

MECHANISMS FOR LAND-USE CONTROL ON GUAM

Prepared for:

Coastal Zone Management Division
Bureau of Planning

Prepared by:

Robert Gomez
CZM Planner
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December 1977

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BUREAU OF PLANNING
GOVERNMENT OF GUAM
P.O. BOX 2950
AGANA, GUAM 96910

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I. INTRODUCTORY STATEMENTS

A. Purpose

Guam's Coastal Zone Management Program operates within the framework of the Comprehensive Plan's land-use element which must include, among other things,

"...regulatory devices governing the use, development and subdivision of land;..."
(P.L. 12-200, Sect. 62020 A).

The review, analysis, and recommendation for land-use control mechanisms is a primary task for implementing the mandate of a comprehensive plan element and for establishing a supportive strategy for the Coastal Zone Management Program, (Element 200, 600, CZM Work Plan; CZM Act, Sect. 305 (b) 4 & 6).

The purpose of this report is to present a concise statement on the structure of major land-use controls on Guam as a means toward these ends.

B. Methodology and Scope

This analysis of land-use control mechanisms is based on a review of zoning law and major pieces of legislation establishing a system under which all development is supposedly regulated. Flow charts indicate the procedures required by permitting processes. Flow charts were verified by the agencies involved.

The identified problem areas and recommendations in this report, together with ongoing legal review and analysis will be discussed further with representatives of agencies involved as well as individuals in the federal and private sectors; the objective being streamlining, where feasible, the present system. The conclusions drawn from these discussions will identify priority areas to become a part of the 306 Management Program.

Note: "Land-use in this report is assumed to refer also to "water use" in certain obvious cases.

C. Organization of Report

This report is divided into four major sections:

- I. Introductory Statements
- II. Land-Use Control Mechanisms - Overview
- III. Guide to Flow Charts
- IV. APPENDICES
 - A. Permitting Flow Charts
 - B. Permit Forms and Schedules
 - C. Government of Guam Organizational Characteristics

II. LAND-USE CONTROL MECHANISMS - OVERVIEW

A. Basis

The approach to land-use control on Guam is based on the standard State Zoning Enabling Act (SZA) of the 1920's. Philosophically, the Act suggests a regulatory system by which the local legislative body adopts regulations specifying in advance detailed land development standards ranging from land use to building height, yards, and fencing requirements. A land owner need only to look at the zoning map and read the regulations to discover what can or cannot be done with property.

The Act presented expectations that a zoning ordinance "...would determine in advance how the community's land would be used and developed. The public debate and formal adoption of the ordinance would, as a result, minimize the need for discretionary judgments in its administration. Enforcement of the ordinance, mainly through the granting of a certificate of compliance, was left in the hands of a building inspector or other administrative official. Provisions were made for a Board of Adjustments to grant variances when unnecessary hardship was imposed. Amending initial ordinance adoption, would be a legislative act." (Meshenberg, Michael J., The Administration of Flexible Zoning Techniques, Planning Advisory Service, Report No. 318, ASPO, June, 1976, p. 3).

B. Statutory Enabling Legislation on Guam

Guam's regulatory system incorporates the mechanism suggested by SZA. The Zoning Law (Title XVIII of Government of Guam Civil Code*) is the basic enabling legislation. The law establishes the zoning maps (Sect. 17050). The Board of Adjustments for the zoning

*All titles, chapters and sections refer to the Civil Code of Guam, unless otherwise specified.

map is the Territorial Planning Commission (TPC) established by Section 13200. Supports for the Zoning Law are the Subdivision Law (Title XIX) and the Building Law (Title XXXII). Enforcement of these laws are in the hands of the Building Official of the Department of Public Works (Sect. 17450). In order to determine in advance how the island's land would be used and developed, Section 13002 calls for a "General Plan," called the "Master Plan," which requires compliance in land development (P.L. 12-90, Sect. 18001.1). All these laws consider Guam as a developing community.

To satisfy specific needs which required special attention, there have been amendments added to the above laws. To protect historic sites, P.L. 12-129 was enacted; Guam's parks are protected by P.L. 12-209. Both laws enables the Department of Parks and Recreation (DPR) to be the guardian of these areas. The Department of Agriculture (DAGRI) controls the land for agricultural use via P.L. 12-225 and Chapter VIII of Title XI (repealed by P.L. 12-226 but continued per Organic Act, Sect. 6) granting agricultural leases. Seashore development is regulated by the Seashore Protection Commission (SPC) with interim permits until a seashore plan is established (P.L. 12-108 and amended by P.L. 13-154).

Public Law 11-191 established the Guam Environmental Protection Agency (GEPA) and subsequently organized the environmental control mechanisms. These mechanisms consider water resources (Title LXI, Chapter II) with permits and licenses of wells; waste water (P.L. 3-109); water pollution (P.L. 3-109); and toilet facilities and sewage (P.L. 3-109) with permits for systems other than public sewage systems.

For areas and condition not suited to development on a lot by lot basis, the Planned Development (Planned Unit Development; PUD) concept is established by Section 17205. Land-Use Permits, another standard mechanism for flexibility within a control system, are granted by the Department of Land Management (DLM) for use by parties or individuals with a demonstrated need. (Title XIV, Chapter VII, repealed by P.L. 12-226, but continued by Section 6 of the Organic Act). The concepts of Parental and Agricultural Subdivision, Section 18001.5 (a) and (b) as amended, provide additional (and at times abused) flexibility.

C. Need for Change

The above land-use control mechanisms have reached a point where modification is necessary for an effective land and water use planning program.

- . A legislative finding indicates that a previous Master Plan has been altered to such degrees that the present zoning map bears little resemblance to the original plan.
- . Another finding indicated that "development has been haphazard and detrimental to the resources of Guam."

These findings, among others, have led the Legislature to pass P.L. 12-200 mandating a "Comprehensive Plan" for Guam which includes a land-use element. It is on the basis of this plan element that the Bureau of Planning (BP) is carrying out a review and suggesting changes in certain land and water use control mechanisms thereby encouraging a rational pattern of future growth.

Support for new approaches have come from a variety of sources:

- . Guam Society of Professional Engineers (GSPE) has established a 1977-78 forum "Building Codes and Regulations and Application to Guam" with the contention that the mechanisms do not provide sufficient guidelines to design building acceptable and/or suitable for Guam while builders claim to process for the present system adds unnecessary time and cost to development projects;
- . the Territorial Planning Commission as well as other regulatory agencies, have claimed that the construction of projects, such as the dog track on Hospital Road, constitutes a misuse of controls. While technically satisfying all legal conditions, the dog track, in the opinion of these groups, was not an appropriate use for the area. It is now under construction.

All these views are a repetition of criticisms of land-use mechanisms based on the SZEa.

"Critics charge that among other things;

- . controls can be misused to permit destruction of valuable and beautiful historical sites and resources and;

- . administration is weak, arbitrary, and sometimes corrupt; allegations of due process violations are common.

(Meshenberg, op. cit. p. 3)

While the above criticisms might not be applicable to Guam verbatim, they are applicable by interpretation. The controls have been used to allow a dog track to be built in a buffer area between residential, hospital educational, and commercial locales. A planned-unit development (housing units) was established a location adjacent to primary aircraft sound zones, on top of an aquifer recharge area, and which essentially ignored any consideration of visual impacts. These were not low-cost housing units. Another residential development was located in an areas detrimental to the location of a proposed historic park. This same development caused during grading phases the destrüction by sedimentation of a large portion of reef flat. A developer is presently attempting to expand an adjacent area with even less restraints than on the original project.

Other incidents give rise to rumors, which become accepted "facts" on island. Among the general criticisms the two mentioned were most applicable; that "administration is weak...", sometimes "arbitrary;" and "allegations of due process violations are common." While some controls are rigid and the mechanisms are followed literally to the point of decision, the decision does not necessarily follow a logical conclusion. The negative impact on resources result from the controls not bearing a strong relationship to rationally developed public policies and plans.

On conclusion developed by the Council of State Governments coincides with conclusions of the Bureau of Planning:

"The process needs remedial action. Consensus tends to prescribe making regulatory powers of local government more flexible and enacting a statutory framework for decision-making which would ensure a voice in development at a level concomitant with the level of impact..."

(The Council of State Governments, A Legislative's Guide to Land Management, December, 1974, Kentucky, p. 9).

The purpose of reviewing and modifying the land-use processes for Guam is to establish remedial action. There is a need to improve the statutory framework for decision-making which answers a voice

in development at a level concomitant with the level of impact. The framework should also make the regulatory powers of Government of Guam agencies more flexible within an arena of coordinating activities. The remedial action is to satisfy the need for a coordinated, cooperative and broad based approach with active public support. It is to establish ways to allow both public and private development to proceed efficiently and economically, but must not hamper decision-makers or regulatory agencies to strike whatever balance will achieve the greatest good when public and private ends are in conflict. The balancing mechanism, certainly not a new concept in land-use law, is particularly important on Guam. While the objective of modifying establish a more efficient regulatory system, there will still be many cases of a special nature which require application of more than the letter of the law. These include hardship cases, as well as reasonable variances for needed projects faced with unique difficulties.

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