall generally include:

- (1) The tract number as issued by the Territorial Planner.
- (2) The name and address of the owner or owners of record, of the subdivider and of the person preparing the map.
- (3) Date, north arrow and scale.
- (4) A key map locating the subdivision in relation to surrounding areas.
- (5) The exact length and bearing of the exterior boundaries of the subdivision which data shall be referenced to the "Guam Geodetic Triangulation Control Net" or such alternative system of triangulation control as the Territorial Surveyor may direct.
- (6) The accurate placement and outline of structures existing on the site.
- (7) The location, names, and existing widths of adjacent street rights of way.
- (8) The location and dimensions of all known existing easements and reservations.
- (9) The location of existing utilities, sewers, drainage ditches and other drainage facilities located in, or adjacent to, the proposed subdivision.
- (10) The lot numbers and lines of all adjacent parcels of land.
- (11) The location, width and direction of flow of all water courses within the subdivision area.
- (12) Topography with contour intervals of two feet (2') where the ground slope is five percent (5%) or less or contour intervals of five feet (5') where the ground slope is more than five percent (5%).
- (13) The location and widths of all existing or proposed streets in the subdivision.
- (14) The approximate lot layout and approximate lot dimensions of each lot.
- (15) Areas intended to be reserved for public use.

(b) The statement of the subdivider shall include a resume of the improvements proposed to be made in the subdivision, the existing zone district or districts applicable to the property, proposed use or uses of the subdivision lots and, in the absence of zoning, the proposed setback requirements for individual property development.

(c) Subdivision improvement plans shall include:

- (1) Street construction plans including, but not limited to, planned grading, street centerline gradients and typical road

- cross-sections specifying material and depths.
- (2) Water and sewer line plans showing pipe sizes, routing, gradients, pressure regulation and point of origin.
 - (3) A drainage plan showing methods and facilities for collection and disposal of storm waters. The storm drainage disposal area or channel must have a demonstrated ability to accept additional water in view of capacity of area or channel and of capacity of existing improvements confining the channel.

The tentative plan shall be prepared in sufficient detail for analysis by the Commission as to sufficiency and most suitable location. The Commission may require the submission of detailed construction drawings as subdivision work is initiated to permit detailed analysis of construction conformity to law and the rules and regulations of the Commission, and to facilitate improvement inspections. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18301. Form of final plans. The final plan submitted for approval shall include a map of the subdivision and a final survey of improvements as installed.

(a) The map of the subdivision shall be prepared by and engineer or surveyor in accordance with the following:

- (1) The final map shall be clearly and legibly drawn in opaque black ink on good quality tracing paper or cloth acceptable to the Territorial Planner. Signatures shall be in opaque black ink. The size of each sheet shall be twenty-two by twenty-nine inches (22" x 29"). A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch (1"). The scale of the map shall be as prescribed by the Commission and shall show all details clearly, with enough sheets used to accomplish this purpose. The map shall be so made and shall be in such condition when filed that good, legible prints can be made therefrom.
- (2) The map shall contain the tract number in letters no less than one-half ($\frac{1}{2}$ ") in height, north directional point, map scale and date of final survey.
- (3) The map shall show all survey and mathematical information and data necessary to locate all monuments, and to locate and retrace any and all interior and exterior boundary lines appearing thereon including bearings and distances of straight lines, radii, arc and tangent lengths of all curves. The final map shall particularly define, designate and delineate all road and alley rights of way and easements and other parcels offered for dedication for public use.
- (4) The following certificates shall be placed on the first sheet of the map in a form prescribed by the Commission:
 - (a) Dedication of street, easements and other parcels of land intended for public use by the owner.
 - (b) Acknowledgment of dedication for certification by a Notary Public.
 - (c) Acceptance of dedication to be signed by the Governor.
 - (d) Certification by the surveyor making the map (record plat) that the map is correct and accurate and that the monuments described thereon have been so located.
 - (e) Limited access dedication where a nonaccess reservation is

used to restrict access. The map shall be lettered "Vehicular access rights dedicated to the government of Guam" along the thoroughfare adjacent to the lots affected.

- (f) Endorsement of Territorial Surveyor.
- (g) Approval by the Commission.
- (h) Certificate of recordation.

In addition, the map shall be accompanied by statements concerning any proposed deed restrictions or covenants.

(b) As part of the final plan, the subdivider shall submit a copy of an as-built drawing of all subdivision improvements. The details of the as-built drawing shall show, but not be limited to a showing of, the precise placement, sizing and characteristics of water lines, drainage measures, streets, street curbs and similar constructed utilities. The as-built drawing shall be to specifications satisfactory to the Commission. [Added by P.L. 6-134, effective December 18, 1962.]

CHAPTER V Improvements

- § 18400. Required improvements.
- § 18401. Utilities extensions - planned areas.
- § 18402. Utilities extensions - unplanned areas.
- § 18403. Time allowed for completion of improvements.

§ 18400. Required improvements. The subdivider shall provide the following improvements and improvement areas within time limits specified by the Commission:

(a) Street and Alleys - Planned areas. Where general plans have been or are hereafter duly adopted and show an area as planned for development into urban uses, the following street and alley improvements shall be required:

All street and alleys within the subdivision shall be graded and drained the full width of the right of way. The roadbed portion of the right of way shall be improved with a stabilized coral base and surfaced with a light bituminous surface treatment having a minimum width of twenty-two feet (22'). The roadway centerline gradient and right-of-way cross-section including drainage ditches, travelled roadway design and paving and shoulders shall be in conformity to criteria established by the Commission.

Permanent sidewalks having a minimum width of four feet (4') shall be laid out for all streets and shall be dedicated to the government of Guam. The Commission shall establish criteria relating to width and construction of such sidewalks, and all such sidewalks shall be in conformity thereto. [Added by P.L. 11-134, effective April 26, 1972.]

(b) Street and Alleys - Unplanned Areas. Where at the time of a subdivision a general plan has not been adopted or where the general plan designates the area as agricultural, the following street and alley improvements will be required.

All streets and alleys within the subdivision shall be graded and drained the full width of the right of way. The roadbed portion of the right of way shall be improved with a stabilized coral base. The roadway centerline gradient and right-of-way cross-section including drainage ditches, travelled roadway and shoulders shall be

in conformity to criteria established by the Commission.

(c) Storm Water Drainage. Storm drainage facilities shall be provided in all subdivisions in accordance with plans prepared by the subdivider conforming to criteria established by the Commission. These facilities shall be designed to dispose of normal storm waters falling on the subdivision without hazard of flooding, inconvenience of ponding, and the erosion of public or private land.

(d) Domestic Water. Potable domestic water shall be piped onto each lot within the subdivision. Water pipes shall be new and so sized to supply normal household pressures.

(e) Sanitary Sewage Disposal. When sanitary sewers are provided in a subdivision, they shall be in conformity to plans prepared by the subdivider satisfactory to the Commission. When sewers are placed within a subdivision, the minimum permissible lot size shall be as determined by the applied zoning district, or in the absence of zoning, shall be not less than seven thousand (7,000) square feet. In subdivisions where sanitary sewers are not provided, the minimum permissible lot size shall be determined by the slope and characteristics of the subdivision soil and subsoil but in no event shall be less than is established by the applied zoning district, or in the absence of zoning, seven thousand (7,000) square feet. Determination of lot size shall be made on the basis of soil percolation tests made in conformity to standards adopted by the Commission. Lot sizes, including area and minimum widths and depths shall be related to the ability of the subdivision lands to accept the anticipated septic tank effluent whereby no sanitary problem will be created. The Commission shall establish criteria relating lot sizes and shapes to tested rates of seepage, and all lots created after the enactment of this Title shall conform thereto.

(f) Survey Monuments. Permanent concrete monuments shall be installed at all point of direction change in the subdivision perimeter and in the exterior lines of blocks. [enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18401. Utilities extensions - planned areas. Where general plans have been duly adopted and show an area as planned for development into urban uses, the following development criteria will apply for subdivisions within the area so delineated:

(a) Road extensions. Where roads must be extended from existing roads in order to gain suitable access to a subdivision, the subdivider shall negotiate with the property owners involved and acquire rights of way to width and alignment approved by the Commission. The subdivider shall improve such access road or roads the same as he improves the interior subdivision roads.

(b) Power, water mains, and fire hydrants may be installed by the Public Utility Agency in accordance with § 21208.3, Government Code of Guam.

(c) The subdivider shall provide easements for all utility extensions to the satisfaction of the Commission, and acceptable to the Public Utility Agency. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18402. Utilities extensions - unplanned areas. In areas where general plans have not been adopted but where water, electrical facilities and roads exist within or adjacent to a planned subdivision area, the criteria of § 18401 will be applicable. In unplanned areas where water service, electric service or public roads

are not immediately available, the government shall not supply any utility or road extension to make the site suitable for development. [Enacted 1952; repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18403. Time allowed for completion of improvements. Upon approval of the tentative subdivision plan by the Commission, the subdivider shall complete within one (1) year all of the improvements required, except that the Commission, for good cause shown, may authorize an extension of time, not to exceed twelve (12) months. for such completion. Within such time, the subdivider must either:

(a) Complete the required improvements and, upon acceptance thereof by the government, file his final plans; or

(b) Furnish bond acceptable to the Commission for the completion of improvements, the bond to be in penal sum of one hundred fifteen per cent (115%) of total work costs as verified by the Director of Public Works. On approval of the bond, the final plans may be filed. [Added by P.L. 6-134, effective December 18, 1962.]

CHAPTER VI

Variances and Appeals

- § 18500. Petition for variances.
- § 18501. Variance subdivisions.
- § 18502. Unit development.
- § 18503. Judicial review.

§ 18500. Petition for variances. The Commission, on its own initiative, or upon the petition of any subdivider stating fully the grounds of the application and all the facts relied upon by the subdivider, may grant variances to the regulations of the Commission. Such petition shall be filed with the tentative plan of the subdivision. In the event the Commission shall find the following facts with respect to the petition for a variance, it may grant a variance under such terms and conditions as it may prescribe:

(a) That there are special circumstances or conditions affecting said property.

(b) That the variance is necessary for the preservation and enjoyment of a substantial property right of the subdivider.

(c) That the granting of the variance will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is situated.

(d) That the variance, if granted, will conform with the intent and purpose of the general or precise plan for the territory, and of this Title. [Enacted 1952, repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18501. Variance subdivisions. The Commission shall have the authority to review any prior division of parcels of land, whether for the purpose of lot parcelling or the establishment of a subdivision, presented to the Department of Land Management for recording as a subdivision under the provisions of this Title. The Commission may require the subdivider or owner to modify the arrangement, to improve access rights of way and easements, or to modify

the size and shapes of lots and other improvements as a condition precedent to record the presentation as a subdivision. The decision of the Commission shall be final. [Added by P.L. 6-134, effective December 18, 1962.]

§ 18502. Unit development. The standards and requirements of this Title may be modified by the Commission in the case of a plan and program for a new town, a complete community, or a neighborhood unit, which in the judgment of the Commission provides adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated, and which also provide such deed restrictions or other legal provisions as will assure conformity to and achievement of the plan. [Added by P.L. 6-134, effective December 18, 1962.]

§ 18503. Judicial review.

(a) Any order of the Commission shall become effective when notice thereof is delivered to the party or parties affected and, unless proceedings for judicial review are instituted as provided for in Subsection (b) of this section, shall become final at the expiration of thirty (30) days thereafter.

(b) If the decision of the Commission is not in accordance with law or is not supported by substantial evidence, the same may be set aside through an action instituted in the Island Court brought by the party affected thereby. The subdivider shall not subdivide any land, or sell, lease, or offer for sale, any subdivision or proposed subdivision or any part thereof, or any lot, parcel or site therein, or commence or continue construction or any improvement relating thereto during the pendency of such action.

(c) Review by the court shall be limited to the record procured before the Commission and, if the decision of the Commission is not according to law or supported by substantial evidence, the court shall return the matter to the Commission for further action in accordance with the evidence. [Added by P.L. 6-134, effective December 18, 1962.]

CHAPTER VII

Penalties, Amendments, Interpretation and Separability

§ 18600. Violation penalties.

§ 18601. Separability.

§ 18602. Repeal.

§ 18600. Violation penalties.

(a) Any individual agent, partnership, firm, association, corporation or any other legal entity violating any of the provisions of this Title shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) for each offense. Such individual agent, partnership, firm, association, corporation or other legal entity shall be deemed guilty of an offense for each day or portion thereof in which any violation is committed, continued or permitted, and shall be punishable as herein provided for each such day or portion thereof.

(b) The imposition of any sentence made under this section shall not exempt the offender from compliance with the requirements of this Title. [Repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18601. Separability. If any section, subsection, sentence, clause, phrase or portion of this Title is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Title. The Legislature hereby declares that it would have passed and does hereby pass this Title and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, phrases, or portions thereof, be declared invalid. [Repealed and added by P.L. 6-134, effective December 18, 1962.]

§ 18602. Repeal. All Acts or parts of Acts which are inconsistent with the provisions of this Title are hereby repealed to the extent of such inconsistency. [Original Chapter 7, consisting of §§ 18600-18606, as added by P.L. 5-142, effective September 8, 1960, repealed by P.L. 6-134, effective December 18, 1962.]

APPENDIX E

SUBDIVISION

RULES AND REGULATIONS

APPENDIX G

INTERIM HOTEL-RESORT ZONE

RULES AND REGULATIONS

TERRITORIAL PLANNING COMMISSION

INTERIM "H" RESORT-HOTEL ZONE

RULES AND REGULATIONS

Contents:

- Section I. Authority, Purpose, and Intent
- Section II. Definitions
- Section III. Procedures for Zone Changes to "H"
- Section IV. Procedures for development within an "H" Zone
- Section V. Standards for development within an "H" Zone

Section I. AUTHORITY, PURPOSE, INTENT

A. Authority

These rules and regulations are promulgated by the Territorial Planning Commission under authority of Titles XIV and XVII of the Government Code of Guam and Public Law 14-41, as amended by Public Law 14-72 and Public Law 14-82.

B. Purpose

The purpose of these rules and regulations is to establish procedural requirements for:

- a. Zone changes to an "H" designation.
- b. Development within "H" Zones.
- c. Substantive standards for development within "H" Zones.

C. Intent

These rules and regulations apply to that area rezoned "H" under the provisions of Public Law 14-41, as amended by Public Law 14-72 and 14-82 (Tumon), as well as all future proposals for development within or changes of zone designation to an "H" zone. As interim regulations, they shall remain in effect until such time as final "H" Zone regulations are adopted by the Territorial Planning Commission.

Section II. DEFINITIONS

For the purpose of defining those uses permitted in the "H" Zone under Public Law 14-41, but not defined elsewhere in the Government Code, the following definitions shall apply:

- 1. Amusement Activity: An indoor or outdoor facility operated for the amusement or entertainment to the public.

2. Cultural Facility

An indoor or outdoor facility operated for the purpose of portraying or promoting aspects of the Island's culture through use of plays, theaters, museums, arts and crafts galleries and displays, and similar facilities.

3. Landscaped Area or Landscaping

An area planted and covered with soft live flora such as lawn, ground cover, trees, shrubs, or any other materials which would aesthetically enhance the area.

4. Park Recreational Facility

An area or facility established and operated for the purpose of accommodating or promoting active or passive recreational activities including sports, interpretive parks, botanical and zoological gardens, playgrounds, and such related facilities.

5. Tourism Related Shops, Offices, and Supportive Services
(Resort Commercial)

Commercial facilities and offices directly dependent on sales or services and immediate proximity to the public and, including but not limited to bicycle or moped rental facilities, but not such commercial or industrial activities as auto, motorcycle, bicycle, and appliance sales or repair; assembly line, hardware, building, electrical, or plumbing supply enterprises and related uses.

6. Transient Guest

Those persons who occupy a hotel, lodging house, or similar facility in a specific location for less than 90 consecutive days.

Section III. Procedures for Zone Change to "H"

- A. A proposed zone change to "H" may be initiated by the Commission or by an application directed to the Commission by any person owning or leasing real property within the area covered by the proposed "H" zone.
- B. Application. An application for a change of zone to "H" shall be filed with the Planning Division, Department of Land Management, on a zone change form, which, in addition to that information normally required for zone changes shall include:
 - 1. A legal description of the area proposed for rezoning, copies of certificates of title for property within the proposed zone and the name of the developer and/or development company, if appropriate.

2. A statement outlining the reasons for requesting such a zone change including:
- a. A discussion of how the public necessity, convenience, and general welfare justifies such a zone change.
 - b. A description of the general geographical character of the area to be rezoned.
 - c. Types of future uses or development proposed within the area, if any.
 - d. Alternatives considered (PUD, Variance, C Zone, etc.).
 - e. A general summary of the anticipated effect of the proposed rezoning on the surrounding environment including its impact on water quality (through drainage, leaching, run-off); any unique historical or ecological sites or other valuable natural or cultural resources; accessibility to beaches, caves, waterfalls, or other recreational sites; and surrounding land-use patterns. General narrative discussion acceptable--no requirement to follow specific guidelines for preparation of Environmental Impact Statements, or Assessments as established by Council on Environmental Quality; unless otherwise required by law.
 - f. If proposed in conjunction with plans for substantial development of the subject area:
 - (1) A summary economic statement to include discussions of the operating and economic role and function of the development's major features, of the primary and secondary markets to be served, of the demand for support services to be generated and the manner in which each will be secured, and of the ways in which the development furthers the expansion in breadth or depth of the Island's economy; but to specifically exclude confidential or sensitive financial data such as forecasted operating cost breakdowns, revenues, cash-flows, breakeven points, and profitability.
 - (2) A development schedule indicating the approximate date when construction or stages (by unit or increment basis) of any planned development are planned to begin and be completed.

- (3) A statement of the applicant's tentative plans regarding the future selling or leasing of all or portions of the development, including specific land areas, condominium units, or cottage or cluster developments by increment method.
- (4) Where no public sewer, water, or such public facilities exist, the proposed methods and facilities to provide such services.
- (5) A plot plan of any proposed development within the "H" Zone area. The plot plan shall show the location of proposed major structures and facilities within the rezoned area, including sources of water and power, required sewage disposal systems and proposed landscaping. The plot plan shall indicate existing topography as defined in Chapter IV, Section 18300(a)(12) of Title XIX of the Government Code of Guam.

C. Upon certification by the Territorial Planner that complete information has been provided by the applicant, the Commission shall hold at least one (1) public hearing thereon in the municipal district where the property to be rezoned is located, as such districts are described in Chapter I of Title XVI of the Government Code, notice of time and place of which shall be given by at least one (1) publication in a newspaper of general circulation at least ten (10) days before the day of said hearing, and by mail to the Commissioner of the municipal district concerned, and to those landowners owning land within five hundred (500) feet of the property for which rezoning is requested, the mailing addresses for such landowners to be in the Real Estate Tax records.

D. Prior to the public hearing, the Territorial Planner shall submit the application and other supporting documents including a summary report of the public hearing for the proposed zone change to the Subdivision and Development Review Committee for their review and recommendation. The Subdivision and Development Review Committee (SDRC) findings shall be presented at the public hearing.

- E. The Commission shall consider the proposed change of zone and may approve or disapprove the same, in whole or in part. The Commission shall make its findings and determinations within forty (40) days from the date of the hearing thereon and shall forward notice of such decision to the applicant, if any. If the application is approved in whole or in part by the Commission, the same shall be forwarded to the Governor who may approve or disapprove the proposed change in whole or in part.
- F. Pursuant to Chapter XIV, Title XVIII of the Government Code, upon approval of the zone change by the Governor, it shall be submitted to the next portion of the next regular session of the Legislature convening after the said approval. Such amendment to the zoning map shall remain in effect unless amended or repealed by statute.
- G. Zone changes to "H" shall not be permitted for any area less than two and one half (2-1/2) acres in size.

IV. Procedures for Development Within an "H" Zone

- A. Before issuance of any building permit for development proposed either in 1) in conjunction with submittal of a requested zone change to "H" or 2) in a prior approved "H" Zone, a tentative plan for such development shall be submitted to the Territorial Planner containing the following information as deemed appropriate by the Territorial Planner:
 - 1. The name and address of the owner or owners of record, of the developer and of the person preparing the map.
 - 2. Date, north arrow and scale.
 - 3. A key map locating the development relation to surrounding areas.
 - 4. The exact length and bearing of the exterior boundaries of the development which data shall be referenced to the "Guam Geodetic Triangulation Control Network" or such alternative system of triangulation control as the Territorial Surveyor may direct.
 - 5. The accurate placement and outline of structures existing on the site.

6. The location, names, and existing widths of adjacent street rights of way.
7. The location and dimensions of all known existing easements and reservations.
8. The location of existing utilities, sewers, drainage ditches, and other drainage facilities located in, or adjacent to, the proposed development.
9. The location, width and direction of flow of all water courses within the subdivision area.
10. Topography with contour intervals of two feet (2') where the ground slope is five percent (5%) or less or contour intervals of five feet (5') where the ground slope is more than five percent (5%).
11. The location and widths of all existing or proposed streets in the development.
12. The approximate layout and approximate dimensions of each structure, facility, or use proposed within the development.
13. Areas intended to be reserved for public use.
14. A drainage plan showing methods and facilities for collection and disposal of storm waters. The storm drainage disposal area or channel must have a demonstrated ability to accept additional water in view of capacity of area or channel and of capacity of existing improvements confining the channel.

The tentative plan shall be prepared in sufficient detail for analysis by the Commission as to sufficiency and most suitable location. The Commission may require the submission of detailed construction drawings as work is initiated to permit detailed analysis of construction conformity to law and the rules and regulations of the Commission, and to facilitate inspections.

- B. Upon certification by the Territorial Planner that such complete and accurate information as requested has been provided, such tentative plan shall be submitted to the Subdivision and Development Review Committee for review and recommendations.
- C. The Territorial Planning Commission shall either approve, including approval with conditions, or disapprove in whole or in part the proposed tentative development plan. Upon approval, appropriate permits for initial construction may be issued.

- D. Any proposed use or structure which has not been included in an approved tentative plan must be approved by the Commission or at its discretion, the Territorial Planner, before issuance of any building permits
- E. A performance bond or undertaking shall be required for any development undertaken pursuant to an approved tentative plan within an "H" Zone as otherwise provided in the regulations. The amount of the bond shall be One Hundred and Ten Percent (110%) of the infrastructure costs of the project, and not less than Two Thousand Dollars (\$2,000). The entire bond or any undertaking of any portion thereof shall be forfeited as determined by the Commission for failure to comply with any applicable land use, water quality, or zoning regulation except as allowed for under prior granting of a variance or other legal exception from such requirement: including, but not limited to, erosion and grading standards, landscaping, height and setback requirements, the tentative development plan as approved by the Commission and any applicable zone regulations. The entire bond or any portion thereof shall be forfeited as is required to complete the site preparation and infrastructure features of the project should these not be completed by the developer.
- F. The Commission shall approve a maximum time period within which all of the improvements authorized in the tentative development plan shall be completed. The time period shall be no less than six months, and no more than four years. The time period shall be based on the size, character, and complexity of the authorized improvements. The Commission may, for good cause shown, grant any extension of time.
- G. Upon completion or any portion of the project in accordance with the tentative plan, the Department of Public Works shall certify to the Commission that the project has been completed in accordance with the tentative plan.
- H. Requirements or preparation of tentative development plans and posting of performance bonds as outlined in this section shall not apply to construction of single-family dwellings in that area in Tumon zoned "H" under Public Law 14-41, as amended.

Section V. Standards for Development Within an "H" Zone

- A. All development within an "H" Zone shall comply with all applicable pollution and erosion standards as promulgated by the Guam Environmental Protection Agency.
- B. The nature, size, shape, lighting, and style of an outdoor sign shall conform to those requirements as outlined in the Sign Regulations, Title XVIII, Chapter IX, of the Government Code for Commercial Zones.
- C. The following parking regulations shall apply:
 - 1. Title XVIII, Chapter VIII, Sections 17350 - 17352 of the Government Code of Guam.
 - 2. Provisions noted under "footnotes" to the "H" Zone Yard and Height Regulations.
- D. Development and activities within an "H" Resort-Hotel Zone shall:
 - 1. Provide open access to public resources including but not limited to beaches or other parts of the ocean shore, parks, conservation areas, rivers, waterfalls, and other public resources.
 - 2. To the maximum extent possible, assure that all permissible and accessory uses enhance, compliment, and do not detract from or surrounding area.
 - 3. When associated with or encompassing such valuable resources as unique land, water, floral, faunal, cultural, historic, archaeologic, or other such areas:
 - a. Provide interpretive materials, displays, and information, as required, reviewed, and approved by the Department of Parks and Recreation. The Territorial Planner shall certify to the TPC and SDRC that the interpretive materials, displays, and information have been so approved.
 - b. Assure that such resources remain, to the maximum extent possible, in their natural or undisturbed state.
- E. Dwellings permitted in an "H" Zone shall be designed:
 - 1. To accommodate primarily the needs and desires of visitors, tourists, and transient guests.
 - 2. In a compatible arrangement so as to compliment and enhance the adjacent structures and environment.

- F. Such recreational or amusement activities as bowling alleys, movie theaters, or sports facilities which normally and necessarily create temporary or occasional substantial adverse impacts, such as excessive noise, light, or traffic, shall be permitted in an "H" Zone only upon a determination by the Commission that such an activity is normally to be found in a tourism-related development area, and that the activity is reasonably compatible with the existing or reasonably foreseeable development of the surrounding area.
- G. Prior to issuance of occupancy permits for any development within an "H" Zone, the developer shall certify to the Territorial Planner that no less than two percent of the total construction cost for development of land oriented facility or structure was expended on landscaping that particular development. Allowable costs under such a requirement include the costs for purchase of landscaping vegetation and labor involved in its planting.
- H. Variance to these regulations may be granted by the Commission only upon issuance of such findings or under such conditions as prescribed under Sections 17501 - 17502 of the Government Code.
- I. Yard, Area, and Height regulations for the "H" Zone are as outlined in the attached chart.

YARD AREA AND HEIGHT REGULATIONS

Use	Gross Density	Minimum Lot Size	YARD (3)			Lot Area per Dwelling	(5) Maximum Building Height
			Front	Side	Rear		
Single	4 d.u./acre	5,000 W/Sewer (919 m ²)	(4) 15 ft. (5m)	(4) 8 ft. (3m)	10 ft. (3m)	5,000 W/Sewer 10,000 W/O Sewer (929 m ²)	2 Stories
Zero Lot Line	5 d.u./acre	4,000 sq.ft. (371.5 m ²)	(4) 15 ft. (5m)	(4) 16 ft. (5m)	10 ft. (5m)	4,000 W/Sewer 8,000 W/O Sewer 8,005 (744 m ²)	3 Stories
Zero Lot Line semi Attached	6 d.u./acre	3,000 sq.ft. (279 m ²)	(4) 5 ft. (5m)	(4) 16 ft. (5m)	10 ft. (5m)	3,000 W/Sewer 6,000 W/O Sewer 6,666 (620 m ²)	3 Stories
Row four to eight	10 d.u./acre	2,500 sq.ft. (232.5 m ²)	(4) 20 ft. (5m)	(4) 16 ft. (5m)	16 ft. (5m)	2,000 W/Sewer 4,000 W/O Sewer (372 m ²)	2 Stories
Multi-Family	16 d.u./acre	10,000 sq.ft. (1012 m ²)	10 ft. (3m)	10 ft. (3m)	13 ft. (4m)	1012 W/Sewer 2722 W/O Sewer (255 m ²)	3 Stories
Multi-Family	20 d.u./acre	25,995 sq.ft. (2,768 m ²)	15 ft. (4m)	10 ft. (3m)	20 ft. (6m)	2217 sq.ft. (206 m ²)	(Lot Length + Lot Width) + 10 m.
Multi-Family	22 d.u./acre	50,002 sq.ft. (4,627 m ²)	23 ft. (7m)	23 ft. (7m)	33 ft. (10m)	2001 sq.ft. (185 m ²)	"
Multi-Family	26 d.u./acre	70,005 sq.ft. (6,506 m ²)	33 ft. (10m)	Total Combined Side Yards equals 307' Lot width, or 33 ft. (10m)	49 ft. (15m)	1,688 sq.ft. (155m ²)	"
Hotel Small	32 d.u./acre	90,000 sq.ft. (8365 m ²)	33 ft. (10m)	Total combined side yards equals 462' lot width, or 33 ft. (10m)	75 ft. (23m)	1,361 sq.ft. (126.5m ²)	"
Hotel Large	38 d.u./acre	200,000 sq.ft. (18,568 m ²)	33 ft. (10m)	Total combined side yards equals 507' lot width, one side min. 53 ft. (16m)	75 ft. (25m)	1141 sq.ft. (106m ²)	"
Resort Commercial	NA	9,986 sq.ft. (929 m ²)	10 ft. (3m)	(5) 10 ft. (3m)	10 ft. (3m)	NA	3 Stories

FOOTNOTES:

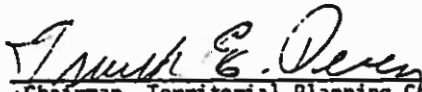
- (1) Landscape/Areas include all setbacks, no parking permitted.
- (2) Two (2) parking spaces permitted on paved driveway within the sixteen foot (16') setback.
- (3) When yard abuts shoreline, building setbacks are increased by thirty-five feet (35') for one story and seventy-five feet (75') for two story and ETC.
- (4) Zero lot line may be permitted with adjacent Owner approval and provision of additional open space.
- (5) Maximum Building Height (MBH) is calculated by dividing the sum of lot length plus lot width by 10.

$$MBH = \frac{(LL + LW)}{10}$$

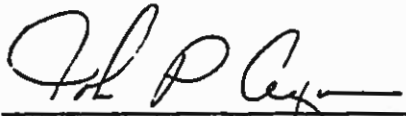
Section VI. Amendments

These Rules and Regulations may be amended by the Commission at any regular or special meeting by a majority vote, provided that a ten (10) day public notice is provided.

Adopted on March 10, 1978.


Chairman, Territorial Planning Commission

I certify that the foregoing is a true copy of the Rules and Regulations of the "H" Resort-Hotel Zone promulgated, effective March 10, 1978. These rules and regulations were in effect March 10, 1978 and continue in effect as of the date of this certification.


JOHN P. AGUON, EXECUTIVE SECRETARY
Territorial Planning Commission

APPENDIX H

TERRITORIAL SEASHORE PROTECTION ACT

TITLE XIV

GOVERNMENT CODE

TITLE XIV

SEASHORE PROTECTION ACT

CHAPTER V-A

Section 13410	Guam Territorial Seashore Protection Act
13411	General Provisions
13412	Definitions
13413	Commissions
13414	Conflict of Interest and Prohibitions
13415	Power and Duties of the Commission
13416	Commission's Responsibilities
13417	Permit Control
13418	Penalties
13419	Severability
13420	Authorization and Appropriation

Section 13410. This Chapter may be cited as the Guam Territorial Seashore Protection Act of 1974 enacted P.L. 12-108, 1974.

Section 13411. The people of the territory of Guam hereby find and declare that the Guam Territorial Seashore Reserve is a distinct and valuable natural resource belonging to all the people of Guam and existing as a delicately balanced ecosystem; that the permanent protection of the natural, scenic, and historical resources of the seashore reserve is a paramount concern to the present and future residents of this island; that in order to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marinelife, and other ocean resources, and the natural environment, it is necessary to preserve the the ecological balance of the seashore reserve and prevent its deterioration and destruction; that it is the policy of this territory to preserve and protect the resources of the seashore reserve for the enjoyment of the current and succeeding generations, and that to protect the seashore reserve, it is necessary:

(a) To study the seashore reserve to determine the ecological planning principles and assumptions needed to ensure conservation of its resources;

(b) To prepare, based upon such study and in full consultation with all affected governmental agencies and departments, private interests and the general public, a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation, management and development of the seashore reserve;

(c) To ensure that any development which occurs in the seashore reserve during the study and planning period will be consistent with the objectives of this Chapter;

(d) That the Board of Directors, Territorial Seashore Protection Commission is hereby charged with the responsibility of implementing the provisions of this Chapter.

Section 13412. Definitions. (a) 'Commission' means Guam Territorial Seashore Protection Commission.

(b) 'Board' means the Board of Directors of the Commission.

(c) 'Seashore reserve' means that land and water area of Guam extending seaward to the ten fathom contour, including all islands within the Government's jurisdiction except Cabras and these villages wherein residences have been constructed along the shoreline prior to the effective date of the Seashore Act, and extended inland to the nearest of the following points:

(1) From the mean high water one for a distance on a horizontal plane of ten (10) meters.

(2) From the mean high water line to the inland edge of the nearest public right-of-way, P.L. 13-154, 1976.

(d) 'Development' means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision of land and any other division of land including lot splits; change in the intensity of use of water, ecology related thereto, or of access thereto; construction or reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility, and the removal of major vegetation.

(e) 'Improved residential property' means a detached, noncommercial residential dwelling, the construction of which was begun before September 1, 1972, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Commission shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated.

(f) 'Person' includes any individual, organization, partnership, and corporation, including any utility and any agency of federal, territorial, and local government.

(g) 'Plan' means the Guam Seashore Reserve Plan.

(h) 'Sea' means the Pacific Ocean or the Philippine Sea.

Section 13413. Commission Creation, Membership and Compensation. (a) There is hereby created a Guam Territorial Seashore Protection Commission (hereinafter referred to as the 'Commission'), consisting of the seven members of the Territorial Planning Commission and the members shall hold office so long as they remain members of the Territorial Planning Commission. P.L. 13-52, 1975

(b) Commission members shall serve without compensation except that each member shall be paid a per diem of Twenty-Five Dollars (\$25.00) for each days' attendance at a meeting of the Commission. Each member shall also be allowed actual expenses incurred in the discharge of his duties." P.L. 13-52.

Section 13414. Conflict of interest. (a) No member of the Commission or employee of the Commission shall participate, in any official capacity whatsoever, in any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which any of the following has a financial interest: the member or employee himself; his spouse; his child; his partner; any organization in which he is then serving or has, within two (2) years prior to his selection or appointment to or employment by the Commission, served in the capacity of officer, director, trustee, partner, employer or employee; any organization within which he is negotiating for or has any arrangement or understanding concerning prospective partnership or employment.

(b) In any case within the coverage of this section, the prohibitions herein contained shall not apply if the person concerned advises the Board in advance of the nature and circumstances thereof, including full public disclosure of the facts which may potentially give rise to a violation of this article, and obtains from the Board a written determination that the contemplated action will not adversely affect the integrity of the Commission. Any such determination shall require the affirmative vote of two-thirds of the members of the Board.

(c) Any person who violates any provision of this section shall, upon conviction, and for each such offense, be subject to a fine of not more than Ten Thousand Dollars (\$10,000) or imprisonment for not more than two (2) years, or both.

Section 13415. Powers and Duties. The Board may:

(a) Accept grants, contributions, and appropriations;

(b) Employ and fix the compensation, in accordance with law, of such professional clerical and other assistants as may be necessary;

(c) (1) Through coordination and assistance with other government departments and agencies, acquired lands, waters, and interests therein with the boundaries of the seashore reserve, by donation, purchase with donated or appropriated funds, by exchange for government land, or transfer. All property owned by the territory of Guam within the seashore reserve is hereby dedicated for the purpose of this Chapter.

(2) With respect to improved residential property acquired for the purposes of this Chapter, which is beneficially owned by a natural person and which the Board determines can be continued in that use for a limited period of time without undue interference with the administration, development, or public use of the coastal reserve, the owner thereof may on the date of its acquisition by the Commission retain a right of use and occupancy of the property for noncommercial residential purposes for a term, as the owner may elect, ending either (a) at the death of the owner or his spouse, whichever occurs later, or (b) not more than twenty-five (25) years from the date of acquisition. Any right so retained may during its existence be transferred or assigned. The Commission shall have paid to such owner the fair market value of the property on the date of such acquisition, less the fair market value on such date of the right retained by the owner.

(3) The Board may terminate a right of use and occupancy retained pursuant to this subsection upon a determination that such use and occupancy is being exercised in a manner not consistent with the purposes of this Chapter, and upon tender to the holder of the right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination;

(d) Contract for any professional services if such work or services cannot satisfactorily be performed by its employees;

(e) Be sued and sue to obtain any remedy to restrain violations of this Chapter. Upon the request of the Commission, the Attorney General shall provide necessary legal representation;

(f) Adopt any regulations or take any action it deems reasonable and necessary to carry out the provisions of this Chapter, but no regulations shall be adopted without a prior public hearing.

Section 13416. Commission responsibilities. The Commission shall:

(a) Elect a chairman.

(b) Appoint an Administrator who shall not be a member of the Commission and who shall have the responsibility for the administration of this Act under the supervision of the Commission.

(c) Prepare, adopt and submit to the Legislature for implementation the Guam Seashore Reserve Plan.

(1) The plan shall be based on detailed studies of all the factors that significantly affect the seashore reserve.

(2) The plan shall be consistent with all of the following objectives:

(a) The maintenance, restoration, and enhancement of the overall quality of the seashore reserve environment, including, but not limited to, its amenities and aesthetic values.

(b) The continued existence of optimum populations of all species of living organism.

(c) The orderly, balance utilization and preservation, consistent with sound conservation principles, of all living and nonliving seashore reserve resources.

(d) Avoidance of irreversible and irretrievable commitments of seashore reserve resources.

(e) Public access for maximum visual and physical use and enjoyment of the seashore reserve by the public.

(3) The plan shall consist of such maps, text and statements of policies and objectives as the Commission determines are necessary.

(4) The plan shall contain at least the following specific components:

(a) A precise, comprehensive definition of the public interest in the seashore reserve.

(b) Ecological planning principles and assumptions to be used in determining the suitability and extent of allowable development.

(c) A component which includes the following elements:

(1) A land-use element.

(2) A conservation for the preservation and management of the scenic and other natural resources of the seashore reserve.

(3) A public access for maximum visual and physical use and enjoyment of the coastal reserve by the public.

(4) A recreation element.

(5) A population element for the establishment of maximum desirable populations densities.

(6) An educational or scientific use element.

(d) Reservations of land or water in the seashore reserve for certain uses, or the prohibition of certain uses, in specific areas.

(ē) Recommendations for the governmental policies and powers required to implement the planning including the organization and authority of the governmental agency or agencies which should assume permanent responsibility for its implementation.

(d) Publish objectives, guidelines, and criteria for the collection of data, the conduct of studies, and the preparation of recommendations for the plan within six (6) months after its first meeting.

(e) Prepare its definitive conclusions and recommendations, including recommendations for areas that should be reserved for specific uses or within which specific uses should be prohibited, which it shall, after public hearing, adopt and submit to the Legislature no later than January 1976, P.L. 12-210.

(f) On or before December 1 1975, adopt the coastal reserve plan and submit it to the Legislature for its adoption and implementation.

Section 13417. Interim permit control.

(a) General provisions.

(1) On or after June 1, 1974 any person wishing to perform any development within the seashore reserve shall obtain a permit authorizing such development from the Commission, and, if required by law, from any other governmental department or agency. No permit shall be issued without the affirmative vote of a majority of the Board members, P.L. 12-210.

(2) No permit shall be issued unless the Board has first found:

(a) That the development will not have any substantial adverse environmental or ecological effect, and

(b) That the development is consistent with the purpose and objectives of this Chapter. The applicant shall have the burden of proof on all issues.

(3) All permits shall be subject or reasonable terms and conditions in order to ensure that:

(a) Access to beaches, recreation and historical areas, and natural reserves is increased to the maximum extent possible by appropriate dedication.

(b) There is no substantial interference with or detraction from the line of sight toward the sea from the territorial highway nearest the coast.

(c) Adequate and properly located public recreation areas and wildlife preserves are reserved.

(d) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon coastal reserve resources.

(e) Alterations to existing land forms and vegetation, and construction of structures shall cause minimum danger of floods, landslides, erosion or siltation.

(4) If prior to the effective date of this Chapter, a building permit has been issued, no person who has obtained a vested right thereunder shall be required to secure a permit under this section, provided that no substantial changes may be made in any such development, except in accordance with the provisions of this Chapter. Any such person shall be deemed to have such vested rights if, prior to April 1, 1973 he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work and materials necessary thereof.

(5) Notwithstanding any provision in this section to the contrary, no permit shall be required for the following types of development:

(a) Repairs and improvements not in excess of Seven Thousand Five Hundred Dollars (\$7,500) to existing single-family residences; provided that the Agency shall specify by regulations those classes of development which involve a risk of adverse environmental effect and may require that a permit be obtained.

(b) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the coastal reserve, pursuant to a permit from the United States Army Corps of Engineers.

(b) Permit procedure.

(1) The Board shall prescribe the procedures for permit applications and may require a reasonable filing fee and the reimbursement of expenses.

(2) The Board shall give written public hearing. Such hearing shall be set no less than twenty-one (21) nor more than ninety (90) days after the date on which the application is filed.

(3) The Board shall act upon as application for permit within sixty (60) days after the conclusion of the hearing.

(4) Any person including an applicant for a permit, aggrieved by the decision or action of the Board shall have a right to judicial review of such decision or action by filing a petition for a writ of mandamus, pursuant to Section 1084 et. sec. of Civil Procedure Code of Guam within sixty (60) days after such decision or action is made.

(5) Any person may maintain an action for declaratory and equitable relief to restrain violation of this Chapter. No bond shall be require for an action under this subsection.

(6) Any person may maintain an action for the recover of civil penalties provided in Section 13418.

(7) The provisions of this section shall be in addition to any other remedies available at law.

(8) Any person who prevails in a civil action brought to enjoin a violation of this Chapter or to recover civil penalties shall be awarded his costs, including reasonable attorneys fees.

Section 13418. Penalties. (a) Any person who violates any provisions of this Chapter shall be subject to a civil fine not to exceed Ten Thousand Dollars (\$10,000).

(b) In addition to any other penalties, any person who performs any development in violation of this Chapter shall be subject to a civil fine not to exceed Five Hundred Dollars (\$500) per day for each day in which such violation persists.

Section 13419. Severability. If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of the Act are severable.

Section 13420. Authorization for appropriation. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Chapter."

APPENDIX I

ATTORNEY GENERAL'S OPINIONS

CHAPTER ONE

DESIGN AND LAYOUT OF SUBDIVISIONS

The following design standards shall apply to all subdivisions, agriculture subdivisions, lot parcellings, decedents estates and parental subdivisions submitted to the Territorial Planning Commission or its legally authorized agent for approval under Title XIX, Government Code of Guam.

The Subdivider shall observe all design standards for land subdivision as hereinafter provided. These standards shall be considered minimum standards, and shall be varied from or waived only as provided in Section 1.5.

1.1 GENERAL

1.11 Conformance with Master Plan. Any proposed subdivision shall conform, as far as practicable, to the proposals and intention of the Master Plan for the Territory of Guam as formally adopted in whole or in part by the Territorial Planning Commission, unless substitute proposal may be shown to the satisfaction of the Commission, or its agent, to better serve the general area of the subdivision and the island.

1.12 Protection of Natural Features. Due regard shall be shown for all natural features such as trees, water courses, scenic points, historic locations, and similar community assets, which, if preserved, will add attractiveness and value to the subdivision.

1.13 Reserve Strips. Reserve strips prohibiting access to streets or adjoining property shall not be permitted, except where, in the opinion of the Commission or its agent, such strips shall be in the public interest.

1.14 Further Subdivision. In cases where a tract is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow the logical further subdivision and economic extension of streets, utility easements, drainage ways and public areas into such parcels.

1.2 STREETS

1.21 Arrangement. The proposed streets shall be considered in their relation to existing and planned streets, to topographic and geologic conditions, and to public convenience and safety. They shall provide for:

1.211 Appropriate continuation of existing arterial and collector streets.

1.212 Extension of arterial and collector streets into adjoining land;

1.213 The discouragement of through traffic on residential streets;

1.214 The maximum attractiveness, livability and amenity of the subdivisions; and,

1.215 Subdivisions of 100 or more lots will normally be required to have more than one access to an existing collector or arterial street or to a proposed collector or arterial street which is to be built in conjunction with the proposed subdivision.

1.22 Street Jogs. Street jogs in arterial and collector streets of less than 500 feet shall not be allowed. Street jogs in residential streets of less than 200 feet shall not be allowed.

1.23 Rights of Way Widths and Alignment. Rights of way widths and alignment shall conform to the standards adopted by the Territorial Planning Commission within the "Road Classifications and Standards" as attached hereto; and made a part hereof. (See Chapter 2 of Rules and Regulations.)

1.24 Intersections. Rights of way centerlines shall be laid out so as to intersect as nearly as possible at right angles. No right of way shall intersect any other right of way at less than 75 degrees.

1.25 Cul-de-Sac. All Cul-de-Sac streets shall:

1.251 Not exceed 700 feet in length; and

1.252 Not provide access to more than twenty-five (25) lots.

1.3 LOTS AND BLOCKS

1.31 Block Lengths. Unless specifically approved by Territorial Planning Commission, block lengths shall not be less than 200 feet, nor more than 2,000 feet. Where blocks exceed 1,000 feet, crosswalk ways may be required.

1.32 Lot Design. No lot shall have a length to width relationship that exceeds a 3 to 1 ratio.

1.33 Panhandle Lots. No panhandle lot shall exceed 9,500 square feet in area except in "A" zones.

1.34 Lot Area. Lot sizes shall meet all requirements of the Zoning Laws.

1.4 EASEMENTS

Wherever possible, all easements shall be contiguous from block to block, and their layout shall create as few irregularities as possible.

1.41 Water Courses. Drainage conduits and channels when not located in a public street, road or alley, or within a public drainage easement, must be located in a recorded and dedicated public easement when on private property. Necessary dedication for construction on private property not owned by applicant must be recorded before the improvement will be approved for construction.

Where a minor improvement of a drainage channel falls on adjacent property (such as daylighting a ditch profile), written permission from the adjacent property owners for such construction, and a copy of the approval of the adjacent owners shall be submitted to the Director of Public Works prior to approval of the improvement plans.

In general drainage easements will have simply described boundaries (described in brief) and simple form and referenced to a well defined point or line.

1.411 Easements for Closed Conduits shall meet the following requirements:

- a. Minimum width of 15 feet, with the pipe located at quarter point on north or west.
- b. On pipes of 24 inches diameter and greater or trenches exceeding 5 feet in depth the easement will have additional width to provide ample working space as required by the Director of Public Works.

1.412 Rights of way for major Open Channels as defined in Public Works standards shall have sufficient width to contain the open channel with side slopes, and a 15 foot service road.

1.42 Utilities. Utility easements shall generally follow lot lines and shall not be less than 10 feet in width.

1.43 Access Easements.

1.431 All access easements shall be separate lots, reserved exclusively as public access and utility easements and recorded by separate document (Declaration of Easement) attached to the map.

1.432 Any adjacent property that is land-locked must ordinarily be served by a dedicated street or easement.

1.5 VARIATION

Strict compliance with the requirements of these rules and regulations may be waived only when, in the judgement of the Commission, such action is in the public interest and not inconsistent with the Subdivision Law. In waiving strict compliance, the Commission may require such alternative conditions as will serve substantially the same objective as the standards or regulations waived.

CHAPTER TWO

ROAD CLASSIFICATIONS AND STANDARDS

2.1 ROAD CLASSIFICATIONS

The streets and roads are classified on the basis of use and importance. In the classification of various routes, which have been established in order of relative importance, both the present and future uses have been considered.

2.11 Classes of Streets.

2.111 Class "A" Streets - Proposed street improvements for residential developments having a minimum size of less than 10,000 square feet per lot shall be Class "A". The net square footage of said residential developments shall be considered to be that portion of the total square footage less the area of parcels required for street purposes. Class "A" streets shall have an asphalt concrete surface and an aggregate base with concrete curb and gutter. Sidewalks and side slopes as recommended by the Soils Engineer or an approved retaining wall within an expanded right of way line. Permanent slope easements may be used upon approval of the Director of Public Works.

2.112 Class "B" Streets - Proposed street improvements for all residential developments having a minimum size of more than 10,000 square feet but less than 20,000 square feet per lot shall be Class "B" and shall have the same components as Class "A", except that sidewalks may be omitted. Permanent slope easements may be used upon approval of the Director of Public Works.

2.113 Class "C" Streets - Proposed street improvements for all residential developments having a minimum size of more than 20,000 square feet and less than 40,000 square feet per lot shall be Class "C" and shall have the components as Class "A", except that curbs and gutters and sidewalks may be omitted.

2.114 Class "D" Streets - Proposed street improvements for all residential developments having a minimum size of more than one acre (or 40,000 square feet) per lot may be Class "D" and shall have the components of Class "A", except that curb and gutters, asphalt concrete surface course, and sidewalks may be omitted. Class "D" streets shall only be allowed in Agriculture zoned area.

(NOTE: In Hillside Area - where cross slopes exceed 10% of the rights of way widths, pavement width may be reduced on approval by the Director of Public Works.

2.12 Types of Streets. All streets within the Territory will also be considered within the following street types:

2.121 Type of M.R. Street - A minor residential street with a right of way width of 44 feet and a face to face of curb width of 28 feet; or,

2.122 Type C.R. Street - A collector residential street with a right of way width of 60 feet and a face to face of curb of 44 feet; or,

2.123 Type M.A. Street - A major arterial street with a right of way width of 80 feet and improvements as required by the Department of Public Works with the approval of the Territorial Planning Commission.

2.124 Alley -A street depressed in the center, with a right of way and surface width of 20 feet

2.13 Traffic Demand. The following standard of design for width of paved portion of streets based on traffic demand shall be used:

2.131 A road serving less than 100 dwelling units, with its entire length devoted to residential uses, shall be considered a "minor residential" type street.

2.132 A road delineated on the approved Master Plan of Highways as a primary access road shall be considered a "Major Arterial" type street.

2.133 Any road not within the above two descriptions shall be considered a "collector residential" type street

2.2 ROAD STANDARDS

The following standards for the design of geometrics and profiles shall govern the preparation of plans for road related improvements.

2.21 Minimum Grades and Cross Slope

2.211 Minimum grade on new streets shall be 0.33% where curb and gutter are used, and 0.15% where drains and side ditches are used; maximum grade shall be 10% unless approved by Director of Public Works.

2.212 Minimum grade of gutter section constructed on existing streets shall be 0.33 percent.

2.213 Minimum cross slope on new streets shall be 2.0%.

2.214 Minimum cross slope on widening shall be 1.5%

2.215 When two streets intersect neither street shall have a grade greater than 3.0% for major and 6.0% for minor, for a minimum distance of 40 feet measured from the curb line of the intersected street, except in unusually rough terrain with approval of Director of Public Works.

2.216 The lengths of vertical curves at the intersections of two street grades shall be in accord with AASHO Standards. However, in minor residential streets, vertical curves may be omitted where the algebraic difference in grades does not exceed 2.0%.

2.22 Street Patterns. The street pattern in the subdivision shall be in general conformity with a plan for the most advantageous development of adjoining areas and the entire neighborhood. The following principles shall be observed:

2.221 Where appropriate to the design and terrain, proposed streets shall be continuous and in alignment with existing planned or platted streets with which they are to connect. The centerlines of streets, if not in alignment, shall be offset at least 200 feet for minor residential streets and 500 feet for arterial and collector streets.

2.222 Proposed streets shall be extended to the boundary lines of the land to be subdivided unless prevented by topography or other physical conditions, or unless, in the opinion of the Commission, such extension is not necessary for the coordination of the subdivision with the existing layout or the most advantageous future development of adjacent tracts.

2.223 Proposed street centerlines shall intersect one another as nearly at right angles as topography and other limiting factors of good design permit. However, no right of way centerline shall intersect any other right of way centerline at less than 75 degrees.

2.23 Design Adjacent to Major Arterial Streets. Subdivision design adjacent to major arterial streets shall be as specified in the General Plan and as determined by the Commission. The following principles and standards shall be observed:

2.231 Street design shall have the purpose of making adjacent lots, if for residential use, desirable for such use by cushioning the impact of heavy traffic and by minimizing the interference with traffic on such thoroughfares.

2.232 The number of intersecting streets along major arterial streets shall be held to a minimum. Wherever practicable, such intersections shall be spaced not less than 1,000 feet on center.

2.233 Frontage roads, if required, shall conform to the requirement of Department of Public Works and shall be separated from the major arterial streets by means of bulb-type intersections capable of stacking at least two (2) cars between the frontage.

2.234 Where frontage roads are not required, residential lots adjacent to the major arterial street shall be required to be served by a minor residential street paralleling such major arterial street at least 175 feet therefrom, or by a series of cul-de-sacs or loop streets extending towards such major arterial street from a collector street at least 600

feet therefrom. In such cases, a wall-fence of a design approved by the Commission shall be required at the rear of properties adjacent to the major arterial street.

2.235 Where the rear of any lot borders any major arterial street, the subdivider may be required to execute and deliver to the Government of Guam an instrument, deemed sufficient by the Attorney General, prohibiting the right of ingress and egress from such major arterial street to such lot.

2.24 Curbs, Sidewalks and Pedestrian Ways. The following principles and standards shall apply to the design and installation of curbs and sidewalks and pedestrian ways:

2.241 Vertical curbs and gutters shall be required in all subdivisions.

2.242 Sidewalks shall be required on both sides of the street in any subdivision, or portion thereof, having lots with an average area less than 10,000 square feet.

2.243 When required for access to schools, playgrounds, shopping centers, transportation facilities, other community facilities, or for unusually long blocks, the Commission may require pedestrian ways not less than ten (10') feet in width. Such pedestrian ways shall be provided with a concrete walk of suitable width.

2.244 Cross gutters will not be allowed crossing Type M.A. streets. Cross gutters will be permitted to cross Type M.R. and C.R. streets only with the specific approval of the director of Public Works.

2.25 Curve Data.

2.251 The curve data for all centerline curves, excluding knuckles, shall be computed and shown on the plans. Radii of curvature on centerline shall not normally be less than 500' for M.A. streets; 175' for M.R. Streets, and 300' for C.R. streets, unless otherwise approved by the Director of Public Works.

2.252 The radius for right of way lines in cul-de-sacs shall be a minimum of 45' unless otherwise specified by the Director of Public Works. A curve of 37' radius shall connect the tangent and the radius curve. The radius of face of curb shall be a minimum of 37 feet.

2.26 Roadbed Design. The roadbed will be designed in accordance with and on the basis of the standards adopted by the Department of Public Works.

2.27 Driveway Design. All driveways hereafter constructed shall comply with the following conditions:

2.271 In all commercial and industrial zoning districts, the driveway openings shall be not less than 12' width or more than 36' in width.

2.272 In residential districts, the driveway openings shall be not less than 12' in width nor more than 20' in width, provided, however, a driveway serving two or more parcels may be 29' in width. For the special case of a 4-unit residential building, the driveway opening may be 27' in width.

2.273 Driveways serving a single parcel of property or serving any of the several adjacent parcels under single ownership shall be separated by at least 25' of full vertical curb.

2.274 Driveways serving separate but adjoining parcels under different ownership shall be separated by at least 10' of full vertical curb in residential districts.

2.275 Driveways serving corner lots shall be so located that a) a driveway on either street shall be 25 feet from the projected curb line of the intersecting street; and, b) no part of driveway shall be located closer than 5' of a curb return.

2.276 Driveway shall form an angle of 30° or less with a line perpendicular to or radial to street alignment for a distance of 18 feet behind property line measured along the shortest side of said driveway.

2.277 Any two driveways in a commercial development must be separated by 10' of vertical curb.

2.278 Concrete driveways shall not be allowed within the right of way lines when entering class C streets. Driveways entering Class B or C streets shall meet the property lines at such a grade so as to permit conversion to Class A street without regrading beyond the property line.

2.279 Where a portion of front yard area is used or intended to be used for the purposes of vehicular movement, storage or parking safety curb of portland cement concrete 6" wide, 14" deep and extending 6" above the surface of ground, shall be formed along and inside of the property line to full extent excepting driveway openings. Such curb may be omitted if the sidewalk area is blocked off from such area by a 30" minimum height fence. Construction of driveways shall also conform to the requirements of standard drawings.

2.3 TYPICAL SECTIONS

Attached, and made a part hereof, are drawings showing the typical sections to be used in subdivision improvements.

CHAPTER THREE

AGRICULTURAL SUBDIVISIONS

The following definition, design standards and procedure requirements shall apply to all agriculture subdivisions submitted to the Territorial Planning Commission, or its legally authorized agent, for approval under Title XIX, Government Code of Guam.

3.1 GENERAL

3.11 Waivers. The subdividers shall observe all definitions, design standards and procedure requirements for agriculture subdivision as hereinafter provided--these provisions shall be varied from or waived only as provided in Chap VI, Section 18501 of the Government Code of Guam.

3.12 Zone. Agriculture subdivisions are only allowed in rural "A" zoned areas.

3.13 Other Requirements. In addition to this chapter, the following regulations, laws and standards apply to all Agriculture Subdivisions:

3.131 All applicable laws contained in Title XIX, Government Code of Guam.

3.132 Chapter One of these Rules and Regulations.

3.133 Chapter Two of these Rules and Regulations, excepting all improvement requirements.

3.2 SPECIFIC REQUIREMENTS

3.21 Map Requirements. The specific rules and regulations concerning the following are contained in "Chapter Four, Data and Map Requirements."

3.211 Preliminary Sketch Plan

3.212 Final Map.

3.22 Roadway Requirements. Whenever a lot or parcel is not served by a public street, a graded street shall be established within the public access easement. Such street shall be constructed in such a manner so as to be readily transversed by ordinary vehicles. This usability shall be demonstrated by the subdivider.

CHAPTER FOUR

DATA AND MAP REQUIREMENTS

The following data and map requirements shall apply to all materials submitted to the Territorial Planning Commission, or its legally authorized agent, for approval under Title XIX, Government Code of Guam.

The applicant shall observe all requirements for map or data submissions as hereinafter provided. These standards shall be considered minimum standards, and shall be varied from or waived only as provided in Section V of "Rules and Regulations Governing Design and Layout of Subdivisions in the Territory of Guam."

4.1 PRELIMINARY SKETCH PLAN

All persons applying for any subdivision or lot parcelling approval shall first submit a sketch plan to the Planning Division, Department of Land Management.

4.11 General. Such sketch plan shall indicate the location of the existing and proposed subdivision, lots, blocks, streets, topography (U.S.G.S. if no other suitable topography), easements and other relevant information.

4.12 Owner's Name. The name of the proposed subdivision owner and subdivision planner shall be indicated.

4.13 Interview. Person (or agent) applying for subdivision approval shall accompany the submission of the sketch plan in order to discuss the proposed subdivision with the Planner-in-charge of subdivision review. At this time, applicable requirements will be discussed and explained to applicant and planner-in-charge will make his recommendations and identify issues.

4.14 Scale . Sketch plan shall be submitted on one or more sheets having dimensions of twenty-four inches (24") by thirty-six inches (36"). The scale shall be 1" = 400' or larger, as may be applicable.

4.2 TENTATIVE SUBDIVISION MAP

All persons applying for the approval of a regular subdivision shall submit six (6) copies of a tentative map to the Planner-in-charge of subdivision approval. Such map shall include the following information:

4.21 Vicinity Sketches. Vicinity sketch shall show the streets and tract lines of all the existing subdivisions within approximately 1/2 mile of the boundary of the proposed tract together with the names and/or numbers of all tracts between the proposed tracts and the nearest existing highways or thoroughfares.

4.22 Elevations. Proposed design elevation of every street intersection and along all streets and show finished grades and elevations on:

4.221 Pads (not required for Agricultural Subdivisions);

4.222 Along streets at every linear 200' intervals.

4.223 At all street intersections; and,

4.224 Percent grades along all street with elevations at each B.C. and E.C. shall also be shown.

4.23 Horizontal Curves. All horizontal curves must be labeled with the length of curve and radius.

4.24 Zoning and Land Use

4.241 Existing zoning, also zoning of adjacent property, must be shown.

4.242 Show approximate location of all existing structures within 100' of the boundary and land use, for adjacent property.

4.25 Letter of Intent to Subdivide. Two copies of statements of intent on form supplied by Planning Division shall be submitted. This form shall be submitted. This form shall include the proposed source of water supply and sewage disposal method. (Not required for Agricultural Subdivisions.)

4.26 Storm Drainage Information. The approximate boundaries of areas subject to inundation or storm water overflows, the location, width and direction of flow of all water courses to an existing water course.

4.27 Landscaping.

4.271 All trees in excess of six inches (6") diameter measured at two feet (2') above the existing ground, must be shown and saved wherever possible.

4.272 A statement of the type and location of proposed street trees.

4.273 A statement as to the intention of the subdivider in regard to slope planting and erosion control.

4.28 Restrictions. An outline of any conditions, restrictive reservations, or covenants existing or proposed.

4.3 FINAL SUBDIVISION MAP

All persons submitting final subdivision maps shall abide by the following requirements:

4.31 Map Form.

4.311 If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

4.312 Sheet numbers. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each sheet, and its relation to each adjoining sheet shall be clearly shown.

4.313 Border. The exterior boundary of the land included within the subdivision shall be indicated by a blue-colored border. The map shall show the definite location of the subdivision and particularly its relation to surrounding surveys.

4.32 Required Information and Accompanying Data. Areas subject to inundation. The boundaries of any areas within the subdivision which are subject to usual inundation by water must be shown.

4.33 Certificates and Acknowledgements. Surveyor's. A certificate by the surveyor responsible for the survey and final map is required. His certificate shall give the date of the survey and state that the survey was made by him or under his direction, and that the survey is true and complete as shown. The certificate shall also state that all the monuments are of the character and occupy the positions indicated, or that the improvement bond includes the cost of monumentation.

4.34 Recording.

4.341 Copy of final approved Subdivision Map or other maps described in Chapter Five, shall be recorded by Department of Land Management prior to returning approved tracing to surveyor.

4.342 Cost of recording shall be borne by owner or applicant,

4.343 A separate document (Deed) must be recorded describing the offer and acceptance of all parcels to be dedicated to the government.

CHAPTER FIVE

OTHER MAPS REQUIRING RECORDING

5.1 GENERAL

5.11 Signatures. All the maps described in Section 5.2 as follows, require the signature of the Territorial Planner (or the Territorial Planning Commission) except; Land Registration Surveys, Remnant Parcel Surveys and Retracement Surveys.

5.12 Combination Maps. These surveys are checked by the Planner-in-Charge of subdivision for the data indicated. The applicant must apply for approval of these surveys separately. Combination maps are only permitted for "consolidation and parcelling or "retracement and subdivision."

5.13 No Combination with Registration. No maps involving registration may be combined with other types of maps.

5.2 DEFINITIONS

5.21 Consolidation Survey: shall mean the voiding and combining of lots, parcels or portions thereof, in order to create new lots.

5.22 Decedents Estate: Shall mean the division of land (owned by the decedent) by court order.

5.23 Land Registration Survey: Shall mean a survey and investigation of presently unregistered land in order to establish a legal title to land.

5.24 Parental Subdivision: Shall mean the division of land by the applicant among his living children or their descendants.

5.25 Real Estate Requirements Survey: Shall mean a survey prepared in anticipation of government acquisition of land to establish description and ownership.

5.26 Remnant Parcel Survey: Shall mean a survey describing the unsurveyed remainder lot or parcel of a larger completely subdivided tract.

5.27 Retracement: A survey based on existing documents to re-establish monuments or to redraw property map.

5.3 DESIGN AND ACCESS REQUIREMENTS

5.31 Public Access Easement. A 44 ft. wide public access and utility easement shall be recorded by separate document (Declaration of Access) to serve any lot or parcel not served by a public street.

5.32 Graded Street. Whenever a lot or parcel is not served by a public street, a graded street shall be established within the public access easement. Such graded street shall be constructed in such a manner so as to be readily traversed by ordinary vehicles. This usability shall be demonstrated by the subdivider.

5.33 Lot Size. In accord with zoning ordinance, however, where public sewer is not available a minimum of 10,000 sq. foot lot shall be required unless specifically approved by the Administrator of Environmental Protection Agency. A larger lot may be required if determined by the Administrator of the Environmental Protection Agency.

5.4 MAP AND DATA REQUIREMENTS

5.41 Retracement Map

5.411 See Final Map Requirements, Sections 4.31 and 4.33 are applicable.

5.412 References: Source documents used as basis for survey shall be clearly indicated on the map.

5.413 Signatures: Territorial Surveyor, Land Surveyor, Owner and Lessee if any. Note: Territorial Planner Signature not required.

5.414 Basic Lot Data; indicate following:

- a. Basic Lot Number
- b. Certificate of Title; Number, if any;
- c. Date of Land Registration;
- d. Owner's Name and Agent, if any.

5.415 Required Data for Adjacent Properties:

- a. Lot Numbers;
- b. All Utility and Access Easements;
- c. All Dedicated Rights of Way;
- d. Most recent document numbers for all of the above.

5.42 Real Estate Requirements Data

5.421 See Final Map Requirements, Sections 4.31 and 4.33 are applicable.

5.422 Topographic Map (U.S.G.S. 1" = 400')

5.423 Basic Lot Data; indicate following:

- a. Basic Lot No.;
- b. Date of Land Registration;
- c. Certificate of Title No.;
- d. Requesting Agency's Name and Purpose

5.424 Signatures: Territorial Planning Commission (Executive Secretary),
Territorial Surveyor, Registered Land Surveyor and Requesting Agency.

5.425 Required Data for Adjacent Properties:

- a. Lot Numbers;
- b. All Utility and Access Easements;
- c. All Dedicated Rights of Way;
- d. Most recent document numbers for all of the above.

5.43 Consolidation Survey

5.431 See Final Map Requirements, Sections 4.31 and 4.33 are applicable.

5.432 Supporting information and document numbers.

5.433 Basic Lot Data; clearly indicate following:

- a. Basic Lot Numbers;
- b. Certificate of Title Numbers;
- c. Date of Land Registration;
- d. Owner's Name;
- e. Signatures: Territorial Planner, Territorial Surveyor, Registered Land Surveyor, Owner and all Leasees.

5.434 Required Data for Adjacent Properties:

- a. Lot Numbers;
- b. All Utility and Access Easements;
- c. All Dedicated Rights of Way;
- d. Most recent document numbers for all of the above.

5.44 Remnant Parcel Survey

5.441 See Final Map Requirements, Sections 4.31 and 4.33 are applicable.

5.442 Reference: Source documents used as basis for survey shall be clearly indicated.

5.443 Basic Lot Data; indicate following:

- a. Basic Lot Number;
- b. Certificate of Title Number;
- c. Date of Land Registration;
- d. Owner's Name;
- e. Signatures: Territorial Surveyor, Registered Land Surveyor, Owner and Leasee, if any.

Owner

NOTE: Territorial Planner signature not required.

5.444 Required Data for Adjacent Properties

- a. Lot Numbers;
- b. All Utility and Access Easements;
- c. All Dedicated Rights of Way;
- d. Most recent document numbers for all of the above.

5.45 Land Registration Map Data

5.451 See Final Map Requirements, Sections 4.31 and 4.33 are applicable.

5.452 Basic Lot Data; indicate following:

- a. Basic Lot Number;
- b. Claimant's Name.

5.453 Signatures: Territorial Surveyor, Registered Surveyor and Claimant.

5.454 Required Data for Adjacent Properties

- a. Lot Numbers;
- b. All Utility and Access Easements;
- c. All Dedicated Rights of Way;
- d. Most recent document numbers for all of the above.

5.5 SPECIAL REQUIREMENTS FOR PARENTAL ESTATES
AND LAND REGISTRATION SURVEYS

5.51 Parental Estates. All applicants for parental divisions of property shall be required to submit the following:

5.511 A certified copy of a deed for the basic lot indicating ownership by the applicant in fee simple for at least five (5) years prior to the application.

5.512 A notarized statement by the applicant listing all his living children or their descendents.

5.513 A map, drawn in accordance with all applicable provisions of the Government Code of Guam, indicating a number of lots not to exceed the number of living children and their descendents listed in the notarized statement above.

5.514 Deeds for each lot shown on the above map; such lots shall be deeded in fee simple and each deed must contain alienation clauses to the effect that the children or descendents shall not sell, lease or otherwise alienate said lots for a period of at least five (5) years.

5.515 Upon final approval by the Territorial Planner, all such deeds and maps must be filed for record within five (5) days of said approval. If deeds and maps are not filed within this period the Territorial Planner's approval shall become null and void.

5.52 Land Registration. Any survey for land registration shall include the entire contiguous interest of the claimant where such estate or claim is less than five (5) hectares. If an estate or claim is more than five (5) hectares, then the minimum allowable survey is five (5) hectares.

5.53 Recording. All maps discussed in this Chapter shall be recorded by Land Management prior to being returned to the surveyor. The current fee for recording shall be charged for this service.

CHAPTER SIX

IMPROVEMENT PLANS

The following standards shall apply to all improvement plans submitted to the Territorial Planning Commission, or its legally authorized agent, for approval under Title XIX, Government Code of Guam.

The subdivider shall observe all the requirements for improvement plans as hereinafter provided. These standards shall be considered minimum standards, and shall be varied from or waived only as provided in Section 1.5 of these "Rules and Regulations."

6.1 GENERAL

6.11 Time Limit. Within the legal time limit, the subdivider may cause the engineered improvement plans of the subdivision or any part thereof to be prepared by a registered professional engineer in accordance with the tentative plan as approved. All streets and other improvements, which in the opinion of the Commission are necessary for the development of any part of the subdivision, will be required.

6.12 Form. The improvement plans shall conform to the following provisions;

6.121 They shall be legibly drawn, printed or reproduced by process guaranteeing a permanent record on white paper and shall incorporate all the design, calculations and engineering reports as required for comprehensive design.

6.122 Size and Scale - The size of each drawing sheet shall be as provided in the standard engineering specifications of Public Works. The scales of maps shall be as demanded by good engineering practice. Engineering calculations and reports shall be made out on 8 1/2 X 11 sheets and submitted bound in folders.

6.123 Title sheet shall show the name of the engineer designing the improvements, tract numbers, name of the subdivision, title of improvements shown thereupon and the particular sheet number and the total number of sheets comprising the improvement plans.

6.13 Certificates and Acknowledgements. The following certificates and acknowledgements shall appear on all the sheets of the improvement plans:

6.131 Engineer's Certificate - Name of the registered civil engineer submitting the plans;

6.132 Recommendation for approval by the subdivision control section of the Department of Public Works;

6.133 Approval by the Director of Public Works.

6.14 Required Information. The improvement plans shall show the engineered details of the improvements required by the Commission and shall be in accordance with the approved tentative plans. These plans shall include:

6.141 Layout of subdivision including but not limited to the dimensions of the exterior boundary of the subdivision, blocks, lots, curves, rights of ways and all other easements granted on the final map.

6.142 Grading Plan and Soil Report - With the submission of a soil report and grading plan sufficient in detail to meet the requirements of the Department of Public Works, the subdivider shall be exempt from the requirements of Chapter 70 of the Uniform building Code.

6.143 Street construction plans shall include, but not be limited to: street grading; road sections, location of curbs, gutters and sidewalks and all construction required in connection with the control of traffic.

6.144 Sewer Plans - shall include, but not be limited to: sizes; profiles; locations and details of sewer mains; sewer laterals; manholes and clean outs and any other structure or plant required from collection to disposal of sewage.

6.145 Water plans shall include, but not be limited to: sizes; profiles; locations and details of water mains, water laterals, blowout valves, fire hydrants or any other reservoir structures required for the distribution of water.

6.146 Storm Drain Plan shall include, but not be limited to: sizes; profiles; locations and details of storm pipes; catch basins; surface drains or any other structure required from collection to disposal of storm runoff.

6.147 Electrical and Telephone Plans - shall include, but not be limited to: the sizes, profiles, locations and details of underground cables, conduits, hand holes, transformers, poles or any other connected structures.

6.15 Accompanying Data. The following additional data, agreements, fee and reports shall be submitted with improvement plans:

6.151 Soils Report. The Subdivider shall furnish a soils report prepared by a registered civil engineer skilled in geology and soils engineering. The report shall be sufficient in detail to enumerate the investigatory soils engineering procedures, analyses, conclusions and recommendations of the soils engineer to provide a safe, stable improvement at all

times during construction and after final completion. Underground drainage shall be specifically included in the report analysis as well as earthquake considerations.

6.152 Calculation Sheets. The subdivider shall furnish sheets showing all the engineering calculations to arrive at the design of road sections, sewer facilities, storm drain, electrical installations and water supply installation.

6.153 Improvement Agreement and Bond. Whenever a bond is required, the subdivider shall file an agreement for the improvement of the subdivision by him as set forth in this subsection and as may be further required by the Director of Public Works. The subdivider shall secure the performance thereof by a good and sufficient surety bond, or a cash deposit, which bond or cash deposit shall be an amount equal to 115% of the cost of the improvements as estimated by the Director of Public Works.

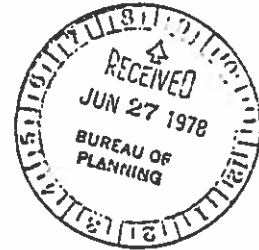
6.16 Filing. The subdivider shall file eight (8) blue-line copies of the final plans with the Director of the Department of Public Works.

6.17 As-Built Plans. Complete "as-built" plans shall be filed with the Director of Public Works upon completion of subdivision improvements. Such "as-built" plans shall be ink on linen or polyester base film. Upon receipt and acceptance of such plans, the Director of Public Works shall release the performance bond.



GOVERNMENT OF GUAM
AGANA, GUAM 96910

June 20, 1978



Memorandum

To: Director, Bureau of Planning
Via: Attorney General *g*
From: Special Assistant Attorney General
Subject: Rule Making and Regulatory Authority
of the Territorial Planning Commission

You have asked our opinion as to the ability of the Territorial Planning Commission ("TPC") to promulgate rules and regulations implementing certain passages of a Coastal Zone Management Program ("CZM Program") as described in the Coastal Zone Management Act of 1972 as amended (16 U.S.C. §§1451-64). In particular, you desire to know if Section 13204 of the Government Code of Guam (1970) as amended, has vested the TPC with authority to promulgate rules and regulations categorizing all lands of the Territory of Guam in one of four major land use districts, providing for zoning within those districts, establishing standards for development within the districts, establishing mechanisms for reassigning lands from one district to another, and designating areas of particular concern.

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Section 13204 reads as follows:

The Territorial Planning Commission is authorized to make reasonable rules, not inconsistent with the provisions of this Title, for the conduct of its business.

Although we are unable to give a definitive answer, we are of the opinion of the section is a mere delegation of an authority to promulgate procedures and rules concerning those matters over which the TPC has been given jurisdiction by the Legislature. We do not believe that the Legislature intended to delegate any power to make good policy decisions by enacting the provision and we believe that the quoted statutory provision constitutes authority too slender to support the program which is contemplated. Ordinarily, it must be clear on its face that the Legislature intended to delegate authority for the administrative action taken, or the action is highly suspect.

However, in recent discussions with Bureau of Planning personnel, it has been suggested that Section 18003 of the Government Code of Guam (1970) as amended, may constitute sufficient authority for promulgation of the desired regulations. We agree.

Section 18003 provides in pertinent part that:

"(t)he Commission shall prescribe and adopt such rules and regulations, which shall include, but not be limited to, specifications and standards for development of subdivision, as are, in its judgment, necessary to effectuate the purposes and intent of this Title. Such rules and regulations may provide for delegation of functions of review and inspection of proposed, tentative and final plans and maps, and of subdivisions, to other agencies and departments of the Government."

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Page 3

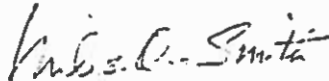
Section 18001 of the Government Code of Guam (1970) as amended, sets forth the intent of the Legislature in enacting the Title XIX in the following language:

"The purpose of this Title and of any rules, regulations, specifications and standards adopted, pursuant thereto, is to control and regulate the development and/or subdivision of any land for any purpose whatsoever. Such control and regulation is determined to be necessary to provide for the orderly growth and harmonious development of the territory; to assure adequate traffic circulation through coordinated street, road and highway systems; to achieve individual property lots of maximum utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage and other health requirements; to permit the conveyance of land by accurate legal descriptions; and to provide logical procedures for the achievement of this purpose."

We think that the delegation accords the TPC a broad range of choices in approach to the problems it must solve, and we find nothing in the Zoning Code or the Subdivision Law which would preclude the TPC from adopting the mechanism required by the statute as a CZM Program. It already has promulgated broad regulations governing land development and land use and these regulations might well form the nucleus of a CZM Program. Introduction of the concept of the area of particular concern into the structure seems entirely permissible.

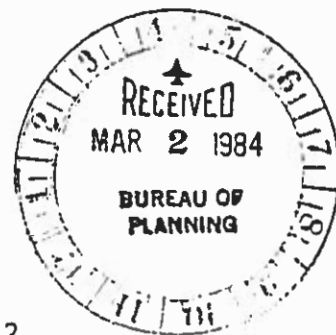
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Similarly, we think that the TPC can base its regulatory decisions on the tentative land use map, even though the Legislature has not yet given final approval to the map. Any subsequent legislative action approving, amending or disapproving the map would be binding on the TPC from that point on, but as an interim measure we find nothing that would preclude the TPC from adopting the map as a basis for its decisions.


MILES O. SMITH



GOVERNMENT OF GUAM
AGANA, GUAM 96910



February 27, 1984

Memorandum

Ref: BP 84-0242

To: Director, Bureau of Planning
From: Attorney General *[Signature]*
Subject: Interpretation of Title XVIII, Chapter XII,
Section 17502, Government Code of Guam

This office is in receipt of your memorandum of November 22, 1983 wherein you requested interpretation of the above entitled section 17502 as follows:

REQUEST NO. 1: Must all of the requirements contained in section 17502 be met before a variance can be granted?

ANSWER NO. 1: Yes.

REQUEST NO. 2: What are the legal interpretations of "practical difficulties and unnecessary hardships" contained in section 17502?

ANSWER NO. 2. See discussion.

STATEMENT OF FACTS:

The Territorial Planning Commission and the Guam Coastal Management Program differ in their respective interpretations of the legal requirements for allowing variances to existing zoning and subdivision laws. There are two areas of disagreement identified: (1) Must all of the requirements of section 17502 be met before a variance can be granted, and (2) what is the legal interpretation of "unnecessary hardships and practical difficulties," requirements to be met before a variance is allowed. The TPC interprets section 17502 in such a manner that not all of the requirements contained therein must be met before a variance can be granted. The GCMP, on the other hand, interprets the section to require all of the conditions to be met. The TPC interprets "unnecessary hardships and practical difficulties" to mean any hardship on the owner, whether financial or otherwise. The GCMP feels the interpretation to mean hardships created by forces or situations arising by other than the property owner's own actions or personal situation. Since the GCMP is charged with enforcing the zoning laws and the TPC is empowered to grant exceptions to the zoning laws, a legal interpretation of the laws in question has been requested of this office by both governmental entities.

DISCUSSION:

Section 17502 of the Government Code of Guam, (Variance Requirements) provides in pertinent part as follows:

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

(a) That the strict application of the provisions of this Title will 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 granting 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 granting of such variance will not be contrary to the objectives of any part of the 'Master Plan' adopted by the Commission or Legislature.

Section 17505 of the Government Code of Guam, (Decision by Territorial Planning Commission) provides in pertinent part:

If, from the facts presented with the application at the hearing, or by investigation by or at the instance of the Commission, the Commission makes the findings set forth in § 17502, it may grant the variance in whole or in part, upon such terms and conditions as it deems necessary to conform to the general intent and purpose of this law. If the Commission fails to make said findings, it shall deny the application. Each decision by the Commission authorizing a variance from the regulations herein established must be by resolution adopted by a majority of its membership, setting forth in writing the findings required by § 17502, except that no written findings shall be required in granting minor variances from the height, yard, lot width, lot area or lot area per dwelling unit requirements (Emphasis added)

The language of this statute is clear and unambiguous. In order for a variance to be granted, the Territorial Planning Commission must find in writing that all of the requirements of section 17502 are met prior to issuance of the variance except in

minor articulated circumstances. There is no requirement that if a variance is denied that the finding be in writing. "Before a variance can be granted, all of the requirements set forth in the applicable statute must be satisfied. This means that each statutory requirement must be met or the [Territorial Planning Commission] action granting a variance cannot stand." 3 E.C. Yokley, Zoning Law and Practice, § 21-6 at 317 (4th Ed. 1979).

In making the determination for the requirements the Commission must decide whether by granting a variance there are practical difficulties or unnecessary hardships inconsistent with the general purpose or intent of the law and that there are exceptional circumstances or conditions applicable to the property involved or to the intended use that do not apply generally to other property in the same zone. It is these requirements that appear to be the most difficult to understand. The terms "practical difficulties", "unnecessary hardships" and "exceptional circumstances" have acquired specific technical meanings as a result of the frequent litigation for decisions of planning boards in the administration of the zoning ordinances and laws of various jurisdictions. Generally speaking, the most restrictive test in determining whether a variance may be granted is the requirement that the applicant demonstrate unnecessary hardships or practical difficulties. Almost all U.S. jurisdictions employ the concept of "unnecessary hardships" which apply primarily to use variances. The term "practical difficulties" is used in about half of the states, and now is used to refer to area variances, although at first the courts started to treat the terms "unnecessary hardships" and "practical difficulties" as synonyms.

A use variance is one that permits a use other than that prescribed by the zoning ordinance An area variance has no relationship to a change of use. It is primarily a grant to erect, alter, or use a structure for a permitted use in a manner other than that prescribed by the restrictions of a zoning or ordinance. 3 E.C. Yokley, Zoning Law and Practice, § 21-6 at 321 (4th Ed. 1979).

The courts have long recognized that commissions and boards such as the Territorial Planning Commission are faced with the difficult balance of competing interests. On the one hand, the community as a whole has an interest in the rational and planned development of the community in accordance with the Master Plan. On the other hand, the applicant often is seeking to use his land in an apparently sensible and economically productive way. There are often other interests as well, such as neighbors or competing businesses.

Keeping these competing interests in mind, we now approach the interpretation of what is practical difficulty and unnecessary hardship. "The law is well established that a variance may be granted only where a property is subjected to a hardship unique or peculiar to itself as distinguished from one arising from the impact of the zoning regulations on the entire district." In re Michener, 115 A.2d 367, 371 (Pa. 1955). That is, the hardship must be unique to the subject property, not to the entire district and not to the owner himself.

Under the various definitions of practical difficulty and unnecessary hardship, the situation of the property owner seeking a variance must be unique and not common to others. However, it is well settled in an established line of cases that the mere fact that a lot or property owner will suffer financial hardship if not granted a variance is not sufficient, standing alone to authorize the variance. 3 E.C. Yokley, Zoning Law & Practice, § 21-8 at 333 (4th Ed. 1979).

For example, in the situation presented in the request for opinion, a property owner purchased land for speculation, desired to subdivide the land and then pleaded that compliance with the laws regarding subdivision improvements were either beyond the applicant's ability to finance or that the parcels would be too expensive to sell. In either case, the applicant would be unable to recognize a profit from his speculations if improvements were required. In this situation the hardship arises not from unique properties of the land, but from financial hardships of the land owner. A variance should not be granted in this type of situation. Further, "profit motive is not an adequate ground for a variance". Broadway, Laguna, Vallejo Ass'n v. Bd. of Permit Appeals, 427 P.2d 810, 815 (Ca. 1967) (Citations omitted). On the other hand, had the property been unique in its situation such as unique subsoil conditions or topography precluding a developer from constructing improvements or from providing public and utility easements as required by the subdivision law, the issuance of a variance may be proper. In the presented situation it was not. It has also been held in many jurisdictions that the purchaser of property is bound to know the zoning and any restrictions of that property at the time of purchase. 3 E.C. Yokley, Zoning Law and Practice, § 21-8 at 340 (4th Ed. 1979).

In the other illustration provided in the request for opinion, an applicant who had been previously notified of his need for a variance approval for a setback nevertheless went ahead and built a structure in violation of the zoning provisions. After construction he requested a variance. The variance was granted. "Under the long established equitable maximum that no one should be allowed to take advantage of his own wrong doing, the courts have uniformly held that where the hardship was created by the

applicant's own acts, he is not entitled to relief." 3 E.C. Yokley, Zoning Law and Practice, § 21-5 at 286 (4th Ed. 1979). "[I]t would hardly be proper to compel the issuance of a variance if an owner builds in violation of the zoning ordinance and then claims hardship entitling him to a variance. If that were the rule, persons who violated the ordinance could do so with impunity." D. Hagman, Urban Planning and Land Development Control Law (1975). The variance should not have been granted in this instance as the landowner had ignored the law and profited from his own wrong doing.

In People ex rel Fordham Manor Reformed Church v. Walsh, 244 N.Y. 280, 155 N.E. 575 (N.Y.C.A., 1927), Mr. Justice Cardozo held that the Board of Appeals was required to provide a statement of the facts upon which it based its decision. "To characterize the situation as a hardship without more does not tend in any substantial degree to enlighten a reviewing court. There must be disclosure of the facts from which hardship is inferred." 155 N.E. at 577. The court went on to point out that a variance is a privilege, not a right, and an applicant is not entitled to obtain a variance merely because someone else was granted one in the same area. He reversed the decision of the Board of Appeals, and commented:

There has been confided to the Board a delicate jurisdiction and one easily abused. Upon a showing of unnecessary hardship, general rules are suspended for the benefit of individual owners and special privileges established. 155 N.E. at 578.

The landmark case of Otto v. Steinhilber, 282 N.Y. 71, 24 N.E.2d 851 (N.Y.C.A., 1939), sets forth the basic requirements of a variance, with particular attention to the notion of unnecessary hardship. In that case, the applicant was a landowner who owned a parcel of land about five acres in size, fronting on Merrick Road in Lynbrook, New York. Property on Merrick Road was zoned commercial to a depth of 150 feet; beyond that point, it was zoned residential. The applicant decided to construct a skating rink on his property and sought a variance to permit him to use the entire tract, commercial and residential, in this fashion. The remainder of the neighborhood was residential in character; primarily single family homes. The Board of Appeals (equivalent to our Territorial Planning Commission) approved the request; the New York Court of Appeals annulled the decision of the Board. The court held:

Before the Board may exercise its discretion and grant a variance upon the ground of unnecessary hardship, the record must show that (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; (2) that the plight of the owner

purposes permitted in the zoning law.

6. There is no unnecessary hardship merely because the applicant will have difficulty in finding an appropriate site for his intended purpose if he does not obtain a variance.
7. Financial hardship to the applicant does not create unnecessary hardship. Factors personal to the applicant - his income, state of health, business acumen, etc. - are not relevant in determining whether an unnecessary hardship exists. The unnecessary hardship must be tied to the use of the land. It does not matter who owns the land.

The authorization of a variance from the terms of the zoning law should be exercised sparingly and only under exceptional circumstances. In Heady v. Zoning Board of Appeals of Milford, 94 A.2d. 789, 791 (Conn. 1953), the Supreme Court of Errors of Connecticut has stated:

The power to grant a variance in the application of established zoning regulations should be exercised [cautiously] The obvious reason is that unless great caution is used and variations are granted only in proper cases, the whole fabric of town and city-wide zoning will be worn through in spots and raveled at the edges until its purpose in protecting property values and securing orderly development of the community is completely thwarted. (Citations omitted).

As stated in section 17001 of the Government Code of Guam, the purpose of the zoning regulations is 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 above buildings for light and air, to prevent undue concentration of population, and to assure adequate provisions for community facilities and facilities such as water, schools, parks and other public requirements." It should be remembered then that the granting of a variance to the zoning law is for the orderly development of the Territory of Guam and not for personal profit or convenience of any particular landowner. The Planning Commission should always consider this before granting a variance.

When making further inquiry regarding this memorandum or to the same subject matter, please make reference to the above file

is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and (3) that the use to be authorized by the variance will not alter the essential character of the locality. 24 N.E.2d at 853.

The applicant must show that the land in question will not yield a reasonable return if used for the purposes allowed in that zone. It is not sufficient if the applicant shows that he can make the greatest profit if granted the variance; he must show the land will not provide any reasonable return if used for the purpose granted. The mere convenience of the applicant is not the test of unnecessary hardship.

If the conditions cited as creating the unnecessary hardship are common to other parcels in the same area, then the fault is probably with the zoning law or map itself, not the result of some unique factor on the applicant's land. In that situation the landowner should approach those with the power to revise the zoning law or map, not seek a variance.

In brief, the following basic principals have been developed with respect to unnecessary hardships:

1. The burden of proof is on the applicant to show that unnecessary hardship exists and the applicant must present facts from which such a hardship can be inferred.
2. The Commission must state the facts upon which it relied in reaching its decision that an unnecessary hardship exists.
3. The applicant must show that his situation is unique. If the problem is shared by other landowners in the area, then the problem is most likely to be found in the zoning law and the zoning map itself, and must be resolved at a higher level, not through an individual variance.
4. While the situation must be unique, it must be related to the zoning law, it cannot be a problem brought on by the applicant himself. For example, where an applicant purchases property, it is presumed that he determined the zoning restrictions before buying and cannot claim injury if he is simply bound to the restriction then in existence.
5. The applicant must show that the land in question cannot yield a reasonable return if used for the

number. In an effort to expedite your inquiry, these requests referencing the file number will be given preferential consideration.

OFFICE OF THE ATTORNEY GENERAL

By:

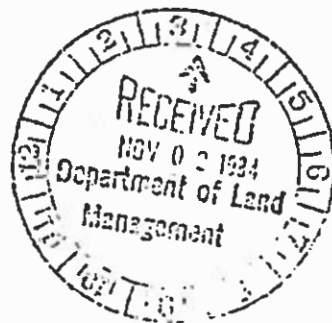
A handwritten signature in black ink, appearing to read "Grant B. Pankhurst", written over a horizontal line.

GRANT B. PANKHURST
Assistant Attorney General

112M/vsc:tqa



GOVERNMENT OF GUAM
AGANA GUAM 96910



October 30, 1984

Memorandum

Ref: DLM 84-1088

To: Executive Secretary, Territorial Planning
Commission

From: Attorney General 

Subject: Authority of Territorial Planning Commission to
Grant a Ten Percent Variance from Subdivision Law

This office is in receipt of your memorandum of June 21, 1984, in which you requested information on the following:

REQUEST: Is the Territorial Planning Commission authorized to grant a ten percent (10%) variance from Subdivision Law requirements?

ANSWER: Yes. The Territorial Planning Commission may grant a variance pursuant to section 18500 of the Government Code.

STATEMENT OF FACTS:

The policy of the Territorial Planning Commission has been to grant variances up to ten percent (10%) from requirements of the Subdivision Law. The Executive Secretary is inquiring whether this practice is legal.

DISCUSSION:

Section 18500 of the Government Code of Guam, (petition for variances) provides, in pertinent part, as follows:

In the event the Commission shall find the following facts with respect to the petition for a variance, it may grant a variance under such terms and conditions as it may prescribe:

(a) That there are special circumstances or conditions affecting said property.

(b) That the variance is necessary for the preservation and enjoyment of a substantial property right of the subdivider.

(c) That the granting of the variance will not be materially detrimental to the public welfare or injurious to other property in the area in which said property is situated.

(d) That the variance, if granted, will conform with the intent and purpose of the general or precise plan for the Territory, and of this Title.

The language of this statute is clear and unambiguous. In order for a variance to be granted, the Territorial Planning Commission must find that all of the requirements of section 18500 are met prior to issuance of the variance. "Before a variance can be granted, all of the requirements set forth in the applicable statute must be satisfied. This means that each statutory requirement must be met or the [Territorial Planning Commission] action granting a variance cannot stand." 3 E.C. Yokley, Zoning Law and Practice, §21-6 at 317 (4th Ed. 1979).

Therefore, in order for the past variances granted by the Territorial Planning Commission to be legal, the Commission was required to find that all of the requirements of section 18500 were met. If the Commission failed to make such a finding, or omitted the required findings from the record, the "action granting a variance cannot stand." Additionally, it should be noted that the Commission is not limited to granting a ten percent (10%) variance. Although limiting variances to ten percent (10%) is a reasonable guideline, the Commission's power to grant variances is discretionary and the degree of variance granted can only be determined on a case-by-case analysis. Finally it should be noted that the authorization of a variance from the terms of the Subdivision Law should be exercised sparingly and only under exceptional circumstances.

As stated in section 18001 of the Government Code of Guam, the purpose of the subdivision regulations is to provide for the "orderly growth and harmonious development of the territory; to insure adequate traffic circulation through coordinated street, road and highway systems; to achieve property lots of maximum utility and liability; to secure adequate provisions for water supply, drainage, sanitary sewerage and other health requirements; to permit the conveyance of land by accurate legal description; and to provide logical procedures for the achievement of this purpose." It should be remembered then that the granting of a variance to the subdivision law is for the orderly development of the Territory of Guam.

When making further inquiry regarding this memorandum or to the same subject matter, please make reference to the above file number. In an effort to expedite your inquiry, those requests referencing the file number will be given preferential consideration.

OFFICE OF THE ATTORNEY GENERAL

By: 

THOMAS P. KEELER
Assistant Attorney General



GOVERNMENT OF GUAM
AGANA, GUAM 96910



December 18, 1984

Memorandum

Ref: BP 84-1703

To: Director, Bureau of Planning

From: Attorney General 

Subject: Government of Guam's Liability for Approval of a Subdivision Development in Area Designated as an Airplane Crash Zone.

This office is in receipt of your memorandum of November 29, 1984, in which you requested information on the following:

REQUEST: What is the Government of Guam's liability for approving a subdivision development in an area designated as an airplane crash zone and high-risk noise zone?

ANSWER: See discussion.

STATEMENT OF FACTS:

On September 13, 1984, the Territorial Planning Commission unanimously approved an applicant's request for a zone change from Agricultural ("A") to Residential ("R-1") for property located one thousand feet (1,000') from Guam's airport. The Commission's approval was made notwithstanding the fact that the Guam Airport Authority, the Subdivision Review Committee, the Attorney General's Office and the Commission's supplemental staff, the Department of Land Management, all recommended disapproval.

The applicant's request for approval of subdivision plans is scheduled to be heard by the Territorial Planning Commission on December 27, 1984. The Director of the Bureau of Planning is concerned that the Commission's approval of the subdivision will leave the Government of Guam open to liability.

DISCUSSION:

A review of the applicable authority reveals that no basis currently exists on which the Government of Guam could be held liable for approving a subdivision located in an airplane crash zone in which a plane later crashed.

However, ample authority exists supporting the theory that a government may be liable for frequent and continuous airplane overflights which

interferes with the use and enjoyment of a person's ownership of land. See, Hagman, Urban Planning and Land Development Control Law (1975). In this respect the United States Supreme Court has held that the noise, vibrations, and fear caused to the occupants of a house located near a county airport constantly exposed to extremely low overflights interferes with the use of the owner's property so as to amount to a "taking" in the constitutional sense of an air easement for which compensation must be made. Griggs v. Allegheny County, 369 U.S. 84 (1962)

In United States v. Causby, 328 U.S. 256 (1946), plaintiffs' land was similarly located under the glide path of planes approaching and leaving an airport. Use of the land for dwelling and raising chickens was greatly impaired by frequent flights of United States aircraft sixty-seven feet over the house and barn. The court held that low and frequent overflights were a direct and immediate interference with the use and enjoyment of land and constituted a taking even though the use of the land had not been completely destroyed. The court concluded that Congress had placed only the airspace above the minimum safe altitudes of flight approved by the Civil Aeronautics Authority in the public domain, that the path of glide was below that altitude, that airspace at a low altitude is so close to the land that continuous invasions of it affect the surface use of landowners as an incident of ownership have a claim to it. Language in the opinion gives support both to a theory that the trespass into the airspace immediately above plaintiffs' land was necessary to recovery and to the theory that severe interference with use was the important element and a trespass was unnecessary for recovery.

Consequently, the Guam Airport Authority's airlines whose flightpath is located for all practical reasons directly over the proposed subdivision could possibly constitute such a direct and immediate interference with the enjoyment and use of land as to amount to a compensable taking. The question is one to be determined by a trier of fact and the measure of compensation would be that normally associated with property taken under the power of eminent domain, that is, the difference in the value of the property before and after the taking of the permanent flight easement. United States v. Causby, 328 U.S. 256, 267 (1946). This is of particular importance to the Territory of Guam which has a vast potential for expansion, as well as ample land for residential use not located in the immediate vicinity of the airport.

Inasmuch as Guam's airport is already in use, a fact which the fair market value of the proposed subdivision should reflect, potential liability would initially appear nominal. However, it should be noted that each increase in the use of an airport constitutes a new "taking" for which a Government is liable. Avery v. United States, 330 F.2d 640, 643 (Ct.Cl. 1964).

In addition, while the operation of low-altitude aircraft flights over private property near an airport may constitute a compensable taking of property as to the governmental instrumentality which owns and operates the airport, no such cause of action lies against federally certified airlines which are using the airport. Luedtke v. County of Milwaukee, 521 F.2d 387, 389 (7th Cir. 1975).

The Office of the Attorney General reiterates its objection to the proposed residential subdivision, not so much due to the potential financial obligations discussed in this memorandum, but because of the risk of loss of life.

When making further inquiry regarding this memorandum or to the same subject matter, please make reference to the above file number. In an effort to expedite your inquiry those requests referencing the file number will be given preferential consideration.

OFFICE OF THE ATTORNEY GENERAL

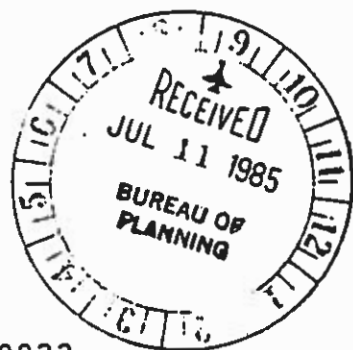
By: 
THOMAS P. KEELER
Assistant Attorney General

cc: Chairman, TPC

TPK/mrc



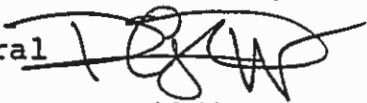
GOVERNMENT OF GUAM
AGANA, GUAM 96910



July 8, 1985

Memorandum (Opinion)

Ref: BOP 85-0922

To: Director, Bureau of Planning
From: Attorney General 
Subject: Authority to Issue Building Permit Clearance
Prior to Approval by the Territorial
Planning Commission

This office is in receipt of your memorandum of June 26, 1985, in which you requested information on the following:

REQUEST: Does a government official have the authority to issue a building permit clearance prior to the application being presented for consideration to the Territorial Planning Commission?

ANSWER: No.

STATEMENT OF FACTS:

The Director of the Bureau of Planning (BOP) is inquiring whether government officials are authorized to issue building permit clearances prior to the matter being approved by the Territorial Planning Commission (TPC). The Director's inquiry was prompted by the Territorial Planner who recently issued a building permit clearance with the statement: "OK for 90 days pending variance approval by TPC". (See attachments). Since the request in question was not allowed under the zoning law the Territorial Planner, by approving the application, allowed an illegal activity to start and continue pending the matter being presented for consideration to the TPC.

DISCUSSION:

Individuals may not construct, enlarge or alter a building without having first filed an application with the Department of Public Works (DPW) building official and been issued the required permit. §31018 of the Government Code. The application for a permit is in a form prescribed by the building official which requires the approval of various government officials. See, §31019 of the Government Code.

In reviewing the application, the government official's duty is to ensure that the applicant's request is in compliance with the applicable law. In particular, the Territorial Planner reviews the application to determine whether it complies with the zoning law. If the application requests a type of use or construction not authorized by the zoning code the Territorial Planner has no authority to recommend approval.

Section 17453 of the Government Code provides:

No license pertaining to the use of land or building shall be issued by any department, officer or employee of the government of Guam, vested with such duty, unless the application for such license has been approved by the Building Official as to the conformance of said use with the provisions of this Title. ("The Zoning Law of the Territory of Guam"). Any license issued in conflict with the provisions of this Title shall be null and void. (Emphasis added).

If the request for building permit is not authorized, no building permit shall be issued whether "conditional" or not, and no construction shall be allowed. The applicant should be referred to the Territorial Planning Commission, which is the only entity empowered to grant variances, approve conditional uses or zone changes. See §§ 17501; 18500; 17102; 17600 of the Government Code.

Note that the Territorial Planner and the Building Official have been notified that they are not authorized to issue building permits pending TPC approval. If your department becomes aware of any zoning violations in the future, it should immediately notify the Director of DPW in writing and forward a copy to the Attorney General's Office. See, §31013 of the Government Code.

For a faster response to any inquiry about this memorandum, please use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By: 

THOMAS P. KEELER
Assistant Attorney General

Attachments

cc: Dept. of Public Works
Dept. of Land Management
Territorial Planning Commission

TPK5/121



GOVERNMENT OF GUAM
AGANA, GUAM 96910

July 16, 1985



Memorandum

Ref: BOP 85-092

To: Director, Bureau of Planning
From: Attorney General *[Signature]*
Subject: Planned Unit Development Requirements

This office is in receipt of your memorandum of June 26, 1985, in which you requested information on the following:

REQUEST NO. 1: Does the Territorial Planning Commission have the authority to establish different standards of development for Planned Unit Developments than those imposed on other zoned districts?

ANSWER: Yes.

REQUEST NO. 2: Must all the requirements contained in section 17605 be met before the Territorial Planning Commission can approve a Planned Unit Development?

ANSWER: Yes.

STATEMENT OF FACTS:

The Bureau of Planning (BOP) is inquiring into the Territorial Planning Commission's (TPC) authority to establish planned development (PD) districts pursuant to section 17605 of the Government Code. The Director is concerned in particular with whether the TPC may establish different standards (e.g., height, lot coverage) on a case by case analysis and whether all of the requirements of section 17605 must be met before the TPC may approve a PD.

DISCUSSION NO. 1:

Section 17605 of the Government Code provides in part:

In approving a detailed development plan, the Territorial Planning Commission may impose such regulations of yards, open space, lot coverage, density and height as are reasonably required to permit the foregoing findings.

This section authorizes the Territorial Planning Commission to review PD applications on an individual basis and impose such regulations as it determines to be reasonably necessary for an

orderly development. As the TPC may impose such conditions as are "reasonably required" to permit a PD development, it may establish different height limits and other regulations on a case by case basis.

DISCUSSION NO. 2:

Section 17605 of the government Code provides in part:

The Territorial Planning Commission may approve the detailed plan and rezoning, following the required hearing, upon findings that the plan, considering structures, uses, access, regulations and layout fixed in it, comprises:

(a) An area of sufficient acreage to constitute a large planning unit having special attributes for integrated development;

(b) An appropriate development of the area from the viewpoints of its natural features, location and suitability for particular uses;

(c) A combination of structures and uses which are in reasonable association and proportion to make a harmonious unit and likely to continue compatibly with one another;

(d) All structures, including accessory structures, shall not cover more than thirty percent (30%) of the area;

(e) A project adequately serviced by the necessary public services, existing or proposed;

(f) A project consistent with an appropriate development of adjacent areas and not unreasonably detrimental to the existing structures and uses in such areas; and

(g) An appropriate evolution of the comprehensive plan for that portion of the territory.

The language of this statute is clear and unambiguous. In order for a PD to be approved, the Territorial Planning Commission must find in writing that all of the standards, procedures and conditions of section 17605 have been met. See, Ford Leasing Develop. Co. v. Board of County Commissioners, 528 P.2d 237 (Colo. 1974); Barrie v. Kitsap County, 527 P.2d 1377 (Wash. 1974).

OFFICE OF THE ATTORNEY GENERAL

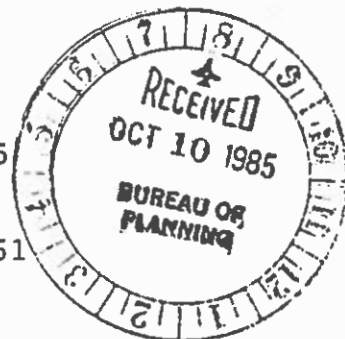
By: 

THOMAS P. KEELER
Assistant Attorney General



GOVERNMENT OF GUAM
AGANA, GUAM 96910

October 3, 1985



Memorandum (Opinion)

Ref: BP 85-1361

To: Director, Bureau of Planning

From: Attorney General 

Subject: Loading Spaces and Minimum Rear Yard
Setback Requirement

This office is in receipt of your memorandum of September 23, 1985, in which you requested information on the following:

REQUEST NO. 1: Are zero rear yard setbacks allowable if loading facilities are located elsewhere on the same lot?

ANSWER: No.

REQUEST NO. 2: Does section 17352 prohibit the locating of loading facilities in the front of a lot?

ANSWER: No.

STATEMENT OF FACTS:

The Director of the Bureau of Planning is forwarding an inquiry from the building permit official regarding loading spaces and minimum rear yard requirements. Specifically, the Director is inquiring whether zero rear yard setbacks are allowable if loading facilities are located elsewhere on the same lot and whether loading facilities are allowable in the front of a lot.

DISCUSSION NO. 1:

Section 17200 of the Government Code sets forth minimum rear yard depth requirements for separate zone uses and provides in part: "Unless facilities are otherwise provided for loading, the rear yard must be not less than twenty (20) feet in depth." Since no standards are provided by which the building permit official could approve construction plans including loading facilities and rear yard setbacks less than the required twenty (20) feet, it is reasonable to assume that the language contained in section 17200 was intended as a guideline for the Territorial Planning Commission (TPC) in reviewing applications seeking a variance.

Memo to Dir., Bu. of Planning
BP 85-1361
October 3, 1985

The building permit official should not approve plans for construction which fail to meet the minimum rear yard setback requirements in addition to the other requirements of section 17200 of the Government Code. Individuals wishing to provide less than the minimum rear yard setbacks should file an application with the TPC for a variance pursuant to section 17501 of the Government Code.

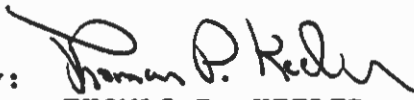
DISCUSSION NO. 2:

Section 17352 of the Government Code provides:

Off-street loading spaces for every commercial or industrial building shall be provided, located and scaled to meet the anticipated needs of all establishments and activities likely to require such space. In general, off-street loading space shall be located in service areas at the rear or sides of establishments in such a way that there will be minimum interference with off-street parking or vehicular movement in off-street parking areas. (Emphasis added.)

This statute provides that "in general" loading facilities will be located at the rear or sides of establishments but does not specifically bar them from being located in the front. Loading facilities may be located in the front of an establishment as long as all the lot size, setback and remaining building code requirements are complied with.

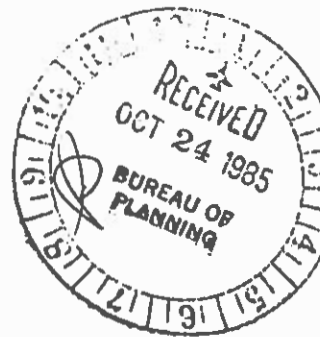
OFFICE OF THE ATTORNEY GENERAL

By: 
THOMAS P. KEELER
Assistant Attorney General

cc: Director, Department of Public Works



GOVERNMENT OF GUAM
AGANA, GUAM 96910



October 24, 1985

Memorandum (Opinion)

Ref: BOP 85-1486

To: Director, Bureau of Planning

From: Attorney General *BA*

Subject: Request for Clarification of "Undeveloped Areas" as Described in Section 17501(h) of the Zoning Code of Guam and Whether Subsections (a) thru (k) of Section 17501 of the Zoning Code of Guam are Limiting Provisions For a Variance.

This office is in receipt of your memorandum of October 23, 1985 wherein you requested the following information:

REQUEST #1: What is meant by "Undeveloped Areas" as stated in section 17501(h) of the Government Code?

ANSWER: Undeveloped areas are areas within designated zones that do not have an approved plan and have not been economically developed or do not have utility infrastructure.

REQUEST #2: Is the Territorial Planning Commission authorized to grant variances in zones not otherwise specified in section 17501 (a) - (k)?

ANSWER: Yes, subsection (a) - (k) are only included as possibilities for granting a variance and do not shut out other situations. The Territorial Planning Commission (TPC) may authorize any variance to an applicant provided that the applicant can show a unique hardship to the land.

STATEMENT OF FACTS:

On October 17, 1985, a variance application for an industrial activity (warehouse) in an R-2 zone was entertained. Based upon their interpretation of section 17501(i) of the Zoning Code, the members of the subdivision review commission informed the applicant that the variance cannot be granted for uses not permitted in the zones outlined by the Zoning Code unless the activity conforms with section 17501(h) or (i). The applicant disagrees and an opinion regarding these sections has been requested. Additionally, the Director of the Bureau of Planning is requesting an

opinion on the definition of undeveloped areas as used in section 17501(h) of the Zoning Code.

DISCUSSION:

The Territorial Planning Commission (TPC) is delegated the responsibility to ensure that the land is put to the most appropriate use (Section 17001). Therefore, the TPC must determine that any and all uses/conditional uses meet the basic standing of the Master Plan as adopted by the Legislature. Yet, at the same time of balancing the government's need for planned development and the harsh reality that there may be some uses or conditional uses that do not cover a particular hardship, the Legislature provides for a variance exception.

Section 17501 of the zoning law of Guam describes when variances are meant to be granted. "Where practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of this Title would occur from its strict literal interpretation or enforcement, the Territorial Planning 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...."

The law provides in subsections (a)-(k) of section 17501 of the zoning law the types of variances that would be allowed in any of the zones areas should the applicant meet the requirements for a variance. The law gives to the TPC the authority to grant or deny the variances within the spirit of the law. As stated earlier, the purpose of the TPC is to ensure that the property is put to the most appropriate use. Subsections (a) - (g) are self-explanatory in that they deal primarily with individual lots. Subsection (h) broadens to allow for temporary buildings or uses for a period not to exceed two (2) years in undeveloped areas.

Given the intent and the spirit of the law as written by the Legislature, it is clear that the purpose of temporary buildings or uses in undeveloped areas was meant for areas without prior economic development or infrastructure support. Development, as defined by Random House Dictionary is "to bring into ... activity." 1 Ed. p. 249 (Paperback Edition)

By reviewing the entirety of the subsection, the meaning of undeveloped areas becomes clear. That is, by designating only temporary structures in undeveloped areas, the TPC was to keep its options open for further planned use development in a given area. Planned use is a geographical area in which development follows an approved plan integrating a combination of uses in an appropriate and unified manner. Therefore, the use of temporary buildings uses in undeveloped areas would provide for easier removal of existing temporary structures when an integrated plan is adopted. The intent of section 17501(h) of the Zoning Code was to grant the use of areas not currently active or not under planned development

by allowing for temporary structures to be built upon the property. This insures that the Territorial Planning Commission can move forward with a carefully planned development for the area.

Bureau of Planning also requested information regarding whether the Territorial Planning Commission is authorized to grant variances in zones not otherwise specified in section 17501(a) - (k) G.C.

Section 17100 of the Zoning Code states that "no building or structure shall be altered, enlarged, moved or maintained, and no building or land shall be used for any purpose, except for a use permitted in the zone in which such building or land is located, as hereafter provided in this article." The law clearly states that there can be no usage upon the land that does not conform to the permitted use within a designated zone. The permitted and conditional uses within a zone are stated in sections 17103-17109 of the Zoning Code. The law further provides that should an applicant not meet the use or the conditional use permitted within a designated zone, the applicant may request for a variance.

Section 17501 of the zoning law provides that variances may be granted "where practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of this Title would occur from its strict literal interpretation or enforcement, the Territorial Planning 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...."

Subsections (a)-(k) of 17501 provide types of variances that the TPC is authorized to grant. A close reading of section 17501 shows that subsections (a)-(k) are not all inclusive, but were intended by the legislature as an aid to the Territorial Planning Commission.

Section 17502 of the zoning law provides that no variances may be granted by the TPC unless it finds, in all five areas:

- (a) That the strict application of the provisions of this Title 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 granting 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;

- (d) That the granting of such variance will not be contrary to the objectives of any part of the "Master Plan" adopted by the Commission or Legislature; and
- (e) That, as to variances from the restrictions of Section 17203 of this Title, 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.

The above requirements need not apply only to the types of uses specified in Section 17501 (i), and variances for such uses shall only be granted by the Commission where it finds that they are deemed essential or desirable to the public convenience or welfare, are in harmony with the various elements or objectives of the "Master Plan," and will not be materially detrimental or injurious to the property or improvements in the immediate neighborhood. In the facts presented, an applicant is interested in obtaining a variance in an R-2 zone to build an industrial activity (warehouse). The Territorial Planning Commission must look to the possible uses that are authorized in an R-2 zone to see if there is an unnecessary hardship upon the land by denying the use of this variance. By the facts presented there is no reason for a variance to be granted at this time. The applicant should request a zoning change as the most appropriate measure for relief.

A variance, then, is proper where a property is subjected to a unique hardship, not when a hardship is subjected to the owner alone. Under the various definitions of practical difficulty and unnecessary hardship, the situation of the property owner seeking a variance must be unique and not common to others. However, it is well settled in an established line of cases that the mere fact that a lot or property owner will suffer financial hardship if not granted a variance is not sufficient, standing alone, to authorize the variance. 3 E.C. Yokley, Zoning Law & Practice, § 21-8 at 333 (4th Ed. 1979). Also, "the law is well established that a variance may be granted only where a property is subjected to a hardship unique or peculiar to itself as distinguished from one arising from the impact of the zoning regulations on the entire district." In re Michener, 115 A.2d of 367, 371 (Pa. 1955). That is, the hardship must be unique to the subject property, not to the surrounding district and not to the owner himself.

It cannot be overemphasized that financial hardship to the property owner is not grounds for a variance, only that which is a hardship on the property. The board cannot act legally with respect to variances beyond the authority conferred on it. The following basic principles have been developed with respect to unnecessary hardships:

- (a) The burden of proof is on the applicant to show that unnecessary hardship exists and the applicant must present facts from which such a hardship can be inferred.

- (b) The Commission must state the facts upon which it relied in reaching its decision that an unnecessary hardship exists.
- (c) The applicant must show that his situation is unique. If the problem is shared by other landowners in the area, then the problem is most likely to be found in the zoning law and the zoning map itself, and must be resolved at a higher level, not through an individual variance.
- (d) While the situation must be unique, it must be related to the zoning law; it cannot be a problem brought on by the applicant himself. For example, where an applicant purchases property, it is presumed that he determined the zoning restrictions before buying and cannot claim injury if he is simply bound to the restriction then in existence.
- (e) The applicant must show that the land in question cannot yield a reasonable return if used for the purposes permitted in the zoning law.
- (f) There is no unnecessary hardship merely because the applicant will have difficulty in finding an appropriate site for his intended purpose if he does not obtain a variance.
- (g) Financial hardship to the applicant does not create unnecessary hardship. Factors personal to the applicant--his income, state of health, business acumen, etc.--are not relevant in determining whether an unnecessary hardship exists. The unnecessary hardship must be tied to the use of the land. It does not matter who owns the land.

In conclusion, subsections (a)-(k) of section 17501 G.C. are guidelines for the Territorial Planning Commission in determining the types of variances that can be granted. Other variances can be granted only if all five parts of subsection 17502(a)-(e) are met. Financial considerations are not to be considered.

This memorandum is issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By: *Robert H. Kono*
ROBERT H. KONO
Assistant Attorney General



GOVERNMENT OF GUAM
AGANA, GUAM 96910

January 15, 1986

Memorandum (Opinion)

Ref: TPC 85-1865

To: Chairman, Territorial Planning Commission

From: Attorney General 

Subject: Proper Procedure for Appealing TPC Decision

On December 12, 1985, Mr. Jose C. Laguana, Chairman of the Territorial Planning Commission (TPC), orally requested an opinion from this office regarding the proper procedures for appealing a TPC decision. The request was prompted by this office's objections to the current TPC practice of permitting applicants to appeal adverse determinations directly to the TPC instead of the Superior Court of Guam.

Section 17506 of the Government Code sets forth the procedure for appealing a zoning variance decision by the TPC and provides:

The decision by the Commission on any variance shall be final, except that any party aggrieved by such decision shall be entitled to a judicial review thereof by application to the Island Court within fifteen (15) days after the filing of the Commission's decision in the Department of Land Management and the Department of Public Works.

Section 18503 of the Government Code contains the procedures for appealing a subdivision variance by the TPC and provides:

(a) Any order of the Commission shall become effective when notice thereof is delivered to the party or parties affected and, unless proceedings for judicial review are instituted as provided for in Subsection (b) of this section, shall become final at the expiration of thirty (30) days thereafter.

(b) If the decision of the Commission is not in accordance with law or is not supported by substantial evidence, the same may be set aside through, an (sic) action instituted in the Island Court brought by the party affected thereby. The subdivider shall not subdivide any land, or sell, lease, or offer for sale, any subdivision or proposed subdivision or any part thereof, or any lot, parcel or site therein, or commence or continue construction of any improvement relating thereto during the pendency of such action.

(c) Review by the court shall be limited to the record procured before the Commission and, if the decision of the Commission is not according to law or supported by substantial evidence, the court shall return the matter to the Commission for further action in accordance with the evidence.

The language of these statutes is clear and unambiguous. A decision by the TPC regarding a zoning or subdivision variance is final unless the applicant takes affirmative action and appeals the TPC decision to the Superior Court of Guam within the stated period. Under no circumstances does the TPC have the jurisdiction or authority to hear an appeal of its own previous decision.

Note that this opinion does not prevent an individual from submitting a new application for a variance or other request from the TPC where there is a material change in circumstances since the prior action. Nor does this opinion prevent the TPC from amending its rules and regulations to provide authority to order a reconsideration of an application. See, §12205 of the Territorial Planning Commission's rules and regulations.

It is our recommendation that the TPC amend its rules and regulations to compliment the reconsideration provision of the Administrative Adjudication Law. Section 24135 of the Administrative Adjudication Law (Reconsideration) provides in pertinent part:

The agency may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire thirty (30) days after the delivery or mailing of a decision to respondent, or on the date set by the agency as the effective date of the decision if such date occurs prior to the expiration of the thirty-day period. If action is not taken on a petition within the time allowed for ordering reconsideration the petition shall be deemed denied.

Individuals should be required to file a written request for reconsideration a minimum of ten (10) days prior to either of the TPC's next regular scheduled meetings. An individual applicant should be limited to one request for reconsideration. In order for the TPC to approve the request there must be four (4) affirmative votes. See, §12204.3 of the Territorial Planning Commission's rules and regulations.

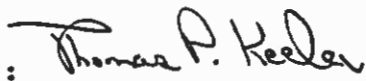
It has also been a common practice of the TPC to grant variances conditioned upon ownership of property. This is illegal. Conditions imposed must relate reasonably to the proper objectives of zoning and a condition which is unrelated to the use of

Memorandum to Chairman
Territorial Planning Commission
January 15, 1986

land may not be imposed. Dexter v. Town Board of Town of Gates, 324 N.E. 2d 870, 872 (N.Y.A.D. 1975). A variance relates to the use of land, not ownership, and a condition which terminates the right of use upon a sale of the land is improper. Cohn v. County Board of Supervisors, 286 P. 2d 836, 839 (Cal. App. 2d 1955). The TPC should discontinue the practice of granting variances conditioned upon property ownership and should further direct the Department of Land Management not to enforce similar conditioned variances previously granted.

This memorandum is issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By: 
THOMAS P. KEELER
Assistant Attorney General



GOVERNMENT OF GUAM
AGANA GUAM 96910

January 16, 1986

Memorandum

Ref: DLM 86-0016

To: Director, Department of Land Management

From: Attorney General *[Signature]*

Subject: Submerged Land Permit and Seashore Clearance

This office is in receipt of your memorandum of January 6, 1986, in which you requested information on the following:

REQUEST: Should an applicant be required to secure a submerged land permit from the Department of Land Management prior to being considered for clearance by the Territorial Seashore Protection Commission?

ANSWER: Since the TSPC has never adopted formal submerged land permit procedures it is our recommendation that until such are implemented DLM's current procedures be followed.

STATEMENT OF FACTS:

The Territorial Seashore Protection Commission (TSPC) entertained two applications for seashore clearance at its last regularly scheduled meeting held on December 26, 1985. The applications involved development within the seashore reserve and were tabled on the recommendation of this office's legal representative to the Commission pending a determination that the matters were proper for consideration.

The issue raised was whether an applicant was required to have a proprietary interest in the submerged land prior to consideration by the TSPC. This requirement would mean that an applicant receive a submerged land permit from the Department of Land Management (DLM) prior to and conditioned upon approval by the TSPC. Currently, DLM's departmental guidelines require TSPC approval prior to it issuing a submerged land permit.

DISCUSSION:

Section 13417(b)(1) of the Territorial Seashore Protection Act provides:

The Board shall prescribe the procedure for permit applications and may require a reasonable filing fee and the reimbursement of expenses.

Since the TSPC has not yet prescribed permit procedures it is our recommendation that DLM's current permit procedures be followed until such a time that proper procedures are implemented. It is our opinion that by following DLM permit procedures the TSPC can guarantee that the interests of the Territory of Guam are protected and the policies of the Seashore Protection Act enforced.

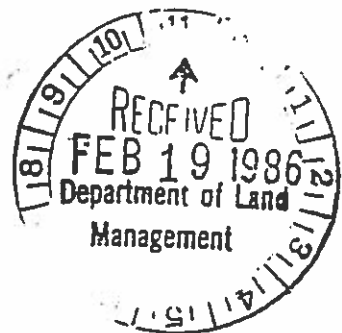
It is our recommendation that TSPC instruct the Planning Division of DLM to prepare the Guam Seashore Reserve Plan required by section 13416 of the Territorial Seashore Protection Act in addition to the above-mentioned submerged land permit procedures.

OFFICE OF THE ATTORNEY GENERAL

By: 
THOMAS, P. KEELER
Assistant Attorney General



GOVERNMENT OF GUAM
AGANA, GUAM 96910



February 10, 1986

Memorandum (Opinion)

Ref: DLM 86-0111

To: Director, Department of Land Management

From: Attorney General *DEJAN*

Subject: Request for Information Regarding the Funding Source for Public Hearings and Mailing Requirements Notices for Zone Change Applications

This office is in receipt of your memorandum dated July 23, 1986 in which you requested the following information:

REQUEST: Is the Department of Land Management responsible for the costs of mailing and publishing notices for public hearings required for zone change applications?

ANSWER: No. The applicant is responsible for the costs.

STATEMENT OF FACTS:

A public hearing is required for zone change applications. As part of this public hearing process, a notice of the hearing must be publicized in a newspaper of general circulation and landowners owning land within 500 feet of the proposed property for which the rezoning is requested are required to be notified by U.S. mail. In accordance with current statute, the zoning applicant is charged a fee of \$10.00 for his application. The Department of Land Management is inquiring as to the responsibility for the cost of advertising and mailing of the notices for the required public hearing.

DISCUSSION:

Section 17603 G.C. provides as follows:

Hearing date-notice. Upon the filing of an application for change of zone, the Commission shall hold at least one (1) hearing thereon in the municipal district where the property to be rezoned is located, as such districts are described in chapter I of Title XVI of this code, notice of time and place of which shall be

given by at least one (1) publication in a newspaper of general circulation, at least ten (10) days before the day of said hearing, and by mail to the Commissioner of the municipal district concerned and to those landowners owning land within five hundred (500) feet of the property for which rezoning is requested, (the mailing addresses for such landowners to be in the real estate tax records (RET)).

Section 17650 G.C. provides for a filing fee for changes of zone as being \$10.00. Obviously, this small fee is not intended to cover the costs involved in publishing a notice in a newspaper and also mailing notices to adjacent landowners within the statutory limits. The fee does not even cover the actual costs involved in administering the application. It is the applicant who is responsible for the publishing and mailing costs. At the change of zone application hearing before the Territorial Planning Commission (TPC) the applicant is required, as part of the application, to present evidence that the notice and public hearing requirements have been met. It is not the responsibility of the Department to pay the costs of the notice requirement. The Department's responsibility is to ensure that the requirements have been met and, when requested, to assist the applicant regarding the proper form and content of the notices. The Department should not involve itself in the actual payments involved in the costs for the notices.

Additionally, it is the opinion of this office that the proof of the notice requirement to the adjacent landowners should comply with the service by mail procedures of Guam Code of Civil Procedure section 1013a, which states as follows:

§1013a. Proof of service by mail. Proof of service by mail may be made by affidavit affixed to the original, or to a true copy, of the document served and filed in the cause, showing the name and residence or business address of the person making the service, that he is over the age of eighteen (18) years and not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid, and that there is regular communication by mail between the place of mailing and the place so addressed.

Proof of service by mail should be included with the application as presented to the TPC.

Memorandum to Director, DLM
Ref: DLM 86-0111
February 10, 1986

Page 3

This memorandum is issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By:


GRANT B. PANKHURST
Assistant Attorney General

GBP20/rsp:jmr



GOVERNMENT OF GUAM
AGANA GUAM 96910

April 1, 1986



Memorandum (Opinion)

Ref: BP 86-0427

To: Director, Bureau of Planning

From: Attorney General 

Subject: Interpretation of Title XVIII, Chapter XII,
Section 17200, Government Code of Guam

This office is in receipt of your memorandum of March 24, 1986, in which you requested information on the following:

REQUEST NO. 1: Do the minimum lot areas requirements per dwelling unit contained in §17200 apply to units other than residential?

ANSWER: No.

REQUEST NO. 2: Can the Subdivision and Development Review Committee (SDRC) refuse to entertain an application for a variance due to the applicant's failure to comply with conditions imposed on a previously approved variance by the Territorial Planning Commission (TPC)?

ANSWER: No, the SDRC is a reviewing committee whose authority is limited to recommending that the TPC not consider the application for variance.

STATEMENT OF FACTS:

The Department of Land Management (DLM) and the Bureau of Planning (BP) differ in their respective interpretations of the legal requirement for minimum lot areas per unit in a light industrial zone (M-1). DLM interprets Section 17200 to require minimum lot areas for dwelling units only whereas BP interprets the section to require minimum lot areas for all units irrespective of their residential or commercial use. A legal interpretation has been requested of this office by the Director (BP) who is also inquiring whether the SDRC may refuse to review an application

for a variance when it knows that the applicant has failed to comply with conditions imposed on previously approved variances by the TPC.

DISCUSSION:

In regards to Request No. 1, Section 17200 of the Government Code, as amended by P.L. 15-57:7, provides in pertinent part that no "lot area per dwelling shall be less than that specified in said table".

The term "dwelling" is defined as "(A) building or portion thereof designed exclusively for residential occupancy, including one-family, two-family and multiple dwellings, but not including hotels". See, §17002 of the Government Code. The language of Section 17200 is clear and unambiguous, the lot area of requirements of the zoning law apply exclusively to houses or other units occupied by a person or persons as a place of residence.

In regards to Request No. 2, E.O. 85-10 established the SDRC with the following duties and responsibilities:

1.A. Requesting, compiling, coordinating and providing official position statements by government of Guam agencies on applications for:

1. all subdivisions requiring improvements;
2. all zone changes;
3. all zone variances requesting more than a ten percent (10%) variance from the applicable zoning provision; *** (Emphasis added)

E.O. 85-10 does not give the SDRC any enforcement powers but instead limits its responsibilities to providing official position statements to the TPC for various island development activities. The SDRC is an advisory committee which may not refuse to review a variance application due to an applicant's failure to comply with conditions imposed on a previously approved variance by the TPC.

We recommend that the SDRC notify the appropriate enforcement agencies of any individual's failure to comply with conditions imposed by the TPC. A copy of the notice should be sent to our office. The SDRC should recommend that the TPC not entertain the

Memorandum to Director, Bureau of Planning
Ref: BP 86-0427
April 1, 1986

subject application for a variance since the applicant has blatantly ignored previous conditions imposed by the commission.

This memorandum is issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By: 

THOMAS P. KEELER
Assistant Attorney General

cc: Chairman, Territorial Planning Commission
Director, Department of Land Management

**GUIDE TO LAND-USE DECISION MAKING FOR
TERRITORIAL PLANNING COMMISSION/
TERRITORIAL SEASHORE PROTECTION
COMMISSION MEMBERS.**

**DEVELOPED BY THE GUAM COASTAL MANAGEMENT PROGRAM,
BUREAU OF PLANNING, GOVERNMENT OF GUAM.**

MARCH 1986

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HOW TO USE THIS GUIDE BOOK

This book has been designed to be used as an aid in the decision-making process. While requests will vary in important but minor ways from application to application, the basis for decision making will remain the same; the laws, the planning considerations, the legal opinions. In structure, this book has been planned to put all the pertinent information at the fingertips of the Commission members.

This book has been divided into sections and subsections, which are tabbed for easy access. The sections cover the broad categories of applications which come before the Commission, (zone change, zone variance, conditional use, etc.), and in a general way, discuss the impacts which can reasonably be expected by the approval of those requests. Also covered in the sections are the legal requirements which must be met by the applicant before a request can legally be entertained.

The subsections are designed to be request-specific and are, therefore, extremely detailed in all areas of information presented. For example; the section designated zone variance is subdivided for *Height Variance*, *Setback Variance*, *Density Variance*, *Sign Variance*, etc. Within each subsection are found the laws that deal with that specific topic, planning considerations and specific examples of the effect of past decisions for similar requests, methodology for decision making, portions of pertinent Attorney General Opinions, and suggestions for mitigating undesirable effects of the proposed action.

Aside from those sections and subsection portions of this guide book discussed above, there are two other portions. The last portion of this book is the appendices, containing the full zoning and subdivision laws, as well as the full text of the Attorney General Opinions.

Immediately following this "how to" section, is an outline of the land-use process and the TPC's place in that process. It is suggested that this section be reviewed periodically by all members, as a thorough understanding of the process in its entirety is essential in order to

understand the importance of decisions rendered by the TPC.

After becoming familiar with this guide book, it is important that each member keep this book available for reference during application review both prior to and during the TPC public hearing. Through continued use of this guide book it is expected that decision consistency and quality can be maintained, to the benefit of the developer as well as the government and community as a whole.

NOTE: In addition to the laws which are quoted throughout this document, there are additional policies which should be thoroughly understood by the Commission before any land-use decisions are rendered. In particular, Executive Order 78-37 (full E.O. can be found in appendix A, page 64), outlines in eighteen (18) policy statements, those concerns which must be followed by the Government of Guam. The relationship of this Executive Order to the Commission is as stated in the Order itself: **".....the following policies, as embodied in the Guam Comprehensive Development Plan, to be implemented by all agencies and instrumentalities of the Government of Guam within the scope of their authorities."**

The commission should understand these policies and their relationship to the various types of requests, (for example; Resource Policy 6, Visual Quality, in relation to height variance requests, and Resource Policy 3, Water Quality, in relation to zone changes and conditional uses in the aquifer area.)

INTRODUCTION

Land is man's most prized resource. Land is our bond with the past and holds the remains of our ancestors, our cultures and our memories. Land is our hold on the present and provides for our food, work, housing, recreation and spiritual needs. Land is our link to the future and provides for those generations of ourselves that we leave behind.

Land is more than the reflection of an individual's connection with time, however. Land is the heart of the community. Our attitudes shape, and in return are shaped by, the ways in which we utilize land to structure our towns, our laws, our politics and ourselves as a community.

While we must always look toward and guard all individual freedoms, we must also remember that we cannot survive as *only* individuals. John Donne wrote, "No man is an island, unto himself.." In order to survive, prosper and grow as individuals, we must first understand our place in the community, and abide by those rules which have been established to ensure the continued viability, health and future prosperity of the community.

Our community, Guam, has established the rules by which we may be ensured the fullest enjoyment of our land. Zoning by area, and guiding specific kinds of development within those zones, we have implicitly guaranteed all individuals that they can know what their communities will be, and that money spent providing the necessary services to the community will be done in the most efficient way possible. The zoning and other land-use laws are essential to both community and individual health and welfare.

Our laws provide firm guidance, but they cannot answer for every situation. While individuals should not be allowed to deviate from those laws simply out of self-centered desire, ease or whim, the laws should, and do, provide for those cases in which the community may be better served by deviating from the *letter* of the law. It is in those cases that you, as a

member of the Territorial Planning Commission, (TPC), must carefully weigh the arguments from both sides and, in the best interest of the community for now and the future, render a decision as to whether or not to allow deviation from the strict interpretation of law.

This is an awesome responsibility, as the decisions you make today may have profound effects on the health and welfare of generations to come. It is because of that, that this guide book has been created. It is hoped that, through the continued use of this book, you may make the most enlightened decisions for the benefit of the entire community.

LAND DEVELOPMENT PROCESS

Development, whether for single family residence, subdivision, hotel complex, or in submerged land, is regulated by land-use law, the Community Design Plan, and general development policies and guidelines. The agencies and commissions which must make decisions as to the legality and appropriateness of development must understand the past development trends, and be able to foresee future development directions and infrastructure capabilities, in order to make decisions for today's development proposals.

All too often, inappropriate decisions have been made because of failures in practice. Clear and factual staff reports have not been available, applications have been accepted which are incomplete, unverified statements have been accepted from both the applicant and government agencies, and finally, the review period has become so shortened as to make legitimate review impossible.

System shortcomings can, and must be eliminated if Guam is to realize long term benefit from its development. Decisions must be based on facts and on the letter of the law. There should be no place for subjective decisions, or poor performance by the government.

DEPARTMENT OF PUBLIC WORKS (DPW) :

All applications for development must first be seen at the Building Permit Section of the Department of Public Works. The initial review at this department is only for application completeness and to ensure the proposed development is within the proper zoning. The application is then forwarded to other departments for more thorough review.

The Department of Public Works is also the responsible agency for land use enforcement, and that will be covered in greater detail at the end of this section.

DEPARTMENT OF LAND MANAGEMENT (DLM):

From the Department of Public Works, the application is transmitted to

the Department of Land Management for review. This is the most important check point in the development review process, because this is the agency that will determine whether or not the proposed development is within the law, or whether it must be submitted to the Territorial Planning Commission.

This department should check to ensure the project:

- 1) Is within the proper zoning;
- 2) Meets all standards for that zoning, including; setback, height, parking, density, and usage, and;
- 3) That the requester is the registered owner of the property to be developed, or has a notarized letter of permission from the registered owner.

If item number three cannot be met, the application should be rejected at that point. If items one and two are not met, this finding should be reflected on the application that TPC action is required, and the applicant should be instructed on the proper procedures required to initiate the TPC review process on that development proposal. If all three items are met at this initial review, and if the proposal does not require TPC review due to the nature of the proposal itself (subdivision proposals, among others, automatically require TPC approval), the application should reflect that the department approves further processing of the application for a building permit.

When a proposal for development requires TPC action, the Department of Land Management must:

- 1) Ensure that all required maps, justifications, and project descriptions are supplied by the applicant.
- 2) Conduct an on-site inspection of the project site.
- 3) Prepare a staff report with recommendations.
- 4) Prepare copies of all pertinent information, and submit those copies to the members of the Subdivision and Development Review

Committee, (SDRC), in such timely manner that the Committee is afforded a minimum of two weeks for review.

5) Schedule public hearings within the affected community for all zone change requests, and any other request which would result in a significant change to the community.

The Territorial Planner, within the Department of Land Management, serves as the Chairman of the Subdivision and Development Review Committee. The Director of the Department serves as Executive Secretary to the TPC, and planning staff of the Department serve as staff to the TPC.

In addition to these duties, the department is responsible for publication of the minutes of both the SDRC and TPC meetings, occupancy permit sign-off to ensure that all TPC conditions to development have been met, and transmittal of approval or disapproval notice to the applicant, the Governor and the Legislature.

Specifics on requirements and deadlines which must be met by DLM and all other agencies of the government, will be detailed in the request - specific sections of this book.

SUBDIVISION AND DEVELOPMENT REVIEW COMMITTEE (SDRC):

The SDRC is the technical arm of the Territorial Planning Commission. Comprised of representatives from the Guam Environmental Protection Agency, Public Utility Agency of Guam, Department of Public Works, Bureau of Planning, Department of Land Management, Department of Parks and Recreation, Department of Agriculture, Department of Public Health and Social Services, Guam Fire Department, Chamorro Language Commission, Navy and Air Force, this committee represents the best land - use and social development expertise on island.

The purpose of the Committee is to investigate and analyze the technical questions relating to land development on Guam, and to offer expert recommendations to the TPC. The last five agencies listed above are ex-officio members of the Committee, and participate only when their particular areas of expertise are needed. The other agencies provide input, and raise questions directly related to their own areas of interest. Examples of the kinds of questions to be raised by each agency are as follows:

1. Guam Environmental Protection Agency:

- Is the percolation rate within the area of development sufficient to accomodate an increased water runoff which would result from development?
- If sewer is not available, is the septic tank and leaching field so placed and designed to be effective?
- Will there be any hazardous waste, increased air pollution or water pollution as a result of the development?
- How will this development effect Guam's ground water supply or near shore water quality?

2. Public Utility Agency of Guam:

- Is there existing sewer line available to the proposed development?
- What is the size and capacity of the existing line? What will be the effect of this development on that capacity?
- Is there existing water line available to the proposed development?
- What is the size and capacity of the existing line? What will be the effect of this development on that capacity?

3. Department of Public Works:

- How will the proposed development impact on the highway infrastructure?
- Does the proposal conform in design to the building code?

4. Department of Land Management:

- Does the proposal conform to the rules and regulations relating to the request type?
- What is the surrounding land usage, and what will be the impact of the proposed usage on that community?

5. Department of Parks and Recreation:

- Will this project impact in any way on the Territorial Park System?
- Will this project impact in any way on historic or prehistoric sites?

6. Department of Agriculture:

- Will this project impact on endangered species or their habitat?
- Will this project impact on any identified prime agricultural land?

7. Bureau of Planning:

- Does the request conform to the requirements of law?
- How does this request respond to resource policy as iterated in Executive Order 78-37?
- Is the proposal in the best interest of the community in terms of long range land-use planning.
- Is the request being made out of necessity, or simply because it is easier for the applicant than following the letter of the law?
- What will be the long and short range impacts of this development on the physical and social health of Guam.

TERRITORIAL PLANNING COMMISSION (TPC)/TERRITORIAL SEASHORE PROTECTION COMMISSION (TSPC):

The TPC is relegated with the responsibility of reviewing, analyzing and making decisions on subdivision proposals, zone changes, zone variances, conditional use requests, all development within the Territorial Seashore Reserve, all development within the Tumon Hotel/Resort Zone, as well as other, assorted land-use requests.

Members should make their decisions objectively, based only on the input from government experts, the applicant and the concerned community, within the confines of the law. Decisions reached by the TPC affect the entire community for years into the future, and will determine the quality of life not only for the applicant, but for the entire island.

While the amount of review allowed for in law should guarantee a decision that is well thought out and, in almost all cases, right, there are problems with the system which do not allow this to occur.

It is entirely possible, under current practices, to receive all approvals for a major, multi-million dollar hotel-shopping complex within eight days after filing an application. In fact, under current regulations, TPC must make a decision within 30 days of filing. To point out just how ludicrous these time elements are, a similar request in Saipan or Hawaii would take a minimum of nine months for review. In California, that request may take as long as five years!

Because of the flaws in the system, it is imperative that all agencies and commissions be aware of those questions that must be answered, and those possible impacts that must be analyzed prior to any decision which may have long term, detrimental effects on our island, our community and our future.

ENFORCEMENT:

The authority for enforcement of the zoning laws, as well as the Uniform Building Code, rests with the Building Permits Section of the Department of Public Works. That office is responsible for conducting on-going field inspections for the entire island, in order to observe violations that may be underway, and to conduct a series of inspections for development which has been permitted for.

Additionally, the Planning Division of the Department of Land Management is responsible for ensuring that all TPC/TSPC conditions to development have been complied with. This is to be undertaken through field inspections prior to approval and issuance of final or occupancy permits.

Any violation uncovered must be acted upon by the Department of Public Works by the issuance of stop work orders and, if necessary, forwarding to the Office of the Attorney General for court action.

REQUEST

The following pages outline each type of request to be reviewed by the Territorial Planning Commission. Each specific request type is tabbed for easy access, and it is suggested that this portion be utilized for each and every application to be acted upon.

ZONE VARIANCE

The Law: Where practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of this Title would occur from its strict literal interpretation or enforcement, the Territorial Planning 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,... (Government Code of Guam, Title XVIII, Chapter XII, Section 17501).

The Requirements: (Government Code of Guam, Title XVIII, Chapter XII, Section 17502). **No variance shall be granted by the Commission unless it finds:**

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

Attorney General's Opinion: "Under the various definitions of practical difficulty and unnecessary hardships, the situation of the property owner seeking a variance must be unique and not common to others. However, it is well settled in an established line of cases that the mere fact that a lot or property owner will suffer financial hardships if not granted a variance is **not** sufficient, standing alone to grant a variance" (Ref: BP 84-0242, February 27, 1984....See Appendix I, Page 164, this document).

Discussion: As stated in the above Opinion, the applicant must first demonstrate that, without the granting of a variance, the applicant will suffer practical difficulties or unnecessary hardships which apply only to that property owner and not other property owners. It is further stipulated that the difficulty or hardship suffered **must be other than financial**.

REMEMBER: An applicant for a variance must first demonstrate that, without the variance, a unique, non-financial hardship would be imposed on the applicant.

(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.

Attorney General's Opinion: "... a variance may be granted **only** where a property is subjected to a hardship unique or peculiar to itself as distinguished from one arising from the impact of the zoning regulations on the entire district." (ibid. page 164.)

Discussion: It is clear from a reading of the law and the Attorney General's Opinion, that an applicant for a zone variance must demonstrate that there is some unique factor applicable to that applicants land, in either configuration, topography or geology, which render that property impossible or "reasonably impractical" to be developed within the confines of the zoning law, and that the unique condition does not apply equally to other, properties.

It should be further noted that the same Attorney General's Opinion goes on to state that "It has also been held in many jurisdictions that the purchaser of property is bound to know the zoning and any restrictions of that property at the time of purchase." (ibid, page 164 .) In other words, property purchased in a *speculative* manner for later development, variances for that development should **not** be granted as the owner should have been aware of the properties limitations at time of purchase.

REMEMBER: An applicant for a variance must also demonstrate a hardship upon the land.

(c) That the granting 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:

Discussion: In reviewing applications for a zone variance, it is of **utmost importance** that the effect of the variance on the surrounding neighborhood be considered. For instance, would the granting of the variance devalue surrounding property, negatively impact on the governments ability to provide fire or police services, result in an increased traffic beyond the in-place roadways safe capacity, increase storm water drain-off onto adjacent properties, overload sewer and water line capacities, etc.

REMEMBER: The applicant must also demonstrate that the granting of the variance will not be detrimental to the neighborhood or zone.

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

Discussion: At present time this refers to the "Community Design Maps and the Tumon Bay Master Plan.

REMEMBER: The applicant must also address this requirement.

(e) That, as to variances from the restrictions of Section 17203 of this title (the full text of that section can be found in appendix _____, page _____ of this document) 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 publics' right to an untrammled use of the beach and its natural beauty.

Discussion: This subsection refers to decisions made on variance applications submitted to the Territorial Seashore Protection Commission. Because of the importance of the seashore area to Guam's future, all applications for the Territorial Seashore Protection Commission will be addressed in a separate section of this document.

REMEMBER: all variance requirements, as stipulated in subsections (a) through (e) must be met prior to any TPC approvals for variance. (ibid, page 89). The demonstrations must be in writing and it is the responsibility of the applicant to provide the proofs that the requirements have been met.

It must also be remembered that, in many cases where the TPC or TSPC approves an application for a variance, the Commission has the obligation to report **in writing** that the applicant has met the requirements. This obligation is required by Section 17505 of the GCG as follows:

Section 17505: **Decision by Territorial Planning Commission.** If, from the facts presented with the application at the hearing, or by investigation by or at the instance of the Commission, the Commission makes the findings set forth in Section 17502, it may grant the variance in whole or in part, upon such terms and conditions as it deems necessary to conform to the general intent and purpose of this law. If the Commission fails to make said findings, it shall deny the application. Each decision by the Commission authorizing a variance from the regulations herein established must be by resolution adopted by a majority of its membership, setting forth in writing the findings required by Section 17502, except that no written findings shall be required in granting minor variances from the height, yard, lot width, lot area or lot area per dwelling unit requirements.

OTHER REQUIREMENTS: Every application for a zone variance must consist of the following items. If any items are not included, the request should be tabled until such time as all required items are submitted.

1) Sets of plans, drawn to scale, showing: Dimensions and shape of lot, lot size; size and location of existing buildings; location and dimensions of proposed buildings or alterations.

2) Map showing all significant land-uses within 1000 foot radius of subject lot (8 1/2" x 14").

3) Sets of maps showing all significant building or uses within 750 feet of subject lot. On the same map also show any natural or topographic peculiarities of said lot (8 1/2" x 14").

4) Map showing all parcels with correct lot numbers within 500 feet of subject (8 1/2" x 14"). If this request requires public hearing, provide names of property owners and addresses for 500 foot radius.

5) Document number of the most recent survey map, recorded in Department of Land Management, showing the subject property.

6) Other additional information as may be required by the Territorial Planner.

7) Justification for variance, in compliance with Section 17502, Zoning Code of Guam.

Appeals: (Government Code of Guam, Titles XVIII, Chapter XII, Section 17506). **Decision Final - appeal.** The decision by the Commission on any variance shall be final, except that any party aggrieved by such decision shall be entitled to a judicial review thereof by application to the Island Court within fifteen (15) days after the filing of the Commission's decision in the Department of Land Management and the Department of Public Works.

DISCUSSION: While the TPC/TSPC has, in the past, entertained appeals of decisions, it is apparant in this section of the codes that the Commission(s) has no authority for such action.

PLANNING ANALYSIS: The following tabbed subsections discuss the various types of variance requests in detail. Each request type is looked at in terms of the law, possible impacts if granted and an analysis of past decision-making and decisions. It is the purpose of this document that Commission members utilize these subsections concurrently with each request, in order that the most informed decision-making can take place, and that the negative impacts of variation from the zoning laws may be eliminated or mitigated for through conditioning of those cases which may be approved.

ZONE VARIANCE

HEIGHT

The Law: Government Code of Guam, Title XVIII, Chapter IV, Section 17150 states: **Height limit established.** In the "A," "R1," "LC," "R2," "C," "M1," and "M2" Zones, no building or structures shall be erected or maintained, nor shall any existing building or structure be altered, enlarged, moved, or maintained, to exceed a height limit of two (2) stories (the two(2) stories shall not exceed a height of thirty (30) feet, except that in the "C" Zone within the "New Agana" lot and block system the building height limit shall be six (6) stories (the six (6) stories shall not exceed a height of seventy-five (75) feet.)

NOTE: While this portion of the law allows for an "LC" Zone, no such zone exists at present time.

Exceptions: Section 17151 of the Government Code of Guam states: **Buildings and structures permitted above height limit.** The following buildings, structures and equipment may be erected and maintained above the permitted height limit:

(a) In the "A" Zone, any building may exceed the height limit of two (2) stories or thirty (30) feet, if such building is located at least a distance equal to two (2) times the height of the building from any lot line;

(b) Shelters accessory to roof gardens or decks, providing such shelters are open on two (2) or more sides, occupy less than half the roof area, do not exceed the height limit by more than ten (10) feet, **and** are set back at least eight (8) feet from each lot line;

(c) Roof structures for the housing of stairways, tanks, ventilating fans, or similar structures and equipment for the maintenance of the building; and

(d) Aerials, flagpoles, skylights, steeples, towers, fire or parapet walls, or other similar structures.

(e) Hotels, provided, that for every foot in elevation exceeding the standard limitation, two (2) 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).

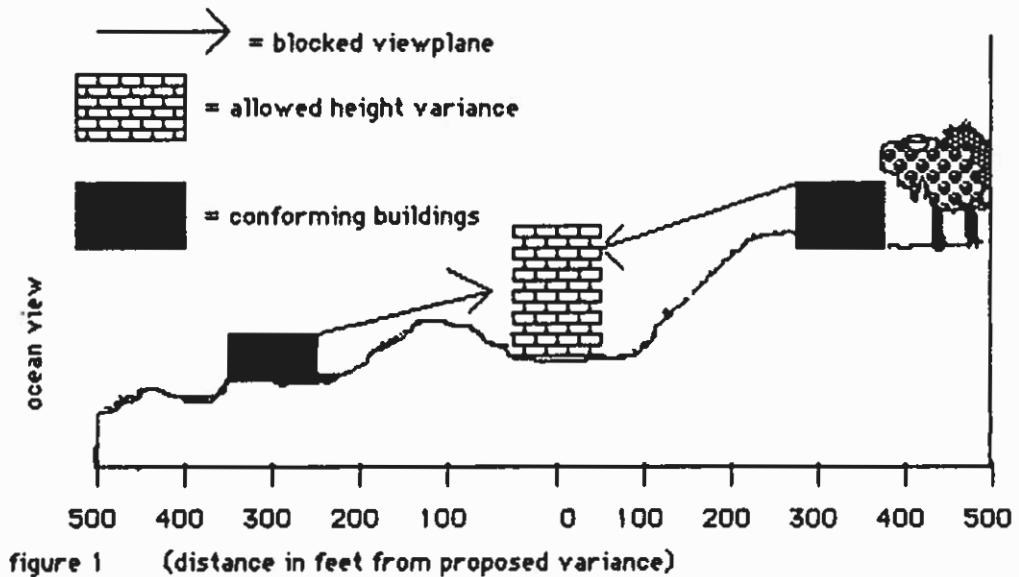
Planning Considerations: The first consideration in reviewing a request for a height variance is compliance to the variance requirements as iterated in Section 17502.

After the requirements noted above have been met, there are still three major considerations must be analyzed during review of requests for height variance. Those are:

a) Will this variance create a danger or a hazard in terms of fire-fighting ability? In other words; does the Guam Fire Department have the equipment available for combating a fire in a building the height of that proposed? If not, is the building properly equipped to combat a fire? Would allowance of the variance increase the fire danger, or decrease the fire-fighting abilities of the Guam Fire Department to surrounding properties?

b) Will allowance of the variance damage the community character? In an R-1 or R-2 zone, additional height for commercial purposes could increase traffic through the neighborhood, decrease privacy, increase the danger to children and increase the possibility for crime.

c) Will allowance of the variance decrease viewing passages? Any property owner must understand, when obtaining property, that views from that property may be obstructed at some future time by development on adjacent properties that is constructed within the guidelines of the zoning law height limitations. Property owners must also be protected in their rights through assurance that those views will not be allowed to be obstructed by development not in compliance, without good cause. In reviewing requests for variances to height, the Commission must understand what effect approval of the request will have on adjacent property views. This can be analyzed by requiring any applicant to provide a height vs. topography graphic for a 500 foot radius from the requesting property. An example of what that graphic may look like is shown in Figure 1, following:



As can be noted, the addition of only a few stories can have a major impact on the blockage of views.

As another visual tool for the Commission, the TPC/TSPC may request that the applicant provide a photograph, taken from an adjacent property looking toward the applicant's property, with the silhouette of the proposed structure (to scale) drawn onto the photograph.

REMEMBER: The onus of proving the necessity for the height variance rests solely with the applicant. If all requirements of Section 17502 have not been met, if the application is incomplete or if the impact upon the community is not either positive or at least neutral, then the Commission should **disapprove** the request. It is not the duty of the Commission to accommodate the wishes of those who would seek special treatment under the law, but it is the duty of the Commission to ensure the rights and best interests of the community at large.

ZONE VARIANCE YARD AND AREA

The Law: Government Code of Guam, Title XVIII, Chapter V, Section 17200 states: **Minimum yards and lot areas established.** No building or structure shall be erected or maintained, nor shall any existing building or structure be altered, enlarged, moved or maintained, on any lot, unless a front yard, a rear yard, and two (2) side yards are provided and maintained on such lot. The depth of such front and rear yards and the width of such side yards shall not be less than the depth and widths specified in the following "Yards and Lot Area" table. Further, no lot width or lot area, nor any lot area per dwelling shall be less than that specified in said table. A commercial building to occupy the whole width of a lot must be of four-hour fire-resistive construction. If party walls are to be erected, the written consent of the owners of adjacent lots must be obtained as a prerequisite for the issuance of a building permit to start construction. If the building to be erected is not of fireproof construction, side yards of eight (8) feet wide must be provided. In the Rural (A) Zone all structures shall have front and rear yards of twenty-five (25) feet and side yards of fifteen (15) feet; the width of each lot shall be one hundred (100) feet with an area of not less than twenty thousand (20,000) square feet. The lot area per dwelling unit in the Rural Zone (A) shall be not less than ten thousand (10,000) square feet.

YARD AND LOT AREA

USE	FRONT YARD DEPTH	REAR YARD DEPTH	SIDE YARD DEPTH	LOT WIDTH	LOT AREA	LOT AREA PER DWELLING UNIT
Single Fam.	15 ft.	10 ft.	8 ft.	50 ft.	5000 sq. ft.	5000 sq. ft.
Multi-Fam.	15 ft.	10 ft.	8 ft.	50 ft.	5000 sq. ft.	1250 sq. ft.
Commercial		20 ft.		20 ft.	2000 sq. ft.	400 sq. ft.
Light Indus.		20 ft.	8 ft.	50 ft.	5000 sq. ft.	1250 sq. ft.
Heavy Indus.	25 ft.	25 ft.	15 ft.	120 ft.	40000 sq. ft.	

Unless facilities are otherwise provided for loading, the rear yard must be not less than twenty (20) feet in depth.

Section 17201. **General yard and area requirements.** (a) No required yard or other open space provided about any building or structure for the purpose of complying with the provisions of this Title, shall be considered as providing a yard or open space for any other building or structure.

(b) No lot or parcel of land under separate ownership at the time this law became effective shall be separated in ownership or reduced in size below the minimum lot width or lot area set forth in the "Yards and Lot Area" table.

(c) Where a lot in the "R1" zone has an area of ten thousand (10,000) square feet or more, a one family dwelling may be erected and maintained on each five thousand (5,000) square feet thereof, if front, side and rear yards of the depth and width specified in the "Yards and Lot Area" table are provided and maintained for each such dwelling.

(d) In the "C" and "M1" zones, every building hereafter erected on a lot which abuts a primary or secondary highway, as shown on a highway plan adopted by the Commission or Legislature, shall provide and maintain a front or side yard having a depth or width, as the case may be, of not less than the required to conform to the line of such highway.

(e) A hotel or motel, while considered a multi-family use, requires a minimum of four hundred (400) square feet of lot area per living unit in a commercial zone.

(f) A cluster development may have a reduction of yards and lot width upon approval by the Commission.

Exceptions: Section 17202 of the Government Code of Guam states:

Exceptions to yard and area regulations.

(a) No front yard need be provided on a lot in a hillside area where the topography of the lot is such as to make it unreasonable or impractical to locate a building on the lot and provide a front yard.

(b) No side yard need be provided for a dwelling or hotel erected above the ground floor of a building, where the ground floor is designed for commercial or industrial purposes.

(c) Cornices, eaves, belt courses, sills, canopies or other similar architectural features, may project into a required side yard not more than two (2) inches from each one (1) foot of width of such side yard and may project into any other required yard space not more than thirty (30) inches.

(d) Open, unenclosed stairways or balconies, not covered by a roof or canopy, may project into a required rear yard not more than four (4) feet, and such balconies may project into a required front yard not more than six (6) feet.

(e) Open, unenclosed porches, platforms, places, not covered by a roof or canopy, or landings, which do not extend above the level of the first floor of the building, may project into any required front, side or rear yard, not more than six (6) feet.

(f) A fence, lattice work screen, wall, or hedge, not more than six (6) feet in height, may be located in any required front, side or rear yard.

(g) In computing the lot area of a lot which abuts upon an alley one-half (1/2) the width of such alley may be assumed to be a portion of the lot.

(h) Accessory buildings or structures may be located and maintained in a rear yard, except in the required ten (10) foot rear yard which is that portion adjoining the rearmost main building on the lot. Such building or structures may also be located and maintained in any side yard, except in the required eight (8) foot side yards adjoining each of the side lot lines.

Planning Considerations: The first consideration in reviewing a request for a yard (setback) or lot area variance is compliance to the variance requirements as iterated in Section 17502.

After the requirements noted above have been met, the following considerations must be analyzed during review of requests for Yard (setback) or lot area variance. These are:

a) Will this variance create a danger or a hazard in terms of fire fighting ability? In other words, if this variance request were to be granted, would there still be adequate space around the building or structure for fire-fighting equipment to maneuver properly? Would this variance allow for the placement of the building or structure in such a way that a fire in the building or structure would increase the danger to surrounding buildings or structures? (see figure 2, below)

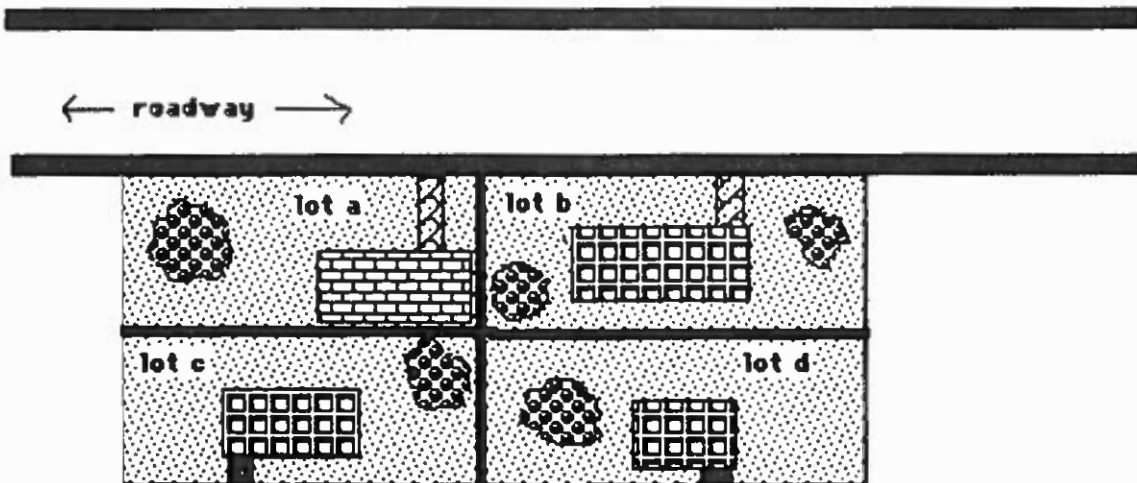


figure 2 Note: Lot a's lack of proper setback endangers adjoining properties and decreases fire-fighting ability on lot a.

b) Will the granting of this variance request unnecessarily degrade the character of the surrounding community? Particular in terms of lot area requirements, would the allowance of a structure on a substandard lot create a visual blight which would decrease the value of the surrounding properties, or which would lead to a deterioration of the community through an erosion of community pride?

c) Will the granting of the variance still allow for proper placement of septic tank and leaching field in an unsewered area? Particular care must be taken in lot area variances to ensure that, in addition to the building or structure to be placed on the lot, there is still adequate room for compliance with proper placement of septic tank and leaching field (septic tank a minimum of ten (10) feet from the building, leaching field a minimum of twenty (20) feet from the building, and both a minimum of five (5) feet from the lot line). These figures are critical in that they are necessary for the maintenance of minimum health standards for both the applicant and the surrounding property owners.

REMEMBER: The onus of proving the necessity for the yard or lot area variance rests solely with the applicant. If all requirements of Section 17502 have not been met, if the application is incomplete or if the impact upon the community is not either positive or at least neutral, then the Commission should **disapprove** the request. It is not the duty of the Commission to accomodate the wishes of those who would seek special treatment under the law, but it is the duty of the Commission to ensure the rights and best interests of the community at large.

ZONE VARIANCE

PARKING AND LOADING SPACE REQUIREMENTS

THE LAW: Government Code of Guam, Title XVIII, Chapter VIII, Section 17350 states: **Automobile Parking Spaces.** Off-street automobile parking space shall be provided as follows:

- (a) For dwelling, at least two (2) automobile parking spaces for each dwelling unit;
- (b) For hotels, at least one (1) automobile parking space for each four (4) guest rooms;
- (c) For places of assembly, such as churches, auditoriums or theaters with seating facilities, one (1) parking space for each four (4) seats;
- (d) For places of assembly, such as restaurants or night clubs without fixed seating facilities, one (1) parking space for each one hundred (100) square feet of customer area in such use;
- (e) For retail sales of building materials, and goods requiring extensive display area, industrial buildings and warehouses, one (1) parking space for each eight hundred (800) square feet of area in such use, exclusive of loading requirements;
- (f) For retail and wholesale sales and services, exclusive of warehouse activity, at least one (1) space for each one hundred and fifty (150) square feet or portion thereof of usable commercial floor area;
- (g) For professional and business offices, public administration offices, one (1) parking space for each four hundred (400) square feet or portion thereof of floor area;
- (h) For offices and clinics, of healing arts, at least five (5) spaces for each practitioner;
- (i) For hospitals and nursing homes, at least one (1) space for each two (2) beds;
- (j) Three (3) spaces for every four (4) employees;
- (k) Total parking requirements will be a total of all applicable elements in paragraphs (a) through (k);
- (l) Appropriate parking space for open space activities such as swimming beaches, picnic areas, campgrounds, boating areas, shall be determined by the Territorial Planning Commission.

Section 17351. **General requirements:** (a) Automobile parking space required by this Title shall be provided at the time of the erection of any main building or at the time any existing main building is enlarged or increased in capacity by adding dwelling units, guest rooms or floor area, and such parking space shall thereafter be maintained.

(b) In the case of a dwelling, the automobile parking space shall be on the same lot and may be provided either in a private garage or in a private automobile parking area.

(c) In the case of multi-residential buildings, churches, theaters, clinics, commercial or industrial buildings, the automobile parking space shall be on the same lot or may be provided in a parking garage available to the public or a private parking area adjacent thereto.

(d) Every automobile parking space shall contain a minimum of one hundred and eighty (180) square feet and shall have adequate access to a public right of way.

Section 17352. **Loading spaces.** Off-street loading spaces for every commercial or industrial building shall be provided, located and scaled to meet the anticipated needs of all establishments and activities likely to require such space. In general, off-street loading space shall be located in service areas at the rear or sides of establishments in such a way that there will be minimum interference with off-street parking or vehicular movement in off-street parking areas.

Planning Considerations: The first consideration in reviewing a request for a variance from parking or loading space requirements is compliance to the variance requirements as iterated in Section 17502.

It has been estimated that (in 1985) there were between 60,000 and 70,000 automobiles on Guam. That fact alone indicates the importance of fulfilling the full requirements of the parking requirements. Experience has shown that, in those cases where parking variances have been granted, customer parking is taken care of through encroachment on adjoining parking areas not belonging to the establishment to which the customers are going, or through on-street parking.

Examples of the results from past parking variance approvals point out the variety of difficulties experienced by the community.

Prior to 1985 it was common for applicants requesting Conditional Use approvals for the operation of "Mom and Pop" stores in residential areas to also request for parking variances, with the argument that, because these stores were designed to fulfill neighborhood needs, the customers would be primarily pedestrian traffic. What was overlooked was the fact that the majority of those neighborhoods were lacking in sidewalk improvements, and therefore the potential customers to these stores would be forced to either walk to and from the store in the street, or drive to the store and park in the street right-of-way or on property adjacent to the store.

From the perspective of community welfare, neither of those options are desirable. Studying traffic records for a ten year period shows that the majority of auto-pedestrian accidents occur where there is no sidewalk, and where the pedestrian is either standing or walking along the side of the road (as opposed to crossing the road), and more alarming, that the majority of pedestrians involved in these accidents are boys between the ages of 5 and 13 years of age, which corresponds to the largest single group of small store customers.

While the stipulation of parking requirements to Mom and Pop stores will not solve the problem of the lack of sidewalks in communities, it will help in easing on-street parking, and therefore creating a greater pedestrian visibility to drivers.

A second argument for granting parking variances in the past has been the argument of "shared parking". For example, the Hafa Adai Exchange in Tamuning was granted a total waiver of parking requirements based on the promise that the Exchange would utilize the Hafa Adai Theater parking lot and the two businesses would operate at different hours in order not to overlap. In actual practice, the Exchange is operating beyond the hours they indicated to TPC, and they are not only overlapping in parking needs with the theater in the evening and on week-ends, but Exchange customers are also utilizing FHP MEDICAL CLINIC parking, which has created an uncalled for burden on this separate, private facility.

A third argument for variance to the parking requirements which has been used successfully in the past, is that the business for which the parking is required, is aimed at tourist customers only, and because of the location in Tumon, would be within walking distance to the customers. In particular, the Kentucky Fried Chicken franchise on Pale San Vitores Road, was granted a total waiver of parking requirements. By allowing this variance, the Commission agreed to a discriminatory practice of business, in which local residents have been shut out from use of this business because there is no area in which customers can legally park. In this particular case, not only was the granting of the request an example of poor planning, but may well have been illegal, in that the business was allowed to shut out an entire class of potential customers (residents).

From the planning viewpoint, there can be very little reason for granting a variance to the parking requirements. In reviewing such applications, the Commission must ask a number of questions, including:

A) Is this request a result of overdevelopment? In other words, has the applicant designed the development beyond the ability of the land to sustain it with all the necessities of law? If such is the case, the application should be denied and the applicant made to redesign the proposal on a smaller scale.

B) If this variance is granted, will the present and future needs of the community, in regards to this business, be met? Any variance must not be granted solely for the convenience or cheaper development costs of the applicant. The Commission must consider the effects of the variance on the community for the present and for the future.

REMEMBER: The onus of proving the necessity for the parking variance rests solely with the applicant. If all requirements of Section 17502 have not been met, if the application is incomplete or if the impact upon the community is not either positive or at least neutral, then the Commission should **disapprove** the request. It is not the duty of the Commission to accomodate the wishes of those who would seek special treatment under the law, but it is the duty of the Commission to ensure the rights and best interests of the community at large.

CONDITIONAL USE

THE LAW: Conditional use. In addition to permitted uses in each of the zones, specified uses will be permitted upon approval by the LCommission of the site plan, including, but not limited to, disposal of sewage, access, parking, structure location and accompanying covenants that may include performance standards. (Government Code of Guam, Title XVIII, Chapter III, Section 17102).

Discussion: Sections 17103 through 17109 list those uses which are conditionally permitted within each zone.

In reviewing applications for conditional uses within a zone, the Commission must first analyze the impact this use will have within the community. For instance, in an area zoned Agriculture, but developed in an R-1 fashion, would the allowance of the conditional use extractive industry be proper? Would such allowance create an increased hazard to children in the area? Would such allowance result in increased air or noise pollution in a populated area?

While most conditional use requests will be straight-forward, and because of their nature, should be reasonable uses for the zones, the Commission must remember that they are conditional and that care must be taken in making any kind of change to a community. Therefore, the following procedures should be followed with each conditional use request.

1) Because conditional uses, by their nature, increase the traffic through a community, no variance from the parking requirements should be granted or entertained.

2) In order to assess the impact of a use on the community, and in order to correct those approvals which have been proven to be negative additions to the community, all conditional use approvals should be conditioned with a time limit (no more than three years), after which time the use must be re-approved by the Commission, or discontinue operations.

3) In order to guarantee that any conditional use will have at least some beneficial effect upon the community in which it is situated, each request approval should be conditioned to include landscaping of the property in question. Landscaping should be specified as to purpose (i.e. aesthetics, buffering or both), and a landscaping plan must be approved by the Commission or their appointed representative.

REMEMBER: The decisions of the Commission should always represent the best interests of the affected community, and not necessarily the requestor or developer. No application to the Commission is "simple and without impact", and it is the duty of the Commission to thoroughly dissect and analyze each and every application.

OTHER REQUIREMENTS: Every application for a conditional use must consist of the following items. If any items are not included, the request should be tabled until such time as all required items are submitted.

1) Twenty (20) copies of a plan showing: a vicinity map, lot lines and area of subject lot; location of all existing structures, proposed structures, parking and loading areas, access and traffic circulation, open space, landscaping, signs and setback distances.

2) A written statement explaining the compatibility of the proposed project with adjacent and neighborhood developments as they exist.

3) Twenty (20) sets of map showing all significant buildings or uses within 750 feet of subject lot (8 1/2" x 14").

SUBDIVISION APPROVALS

THE LAW: Government Code of Guam, Title XIX, Chapter I, Section 18001 states: **Purposes and intent.** The purpose of this Title and of any rules, regulations, specifications and standards adopted, pursuant thereto, is to control and regulate the development and/or subdivision of any land for any purpose whatsoever. Such control and regulation is determined to be necessary to provide for the orderly growth and harmonious development of the territory; to insure adequate traffic circulation through coordinated street, road and highway systems; to achieve individual property lots of maximum utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage and other health requirements; to permit the conveyance of land by accurate legal description; and to provide logical procedures for the achievement of this purpose.

Discussion: Of all the applications which the Territorial Planning Commission will review and decide upon, subdivision applications are perhaps the most important because:

- 1) Subdivisions most often are requested for the development of, not only home lots, but the houses as well. Of all the basic human needs, homes (shelter) may rank second only to food and water.
- 2) Subdivisions will impact very heavily upon all the supporting infrastructure, such as water lines and supply, sewage disposal, traffic network, schools, etc. In most cases, the developers or buyers in these subdivisions do not contribute significantly in the upgrading or initial development of these systems.
- 3) The addition of concrete or other materials on the land, for homes, walls, sidewalks, roadways, etc., will affect the grounds ability to absorb storm-water run-off, creating flooding and damage to structure if not addressed properly in the planning stage.
- 4) Because of the scale of development associated with subdivision

requests (vis a vis other requests to TPC), these applications offer the Commission the best opportunity to intelligently guide the direction and quality of growth on Guam.

The Requirements: Section 18005 states: **General requirements for subdivisions.** In all subdivisions presented for recording under this Title, the subdivider shall:

(a) Not subdivide or develop land for any purpose contrary to the provisions of the Zoning Law, Title XVIII, Government Code of Guam.

Discussion: This requirement has a dual objective. First, no subdivision shall be developed in a zone for which the use is not either permitted or conditioned according to the zoning law, without first obtaining a zone change. Second, each tract within a subdivision must conform to the development requirements of that zone, unless the applicant first acquires a variances.

Remember: If an applicant for subdivision is also requesting a zone change or a variance, that applicant must **first** meet the requirements of Section 17600 or Section 17502.

(b) Cause every lot to abut a roadway right of way having a minimum width of forty (40) feet, except that the Commission may, **where circumstances warrant**, permit the subdivider to utilize roadway rights - of - way less than forty (40) feet but in no case less than twenty (20) feet in width.

Discussion: In defining warrantable circumstances, the Commission must analyze the effects such a reduction of right of way will have on surrounding properties under current circumstances, as well as effects on the neighborhood in regard to future planning.

(c) Except as may be provided for pursuant to Section 21203.3, Title XXII, Government Code of Guam, provide for the installation of power, water and telephone lines, fire hydrants, roads and highways within the subdivision in accord with any general or precise plan approveds by the Commission.

Discussion: Given that infrastructure funding (by the government) requires a lead time of one - five years, and that subdivision approval and development occurs at a pace which makes inclusion of infrastructure upgrading funding for new developments into Capital Improvement requests impossible, it behooves the Commission to ensure that the developer provides that needed infrastructure. Any waiver of this requirement will cause the government to provide those services at a later date, to the detriment of intelligent utilization of scant funding resources, and will create an unhealthy, hazardous or undesirable climate within the development and surrounding neighborhood during the interim.

(d) Where an established framework of local streets exists, provide for the uniformity of street widths and alignment thereto with the streets of the subdivision, and for the continuation of existing street names.

Discussion: This subsection is directly connected to subsection (b), above. Any subdivision has a very high likelihood of leading to further subdivision on adjacent properties in the future. The uniformity of streets (and other improvements), will ensure the continued **usability** of the improvements, help to maintain the quality of development, decrease hazards and decrease costs to government in infrastructure maintenance.

(e) Provide for adequate light, air and privacy on all lots regardless of land use, and design the location of streets to prevent excessive grading and scarring of the landscape.

Discussion: These requirements provide for the well being of the residents, and prevent unnecessary erosion of the land, which would impact negatively on the properties in question as well as surrounding land.

(f) Provide sufficient drainage of the land to provide reasonable protection against flooding.

Discussion: This requirement is for the protection of the application property and surrounding properties.

(g) Provide that streets within residential areas shall not be planned for through traffic in order to insure privacy and safety.

Discussion: This requirement is not in conflict with requirement (d) above. This requirement is to ensure that subdivision roadways are not used as "shortcuts" for through traffic.

OTHER REQUIREMENTS: Every application for a subdivision waiver of improvements must consist of the following items. If any items are not included, the request should be tabled until such time as all required items are submitted.

- 1) Sixteen (16) sets of map containing the following:
 - a) Vicinity map showing relationship of project to major streets or other popular landmarks.
 - b) Name, address and phone number of Registered Civil Engineer or Surveyor.
 - c) The basic lot and requested divisions with boundary line distances showing all easements and lot areas.
 - d) All parcels including easements and document numbers of adjacent properties.
 - e) Location, names and widths of adjacent streets and easements.
 - f) Sufficient contours to determine topography of proposed lots and roads.
 - g) location and outlines of all existing buildings and their use.
 - h) Identify all existing utilities (water, power, sewer, telephone).
 - i) Statement of water availability and method of sewage disposal.
 - j) Location, width and direction of flow of all water courses and the location of downstream disposal of storm water.
- 2) Non-existence of public utilities. In the event public sewer system is not available to the subject lot or the surrounding area, developer must disclose method of sewage disposal.
- 3) Sixteen (16) sets of map showing all parcels within 500 feet of the outer property line of the subject lot. Each parcel shall identify lot number.
- 4) Demonstration of public necessity, convenience and general welfare.