CHAPTER 36

DEVELOPMENT PERMITTING; APPLYING PERFORMANCE STANDARDS; AND ENFORCEMENT

36. 1. INTRODUCTION

36. 1. 1. Introduction

In this chapter, we discuss *regulating development* or the applying of legal controls to certain developments and activities. Developments regulated, for the most part, include landscape changes, building construction, and infrastructure use and improvements. Activities regulated include land and other resource uses, extractions, and harvests.

Usage rules for land and coastal waters usually result from comprehensive planning efforts. Our last chapter discussed several of these. The planners made certain recommendations and in some cases, these were placed into our laws and regulations.

36. 1. 2. Our Fundamental Environmental Rights

Our Commonwealth's development regulatory schemes generally flow from the fusion of our communities' social and economic goals and our conservation desires. A common goal of many of our communities, as discussed in the last chapter, is *sustainable development*.

The foundation of many environmental laws and regulations also results from our identified *human environmental rights*.

Here in the Commonwealth, we established our basic environmental rights into our highest law, the CNMI Constitution.

The *Constitution of the Northern Mariana Islands* states, in Article I, Section 9, that **each person has the right to a clean and healthful public environment**.

To preserve this right, our constitution describes the powers and limitations of our three branches of government. It also provides for the management and disposition of our submerged and upland public lands.

Article III, Section 1 provides,

> "The executive power of the Commonwealth shall be vested in a governor who shall be responsible for the faithful execution of the laws."

A common goal of many of our communities is sustainable development.

The *Official Analysis of the Constitution* clarifies the extent of this "executive power". This analysis states that it "...includes the power to promulgate executive orders, rules and regulations."

Article III, Section 14 contains the second constitutional provision from which the executive authority derives. It reads:

> "Each principal department shall be under the supervision of the governor and, unless otherwise provided by law, shall be headed by a single executive. The governor shall appoint the heads of executive departments, with the advice and consent of the senate. The governor may remove the heads of executive departments."

The CNMI Constitution also contains the following article that also establishes certain environmental rights for our people:

> ARTICLE XIV: NATURAL RESOURCES
> Section 1. Marine Resources. The marine resources in waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction under United States law shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.

Under their enabling laws, Commonwealth agencies are mandated to ensure these rights.

Our developers, most often, are private entities.

36. 2. WHO ARE OUR DEVELOPERS?

36. 2. 1. Our Developers

Our developers, most often, are *private entities* – meaning persons or legally established corporations. These entities hope to benefit from a land or ocean resource development project. Investors in private development projects seek a monetary profit from their investment.

Other private entities gain their principal employment from our private developments. These include our real estate brokers, engineering and architectural firms, construction companies, landscapers, and property managers. These original investment dollars help drive our Commonwealth's economy through payrolls, taxes, purchases, etc.

Several CNMI government agencies are also our developers, including the Commonwealth Utilities Corporation.

Historically, many of the financial resources for our private investment developments have come from foreign corporations. Most of these have their base of operations in Asia – Japan, Korea, China, and the Philippines. Several multinational hotel and restaurant chains have invested here as well.

Several CNMI government agencies are also *our developers*. These include our Department of Public Works, our Commonwealth Utilities Corporation, our Commonwealth Ports Authority, our Marianas Housing Authority, our Commonwealth Development Authority, our Public Schools System, and our various municipality agencies.

These agencies work to construct our needed facilities and resolve other infrastructure difficulties to better meet the public demand. Some infrastructure difficulties include problems with utilities

(power, water, and sewer), roads, drainage systems, ports, and hospital and school facilities.

These public developments also help drive our economy. They commonly support the private sector through employment of numerous workers, procurement of the services of professional firms, and the purchase of materials. They also provide direct jobs for government employees. Yes, our government employees also have to pay taxes!

36. 3. OUR DEVELOPMENT REGULATORY AUTHORITIES

36. 3. 1. Executive Branch Organization Act of 1978

Public Law 1-8 is our Executive Branch Organization Act of 1978. This Act established the executive offices of our Commonwealth's government. It provided for staff and assistants as may be required to carry out their functions and responsibilities.

This Act reaffirmed the powers and duties of each office described in the CNMI Constitution. It assigned additional responsibilities to those entities. It also established and described the functions of other executive agencies.

The Act established separate administrative provisions to govern appointments to departments, boards, and commissions. It reinforced the constitutional provision empowering our Governor to remove appointees.

Included in this enabling act were the original mandates for our Departments of Commerce and Labor, Public Works, Public Health, Public Schools, and Natural Resources.

As the years have passed, their authorities and responsibilities have became more refined. Some executive branch agencies have since been subdivided. At the time of this book's writing we now have separate departments for Labor and Commerce. Also the provision of electric and water utilities was separated from Public Works as the Commonwealth Utilities Corporation. Some agencies have even been combined with other agencies. For example the jurisdictions of Labor and Immigration were united.

CRM has an active monitoring and enforcement section.

36. 3. 2. Our Coastal Resources Management Program (CRMP) Enabling Act and Promulgated Regulations

Public Law 3-47 is our Coastal Resources Management Act. It was established to coordinate island development management under one umbrella. It specifies policies and rules which regulate activities that have the potential to affect our island's resources. These resources are broadly defined and include marine waters and resources, groundwater, wetlands, watersheds, and certain designated Areas of Particular Concern (APC's).

Under P. L. 3-47, CRM created regulations that established a *resource-use permitting* process. It set standards and procedures for reviewing permit applications. It included a procedure for conflict resolution. It also defined penalties for program violations.

CRM has an active monitoring and enforcement section. CRM enforcement officers ensure *compliance* with the CRM statute and

The Shoreline APC includes the area between the water line and 150 feet inland.

The Lagoon and Reef APC includes the area extending seaward from the water line to the outer slope of the reef and extends 12 miles distance from our shores.

regulations as well as compliance with conditions in permits for developments. The enforcement program also regulates activities within the CRM APC's (see below). As we can see, c*ompliance* is a key word for resource management. It doesn't make any sense to develop laws and rules if they are not enforced and if people do not *comply* with them.

To insure this compliance, the Administrator of the Coastal Resources Management Office can apply severe sanctions for violations of the Coastal Resources Management Act. CRM may impose administrative penalties including **fines** not to exceed $10,000 per day. The Director can also issue **cease and desist orders**. These orders mandate that no further activity occur until an issue is settled or a fine is paid.

In addition, the Commonwealth, through its court system, may impose punitive damages and criminal penalties. For criminal violations of the Act it may impose fines of not more than $2,000 or imprisonment of up to five years in jail, or both.

CRM regulates all large-scale developments wherever they occur in the CNMI. These are called **major sitings** and are discussed in more detail below.

CRM also regulates all activities occurring within in its designated Areas of Particular Concern (APC's). At the time of this book's writing there were five APCs: **shoreline**, **lagoon and reef**, **wetlands and mangrove**, **port and industrial**, and **coastal hazards.**

The *Shoreline APC* includes the area between the water line and 150 feet inland.

The *Lagoon and Reef APC* includes the area extending seaward from the water line to the outer slope of the reef and extends 12 miles distance from our shores.

The *Wetlands and Mangrove APC* includes those areas permanently or periodically covered with water, within which can be found species of wetland or mangrove vegetation.

The *Port and Industrial APC* includes those land and water areas surrounding the commercial ports of Saipan, Tinian, and Rota.

The *Coastal Hazards APC* was the most recently established CRM APC, promulgated in 1996. It includes special protective measures to insure against wave and flooding hazards to our nearshore developments.

Both the CRM permitting and enforcement processes are discussed in more detail below.

36. 3. 3. Our Division of Environmental Quality's Enabling Law and Regulations

The Commonwealth Environmental Protection Act empowers the Director of the Division of Environmental Quality (DEQ) "to develop and administer programs, including, where appropriate, a system of standards, permits, or prohibitions, to prevent or regu-

late activities concerning the discharge of pollutants to the air, land, water, wetlands, and submerged lands."

The DEQ Director is authorized to issue orders that require a person or firm to *cease and desist activities*. The Director can also issue an order to *mitigate* an action, by either reversing or reducing any significant adverse effect of a violation of a law or regulation.

The Commonwealth, through the Office of the Attorney General, may also file a civil action in its courts. This action may be to invoke any appropriate remedy, including restraining orders and injunctions, to enforce the CNMI Environmental Protection Act and any Division of Environmental Quality order.

DEQ also has the enforcement tools of civil fines of up to $1,000 per day, and criminal penalties of fines up to $50,000 and/or one year imprisonment. All these remedies can be **concurrent** and **cumulative**.

Additional DEQ Statutory and Regulatory Authorities;
CNMI Groundwater Management and Protection Act.
CNMI Litter Control Act.
DEQ Earthmoving and Erosion Control Regulations.
DEQ Individual Wastewater Disposal Systems Regulations.
DEQ Well Drilling Regulations.
DEQ Hazardous Waste Management Regulations.
DEQ Pesticide Regulations.
DEQ Air Pollution Control Regulations.
DEQ Drinking Water Regulations.
DEQ Underground Injection Control Regulations.
DEQ Litter Control Regulations.
DEQ Underground Storage Regulations.
DEQ Above Ground Storage Regulations.
CNMI Water Quality Standards.

The Port and Industrial APC includes those land and water areas surrounding the commercial ports of Saipan, Tinian, and Rota.

36. 3. 4. Our Forestry Program: Forestry Permits

The Forestry Section within our Division of Plant Industry manages our Commonwealth forests. It has permitting authority over the cutting of trees on all CNMI public lands. The Forestry Section also sponsors our annual CNMI Arbor Day celebration (recently extended to Arbor Week or Arbor Month).

Arbor Day has both a public education function — on the nature and value of trees — as well as serving as a focal point in time for us to plant trees and shrubs around our schools, homes, parks, and businesses.

Unlike most of the United States, we celebrate Arbor Day in the late Summer/early Fall instead of the Spring. This is to coincide with our tropical rainy season.

The Coastal Hazards APC includes special protective measures to insure against wave and flooding hazards to our nearshore developments.

36. 3. 5. Our Division of Fish and Wildlife; DFW Permits

The Division of Fish and Wildlife receives its regulatory authority under Public Law 2-51. This enabling law, along with the DFW Regulations, grants permitting authority to the Director of DFW to regulate fish and wildlife activities on the lands and in the territorial seas of our Commonwealth.

Scientific research is also coordinated under a scientific research permit program. DFW enforces Commonwealth laws that protect CNMI-listed endangered species. The DFW Director and staff cooperate with federal authorities where their jurisdictional authorities overlap.

36. 3. 6. Our CNMI Zoning Program

Public Law 6-36, the Zoning Enabling Act, created the CNMI Zoning Program. It was later amended by P. L. 7-41, and by P. L. 8-10. In 1993, Saipan Local Law 8-7, based on *performance zoning principles*, enacted a set of zoning regulations, a comprehensive land use plan, and a zoning map.

Saipan Local Law 94-1 then suspended Saipan Local Law 8-7. Before its suspension, the Zoning Office administered and enforced a zoning program for the island of Saipan. The law only lasted for a brief period of about one year before being suspended.

At the time of this book's writing, actions to re-enact zoning for Saipan are presently being initiated.

36. 4. PERMITS

36. 4. 1. Introduction

Experience has shown that many land and ocean resource developments can have negative impacts which require government intervention.

Under our CRM program, major siting projects are often required to develop several specific resource management plans.

Experience and judicial opinions also confirm that our communities can legally have *rules* and *performance standards* which can be applied to such developments. This is done through the above-mentioned permitting programs.

36. 4. 2. What are Permits?

Using the word "permit" can be a bit confusing. This is especially so when we combine the words "regulate" and "permit".

The English word "permit" comes from an old Roman word '*permittere*' which was like a pass or a document. It allowed one to cross old Roman territorial boundaries (*per-* through, *mittere* -to send, let go). It is the root of the English word "permission." (History buffs will recall that Ancient Rome once controlled Southern England for a time).

When regulatory laws require a permit, it is because this is a manner of controlling an activity that is *easy to enforce*. Other ways of regulating often involve the need to gather much evidence of resource impacts.

Evidence might be needed to show responsibility for resource depletion or pollution, intentional wrongdoing, negligence, and the varying degrees and extent of environmental damage. An economic valuation of the resource damaged or lost might be required.

These are often difficult to entirely prove, and often result in long court battles with unsure outcomes. Permit regulations are much easier to enforce. Either one has a permit to do what they are doing, or they do not. Pure and simple.

36. 4. 3. Limited Entry; Limiting the Number of Permits

Resource management agencies often place limits on the number of permits issued per activity. For example, limiting commercial fishing permits is a way of ensuring that enough fish survive to spawn future generations.

On Saipan, the number of water craft permits is similarly controlled. This helps to manage lagoon use conflicts. CRM places numerical limits on jet ski, parasailing, and "banana" boat permits.

36. 4. 4. Permit Conditions

One of the most powerful aspects of permitting programs is that regulators can add carefully written **permit conditions** when allowing an activity to occur. They can also require that the activity be done according to the latest technical and scientific methods.

A permit can require a developer to monitor and regularly report on key aspects of an environmental feature or cultural resource which might greatly concern an agency official.

Historic preservation conditions, for example, require developers to *halt* construction if land clearing actions unearth important historic resources. A period of time is then required to be available for HPO to assess and properly manage these cultural resources. (See our next chapter for more on historic resource protection).

As another example, environmental quality conditions mandate golf courses to monitor and regularly report the conditions of the groundwater below the fairways and around the greens. This is to ensure against groundwater contamination from overuse of pesticides and fertilizers.

CRM places numerical limits on jet ski, parasailing, and "banana" boat permits.

36. 4. 5. Commonly Required Project-specific Mitigation Plans

Under our CRM program, major siting projects are often required to develop and implement several specific resource management plans. These plans are designed to minimize or mitigate existing and potential resource impacts.

The following plans are commonly required, depending upon the nature of the project:

1. a utilities plan
2. a stormwater management plan
3. an earthmoving and erosion control plan
4. a brown treesnake prevention plan
5. a public access plan
6. a reverse osmosis brine disposal plan
7. a human resource development plan
8. a groundwater management plan
9. a golf course management plan
10. a habitat conservation plan
11. a wetlands mitigation plan
12. an archeological resource recovery plan

In most cases, these plans are submitted as part of the permit's application package. If they are not, the CRM agency directors often condition the CRM permit to require these plans be submitted and approved before construction begins.

Each developer, private or public, is responsible for carrying out the plans they obtain approval for. The CRM enforcement section provides permit compliance oversight.

36. 5. PERFORMANCE STANDARDS OR "STANDARDS OF PERFORMANCE"

36. 5. 1. Introduction

How much development is too much? What is the best acceptable amount? How high of an amount of noise, water, and air pollution is acceptable? What infrastructure amenities, if any, should developers provide?

The answers to these questions vary. They vary with the type of development as well as with the type and degree of noise or pollutant involved.

Land developments and building construction usually increase the *amount of use* on a property. This increased intensity of use is intended to bring in *more* customers, *more* tenants, and *more* tourists.

How much development is too much?

Developers view this increased use as economically necessary to pay for the costs of their development, to cover its operating costs, and to provide each investor with a profit.

36. 5. 2. The Reasons for Standards

The increased use of one's property often has impacts on *adjacent properties*.

For instance, if a new development has a high demand for power consumption, and if the power generation ability of the utility is limited, nearby properties may suffer either power outages, lowered voltages, or both. Increased water consumption causes similar off-property impacts.

A requirement by a community that a development not have too great an impact on adjacent properties, is referred to as a **standard**. Standards can require properly controlled noise, lighting, and controlled road access, along with adequate drainage, sewage, and parking facilities.

Eventually these standards have developed into *performance numbers*. Architects and engineers must use these numbers when planning a development to meet the community's desires. In each of the categories below, community standards were established for various types of construction.

36. 5. 3. Flexible or *Performance* Standards

Sometimes standards can be somewhat flexible. For example, a building that is shorter than standard height might be allowed to cover more of a lot area.

Often, planners use variable *open land space* and *setback requirements* to allow for more flexibility in construction. The more setback and open land space a developer maintains, the taller the building that is allowed.

Features such as a high degree of landscaping, *pervious parking*, and rainwater collection and storage systems can also offset **nuisance** effects to neighboring properties. Pervious parking is a parking design that includes cement and asphalt to support vehicles but also uses grassy areas with non-calcareous sand beneath it to allow water to drain through it. Unfortunately calcareous sand (our most common local type) cements together and is not suited for this type of use.

36. 6. SOME CATEGORIES OF PERMIT STANDARDS

36. 6. 1. Parking Standards

Off-property parking is an impact many businesses have experienced. For example customers going to a restaurant, if allowed, will use a neighboring property's parking spaces whenever the restaurant's own parking area is full.

Off-property parking is an impact many businesses have experienced.

The space taken then limits and often completely blocks out the adjacent store's customers. This obviously could decrease the adjacent store owner's business.

During between-meal times, the situation might be reversed. Then, the restaurant's parking area might be used by the adjacent store's customers.

How many parking spaces should the restaurant owner provide? How many should the store owner provide?

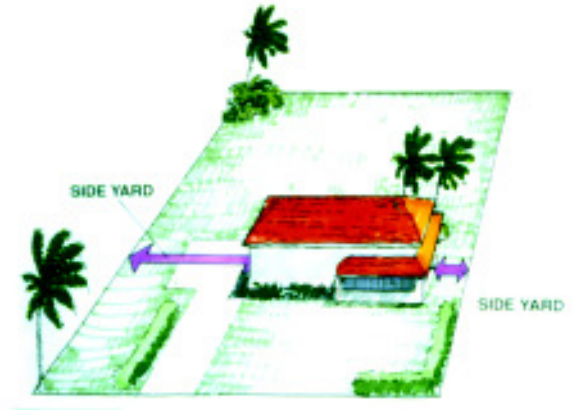
36. 6. 2. Setback Standards

Commercial building owners receive their income by renting floor space to other businesses. Outside building property space, not enclosed by the building's walls, is not usually rented.

This outside building space is easily conceived as a loss of potential income. If allowed, many commercial building owners opt to build their buildings right to the edge of their property. This maximizes their rentable floor area.

When buildings are constructed to the very edges of property lines, neighboring buildings have no space between them. In urban settings, this can be a serious fire hazard. If one building catches fire, fire fighters have no between-building room to maneuver and work to fight the fire.

Uncontrolled fires easily spread through an urban area from building to building. Unfortunately, the lesson to mandate a *sideyard setback*, or a required open space between building edges, sometimes has to be learned the hard way.



Setback standards stipulate that there be a given distance between the property line and a structure.

Many large cities, including London, Chicago, San Francisco, and several others in Asia, have suffered huge city-wide fires.

36. 6. 3. Height Standards

Another way developers can increase their income from a property is by erecting multi-story buildings. Usually, people's unwillingness to climb many sets of stairs limits this to two stories, unless the owner provides elevators.

Recent laws mandate increasing the accessibility of buildings to persons with disabilities.

The tallest building on Saipan, built in 1998, is the 18-story Hafa Adai Beach hotel.

Recent laws mandate increasing the *accessibility* of buildings to persons with *disabilities*. This has also stimulated the use of elevators.

Multi-story dwellings are common for hotels and condominiums. Building owners sell the *views* as part of the tourist or condominium-living experience. View-selling buildings are often concentrated along coastal seashores.

If unregulated, multi-story buildings along coastlines can quickly block the public's enjoyment of our natural coastal views. Traditional access routes to our shorelines could be completely blocked. CRM currently regulates multi-story buildings by mandating extra tall buildings to provide *view corridors* along with other coastal view and coastal access protective requirements.

Interestingly, the standard for building height in the US Territory of American Samoa, at the time of this book's writing, is the height of the island's tallest tree. American Samoa's tallest hotel is three stories.

The tallest building on Saipan, in 2006, is the 18-story Hafa Adai Beach hotel. A plan for a 21-story building once received a CRM permit but was never built. (See our discussion on building height, energy, and safety in our last chapter, Ch. 42.)

36. 6. 4. Unit and Lot Density, and Open Space Percentage Standards

Unit Density Standards
Increasing density within one's building unit is another common method to maximize income from a property's development.

Imagine constructing a 1000-square-foot commercial building.

One could have one big room with 1000 square feet in it. However, one could instead have two rooms with 500 square feet each (with some of the floor area taken up by the width of the partition), or four rooms of 250 square feet. The number of units within a building is the commercial *unit density ratio*.

Lot Coverage Standards
Lot coverage ratio is another type of density standard. (Land which one owns is often referred to as their *property lot).* If a company has a 10,000-square-foot relatively flat area of land, it might opt to have two 5,000-square-foot buildings on it. Or, it may opt to have four buildings of 2,500 square feet each. If there were setbacks between the buildings, then the *buildable area* is less than this area would be with no setbacks.

However, if the use of the buildings is for a tourist resort hotel, there would likely be landscaped lawns, shrubs, pools, tennis courts, etc., included in its design. These features add *amenities* which attract recreation-oriented tourists.

Open Space Percentage Standards
Open space refers to areas of properties that do not have buildings on them. Communities often require that different types of devel-

opments include *percentage ratios of open spaces* to their lot developments. Examples include grassed lawn areas and landscaped sites. In certain cases even tennis courts and outdoor patio areas might be categorized as 'open space'. However, parking areas, in most cases, are not accepted as open space.

36. 6. 5. Groundwater Protection Standards

Restrictions on a property's unit densities, lot coverage, and open space percentages are often established as a protection for an area's groundwater. If an area is unsewered, often there are restrictions on the number of building or units allowed on each lot. This is done as a control on the amount of septic system sewage that is allowed to enter the groundwater.

Bacterial infections and an excess-nutrient-caused disease, **methemoglobinema**, are of great concern to public health officials. This is especially so in unsewered areas where potentially polluted groundwater is the main source of drinking water.

Subdivision Regulations

In many counties and cities of the world, subdivision regulations set a limit on how small a lot area can be divided. If there are too many houses built over an underground aquifer, each with its own septic system instead of a municipal sewer, the danger of groundwater contamination is very real.

Here in the CNMI, however, many people feel that our cultural tradition of receiving *buildable property* from our parents is an inherent "legal right." By tradition our elderly persons who own land have subdivided their land and given it to their children as their inheritance. Their grandparents did this; their parents did this.

As our populations grow however, and our once large tracts of land are subdivided, the size of each lot gets smaller and smaller. This means that many more people are living on an area of land that used to have far fewer.

The increased density of homes, each discharging its sewage into the ground, presents an increased likelihood that the groundwater will become contaminated. Natural water cleansing processes can only clean so much.

Protecting the groundwater by applying subdivision regulations was an important but controversial aspect of Saipan's now-suspended zoning law. This controversy is easy to understand. It is as though we have to make a choice of whether to preserve our environment or our traditional way of life. In the not-too-distant future, however, we will not have a choice. We may well also regret that we did not take appropriate protective action earlier.

The size of our land does not grow. With each generation our population grows. As our population grows, the time will soon come when, without subdivision regulations, our children's children will be inheriting an *unbuildable lot*. This is not only because they would be on too small an area to support a house. It would also be due to the fact that the accumulation of sewage from our present day homes and buildings had caused irreparable damage to our islands' groundwater.

Open space refers to areas of properties that do not have buildings on them.

The increased density of homes, each discharging its sewage into the ground, presents an increased likelihood that our groundwater will become contaminated.

How big or how outlandish a sign may be is a matter of individual judgment.

Uncontrolled lighting can have adverse spill-over effects, and can cause a nuisance to neighboring property owners.

The Benefits and Costs of Sewer Infrastructure
You may have already concluded that sewered areas can allow for a greater lot coverage and unit density. They do. Sewers protect groundwater.

Sewers can, however, also decrease **groundwater recharge**. They do this by diverting pumped water, used in sewer lines, away from an aquifer. Both groundwater availability and groundwater quality limit our islands' overall development potential.

36. 6. 6. Commercial Signs and Lighting Standards

Communities vary a great deal in their levels of tolerance for commercial signs. Most businesses advertise by several means. One of these is the construction of one or more physical signs to indicate the business's location.

How *big* or how *outlandish* a sign may be is a matter of individual judgment. Some businesses use huge signs as a sort of a business trademark. Others have flashing neon signs or signs that revolve in the wind. Some even have signs with music and audio messages coming from them.

At the time of this book's writing, there are even signs in the CNMI depicting nude people. These advertise nightclubs, restaurants, and massage parlors. The great majority of US communities forbid such signs.

Many local signs appealing to tourists are in languages other than English. The resident public has little understanding of what is actually being expressed by these. This can also become confusing to public health and public safety officials in their efforts to apply business-specific regulations, such as restaurant inspections.

Billboards
Several **billboards** are now located around our islands. These are usually very large signs located away from a commercial building. In many tropical places, billboards are outlawed. This is the case in the US State of Hawaii, as a result of a coordinated "No Billboards Hawaii," community action campaign. (Chapter 264.71-79 Hawaii Revised Statutes.) The US Supreme Court has affirmed that it is a community's right to regulate signs for aesthetic purposes.

The Saipan Zoning Law had a provision banning *off-site* signs completely, excepting signs erected by government agencies and temporary political campaign signs. The suspension of this law resulted in the reappearance of billboards around our islands.

Lighting
Uncontrolled lighting can have adverse spill-over effects, and can cause a *nuisance* to neighboring property owners. The word nuisance derives from a Latin word meaning *to harm*.

Excessive lighting can also adversely affect wildlife. Sea turtles, for instance, will not nest on beaches that are brightly lit. Moreover, sea turtle hatchlings become confused by shoreline lights. They move inland towards the lights, instead of out towards the moon and starlit sea.

36. 6. 7. Landscaping Standards

Architects and planners find that the degree to which a development uses landscaping to *buffer* it from neighboring properties often determines whether a community accepts or rejects the development.

Architects often include images of trees, shrubs, and lawnscapes to portray their construction designs to potential investors and to government officials. (See chapter 41 on Community Aesthetics, Building Design, and Landscaping.)

Architects and planners use landscaping to buffer their developments from neighboring properties.

36. 7. OUR CRM MAJOR SITING PERMITTING PROCESS

36. 7. 1. Types of CRM Permits

As mentioned, (Section 36. 3. 2) our CRM Program issues two (2) types of permits. These are the major siting permit and the APC minor permit.

36. 7. 2. Major Siting Permits

Individual projects or projects which, taken together, place excessive strain on our infrastructure are major sitings. Major sitings also include projects that create potential threats to our coastal resources.

The CRM agencies (HPO, DEQ, CUC, Public Works, DLNR, and Commerce) adopted guidelines for determining whether a project constitutes a major siting. They based these guidelines mostly on a project's size and its potential impact upon our infrastructure. They did this to promote public awareness of CRM's major siting jurisdiction. They also did it to ensure the consistent application of relevant regulations.

A major siting permit is required for any project that has the potential to affect coastal resources directly and significantly. Major siting permits are usually issued for our large commercial buildings, resorts, and golf courses.

A major siting permit is required for any project that has the potential to affect coastal resources directly and significantly.

They are also issued for infrastructure projects such as our water, power, and sewer projects. Additionally, major siting permits are issued for homestead subdivisions, major harbor improvements, and projects whose *water* or *power demands* meet the *criteria* established for a major siting. This criteria is 3,500 gallons of water per day or 500 kilowatt hours of electricity per day.

The following projects also need a major siting permit:

Major road construction;
Installation of traffic lights;
Major highway repairs;
Dredging activities (such as the Saipan Harbor improvement project and the Rota West Harbor project); and
The placement and replacement of sewer lines.

In addition to the above, the CRM Board of Agency Directors can, by consensus, deem any project a major siting if they believe it to have the potential to significantly affect our coastal resources.

A major siting permit is valid only if the CRM Administrator and its six (6) Board members sign it. A minor permit is valid with just the CRM Administrator's signature. All major siting permits are issued with conditions addressing any concerns of the Board members.

These CRM Board members include the Directors of the Commonwealth Utilities Corporation (CUC), the Department of Commerce (DOC), the Division of Environmental Quality (DEQ), the Department of Public Works (DPW), the Department of Lands and Natural Resources (DLNR), and the Historic Preservation Office (HPO).

The CUC concerns itself with the infrastructure demand of a project. The agency wants to be certain there is enough water and power to supply the community as well as the proposed development. It also wants to be sure that its sewerline would be able to accommodate the additional sewage flow.

The DOC mainly examines employment opportunities for island citizens, and the financial capability of the project.

If a proposed project meets the CRM major siting criteria, a pre-application meeting is often held.

The DEQ incorporates conditions regarding air and water quality, erosion control, noise pollution, hazardous materials, well drilling, and waste water disposal systems.

The DPW is concerned with building safety codes, traffic circulation, stormwater drainage, and other physical conditions at the project site.

The DLNR is concerned with the preservation of our fish and wildlife species, the protection/mitigation of their habitats, and the prevention of brown treesnakes from entering the CNMI.

The HPO is concerned with the protection of archeological artifacts and deposits, and historic sites and structures. All major siting projects are required to have their project site surveyed by an archeologist before any earthmoving activities start.

36. 7. 3. The Pre-application Meeting

If a proposed project meets the CRM major siting criteria, a pre-application meeting is often held. The meeting includes the applicant, the CRM staff, and sometimes the CRM Board of Directors or members of their technical staff.

This meeting allows the applicant to informally present the proposed project to CRM staff and the CRM Board of Directors. It also allows CRM staff to brief the applicant on permitting procedures.

One of the goals of the pre-application conference is for the CRM staff and the representatives of the CRM Board Agencies to discuss ways in which the project might be modified so as to meet all of the applicable CRM regulations.

The applicant is additionally informed of known or potential environmental impact concerns. Impacts to physical infrastructure elements, such as power, water, sewer, roads, solid waste, schools, hospitals, and port facilities, are also reviewed at this meeting. The applicant's need to mitigate these impacts is discussed as well.

The pre-application meeting is intended to ensure that when the project is ultimately submitted for review, the project will be designed to conform to CRM regulations, including height, setback, density, parking and other standards.

During pre-application meetings, property developers often learn more about the actual costs involved with modern developments. They can ascertain more realistic timeframes for required plan preparations and review periods. In the world of real estate development, the old financial adage of "time is money" is very true.

Open and frank pre-application meetings also serve to discourage inappropriate developments from ever applying for major siting permits.

The reason is simple. If a major siting project would most likely not receive a permit, regardless of how much mitigation is proposed, why would anyone waste their time and pay the permit processing fee for a CRM program review and decision?

This is one reason why such a high percentage of CRM-reviewed projects are approved. Projects which clearly would not be approved are, through informal pre-application meetings, discouraged from ever applying.

36. 7. 4. Application Documents, Fees, and Public Announcements

Applications for CRM permits, and all important actions regarding CRM permits, are regularly announced in our local media.

Major siting projects are required to develop environmental impact assessments (EIA's) with their project's application. Environmental impact assessments are intended to be comprehensive and informative documents that describe the nature and extent of the proposal, the potential adverse effects it may cause, and the measures proposed to minimize these. Professional planners and engineers usually develop these EIAs.

The CRM Program assesses permit application fees. These funds are intended to match the amount of government time that would be required for projects to receive a full review. These fees also fund the monitoring and enforcement needed when a permit is granted.

36. 7. 5. CRM Agency Review and CRM Public Hearings

When the CRM office receives a major project application, copies of the application and its attachments are sent to the CRM Board of Directors. Soon thereafter, CRM schedules a public hearing to hear any and all public comments regarding the proposed project.

CRM Agency Directors have a legal duty to be fair and impartial throughout the process. Each should refrain from reaching any conclusions until they have reviewed the application and its EIA and have listened to and carefully considered all public comment.

The purpose of the public hearing is to allow the public to have a strong voice in influencing the decisions of the CRM Board. The public is encouraged to express its views on whether to grant, to grant with conditions, or to deny the permit application.

Soon after the CRM office receives a major project application, it schedules a public hearing to hear any and all public comments regarding the proposed project.

These options are extremely important to the general welfare. Does the Commonwealth need or want a particular type of development? Should such development be allowed at a particular location?

Our CRM Program provides the general public with the right to involve itself in determining what types of development will be allowed in our islands. The CRM public hearing is also a right of the proposed project's applicant and an opportunity for them to personally respond to any concerns raised.

Careful consideration of the public's comments on a proposed project is an important responsibility of the CRM board members. By law, board members must either be present at public hearings, listen to a tape recording, or read a transcript of all of the public's comments before making a decision on a proposed project.

The CRM Director or designee serves the role of convenor at the public meeting. The Director is responsible to ensure that the project is described in a fair manner. The Director is also responsible to ensure that all members of the public wishing to make a comment, either orally or in writing, have the opportunity to have their comments heard and received.

The CRM Director also has the responsibility to *adequately notify* the public in advance of the time, date, and place for the public hearing. Two successive newspaper ads are the absolute minimum for such notification.

By regulation, all CRM public hearings must be held on the island on which the project is to occur. The only exceptions to this are projects in our northernmost islands, which can have their public hearings on Saipan.

By tradition, and for convenience, the start time of the public hearings is usually between 6:00pm and 7:00pm. The location of the meeting is at a public room, usually a school cafeteria or library, in the closest proximity to the site of the proposed project.

To ensure that the project is described in a fair manner, the CRM Director usually invites the project proposers or their representatives to make a presentation at the public hearing. The proposers themselves usually describe the project, and field any questions about the project from the general public.

These questions usually relate to the nature of the project. They also may refer to the manner(s) by which a proposer would attempt to mitigate possible adverse cultural or environmental impacts arising from it.

The CRM Agency Directors and the CRM Director, as well as the developers, field any questions regarding the review process. After the public hearing, members of the public have up to thirty (30) days to submit additional comments in writing. All written comments submitted by the public are disseminated to the CRM Board.

36. 7. 6. CRM Board Meetings, Project Discussion, and the Attempt to Find a Consensus

A CRM Board meeting is not required for every project in order to reach a decision. However, when it seems necessary or advantageous to discuss projects amongst the Board, a meeting is called. Meetings are *duly announced* in conformity with our **Open Government Act** and are open to the public.

If a Board meeting is scheduled for the project, the applicant or his representative is usually invited to attend. There they attempt to address any concerns raised.

The CRM Board then debates the merits and costs of the project. They discuss whether the project is consistent with the CNMI's Coastal Resource Management goals and regulations. Ultimately, the applicant must address all concerns brought up by the CRM Board or face the possibility of not gaining the Board's approval.

36. 7. 7. Certification of Completeness

After reviewing the submitted documents, the CRM Director makes a determination as to whether the application is complete or not. Deficiencies are identified and forwarded to the applicant.

If the information is complete, a certification to this effect is published in a local newspaper. The CRM Board must then make its final decision on the permit application within 60 days.

36. 7. 8. Conditional Permit or Project Denial Letter Preparation

If the consensus of the Board is to issue the project a permit, one is then typed out. It would include all of the conditions that Board members require. If, on the other hand, the consensus is to deny the permit application, a permit denial letter is written.

36. 7. 9. Circulation for Signatures

The final CRM permit (or denial letter) must be signed by *all six* (6) CRM Board members. Prior to its final issuance, the CRM Director must certify that any permit that the Board does agree to, is issued in conformance with the CRM enabling law and its regulations.

If a permit is granted, a meeting is then held with the permittee, during which the conditions are explained. The approved final CRM permit is then signed by the applicant, indicating their understanding and agreement to comply with the conditions. The CRM Enforcement Section then receives a copy of the final permit for its monitoring and enforcement activities.

36. 7. 10. Resolution of a CRM Board Deadlock

On rare occasions, there is no consensus after the 60 day *decision period* established for final permit approval or disapproval. Then, according to the law, the CRM Director must certify in writing that a consensus does not exist and transmit the final permit to the CNMI Governor for review and action to *break the deadlock*.

The CRM Director must indicate in the transmittal letter the reasons why any particular CRM Board member(s), or the CRM Director themself had not signed the final CRM permit. The Board members are required to submit a letter of justification as well.

Our Governor then has thirty (30) days to approve or disapprove the final permit. The Governor must submit written findings to support this decision.

36. 7. 11. CRM Project Appeal Procedures

Persons who do not feel the CRM decision-making process adequately addressed their expressed concerns may appeal the CRM decision if they qualify as an **aggrieved party**.

Presence at the CRM public hearing or submission of a letter within 30 days of the hearing establishes this. Adjacent landowners can also appeal CRM permit decisions.

An administrative hearing body, the CRM Appeals Board, hears the appeal. Grounds for appeal include violations of any applicable procedures, regulations, and statutes which the CRM program is mandated to comply with.

Persons not satisfied with a final decision of the appeals body may then bring the matter to the CNMI courts for a judicial resolution.

36. 8. PERMIT ENFORCEMENT

36. 8. 1. CRM's Project Monitoring Program

As indicated, when a CRM permit is issued, the permit and the project file are transmitted to CRM's enforcement section. This occurs *before* any earthmoving or construction activities begin. The enforcement section ensures that all the permit conditions are strictly observed.

It is important to understand that issuance of a CRM permit does not mean that the permittee can immediately start clearing or excavating land. CRM permits have several requirements (*permit conditions*) that must be satisfied (submitted and approved) prior to any earthmoving work.

A tracking system is used to record permit conditions needing to be satisfied. Upon meeting these conditions, the permittee is then notified that the project may begin with the actual construction activities. This notification is called a *Notice to Proceed* (NTP).

CRM enforcement staff routinely monitor all CRM permitted projects. This ensures that construction activities are done according to the approved construction drawings and the CRM permit's requirements. Minor design changes must receive advanced approval. Major changes trigger the need to apply for an amended CRM permit.

There are also requirements permittees must carry out *during* construction activities. Some of these include proper handling of construction debris, dust control, the availability of portable toilet facilities for workers, and the installation of erosion and sediment control measures.

36. 8. 2. Enforcement of CRM Permits

The CRM Director can choose from several courses of action to ensure compliance with the CRM program policies and permit conditions. As mentioned above, fines can be placed of as much as $10,000 per day for each program violation. Criminal sanctions can also be sought.

36. 8. 3. Permit Condition Violations

When a permitted project violates any of the permit conditions, CRM issues an enforcement *warning notice* for the permittee to take corrective measures. This means that the project must conform to the permit requirements within thirty (30) days from their receipt of the warning notice.

If the thirty days pass and the permittee fails to take corrective action for an ongoing violation, CRM can issue a permit enforcement notice. Often a fine is levied as well. The notice informs the violator of their opportunity to request an enforcement hearing, and of their administrative procedure rights.

After determining that a violation did occur, the Director may temporarily suspend a permit for a given period, levy a fine, or order that a specific corrective action be taken. The Director may even revoke a CRM permit in its entirety.

36. 8. 4. No Permit Violation

When an unpermitted commercial activity is discovered which falls within any of the CRM's Areas of Particular Concern, a *Notice of Violation* and a *Cease and Desist Order* is issued. Such a notice and order may also be issued if an activity meets the CRM major siting criteria but does not have a CRM permit.

Again the violator may be levied a fine depending on the type of violation. Normally, violators quickly comply with their need to obtain the necessary permits rather than risk further fines and penalties.

36. 9. CONCLUSION

The permitting process is never perfect, but by following written procedures and applying their requirements equally, fairly and professionally to all of our citizens and foreign investors, permitting agencies can overcome the potential challenge that permitting or enforcement decisions were made in an **arbitrary** and **capricious** manner.

Also it is important to note that when one pays a permit fee, they are not buying a permit. Rather they are reimbursing the government for its costs in processing, making, and enforcing a permit decision. Likewise when an agency levies a fine, it is not a tax or revenue generating action. Fines are meant as punitive actions whose purpose is to ensure that violators strictly comply with the program's rules in the future.