

1 **FOR PUBLICATION**

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5 **IN THE SUPERIOR COURT**  
6 **OF THE**  
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 MANUEL ALVAREZ, dba ) **CIVIL CASE NO. 04-0190**  
9 Saipan E Tours, )  
10 Plaintiff, )  
11 v. ) **ORDER:**  
12 COASTAL RESOURCES MANAGEMENT ) **GRANTING DEFENDANT’S**  
13 OFFICE, and JOAQUIN D. SALAS, ) **MOTION TO DISMISS**  
14 Defendants. )  
15 \_\_\_\_\_ )

16 **I. INTRODUCTION**

17 **PLAINTIFF** Manuel Alvarez (“Alvarez”) operates a commercial jet-ski operation on public  
18 land. Alvarez is currently a defendant in another proceeding (Civil Action No. 02-0674) filed by  
19 the Marianas Public Lands Authority (“MPLA”). In that case, MPLA seeks to regain possession  
20 of the land currently occupied by Alvarez, for any possible damages to the land, and for past rent  
21 MPLA claims is owed by Alvarez. An element of this case is whether Alvarez is/was operating his  
22 business with a valid permit from the Coastal Resources Management Office (“CRM”), and whether  
23 or not CRM improperly revoked Alvarez’s permit.

24 In this separate but related action, Alvarez primarily seeks: 1) a declaration from the Court  
25 that the determination of nullity of the said permit and the cease-and-desist order are null and void;  
26 and 2) to permanently enjoin CRM from making any determination that Alvarez’s permit is null and  
27 void, and from making any cease-and-desist order against Alvarez without first giving him a  
28 hearing.

1 Defendant CRM has filed a Motion to Dismiss on the grounds that this Court lacks subject  
2 matter jurisdiction over the matter because Alvarez failed to exhaust his administrative remedies.  
3 Essentially, Alvarez has not pursued the administrative appeals available to him, and therefore CRM  
4 argues that this judicial action is improper. Alvarez counters that by declaring his permit null and  
5 void, CRM has taken a “final action,” and the issue is therefore suitable for judicial review. Further,  
6 Alvarez argues that he was denied his constitutional Due Process rights, and that exhaustion of  
7 administrative remedies is not required in matters involving the application of constitutional law.  
8 CRM replies that the CNMI Supreme Court has already expressly addressed and rejected this  
9 argument.

## 10 II. ANALYSIS

11 Essentially, the court may have jurisdiction over this matter if *either* of two conditions is  
12 met: a) statutorily, because the conditions of 1 CMC § 9112 have been met; OR b) if Plaintiff’s  
13 constitutional argument is applicable to the facts presented here. Each of these avenues to the court  
14 system is addressed in turn.

### 15 A. Jurisdiction and Administrative Procedure

16 The court’s jurisdiction over administrative proceedings is governed by 1 CMC § 9112(d)<sup>1</sup>  
17 of the Administrative Procedures Act, 1 CMC §§ 9101, *et seq.* (“APA”). This statute limits judicial  
18 review only to *final* agency actions. The purpose of this limitation is twofold. First, administrative  
19 agencies are *generally* the most qualified governmental agencies to deal with its specific area of  
20 expertise. Often the agency can address issues more efficiently than courts, and the courts thus  
21 avoid being overloaded with cases in which it lacks expertise. Second, it is senseless to waste  
22 judicial resources on disputes that may still be resolved within the framework of the administrative

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24 <sup>1</sup> Agency action made reviewable by statute and final agency action for which there  
25 is no other adequate remedy in a court are subject to judicial review. A preliminary,  
26 procedural, or intermediate agency action or ruling not directly reviewable is  
27 subject to review on the review of the final agency action. Except as otherwise  
28 expressly required by statute, agency action otherwise final is final for the purposes  
of this section whether or not there has been presented or determined an application  
for a declaratory order, for any form of reconsideration, or, unless the agency  
otherwise requires by rule and provides that the action meanwhile is inoperative,  
for an appeal to a superior agency authority.

1 CMC § 9112(d).

1 agency itself. It is entirely possible that an agency may issue a decision or finding at one level, then  
2 overturn itself upon appeal to a higher *internal* body of the agency.

3 It is a clearly established policy in American legal jurisprudence that unless an agency  
4 oversteps the scope of its authority, (discussed *infra*, part II C) courts will decline to review agency  
5 decisions unless and until all administrative appeals within the agency have been exhausted.

6 Exhaustion is generally required as a matter of preventing premature interference  
7 with agency processes, so that the agency may function efficiently and so that it may  
8 have the opportunity to correct its own errors, to afford the parties and the courts the  
benefit of its experience and expertise, and to compile a record which is adequate for  
judicial review.

9 *Weinberger v. Salfi*, 422 U.S. 749, 765, 95 S. Ct. 2457, 2467, 45 L. Ed. 2d 522, 538-39 (1975).

10 Therefore, the Court will not review an agency decision unless an adequate showing has been made  
11 that the party has exhausted its administrative remedies.<sup>2</sup>

## 12 **B. Final Agency Action**

13 CRM asserts that its decision on Alvarez’s permit does not constitute a final agency action.  
14 Specifically, CRM cites to the letter served upon Alvarez, wherein Alvarez is specifically told *he*  
15 *has the right* to challenge the order via the administrative system available to him.<sup>3</sup> The language  
16 of this letter is clear: CRM has indeed made its decision on Plaintiff’s permit, but this decision is  
17 subject to review within the agency upon proper appeal.

18 Alvarez does not claim that he failed to follow procedure because he never received notice  
19 from CRM. Instead, Alvarez admits he chose to disregard the paragraph discussing his right to  
20 appeal and did not submit his written request within the thirty-day period. In doing so, he failed to  
21 follow established procedure for contesting the enforcement action taken by CRM, and did not

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23 <sup>2</sup> The court would refer Plaintiff’s counsel to such seminal U.S. Supreme Court cases as *Chevron U.S.A. Inc.*  
24 *v. Nat’l Res. Defense Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), or *United States v. Mead*  
25 *Corp.*, 533 U.S. 218, 121 S. Ct. 2164, 150 L. Ed. 2d 292 (2001), for an excellent general review of the deference given  
26 to administrative agencies by the courts, as well as *Nat’l Park Hospitality Ass’n v. Dep’t of the Interior*, 538 U.S. 803,  
123 S. Ct. 2026, 155 L. Ed. 2d 1017 (2003) for an understanding of the policy of allowing the administrative agency to  
develop the record before judicial review.

27 <sup>3</sup> “You have the right to request for an enforcement hearing with regards to this enforcement action as provided  
28 for in Section 14D(iii) of the CRM Rules and Regulations. If you wish to appeal, you must submit a written request  
within thirty (30) days from the date you received this notice and must include your arguments why this enforcement  
action should not be taken against Saipan E Tours. Failure to make a written request within the time allowed will cause  
you to lose your right to appeal this notice.” (Letter from CRM to Alvarez of 4/22/04, at 1-2).

1 exhaust his remedies within the agency. Thus, Alvarez has failed to demonstrate that he has met the  
2 *statutory* requirements that would give this court jurisdiction over the matter.

3 **C. Constitutional/Due Process Issue**

4 Alternatively, Alvarez could avoid the requirements of 1 CMC § 9112(d) *if* Alvarez could  
5 show that CRM acted outside the scope of its authority. By its very nature, every administrative  
6 agency is a tribunal of limited jurisdiction and its jurisdiction is dependent entirely upon the statute  
7 vesting it with power. *Castro v. Viera*, 541 A.2d 1216, 1220 (Conn. 1988). However, the  
8 requirements of the APA may only be bypassed by claims challenging the constitutionality of the  
9 administrative agency’s existence, or challenging the agency’s right to promulgate the regulations  
10 the agency was attempting to enforce. *Rivera v. Guerrero*, 4 N.M.I. 79, 83 (1993).

11 Here, Alvarez argues that in *Rabang v. INS*, 35 F.3d 1449 (9th Cir. 1994), the Ninth Circuit  
12 held that exhaustion of administrative remedies at the administrative level is not required if the  
13 matter involves application of constitutional law, thus giving the court subject matter jurisdiction.  
14 While this is the holding of *Rabang*, the facts are inapposite to the case at hand. As CRM correctly  
15 points out, *Rabang* involved the INS making rulings interpreting the language of the Constitution.  
16 This was outside the scope of the INS’s authority. Here, no such issue exists. Alvarez is not  
17 claiming that CRM is making constitutional interpretations beyond the scope of its authority.  
18 Instead, Alvarez says that CRM’s procedures violate constitutional protections.

19 The Due Process clauses of the Fifth and Fourteenth Amendments to the United States  
20 Constitution, as well as the CNMI counterpart, N.M.I. Const. art. I, § 5, essentially state that “no  
21 person shall be deprived of life, liberty or property without due process of law.” Alvarez attempts  
22 to create a constitutional issue for this Court to review by creating a circular argument. First,  
23 Alvarez claims that CRM denied him his property right by determining that his permit was null and  
24 void. Then, Alvarez claims that he was denied his due process right to a hearing on the matter.  
25 Then, *even though* Alvarez had the right to a hearing on the matter, Alvarez chose to eschew this  
26 right by ignoring the appeal method offered to him by CRM, and brought this issue to the Court—by  
27 claiming a denial of due process!

28 The Court cannot allow such a fantastical application of due process to be rewarded. Alvarez

1 had the right to due process—simply by following the procedures set forth in the letter sent to him  
2 by CRM. If Alvarez had complied with this essential first step, *then after his administrative remedy*  
3 *was exhausted*, if he was still dissatisfied with the result, he could file his case with the court. This  
4 was never done. Therefore, Alvarez was never denied his due process right, he simply chose an  
5 improper procedural avenue.

6 **III. CONCLUSION**

7 Plaintiff was given notice that he should appeal the decision of the CRM if he disagreed with  
8 CRM’s decision. Plaintiff was told how to appeal, and was warned that he may lose his right to  
9 appeal if he did not follow proper procedure. Plaintiff chose not to follow proper procedure, but  
10 instead inappropriately filed this claim. Defendant correctly argues that Plaintiff has failed to  
11 exhaust his administrative remedies, that the Court does not have jurisdiction to hear this matter, and  
12 that no constitutional issue exists for the Court to review. Therefore, Defendant’s Motion to Dismiss  
13 is **GRANTED**.

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15 **SO ORDERED this 21st day of July 2004.**

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18 /s/  
19 ROBERT C. NARAJA,  
20 Presiding Judge  
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