ANALYSIS OF GUAM LAND USE LAWS AND THE ROLE OF THE TERRITORIAL PLANNING COMMISSION

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AUTHORITY OF THE TERRITORIAL PLANNING COMMISSION AND TERRITORIAL SEASHORE PROTECTION COMMISSION

1. Express Authority:

The TPC and TSPC have such authority as is bestowed upon them by law. There are two (2) sources of law in Guam. The laws in force in Guam consist of the acts of the Guam Legislature and executive orders of the Governor promulgated pursuant to the Organic Act and pursuant to acts of the Legislature. (Title One, Section 100, Revised Guam Codes Annotated).

The authority of the Governor of Guam to make laws by executive order independent of delegation of legislative authority is embodied in Section Six, Paragraph Six, of the Organic Act of Guam. The Organic Act gives the Governor power to promulgate laws which are not inconsistent with laws of the legislature. Any laws promulgated by the Governor which are not inconsistent with legislative laws have the same force and effect upon the people of Guam as laws of the Legislature. Laws so promulgated by the Governor have the same force and effect upon the TPC, TSPC, and SDRC as do laws promulgated by the Legislature. The authority of the TPC, the TSPC, and the SDRC, thus is derived from both legislative enactments and gubernatorial executive orders.

The TPC and TSPC have been given legislative authority to promulgate regulations consistent with the intent of the laws to clarify and expand upon those legislative enactments which they are directed to implement and oversee. This legislative authorization to regulate is very broad. (Opinion of the Attorney General, June 20th, 1978). When approved by the Governor and promulgated by gubernatorial executive order, TPC and TSPC regulations become law.

In the absence of legislative authority to promulgate regulations to implement a legislative enactment, regulations promulgated by the TPC and TSPC can become law. They do not become law by virtue of any independent power of the TPC or TSPC. When submitted to the Governor for his approval they have the status of recommendations for gubernatorial legislation. After approval by the Governor of the regulations and the promulgation by the Governor of an executive order ordering their implementation, the regulations have the status of and the force and effect of law. Gubernatorial executive orders are not valid laws if they are inconsistent with laws of the legislature.

2. Implied Authority:

Zone Changes: The TPC has no direct statutory authority to attach conditions to zone changes. Section 17604 of the zoning law simply says that the TPC, in considering a proposed zone change, may approve or disapprove the change of zone in whole or part. "While contract or conditional zoning can be accomplished by other means, restrictive covenants may be used to compliment zoning ordinances and give individualized treatment to a given area for which a zoning change is sought. For example, a municipal authority may reclassify land to a less restricted use if the applicant for rezoning agrees to special limitations on the use of the rezoned property which are not imposed on other land included in the same classification. Such contract zoning has been attacked as an unauthorized exercise of delegated legislative powers. However, an increasing number of cases have approved the device as a legitimate means of exercising the zoning power and achieving needed flexibility. Although the device contemplates that the private agreement restricting use be legally binding, there are serious questions and little case law as to what form the agreement should take to ensure enforcement against subsequent

owners of the classified land." Hagman, Urban Planning and Land Development Control Law, 1971, West Publishing Company. Thus the TPC can "contract" with the applicant and his successors and assigns to place conditions on any zone change. The "contract" should be in writing, signed by the Chairman of the TPC and the applicant, endorsed by the Governor, filed for record, and noted on the zoning map.

Zone Variances:

The zoning law does not directly authorize the TPC to impose conditions on zone variances, except that Section 17501(k) requires stated conditions for approval of variances for substandard lots in "A" zones. The power to impose conditions when variances are granted is implied, even where the statute does not contain such authority. Urban Planning, supra, page 199. The variance may be limited to a term of years and then subjected to review, or limited until a certain event occurs. A variance issued on condition that a restaurant in a residential zone be closed during certain hours of the evening has been held valid. The condition relates to the property rather than the applicant, so it is improper to issue a variance on the condition that the property remain owned by the applicant. However, it would seem to be permissible to require a review of the variance upon change of ownership. Urban Planning, supra, page 199.

II

LAND USE POLICIES

The following policies can be a source of inspiration to TPC, TSPC, and SDRC when faced with "close cases" in the decision-making process.

1. Legislative Policies of General Application:

   (1.) It is the policy of the territory that the public water supply be protected from contamination and that safe drinking water be provided for public consumption to the greatest degree practicable. (Public Law 14-90)

(2.) It is the policy of the territory that the public have access to Guam's coastal shorelines and to hill and jungle lands which can be used by the public for recreational purposes. (Public Law 13-69 and Government Code Section 13451)

(3.) The indiscriminate building of structures on the ocean shores of Guam should be discouraged. (Government Code Section 13450, Territory Beach Areas Act)

(4.) It is the policy of the territory to engage in the preservation of historic archaeological and architectural sites. (Government Code Section 13985)

(5.) It is the policy of the government that all departments and agencies shall seek to conserve endangered species. (Government Code Section 12325, Public Law 13-83)

(6.) All agricultural lands shall be protected as much as possible from development which is detrimental to the land itself or limits the amount of agricultural land available for agricultural purposes. (Public Law 15-101)

2. Gubernatorial Policies of General Application:

(1.) There shall be increased enforcement and compliance with sign laws, litter laws, zoning laws, subdivision laws, building laws, and other related land use laws. (Executive Order 78-23)

(2.) Critical agricultural lands shall be preserved and maintained for agricultural purposes. (Executive Order 78-23)

(3.) Only those uses shall be located in the seashore reserve which either enhance or are compatible with or do not generally detract from the surrounding coastal areas, environmental quality, and beach accessibility or in the alternative can demonstrate dependence on such a location and the lack of feasible alternative sites. (Executive Order 78-23)

(4.) In flood plains, in erosion prone areas, in air installation crash and sound zones and over major fault lines, development should be limited. (Executive Order 78-23)

(5.) Development should be limited in areas where the slope of the land exceeds fifteen percent (15%). (Executive Order 78-23)

(6.) Agreements shall be encouraged with the owners of private and federal property for the provision of access to and use of resources of a public nature located on these properties. (Executive Order 78-23)

(7.) Visually objectual uses shall be located to the maximum extent practicable so as not to degrade significantly views from scenic overlooks, highways, and trails. (Executive Order 78-23)

(8.) The power of agencies of the Government of Guam shall not be exercised in a manner which would take or damage private property for public uses without the payment to the owner of the property just compensation. (Executive Order 78-23)

III

ZONING AND ZONE CHANGE

Considerations of SDRC and TPC in decision-making:

1. Will the granting of a zone change constitute "spot zoning"? "Spot Zoning" refers to rezoning. It is not properly applied to development permission that comes about by a variance. Mr. Hagman has observed that a spot zone occurs where an "island" of property is created and where one or more of the following factors are present:

   (1.) A small parcel of land is singled out for special and priviledged treatment.

   (2.) The singling out is not in the public interest but only for the benefit of the landowner.

   (3.) The action is not in accord with the comprehensive plan.

2. Is a zone variance, properly conditioned as to time limits on use and other considerations, a more adequate solution?
3. Will a zone change make structures on the premises nonconforming with any zoning regulations?
4. Does the public necessity, convenience, and general welfare justify a zone change?
5. If agricultural land or a rural zone is involved, has an agricultural impact statement been received and considered?
6. Have the hearing and notice requirements of Section 17603 of the Zoning Law been complied with?
7. Is a change to a zoning classification, other than that which is requested, appropriate? (Example PUD)

8. Has the Commission and SDRC considered all evidence presented at the public hearing on the zone change?
9. Should the zone change be approved in full or only in part?
10. Should the Commission impose contractual conditions and/or restrictions on the use of the property where the zone change is granted?
11. Is a conditional use permit a more appropriate action?
12. If subsequent development of the property is contemplated would the proposed development comply with the Guam Landuse Policies of Executive Order 78-37?
13. Will the zoning, if permitted, be compatible with the landuse district in which it is located? (Executive Order 78-23)
14. Is an applicant for zone change a proper party? (Does the applicant own or lease the subject property or have a power of attorney from one who does?)
15. Is the applicant or his attorney-in-fact present at the meeting of the Commission?
16. Has the Commission heretofore considered and rejected the same proposal, and if so, what circumstances, either legal or practical have changed since that time?
17. Has each member of the Commission and SDRC examined the proposal with regard to a potential conflict of interest by that member?
18. Is any element of the Seashore Reserve applicable?
19. Is the property of potential cultural, historical, archeaological, or architectural significance? (If so, the Guam Institute of Spanish-Chamorro Culture should be consulted).
20. Have the requirements of the Open Government Law been met?
21. Are there resources of a public nature located on the land proposed to be rezoned? (If so, the TPC should require public access to those lands as a condition of rezoning).
22. If the zone change is approved, has the Commission made written findings required by Sections 17604 and 17600? The Commission must state that the "public

necessity, convenience, and general welfare justify the zone change." The Commission may go further and give particular reasons for this finding. Any conditions imposed upon the zone change must be in writing and should be noted on the zoning map. The Commission must "forward notice" (mail notice) of its decision to the applicant.

IV

SEASHORE RESERVE

Considerations for SDRC and TSPC in decision-making:

1. Will the permit, if issued, conform to the Guam Landuse Policies of Executive Order 78-37?
2. Is the proposed use compatible with the Landuse District Guidelines? (If the subject property is within an area of particular concern have APC standards been met such as a flood hazard area permit from Department of Public Works?)
3. Is the activity exempted from a permit by the Seashore Protection Act?
4. Is the development consistent with the seashore reserve plan at the present stage of its development and consistent with the Guam Coastal Management Program objectives?
5. Has a timely public hearing been held and the results of that hearing been considered?
6. Have the requirements of the Open Government Law been complied with?
7. Have the members of the TSPC and SDRC considered possible conflicts of interest which may be involved in entertaining and deciding the application?
8. Is the applicant the person who intends to perform development within the seashore reserve? (In some cases, the TPC may desire to require application by more than one individual, i.e., owner and developer)
9. Is the applicant or his attorney-in-fact present at the meeting?

10. Has the TSPC made the findings required by Section 13417(2)? The TSPC must state that "the development will not have any substantial adverse environmental or ecological effect" and that "the development is consistent with the purpose and objectives of the Seashore Protection Act." No elaboration on these findings are necessary so long as the TSPC attaches written conditions to its findings. The written conditions are themselves evidence of the process of decision-making.

11. Have written conditions been attached to the development permit? The conditions must squarely meet all applicable considerations required by the Government Code Section 13417(3).

V

THE OPEN GOVERNMENT LAW

(Chapter 4, Title IV, Government Code)

There is no question that the TPC and the TSPC are "public agencies" to which the Open Government Law applies. The SDRC would also seem to be included as "an advisory commission created by law" ((Section 3228, subparagraph (a)(2))). The "law" creating the SDRC is the governor's executive order which as we have seen is "law" by virtue of Section 100 of the Revised Guam Code.

Section 3233 of the Government Code provides that a public agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place to be specified in the order of adjournment. A copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the meeting was held within twenty-four (24) hours after the time of adjournment.

Section 3234 requires that where a hearing is being held at a meeting the procedure for adjournment of the hearing is the same as that for adjournment of

a meeting.

Section 3237 requires that minutes of a meeting of a public agency must (as a minimum) include a record of all motions, proposals, and resolutions offered, the results of any votes taken, and a record of individual votes in event of roll call. Section 3237 also provides that insofar as it may do so without violating Section 3227 of the law, the agency may maintain a record of persons present at a meeting. Section 3227 states as follows:

> Section 3227(a). "A member of the public shall not be required as a condition to attendance at a meeting of a public agency, to register his name and other information, to complete a questionnaire or otherwise to fulfill any condition precedent to his attendance."
>
> Section 3227(b). "This Chapter does not require that a person who is admitted to a meeting of a public agency shall, because of his mere presence, be accorded an opportunity to participate in such a meeting. Each public agency retains the right to reserve areas for the public and to exclude the public from any area necessary for the orderly conduct of its business." (Emphasis added)
>
> Section 3228(b) defines the term "meeting" as follows: "Meeting means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Meeting does not include any on-site inspection of any project or program." (Emphasis added)

Section 3238 provides that any action taken by an agency in violation of the Open Government Law shall be void and of no effect. The term "action taken" is defined by Section 2328(c) as follows:

> "Action taken" means a collective decision made by a majority of the members of a public agency, a collective commitment or promise by a majority of the members of a public agency to make a positive or negative decision, or an actual vote by a majority of the members of a public agency when sitting as a body or entity, upon a motion, proposal, resolution or order." (Emphasis added)

Section 3235 governs executive sessions. An occasion sometimes arises where an executive session is necessary, particularly where an employee's appointment, employment or dismissal is at issue or where complaints by

one public employee against another public employee are to be heard. Under Section 3235 the agency may "hear" complaints and "consider" appointments in executive session. It may not take a vote or make any decision on these matters in executive session. Decisions must be reserved for open session. (Memorandum of Legislative Counsel to Senator Katherine B. Aguon, January 22, 1980; Memorandum of Legal Counsel, Territorial Board of Education to Chairman, Territorial Board of Education, January 28, 1980.)

This writer is aware of more than one instance where the priviledge granted by the provisions of Section 3234 allowing executive sessions to be held for consultations with the Attorney General has been abused. Care should be taken to assure that before such sessions are held there is a genuine, grave "threat to the public health, safety or welfare."

VI

RECENT LEGISLATION AND EXECUTIVE ORDERS

The most widely used laws and executive orders are contained in the publication Guam Coastal Management Program and Environmental Impact Statement, VolumeII, available from the Bureau of Planning. Other laws, of limited effect, are listed in the publication A Guide To The Changes In Laws Relative To Land and Water Use, 1969 to 1976, also available from the Bureau of Planning.

The following outline is intended to provide a summary of the newer laws and executive orders which are not discussed in detail elsewhere in this report.

1. EXECUTIVE ORDERS:

Executive Order Number 78-42 established the boundaries of the Guam Territorial Seashore Park.

Executive Order Number 75-18 ordered all Government of Guam departments and agencies to first secure the approval of the Parks and Recreation Division

of the Department of Commerce before engaging in the destruction of trees, plants, or other flora.

Executive Orders 72-13 and 75-30 promulgated rules and regulations for the Agana Boat Basin.

Executive Order 79-020 adopted rules and regulations for the lease of public land.

Executive Order 79-012 established the Agana Bay Urban Waterfront, as that area is defined by the Guam Coastal Management Program's Agana Bay Urban Waterfront Redevelopment Plan, as an area of particular concern for planning, created the Urban Waterfront Task Force, and directed the Task Force to update the plan and request, through the Governor, that the various agencies and commissions take such actions as necessary to assure eventual overall redevelopment of the Urban Waterfront.

Executive Order 79-023 directs all agencies to assist in the implementation of the Economic and Land-Use Plan for Cabras Island and surrounding area.

2. LEGISLATION:

Public Law 13-30 authorized the Director of Department of Public Works to acquire on behalf of the Government of Guam either fee title to or a perpetual easement over those portions of primary and secondary roads and village streets to which legal title is still vested in private owners. This is to be done either by negotiation with the property owners or by condemnation proceedings instituted by the Governor.

Federal Law 96-205, March 12th, 1980, Section 607, transferred to the Government of Guam all right, title, and interest of the United States in all deposits of oil, gas, and other minerals within the submerged lands previously conveyed to Guam .

Public Law 14-112 [Government Code Section 31055(b)] empowers the Territorial Planning Commission to hear appeals of any decision or regulation of the building official in enforcing the building code except those relative to the suitability of alternate building materials and methods of construction and except summary abatement decisions of the building official. This section amended existing law to exclude from TPC appeal jurisdiction decisions of the building official regarding suitability of alternate building materials.

Public Law 14-90 gives authority to the Guam Environmental Protection Agency to adopt and enforce primary drinking water regulations which contain, among other things, criteria and procedures for the siting of new facilities for public water systems.

Public Law 15-6 and Public Law 15-12 authorized the Government of Guam to lease government owned property for a term not exceeding 50 years for commercial purposes.

Public Law 15-18 authorized public land to be leased for agricultural purposes for a term not exceeding 50 years.

Public Law 15-96 provided new legislation regarding nuisance, mosquito control, water storage, rodent control, confinement and exclusion of animals, sanitation, food storage, disposal of dead animals, animals running at large, graves, hazardous substances, solid waste, mortuaries, swimming pools, cemeteries, hotel sanitation, laundries, eating and drinking establishments, and child care facilities.

Public Law 15-111 adds a new subsection to Section 10500 of the Government Code. The effect of this addition is that property owners must have construction or repair of structures on their premises done by a licensed contractor unless the structure is to be used for the personal needs of the property

owner. This new addition to law prevents self construction of structures which can be or are used for commercial purposes.

Public Law 15-57 amended subsection (h) of Section 17202 of the Government Code to liberalize the permitted location of accessory buildings used for storage and cooking facilities.

Public Law 13-191 (Government Code Sections 18006 and 18007) requires approval of a subdivision by the real estate commissioner before any person subject to the requirements of the real estate law sells, leases or offers to sell or lease any interest in a subdivision on Guam. Section 58050 of the Government Code provides that the real estate commission is the Director of the Department of Revenue and Taxation.

Public Law 14-15 added a new section 5150 to the Government Code to require certain agencies, including the TPC and TSPC (but not SDRC) to submit a detailed report each year before September 30th, to the Governor and the legislature describing the operation of the agency during the fiscal year concluded on the preceding June 30th. The report is required to project the goals and objectives of the commission as developed for the program budget report.

Public Law 14-76 created improvement districts so that property owners can facilitate the provision of public utilities for qualified areas.

Public Law 15-118, Government Code Section 13500(d) of the Chamorro Land Trust Commission Act is amended to define the term 'Native Chamorro' as "any person who became a U.S. citizen by virtue of the authority and enactment of the Organic Act of Guam or descendents of such person."

Public Law 15-114 extended the boundaries of Guam to 200 geographical miles seaward and stated that Guam will exercise exclusive rights to management and exploration of ocean resources in that area.

Public Law 15-100 added a new chapter 1-A to Government Code Title 22 to

provide for under ground utility damage prevention. It also added a section 17402 to the Government Code to require all signs within TPC jurisdiction in a language other than English or Chamorro to also have a meaningful English or Chamorro translation on them in Roman alphabet letters. Section 17402 has recently been declared unconstitutional by the Superior Court of Guam.

Public Law 15-86 defined "public notice" as that term is used in the Open Government Law and the term "newspaper of general circulation."

Public Law 15-131 solved the problem of prohibitions on alienation of parentally subdivided lands by adding to subsection (b) of Section 18001.5 of the Subdivision Law a provision that the deed transferring the property may provide that the children or their descendents of the parent may mortgage the property for the purpose of constructing a residence on the property. It should now be less of a problem for grantee children to obtain financing for residential construction on these lands.

Public Law 15-132 provides that the Department of Commerce in coordination with the Bureau of Planning shall develop a comprehensive master plan for the development of Tumon Bay as a Hotel-Resort Zone.

Public Law 14-37 authorizes the Guam Environmental Protection Agency to implement the laws found therein governing solid waste disposal.

Public Law 14-22 established procedures for application and control of pesticides and delegated implementing and enforcement authority to GEPA.

Under Government Code Section 13999 et.seq. the TPC is designated the Guam Place Name Commission. The commission must give approval to the naming of any place in Guam before that place is named and may change the name of any place. It may adopt rules and regulations for the exercise of its powers. The TPC administers the Improvement District Law, Government Code Section 48001 et. seq.

Government Code Section 57048 empowers GEPA to administer and enforce

the water pollution laws.

Government Code Section 57015 empowers GEPA to prohibit the construction or modification of any air pollution sources.

VII

PUBLIC LANDS AND THE CHAMORRO LAND TRUST COMMISSION ACT

Guam Government Code Section 13251 et. seq. establishes the TPC as the Guam Natural Resources Board. The Board has the function of evaluating all proposals for the use, lease or purchase of territorial land for commercial mining or the removal of minerals, rocks or sand for processing. After a public hearing and after taking into consideration the Guam Coastal Management Plan policies and any applicable Seashore Reserve, APC, and Land Use District Standards, the Board makes a recommendation to the Governor concerning the granting or denial of the proposed mining. The Governor then authorizes the lease of the land.

Public Law 15-6 authorized the Government of Guam to lease government owned property for a term not exceeding 50 years for commercial purposes.

Public Law 15-12, section C, made the authorization to lease land for commercial purposes retroactive in effect to September 1st, 1978 and validated commercial mining leases entered into after September 1st, 1978.

Public Law 15-18 allowed the lease of public lands for agricultural purposes by the Department of Land Management, subject to the approval of the Governor. It also validated all agricultural leases entered into after January 1st, 1975, (when the Chamorro Land Trust Commission Act was passed). The law provides further that it will be automatically repealed when the Chamorro Land Trust Commission convenes.

Executive Order 79-020 promulgated rules and regulations for the administration of the agricultural land lease program under public law 15-18. The reason for the retroactive provisions in those public land use laws is Public Law 12-226, the Chamorro Land Trust Commission Act, enacted February, 1975. The act repealed all public land lease provisions of chapters 6,7,8, and 9 of Title 14, Government Code of Guam, leaving a void. Nevertheless, land leasing continued without statutory authority. This situation was caused by the provision of the Chamorro Land Trust Commission Act which made the act effective only when the Chamorro Land Trust Commission convened.

Public Law 15-133, subsection 2, provides that the land transfer board, the Governor, and the Director of the Department of Land Management shall not sell, lease or exchange government owned property without prior approval of the legislature. This law does not apply to "chapter 7", an apparent reference to Chapter 7, Title XIV, of the Government Code which authorizes the Director of the Department of Land Management to grant limited use permits for the use of government real property for any purpose except agriculture. Also, since the law only requires legislative approval of the sale, lease or exchange of public land, the Guam Natural Resources Board and the Governor will still be able to grant mining and mineral extraction use permits without legislative approval, although lease or sale of such properties will require legislative approval.

When the Chamorro Land Trust Commission convenes, the Commission will have exclusive jurisdiction over all government lands except those held under existing leases and permits, those dedicated by law to specific public uses, and those reserved for Government use by the Department of Land Management with the concurrence of the legislature. These lands administered by the Commission, called "available lands", are to be designated Chamorro homelands

and are to be leased long term at nominal rent for agricultural and residential use to any persons who became U.S. citizens by virtue of the Organic Act and the descendents of such persons. Since the Seashore Reserve is dedicated to the public, it will continue to be administered by the TSPC. It is not an "available land" by definition.

When the Chamorro Land Trust Commission convenes, all leases and permits containing clauses allowing termination of the lease or revocation of the land use permit will be withdrawn and placed under the control of the Commission. The TPC, after that time, will have no authority over available public lands.

Section 13506(c) gives the Chamorro Land Trust Commission planning and development powers similar to those granted to the Guam Housing and Urban Renewal Authority.

Section 13502 of the Act empowers the Chamorro Land Trust Commission to designate and plan subdivisions on available lands in, adjacent to or near any village in the Chamorro Home Lands. Like the Urban Renewal Law, the Chamorro Land Trust Commission Act displaces the TPC's subdivision authority. At page 104 of the Guam Coastal Management Program, Volume 1, the author states that land and water uses will be regulated in the Chamorro Home Lands by the land use policies of Executive Order 78-37, the land use standards of Executive Order 78-23, and to any applicable seashore reserve and APC standards that may be applicable. That is questionable because section 13505 of the Chamorro Land Trust Commission Act provides that the powers and duties of the Governor and the Department of Land Management shall not apply to lands having the status of Chamorro Home Lands except as specifically provided for in the Chamorro Land Trust Commission Act.

RECOMMENDATIONS FOR LEGISLATION:

1. Expand the seashore reserve now, because it will be more difficult to do after the Chamorro Land Trust Commission begins leasing

shoreline areas.

2. Require that the TPC review and approve or disapprove all subdivisions within homelands as to conformity with the Subdivision Law.

3. Approve the Governor's land use policies, guidelines, and APC standards. Leave no question that they are applicable to the homelands.

It the legislature does not act affirmatively on the proposal that the Seashore Reserve be expanded, prior to the convening of the Chamorro Land Trust Commission, the Director of the Department of Land Management may, under the authority of Section 13503 of the Act, exempt an area of sufficient area to constitute an adequate seashore reserve within 90 days after the Commission convenes. If the legislature approves the exemption the seashore reserve will be protected.

If the legislature does not affirmatively act on the other proposals for legislation prior to the convening of the Commission, the TPC, can, under the provisions of Section 13515, propose to the Commission that the TPC be granted review authority over subdivisions and at least advisory authority over land use planning in the homelands. If the Commission desires to do so, it may delegate this authority to TPC.

VIII

GUAM HOUSING AND URBAN RENEWAL AUTHORITY AND THE TERRITORIAL PLANNING COMMISSION

The Guam Housing and Urban Renewal Authority has the power under Section 13952 of the Government Code to designate and plan subdivisions in general conformity with the provisions of the Subdivision Law in, adjacent to or near any village.

Over the years the legislature has authorized, by several legislative acts, the establishment of a number of GHURA subdivisions. Public Law 15-127 represents the latest of these legislative enactments. Section 13965.5 of Public Law 15-127, while not artfully drafted, does unequivocally require that GHURA prepare the subdivision plans and submit the plans to the TPC for review as to the plans' conformity with the comprehensive development plan, the community design plan, and subdivision law. The TPC is then required to issue a decision on the plans within 30 days after receipt of the proposed plans from GHURA. Public Law 15-127 represents the first recognition that TPC should have a hand in the subdivision process in GHURA subdivisions.

The legislature should solidify the progress that has been made toward that logical conclusion by amending the GHURA enabling legislation to require TPC approval of all GHURA subdivision plans and TPC approval of all areas designated by GHURA for subdivisions.

IX

POTENTIAL PROBLEM AREAS AND SOLUTIONS

1. On September 27th, 1979, the TPC resolved that the territorial planner have the authority to approve one substandard lot in an agricultural zone except in those instances where the subject property is within a water lens recharge area or where the property is a part of a large tract. The territorial planner is then required to furnish a list to the TPC for TPC ratification. This power to grant a variance cannot be delegated by the TPC to the territorial planner without legislative authorization. Neither should the TPC act upon these applications in a wholesale manner. The legislature has required that these applications be granted only when the TPC makes the findings required by Section 17502 for variances, and no legislative intent is apparent which would license the TPC to treat applications for substandard

lots in A Zones any less restrictively than other variance applications.

Section 18202 which authorizes the territorial planner to approve lot parcellings and agricultural subdivisions does not abrogate the requirements that the TPC approve variances.

2. Section 17501(k) of the Zoning Law requires that the parcelling of a substandard lot in a rural zone be "conditioned. . . that the parcelled out lot be served by water and power and a public road." Section 6 of the Guam Land Use Guidelines approved by the TPC and embodied in the executive order of the Governor requires that variances be approved by the TPC only if the proposed use is found by the TPC to be compatible with the Guam Landuse Policies. Section 3B of the Guam Landuse Policies states that the minimum lot size for uses in agricultural areas should be one half acre until adequate infrastructure including functional severing is provided. Prior to adoption of the Landuse Policies, the TPC often allowed parcelling of an agricultural homesite with only an ambiguous direction to the landowner that he should provide water, power, and a public road. While Section 17501(k) does not make it clear whether these improvements should exist at the time of the parcelling or whether the TPC should require that they be provided within a specified time, it can be said that because of section 3B of the Guam Landuse Policies, the TPC should at a minimum direct that the improvements be provided within a specified time. The TPC should also require that the parceller submit proof to the territorial planner, by affidavit, that the improvements have been made.
3. Section 17501(k) also requires that further agricultural parcelling be prohibited. The TPC should direct the territorial planner to note on all parcelling maps presented under this section that further parcelling is prohibited.
4. Section 17501(k) also requires that the "owner" of the lot in the rural zone

apply to the TPC for the parcelling of a substandard lot for a single family residence. Many persons have received deeds to substandard lots and have afterwards applied to the territorial planner for approval of the parcelling. The law is clear that the owner of the parcel from which the residence lot is to be severed is the person who should make the application.

Legislation is necessary to remedy this problem because under existing law if the owner of the property is deceased or refuses to make the parcelling application, the grantee named in the deed of a substandard lot cannot make the application.

Another problem with the word "owner" has arisen not just in parcelling, but in regular subdivisions, regarding what proof a subdivider must present of his "ownership" of property before he is entitled to subdivide. If the TPC feels that it is imperative that a subdivider prove his "ownership" by producing a certificate of title evidencing land registration, it may so provide be regulation. If the TPC feels that proof of registration of the land should not be required, it may by regulation provide that ownership shall be determined by an examination of the recorded chain of title and the real estate tax rolls. Failure to establish either the chain of record title or a record of payment of taxes on the property will be grounds for denial of the application.

5. While the SDRC does have review authority over the designation of flood hazard areas, the SDRC does not have any direct involvement as an entity in the process of approval of an application for development of a specific project in a flood hazard area. The approval or disapproval of an application is made by the building permit division of the Department of Public Works. Since there is no SDRC meeting or TPC meeting (unless a decision of the Department of Public Works is appealed) members of the public have in fact no chance to

express their opinions or concerns regarding the application. Unless a public hearing is provided by the Flood Hazard regulations, before such a decision is made, a violation of the Open Government Law most probably will be the result. Public decisions are required by Section 3226 of the Government Code to be made in public.

6. Section 18001.5(b) of the Subdivision Law exempts parental subdivisions from the requirements of improvements of Chapter V of the law. It is obvious that it is the legislative intent that neither Chapter 5 nor Chapter 2, and 4 apply. While some parental subdivisions may be lot parcellings or agricultural subdivisions exempted by Section 18200 from the requirements of Chapter 2 and 5, some parental subdivisions will not be, and therefore clarification is needed. The same interpretation should be made for Section 18001.5(a) which exempts court distribution from the provisions of Chapter V.
7. Coordination between the courts and the territorial planner is necessary to insure that the requirements of section 18001.5(a) are complied with, so that the territorial planner can require street and utility easements and adequate lot size for judicial subdivision in estate administration.
8. The TPC and the SDRC have had problems in the past obtaining legal representation for consideration of all applications and coordination with other agencies. Executive Order 78-2 empowers SDRC to designate as ex-officio members other persons from governmental agencies or departments whom it determines should be involved in its activities. The Guam Gaming Commission is by law, composed of the attorney general as ex-officio member. Other Commissions also have the attorney general as ex-officio member by law. When designated as ex-officio member, the attorney general usually supplies an attorney to assume that position. It is suggested that SDRC designate the attorney general as an ex-officio member. Without legal representation, how will SDRC be able to effectively perform its function under Executive Order 78-2 to assist government

agencies in the establishment and adoption of policies, standards, rules, and regulations relating to land use?

9. Where restrictive covenants have existed which govern property owners' rights to develop their property, a subsequent zoning ordinance permitting a use prohibited by the restrictive covenant cannot abrogate and take precedence over the restrictive covenant. But where there is an absolute conflict between the restrictive covenant and the zoning law, for example where a lot is restricted to residential use and zoned for exclusive commercial use, the zoning law governs and the lot must be used for commercial use. Urban Planning, supra, page 308 and 309.

X

FACTUAL PROBLEMS AND SOLUTIONS

(1.) Enzo Ferrari comes before the TPC on his application for conditional use. Mr. Ferrari has a 5 year lease on 3 acres of property in a Commercial Zone. He desires to develop the property into a mini car race track. Applicant has filed with the TPC a site plan for the sewage facilities, access, parking, and structure location. The Director of the Department of Land Management had previously referred the conditional use application to the SDRC for review under the authority of Executive Order 78-2, paragraph 1 (a)(5)(b). The SDRC has considered the application and has made written findings and recommendations to the TPC. Among other things, the SDRC has found that the proposed development complies with the land use policies of Executive Order 78-37. The SDRC has questioned whether a conditional use is necessary and if it is necessary whether it is permissible. The SDRC has found the site plan to be satisfactory but has recommended that the TPC, as a condition to approval, require covenants to be noted on the site plan for grading, open space, landscaping, and noise control. Questions: 1. Is the proposed activity an

"amusement enterprise" which under Section 17106(a)(4) is always permissible in a commercial zone, thus requiring no approval of TPC? 2. If the proposed activity is similar to an "amusement enterprise" under the provisions of Section 17106(a)(13) should the TPC by resolution in writing approve the proposed activity as being similar to that specified permitted use? 3. Is the proposed activity a conditional use because it fits the category of "recreation, including amusement centers" set out in Section 17106(b)(4)?

Discussion, Solution, and Findings:

"Amusement enterprise" is not defined by Guam Law. In California an activity like mini car racing is considered an amusement enterprise. The TPC has in its rules and regulations for H Zone (Section II, Paragraph 1) defined the term "amusement activity" as "an indoor or outdoor facility operated for the amusement or entertainment to the public," but the TPC has never by regulation defined "amusement enterprise" for purposes of the zoning law. Because of noise generated by the cars and the patrons of a mini race car facility, it is logically that type of activity which should be a conditional use, however, it is questionable whether this activity is a conditional use under the law. A mini car race track is normally not thought of as being an "amusement center" requiring a conditional use permit. "Amusement Center" generally brings to mind an indoor activity such as game room. A drive-in theatre is listed as a conditional use. It is an outdoor activity. An indoor theatre is not listed as a conditional use. Can the TPC classify this outdoor activity as a conditional use?

Section 17106(b)(4) states that "recreation, including cockpits, marinas, amusement centers, and drive-in theatres are conditional uses in a Commercial Zone. The Attorney General has opined that the word "including" as set out in the Section 17501 of the Zoning Law does not limit the TPC to granting only the variances listed thereafter but should be interpreted to

mean including, but not limited to. In the case of the lists of permitted uses and conditional uses, the word "including" can likewise be so interpreted.

Section 17102 states in pertinent part: "In addition to permitted uses in each of the zones, specified uses will be permitted. . ." This limitation only applies to those uses listed which do not list a general activity and then proceed to give illustrative examples. In the problem presented, it does not limit the TPC's authority to determine that the proposed activity is best relegated to the category of "recreation" which is a conditional use rather than to the category of "amusement enterprise" which is a permitted use. The TPC should, therefore, find that the activity is a conditional use and either grant or deny the application. If the TPC grants the application, it should make the following findings:

1. That the site plan, including disposal of sewage, access, parking, and structure location is satisfactory to the commission.
2. That appropriate accompanying covenants have been required.
3. That the project as approved will not be detrimental to the public's health, safety, and welfare.

The Commission is not specifically required by law to make findings before granting a conditional use application, however, it is recommended. The requirement of Section 17102 that the site plan include accompanying covenants (that may include performance standards) appears to be mandatory. Thus the Commission must include covenants. The covenants may at the discretion of the TPC include performance standards. It is doubtful whether the TPC would not desire to require covenants including development and performance standards.

If the TPC denies the application, it should make one or more of the findings as illustrated below:

1. That the site plan is unsatisfactory to the Commission.
2. That the project as presented is detrimental to the public's health, safety, and general welfare.

(2.) Mr. Strangelove comes before the TPC on appeal of the decision of the building official that Mr. Strangelove's new "massage studio" is not qualified for an occupancy permit because it is located in a Commercial Zone and is not the type of establishment which is a permitted use in a Commercial Zone. The building official does not contend that the building is unsafe and has taken no action to declare the building unsafe. Mr. Strangelove's notice of appeal states as his ground of appeal that his studio is a personal service shop which is permitted in a Commercial Zone by Section 17106(a)(9) of the Government Code. At the hearing, the TPC is informed that the studio is just outside the seashore reserve, that it is just outside the Agana Bay redevelopment area, that it is not within a flood hazard area and that it complies with the provisions of Government Code Section 17203(b) regarding height limitations in beach areas. The building official appears at the hearing. Mr. Strangelove appears by Miss. Lee, his agent in writing. No proof is presented at the hearing that the business operated by Mr. Strangelove is anything other than a legitimate enterprise, however, the building official advises the Commission that he believes the studio is detrimental to the public's health and general welfare because he believes that it will be nothing more than a front for prostitution.

Discussion of Problem:

Section 17106(a)(9) permits "personal service shops, including barber shops, beauty parlors, laundromats, and the like". Section 17106(a) (13) gives the Commission the power to designate by resolution in writing that a massage studio is similar to a beauty parlor or barber shop and allow that use in a Commercial Zone. Since the legislature has not seen fit to list a massage studio as a conditional use, the TPC has no power to so categorize it. The TPC, therefore, is faced with the following alternatives:

1. Find that the massage studio is permitted in a Commercial Zone because it is a "personal service shop" which is "like" a beauty parlor, barber shop or laundromat, in which case the

TPC will rule in favor of the massage studio.

2. Find that the massage studio is "similar" to a personal service shop and adopt a resolution in writing to that effect, in which case the TPC will rule in favor of the massage studio.

3. Find that the massage studio is not permitted at all in a Commercial Zone.

If the TPC makes the latter determination, it has effectively denied a presumed legitimate business it's right to operate on Guam, since a massage studio does not fit into any other category of uses permitted in any other zone, with or without condition.

The Los Angeles County Zoning Ordinance has nine (9) types of Commercial Zones. Each of the nine types of Commercial Zones has approximately 50 or 60 listed uses which will be permitted, for a total of approximately 500 listed uses. Guam Law lists fifteen (15) permitted uses for Commercial Zones. Perhaps the legislature should expand that list of permitted uses, not only for Commercial Zones but for other zone classifications as well.

Donald Hagman in his legal treatise Urban Planning and Land Development Control Law at page 104 postulates that it is better to expand a list of permitted uses rather than to rely on a "similar uses" provision (such as Section 17106(a)(13) of the Government Code). The Los Angeles County Zoning Ordinance, referred to above, lists as the 62nd permitted use in a C-1, restricted business zone, "Turkish baths". If the legislature expands the lists of permitted uses, it should consider expanding the list of conditional uses so long as Guam continues to lack a restricted business zone. There are persons who feel that a massage studio, if permitted at all, should be permitted only in a restricted business zone or as a conditional use. If the legislature decides that the lists of permitted and conditional uses do not need legislative attention, then the legislature should empower the TPC to expand the list of conditional uses in each zone by resolution of the TPC in writing.

RECORD, FINDINGS, AND ORDER:

If the TPC finds that a massage studio is a permitted use, in ruling on the appeal the Commission must, to paraphrase Section 31068, Section 31001, and Section 31069, make within a reasonable time such written decision and order as shall promote the safety, health, and general welfare of the public.

The TPC can attach conditions to the conditional use permit. The TPC must keep a record of the proceedings, including but not limited to, a record of every tally vote. It is suggested that the vote be indicated by number of affirmative votes, number of negative votes, number of abstentions, and number of persons not voting.

(3.) Mr. Sand Mann is engaged in the home construction business in Guam. Mr. Mann owns a parcel of land in Ipan, which he registered in 1962 under the Guam Land Title Registration Act. At that time Mr. Mann's registration included a parcel of beach area including land which has now been reclaimed by the sea. Mr. Mann has extracted sand for use in his construction business from the inland side of the beach to such an extent that a hole in the beach six feet deep, ninety feet long, and fifty feet wide has been created.

The beach area on Mr. Mann's property is 100 feet wide from mean high water mark to the inland vegetation. The land is zoned A. The area of the excavation is on the beach but just inland from the boundary of the seashore reserve. The land is not within any area of particular concern. The building official originally issued a permit to Mr. Mann allowing the excavation. A member of the public traversing the beach came upon the excavation and complained to the building official. The building official contacted Mr. Mann and informed him that his permit to so use the property was "revoked" as being void because of violation of the zoning law. Mr. Mann then asked for a hearing with the building official to discuss the matter. The building official granted his request. Upon receiving notice of this controversy, the TPC

met and resolved to review the matter. The TPC issued an order abating the proceedings before the building official under the authority granted to the TPC by Section 31065 of the Government Code and scheduled a hearing to resolve the matter. At the hearing, the TPC determined that the activity conducted by Mr. Mann was of the type permitted in A Zone only under a conditional use permit. Since Mr. Mann had never applied for and received a conditional use permit, the TPC ordered that the present excavations be filled in by Mr. Mann within 30 days and if Mr. Mann failed to do so, the TPC ordered that the building official fill in the excavation and seek the assistance of the Attorney General to obtain from Mr. Mann reimbursement for the cost of remedying the violation. Mr. Mann is so miffed by the TPC action that he fills the hole with coral, pours a layer of concrete over the top, surrounds the area with a barbed wire fence, and positions his two doberman guard dogs within the fence. Persons using the beach are intimidated by the dogs and repulsed by the sight of Mr. Mann's obstruction of the beach.

Question: Shouldn't the area of the Seashore Reserve be expanded at least to pre-typhoon Pamela boundaries and shouldn't the exclusionery coverage of Government Code Section 17203 prohibiting construction of structures on beaches be expanded as well?

(4.) Mrs. Sablan is a poor widow who has eleven minor children, all of whom depend upon her for their support. At present she and her children live in a rented apartment paid for by public assistance. Mrs. Sablan has no other source of income. When Mr. Sablan died last year, his sole legacy to Mrs. Sablan was a quarter acre lot in Dededo adjoining Y-Seng Song road. The lot and the surrounding area is zoned R-1. A ravine caused by sinkholes splits the lot so that only 2000 square feet nearest the highway is usable for construction of a structure. Mrs. Sablan's uncle has a small vegetable farm and has encouraged Mrs. Sablan to construct a vegetable stand on her lot and sell his vegetables there so that she can support her children.

The plans for the proposed vegetable stand show that if the variance is granted, the yard and area requirements for commercial use can be met. Mrs. Sablan comes before the TPC on her application for variance to use the R-1 lot for commercial purposes. Notice of the application has been published in the Pacific Daily News. No objections from surrounding neighbors have been received. SDRC has reviewed the application and has recommended that the variance be granted with the following conditions:

1. That the variance be granted for a period of one year renewable for successive periods upon approval by the TPC of subsequent requests for review.

2. That if the variance is not utilized it will automatically terminate after a period of six months of nonuse.

3. That the roadside stand be operated only in daylight hours because lighting in the neighborhood is very bad.

4. That if the property is sold or otherwise alienated by Mrs. Sablan, then the variance will automatically expire.

When the application is considered by the TPC at its meeting, a spectator, Mr. Sour Apples, objects to the granting of the variance. Mr. Apples does not live in the neighborhood. He owns a fruit and vegetable stand on Marine Drive about one mile from the subject property. His objection is that the proposal is not in the public interest because Larry's Little Store sells fruits and vegetables and is located only two blocks from the subject property. Mrs. Sablan replies that Larry's sells only imported vegetables which are not of local freshness or quality and the prices of those vegetables are twice what she will be able to sell her vegetables for.

Discussion:

"The criteria for obtaining a variance are vigorous. If the courts really superintended their issuance, upwards of ninety percent of the variances granted would probably be found invalid. . . . Illegal issuance is a widespread phenomenon nationwide." Urban Planning, supra, page 197.

"Enabling acts and ordinances variously require that the variance cannot be issued if issuance would be contrary to the intent or spirit of the ordinance; or would have an adverse effect on the master plan. These provisions have the same or at least overlapping meanings, and may be little more than a restatement of the general rule that all zoning variances, as all aspects of zoning, must be in the public interest. Sometimes the public interest test is met by showing that the proposed use would be an advantage to the public, such as the availability of a shopping center in an area." Urban Planning, supra, page 198. "As a matter of practical variance administration, variances are seldom issued where a large number of neighbors appear and vigorously oppose the variance, though the number of protestors and the intensity of the objections should not dictate the results." Urban Planning, supra, page 198.

The test that the granting of the variance will not be injurious to the property in the same neighborhood "may not be met if the use causes depreciation of values in a neighborhood" or if "permitting a use generates an increase in traffic." Even where the statute does not provide that the Commission may grant the variance subject to appropriate conditions and safeguards, the power to condition variances may be implied. Urban Planning, supra, page 200.

"The condition applies to the property rather than the applicant, so that it would be improper to issue a variance on condition that the property remained owned by the applicant." Urban Planning, supra, page 200. As regards, the requirements of subsections (a) and (b) of Section 17502 that there must exist exceptional circumstances or conditions that do not generally apply to other property in the same zone and there must be found to be practical difficulties or unnecessary hardships related to the property it has been said: "The terms unique, special, exceptional, and extraordinary and the like suggest that a variance is proper only where the property is somehow different

from other property, particularly adjacent property. . . where the land is physically unique, the classic circumstances for a variance exist." Urban Planning, supra, page 201. "Suppose a property owner applies for a variance to make a commercial use of property zoned residential. . . if the land as zoned could still enjoy a reasonable return if put to a residential use, he may not have established unnecessary hardship." Urban Planning, supra, page 203. "Many enabling acts. . . provide for the issuance of a variance where there are pracitical difficulties as well as unecessary hardships. Most courts consider the terms to be interchangeable. . . The elements necessary to prove practical difficulty are not well defined, though the test is clearly less rigorous than the unnecessary hardship standard." Urban Planning, supra, page 205. "It may also be hardship to deny an old and poor widow the opportunity to run a neighborhood store from her home. . ." However, this kind of hardship is not usually held to entitle the owner to a variance; the hardship does not relate to the property. If there are several standards to be met, findings on each standard may be required, as in the case of variances. It is not generally sufficient to merely recite the standards. Thus, a decision granting a variance with findings stated as follows" "We find a hardship exists, that the granting of the variance is in harmony with ordinance and will not injure neighboring property--- is not a finding of sufficient specificity." Urban Planning, supra, page 225.

SOLUTION:

1. Decision: "Resolved that the Territorial Planning Commission grant a variance for lot number _____ Dededo, to allow the use of the property for fruit and vegetable retail sales in accordance with the sketch of the proposed project on file with the Commission, subject, however, to the following conditions:

1. This variance is granted for a period of 1 year from the effective date of this action. Subsequent application for extension of time will be considered by the TPC upon receipt of a written request for review and extension of time in a form satisfactory to the territorial planner.

2. If the variance is not utilized for any period of six months it shall automatically expire.

3. The activity authorized by this variance shall be conducted only during daylight hours.

2. FINDINGS:

"The Commission finds:

1. That the requirements of subsections (c) and (d) of Government Code Section 17502 are met for the reasons that:

   (a) The proposed use will provide the neighborhood with a needed source of fresh local produce and directly promote local business while indirectly promoting local agriculture.

   (b) The conditions imposed by the TPC effectively safeguard the public as a whole and the neighborhood in particular from injury by the use granted.

2. That the requirements of subsections (a) and (b) of Section 17502 are met because the physical characteristics of the subject lot do not generally apply to other lots in the same zone and the use of the subject property is practically difficult in that the land as zoned cannot provide its owner with a reasonable return.

(5.) Suppose that the master plan showed a proposed expansion of Y-Seng Song road to a width that would include part of the proposed vegetable stand. Public Law 12-90 enacted January 16th, 1974 added subsection 1800.1 to the subdivision law to provide that construction on land designated for future road purposes shall not be authorized. While that provision was placed in the subdivision law, it is clear from a reading of the entire section that it applies to any development of land, whether subdivision or not.

Does the TPC have the power to grant variances from this restriction

and if so, what are the applicable conditions for variances? As pointed out hereinbefore in this report, the TPC has broad powers to regulate land use so long as those powers are exercised in conformity with legislative intent. Variances to relieve hardship are necessary where a statute purports to reserve an area indefinitely for future highway expansion lest a court conclude that such reservation constitutes an unlawful taking. Urban Planning, supra, page 274.

The TPC has power to grant a variance from this restriction imposed by Section 18001.1. Are the requirements imposed by Section 18500 of the subdivision law the applicable requirements for the granting of the variance or are the provisions of Section 17502 regarding variances to the zoning law the applicable requirements?

The wording of Section 18500 is a problem in itself, but that section appears to give the TPC authority to grant variances to any provision of the law embodied in the subdivision law and not just to the regulations of the Commission which implement the law. The only real difference between the two sections as far as the facts which must be found to substantiate a variance is that zoning variances require a finding that the special circumstances affecting the property do not generally apply to other property in the same zone. So long as the Commission makes the findings required for a zone variance it can permit a variance to Section 1800.1, which requires no construction on areas reserved for highways and public use.

XI

RECOMMENDATIONS FOR TPC ACTION BY REGULATION:

The following recommendations are provided in addition to those pointed out hereinbefore by this report:

1. The TPC "policy statement" dated December 27, 1979, regarding political signs should be incorporated in a regulation.

2. Section 17150 of the Government Code which prescribes height limitations of structures does not indicate whether a basement is to be considered in counting the number of permissible stories that a structure may have, nor does it indicate the level from which the height limitations, measured in terms of feet, are to be measured. Regarding the latter, the TPC and TSPC may desire to provide that height is to be measured from the finished grade level rather that the original ground level. Equally permissible is a TSPC and TPC regulation providing that height be measured from the average grade level. Urban Planning, supra, page 111. The regulation should be equally applicable to measurement of the height of buildings which are within 75 feet of the mean high water mark under the provisions of Government Code Section 17203(b).

3. The TPC and TSPC may desire to adopt a regulation to the effect that where any law administered by the TPC or TSPC or any regulation of the TPC or TSPC requires that notice of a particular action or proposed action be "delivered" to a party or person, the word "delivered" shall mean mailed to the last known address of said person or personally delivered to said person.

4. The TPC should adopt regulations embodying their policy statements regarding reconsideration of disapproved applications requiring public hearing (August 23rd, 1979) and the use of the Paseo Loop Billboard. These policies affect individual substantive rights and should be promulgated by regulation after public hearing.

5. The TPC should adopt a regulation that when the TPC approves a variance for a substandard lot (area requirement) in an agricultural area, the territorial planner shall note on the subdivision map that further subdivision is prohibited.

6. The problem of monumental signs has been lessened, if not eliminated, by the Attorney General's opinion that the TPC can grant variances to the sign regulations of the zoning law. However, if it so desires, the TPC has the power to adopt monumental sign regulations. the TPC may want to consider using as a model the proposed monumental sign legislation which the TPC approved on August 15th, 1978.

7. The TPC should adopt a regulation regarding potential conflicts of interest of individual members in considering and taking action on applications. The provisions of Section 13414 of the Government Code which describe conflicts of interest procedures for TSPC members can be used as a model for a regulation applicable to TPC.

8. The TPC and TSPC should require by regulation that no application for land use shall be entertained unless the applicant is present, either in person or by his designated attorney-in-fact.

9. It is suggested that the TPC by regulation require that where the TPC approves subdivision plans for subdivision improvements subject to the conditions that other Government of Guam agencies examine the improvements, and approve them as having been constructed in accordance with the plans, the TPC require the subdivider to submit to the territorial planner an affidavit that the improvements have been completed according to the plans and according to the conditions imposed by TPC.

10. Under Section 17501(h) of the zoning law, the TPC may grant a variance for the purpose of permitting temporary buildings or uses for a period not to exceed two years in "undeveloped areas". At present, the term "undeveloped areas" is being interpreted to mean those areas zoned "A" on the 1966 master plan, however, because of the new land use area designations, the TPC may want to reconsider this question and adopt an appropriate regulation defining this term.

11. The TPC needs to adopt a regulation giving the power to the territorial planner in his discretion to require or to not require a public hearing in those cases in which a public hearing is not required by law as a condition precedent to consideration of an application by the TPC. (ex: conditional use applications)

12. The TPC needs to require that all applicants for variances for sub-standard lots provide, as part of the application, a map of the subject property showing the location of all structures on the property.

13. The law provides specific procedures in many cases for appeal of adverse decisions of the TPC to the Superior Court (Section 18503 for subdivisions, Section 17429 for junkyards, Section 17506 for zone variances, Section 17500 for decisions of the building official). No specific procedures exist for appeal of the denial of a zone change or a conditional use permit. The TPC may provide such procedures by regulation, if it desires to do so.

XII

OTHER RECOMMENDATIONS FOR LEGISLATION:

In addition to other recommendations for curative legislation heretofore examined, the following observations are offered for certain sections of the law that are in need of clarification:

1. Section 18200 of the Subdivision Law should be amended to read:

   "The requirements of Chapter II and Chapter V of this Title shall not apply to lot parcelling subdivisions and agricultural subdivisions, provided that where a reversion to acreage is made, the subdivider shall prepare a final map showing the existing subdivision and the original parcel or parcels which shall result from the reversion Upon approval of the map showing the reversion to acreage, the map may be completed and submitted as a record plot."

2. Section 18500 of the Subdivision Law should be amended to read:

   "The Commission, on its own initiative, or upon the petition of any subdivider stating fully the grounds of the application and all facts relied upon by the subdivider, may grant variances to

the provisions of this Title or to the regulations of the Commission. . ."

3. The legislature should amend Section 17429 of the Government Code relating to junkyards. That section provides that the TPC shall issue a permit for a junkyard if the TPC determines that the standards set forth by Section 17451 are met. The reference to Section 17451 is erroneous. It is Section 17426 which contains the improvement standards which must be met.

4. The legislature should give the TPC and TSPC the power to issue subpoenas and to compel the attendance of witnesses and the production of evidence at any hearing convened by the Commissions. GEPA has such power under Public Law 14-37 to enforce the solid waste management act. The Guam Contractors Licensing Board has such authority under its enabling legislation. Since the TPC and the TSPC have the authority to condition most of their decisions regarding land use, it is only logical to grant these agencies the means with which to follow up to insure compliance with the conditions and restrictions which they have imposed.

5. Section 17451 of the Government Code authorizes the building official to delegate the authority to issue building permits outside of the organized villages to the commissioners referred to in Title 26 of the Government Code. The question of whether a building permit is authorized by law to be issued in a particular area for a particular purpose should be decided by a professional employee of the government with experience and knowledge in this area. This provision allowing delegation of that authority should be deleted from the law.

Bill No.

Introduced by:

AN ACT TO ADD A NEW SECTION 17112 TO THE GOVERNMENT CODE OF GUAM TO PROVIDE FOR EXPANSION OF THE LIST OF PERMITTED AND CONDITIONAL USES AND TO PROVIDE FOR THE ESTABLISHMENT OF A RESTRICTED BUSINESS ZONE.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1.

A new Section 17112 is added to Chapter III, Title XVIII of the Government Code of Guam to read:

"The Territorial Planning Commission shall prepare a detailed plan for the expansion and clarification of the lists of permitted uses and conditional uses contained in Chapter III of Title XVIII of the Government Code of Guam. The Territorial Planning Commission shall prepare a detailed plan for the location of and regulation of a restricted business zone. After completion of the plans, the Commission shall hold at least one public hearing on the proposed plans. Following public hearing, the plans shall be transmitted to the Governor by the Territorial Planning Commission not later than June 1st, 1981, with a summary of public hearing testimony. Following approval by the Governor, the plans shall be submitted to the Guam Legislature for adoption."

Bill No.

Introduced by:

AN ACT TO AMEND THE DEFINITION OF THE SEASHORE RESERVE.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1.

Section 13412(c) of the Government Code of Guam is amended to read:

"(c) 'Seashore Reserve' means that land and water area of Guam extending seaward to the ten fathom contour, including all islands within the territory's jurisdiction and extending inland to such boundaries as are delineated on the official Seashore Reserve Map."

Bill No.

Introduced by:

AN ACT TO AMEND SECTION 13952 OF THE GOVERNMENT CODE RELATIVE TO GOVERNMENT SUBDIVISIONS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1.

Section 13952 of the Government Code is amended to read:

"The Director, with the approval of the Territorial Planning Commission, may designate and plan subdivisions in conformity with the provisions of Title XIX, Government Code of Guam, in, adjacent, or near any village. Prior to his adoption of a subdivision plan, the Director shall submit such plan to the Territorial Planning Commission for review as to its conformity with Title XIX of the Government Code and all other applicable land use laws and regulations. The Territorial Planning Commission shall issue a decision on the plan and the location of the subdivision within thirty (30) days after receipt of a proposed subdivision plan from the Director. If the Territorial Planning Commission approves the plan, it may do so in whole or in part. It may attach conditions, covenants, restrictions, and performance standards to its approval. The Territorial Planning Commission shall submit it's decision with respect to the subdivision to the Director for his action."

Bill No.

Introduced by:

AN ACT TO AMEND SECTION 13502 OF THE GOVERNMENT CODE RELATIVE TO DESIGNATION AND PLANNING OF SUBDIVISIONS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1.

Section 13502(e) of the Government Code of Guam is amended to read:

"The Commission with approval of the Territorial Planning Commission may designate for subdivision a parcel of land on available lands, adjacent to, or near any village. The Commission may prepare or cause to be prepared subdivision plans and may utilize for this purpose the assistance and cooperation of any agency, public or private. Prior to its adoption of a subdivision plan, the Commission shall submit such plan to the Territorial Planning Commission for review as to its conformity with Title XIX of the Government Code and all other applicable land use laws and regulations. The Territorial Planning Commission shall issue a decision on the plan and the location of the subdivision within thirty (30) days after receipt of a proposed subdivision plan from the Commission. If the Territorial Planning Commission approves the plan, it may do so in whole

or in part. It may attach conditions, covenants, restrictions, and performance standards to it's approval. The Territorial Planning Commission shall submit it's decision with respect to the subdivision to the Commission for action. Subdivision lots shall be leased in accordance with Section 13506."