

TITLE 145: DEPARTMENT OF PUBLIC LANDS

**CHAPTER 145-10
ADMINISTRATIVE HEARING PROCEDURE RULES AND
REGULATIONS**

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Chapter Authority: 1 CMC §§ 2801-2808.

Chapter History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

Commission Comment: N.M.I. Const. art. XI, codified as amended at 2 CMC §§ 4111-4115, established the Marianas Public Land Corporation (MPLC), responsible for the management and disposition of public lands. See 2 CMC §§ 4113 and 4114.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. According to Executive Order 94-3 §§ 104 and 306(a):

Section 104. Department of Lands and Natural Resources.

The Department of Natural Resources is re-designated the Department of Lands and Natural Resources.

...

Section 306. Department of Lands and Natural Resources

(a) Marianas Public Land Corporation. Pursuant to [N.M.I. Const. art. XI, §4(f)], the Marianas Public Land Corporation is dissolved and its functions transferred to a Division of Public Lands in the Department of Lands and Natural Resources, which shall have at its head a Director of Public Lands.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

In 1997, the Legislature passed the “Public Lands and Natural Resources Administration Act of 1997,” PL 10-57 (effective Apr. 18, 1997), codified as amended at 1 CMC §§ 2651-2691. PL 10-57 repealed and reenacted chapter 13, division 2 of title 1 of the Commonwealth Code, 1 CMC §§ 2651, et seq., and statutorily established the Department of Lands and Natural Resources (DLNR) with the structure, duties, and responsibilities set forth in the act. See 1 CMC § 2651 and the commission comment thereto.

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PL 10-57 § 4 vacated Executive Order 94-3 § 306. PL 10-57 § 3, enacted a new article 3, entitled “Public Lands,” in title 1, div. 2 of the Commonwealth Code, formerly codified as amended at 1 CMC §§ 2671-2678. The article created a Division of Public Lands within DLNR “headed by a Director serving under the supervision and control of the Secretary and the Board of Public Lands.” PL 10-57 § 3 (§ 2671) (formerly codified at 1 CMC § 2671(a)). 1 CMC § 2671(b) provided that the Division of Public Lands is the successor to the Marianas Public Lands Corporation pursuant to N.M.I. Const. art. XI §4(f) and assigned all statutory powers and duties of the MPLC to the Division of Public Lands.

PL 10-57 § 3 (§ 2672) (formerly codified at 1 CMC § 2672(a)(2)) empowered the Division of Public Lands to manage, use and dispose of surface lands in the Commonwealth, subject to the supervision of the Board of Public Lands and the policies of the act. PL 10-57 § 3 (§ 2673) (formerly codified at 1 CMC § 2673(a)) established a Board of Public Lands to set policy for the Division of Public Lands and directed the Secretary of DLNR and the Director of the Division of Public Lands to carry out the policies of the board concerning matters under its jurisdiction.

PL 12-33 (effective Dec. 5, 2000), the “Board of Public Lands Act of 2000,” repealed PL 10-57 § 3 as codified in title 3, div. 2, art. 3 of the Commonwealth Code, 1 CMC §§ 2671-2678. PL 12-33 § 3 (§ 101(a)) created a Board of Public Lands Management and an Office of Public Lands under the direction of the Board. PL 12-71 (effective Nov. 13, 2001) amended § 101(a) to create the Marianas Public Lands Authority as an independent public corporation of the CNMI under the control and supervision of a Board of Directors. See PL 12-71 § 2(a).

According to PL 12-33:

Section 2. Findings. The Legislature finds that an inherent conflict exists by placing the Board of Public Lands (BPL) and Division of Public Lands (DPL) within the Department of Lands and Natural Resources (DLNR). See PL 10-57, as amended. The Secretary of DLNR is required to implement the policies put forth by the BPL. However, the Secretary, who serves at the pleasure of the Governor, must also implement the policies of the administration. A potential conflict arises when BPL and the administration’s policies differ or are inconsistent. By separating BPL and DPL from DLNR, such conflict would be avoided and help ensure that public land policy is dictated by an independent Board.

Section 3. Repeal and Re-enactment. Except as provided in Section 4 of this act, Public Law 10-57, as amended and codified under Article 3, Chapter 13, Part 2 of Title 1 of the Commonwealth Code is hereby repealed and re-enacted as a new Chapter 14 under Division 2 of Title 1 as follows:

Chapter 14

Section 101. Board of Public Lands Management.

(a) There is established within the Executive Branch an independent Board of Public Lands. An Office of Public Lands, headed by a Public Lands Administrator, is established under the control and general supervision of the Board to execute, implement and enforce the policies, decisions, orders, rules and regulations of the Board.

(b) The Board of Public Lands is declared to be the successor to the Marianas Public Lands Corporation pursuant to N.M.I. Const. Art. XI, § 4(f). Except as provided in this act, all powers and duties assigned to the Marianas Public Land Corporation by existing statute shall be considered as assigned to the Board of Public Lands Management.

Section 102. Board Powers and Duties.

(a) The Board of Public Lands shall have the following powers and duties:

(1) To be responsible for the management, use, and disposition of submerged lands off the coast of the Commonwealth, pursuant to the Submerged Lands Act, as amended (2 CMC §§ 1201 et seq.);

(2) To be responsible for the management, use and disposition of surface lands of the Commonwealth.

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(b) The authority of the Board of Public Lands extends to all those lands defined as public lands by N.M.I. Const. Art. XI, § 1 or any other provision of law, subject to the provisions of this chapter and except as limited by transfers of freehold interests.

....

Section 4. Global Amendment. Any reference to the Division of Public Lands in the Commonwealth code is hereby amended to read “Office of Public Lands.”

Section 5. Transition. All property, equipment, supplies, and personnel of the Board of Public Lands and the Division of Public Lands under PL 10-57, as amended are transferred to the Board of Public Lands established under this act. The provisions of this act shall not affect the appointment and service term of the Board of [D]irectors, serving on the effective date of this act.

According to PL 12-71:

Section 1. Findings. The Legislature finds that questions have arisen to the extent of the powers and duties of the Board of Public Lands. It is the intent of the Legislature that the Board of Public Lands be given broad powers over its operations, and the leasing of public lands.

Section 2. Amendment.

(a) 1 CMC § 101(a) as enacted by the Board of Public Lands Act of 2000 (H.B. No. 12-257), is hereby amended as follows:

“(a) There is established within the Executive Branch an independent public corporation of the Commonwealth of the Northern Mariana Islands, a public corporation to be known as the Marianas Public Lands Authority. The office of Marianas Public Lands Authority shall be headed by Commissioner of Marianas Public Lands Authority and Deputy Commissioner for each Senatorial District. All other Division[s] of the Marianas Public Lands Authority shall be headed by the Division Chief. The Commissioner shall serve at the pleasure of the Board of Directors. Each Deputy Commissioner shall be appointed by the Board of Directors. This Public Corporation is established under the control and general supervision of the Board of Directors to execute, implement and enforce the policies, decisions, orders, rules and regulations of the Board. The Board of Directors shall serve every five years with three serving four and two serving five years. The present board is not effected by this amendment upon effective of this Act. [sic]”

(b) 1 CMC Section 102 as enacted by the Board of Public Lands Act of 2000 (H.B. No. 12-257), is hereby amended to include a new subsection (c) to read as follows:

“(c) The Board of Directors may select, employ, promote and terminate employees, employ contractors and consultants, employ legal counsels, sue and be sued in its own name, provide liability insurance as it considers necessary, make contracts, borrow money within the limitations contained in Article X of the Constitution of the Northern Mariana Islands, and take any other action necessary for the management or disposition of surface and submerge [sic] public lands.”

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands and transferred the powers and duties of the Marianas Public Lands Authority to the Department of Public Lands within the executive branch. 1 CMC § 2801. PL 15-2 did not address authority over submerged lands.

PL 15-2 found:

Art. XI section 4(f) of the Constitution, as amended in 1985, provides that the functions previously performed by the Marianas Public Land Corporation “shall be transferred to the executive branch of government” after its dissolution. The Marianas Public Lands Authority in its current structure as an autonomous agency outside the executive branch fails to comply with this constitutional mandate.

PL 15-2 § 2(a) [Commission comment to 1 CMC § 2801].

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PL 15-2 created the Department of Public Lands within the executive branch “to manage and administer the Commonwealth’s public lands under the provisions of Article XI of the Constitution.” 1 CMC § 2801. PL 15-2 changed all references in the Commonwealth Code from the Marianas Public Lands Corporation, Division of Public Lands, Office of Public Lands or the Marianas Public Lands to the “Department of Public Lands.” PL 15-2 § 4 [Commission comment to 1 CMC § 2801]. Public Law 15-64, effective May 30, 2007, changed all references in the Commonwealth Code from Board of Public Lands to “Secretary of Public Lands.” PL 15-64 § 4.

Pursuant to PL 15-2:

The Department [of Public Lands] shall be responsible for the administration, use, leasing, development, and disposition of all those lands defined as public lands by N.M.I. Const. art. XI, §1 or any other provision of law, subject to the provisions of this chapter and except as limited by transfers of freehold interests to individuals, entities, or other government agencies. The Department’s authority does not extend to the issuance of land use permits and licenses, except as specifically provided for in this Act, and does not limit in any respect the authority of other Commonwealth agencies to issue permits and licenses pursuant to their respective enabling legislation.

1 CMC § 2803(a).

PL 15-2 created a Secretary of the Department of Public Lands and an Advisory Board to the Secretary. 1 CMC §§ 2801 and 2804.

The Law Revision Commission notes that PL 12-33, PL 12-71 and PL 15-2 failed to repeal 1 CMC § 2653(c) and (k), which grant DLNR the power and duty to manage and dispose of public lands subject to the supervision of the Secretary of Public Lands and to manage, use and dispose of submerged lands of the Commonwealth, pursuant to the Submerged Lands Act. These provisions appear to conflict with the authority over public and submerged lands vested with Marianas Public Lands Authority and the Board of Public Lands Management in Public Laws 12-33 and 12-71. As PL 15-2 does not address Department of Public Lands authority, if any, over submerged lands, it appears that only DLNR’s authority over public lands pursuant to 1 CMC § 2653(c) may conflict with the authority of the Department of Public Lands. DLNR’s authority over public lands is subject to the supervision of the Secretary of Public Lands (1 CMC § 2653(c)), which may minimize any possible conflict.

Please refer to the Commission comment to NMIAC chapter 145-60 for more information regarding submerged lands.

PL 15-2 requires that “[n]o later than one year after the effective date of this Act, the Department [of Public Lands] shall adopt and promulgate a comprehensive land use plan with respect to public lands.” 1 CMC § 2805(f).

Part 001 - General Provisions

§ 145-10-001 Authority

The rules and regulations in this chapter are hereby promulgated and issued by the Board of Public Lands of the Commonwealth of the Northern Mariana Islands, pursuant to its powers, duties, and authorities under Public Law 12-33 [1 CMC §§ 2801-2808], effective December 5, 2000.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

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Commission Comment: The Commission deleted “emergency” before “rules and regulations” because the regulations have been permanently adopted.

§ 145-10-005 Purpose of Regulations

The purpose of the rules and regulations in this chapter is to provide a comprehensive and efficient administrative hearing process for the Office of Public Lands.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

Commission Comment: The Commission deleted “emergency” before “rules and regulations” because the regulations have been permanently adopted.

§ 145-10-010 Definitions

- (a) “Administrator”. The Administrator of the Office of Public Lands.
- (b) “Administrative Hearing Officer”. The in-house hearing officer selected by the Board of Public Lands to conduct administrative hearings in accordance with the Commonwealth Administrative Procedure Act [1 CMC §§ 9101, et seq.] and the rules and regulations in this chapter.
- (c) “Administrative Procedure Act”. The Commonwealth Administrative Procedure Act, codified at 1 CMC §§ 9101, et seq.
- (d) “Board of Public Lands”. The policy-making body responsible for the management, use, and disposition of all Commonwealth submerged and surface public lands.
- (e) “Office of Public Lands”. The office, headed by the Administrator, established under the control and general supervision of the Board of Public Lands to execute, implement and enforce the policies, decisions, orders, rules and regulations of the Board of Public Lands.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

Commission Comment: In subsection (c), the Commission changed “as” to “at” to correct manifest errors. The Commission inserted quotation marks around terms defined.

Part 100 - Administrative Hearing Procedures

§ 145-10-101 Administrative Hearing Officer Position

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(a) The Board of Public Lands hereby establishes the position of administrative hearing officer (“hearing officer”) and authorizes the hearing officer to conduct appellate hearings and issue decisions on administrative land claims.

(b) The hearing officer shall have the authority to hear any appeal made by any person aggrieved by a decision made by the Administrator or his/her designee. The decision of the hearing officer is final unless appealed to the Board of Public Lands.

(c) In the event that the hearing officer has determined that a conflict, if any, exists pursuant to the CNMI Code of Ethics, the Administrative Procedure Act, or for any other reason(s) duly noted, the Board of Public Lands may select a hearing officer pro tem to hear and issue a decision and order on such appeal.

(d) The hearing officer, in carrying out his/her duties and responsibilities, pursuant to the Commonwealth Administrative Procedure Act [1 CMC §§ 9101, et seq.] and the rules and regulations in this chapter, shall exercise his/her independent judgment on the evidence before him/her, free from pressures by the parties to the appeal involved, the Board of Public Lands, the Office of Public Lands, or any other Commonwealth government agencies and/or officials.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

Commission Comment: In subsection (c), the Commission changed “exist” to “exists” to correct a manifest error.

§ 145-10-105 Hearing; Conduct and Procedure

The hearing officer shall conduct and regulate the course of the hearing proceedings and issue decisions in conformance with the Administrative Procedure Act, 1 CMC §§ 9101, et seq.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

§ 145-10-110 Appealable Decisions of the Administrator or His/Her Designee

- (a) Denial or noncompliance of village homestead.
- (b) Denial or noncompliance of agricultural homestead.
- (c) Denial or noncompliance of surface or submerged lands permit or lease.
- (d) Denial of land claims.
- (e) Denial of land exchange.

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(f) The Administrator or his/her designee's written notice of denial or noncompliance shall inform the aggrieved person that he/she may appeal, in writing, such adverse decision to the hearing officer within thirty days of receipt of notice of denial or noncompliance.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

Commission Comment: The final paragraph was not designated. The Commission designated it subsection (f).

§ 145-10-115 Appeal to the Board of Public Lands

Any person not satisfied with the decision of the hearing officer may appeal such decision to the Board of Public Lands within thirty days of receipt of the hearing officer's decision. The Board of Public Lands, having the authority over the management, use, and disposition of all Commonwealth surface and submerged public lands, is the final agency authority.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

§ 145-10-120 Appeal of the Board of Public Lands Decision

Appeals from a Board of Public Lands decision shall be brought pursuant to the Administrative Procedure Act [1 CMC §§ 9101, et seq.]

History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

§ 145-10-125 Timing; Issuance of Decisions and Orders

The hearing officer shall issue his/her decision on each claim after the administrative hearing proceeding is fully completed. The decision may be issued within thirty days. If more time is needed to issue a decision, due to caseloads, the parties will be notified of such extension.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).

§ 145-10-130 Severability

If any provision of the rules and regulations in this chapter shall be held invalid by a court of competent jurisdiction, the remainder of such rules and regulations other than those to which it is held invalid, shall not be affected thereby.

Modified, 1 CMC § 3806(d).

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History: Adopted 23 Com. Reg. 18803 (Dec. 21, 2001); Emergency and Proposed 23 Com. Reg. 18398 (Sept. 24, 2001) (effective for 120 days from Sept. 24, 2001).