

**TITLE 40: COMMONWEALTH PORTS AUTHORITY**

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**CHAPTER 40-60**

**TEMPORARY LAND USE PERMITS RULES AND REGULATIONS**

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Chapter Authority: 2 CMC § 2122(j).

Chapter History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Commission Comment: For the history of the regulatory authority of the Commonwealth Ports Authority, see the general comment to chapter 40-10.

**Part 001 - General Provisions**

**§ 40-60-001 Authority**

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(a) The regulations in this chapter are hereby promulgated by the Commonwealth Ports Authority (“CPA”) in accordance with 2 CMC § 2122(j) and shall have the force and effect of law.

(b) The CPA has the duty and responsibility to develop, maintain, operate and manage all air and sea ports within the Commonwealth of the Northern Mariana Islands pursuant to 2 CMC § 2122(a). CPA has certain airport lands under its jurisdiction and ownership, which are being reserved for future port development. These lands are being maintained as unimproved property, but may be used for farming, grazing or other activities so that they remain in a clean and unobstructive\* state. CPA finds that such lands would best be maintained by farmers and ranchers willing to clean and maintain the lands in return for short-term farming, grazing or short-term noncommercial/commercial purposes under the terms of this chapter and the temporary permit issued. The activities permitted under this chapter shall be deemed “portconnected” pursuant to the requirements of 2 CMC § 2122(e) and as a matter of CPA policy.

\*So in original.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-005 Purpose of the Regulations**

(a) To establish a uniform land use policy regarding the application, review, and award of agricultural, grazing, and short-term non-commercial or commercial permits to use CPA lands without erecting any permanent improvement thereon.

(b) To establish uniform terms and conditions for the use of CPA lands pursuant to temporary land use permits.

(c) To ensure that the award of temporary land use permits do not violate any applicable local or federal law, regulation, or policy, and that the mission and best interest of the CPA are carried out and promoted.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-010 Applicability**

This chapter shall apply to all agricultural, grazing and other short-term non-commercial or commercial permits, subject to cancellation at the discretion of the CPA, with or without cause, as provided for under this chapter. This chapter shall not apply to commercial leases and concessions with a term of more than one year, or to other commercial arrangement related to CPA operation of airport and seaport properties.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

**§ 40-60-015 Definitions**

- (a) “Application” or “renewal application” means the temporary land use permit application made on form provided by the Authority and available to all permit applicants, existing or prospective.
- (b) “Authority” or “CPA” means the Commonwealth Ports Authority.
- (c) “Board” or “Board of Directors” means the Board of Directors of the Commonwealth Ports Authority.
- (d) “CPA lands,” for purposes of this chapter means any unimproved airport land owned by or that is under the control of the Authority and which has been designated by CPA for agricultural, grazing or short-term noncommercial or commercial use.
- (e) “Executive Director” means the Executive Director of the CPA or his designee.
- (f) “Permanent improvement” means any permanent or fixed structure, constructed of materials generally associated with permanency such as concrete, hollow block, or metal, and incapable of being dismantled or removed upon expiration of the permit except through demolition or destruction of the improvement.
- (g) “Permit” means the legal instrument issued by the Authority authorizing the agricultural, grazing, short-term commercial or non-commercial use of CPA lands and issued pursuant to this chapter, or were issued prior to this chapter but are now made subject to this chapter.
- (h) “Permittee” means the person issued a permit to use CPA lands, pursuant to this chapter and the terms and conditions of the permit.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Commission Comment: In subsection (d), the Commission changed “or is under” to “or that is under” to correct a manifest error. The Commission inserted a comma after the word “block” in subsection (f) pursuant to 1 CMC § 3806(g).

**Part 100 - Cancellation of Existing Permit and Application for New Permit**

**§ 40-60-101 Cancellation of Existing Permits**

All existing permits for the use of CPA lands issued prior to the adoption of this chapter shall be canceled by the Authority no later than ninety days after the effective date of this chapter. Any existing permittee of CPA lands who fails to file an application for a new permit as set forth in § 40-60-105 below shall be deemed a trespasser after such period,

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and CPA may take any action, legal or equitable, to remove any unlawful occupant who does not have a valid permit to use CPA lands.

Modified, 1 CMC § 3806(c), (d), (e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-105 Application for New Permit**

Any existing permittee who wishes to obtain a new permit to use CPA land as a result of the proposed termination of an existing permit, must file a completed application for a new permit with the Executive Director within ninety days after the effective date of this chapter. Such person shall obtain an application form from the Authority. Any existing permittee making an application may be allowed to continue the use and occupancy of CPA land described by the canceled permit, pending the final decision of the Authority on the application for a new permit.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **Part 200 - Application for a New Permit**

#### **§ 40-60-201 Application Form**

The Executive Director shall make available uniform application forms for agricultural, grazing, short-term commercial and non-commercial use of CPA lands. Application forms shall be available at the Authority's office at the Saipan International Airport on Saipan and at the office of the airport manager on Tinian and Rota.

Modified, 1 CMC § 3806(f).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

#### **§ 40-60-205 Application Fee**

A non-refundable application fee of twenty-five dollars shall be assessed for each application. The fee shall be used to defray the cost of processing, review, and other administrative costs.

Modified, 1 CMC § 3806(e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

#### **§ 40-60-210 Renewal**

Any permittee who wishes to renew his permit to use CPA land shall file a new application with the Authority no later than sixty days prior to the expiration of the

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existing permit. All applications for renewal shall be accompanied with the standard application fee and any rental payment due and payable the Authority. No permit may be renewed without payment of the application fee and any outstanding rental due under the existing permit. Any permittee submitting an application for renewal under this section shall continue to use the CPA land he is occupying pending the final decision of the Authority on his application, provided that he pays all rental as the same become due and payable.

Modified, 1 CMC § 3806(e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-215 Permit Application for Newly Designated CPA Lands**

(a) The Authority may designate, for temporary land use permits, other idle lands under its ownership or control and which are being reserved for future port expansion or development by the Authority. The Authority may designate such property, as appropriate, for temporary use under permits issued pursuant to this chapter.

(b) In the event the Authority designates for permit issuance any CPA lands, it shall publish a notice of intention to offer for temporary use permitting such CPA lands and shall prescribe in the notice the method for making application. Publication by notice in a newspaper of general circulation in the Commonwealth at least twice within thirty days of CPA designation shall be made by the Authority.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-220 Review and Award of Permit**

(a) The Authority's Airport Facilities Committee shall review each application for a temporary permit to use CPA land. It may, as it deems necessary, provide for a public hearing on the permit applications for newly designated CPA land. If there is a hearing, each applicant shall be entitled to present testimony concerning his/her application and why his/her permit application, if granted, will serve the best interests of the Authority. The Authority may reject any and all application at its sole discretion. Notice of the award or denial of a permit application and the basis for the award or denial shall be given to all applicants.

(b) Where there are several permit applications for the same parcel of land, the Authority's Airport Facilities Committee will base its selection on the applicant's past experience and ability to successfully carry on the farming or cattle grazing activity, the applicant's relative need to support himself and his family, and the applicant's ability to comply with the permit terms and conditions and this chapter. Where all of the applicants appear to qualify for a permit, the Committee shall select the successful applicant by drawing of lots.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-225 Appeal of Rejection of Application**

Any unsuccessful permit applicant may appeal the decision of the Authority denying his application as provided in § 40-60-370.

Modified, 1 CMC § 3806(c).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-230 Restrictions on Who May Apply**

No director, officer, or employee of the CPA, either personally or as an agent of another shall be permitted to apply or benefit directly or indirectly from a permit issued under this chapter. Any application submitted by a director, officer, employee, or an immediate family member shall be summarily rejected. The restrictions imposed by 2 CMC § 2131 and the Ethics in Government Law shall apply.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Commission Comment: The Commission inserted a comma after the word “employee” pursuant to 1 CMC § 3806(g).

## **Part 300 - Minimum Terms and Conditions of Permits**

### **§ 40-60-301 Uniform Permit**

The Authority shall prepare a uniform permit for all permittees. Such permit shall incorporate the terms and conditions of the regulations in this chapter, in addition to other pertinent terms and conditions.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-305 Term of Permit**

All permits issued under this chapter shall be for a period not to exceed one year.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

**§ 40-60-310 Other Conditions of Renewal**

Any renewal application shall be subject to approval by the Executive Director, after payment of all fees and rentals, as set forth under § 40-60-210. Any permittee who has complied with the terms of his permit throughout the duration of the permit and is seeking renewal of his permit shall be given priority over other applicants unless the Authority in its best judgment determines otherwise. Any decision to reject a permittee's renewal application and to award a new permit to another applicant must be for good and justifiable reasons and shall not be based on arbitrary or capricious reasons.

Modified, 1 CMC § 3806(c).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

**§ 40-60-315 Rentals**

Rental rates shall be assessed on a per acreage basis, as stated below. For any land use not stated below, the Authority may impose a different rate, provided it is reasonable.

- (a) For non-commercial cattle grazing: \$30.00 minimum per hectare per year.
- (b) For non-commercial agriculture (i.e. subsistence farming): \$30.00 minimum per hectare per year.
- (c) For short-term commercial agriculture: \$30.00 minimum per hectare per year, plus three percent of that portion of permittee's quarterly business gross revenues attributable to the gross income received by permittee from commercial agricultural activity on CPA land covered by the permit. Permittee shall submit a copy of his quarterly BGRT within thirty days after the end of each quarter along with any payment due. Permittee shall, at all times, keep complete books and records evidencing all commercial transactions conducted on the permitted land.
- (d) For short-term plant nursery activity: \$30.00 minimum per hectare per year plus three percent of that portion of permittee's quarterly business gross revenues attributable to the gross income received by permittee from commercial agricultural activity on CPA land covered by the permit. Permittee shall submit a copy of his quarterly BGRT within thirty days after the end of each quarter along with any payment due. Permittee shall, at all times, keep complete books and records evidencing all commercial transactions conducted on the permitted land.
- (e) For other uses (including the use of land by government agencies and non-profit organizations): All applications for use of CPA lands other than for the above purposes shall require approval of the Board of Directors; and the Authority may use any other method to establish rental for such use as it deems fair and would further its best interest and the interest of people of the Commonwealth.

Modified, 1 CMC § 3806(e), (f).

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History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-320 Security Deposit**

Authority shall require each permittee to post a security deposit of \$250.00, refundable without interest upon permit expiration on the condition that the permittee has restored the land to the satisfaction of the Authority and permittee has vacated the premises and has paid all due rentals, fees and charges.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-325 Construction of Improvements**

(a) Permittee may construct temporary structures only (i.e. non-permanent improvements) on CPA land, only upon obtaining the prior written consent of the Authority, and under the following terms and conditions:

(1) Permittee shall not construct any permanent improvement on the land, either concrete, metal, or otherwise. The determination of what is a permanent improvement shall lie with CPA alone.

(2) Prior to construction of any temporary improvement on CPA land, a written request describing the proposed improvement and specifications thereto must be approved in advance in writing by Executive Director.

(3) Any temporary improvement placed on CPA land shall not create a lien on the land.

(4) Upon approval by the Authority, a permittee must obtain any required permits before using the land, from pertinent government agencies, including but not limited to: the Division of Environmental Quality, Department of Lands and Natural Resources, Coastal Resources Management, or Historic Preservation Office, and so forth.

(5) Upon expiration of the term of the permit, permittee shall remove all the improvements placed thereon, at his sole expense.

(b) The permittee shall not have any right to remain on CPA lands after the expiration or termination of his or her permit; and the Authority shall have the right to remove any improvement, fixture and other property of permittee and dispose of such as it sees fit. In exercising this right, the Authority shall:

(1) Not be liable for damages to or loss of any property removed;

(2) Have the right to recover costs of removal and/or storage or disposal; and,

(3) Recover any attorney's fees or other costs incurred as a result.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-330 Restrictions on Use**

The following restrictions shall apply to the use of CPA land covered by a temporary use permit:



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- (a) No employee barracks shall be constructed on CPA land.
- (b) No residential structure shall be constructed on CPA land.
- (c) No extension of any business other than agricultural/nursery shall be made, unless specifically approved by the Board of Directors and specifically identified in writing as a variance from these restrictions.
- (d) No mining, drilling, extraction of land, mineral, or soil shall be made on CPA land.
- (e) Permittee shall not use CPA land as a waste deposit or landfill.
- (f) Permittee shall not store explosives, dangerous chemicals, flammable and inflammable liquids or other hazardous materials on CPA land.
- (g) Permittee shall not conduct any hazardous activities on CPA lands.
- (h) No permit will be issued for CPA lands within 100 feet from any port perimeter fence.
- (i) Permittee shall not transplant any permanent trees growing on CPA land, such as coconut trees, fruit trees, breadfruit, etc., except upon the prior written approval of the Authority.

Modified, 1 CMC § 3806(g).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Commission Comment: In subsection (e), the Commission changed “waste depositor or landfill” to “waste deposit or landfill” to correct a manifest error.

### **§ 40-60-335 Monitoring for Compliance**

To insure that this chapter and the terms and conditions imposed by the land use permit are complied with, CPA’s Lease Enforcement and Compliance Office shall conduct regular visual inspections of the permitted premises and take such measures or actions needed to correct any violation of the permit terms and conditions and this chapter. Unannounced inspections shall be conducted and CPA shall not be prohibited by the permittee or others acting for or on behalf of the permittee from conducting such inspections. The CPA Comptroller’s Office shall monitor and enforce all financial matters relating to the permit issued, including the collection of unpaid fees and charges.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-340 Proper Maintenance of CPA Lands**

All permittees shall properly maintain CPA lands at all times. A permittee shall not commit any waste of the property nor shall he remove any existing trees, or vegetation other than underbrush, shrubs and tangan-tangan. A permittee shall not allow litter, garbage or other refuse to accumulate on the property or allow the property to become an eyesore. Any property of the Authority which is damaged or destroyed by permittee shall be repaired or replaced by permittee.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

**§ 40-60-345 Utilities**

All electrical, water, telephone or other utility services may be installed but at permittee's expense and in permittee's own name. Permittee shall pay any and all utility bills and invoices as they come due. No utility provider shall be allowed to place any lien or encumbrance on CPA lands or any fixtures attached thereto as a result of a permittee's failure to pay any sums due for such utility services.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

**§ 40-60-350 Permit Not Assignable**

No permit issued under this chapter shall be assignable to any third party, for any reason. Any permit assigned or transferred to a person other than the named permittee shall be immediately canceled and terminated by the Authority.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

**§ 40-60-355 Waiver of Aircraft Noise and Pollution Claims**

Any person given a permit to use CPA lands under this chapter shall be deemed to have waived any claim or cause of action for aircraft nuisance, noise pollution, or other nuisance or pollution, for damages suffered for the loss of, or injury to, any crop or livestock against CPA, any airline, or aircraft operator conducting business or operating at any airport under the Authority's control.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

**§ 40-60-360 Termination**

(a) Any permit issued pursuant to this chapter shall be terminable by either party, without cause.

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- (b) A party may terminate a permit, to be effective forty-five days after written notice to the other party.
- (c) Authority shall not be liable to the permittee for damages suffered due to any early termination of the permit.
- (d) Any permit issued hereunder shall include a waiver of any claim for assistance which might be afforded under the Federal Relocation Assistance Act.
- (e) Upon termination, permittee shall be solely responsible for removing any temporary improvements within the time allowed in the notice of termination.
- (f) Upon termination, permittee shall be responsible for restoring the land to the satisfaction of the Authority.
- (1) If permittee fails to restore CPA land to the satisfaction of the Authority, the Authority will make such restoration and deduct any and all costs and expenses incurred from the security deposit.
- (2) If the security deposit is insufficient to pay such expenses and costs, permittee shall reimburse the Authority for the additional expenses incurred by the Authority.
- (3) In the event the permittee fails to reimburse the Authority for any costs and expenses incurred, the Authority may file suit for damages to recover such costs and expenses. If successful in such suit, it shall be entitled to recover court costs and attorneys fees incurred.

Modified, 1 CMC § 3806(e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-365 Indemnification and Release of Liability**

Permittee shall indemnify and hold the Authority, directors, officers, employees, and agents free and harmless from any and all liability for any damage to persons or property arising from permittee's activities on CPA land.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-370 Right to Appeal**

Permittee shall have the right to appeal the denial of any permit application, denial of renewal, permit termination, or other grievance within ten days after he knows or should have known the facts giving rise to such grievance. He may also request an extension of time to vacate CPA lands upon the termination of any permit. All appeals and requests for extension of time shall be filed in writing specifying the grounds therefore and addressed to the Executive Director. The CPA Board's appeals panel consisting of three Board members appointed by the Chairman shall consider and hear the appeal taken. The panel's decision shall be final and unreviewable.

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Modified, 1 CMC § 3806(f).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-375 Unilateral Modification**

The Authority shall have the right to unilaterally amend any of the terms or conditions of any permit issued under this chapter, including any rates and charges stated therein, whether or not any such amendments conform to this chapter, in order to conform with any applicable federal regulations or directives, or the order of any federal agency including but not limited to the Federal Aviation Administration and the U.S. Department of Transportation.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-380 Attorney's Fees**

In the event the Authority files any civil action with a court of competent jurisdiction to enforce any term or provision of this chapter or any permit issued hereunder, or for breach of any such term or condition, permittee shall pay Authority reasonable attorney's fees and court costs, if Authority is successful.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

## **Part 400 - Miscellaneous Provisions**

### **§ 40-60-401 Applicable Laws**

This chapter and any permit issued hereunder shall be interpreted in accordance with the laws of the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

### **§ 40-60-405 Severability**

If any of the provisions of this chapter or the terms and conditions of any permit issued hereunder is held invalid or unenforceable by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).