TITLE 145
DEPARTMENT OF PUBLIC LANDS

CHAPTER 145-10
ADMINISTRATIVE HEARING PROCEDURE RULES AND REGULATIONS

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 PL 10-57 repealed and reenacted chapter 13, division 2 of title 1 of the Commonwealth Code, 1 CMC §§ 2651, et seq., and statutorily established the Department of Lands and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.

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.
(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].

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).

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

(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.

(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).

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).

CHAPTER 145-20
AGRICULTURAL AND VILLAGE HOMESTEAD RULES AND REGULATIONS

SUBCHAPTER 145-20.1
AGRICULTURAL HOMESTEAD WAIVER PROGRAM RULES AND REGULATIONS

Subchapter Authority: 2 CMC § 4325.

Subchapter History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

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. 2 CMC §§ 4301-4314 set forth the general statutory provisions governing homesteads in the CNMI and designate MPLC as the agency responsible for implementing homestead laws.

PL 2-13 (effective Feb. 9, 1981), the "Homestead Waiver Act," is codified as amended at 2 CMC §§ 4321-4328. PL 11-96 (effective Sept. 10, 1999) amended certain provisions of the Homestead Waiver Act. 2 CMC § 4323, as amended by PL 14-66 (effective May 5, 2005) directed the MPLC to waive certain requirements of the agricultural homesteading program.

PL 12-33 (effective Dec. 5, 2000), the "Board of Public Lands Act of 2000," and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. The Marianas Public Lands Authority became the successor agency to the Marianas Public Lands Corporation.

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. 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" and transferred the powers and duties of the Marianas Public Lands Authority to the Department of Public Lands. 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. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

2 CMC § 4325 empowers the Department of Public Lands to promulgate rules and regulations to carry out the purposes of the Homestead Waiver Act. PL 15-2 § 3 (§ 108) requires that the Department of Public Lands "assess the demand

for homesteads and develop a program for meeting that need, to the extent practicable, within the available land base." 1 CMC § 2808.

The Marianas Public Lands Corporation promulgated the Agricultural Homestead Waiver Program Rules and Regulations codified in this subchapter.

Part 001 - General Provisions

§ 145-20.1-001 Authority

The rules and regulations in this subchapter are hereby promulgated and issued by the Marianas Public Land Corporation (MPLC) pursuant to § 5 of the Northern Mariana Islands Homestead Waiver Act of 1980 (Public Law 2-13, as amended).

Modified, 1 CMC § 3806(d).

History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

§ 145-20.1-005 Purpose

The purposes of the rules and regulations in this subchapter are to set forth the necessary procedures with respect to agricultural homestead waiver applications; to set out in detail the standards of eligibility; to provide for certain requirements necessary to meet the goals and objectives of the agricultural homestead waiver program; to provide for a system of issuance of notice and hearing process for applicants whose applications have been denied, and to provide a basic format for applications and other documents and instruments necessary to administer and implement the agricultural homestead waiver program.

Modified, 1 CMC § 3806(d).

History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

Part 100 - Agricultural Homestead Waiver Program Requirements

§ 145-20.1-101 Standards of Eligibility

The criteria provided hereinunder shall govern the eligibility of the following classes of applicants for agricultural homestead under Public Law 2-13, as amended:

(a) An applicant must have, prior to January 9, 1978, entered upon, occupied, and improved a certain public land for agricultural purposes with any form of authorization from the government, and actually entered upon, occupied, improved and continually used said public land for agricultural purposes through the effective date of the Northern Mariana Islands Homestead Waiver Act of 1980, as amended; or an applicant must have, prior to January 9, 1978, entered upon, occupied, and improved a certain public land for agricultural purposes for a period of 15 years or more with or without any authorization from the government.

(b) An applicant must be 18 years or older at the time he/she entered upon, occupied, and improved either with or without government authorization, a certain public land for agricultural purposes.

(c) An applicant or his/her spouse must not own or have more than one agricultural homestead.

(d) An applicant or his/her spouse must not own or have an interest in land within the Northern Mariana Islands that equals or exceeds the land area allowable at the time he/she entered upon, occupied, and improved a certain public land for agricultural purposes.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

§ 145-20.1-105 Application Procedure

(a) All applicants for waiver of agricultural homestead shall fill out an agricultural homestead waiver application form provided for by MPLC. The said form is attached hereto as appendix "A." All applications shall be submitted no later than one year from the date of the final publication of the rules and regulations in this subchapter.

(b) All applications shall be signed and acknowledged before a notary public or declared under penalty of perjury.

(c) All applications must be accompanied by a $200.00 application fee.

(d) After submission of an application, MPLC shall review and verify the eligibility of the applicant and all essential facts set forth in the application, including but not limited to investigation of records, interviewing of applicants and witnesses, inspection of premises and improvements or developments, etc.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

Commission Comment: In subsection (a), the Commission moved the period after "A" inside of the closing quotation mark.

§ 145-20.1-110 Issuance of Permit and Deed

An applicant whose application has been reviewed, verified, approved, and found to meet the agricultural homestead requirements, rules, and regulations to the satisfaction of MPLC shall be issued an agricultural homestead permit upon completion of the necessary survey work, preparation of an official survey plat and payment of 10% of the survey cost incurred by MPLC, however, not to exceed $100 per hectare, whichever is lower. The said form is attached hereto as

appendix "B." Upon issuance of the permit, a deed to the applicant shall be issued and delivered to the said applicant. The said form is attached hereto as appendix "C."

Modified, 1 CMC § 3806(f), (g).

History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

Commission Comment: The Commission moved the periods inside of the closing quotation marks.

§ 145-20.1-115 Notice and Hearing

An applicant whose application for an agricultural homestead waiver has been received, verified, and found not eligible, shall be informed in writing, in the language the applicant is conversant with, of such decision, the reason therefore, and the right of each applicant to appear before the hearing committee set up by the Corporation to hear and determine why his/her application should not be denied. Such a hearing shall be held no later than 90 days after receipt of such notice by the applicant. If the applicant has reasons to believe that his/her application should not be denied, he/she should present his/her case before the committee for consideration. No later than 30 days after the hearing, the committee, on behalf of the Corporation, shall issue its decision. If the committee finds that it should deny the application, a written decision to that effect shall be prepared and given to the applicant. Such a decision shall be deemed final for MPLC. The applicant has the right to be represented by a counsel of his/her choosing and to bring witnesses at the said hearing.

Modified, 1 CMC § 3806(f).

History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

Appendix A

Application for Waiver of Agricultural Homestead Requirements
Marianas Public Land Corporation

P. O. Box 380
Saipan, CM 96950

Application For Waiver of
Agricultural Homestead Requirements

A. Bio Data

1. Name of Applicant(s): _____
(Last) (First) (Middle)

(Spouse's Maiden Name) _____
(Last) (First) (Middle)

2. Place of Birth: (Applicant) _____
(Spouse) _____

3. Date of Birth: (Applicant) _____ Age: _____
(Spouse) _____ Age: _____

4. Date of Marriage: _____

5. Home Address: _____

6. Mailing Address: _____

7. Telephone Number: (Home) _____
(Work) _____

8. Number of dependent children (under 18 years) _____

9. Occupation(s): (Applicant) _____
(Spouse) _____

10. Name and address of employer:
(Applicant) _____
(Spouse) _____

B. Land Ownership Statement

1. Do you or your spouse own or have an interest in agricultural land in the Commonwealth of the Northern Mariana Islands? _____

a) What kind of interest? (Specify whether inheritance, co-heir to decedent's estate, co-owner, through purchase, homesteading program, etc.) _____

b) Where is the land located? (Describe) _____

c) How large is the land? _____

d) Who is using the land? _____

2. Are you or your spouse presently occupying and developing a public land for agricultural, purpose?_____

a) When did you first enter, occupy and develop the land?_____
Month Date Year

b) Where is the land located? _____

c) How large is the land? _____

d) How long have you entered occupied, and developed the land?_____

e) Did you apply to homestead the land? _____

f) When did you apply to homestead the land?
_____
Month Date Year

g) Have you ever been issued an agricultural homestead permit?_____

h) Did you pay the $10 filing fee? _____

i) Do you have authorization from the government to enter upon, occupy, and improve the land for agricultural purposes?_____
1) Who authorized you? _____
2) When? _____

j) Were you ever given a map by the government for that land that you have entered, occupied, and improved for agricultural purposes? (Attach map) _____

k) Have you ever traveled to another island, or country after you entered upon, occupied, and improved the land for agricultural, purposes? _____
1. When? _____

2. Length of travel? _____
3. For what purpose? _____

l) Have you ever authorized or permitted anyone (aside from your spouse or children) to enter upon, occupy and improve the land or any portion of the said land? _____

m) Who else, if any, beside you, your spouse or children, is occupying or using the land?_____
1) Length of time the above person is using the land? _____

n) What development(s) or improvement(s), if any, have you made on the land? _____
1) In the space below, draw a simple sketch of the land and indicate what portion of the land has what development(s) or improvement(s):

2) Names of adjoining occupants to your:
North _____
South _____
East _____
West _____

Certification by Applicant/Spouse

I/We, _____ declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on _____, 19_____, at _____, Commonwealth of the Northern Mariana Islands. Also, I/we understand that by falsifying any of the answers herein for the purpose of obtaining a deed to the public land I/we was/were authorized to enter, occupy, and improve for agricultural purposes, MPLC is authorized by me/us to declare my/our application for waiver of agricultural homestead requirements null and void.

Date: _____ Applicant: _____

Date: _____ Spouse: _____

Acknowledgment

Commonwealth of the)
Northern Mariana Islands) ss
)
_____)

On this _____ day of _____, 19___, before me appeared _____, known to me to be the person(s) whose name(s) is (are) subscribed to the foregoing Instrument and acknowledged that he/she signed and delivered said Instrument as his/her free and voluntary act for the purposes therein set forth.

In Witness Whereof, I hereunto set my hand and seal this _____ day of _____, 19___.

_____
Notary Public

Modified, 1 CMC § 3806(f), (g).

History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

Commission Comment: In section (B)(2)(k), the Commission corrected the spelling of “traveled.”

Appendix B

Permit to Homestead Agricultural Tract
Commonwealth of the Northern Mariana Islands
Marianas Public Land Corporation

Permit to Homestead Agricultural Tract No. _____

This Agricultural Homestead Permit is issued by the Marianas Public Land Corporation in favor of _____, referred to hereinafter as "Homesteader", who is hereby authorized to continue to occupy, use, and improve the parcel of land described as per attachment "A", referred to as the "Homestead" in accordance with the provisions of the Northern Mariana Islands Homestead Waiver Act of 1980, as amended, and the rules and regulations promulgated thereof.

In issuing this Permit, the Marianas Public Land Corporation has made the following findings:

1. That the Homesteader has, prior to January 9, 1978, continuously entered upon, occupied, and improved that parcel of land as described in attachment "A" for agricultural purposes for a period of _____ years.

2. That the Homesteader does not own or have an interest in agricultural land within the Commonwealth of the Northern Mariana Islands that exceeds or equals the area or size of the above-described Homestead.

3. That the Homesteader has paid the application fee of $200.00 and costs of survey of the Homestead in accordance with § 5 of the approved Rules and Regulations [§ 145-20.1-105(c)].

4. That the Homesteader has fully understood and agreed to reserve to the government of the Commonwealth of the Northern Mariana Islands, its successors and assigns, all mineral rights or such water rights as may be required, the existing roadways, rights of ways and other easements upon said Homestead. The Homesteader further agrees to reserve for the benefit of the Government of the Northern Mariana Islands, its successors and assigns from the land above described necessary rights of way for construction of utility lines, pipelines, or other conduits with necessary maintenance and access roads as may be constructed by the authority of the government of the Northern Mariana Islands, its successors and assigns, but this reservation shall not be construed to waive any claims for injury to growing crops, damage to improvements or other injuries sustained by the Homestead as a direct result of the execution of work or exercise of the right of entry upon the above-described property under this reservation.

5. That the Homesteader has satisfied the waiver eligibility requirements and is hereby waived from complying with the compliance requirements as mandated by law.

6. That the Homesteader is entitled to receive a Quitclaim Deed to said Homestead within 90 days from the date hereof.

Dated this _____ day of _____, 19___.

Marianas Public Land Corporation Homesteader

By _____ _____
Chairman
Board of Directors

Modified, 1 CMC § 3806(f), (g).

History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

Commission Comment: In subsection (3), the citation to § 5, codified at § 145-20.1-110, is incorrect. The Commission cited the correct provision in the brackets.

Appendix C

Quitclaim Deed for Agricultural Homestead Tract
Commonwealth of the Northern Mariana Islands
Marianas Public Land Corporation

Quitclaim Deed for
Agricultural Homestead Tract

This Indenture made this _____ day of _____, 19___, by and between the Marianas Public Land Corporation of the Commonwealth of the Northern Mariana Islands, hereinafter referred to as "GRANTOR", and _____ of _____, Northern Mariana Islands, hereinafter referred to as "GRANTEE".

WITNESSETH THAT:

WHEREAS, Grantee has continuously entered upon, occupied, and improved a certain public land described below for agricultural purposes for a period of _____ years at the effective date of the Constitution of the Northern Marianas Islands, the first entry being made on _____; and

WHEREAS, Grantee complied with the provisions of the homestead laws pertaining to the said agricultural tract as well as the terms and conditions of the Permit to Homestead Agricultural Tract No. _____, incorporated herein by reference.

NOW, THEREFORE, pursuant to the provisions of the Northern Mariana Islands Homestead Waiver Act of 1980, the Grantor having the powers to manage and dispose of public lands under Article XI of the Constitution on behalf of the Commonwealth, now do hereby by these presents remise, release, and quitclaim forever to the Grantee, all right, title, interest, or claim of the Commonwealth in and to the following described real property situated and lying at _____, Northern Mariana Islands:

Tract No. _____ containing an area of _____ square meters more or less as shown on the Division of Lands and Surveys Official Survey Plat Number _____ dated _____, the description therein being incorporated herein by reference.

TO HAVE AND TO HOLD the same unto the Grantee, his/her heirs and assigns forever, together with all fixtures and appurtenances belonging thereto, but reserving to the Commonwealth, its successors and assigns, all mineral rights or such water rights as may be required, the existing roadways, and other easements upon the premises. There is also hereby reserved for the benefit of the Commonwealth, its successors and assigns, from the premises necessary rights of way for construction of utility lines, pipelines, or other conduits with necessary maintenance and access roads as may be constructed by the authority of the Commonwealth, its successors and assigns; but this reservation shall not be construed to waive any claim for injury to growing crops,

improvements, surface damage, or other injuries sustained by the Grantee, his/her heirs and assigns, as a direct result of the execution of the work or exercise of the right of entry under this reservation.

IN WITNESS WHEREOF, the Chairman of the Board of Directors of the Marianas Public Land Corporation, pursuant to the authorization of the Board, hereby enters his signature and affixes the seal of the Corporation on the day and year first above written.

MARIANAS PUBLIC LAND CORPORATION

By: _____
Chairman
Board of Directors

History: Adopted 5 Com. Reg. 2240 (July 29, 1983); Proposed 5 Com. Reg. 2109 (May 27, 1983); Proposed 3 Com. Reg. 1285 (July 31, 1981).

SUBCHAPTER 145-20.2
ROTA AGRICULTURAL HOMESTEAD PROGRAM RULES AND REGULATIONS

Subchapter Authority: N.M.I. Const. art. XI, PL 15-2, and PL 7-11 § 3 (former 2 CMC § 4383 repealed and reenacted by PL 10-3 § 5).

Subchapter History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018); Proposed 14 Com. Reg. 10179 (Dec. 15, 1992).

Commission Comment: N.M.I. Const. art. XI, codified as amended at 2 CMC §§ 4111-41115, established the Marianas Public Land Corporation (MPLC), responsible for the management and disposition of public lands. See 2 CMC §§ 4113 and 4114. 2 CMC §§ 4301-4314 set forth the general statutory provisions governing homesteads in the CNMI and designated MPLC as the agency responsible for implementing homestead laws.

PL 7-11, the "Rota Agricultural Homestead Act of 1990," codified as amended at 2 CMC §§ 4381-4385, is deemed effective on October 24, 1990 pursuant to PL 10-3 (effective Mar. 4, 1996), the "Rota Agricultural Homestead Corrections Act of 1996." See PL 10-3 § 3 set forth in the commission comment to 2 CMC § 4382. PL 7-11 § 2 authorized the MPLC to administer an agricultural homestead program on Rota. PL 6-15 § 3 (former 2 CMC § 4373) empowered MPLC to promulgate rules and regulations to carry out the purposes of the act.

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.

PL 10-3 (effective Mar. 4, 1996), the "Rota Agricultural Homestead Corrections Act of 1996," codified at 2 CMC §§ 4382 and 4383, amended PL 7-11 to, among other things, update the law to reflect the changes effected by Executive Order 94-3. PL 10-2 § 5 repealed PL 6-15 § 3. 2 CMC § 4383(a) requires the Secretary of the Department of Lands and Natural Resources to establish standards and requirements for the use, occupation and development of the homestead tracts granted under the act.

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, et seq. 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. 1 CMC § 2654 authorizes the Department of Lands and Natural Resources to adopt rules and regulations in furtherance of its duties and responsibilities.

PL 10-57 § 4 vacated Executive Order 94-3 § 306. PL 10-57 § 3 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." 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 12-33 (effective Dec. 5, 2000), the "Board of Public Lands Act of 2000," and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management.

After PL 12-33 vested the authority to implement the homesteading programs in the new Board of Public Lands Management, the Legislature enacted PL 12-53 (effective on May 29, 2001). PL 12-53, the "Rota Agricultural Homestead Amendment Act of 2001," amended 2 CMC § 4382 to authorize the Board of Public Lands to designate agricultural lands on Rota for homesteads. However, PL 12-53 did not amend 2 CMC § 4383, which still requires the Secretary of the Department of Lands and Natural Resources to establish standards and requirements for the use, occupation and development of the homestead tracts granted under the act.

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, replaced the Marianas Public Lands Authority with the Department of Public Lands within the executive branch. Public Law 15-2 repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands. 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" and transferred the powers and duties of the Marianas Public Lands Authority to the Department of Public Lands. 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. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

PL 15-2 § 3 (§ 108) requires that the Department of Public Lands "assess the demand for homesteads and develop a program for meeting that need, to the extent practicable, within the available land base." 1 CMC § 2808. PL 15-2 did not amend 2 CMC § 4383(a), which requires the Department of Lands and Natural Resources to establish standards for homestead tracts in Rota. Consequently, authority over an agricultural homestead program on Rota is unclear.

On December 15, 1992, the MPLC published proposed Rota Agricultural Homestead Program Rules and Regulations pursuant to the authority of PL 7-11. See 14 Com. Reg. 10179 (Dec. 15, 1992). A notice of adoption was never published. This subchapter is reserved for future rules and regulations governing the Rota Agricultural Homestead Program.

Part 001 - General Provisions

§ 145-20.2-001 Authority

The regulations in this subchapter are promulgated by the Department of Public Lands ("DPL") pursuant to the authority set forth in Article XI of the Commonwealth Constitution, Public Law 7-11, and Public Law 15-2.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-005 Purpose

The purpose of these rules and regulations are to set forth the necessary procedures with respect to agricultural homestead applications; to set out in detail the standards of eligibility; to provide for certain requirements necessary to meet the goals and objectives of the agricultural program; to provide for an efficient system of notice and hearing process for applicants whose applications have been denied; and to provide a basic format for applications and other documents and instruments necessary to administer and implement the agricultural homestead program.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-010 Definitions

(a) "Domicile" means that place in which a person maintains a residence with the intention of continuing that residence for an unlimited or indefinite period, and to which that person has the intention of returning whenever absent, even for an extended period.

(b) "Marriage" means a legal status requiring the issuance of a marriage license and a ceremony performed by a person authorized under Commonwealth law or the laws of another jurisdiction recognized by the Commonwealth, or a customary marriage between citizens that is solemnized in accordance with recognized customs and Commonwealth law.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

Part 100 - Rota Agricultural Homestead Program Requirements

§ 145-20.2-101 Designation of Homestead Areas

DPL may designate areas suitable for farming and agricultural activities, and shall use such designated areas for the distribution of agricultural homestead lots. No applicant may be granted an agricultural homestead lot outside of the designated area without the prior approval of the DPL Secretary.

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-105 Establishment of Area

All eligible applicants shall be entitled to a maximum area of one hectare or 10,000 square meters of agricultural land.

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-110 Persons Eligible to Homestead

All applicants for agricultural homestead lots must meet and satisfy all of the following criteria:

(a) An applicant must be 18 years of age, or over, and a citizen of the Commonwealth of the Northern Mariana Islands, and of Northern Marianas descent as provided for in the CNMI Constitution.

(b) An applicant must have been domiciled on the island of Rota for not less than five years.

(c) An applicant or his/her spouse must not own or have an interest in agricultural land within the Commonwealth of the Northern Mariana Islands which equals or exceeds a half hectare or 5,000 square meters.

(d) An applicant or his/her spouse must not have been a recipient of an agricultural homestead lot from a previous agricultural homesteading program.

(e) An applicant shall not receive more than one agricultural homestead lot.

(f) If two applicants marry, the applicants must notify DPL of the marriage and one of the applications must be withdrawn. If an applicant marries a permittee, the applicant must notify DPL and withdraw the application. If two permittees marry, the permittees must notify DPL of the marriage and one of the permits must be canceled. If an applicant or permittee marries the recipient of an agricultural homestead lot, the permittee or applicant must notify DPL of the marriage and withdraw his/her application or cancel his/her permit.

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-115 Priority of Applicants

DPL shall take into consideration the date of application, so that an earlier applicant shall take precedence over a later applicant, all other factors being equal. Applicants who have incomplete files will not be considered until all required documents and information is submitted. DPL shall then prioritize the applications submitted according to the following categories:

(a) Residency Status
(1) Applicants physically residing on the island of Rota will be given first priority.
(2) Applicants physically residing somewhere other than the island of Rota, will be given second priority.

(b) Ineligible Applicants

(1) Those applicants who are determined ineligible to receive agricultural lots due to constitutional and statutory restrictions shall be notified in writing of such determination. The notification shall specify the reasons for ineligibility and inform the applicant of a right to appeal the determination within 30 days from the date of the notice.

(c) In order to verify the information provided in the application and in order to accurately determine the actual need and priority for an agricultural homestead lot, DPL may require the applicant to provide additional documentation as DPL deems appropriate.

Modified, 1 CMC § 3806(a).

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-120 Application Procedure

(a) All applicants for agricultural homestead shall fill out an application form provided by DPL. Applications may be submitted in the Saipan Office or directly to the Rota Office. Applications shall be date stamped by the DPL when received.

(b) All applications must be signed and notarized under penalty of perjury.

(c) All applications must be accompanied by a $100 non-refundable application fee.

(d) After submission of an application, DPL shall verify the eligibility of the applicant and all essential facts set forth by the applicant, and if necessary, require the applicant to appear before the DPL Resident Director or Homestead Director or his/her designee for an interview to clarify or verify the information given in the application. Approval or disapproval of application shall be rendered no later than 90 days after receipt of a completed application.

(e) It is the applicant's responsibility to notify DPL of any changes to their mailing address or other contact information. Any letters, notices, or other documents mailed to the applicant's last known address on file and returned by the postal service as undeliverable, unable to forward, etc. will result in the applicant's file being placed under inactive status until such time they update their contact information.

Modified, 1 CMC § 3806(a), (g).

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-125 Issuance of Homestead Permit

(a) DPL shall issue a permit to enter upon, use, and improve the land once the agricultural tract has been surveyed, monumented, mapped, and is ready for homesteading. The DPL shall conduct a lottery wherein the eligible applicant will pick their lot by blind draw.

(b) After an agricultural lot is drawn by an eligible applicant, the DPL shall prepare an agriculture homestead permit for the applicant, and shall give a copy of the map showing the agriculture homestead tract as surveyed, and shall also physically show the tract to the homesteaders.

(c) A permit fee of $100 shall be paid by the homesteaders due and payable at the time the permit is executed.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-130 Conditions of Occupancy

(a) The homesteader shall enter upon and commence the use and improvement of the agriculture lot consistent with a land utilization and planting program approved by DPL within 90 days after the receipt of the permit. Upon noncompliance with the foregoing, the permit shall expire and be null and void and the homesteader shall be construed to have waived all rights in and to the land. DPL shall then have the right to enter and possess the land.

(b) The homesteader shall, at all times, maintain all boundaries clear of any and all weeds, trash, and underbrush.

(c) DPL shall show the homesteader the actual boundaries of the homestead lot. However, any subsequent request by homesteader for retracement of boundaries by DPL may be undertaken only after a $300 fee is paid in advance.

(d) During the period of occupancy, the homesteader shall observe and comply with all rules, regulations, and requirements concerning the use, occupation, and development of the homestead lot.

(e) No permanent structure, e.g. reinforced concrete or hollow concrete blocked construction, is allowed during the term of the permit. All temporary construction for housing of people shall provide sanitation facilities approved by the Bureau of Environmental and Coastal Quality (BECQ).

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-135 Homestead Progress Inspection

(a) DPL shall conduct inspections of the homestead at least once a year, or more often as it deems necessary, to determine compliance with the homestead requirements. Notice of Inspection shall be given to the homesteader at least ten days in advance.

(b) After each inspection, the homestead inspection team shall issue a brief report on the progress of and the compliance of the homesteader.

(c) In the event that a homesteader is not complying with the homestead requirements, the inspection team shall so note in its report and inform the homesteader of the requirement he/she is not complying with. Appropriate written warnings shall be given to the homesteader. Such notice shall contain specific corrective actions to be taken by the homesteader to bring himself/herself into compliance with the homestead requirements.

(d) All inspection reports shall be signed by the homestead inspector.

(e) It is the homesteader's responsibility to notify DPL of any changes to their mailing address or other contact information. Any letters, notices, or other documents mailed to the homesteader's last known address on file and returned by the postal service as undeliverable, unable to forward, etc. could result in the homesteader losing the opportunity to contest the revocation of their lot.

Modified, 1 CMC § 3806(a), (e), (g).

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-140 Deeds of Conveyance

Deeds of conveyance shall be issued by DPL for homestead lots entered pursuant to the Rota Agriculture Homestead Act of 1990. Upon maturity of the permit and only upon execution of a certification by DPL certifying that the homesteader has resided on the island of Rota for three years from the date of entry upon the homestead lot and has complied with all laws, rules, and regulations appertaining to the homestead. DPL shall issue the deed of conveyance within six months of the time the homesteader becomes eligible to receive the deed of conveyance.

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-145 Transfer of Homestead Permit

No rights in or to a homestead permit shall be sold, assigned, leased, transferred, or encumbered. Except that in the event of the death of the homesteader prior to the issuance of a deed of conveyance, all rights under the permit shall inure to the benefit of such person or persons, if any, as the homesteader shall designate in the permit or letter filed with DPL. In the event that the homesteader makes no designation, the permit shall be revoked, and the land, together with all appurtenances thereto entered thereunder, shall revert to DPL or its successor.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-150 Penalties

(a) Grounds for Revocation of Permit. If at any time after the issuance of the homestead permit, and before the expiration of the permit period, the homesteader abandoned the land or failed to

comply with the laws, then the permit shall be revoked and the land shall revert to DPL or its successor. DPL may at its discretion allow the homesteader an extension of the permit period.

(b) Grounds for Disqualification.
(1) If an applicant knowingly and willfully submits false information to DPL under penalty of perjury, the matter shall be referred to the Attorney General for prosecution and the applicant's permit shall be revoked and the applicant shall be disqualified from participation in the agricultural homesteading program.
(2) If an applicant negligently or recklessly submits false information to DPL, or otherwise misleads DPL, the applicant may be disqualified from participation in the agriculture homestead program permanently or for a period of time to be determined by the Secretary.

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-155 Notice and Hearing

An applicant whose application for an agricultural homestead has been received, verified, and found ineligible, shall be informed in writing of such decision, the reason therefore, and provided notice of a right to appeal the decision within 30 days of the date of the letter. Such hearing shall be held no later than 90 days after receipt of such notice by the applicant. The applicant has the right to be represented by a counsel of his/her choosing and to bring witnesses to the hearing. No later than 30 days after the hearing, the hearing officer, on behalf of the DPL, shall issue his/her decision. If the hearing officer denies an application, a written decision to that effect shall be prepared and given to the applicant. Such a decision shall be deemed final.

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

§ 145-20.2-160 Waiver

DPL, upon recommendation of the inspection team, the Rota Director, and upon a showing of good cause, may temporarily waive a homestead requirement in the regulations in this subchapter and the conditions imposed on the permit, provided that no provisions set forth in the Constitution or by statute shall be waived.

History: Adopted 40 Com. Reg. 40926 (Sept. 28, 2018); Proposed 40 Com. Reg. 40814 (July 28, 2018).

SUBCHAPTER 145-20.3
TINIAN AGRICULTURAL HOMESTEAD PROGRAM RULES AND REGULATIONS

Subchapter Authority: PL 6-15 § 3 (former 2 CMC § 4373 repealed and reenacted by PL 10-2 § 5).

Subchapter History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

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. 2 CMC §§ 4301-4314 set forth the general statutory provisions governing homesteads in the CNMI and designate MPLC as the agency responsible for implementing homestead laws.

PL 6-15, the "Tinian Agricultural Homestead Act of 1988," codified as amended at 2 CMC §§ 4371-4376, is deemed effective on Feb. 21, 1989 pursuant to PL 10-2 (effective Mar. 4, 1996), the "Tinian Agricultural Homestead Corrections Act of 1996." See PL 10-2 § 3 set forth in the commission comment to 2 CMC § 4372. PL 6-15 § 2 authorized the MPLC to administer an agricultural homestead program on Tinian. PL 6-15 § 3 empowered MPLC to promulgate rules and regulations to carry out the purposes of the act.

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.

PL 10-2 (effective Mar. 4, 1996), the "Tinian Agricultural Homestead Corrections Act of 1996," codified at 2 CMC §§ 4372 and 4373, amended PL 6-15 to, among other things, update the law to reflect the changes effected by Executive Order 94-3. PL 10-2 § 5 repealed PL 6-15 § 3. 2 CMC § 4373(a)(2) requires the Secretary of the Department of Lands and Natural Resources to establish standards and requirements for the use, occupation and development of the homestead tracts granted under the act.

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, et seq. 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. 1 CMC § 2654 authorizes the Department of Lands and Natural Resources to adopt rules and regulations in furtherance of its duties and responsibilities.

PL 10-57 § 4 vacated Executive Order 94-3 § 306. PL 10-57 § 3 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." 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 12-33 (effective Dec. 5, 2000), the "Board of Public Lands Act of 2000," and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. The Marianas Public Lands Authority became the successor agency to the Marianas Public Lands Corporation.

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, replaced the Marianas Public Lands Authority with the Department of Public Lands within the executive branch. PL 15-2 repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands.

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. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

While PL 12-33 vested the authority to implement the homesteading programs in the Board of Public Lands Management and PL 15-2 transferred that authority to the Department of Public Lands, 2 CMC § 4373(a)(2) was not amended. 2 CMC § 4373(a)(2) requires the Department of Lands and Natural Resources to establish standards for homestead tracts in Tinian. PL 15-2 § 3 (§ 108) requires that the Department of Public Lands "assess the demand for homesteads and develop a program for meeting that need, to the extent practicable, within the available land base." 1 CMC § 2808. Consequently, authority over an agricultural homestead program on Tinian is unclear.

MPLC promulgated the 1991 Tinian Agricultural Homestead Program Rules and Regulations pursuant to the authority of PL 6-15 § 3.

Part 001 - General Provisions

§ 145-20.3-001 Authority

The rules and regulations in this subchapter are hereby promulgated and issued by the Marianas Public Land Corporation (MPLC) pursuant to section 3 of the Tinian Agriculture Homestead Act of 1988 (Public Law 6-15).

Modified, 1 CMC § 3806(d), (f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-005 Purpose

The purpose of the rules and regulations in this subchapter are to set forth the necessary procedures with respect to agricultural homestead applications; to set out in detail the standards of eligibility; to provide for certain requirements necessary to meet the goals and objectives of the agricultural program; to provide for an efficient system of notice and hearing process for applicants whose applications have been denied, and to provide a basic format for applications and other documents and instruments necessary to administer and implement the agricultural homestead program.

Modified, 1 CMC § 3806(d).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-010 Definitions

(a) "Domicile": That place where a person has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. The permanent residence of a person or place to which he intends to return even though he may actually reside elsewhere. The established, fixed, permanent, or ordinary dwelling place or place of residence of a person, as distinguished reside elsewhere.*

*So in original.

(b) "Marriage": The legal union of one man and one woman as husband and wife. It is a legal status and requires the issuance of a marriage license by the Commonwealth with or without a ceremony by a church.

(c) "Common Law Marriage": One not solemnized in the ordinary way but created by an agreement to marry, followed by cohabitation. Such a marriage requires a positive mutual agreement, permanent and exclusive of all others, to enter into a marriage relationship, combined with cohabitation sufficient to allow the fulfillment of necessary elements to the relationship of man and wife, and an assumption of marital duties and obligations. The burden to prove such relationship lies with the applicant, however, the existence of children whose birth certificates list both parties to such a relationship as parents shall constitute a prima facie showing of the existence of the relationship. For purposes of the regulations in this subchapter only, the definition of spouse shall include either party to a "common law" marriage.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

Commission Comment: The Commission inserted quotation marks around terms defined.

Part 100 - Tinian Agricultural Homestead Program Requirements

§ 145-20.3-101 Designation of Homestead Areas

The Marianas Public Land Corporation may from time to time designate areas suitable for farming and agricultural activities, and shall use such designated areas for the distribution of agriculture homestead lots. No applicant may be granted an agriculture homestead lot outside of the designated area without the prior approval of the Board of Directors.

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-105 Establishment of Area

All eligible applicants shall be entitled to a maximum area of one hectare or 10,000 square meters of agricultural land.

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-110 Persons Eligible to Homestead

All applicants for agriculture homestead lots must meet and satisfy all of the following criteria:

(a) An applicant must be 18 years of age, or over, and is a citizen of the Commonwealth of the Northern Marianas, and of Northern Marianas descent as provided for in the CNMI Constitution.

(b) An applicant must have been domiciled on the island of Tinian for not less than five years.

(c) An applicant or his/her spouse must not own or have an interest in agricultural land within the Commonwealth of the Northern Marianas which equals or exceeds ½ hectare or 5,000 contiguous square meters.

(d) An applicant or his/her spouse must not have been a recipient of an agriculture homestead lot from a previous agricultural homesteading program.

(e) An applicant shall not receive more than one agriculture homestead lot.

(f) A person is not eligible to apply for a homestead within the first six months after ceasing to cohabitate with an applicant or recipient of an agricultural homestead lot. Additionally, if an applicant resumes cohabitating with another applicant or recipient of an agricultural homestead lot within six months after receiving a permit to homestead, the permit shall be considered void for all purposes.

(g) A person residing with an applicant for, or recipient of an agricultural homestead lot is not eligible to apply for a homestead.

(h) If two applicants marry within the first year of either’s permit, they shall make an election as to which homestead to develop and the other homestead permit shall be deemed void. If an election is not made within two months of the marriage, the most recent permit shall be deemed void.

Modified, 1 CMC § 3806(e), (g).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

Commission Comment: In subsection (d), the Commission inserted the word "a" before "previous" to correct a manifest error.

§ 145-20.3-115 Priority of Applicants

The Marianas Public Land Corporation shall prioritize the applications submitted according to the following categories. In order to verify the information provided in the application and in order to accurately determine the actual need and priority for an agricultural homestead lot, MPLC may require the applicant to provide additional documentation as MPLC deems appropriate.

(a) First Priority
(1) Married applicants whose primary source of income is derived from farming.
(2) Single applicants whose primary source of income is derived from farming.

(b) Second Priority
(1) Married applicants whose primary income is derived from sources other than farming.
(2) Single applicants whose primary income is derived from sources other than farming.

(c) Ineligible Applicants
Those applicants who are determined ineligible to receive agricultural lots due to constitutional and statutory restrictions shall be notified in writing of such determination. The letter notice shall specify the reasons for ineligibility and inform the applicant of a right to appeal the determination within 30 days of the receipt of the notice.

(d) Within each category of eligible applicants, the MPLC shall take into consideration the date of application, so that an earlier applicant shall take precedence over a later applicant, all other factors being equal.

Modified, 1 CMC § 3806(g).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

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

In subsection (c), the Commission changed "informing" to "inform" to correct a manifest error.

§ 145-20.3-120 Application Procedure

(a) All applicants for agricultural homestead shall fill out an application form provided by MPLC. Applications may be submitted in the Saipan Office or directly to the Tinian Office. Applications shall be date stamped by the MPLC when received.

(b) All applications shall be signed and declared under penalty of perjury.

(c) All applications must be accompanied by $100.00 non-refundable application fee.

(d) After submission of an application, MPLC shall verify the eligibility of the applicant and all essential facts set forth by the applicant and if necessary require the applicant to appear before the MPLC Homestead Administrator or his designee for an interview to clarify or verify the information given in the application. Approval or disapproval of application shall be rendered no later than 90 days after receipt of a completed application.

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-125 Issuance of Homestead Permit

(a) Upon approval of the application, the MPLC shall issue a permit to enter upon, use and improve the land once the agricultural tract has been surveyed, monumented, mapped, and is ready for homesteading. The MPLC shall, by drawing of lots, pick up the agriculture lots for eligible applicants.

(b) After a agricultural lot is picked for an eligible applicant, the Corporation shall prepare a agriculture homestead permit for the applicant, and shall give a copy of the map showing the agriculture homestead tract as surveyed and shall also physically show the tract to the homesteaders.

(c) A permit fee of $100.00 shall be paid by the homesteaders due and payable at the time the permit is executed.

Modified, 1 CMC § 3806(g).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

In subsection (a), the Commission inserted the word “is” before “ready” to correct a manifest error.

§ 145-20.3-130 Conditions of Occupancy

(a) The homesteader shall enter upon and commence the use and improvement of the agriculture lot consistent with a land utilization and planting program approved by MPLC within 90 days after the receipt of the permit. Homesteader may develop his/her own land utilization planting program, but shall obtain written approval from MPLC prior to actual use and occupancy of the homestead lot. Upon noncompliance with the foregoing, the permit shall expire and be null and void and the homesteader shall be construed to have waived all rights in and to the land. Upon such occupancy, MPLC shall have the right to enter and possess the land.

(b) The homesteader shall, at all times maintain all boundaries clear of any and all weeds, trash and underbrush.

(c) MPLC shall show the homesteader the actual boundaries of the homestead lot. However, any subsequent request by homesteader for relocation of boundaries by MPLC may be undertaken only after a $300.00 fee is paid in advance.

(d) During the period of occupancy, the homesteader shall observe and comply with all rules, regulations and requirements concerning the use, occupation and development of the homestead lot.

(e) No permanent structure, e.g. reinforced concrete or hollow concrete blocked construction is allowed during the term of the permit. All temporary construction for housing of people shall provide sanitation facilities approved by the Division of Environmental Qualities (DEQ).

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-135 Homestead Progress Inspection

(a) The MPLC shall conduct inspections of the homestead at least once a year, or more often as it deems necessary to determine compliance with the homestead requirements. Notice of inspection shall be given the homesteader at least ten days in advance.

(b) After each inspection the homestead inspection team shall issue a brief report on the progress of and the compliance of the homesteader.

(c) In the event that a homesteader is not complying with the homestead requirements, the inspection team shall so note in its report and inform the homesteader of the requirement he/she is not complying with. Appropriate written warnings shall be given the homesteader. Such notice shall contain specific correcting action to be taken by the homesteader to bring himself into compliance with the homestead requirements.

(d) All inspection reports shall be signed by the inspection team chairperson and all participating team members.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-140 Deeds of Conveyance

Deeds of conveyance shall be issued by the Marianas Public Land Corporation for homestead lots entered pursuant to the Tinian Agriculture Homestead Act of 1988 upon maturity of the permit, and only upon execution of a certification by the Marianas Public Land Corporation certifying that the homesteader has resided on the island of Tinian for three years from the date of entry upon the homestead lot and has complied with all laws, rules and regulations appertaining to the homestead. MPLC shall issue the deed of conveyance within six months of the time the homesteader becomes eligible to receive the deed of conveyance.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-145 Transfer of Homestead Permit

No rights in or to a homestead permit shall be sold, assigned, leased, transferred or encumbered; except that in the event of the death of the homesteader prior to the issuance of a deed of conveyance, all rights under the permit shall inure to the benefit of such person or persons, if any, as the homesteaders shall designate in the permit or letter filed with the Marianas Public Land Corporation. In the event no designation is made by the homesteader, then the permit shall be revoked, and the land, together with all appurtenances thereto entered thereunder, shall revert to MPLC or its successor.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-150 Penalties

(a) Grounds for Revocation of Permit
If at any time after the issuance of the homestead permit, and before the expiration of the permit period, the homesteader abandoned the land or fail to comply with the laws, then the permit shall be revoked and the land shall revert to MPLC or its successor. The Marianas Public Land Corporation may at its discretion allow the homesteader an extension of the permit period.

(b) Grounds for Disqualification
(1) If an applicant knowingly and willfully submits false information to MPLC under penalty of perjury, the matter shall be referred to the Attorney General for prosecution and the applicant's permit shall be revoked and disqualified from participation in the agriculture homesteading program.
(2) If an applicant negligently or recklessly submits false information to MPLC or otherwise misleads MPLC, the applicant may be disqualified from participation in the agriculture homestead program permanently or for a period of time to be determined by the Board.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-155 Notice and Hearing

An applicant whose application for an agricultural homestead has been received, verified, and found not eligible, shall be informed in writing of such decision, the reason therefore, and a right to appeal the decision within 30 days of the date of the letter. Such hearing shall be held no later than 90 days after receipt of such notice by the applicant. The applicant has the right to be represented by a counsel of his/her choosing and to bring witnesses to the said hearing. No later than 30 days after the hearing, the committee, on behalf of the Corporation, shall issue its decision.

If the committee finds that it should deny the application, a written, decision to that effect shall be prepared and given to the applicant. Such a decision shall be deemed final.

Modified, 1 CMC § 3806(f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

§ 145-20.3-160 Waiver

The Marianas Public Land Corporation upon recommendation of the inspection team and the Homestead Administrator and upon showing of good cause, may waive a homestead requirement in the regulations in this subchapter and the conditions, imposed on the permit; provided that, no restrictive provisions of the Constitution or statute shall be waived.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

Part 200 - Miscellaneous Provisions

§ 145-20.3-201 Effective Date

The rules and regulations promulgated in this subchapter shall be effective and have full force and effect of law thirty days after publication of these rules and regulations in the Commonwealth Register.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 13 Com. Reg. 7650 (Feb. 15, 1991); Proposed 12 Com. Reg. 7404 (Oct. 15, 1990).

SUBCHAPTER 145-20.4
VILLAGE HOMESTEAD RULES AND REGULATIONS

Subchapter Authority: 2 CMC § 4338.

Subchapter History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Amdts Adopted 12 Com. Reg. 7511 (Dec. 15, 1990); Amdts Proposed 12 Com. Reg. 7107 (June 15, 1990); Amdts Proposed 11 Com. Reg. 6665 (Dec. 15, 1989); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).*

*The text of the proposed regulations was not published with the 1980 notice of proposed regulations.

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.

2 CMC §§ 4301-4314 set forth the general statutory provisions governing homesteads in the CNMI and designate MPLC as the agency responsible for implementing homestead laws. PL 1-42 (effective Dec. 19, 1979), the "Village Homesteading Act of 1979," codified as amended at 2 CMC §§ 4331-4338, established the village homesteading program and authorized MPLC to implement and administer the program. See 2 CMC §§ 4332-4333. PL 1-42 § 7 empowered MPLC to promulgate rules and regulations to carry out the purposes of the act. See 2 CMC § 4338.

PL 12-33 (effective Dec. 5, 2000), the "Board of Public Lands Act of 2000," and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. The Marianas Public Lands Authority became the successor agency to the Marianas Public Lands Corporation.

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, replaced the Marianas Public Lands Authority with the Department of Public Lands within the executive branch. PL 15-2 repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands.

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. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

PL 15-2 § 3 (§ 108) requires that the Department of Public Lands "assess the demand for homesteads and develop a program for meeting that need, to the extent practicable, within the available land base." 1 CMC § 2808.

MPLC promulgated the original regulations in this subchapter. In 2004, MPLA repealed and repromulgated the Village Homestead Rules and Regulations in their entirety pursuant to the authority of PL 12-33.

Part 001 - General Provisions

§ 145-20.4-001 Authority

The rules and regulations in this subchapter are hereby promulgated and issued by the Marianas Public Lands Authority (MPLA), pursuant to its duties and responsibilities under article XI of the CNMI Constitution, PL 12-33, as amended, and 2 CMC §§ 4331, et seq.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).

Commission Comment: The 1990 amendments contained authority and purpose provisions as follows:

§ 1 Authority
These regulations are promulgated by MPLC pursuant to two independent sources of rule-making authority:
(1) MPLC's constitutional authority and
(2) Section 7 of PL 1-42, as amended - the Village Homesteading Act of 1979, 2 CMC [s]ection 4331, et seq.

§ 2 Purpose and Policy of Amendments to Village Homestead Regulations

These regulations are promulgated to update and amend the Village Homesteading Regulations promulgated by MPLC on November 3, 1980, published in the Commonwealth Register dated March 30, 1981, at pages 1189 - 1199 and effective on April 30, 1981.

In promulgating these regulations, MPLC notes that there has been an ever-increasing number of applicants for village homesteads and an ever-diminishing supply of public lands that may be allocated to village homestead developments. In these regulations village homestead application categories are based upon the legislative criteria established in Public Law 1-42, as amended.

For example, the income and asset eligibility criteria are promulgated pursuant to the legislature's direction that the Act be established for residents "who are without village lots and do not have the means to acquire village lots." (PL 1-42, [s]ection 2(c)(1), 2 CMC [s]ection 4332(c)(1).) MPLC has determined that it may cost between $20,000 to $100,000 to acquire an average village lot in the CNMI. The income/assets eligibility criteria promulgated in paragraph 3(e) of these regulations will disqualify those applicants who may not own land in the CNMI, but who have sufficient income and/or assets to acquire a village lot in the CNMI.

12 Com. Reg. at 7110-11 (June 15, 1990).

With respect to MPLC's authority, see 1 CMC § 2671(b) and the commission comment at the beginning of this subchapter.

The MPLA's 2004 amendments repealed and re-promulgated this subchapter in its entirety. The Commission therefore, cites the 2004 amendments in the history sections throughout this subchapter.

§ 145-20.4-005 Purpose

The purposes of the rules and regulations in this subchapter is to repeal and repromulgate the Village Homestead Rules and Regulations, as published in the Commonwealth Register, volume 3, number 2 at page 1189 and volume 12, number 6 at page 7107; to provide the standard of eligibility, a system for issuing permits, deeds, notices and appeal rights.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).

§ 145-20.4-010 Definitions

(a) "Abandon": To leave a village homestead lot neglected or showing no improvement during the permit period or to allow a mortgage on the homestead property to go into default, thereby placing the property at risk of foreclosure.

(b) "Administrative Procedure Act" ("APA"): The Commonwealth Administrative Procedure Act, codified at 1 CMC §§ 9101, et seq.

(c) "Applicant": An individual, married couple or joint applicant who submits a single application for a village homestead lot.

(d) "Authorized Person": A person duly empowered through a valid power of attorney, to act on behalf of an applicant or homesteader.

(e) "Board of the Marianas Public Lands Authority" ("Board"): The policy-making body for the Marianas Public Lands Authority.

(f) "Commissioner": The Commissioner of the Marianas Public Lands Authority.

(g) "Hearing Officer": The MPLA Hearing Officer, including hearing officers pro-tempore appointed by the Board to conduct administrative hearings on homestead matters in accordance with the APA and the MPLA Administrative Hearing Procedure Rules and Regulations.

(h) "Homesteader": A person granted a village homestead permit.

(i) "Joint Applicants": Persons who have submitted a village homestead application in their names.

(j) "Land Interest": Title to or an interest in a parcel of land qualifying as a village lot in the Commonwealth.

(k) "Lottery": The drawing of a village homestead lot.

(l) "Marianas Public Lands Authority" ("MPLA"): An independent public corporation under the control and general supervision of the Board, and headed by a Commissioner to execute, implement and enforce the policies of the Board.

(m) "Village Lot": A parcel of land determined by the Marianas Public Lands Authority to be suitable for the construction of a residence and is, or will be, reasonably accessible to water and power utilities.

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Amdts Adopted 12 Com. Reg. 7511 (Dec. 15, 1990); Amdts Proposed 12 Com. Reg. 7107 (June 15, 1990); Amdts Proposed 11 Com. Reg. 6665 (Dec. 15, 1989).

Commission Comment: The 2004 amendments repealed and repromulgated this section in its entirety with substantial changes. The Commission inserted quotation marks around terms defined.

Part 100 - Village Homestead Program Requirements

§ 145-20.4-101 Application Procedure

(a) Any person applying for a village homestead lot shall fill out and sign under penalty of perjury the village homestead application provided by MPLA.

(b) Any person who submitted an application for a village homestead lot before the passage of the Northern Mariana Islands Village Homesteading Act of 1979, as amended, must also fill out and sign under penalty of perjury the village homestead application.

(c) An applicant shall pay a reasonable application processing fee as set by the Board.

(d) The MPLA shall review the application and may require the applicant to appear before the MPLA to verify accuracy and completeness.

(e) An applicant determined ineligible shall be informed of such determination in writing and the reasons therefor.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Amdts Adopted 12 Com. Reg. 7511 (Dec. 15, 1990); Amdts Proposed 12 Com. Reg. 7107 (June 15, 1990); Amdts Proposed 11 Com. Reg. 6665 (Dec. 15, 1989); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).

Commission Comment: The 2004 amendments completely rearranged and re-promulgated this part with substantial amendments. The history prior to 2004 is provided where applicable.

§ 145-20.4-105 Standards of Eligibility

(a) An applicant is not eligible for a village homestead lot if the applicant, an applicant's spouse or joint applicant:
(1) Has been a recipient of a village homestead lot under this program or any previous homestead program;
(2) Owns a village lot; or

(3) Has an ownership in a village lot, including an owner of land who has divested himself or herself of his or her possessory right through lease.

(b) In determining whether an applicant, has an interest in a village lot, the following shall be considered:
(1) Whether an applicant has an undivided interest in land, through inheritance or otherwise, that meets the definition of a village lot; or
(2) Whether an applicant has conveyed his or her interest in a village lot to a corporation, trust or other entity owned, in whole or in part, by him or her.

(c) If an applicant knowingly and willfully submits false information under penalty of perjury to MPLA, he or she shall be permanently disqualified from participating in the village homestead program.

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Amdts Adopted 12 Com. Reg. 7511 (Dec. 15, 1990); Amdts Proposed 12 Com. Reg. 7107 (June 15, 1990); Amdts Proposed 11 Com. Reg. 6665 (Dec. 15, 1989); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).

Commission Comment: See the commission comment to § 145-20.4-101.

§ 145-20.4-110 Homestead Issuance Process

(a) The granting of a homestead lot shall be based on the date the applicant submits a completed application and required documents to MPLA.

(b) An applicant eligible to participate in a lottery shall be informed in writing of the date, time, and location of the lottery and location of homestead lots to be distributed. An applicant need not be preset at the time of the lottery, but must designate, through a power of attorney, a person who will participate in the lottery on his or her behalf.

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004).

Commission Comment: See the commission comment to § 145-20.4-101.

§ 145-20.4-115 Homestead Permit Process

(a) A lottery participant shall be issued a homestead permit to the homestead lot drawn, provided that an environmental impact assessment had been conducted and completed prior to the lottery.

(b) The homesteader shall be given a copy of the homestead permit and shall be shown the actual boundaries of the lot. The homesteader must sign a form indicating he or she was shown the lot and its boundaries.

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).

Commission Comment: See the commission comment to § 145-20.4-101.

Public Law 17-26 (effective December 16, 2010) amended § 145-20.4-115 to require the Department of Public Lands to conduct and complete an environmental impact assessment prior to having qualified homesteaders participate in the lottery of available homestead lots.

§ 145-20.4-120 Homestead Requirements

A homesteader shall:

(a) Enter, use and improve the homestead lot within 120 days and complete a single family residence within two years after the issuance of a homestead permit;

(b) Commence to reside in his or her homestead as his or her principal place of residence no later than the end of the second year after the issuance of the homestead permit, and continually reside throughout the third year; and

(c) Not lease, assign, sell, or transfer the homestead lot during the permit period.

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Amdts Adopted 12 Com. Reg. 7511 (Dec. 15, 1990); Amdts Proposed 12 Com. Reg. 7107 (June 15, 1990); Amdts Proposed 11 Com. Reg. 6665 (Dec. 15, 1989); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).

Commission Comment: See the commission comment to § 145-20.4-101.

Public Law 17-4 (effective June 17, 2010) amended 2 CMC § 4335 by adding a new subsection (d) to allow the Department of Public Lands to waive the requirement or policy of re-building a second residential dwelling when it has been determined or proven that the homesteader's initial residential dwelling house was destroyed or severely damaged by typhoon, tsunami, or other natural or man-made disasters.

Public Law 17-37 (effective April 4, 2011) amended 2 CMC § 4335 by adding a new subsection (e) to allow the Department of Public Lands to waive the requirement or policy of completing a single family residential dwelling structure within two years of issuance of a village homestead permit upon the homesteader's showing reasonable justification or explanation that a minimum of ten thousand dollars has been invested in the homestead lot.

§ 145-20.4-125 Homestead Permit Revocation

A homestead permit may be revoked if the homesteader:

(a) Fails to clear the homestead lot and construct a single-family residence within two years after issuance of the permit;

(b) Fails to comply with the homestead permit or as otherwise provided in the rules and regulations in this subchapter;

(c) Fails to use the homestead lot as his or her principal residence within two years after issuance of the permit;

(d) Abandons the homestead lot during the permit period;

(e) Sells or attempts to sell, conveys, leases or rents the homestead;

(f) Allows another person to occupy the homestead in place of the homesteader without securing written authorization from MPLA;

(g) Fails to maintain the homestead lot in a clean, safe and sanitary condition; or

(h) Provides false information in the village homestead application or other required documents.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).

Commission Comment: See the commission comment to § 145-20.4-101.

Public Law 17-4 (effective June 17, 2010) amended 2 CMC § 4335 by adding a new subsection (d) to allow the Department of Public Lands to waive the requirement or policy of re-building a second residential dwelling when it has been determined or proven that the homesteader's initial residential dwelling house was destroyed or severely damaged by typhoon, tsunami, or other natural or man-made disasters.

Public Law 17-37 (effective April 4, 2011) amended 2 CMC § 4335 by adding a new subsection (e) to allow the Department of Public Lands to waive the requirement or policy of completing a single family residential dwelling structure within two years of issuance of a village homestead permit upon the homesteader's showing reasonable justification or explanation that a minimum of ten thousand dollars has been invested in the homestead lot.

§ 145-20.4-130 Village Homestead Waiver Procedures

Any person who has continuously used and occupied public land for at least fifteen years prior to January 9, 1978 is eligible for a village homestead lot, provided that the following procedures and requirements shall be applicable:

(a) The applicant must be eligible to homestead a village lot and must fill out a village homestead application provided by the MPLA;

(b) The applicant must submit an affidavit or declaration under penalty of perjury that he or she has been continuously using and occupying the public land for at least fifteen years prior to January 9, 1978;

(c) After submission of an application, the MPLA shall review the application, and may require additional proof to substantiate the claim; and

(d) Upon approval of the application by MPLA, a certificate of compliance shall be issued to the applicant for the parcel of public land he or she has been using and occupying, which shall not exceed 1,000 square meters, provided that an official survey plat is prepared prior to issuance of the certificate of compliance. Upon approval of the Board a quitclaim deed shall be issued to the applicant.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).

Commission Comment: See the commission comment to § 145-20.4-101.

Public Law 17-4 (effective June 17, 2010) amended 2 CMC § 4335 by adding a new subsection (d) to allow the Department of Public Lands to waive the requirement or policy of re-building a second residential dwelling when it has been determined or proven that the homesteader's initial residential dwelling house was destroyed or severely damaged by typhoon, tsunami, or other natural or man-made disasters.

Public Law 17-37 (effective April 4, 2011) amended 2 CMC § 4335 by adding a new subsection (e) to allow the Department of Public Lands to waive the requirement or policy of completing a single family residential dwelling structure within two years of issuance of a village homestead permit upon the homesteader's showing reasonable justification or explanation that a minimum of ten thousand dollars has been invested in the homestead lot.

§ 145-20.4-135 Appeal

Any person or party aggrieved by an adverse action by MPLA may appeal to the Hearing Officer pursuant to the MPLA Administrative Hearing Procedure Rules and Regulations [NMIAC, title 145, chapter 10].

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004).

Commission Comment: See the commission comment to § 145-20.4-101.

Part 200 - Miscellaneous Provisions

§ 145-20.4-201 Severability

If a court of competent jurisdiction shall hold any provision of the rules and regulations in this subchapter invalid, the remainder of these rules and regulations, other than those held invalid, shall not be affected.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004).

§ 145-20.4-205 Effective Date

The rules and regulations in this subchapter shall take effect upon notice of their final adoption as provided by the APA.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 26 Com. Reg. 23120 (Aug. 26, 2004); Amdts Proposed 26 Com. Reg. 22158 (Mar. 23, 2004); Adopted 3 Com. Reg. 1189 (Mar. 30, 1981); Proposed 2 Com. Reg. 973 (Nov. 17, 1980).

Commission Comment: The 2004 amendments deleted former appendices A through E.

SUBCHAPTER 145-20.5
NORTHERN ISLANDS AGRICULTURAL HOMESTEAD PROGRAM RULES AND REGULATIONS

Subchapter Authority: NMI CONST. art. XI; PL 16-50; PL 15-2.

Subchapter History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

Part 001 - General Provisions

§ 145-20.5-001 Authority

The regulations in this subchapter are promulgated by the Department of Public Lands ("DPL") pursuant to the authority set forth in Article XI of the Commonwealth Constitution, Public Law 16-50, and Public Law 15-2.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-005 Purpose

The purpose of these rules and regulations is to set forth the necessary procedures with respect to agricultural homestead applications; to set out in detail the standards of eligibility; to provide for certain requirements necessary to meet the goals and objectives of the agricultural program; to provide for an efficient system of notice and hearing process for applicants whose applications have been denied; and to provide a basic format for applications and other documents and instruments necessary to administer and implement the agricultural homestead program.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-010 Definitions

(a) "Domicile" means that place in which a person maintains a residence with the intention of continuing that residence for an unlimited or indefinite period, and to which that person has the intention of returning whenever absent, even for an extended period.

(b) "Marriage" means a legal status requiring the issuance of a marriage license and a ceremony performed by a person authorized under Commonwealth law, or a customary marriage between citizens that is solemnized in accordance with recognized customs.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

Part 100 - Northern Islands Agricultural Homestead Program Requirements

§ 145-20.5-101 Designation of Homestead Areas

DPL may designate areas suitable for farming and agricultural activities, and shall use such designated areas for the distribution of agricultural homestead lots. No applicant may be granted an agricultural homestead lot outside of the designated area without the prior approval of the DPL Secretary.

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-105 Establishment of Area

All eligible applicants shall be entitled to a maximum area of one hectare or 10,000 square meters of agricultural land.

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-110 Persons Eligible to Homestead

All applicants for agricultural homestead lots must meet and satisfy all of the following criteria:

(a) An applicant must be 18 years of age, or over, and is a citizen of the Commonwealth of the Northern Marianas, and of Northern Marianas descent as provided for in the CNMI Constitution.

(b) An applicant must be presently residing in the Northern Islands for at least one year and must be eligible to vote in the Northern Islands elections.

(c) An applicant or his/her spouse must not own or have an interest in agricultural land within the Commonwealth of the Northern Marianas which equals or exceeds ½ hectare or 5,000 contiguous square meters.

(d) An applicant or his/her spouse must not have been a recipient of an agricultural homestead lot from a previous agricultural homesteading program.

(e) An applicant shall not receive more than one agricultural homestead lot.

(f) If two applicants marry, the applicants must notify DPL of the marriage and one of the applications must be withdrawn. If an applicant marries a permittee, the applicant must notify DPL and withdraw the application. If two permittees marry, the permittees must notify DPL of the marriage and one of the permits must be canceled. If an applicant or permittee marries the recipient of an agricultural homestead lot, the permittee or applicant must notify DPL of the marriage and withdraw his/her application or cancel his/her permit.

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-115 Priority of Applicants

(a) DPL shall prioritize the applications submitted according to the following categories:

(1) First Priority
(i) Married applicants whose primary source of income is derived from farming.
(ii) Single applicants whose primary source of income is derived from farming.

(2) Second Priority
(i) Married applicants whose primary income is derived from sources other than farming.
(ii) Single applicants whose primary income is derived from sources other than farming.

(b) Ineligible Applicants. Those applicants who are determined ineligible to receive agricultural lots due to constitutional and statutory restrictions shall be notified in writing of such determination. The notification shall specify the reasons for ineligibility and inform the applicant of a right to appeal the determination within 30 days from the date of the notice.

(c) In order to verify the information provided in the application and in order to accurately determine the actual need and priority for an agricultural homestead lot, DPL may require the applicant to provide additional documentation as DPL deems appropriate.

(d) DPL shall take into consideration the date of application, so that an earlier applicant shall take precedence over a later applicant, all other factors being equal.

Modified, 1 CMC § 3806(a), (g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-120 Application Procedure

(a) All applicants for agricultural homestead shall fill out an application form provided by DPL. Applications may be submitted to the Saipan Office. Applications shall be date stamped by the DPL when received.

(b) All applications must be signed and notarized under penalty of perjury.

(c) All applications must be accompanied by a $100 non-refundable application fee.

(d) After submission of an application, DPL shall verify the eligibility of the applicant and all essential facts set forth by the applicant and if necessary, require the applicant to appear before the DPL Homestead Director or his/her designee for an interview to clarify or verify the information given in the application. Approval or disapproval of application shall be rendered no later than 90 days after receipt of a completed application.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-125 Issuance of Agricultural Homestead Permit

(a) Upon approval of the application, the DPL shall issue a permit to enter upon, use, and improve the land once the agricultural tract has been surveyed, monumented, mapped, and is ready for agricultural homesteading. The DPL shall conduct a lottery wherein the eligible applicant will pick their lot by blind draw.

(b) After an agricultural lot is drawn by an eligible applicant, the DPL shall prepare an agriculture homestead permit for the applicant, and shall give a copy of the map showing the agricultural homestead tract as surveyed and shall also physically show the tract to the homesteaders.

(c) A permit fee of $100 shall be paid by the homesteaders due and payable at the time the permit is executed.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-130 Conditions of Occupancy

(a) The homesteader shall enter upon and commence the use and improvement of the agricultural lot consistent with a land utilization and planting program approved by DPL within 90 days after the receipt of the permit. Upon noncompliance with the foregoing, the permit shall expire and be null and void and the homesteader shall be construed to have waived all rights in and to the land. Upon such occupancy, DPL shall have the right to enter and possess the land.

(b) The homesteader shall, at all times, maintain all boundaries clear of any and all weeds, trash, and underbrush.

(c) DPL shall show the homesteader the actual boundaries of the homestead lot. However, any subsequent request by homesteader for retracement of boundaries by DPL may be undertaken only after a $300 fee is paid in advance.

(d) During the period of occupancy, the homesteader shall observe and comply with all rules, regulations, and requirements concerning the use, occupation, and development of the homestead lot.

(e) No permanent structure, e.g. reinforced concrete or hollow concrete blocked construction is allowed during the term of the permit. All temporary construction for housing of people shall provide sanitation facilities approved by the Division of Environmental Quality.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-135 Conditions of Occupancy

(a) The DPL shall conduct inspections of the homestead at least once a year, or more often as it deems necessary to determine compliance with the homestead requirements. Notice of Inspection shall be given to the homesteader at least ten days in advance.

(b) After each inspection, the homestead inspection team shall issue a brief report on the progress of and the compliance of the homesteader.

(c) In the event that a homesteader is not complying with the homestead requirements, the inspection team shall so note in its report and inform the homesteader of the requirement he/she is not complying with. Appropriate written warnings shall be given to the homesteader. Such notice shall contain specific corrective actions to be taken by the homesteader to bring himself/herself into compliance with the homestead requirements.

(d) All inspection reports shall be signed by the Homestead Inspector.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-140 Deeds of Conveyance

Deeds of conveyance shall be issued by DPL for homestead lots entered pursuant to the Northern Islands Village and Agricultural Homesteading Act of 2008 upon maturity of the permit, and only upon execution of a certification by DPL certifying that the homesteader has complied with all laws, rules, and regulations appertaining to the homestead. DPL shall issue the deed of conveyance within six months of the time the homesteader becomes eligible to receive the deed of conveyance.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-145 Transfer of Homestead Permit

No rights in or to a homestead permit shall be sold, assigned, leased, transferred or encumbered. Except that in the event of the death of the homesteader prior to the issuance of a deed of conveyance, all rights under the permit shall inure to the benefit of such person or persons, if any, as the homesteaders shall designate in the permit or letter filed with DPL. In the event that the homesteader makes no designation, then the permit shall be revoked, and the land, together with all appurtenances thereto entered thereunder, shall revert to DPL or its successor.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-150 Penalties

(a) Grounds for Revocation of Permit. If at any time after the issuance of the homestead permit, and before the expiration of the permit period, the homesteader abandons the land or fails to comply with the laws, then the permit shall be revoked and the land shall revert to DPL or its successor. DPL may at its discretion allow the homesteader an extension of the permit period.

(b) Grounds for Disqualification.
(1) If an applicant knowingly and willfully submits false information to DPL under penalty of perjury, the matter shall be referred to the Attorney General for prosecution and the applicant's permit shall be revoked and disqualified from participation in the agricultural homesteading program.
(2) If an applicant negligently or recklessly submits false information to DPL or otherwise misleads DPL, the applicant may be disqualified from participation in the agricultural homestead program permanently or for a period of time to be determined by the DPL Secretary.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-155 Notice and Hearing

An applicant whose application for an agricultural homestead has been received, verified, and found not eligible, shall be informed in writing of such decision, the reason therefore, and a right to appeal the decision within 30 days of the date of the letter. Such hearing shall be held no later than 90 days after receipt of such notice by the applicant. The applicant has the right to be represented by a counsel of his/her choosing and to bring witnesses to the said hearing. No later than 30 days after the hearing, the Hearing Officer, on behalf of the DPL, shall issue his/her decision. If the Hearing Officer denies an application, a written decision to that effect shall be prepared and given to the applicant. Such a decision shall be deemed final.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

§ 145-20.5-160 Waiver

DPL, upon recommendation of the Homestead Inspector and the Homestead Director, and upon a showing of good cause, may waive a homestead requirement in the regulations in this subchapter and the conditions imposed on the permit, provided that, no restrictive provisions of the Constitution or by statute shall be waived.

Modified, 1 CMC § 3806(g).

History: Adopted 40 Com. Reg. 41011 (Nov. 28, 2018); Proposed 40 Com. Reg. 40943 (Sept. 28, 2018).

CHAPTER 145-30
COMMERCIAL USE OF MANAGAHA ISLAND RULES AND REGULATIONS

Chapter Authority: N.M.I. Const. art. XI §3; N.M.I. Const. art XIV § 2.

Chapter History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

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.

PL 12-33 (effective Dec. 5, 2000), the "Board of Public Lands Act of 2000," and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. The Marianas Public Lands Authority became the successor agency to the Marianas Public Lands Corporation.

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, replaced the Marianas Public Lands Authority with the Department of Public Lands within the executive branch. PL 15-2 repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands.

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. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

MPLC promulgated the 1993 Commercial Use of Managaha Island Rules and Regulations pursuant to its constitutional authority.

PL 18-42 (Mar. 27, 2014) amended 1 CMC § 2653 to specify that the Department of Lands and Natural Resources is to manage the preservation, protection, and maintenance of Managaha in consultation with the Department of Public Lands. PL 18-42 did not supersede the existing Commercial Use of Managaha Island regulations.

Part 001 - General Provisions

§ 145-30-001 Findings

The Department of Public Lands (DPL) makes the following findings in support of the regulations in this subchapter:

(a) DPL has the authority to manage and dispose of public lands, including Managaha Island, under Article XI, § 3 of the CNMI Constitution. Managaha Island is to be maintained as an uninhabited place and used only for cultural and recreational purposes under Article XIV, § 2 of the CNMI Constitution.

(b) The recreational and cultural use of Managaha Island is threatened unless there is upkeep maintenance of daily trash collection and removal, sanitary toilet facilities, the provision of water and electricity to run those facilities, shelter, and the improvement and maintenance of the facilities and pier.

(c) DPL must resort to the private sector to provide the necessary facilities and to repair, operate, and maintain them. This can only be accomplished if a private company is granted the right to engage in limited commercial activity on the Island and there is a source of funding for the costs incurred in repairs, maintenance and the delivery of services.

(d) Commercial activity which provides food, beverages, beach equipment, water sports equipment and tours will promote the use of Managaha Island as a recreational oriented site, thus serving the constitutional objectives in management. There is, however, a need to limit the amount of commercial activity on Managaha Island in order to protect its resources. The presence of numerous competing concessions will result in difficulties in island management and the maintenance of island facilities. And, the proliferation of concession stands will lead to the loss of scenic beauty and tranquility. Therefore, it is determined that commercial competition on the Island will be eliminated. A concessionaire will be responsible for commercial activities as well as island maintenance and the provision of public services. The sales and rental activities of that Concessionaire shall be limited to a designated area. In addition, in order to ensure that Northern Mariana descent entrepreneurs will participate in the commercial activities on Managaha Island, limited subconcessions will be granted in the areas of food service, human powered watercraft and wind powered watercraft as approved by both the DPL and the Concessionaire.

(e) There has been a landscaping and revegetation project to protect the Island from erosion, to provide more shade to users, and to eliminate noxious plants. This project is ongoing. In addition, there are the continuous costs of security, power generation, pump operation, cleanup, lifeguards, free transportation to local residents and maintenance of Island facilities and infrastructure.

(f) In order to fund these repairs, improvements, and ongoing operational costs, to run the deep water well, power and waste water facilities, the DPL has determined that a landing and user fee shall be charged to tourists to Managaha Island. Portion of the economic benefits derived from the landing and user fee shall be used to fund or reimburse the Concessionaire for providing operational cost as stated herein.

(g) The regulations in this subchapter shall set forth the limitations on commercial activities on Managaha Island, the responsibilities of the Concessionaire in providing public benefits, and the collection and use of the landing and user fees.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: 1 CMC § 3806(f).

§ 145-30-005 Policy

It is the policy of the DPL, as mandated by Article XI, § 3 and Article XIV, § 2, of the Constitution of the Commonwealth of the Northern Mariana Islands, to permit concessions on the island only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation by tourists will not unduly impair the Island's resources. Concession activities shall be limited to those necessary and appropriate for public use and enjoyment of the Island and that are consistent to the highest practical degree with the preservation and conservation of the Island.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

§ 145-30-010 Purpose

The purpose of the rules and regulations in this subchapter is to set forth certain restrictions on commercial activities on Managaha Island; to publish regulations for the use of the Managaha pier; to establish a landing and user fee for the use of the pier by commercial operators; to set forth rules governing commercial photography on the Island and for other miscellaneous purposes related to these activities.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Proposed 39 Com. Reg. 32777 (Aug. 29, 2012);* Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: *A notice of adoption for the August 2012 proposed regulations were never published to date.

§ 145-30-015 Definitions

(a) "Boat and Tour Operators": Any person(s) who transports tourist(s) to the island for any type of fee or other compensation.

(b) "Commercial Activity": Any activity conducted on the Island for profit (or resulting in profit) by an enterprise or person required to have a business license to conduct the activity.

(c) "Commercial photography": The taking of photographs, films or videos from any type of camera device of any article of commerce or models for the purpose of commercial advertising and shall include all photography to be used for advertisements or for public entertainment and all photography for which a fee is paid, either to the model or actor, or to the photographer. It shall not include any photography by government agencies done on behalf of the Marianas Visitors Authority for the promotion of tourism in the Northern Marianas Islands.

(d) "Commercial Concession": Any facility which prepares, delivers, sells or provides food or beverages on the Island; any facility which rents or sells water sports equipment, recreational equipment, or beach equipment and related supplies; any operation which conducts tours on the Island or from the Island; and, any merchant which sells goods or services of any nature on the island.

(e) "Concessionaire": Whoever DPL awards the Special Recreational Concession to with a formal Agreement who has the exclusive right to operate all commercial concessions on the Island, provide island maintenance, and provide other provision of public services under the Agreement terms.

(f) "Department": Department of Public Lands ("DPL").

(g) "Designated Concession Area": That portion of the main pavilion and other areas delineated in exhibit # 1 of the Special Recreational Concession Agreement.

(h) "Island": Managaha Island.

(i) "Regulation": Commercial use of Managaha Island Rules and Regulations.

(j) "Resident": A person who is domiciled in the CNMI.

(k) "Subconcessionaire": A subcontracted company with a permit from DPL, approved by both DPL and the Concessionaire, to provide commercial activities such as food service, human powered watercraft or wind powered watercraft on Managaha Island, etc., under the Special Recreational Concession Agreement.

(l) "Tourist": A person who is not a resident of the CNMI.

Modified, 1 CMC § 3806(f) and (g).

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Proposed 39 Com. Reg. 32777 (Aug. 29, 2012);* Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: The referenced exhibit # 1 was not published with the proposed or adopted regulations.

*A notice of adoption for the August 2012 proposed regulations were never published to date.

Part 100 - Commercial Use of the Island

§ 145-30-101 Uses and Privileges

(a) All commercial activity including conveniences such as food, beverages, recreational equipment and the like shall only be provided by the main Concessionaire and a limited number of subconcessionaires mutually agreed upon by DPL and the Concessionaire. Outside food and beverages brought in by visitors shall only be allowed for personal consumption.

(b) Any commercial activity shall take place only in the designated concession area.

(c) The exclusive right to operate all commercial concessions does not include the exclusive right to provide transportation to and from the Island; provided, however, that if the Department, in consultation with any other agency determines that the number of tourists visiting the Island must at any present or future time be limited, then the Concessionaire shall carry the number of passengers permitted under the restriction. This, however, is subject to the Concessionaire's privilege of providing transportation to that number of passengers it is entitled to serve meals to, so long as the number of passengers permitted to be carried to Managaha Island is no fewer than the number permitted under any current permit for the Island. In order to ensure that public safety can be maintained and that the Island will not suffer from environmental impacts, the combined number of passengers on the Island shall not exceed 1,000 at any one time, whether they arrived by the Concessionaire's vessel or other boat and tour operators.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Proposed 39 Com. Reg. 32777 (Aug. 29, 2012);* Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: [Historical comment removed.]

*A notice of adoption for the August 2012 proposed regulations were never published to date.

§ 145-30-105 Enforcement of Regulations

(a) DPL through its Compliance Division Director or his/her designee, shall be responsible for the enforcement of the regulations in this subchapter.

(b) DPL shall provide any person determined to have violated the regulations in this chapter with written notice of the nature of the violation and the corrective action to be taken.

(c) If, after a reasonable time to comply has passed, the violation continues or is repeated, DPL may take appropriate corrective measures. In the case of boat and tour operators, this may include banning from use of the pier after last completed trip.

(d) Any person aggrieved by a decision or order of DPL made pursuant to this section may appeal such decision or order to the DPL Secretary, within ten days thereof. The DPL Secretary shall promptly afford such person notice of, and the opportunity to be heard, at a hearing within

30 days after filing the appeal and the DPL Secretary's decision shall be released not more than forty-five days after the final hearing.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

§ 145-30-110 Management and Maintenance of Island

(a) It shall be the responsibility of the Concessionaire to perform the following services for the public's benefit:
(1) Clean up of trash on entire Island and dispose of it on a daily basis;
(2) Maintain the toilet and locker room facilities located within the main pavilion and the shower facilities near the pavilion in clean order and good operating condition;
(3) Maintain the other improvements within the exclusive concession area;
(4) Provide security services on the Island;
(5) Provide 20% of the seating capacity on regularly scheduled daily round trips to the Island free of charge for local passengers. If the full 20% is not so utilized, then the Concessionaire may provide the remainder of that number of seats available to non-residents however, priority of the 20% must be given to local passengers.
(6) Maintain the landscaping of the vegetation of the Island;
(7) Provide lifeguards to monitor, patrol, and supervise the activities of people swimming, snorkeling and all other water-related activities at all beach areas surrounding the Island during normal hours of operation.
(8) Provide hourly announcements regarding swimming safety, marine protected area actions, general water safety, closing hours, or other announcements as deemed necessary.

(b) A subconcessionaire shall perform the following services for the public's benefit:
(1) Maintain the improvements within their concession area. This includes the pala pala and its improvements provided to the subconcession for meals;
(2) Take appropriate measures to ensure the safety of Managaha Visitors. A subconcessionaire renting watercraft or equipment shall keep its customers under observation at all times and shall maintain in operating condition the means to rescue them should trouble occur.

(c) Provide 20% of the vessel seating capacity on regularly scheduled daily round trips to the Island free of charge for local passengers. To ensure order, local residents must still make a 24-hour advance reservation for their seat with the Concessionaire prior to departure. If the full 20% is not so utilized, then the Concessionaire may provide the remainder of that number of seats available to non-residents however, priority of the 20% must be given to local passengers up until embarkment.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: [Historical comment removed.]

§ 145-30-115 Storm Conditions

When typhoon condition no. 2 or tropical storm condition 2 is declared, or when the Homeland Security and Emergency Management Agency or the Department determines that it is unsafe to land passengers at the Managaha pier due to inclement weather, the Concessionaire shall be close Managaha Island and shall first secure operating utilities on the Island, including water, power, toilets, lifeguard services, ranger station, and public security before leaving the Island unless it is deemed unsafe to do so. The Concessionaire shall take reasonable measures to protect the main pavilion, generator house, storage, and reverse osmosis room from storm damage, and ensure that subconcessionaires shall also secure their property against any damages.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: [Historical comment removed.].

§ 145-30-120 Hours of Operation

The Concessionaire shall operate its concession between 8:00 a.m. and 5:00 p.m. daily or as preapproved by the DPL Secretary. The Concessionaire may operate at night after providing a written request to the Department at least 36 hours in advance, prepaying the landing fee, and receiving a written consent. Boat and tour operators are prohibited from landing tourists on the Island outside of these hours without the prior written consent of the Department.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

§ 145-30-125 Signs and Advertisements on the Premises

(a) The Concessionaire may display, erect, install, paint or place any signs or other advertisements on or about the exterior of the building only within the designated concession area, as it deems necessary and proper in the conduct of its activities. The Department, however, reserves the right to order the Concessionaire to remove signs, displays, advertisements or decorations if they are, in the opinion of the Department, offensive to the public, detrimental to the appearance of the Island or unrelated to the use of the Island. The Department shall provide five (5) days' notice to the Concessionaire to remove non-offensive signs, or a 24-hour notice if it is deemed offensive by the Department. If the signs are not removed within the allotted time after receipt of the written notice, the Department reserves the right to enter the main building concession within the designated concession area and remove the sign at the expense of the Concessionaire.

(b) Subconcessionaires are restricted to advertising within the pala pala closest to the dock for the food subconcession and the free-standing stalls for the wind powered and human powered watercraft subconcessions.

(c) CNMI Government agencies may erect, install, paint or place sign(s) for educational, cultural, and safety purposes with the expressed written consent of DPL.

(d) No advertisements shall be permitted on the Island or its pier, except as provided in this section.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

§ 145-30-130 Government Requirements

The Concessionaire shall procure all necessary business licenses, food handling permits, and other certificates required by the government and its agencies for their daily operations on Managaha Island. The Concessionaires shall observe and comply with the provisions of all laws and rules and regulations with respect to their operation on Managaha Island.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

§ 145-30-135 Public Security

(a) The Concessionaire is responsible for providing security guard services to patrol the Island outside of the normal hours of operation. The security guard shall use their best efforts to protect the public facilities and the properties and belongings of the Concessionaire, the subconcessionaires and the Department from theft and vandalism.

(b) The Concessionaire shall provide lifeguards to monitor, patrol, and supervise the activities of people swimming, snorkeling and all water-related activities at all beach areas surrounding the Island during normal hours of operation. All lifeguards shall be trained and certified in the Commonwealth or any U.S. jurisdiction in administering first aid and water safety.

(c) Subconcessionaires responsible for renting wind powered and human powered watercrafts shall be responsible for watching the users of their watercrafts and shall have the means to rescue them in the event that they are in trouble.

(d) The Department shall keep on staff a sufficient number of rangers/enforcement officers to assist with the enforcement of this regulation. It shall be the duty of the enforcement officers to enforce these regulations, maintain public security, record the daily landings of tourists, and collect landing fees during normal hours of operations.

(e) In order to ensure public safety and the effective enforcement of the regulations, the Concessionaire and all subconcessionaires, tourists, visitors, and boat and tour operators shall cooperate with the rangers/compliance officers on Managaha Island and follow the directives of such officers. The rangers/compliance officers shall have access at all times to the areas of operation of the Concessionaire and subconcessionaires on the Island for the purpose of providing security or recording of landing and user fees.

(f) DPL, the Concessionaire and subconcessionaires shall assume no responsibility for any damage or loss of a visitor’s personal property which may occur on the Island or pier through their own acts or negligent failure to act.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Part 200 - The Managaha Pier

§ 145-30-201 Applicable Regulations

In addition to the regulations contained in this part, any applicable federal and CNMI regulations shall govern water and pier use.

History: Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

§ 145-30-205 Use of Pier

(a) The engines of any vessel lying at the pier shall not be tried or tested except as part of a routine predeparture warming up of engines.

(b) No person shall make any repairs or do any kind of manufacturing, construction, or maintenance work in the vicinity of the pier or on a vessel lying at the pier without DPL's written consent.

(c) The pier is only to be used for the loading and unloading of passengers. Each vessel is required to provide sufficient staff and equipment, including gangplank or other devices, to ensure the safe loading and unloading of its passengers.

(d) With the exception of service dogs, no fowl, animal, or livestock of any kind shall be permitted to disembark on the Island.

(e) No rubbish, swill, garbage, or refuse shall be present on any vessel lying at the pier unless it is being removed from the Island and is protected from spillage in proper containers.

(f) Smoking is prohibited on the pier and on vessels lying at the pier.

(g) The transferring of fuel between tanks or from boat to boat while lying at the pier is prohibited.

(h) No substance of any kind shall be deposited on the pier or dumped over the side of any vessel while lying at the pier except with the prior expressed written permission of the Department.

(i) All Commonwealth Ports Authority Harbor Regulations [NMIAC, title 40, subchapter 20.1] not inconsistent with the regulations in this part are adopted and compliance with those regulations is required.

(j) Whenever, under applicable federal or Commonwealth regulation or statute, a person is required to report, a simultaneous written report shall be made to the Secretary of the Department.

Reporting to the Department, however, does not relieve a person from filing required reports with other authorities.

(k) The pier is under the supervision and control of the Department and is maintained for the use of all boat and tour operators with priority given to Concessionaire's commercial boat and tour operators. Recreational boaters may only use the pier to load and unload passengers if such use does not interfere.

(l) All vessels may dock at the pier for loading and unloading of passengers, supplies and equipment only. If it is deemed unsafe to dock on the pier due to high-surf or rough weather conditions, all licensed and unlicensed vessels may, with prior consent of DPL, land on the northern part of the Island to load and offload passengers. The Concessionaire and the Department shall not assume responsibility for any and all injuries, losses, or damages to persons or property which may occur on or around the Island, including those incurred on vessels at the Island.

(m) No vessel may lie at the pier except when actively loading and unloading passengers unless approval is first obtained from the DPL ranger/compliance officers.

(n) All vessels using the pier shall obey the instructions of the DPL rangers/compliance officers.

(o) Boat and tour operators are primarily responsible for the return of all passengers they bring to the Island and may not depart the pier without first making arrangements for the complete accountability and safe return of all passengers and their belongings brought to the island.

(p) Any person found causing damage to the pier is responsible for the cost of repair except for normal wear and tear.

(q) The captain of any commercial vessel or owner or operator of any private vessel must remain on board the vessel while lying at the pier.

(r) Diving from or climbing on any part of the pier or vessel lying at the pier is prohibited. Swimming, snorkeling, diving or use of any floatation device within 200 feet of any part of the pier or a vessel lying at the pier is also prohibited. Each vessel approaching the pier is responsible for keeping a lookout to prevent collision with persons in the water surrounding the pier and island.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: [Historical comment removed.]

§ 145-30-210 Collection of Landing and User Fees

(a) The Department or its designee shall charge a landing and user fee from all tourists arriving on the Island.

(b) The landing and user fee shall be at least $10.00 (ten dollars) per tourist landing on the Island adjusted upwards for inflation using the US CPI index every five years.

(c) The Department or its designee shall be responsible for collecting the daily landing and user fees and recording the number of passengers landed by each boat and tour operator on the Island. These records shall contain issuance of receipts by DPL to visiting tourists, private boats, and tour operators. The Department shall be responsible for depositing the landing and user fees on its banking account.

(d) There shall not be an extra charge for multiple landings of a tourist if occurring in a single day provided that the visitor presents dated proof of receipt upon reentry.

(e) A systematic method of collection of the fees on a monthly basis shall be developed by the Department. Boat and tour operators may be billed for collection by DPL on a monthly basis.

(f) The landing and user fees shall be used only for reimbursements for cost of the construction, maintenance, repair, and/or upkeep of the improvements, infrastructure, pier, appearance, safety, and cleanliness of Managaha Island. All revenue unused by DPL by the end of fiscal year shall be remitted to the Marianas Public Land Trust (MPLT). The landing and user fees shall be reviewed annually to ensure that it is used only for the purposes expressed herein above.

(g) All fees and charges payable under the regulations in this chapter shall be paid when they are incurred or, with the prior written consent of DPL, within thirty days of demand thereof. In the event that such fees and charges are not paid within thirty days of demand, such fees and charges shall bear interest at the rate of 12% per annum from the date that the demand was made; and in addition, all costs of collection, including attorney fees, shall be paid to DPL or its designee.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: [Historical comment removed.]

Part 300 - Other Activities

§ 145-30-301 Cultural Events

The Island of Managaha is a unique cultural and recreational resource for the people of the Commonwealth. The Department reserves the right to entirely close or limit the number of tourists to Managaha so that the Island may be used for a bona fide cultural event.

(a) Any party desiring to use the Island for a cultural event shall so inform the Department at least sixty (60) days in advance of the event. The notice shall include a description of the event, an explanation of the cultural significance of the event and the number expected to attend. The Department, in its sole discretion, shall determine whether or not the event should be allowed and if so, what restrictions should apply. This notice requirement shall not apply to traditional Chief Aghurubw day events held annually at the Carolinian Pavilion.

(b) The Department shall notify the Concessionaire no less than thirty (30) days prior to such limited access or closure. The Department shall endeavor to work with the Concessionaire to schedule such an event for a time with the least impact on the Concessionaire's business with the limits set by cultural practices.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

§ 145-30-305 Commercial Cinematography, Videography and Photography

(a) The Department finds that it is common for hotels on Saipan to charge commercial cinematographers, videographers and photographers for the use of their premises as locations for filming, videoing, and photography to be used in public advertisements or entertainment. A photography fee shall be established for Managaha in accordance with the following criteria:
(1) The direct and indirect cost to the Department of maintaining the Island;
(2) The benefit to the commercial photographer;
(3) The public policy or interest served;
(4) The comparable photographic fees assessed by the private sector;
(5) Other pertinent factors.

(b) No picture may be filmed or photographed, and no television production or sound track made on the Island by any person other than amateur or bona fide newsreel and news television photographers and soundmen, unless written permission has been obtained from the Department.

(c) The taking of photographs, films, or videos of any article for commerce or models for the purpose of commercial advertising without a written permit from the Department is prohibited.

(d) The Department shall charge a fee delineated in the DPL Temporary Occupancy Rules and Regulations, NMIAC § 145-70, for engaging in commercial cinematography, videography, and photography on Managaha Island.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: [Historical comment removed].

§ 145-30-310 Collection of Medicinal Plants

(a) Harvesting of plants for traditional Chamorro or Carolinian medicinal use is permitted, subject to obtaining DPL's written approval and provided that such activity does not damage the plant.

(b) People harvesting medicinal plants are responsible for maintenance of the affected area. All plant remnants and other refuse shall be disposed of in a proper fashion in containers located at the various pala palas.

(c) As the ecology of the Island is fragile and in need of protection, the use of medicinal plants shall be limited to citizens of the Commonwealth.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

Commission Comment: [Historical comment removed].

§ 145-30-315 Camping

The Department shall allow temporary camping on the Island to citizens and residents of the Commonwealth for a maximum of twenty-five (25) people per night (adult and children). The camping permits must be submitted and approved by the Department prior to arrival on Mana!!aha. DPL shall collect a refundable security deposit of $25.00 per permit with a nonrefundable $25.00 fee per night. Campers may use the designated pavilions to hold camping activities, with the exception of the following areas:

(a) Main Exclusive Concession areas;

(b) Pavilion near the statue of Chief Aghurubw; and

(c) Pavilion fronting the pier.

Campers are not allowed to start bonfires or bring and use any type of fireworks or firearms during the camping event. DPL shall allow overnight stay to government agencies and educational institutions for wildlife and environmental research studies, or other purposes with written approval from the DPL Secretary.

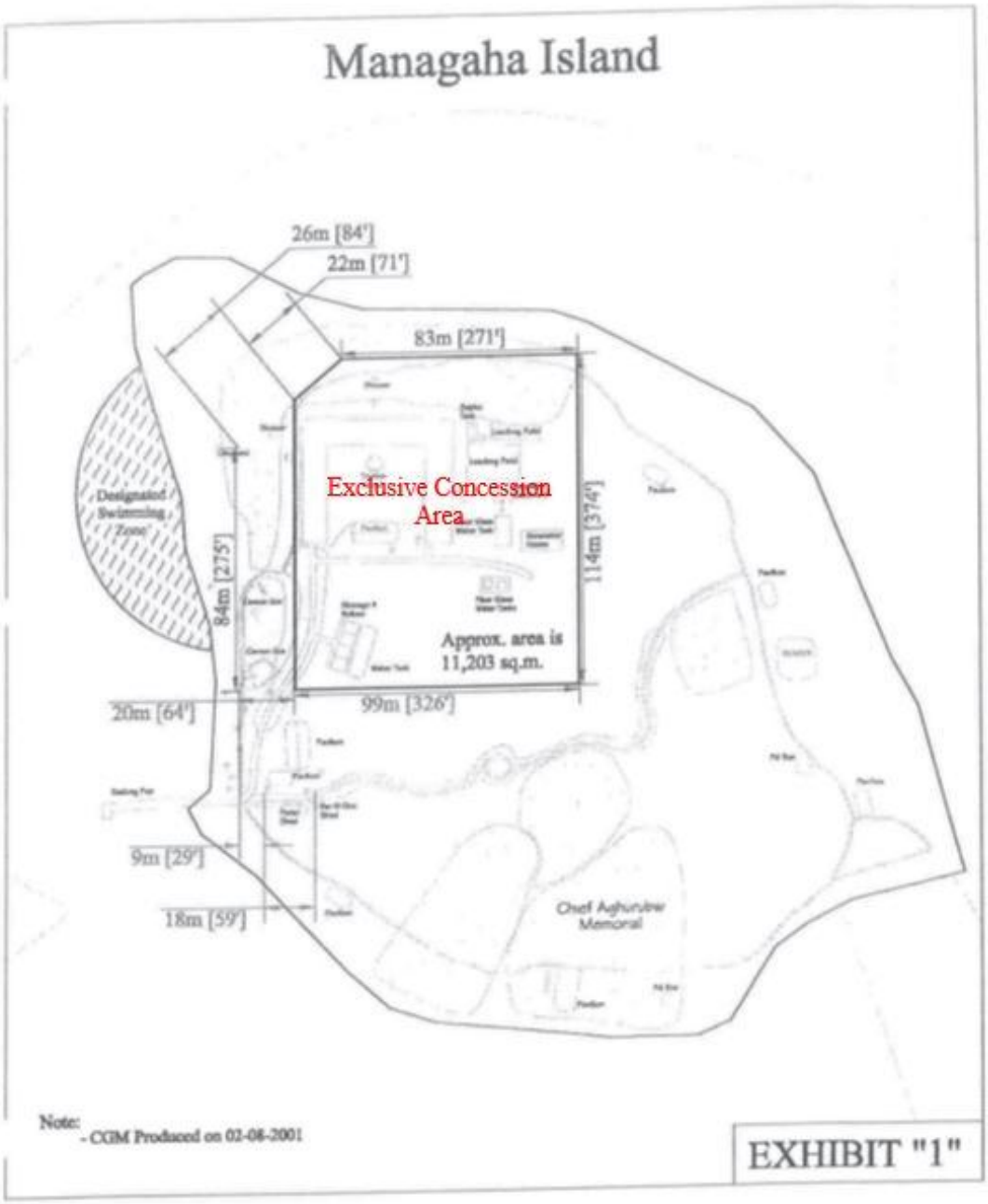
Modified, 1 CMC § 3806(g).

History: Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Proposed 42 Com. Reg. 44663 (Dec. 28, 2020).

Appendix A

DEPARTMENT OF PUBLIC LANDS
P.O. BOX 500380 SAIPAN, MP 96950

Exhibit 1
Exclusive Concession Area



Part 400 - Miscellaneous Provisions

§ 145-30-401 Waiver

The Department, upon a showing of good cause, may waive the enforcement of the regulations in this chapter; provided that no restrictive provision of the Constitution or statute shall be waived.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

§ 145-30-405 Discrimination Prohibited

The use and enjoyment of the Island and the facilities shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, or any physical handicap.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

§ 145-30-410 Effective Date

The rules and regulations promulgated in this chapter shall be effective and have full force and effect upon adoption into the Commonwealth Register.

History: Amdts Adopted 43 Com. Reg. 45066 (Feb. 28, 2021); Amdts Proposed 42 Com. Reg. 44663 (Dec. 28, 2020); Adopted 15 Com. Reg. 10876 (Sept. 15, 1993); Proposed 15 Com. Reg. 10631 (May 15, 1993).

CHAPTER 145-35
HOUSING PARTNERSHIP REGULATIONS

Chapter Authority: N.M.I. Const. art. XI §3; N.M.I. Const. art XIV § 2; 2 CMC § 4338.

Chapter History: Emergency 26 Com. Reg. 22638 (June 24, 2004) (effective for 120 days from May 28, 2004).

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.

PL 12-33 (effective Dec. 5, 2000), the "Board of Public Lands Act of 2000," and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. The Marianas Public Lands Authority became the successor agency to the Marianas Public Lands Corporation.

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, replaced the Marianas Public Lands Authority with the Department of Public Lands within the executive branch. PL 15-2 repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands.

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. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

MPLA promulgated the emergency Housing Partnership Regulations effective for 120 days from May 20, 2004. Permanent Housing Partnership Regulations have not been adopted.

[Reserved for future Housing Partnership Regulations.]

CHAPTER 145-40
LAND COMPENSATION CLAIMS RULES AND REGULATIONS

Chapter Authority: 2 CMC § 4750.

Chapter History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

Commission Comment: PL 12-33 (effective Dec. 5, 2000), the "Board of Public Lands Act of 2000," and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. The Marianas Public Lands Authority became the successor agency to the Marianas Public Lands Corporation.

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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. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

PL 13-17 (effective July 23, 2002), the "Land Compensation Act of 2002," is codified as amended by PL 13-25 (effective Sept. 20, 2002), PL 13-39 (effective Dec. 13, 2002), PL 13-56 (effective July 25, 2003), PL 14-29 (effective Sept. 21, 2004) and PL 15-2 (effective February 22, 2006) at 2 CMC §§ 4741-4751. PL 13-17, as amended, authorizes the Department of Public Lands to settle claims against the Commonwealth government for land acquired for public purposes. PL 13-25 § 13, codified as amended at 2 CMC § 4750, directs the Department of Public Lands and the Secretary of Public Lands to promulgate regulations to implement the intent of the act.

The regulations set forth in this chapter were adopted by the Board of Directors for the Marianas Public Lands Authority in May 2003.

Part 001 - General Provisions

§ 145-40-001 Authority

The rules and regulations (regulations) in this chapter are hereby promulgated by the Board of Directors for the Marianas Public Lands Authority, Commonwealth of the Northern Mariana Islands (Commonwealth), pursuant to its powers, duties, and authorities under Public Law 13-17, also known as the "Land Compensation Act of 2002," effective July 23, 2002, as amended by Public Law 13-25, effective September 20, 2002, and Public Law 13-39, effective December 13, 2002.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

§ 145-40-005 Purpose

The purpose of the regulations in this chapter is to provide for a comprehensive method of processing claims and disbursing monetary compensation to landowners whose lands had been taken by the Commonwealth for a public purpose, and for the efficient administrative hearing process pursuant to Public Law 13-17, effective July 23, 2002, as amended by Public Law 13-25, effective September 20, 2002, and Public Law 13-39, effective December 13, 2002.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

§ 145-40-010 Definitions

(a) "Acquire" ("Acquisition"). The act by which the Commonwealth first entered and used private land for a public purpose.

(b) "Administrative Procedure Act" ("APA"). The Commonwealth Administrative Procedure Act, codified at 1 CMC §§ 9101, et seq.

(c) "Appraisal". The act or process of developing an opinion of value on privately owned land and improvement(s) at the time of taking.

(d) "Appraisal Report". The written or oral communication of an appraisal; the document transmitted to the client upon completion of an appraisal assignment.

(e) "Appraisal Review". The act or process of developing and communicating an opinion about the quality of another appraiser's work.

(f) "Appraisal Reviewer". The in-house MPLA or independent appraisal reviewer appointed by the Board who is a certified general real estate appraiser, licensed to practice in the Northern Mariana Islands; one who reviews the work of other appraisers for completeness, adequacy, relevance, appropriateness, and reasonableness in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

(g) "Appraiser". A certified general real estate appraiser, licensed to practice in the Northern Mariana Islands.

(h) "Board of Directors" ("Board"). The policy-making body for the Marianas Public Lands Authority responsible for the management, use and disposition of all Commonwealth submerged and surface public lands pursuant to Public Law 12-33, effective December 5, 2000, as amended by Public Law 12-71, effective November 13, 2001.

(i) "Commissioner". The MPLA Commissioner or his/her designee.

(j) "Commonwealth". The Government of the Commonwealth of the Northern Mariana Islands.

(k) "Eligibility for Monetary Compensation". The legal standing for which landowners are deemed qualified for monetary compensation after the Commonwealth has officially certified private land it acquired for public purposes, and after each claimant case file is officially deemed as complete and final by the Board as recommended by the Commissioner pursuant to § 145-40-101 of this chapter.

(l) "Evidence of Clear Title". The legal standing for which a landowner is duly registered as the legal owner of property acquired by the Commonwealth pursuant to the authoritative records of the Commonwealth Division of Land Registration and Survey, Office of the Commonwealth Recorder and, when necessary, the valid proof of clear title performed by a licensed title search company.

(m) "Hearing Officer". The in-house MPLA hearing officer including hearing officer(s) pro tempore appointed by the Board/Commissioner to conduct administrative hearings on land compensation claims as authorized by Public Law 13-25, and in accordance with the APA and part 200 of this chapter.

(n) "Landowner or Owner". A person of Northern Marianas descent duly registered as the legal owner(s) of real property taken or acquired by the Commonwealth, and the person, persons, entity, or entities qualified to receive monetary compensation pursuant to Public Law 13-17, as amended.

(o) "Land Taking". Land owned by persons of Northern Marianas descent as defined in article XII of the Commonwealth Constitution, and which had been taken by the Commonwealth for a public purpose.

(p) "Marianas Public Lands Authority" ("MPLA"). The independent public corporation established under the control and general supervision of the Board pursuant to Public Law 12-33, as amended by Public Law 12-71, and headed by the Commissioner, to execute, implement, and enforce the Board's policies, decisions, orders, and regulations.

(q) "Market Value". The most probable price as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a

fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

(r) "Monetary or Just Compensation". The monetary payment offered to a landowner whose land had been taken by the Commonwealth for a public purpose; the amount of compensation offered to the owner based on the appraised market value of the land taken.

(s) "Other Claims". Any other use of private land acquired by the Commonwealth for a public purpose as defined by 1 CMC § 121.

(t) "Outstanding Land Compensation Claims". Unsettled land claims against the Commonwealth resulting from the Commonwealth's acquisition of privately owned lands for a public purpose.

(u) "Party". Any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in a land compensation claim hearing proceeding against the Commonwealth pursuant to Public Law 13-17, as amended.

(v) "Person". Any individual, partnership, corporation, association, clan, lineage, governmental subdivision, or public or private organization of any character other than the Commonwealth, who is a landowner disputing a written offer for just compensation by the Commissioner with respect to land taken by the Commonwealth for a public purpose.

(w) "Ponding Basin". A natural or artificial depression on the soil surface having computed surface area and depth to contain volume of rainfall run-off from watershed or tributary areas within the proximity of roadway facilities.

(x) "Public Purpose". The acquisition of private land for the public's benefit as defined by 2 CMC § 4143(e)(1), (2) and (7), and (f).

(y) "Right-of-way". The public right to pass over land owned by another, usually based upon an easement, path, or thoroughfare.

(z) "Time-of-taking". The date the Commonwealth first entered and used private land for a public purpose. For purposes of establishing a benchmark year for the time-of-taking prior to the Covenant, all private land acquired by the Commonwealth's predecessor, the Trust Territory government, for a public purpose before March 24, 1976 will be considered acquired on March 24, 1976.

(aa) "Wetland". An area inundated or saturated by surface or groundwater with a frequency sufficient to support a prevalence of plant or aquatic life that require saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries, and similar areas in the Northern Mariana Islands chain. (Office of Coastal Resources Management Rules and Regulations promulgated pursuant to 2 CMC §§ 1501, et seq., the Coastal Resources Management Act of 1983 [NMIAC, title 15, chapter 10].)

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

Commission Comment: In subsection (b), the Commission changed "as" to "at" to correct a manifest error. In subsection (aa), the Commission changed "regulation" to "regulations" to correct a manifest error. The Commission inserted commas after the words "appropriateness" in subsection (f), "entity" in subsection (n), "implement" in subsection (p), and "agencies" in subsection (aa) pursuant to 1 CMC § 3806(g).

Part 100 - Processing of Claims and Methods of Disbursement of Monetary Compensation

§ 145-40-101 Acquisition

(a) All private property acquired by the Commonwealth must be made pursuant to 2 CMC § 4712, 2 CMC §§ 4141, et seq., and this section, as follows:
(1) Certification, Declaration or Determination to Acquire. The acquisition of private land for a public purpose as defined in 2 CMC § 4143(e)(2) shall originate at the Office of the Governor and must include the following:
(i) A certification by the Governor of the public use(s) or purpose(s) for which the Commonwealth is acquiring the land parcel(s), as provided in 2 CMC § 4143(e)(2); or a declaration or determination by the Legislature of the public use(s) or purpose(s) for which the Commonwealth is acquiring the land parcel(s), as provided in 2 CMC § 4143(e)(1);
(ii) Boundary survey(s) and/or legal description(s); and
(iii) Identification of encumbrances and disputes, if any.
(2) Evidence of Clear Title. There shall be a finding of clear title to the land acquired. The Commonwealth may require the owner to furnish a preliminary title report, which verifies that he/she has unencumbered title to the land to be monetarily compensated whenever there is insufficient title evidence as to his/her ownership of the land in question.
(3) Preliminary Acquisition Notice to Owner. The Office of the Governor shall issue a written preliminary acquisition notice to the owner. The notice, which must be sent by U.S. postal priority mail or hand delivered and acknowledged that it was delivered and received, shall:
(i) Inform the owner of the Commonwealth's interest in acquiring his/her land and the public purpose for which it is needed; and
(ii) Inform the owner of Public Law 13-17 as amended, and the regulations in this chapter, and request written permission to survey and appraise the subject land.
(4) Survey and Appraisal of Private Land to Be Acquired.
(i) Upon receipt of the owner's authorization, the Commonwealth shall survey the owner's property, if necessary, and secure an approved plat. Concurrently, MPLA shall solicit and contract for an independent appraiser to appraise the property to be acquired in accordance with the Commonwealth Procurement Regulations.
(ii) MPLA shall give the appraiser reasonable time to complete the appraisal report. MPLA and the appraiser shall agree on the time for completion and submittal of the appraisal report upon execution of the agreement for appraisal assignment.
(5) Review of Appraisal Report and Determination of Market Value.

(i) Upon completion and submittal of the appraisal report, MPLA shall either accept the report or require a review. If a review is required, the appraisal reviewer shall have 30 days to review the appraisal report for any deficiencies. The appraisal reviewer shall be given additional time for review if warranted.
(ii) If the appraisal reviewer finds deficiencies in the appraisal report, MPLA shall notify the appraiser of such deficiencies, and give the appraiser reasonable time to make corrections.
(iii) If the appraiser refuses to make corrections or change the appraisal report pursuant to the recommendations of the appraisal reviewer, then the appraiser shall submit in writing his/her reasons within 15 days from receipt of the appraisal reviewer's report on deficiencies.
(iv) If the appraiser refuses to make corrections or if the appraisal reviewer finds deficiencies after re-submittal, the appraisal reviewer shall submit his/her own recommendation as to the market value of the land.
(v) MPLA shall determine the market value of the private land based on the appraiser's report and the appraisal reviewer's report, if any.
(vi) MPLA may reject any appraisal report which it determines is unsatisfactory under the requirements of the regulations in this chapter.
(6) Written Offer to Owner.
(i) Within 30 days after the determination of market value, MPLA shall transmit a written offer to the owner, which shall be sent by mail or delivered in person with proof of service. The written offer may include the following:
(A) A recital of the market value of the private land; and
(B) A copy of any approved appraisal report, subject to copying charges.
(ii) All written offers shall be subject to approval by the Board.
(iii) Within 60 days after receipt of the written offer, the owner must either accept or reject the written offer. MPLA shall deem the written offer rejected if the owner fails to respond within 60 days.
(iv) If the owner rejects in writing the written offer, he/she shall have 30 days to present evidence relevant to the market value of his/her land. If MPLA determines that the evidence presented by the owner warrants a revision of the market value, MPLA may modify the determination of the market value, in consultation with the appraisal reviewer or with the appraiser.
(7) Land Compensation Settlement Agreement. If the owner agrees to the offer made in the course of the negotiations, MPLA and the owner shall enter into a land compensation settlement agreement, which shall be subject to the approval of the Board at the recommendation of the Commissioner, and include at least the following:
(i) The agreed value of the owner's land;
(ii) The legal description of the owner's land;
(iii) The owner's promise to warrant clear title to the land; and
(iv) The signatures of the owner and the Board or its designee(s).
(8) Alternate Means of Acquisition. If the Commonwealth and an owner do not reach an agreement as provided in subsection (a)(7), the Commonwealth may proceed to acquire the private land by other legal means.
(9) Processing of Monetary Compensation. Within 15 days of the conclusion of negotiations, MPLA shall:
(i) Prepare a warranty deed for the owner to convey title to his/her land to MPLA; and
(ii) Pay agreed compensation to the owner.

(10) Disposition of Acquisition Records, Documents and Reports. All materials for land compensation claims settlement should contain the following:
(i) Governor's certification, or the declaration or determination by the Legislature of the public uses or purposes for which the private land is being acquired;
(ii) Preliminary acquisition notice to owner;
(iii) Owner response to acquisition notice;
(iv) Solicitation for appraisal;
(v) Selection and agreement for appraisal services;
(vi) Approved survey maps;
(vii) Approved appraisal report;
(viii) Appraisal reviewer's recommendation;
(ix) Written offers to owner;
(x) Proof of service and/or acknowledgment;
(xi) Rejection/request for negotiations by the owner;
(xii) Owner's acceptance of offer;
(xiii) Proof of clear title;
(xiv) Copy of notice published in the local newspaper or broadcast on local radio, with the dates of publications or broadcasts;
(xv) Land compensation settlement agreement;
(xvi) Warranty deed;
(xvii) Notice to owner to vacate land; and
(xviii) Any material pertaining to the land compensation.

(b) Impediments Affecting Land Claim. If MPLA determines that a claim contains issues affecting clear title or other impediments preventing timely processing of land acquisition and compensation, the claimant(s) shall be responsible for resolving these impediments. Until these impediments are resolved, MPLA may suspend processing of such claim and proceed to the next claim in priority. After the claimant(s) has resolved these impediments to the satisfaction of MPLA and in accordance with the regulations in this chapter, MPLA will resume processing the claim.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

Commission Comment: In subsection (a)(1)(x), the Commission corrected the spelling of acknowledgment.

§ 145-40-105 Priority

Priority for compensation is pursuant to Public Law 13-17 § 4(d), based on the time of taking and compliance with the regulations in this chapter, in the following order:

(a) First, rights-of-way;

(b) Second, ponding basins; and

(c) Third, wetlands and other claims.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

§ 145-40-110 Eligibility and Disbursement of Monetary Compensation

(a) The Commissioner shall deem a pending land claim settlement case file complete pursuant to this part, and shall thereafter submit it to the Board for approval.

(b) The Board shall approve land compensation settlements as complete before disbursement of monetary compensation. MPLA shall thereafter notify each land claimant of the Board's official action, and shall dispose of each settlement case file upon the issuance of a payment check to each claimant.

(c) The Commissioner may advertise all land compensation settlement claims in various media prior to disbursement of payments.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

Part 200 - Appeal; Administrative Hearing Procedure

§ 145-40-201 Hearing Officer

(a) Jurisdiction and Authority. Pursuant to Public Law 13-25 § 10, the hearing officer shall have jurisdiction and authority to conduct all hearings and issue final written findings, orders, or decisions on land compensation claims timely requested in writing by landowners who dispute the Commissioner's written offer of just compensation.

(b) Conflict of Interest and Appearance of Partiality. In the event that the hearing officer has determined that a conflict of interest exists, he/she shall disqualify himself/herself, and request the Board/Commissioner to assign a hearing officer pro tempore to hear and issue written findings, order, or decision on the claim.

(c) Independent Judgment. The hearing officer, in carrying out his/her duties and responsibilities pursuant to the APA and the regulations in this chapter, shall exercise his/her independent judgment on the evidence before him/her, free from pressures by any party, MPLA Board members, MPLA staff, Commonwealth agencies or officials, or any person.

(d) Final Decision. The decision of the hearing officer is final, unless timely appealed to the Board.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

Commission Comment: The Commission inserted a comma after the word "order" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 145-40-205 Hearing Conduct and Procedure

(a) Administrative Proceedings. The hearing officer shall conduct and regulate the course of all administrative proceedings, and issue decisions on claims timely filed by any landowner who disputes the method used to determine, or the amount of, just compensation offered by the Commonwealth to resolve a land compensation claim, in accordance with Public Law 13-17, as amended, the APA, and this part of this chapter.

(b) Written Request for Hearing. If, upon a written offer of just compensation, a landowner disputes the method used to determine, or the amount of, the just compensation offered by the Commonwealth to resolve the land compensation claim, the landowner shall have 20 days to make a written request to MPLA for an administrative hearing to protest the offer.

(c) Notice of Status and Scheduling Conference. Following a landowner's timely filed written request for an administrative hearing, and within 30 days of the filing of the written protest by the landowner, the hearing officer shall issue a notice of status and scheduling conference. The notice shall be served in accordance with the Commonwealth Rules of Civil Procedure. The notice of status and scheduling conference shall include the following.
(1) The date, time, and place of hearing;
(2) The nature of the hearing;
(3) The legal authority and jurisdiction under which the hearing is to be held;
(4) The matters asserted;
(5) The names of all parties and other persons to whom notice is being given by the hearing officer;
(6) The official file or other reference number given to a particular claim; and
(7) Notice to each party of their right to have an attorney represent them, at their own expense.

(d) Status and Scheduling Conference. The matters to be addressed at such conference are:
(1) The possibility of a settlement;
(2) Possible stipulations and admissions;
(3) The setting of an evidentiary hearing; and
(4) Such additional matters as may contribute to the orderly and expeditious resolution of the issues.

(e) Notice of Evidentiary Hearing. The hearing officer, during the status conference, shall set the date, time, and place for an evidentiary hearing. Following the status conference, the hearing officer shall issue a written notice for evidentiary hearing, which shall be served in accordance with the Commonwealth Rules of Civil Procedure. The notice shall include the following:
(1) The date, time, and place of hearing;
(2) The nature of the hearing;

(3) The names of all parties and other persons to whom notice is being given by the hearing officer;
(4) The land compensation claim number;
(5) Notice to parties of their right to have an attorney represent them if they choose, at their own expense;
(6) The right to present witnesses; and
(7) The right to submit documents or other written evidence.

(f) Evidentiary Hearing. The hearing officer shall conduct evidentiary hearings on land compensation protests in order to make determinations on the questions involved in the protest. The hearing officer shall have the general power to:
(1) Issue subpoenas for attendance of witnesses;
(2) Issue subpoenas for production of documents;
(3) Administer oaths;
(4) Regulate the course of the hearing;
(5) Hold conferences for the settlement or simplification of the issues;
(6) Dispose of procedural requests or similar matters;
(7) Make or recommend orders or decisions in accordance with the APA; and
(8) Exercise other powers that may be necessary to effectively implement Public Laws 13-17 and 13-25.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

§ 145-40-210 Timing for Issuance of Findings, Decision and Order

The hearing officer shall issue his/her findings, order, or decision pursuant to 1 CMC §§ 9110, et seq., within 30 days after the hearing is completed.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

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

§ 145-40-215 Appeal of Hearing Officer Findings, Decision or Order

Any party adversely affected by findings, order, or decision of the hearing officer may appeal in writing pursuant to Public Law 13-25 § 11.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

§ 145-40-220 Judicial Review

Appeal from an order or decision of the Board shall be brought pursuant to Public Law 13-25 § 12.

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

Part 300 - Miscellaneous Provisions

§ 145-40-301 Severability

If any provision of the regulations in this chapter shall be held invalid by a court of competent jurisdiction, the remainder of such regulations, other than those held invalid, shall not be affected.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20219 (May 29, 2003); Proposed 25 Com. Reg. 20039 (Feb. 28, 2003); Emergency and Proposed 24 Com. Reg. 19843 (Dec. 27, 2002) (effective for 120 days from Dec. 27, 2002).

CHAPTER 145-50
PUBLIC PURPOSE LAND EXCHANGE RULES AND REGULATIONS

Chapter Authority: 2 CMC § 4146.

Chapter History: Proposed 34 Com. Reg. 32302 (Feb. 29, 2012);** Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995);* Adopted 10 Com. Reg. 5418 (Jan. 18, 1988); Proposed 9 Com. Reg. 5256 (Oct. 15, 1987).

*The text of the proposed regulations was not published with the March 1995 notice of proposed regulations.

**On February 27, 2012, the Department of Public Lands published proposed Land Exchange Rules and Regulations pursuant to the authority of PL 15-2. See 32 Com. Reg. 32300 (Feb. 29, 2012). A notice of adoption was never published. This subchapter is reserved for future rules and regulations governing the Land Exchange Rules and Regulations.

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.

PL 5-33 (effective June 1, 1987), the "Public Purpose Land Exchange Authorization Act of 1987," is codified as amended at 2 CMC §§ 4141-4149. The act, as amended by PL 13-17 § 8 (effective July 23, 2002), PL 13-23 (effective Sept. 9, 2002) and PL 14-44 (effective Dec. 2, 2004), authorizes MPLC or its successor to enter into certain land exchange agreements with private landowners. PL 5-33 § 6 empowers MPLC to promulgate rules and regulations to carry out the purposes of the act. See 2 CMC § 4146.

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, et seq. 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. 1 CMC § 2654 authorizes the Department of Lands and Natural Resources to adopt rules and regulations in furtherance of its duties and responsibilities.

PL 10-57 § 4 vacated Executive Order 94-3 § 306. PL 10-57 § 3 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." 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 12-33 (effective Dec. 5, 2000), the "Board of Public Lands Act of 2000," and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to a new Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. The Marianas Public Lands Authority became the successor agency to the Marianas Public Lands Corporation.

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, replaced the Marianas Public Lands Authority with the Department of Public Lands within the executive branch. PL 15-2 repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands.

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. For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

The MPLC issued Land Exchanged Rules and Regulations in 1988, pursuant to PL 5-33 § 6, 2 CMC § 4146. See 10 Com. Reg. 5418 (Jan. 18, 1988); 9 Com. Reg. 5256 (Oct. 15, 1987). The DLNR Division of Public Lands promulgated

the 1995 Public Purpose Land Exchange Regulations codified in this chapter pursuant to the authority of Executive Order 94-3 § 306 and PL 5-33.

Part 001 - General Provisions

§ 145-50-001 Authority

The regulations in this chapter are promulgated by the Division of Public Lands of the Department of Lands and Natural Resources pursuant to § 6 of the Public Purpose Land Exchange Authorization Act of 1987, as amended [2 CMC § 4146].

Modified, 1 CMC § 3806(d).

History: Proposed 34 Com. Reg. 32302 (Feb. 29, 2012); Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Commission Comment: On February 27, 2012, the Department of Public Lands published proposed Land Exchange Rules and Regulations pursuant to the authority of PL 15-2. See 32 Com. Reg. 32300 (Feb. 29, 2012). A notice of adoption has never been published to date.

§ 145-50-005 Purpose

The regulations in this chapter are promulgated to repeal and replace in their entirety, the rules and regulations promulgated by the Marianas Public Land Corporation pursuant to the Public Purpose Land Exchange Authorization Act of 1987, published in the Commonwealth Register on January 18, 1988 at pages 5418-5428.

Modified, 1 CMC § 3806(d), (f).

History: Proposed 34 Com. Reg. 32302 (Feb. 29, 2012); Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Commission Comment: On February 27, 2012, the Department of Public Lands published proposed Land Exchange Rules and Regulations pursuant to the authority of PL 15-2. See 32 Com. Reg. 32300 (Feb. 29, 2012). A notice of adoption has never been published to date.

§ 145-50-010 Definitions

(a) "Division" means the Division of Public Lands of the Department of Lands and Natural Resources.

(b) "Government" means, for purposes of the regulations in this chapter, the agencies involved in the land exchange process, other than the Division of Public Lands.

(c) "Owner" means the person, persons, entity, or entities qualified to receive a land exchange under the Public Purpose Land Exchange Authorization Act of 1987, as amended [2 CMC §§ 4141-4149].

Modified, 1 CMC § 3806(d), (f).

History: Proposed 34 Com. Reg. 32302 (Feb. 29, 2012); Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Commission Comment: On February 27, 2012, the Department of Public Lands published proposed Land Exchange Rules and Regulations pursuant to the authority of PL 15-2. See 32 Com. Reg. 32300 (Feb. 29, 2012). A notice of adoption has never been published to date.

Part 100 - Basic Acquisition Policies

Commission Comment: On February 27, 2012, the Department of Public Lands published proposed Land Exchange Rules and Regulations pursuant to the authority of PL 15-2. See 32 Com. Reg. 32300 (Feb. 29, 2012). A notice of adoption has never been published to date.

§ 145-50-101 Exchanges Based on Fair Market Value

All land exchanges must be based on a "fair market value" ratio as determined and established by an independent appraisal study.

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Commission Comment: The Commission created the section titles in part 100.

§ 145-50-105 Fair Market Value; Basis

The government's and the Division's appraisal of fair market value shall be based upon nationally recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of value under the "eminent domain law" of the CNMI; and, in the case of land being acquired for highway purposes, consistent with federal requirements applicable to valuation of land being acquired for highway purposes.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-110 Uneconomic Remnants

If the acquisition of a certain portion of private land will leave an owner with an uneconomic remnant, the government shall also propose to acquire the uneconomic remnant along with that portion of the property needed for the project. An uneconomic remnant is that parcel of an owner's real property that would otherwise remain in title to the owner but have no utility or economic value to the owner after the government's acquisition of the owner's adjoining real property.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-115 Permission for Appraisal

Before entering into the negotiation for a land exchange, the government shall obtain written permission from the owner to enter upon and appraise his/her land.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-120 Solicitation and Selection of Appraisers

The government shall solicit and select independent appraisers in accordance with the CNMI Procurement Regulations [NMIAC, title 70, subchapter 30.3] promulgated by the Department of Finance pursuant to article X, section 8 of the CNMI Constitution, 1 CMC § 2553(j) and 1 CMC § 2557.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-125 Appraisers; Conflict of Interest

No appraiser shall have any interest, direct or indirect, in the real property which he/she appraises for the government or the Division that would in any way conflict with his/her performance of the appraisal. No appraiser shall act as a negotiator for the government, the Division, or the owner in the acquisition of real property which he/she has appraised in connection with the project. Compensation for an appraisal shall not be based on the amount of valuation.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-130 Review of Appraiser Reports

(a) The government or the Division at its option may require its review appraiser or an independent review appraiser to review all appraisal reports for:
(1) Adequacy of the appraiser's supporting data and documentation.
(2) Soundness of the appraiser's reasoning in conformance with recognized appraisal practices.

(3) Soundness of the appraiser's opinion of the fair market value of the property.

(b) If the government or the Division decides to have an appraisal report reviewed, the review appraiser may request the appraiser to make any necessary changes in the appraisal report. After all necessary changes are made, the reviewer shall recommend whether the appraisal report should be accepted. If the appraiser refuses to change the appraisal report pursuant to the recommendations of the review appraiser then the government or the Division shall request the appraiser to explain his/her reasons for not doing so, in writing. The government and the Division may reject any appraisal report which it or they determine is unsatisfactory under the requirements of the regulations in this chapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 145-50-135 Proposal to Owner Not to Exceed Estimate

The fair market value to be stated in the written proposal to the owner (§ 145-50-220 of this chapter) shall not be more than the fair market value estimate set forth in the approved appraisal report, if any.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-140 Exchange Based on Fair Market Value

Public land to be used in the acquisition must be appraised and the fair market value shall be the basis for the ratio of exchange. The size of public land to be used as compensation may be more or less than the private land to be acquired depending on the comparison of the fair market values of the two parcels; provided, that the exchange is equitable.

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-145 Supplemental Monetary Compensation

Notwithstanding § 145-50-140, in a land exchange the Division shall use its best efforts to exchange public land which is equal in size and value to the private land which has been taken or is to be acquired. Provided, however, that if the private land which has been taken or is to be acquired is equal in size to, but greater in value than, the public land to be exchanged, the

government may offer the owner monetary compensation in addition to a land exchange for the purpose of meeting the value for value requirement of the law.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-150 Publication of Proposed Land Exchanges

All proposed land exchanges shall be published in a newspaper of general circulation and broadcast on the local radio and/or television in the CNMI, both in English and the vernacular, once each week for at least four consecutive weeks. Requests from concerned persons for the land exchange for a public hearing which are received within the time frame allocated for the public notice shall be heard as requested.

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-155 Size and Value Limitations

Private land which has a fair market value of less than $5,000 or an area of less than 700 square meters shall not be acquired through a land exchange.

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-160 Prioritization of Land Acquisition

In considering whether to use land exchange as the method of acquisition of private land, the Division shall take into consideration the many demands on the public lands, the decreasing amount of public land available for land exchange, and the following priorities:

(a) First priority includes all current use of private land by the public where no alternative sites are readily available on public land. First priority also includes all land exchanges pending prior to the publication of the rules and regulations in this chapter.

(b) Second priority includes private land required to accomplish a public project where public land is not readily available for such project.

(c) Third priority includes sites certified to be of historical significance and shoreline and beachfront properties.

(d) Fourth priority includes all wetlands.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-165 Validity of Past Land Exchanges

Any land exchange agreement entered into by the Division (or its predecessor) prior to the effective date of Public Law 5-33, June 1, 1987 (2 CMC §§ 4141, et seq.) which accomplished a public purpose as defined in that Act, is hereby deemed to be a lawful and binding agreement in the same manner and to the same extent as if entered into after the effective date of that Act. Provided, however, this section shall not affect pending agreements to exchange all future claims, pursuant to Public Law 5-5, or exchanges related to 1944 land actions, until such claims have been completed.

Modified, 1 CMC § 3806(d).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-170 Settlement of Lawsuits

Any land exchange agreement entered into by the Division for the purpose of settling a lawsuit which has actually been filed shall be exempt from the requirements set forth in the rules and regulations in this chapter, provided that the agreement is approved by the court.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Part 200 - Acquisition and Land Exchange Procedure

Commission Comment: On February 27, 2012, the Department of Public Lands published proposed Land Exchange Rules and Regulations pursuant to the authority of PL 15-2. See 32 Com. Reg. 32300 (Feb. 29, 2012). A notice of adoption has never been published to date.

§ 145-50-201 Determination to Acquire; Governor's Certification or Legislature's Declaration or Determination

The acquisition of private real property for a public purpose as defined in Public Law 5-33, as amended, [2 CMC §§ 4141-4149] shall originate at the Office of the Governor and must include the following:

(a) Except as provided in § 145-50-170, a certification by the Governor of the public use(s) or purpose(s) for which the government is acquiring the land parcel(s), as provided in 2 CMC §

4143(e)(2); or a declaration or determination by the Legislature of the public use(s) or purpose(s) for which the government is acquiring the land parcel(s), as provided in 2 CMC § 4143(e)(1);

(b) Boundary survey(s) and/or legal description(s);

(c) Identification of encumbrances and disputes, if any.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-205 Evidence of Title

There shall be a finding of title to the property to be acquired, which shall consist of valid proof of clear title, unless the Governor waives this requirement in writing. The government or the Division may require the owner to furnish a preliminary title report which verifies that he/she has unencumbered title to the property to be exchanged whenever there is insufficient title evidence as to his/her ownership of the property in question.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-210 Issuance of Preliminary Acquisition Notice

The Office of the Governor shall issue a preliminary acquisition notice to the owner. The notice shall:

(a) Inform the owner of the government's interest in acquiring his/her real property and the public purpose for which it is needed.

(b) Inform the owner of Public Law 5-33, as amended, the rules and regulations in this chapter, and the need to appraise the subject property to assess the fair market value.

(c) Request written permission from the owner to survey his/her land if it is unsurveyed and to inspect his/her land for the appraisal evaluation.

(d) If the fair market value of the owner's property is determined to be $5,000 or more and the area is 700 square meters or more, ask the owner if he/she wants the government to acquire his/her property through a land exchange. The owner shall indicate in an accompanying acknowledgment receipt whether he/she wants to enter into a land exchange or does not want to enter into a land exchange.

(e) The preliminary acquisition notice must be sent via return receipt mail or hand delivered and acknowledged that it was delivered and received.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

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

In subsection (d), the Commission corrected the spelling of "acknowledgment."

§ 145-50-215 Survey and Appraisal of Real Property to Be Acquired

(a) Upon receipt of the owner's authorization, the government shall survey the owner's property, if necessary, and secure an approved plat. Concurrently, the government shall solicit and contract for an independent appraiser to appraise the property to be acquired in accordance with the CNMI Procurement Regulations [NMIAC, title 70, subchapter 30.3] and the basic acquisition policies of the rules and regulations in this chapter.

(b) The government shall give the appraiser reasonable time to complete the appraisal report. The government and the appraiser shall agree on the time for completion and submittal of the appraisal report upon execution of the agreement for appraisal report.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-220 Review of Appraisal Report and Determination of Fair Market Value of Real Property to Be Acquired

(a) Upon completion and submittal of the appraisal report, the government and/or the Division (if the owner has requested a land exchange) shall either accept the report or require a review. If a review is required, the government's or the Division's staff review appraiser or an independent review appraiser retained for such purpose shall have thirty working days to review the appraisal report for any deficiencies. The review appraiser shall be given additional time to review the report if such is warranted by its complexity.

(b) If the review appraiser finds any deficiencies in the appraisal report, the government or the Division (if the owner has requested a land exchange) shall notify the appraiser of such deficiencies, and give the appraiser reasonable time to make corrections. If the appraiser refuses to make corrections or if the review appraiser finds any deficiencies after re-submittal, the review appraiser shall submit his own recommendation as to the fair market value of the property.

(c) The Governor shall determine what is, in his/her opinion, the reasonable fair market value of the property, based on the appraiser's report and the review appraiser's report, if any.

(d) The Division shall, in the case of a land exchange, be responsible for the custody of the appraisal report and the report, if any, of the review appraiser.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-225 Written Proposal to Owner

(a)(1) Within thirty days after the determination of fair market value, the government shall send or deliver a written proposal to the owner. The written proposal shall include the following:
(i) A recital of the fair market value of the property.
(ii) A copy of the approved appraisal report, if any, or copies of the appraiser's and review appraiser's reports.
(2) The written proposal shall be sent by return receipt mail or delivered in person and acknowledged that it was delivered and received.

(b) Within sixty days, the owner must either reject or accept the written proposal. After the expiration of sixty days, the government shall deem that the owner has rejected the written proposal and shall initiate other means of acquisition.

(c) The owner shall be given a reasonable opportunity to present material which he/she believes is relevant to determining the value of his/her property. If the government or the Division determines that the evidence presented by the owner warrants a revision of the fair market value, the government or the Division may modify the determination of fair market value, in consultation with the review appraiser, if any, or with the appraiser.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Commission Comment: The original paragraphs of subsection (a) were not designated. The Commission designated subsections (a)(1) and (a)(2).

§ 145-50-230 Owner Does Not Want Land Exchange

If the owner indicates in his/her acknowledgment receipt that he/she does not want a land exchange, the government shall negotiate for monetary compensation, subject to the Governor's approval, or recommend condemnation proceedings if needed.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Commission Comment: The Commission corrected the spelling of "acknowledgment."

§ 145-50-235 Owner Wants Land Exchange

(a) The Division must explain its Land Exchange Rules and Regulations, codified in this chapter, and the basis for establishing the fair market value of the owner's property.

(b) The Division must explain to the owner that certain public land parcels have been designated and reserved for land exchange purposes and inform him/her of the established fair market value of these land parcels based on the latest approved appraisal reports.

(c) The owner shall be given, if requested, copies of the latest approved appraisal reports of the public land parcels and may have them reviewed by an independent review appraiser retained by the owner at the owner's expense.

(d) The Division shall create a file, if it has not already done so, which must contain the following documents:
(1) The Governor's certification or the Legislature's declaration or determination;
(2) Valid proof of clear title, or the Governor's written waiver of that requirement;
(3) Preliminary acquisition notice and receipt;
(4) Owner's response to acquisition notice;
(5) Appraisal solicitation;
(6) Appraisal selection;
(7) Approved basic and severance maps;
(8) Approved appraisal report, if any; or the appraiser's report and the review appraiser's report, if any;
(9) Written notice to owner;
(10) Owner's acceptance of written proposal.

(e) If the owner agrees to the written proposal or the final proposal made in the course of the negotiations, the Division, through the Governor, and the owner shall enter into a land exchange agreement, which shall be subject to the Governor's approval, and include at least the following:
(1) The value of the owner's property and the value of the public land that has been agreed upon.
(2) The legal description of the owner's land to be acquired, and an adequate description of the parcel(s) of public land the owner agrees to accept in exchange for his/her private land.
(3) An agreement by the owner that he/she will warrant title to the property he/she will convey to the government.
(4) The signatures of the owner and the Governor.

(f) If the government or Division and an owner who has selected a land exchange do not reach an agreement as provided in subsection (e) of this section, and do not otherwise reach an agreement

for monetary compensation for the land to be acquired by the government, the government may proceed to acquire the land by other legal means.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-240 Publication of Proposed Exchange

Upon the signing of the land exchange agreement, the Division shall, within thirty days, publish the proposed exchange pursuant to § 145-50-150.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Commission Comment: The Commission created the section title.

§ 145-50-245 Processing and Execution of Land Exchange

(a) Within seven days of the successful conclusion of the negotiation, subject to the availability of funds, the Division shall:
(1) Solicit and select a surveyor in accordance with the CNMI Procurement Regulations [NMIAC, title 70, subchapter 30.3] to survey the public land parcel(s) to be exchanged.
(2) Prepare a deed of land exchange.

(b) Upon completion of the required surveys and deed of land exchange, the Division shall arrange for the execution of the deed, subject, however, to the final approval of the Governor.

(c) If the owner's property is occupied or being used by the owner upon the execution of the deed, the government shall notify the owner that he/she must vacate the premises. If the owner needs time to relocate, the government shall grant him/her reasonable time to do so.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

§ 145-50-250 Disposition of Acquisition Records, Documents and Reports

All materials which are part of the file for the particular land exchange must be compiled and safeguarded in proper filing containers. This file must at a minimum contain the following:

(a) Governor's certification, or the declaration or determination by the Legislature of the public uses or purposes for which the land is being acquired;

(b) Preliminary acquisition notice;

(c) Solicitation for appraisal;

(d) Selection and agreement for appraisal services;

(e) Approved appraisal report;

(f) Review appraiser's recommendation (if any);

(g) Written proposal to owner;

(h) Written proposal return receipt mail/acknowledgment receipt;

(i) Rejection/request for negotiations by the owner (if any);

(j) Final proposal;

(k) Proof of clear title or the Governor's written waiver of that requirement;

(l) Survey plat(s);

(m) Copies of notices published in the newspaper and broadcast on local radio and/or television, with the dates of publications and broadcast;

(n) Deed of exchange;

(o) Notification to owner to vacate the property (if any);

(p) Any correspondence pertaining to the land exchange.

Modified, 1 CMC § 3806(f).

History: Adopted 18 Com. Reg. 14129 (May 15, 1996) (repealing and replacing the 1988 Marianas Public Land Corporation Land Exchange Rules and Regulations); Proposed 17 Com. Reg. 13308 (May 15, 1995); Proposed 17 Com. Reg. 13023 (Mar. 15, 1995).

Commission Comment: In subsection (h), the Commission corrected the spelling of "acknowledgment."

CHAPTER 145-60
SUBMERGED LAND RULES AND REGULATIONS

Chapter Authority: 2 CMC § 1221.

Chapter History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: PL 1-8, tit. 1, ch. 13 (effective Aug. 10, 1978), formerly codified at 1 CMC §§ 2651, et seq., originally created a Department of Natural Resources (DNR) within the Commonwealth government.

PL 1-23 (effective Feb. 20, 1979), the Submerged Lands Act, codified as amended at 2 CMC §§ 1201-1231, was first enacted in 1979. In 1988, PL 6-13 (effective Nov. 3, 1988) extensively amended the codified sections of PL 1-23 in order to extend the authority of the Department of Natural Resources over all submerged lands. See 2 CMC § 1201 and the commission comment thereto. Pursuant to the Submerged Lands Act, DNR is responsible for the management use and disposition of submerged lands in the Commonwealth and has the power to adopt rules and regulations consistent with the act. See 2 CMC § 1221.

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:

> Section 104. Department of Lands and Natural Resources.
>
> The Department of Natural Resources is re-designated the Department of Lands and Natural Resources.

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, et seq. 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.

Pursuant to 1 CMC § 2653(k), DLNR is responsible for the management, use, and disposition of submerged lands pursuant to the Submerged Lands Act, 2 CMC §§ 1201, et seq. Former 1 CMC § 2672(a)(1) further specified that the Division of Public Lands within DLNR is responsible for the management, use, and disposition of submerged lands pursuant to the Submerged Lands Act.

PL 12-33 (effective Dec. 5, 2000), the "Board of Public Lands Act of 2000," and PL 12-71 (effective Nov. 13, 2001) transferred the authority to manage, use, and dispose of surface and submerged public land to the Marianas Public Lands Authority, under the direction of a Board of Public Lands Management. PL 12-33 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 (§ 102(a)(2)) granted the Board of Public Lands Management the power and duty to mange, use and dispose of submerged lands off the coast of the Commonwealth pursuant to the Submerged Lands Act.

Public Laws 12-33 and 12-71 did not repeal 1 CMC § 2653(k), which grants DLNR the power and duty to manage, use and dispose of submerged lands of the Commonwealth pursuant to the Submerged Lands Act. This provision was in apparent conflict with the authority provided to the Marianas Public Lands Authority and the Board of Public Lands Management set forth in PL 12-33 and PL 12-71.

Public Law 15-2 (effective February 22, 2006), codified at 1 CMC §§ 2801-2809, replaced the Marianas Public Lands Authority with the Department of Public Lands within the executive branch. PL 15-2 repealed all provisions of Public Laws 10-57, 12-33, and 12-71 applicable to public lands, but did not specifically address submerged lands. Presumably, the absence of submerged lands in PL 15-2 resolves the apparent conflict of authority between two government agencies over submerged lands.

For a complete history of the authority over public lands in the Commonwealth see the general comment to chapter 10 of this title.

In addition, the CNMI Attorney General's Office issued an opinion in May 2007 to a division of DLNR regarding the CNMI's rights over its submerged lands. 29 Com. Reg. 26517 (May 16, 2007). Attorney General Opinion 07-01 was issued in response to an inquiry from the Division of Fish and Wildlife of the DLNR regarding its authority "to enforce

CNMI laws regulating fishing practices and equipment within the Commonwealth's near shore waters." 29 Com. Reg. 26517 (May 16, 2007). For the full text of Attorney General Opinion 07-01, see 29 Com. Reg. 26517 (May 16, 2007).

PL 18-42 (Mar. 27, 2014) amended 1 CMC § 2653 to specify that the Department of Lands and Natural Resources has the authority to promulgate regulations concerning submerged lands within three miles of the shore. To the extent these regulations conflict with 1 CMC § 2653, they are superseded.

The Department of Natural Resources first promulgated Submerged Lands Regulations in 1981 pursuant to PL 1-23 and PL 1-8. The history of the 1981 regulations is as follows: Adopted 3 Com. Reg. 1043 (Feb. 23, 1981); Proposed 2 Com. Reg. 903 (Nov. 17, 1980). The text of the proposed regulations was not published with the 1980 notice of proposed regulations.

Part 001 - General Provisions

§ 145-60-001 Summary

This chapter sets forth the Department's regulations and policies relating to the use and lease of submerged lands within the Commonwealth. In particular, the rules in this chapter provide the definitions of key terms, explain the Department's policy on uses requiring Department approval, lease and easement application terms and conditions, fee determination, types of use and penalty determination.

Modified, 1 CMC § 3806(d).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-005 Purpose

(a) The purpose of the rules in this chapter is to establish procedures and guidelines for leasing, licensing or permitting use of the Commonwealth of the Northern Marianas Islands submerged lands. Since these are Commonwealth resources, the Director of the Department of Natural Resources reserves the right in his discretion, to deny any request for a lease, license or permit though all approved leases must be ratified by the CNMI Legislature as provided by the Submerged Lands Act. The criteria set forth below with respect to whether a lease, license, or permit may be issued are to be considered guidelines for but are not binding upon the Director.

(b) In 1979, the Submerged Lands Act was promulgated to provide for the exploration, development, and extraction of petroleum or mineral deposits (2 CMC §§ 1201-1231). In 1988, Public Law 6-13 gave the Department broader authority to lease, license, and permit for the use of submerged lands. (2 CMC §§ 1211-1204). As a result of this legislation, the Department is authorized to grant leases or licenses for dredging, filling, erection of permanent structures and installation of fixtures such as cables and pipelines on submerged lands of the Commonwealth. The Commonwealth holds in trust these resources for the benefit of the public, and the public uses thereof generally include recreation, fishing, shoreline access and navigation.

(c) The purpose of the rules in this chapter is to provide a guide for federal, Commonwealth, and private uses of Commonwealth submerged lands. Coordinated management is necessary to resolve the increasing number of conflicts that may arise between development and preservation of environmental quality, resource conservation, and public rights to use these resources.

(d) The management of these resources is affected by the public trust doctrine and the public rights thereunder as well as the public's customs, uses, and traditions. In addition, management of the submerged lands by the Department is subject to other Commonwealth and federal laws.

(e) Activities on submerged lands must conform to various resource planning and protection laws administered by other Commonwealth agencies such as the Coastal Resources Management Office, the Division of Environmental Quality, Historical Preservation Office and the Division of Fish and Wildlife. The Commonwealth Port Authority is charged with developing port terminal facilities.

(f) The Department's management decisions will not be more restrictive than any actions imposed by other government agencies.

(g) The overall goal of the Department in meeting its responsibilities is to help provide the greatest long-term benefits for all of the people in the Commonwealth. To this end, leases, licenses, and permits are prioritized in terms of their impact on public rights, customs, and uses. Leases, licenses, and permits deemed to be most desirable are those issued for uses which depend on the water and/or submerged lands for their existence and which make wise use of the natural renewable resources therein. Leases, licenses, and permits deemed to be least desirable are those issued for uses which are not dependent on the water and/or submerged lands and which cause irreversible changes therein. Since private use of submerged land unavoidably restricts general public use of this resource, fees shall be imposed on those private users.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (g).

With respect to the references to the Department of Natural Resources, see Executive Order 94-3 (effective August 23, 1994) reorganizing the Commonwealth government executive branch, changing agency names and official titles, and effecting numerous other revisions.

The Commission inserted a comma after the word "licenses" in subsection (g) pursuant to 1 CMC § 3806(g).

§ 145-60-010 Definitions

(a) An "aggrieved party" is a person who has a property interest in the land or who is an adjacent submerged lands tenant.

(b) A "buffer zone" is an area separating two different types of zones or classes of areas to make each blend more easily with each other.

(c) The "Department" means Department of Natural Resources.

(d) The "Director" shall mean the Director of the Department of Natural Resources.

(e) "Filling" is addition of fill material into waters of the United States. The term generally includes the following activities:
(1) Placement of fill that is necessary for the construction of any structure;
(2) The building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction;
(3) Residential, and other uses;
(4) Causeways or road fills;
(5) Dams and dikes;
(6) Artificial islands;
(7) Property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments;
(8) Beach nourishment;
(9) Levees;
(10) Fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and
(11) Artificial reefs.

(f) "Ordinary high water mark" means the mark on tidal waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on (the effective date of submerged lands act amendment) as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: Provided, that in any area where the ordinary high-water mark cannot be found, the ordinary high-water adjoining saltwater shall be the line of mean higher high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high water.

(g) "Specific use activities" are defined in part 500 herein.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: In subsection (a), the Commission corrected the spelling of "aggrieved." In subsection (f), the Commission deleted the repeated word "mark."

With respect to the references to the Department of Natural Resources, see Executive Order 94-3 (effective August 23, 1994) reorganizing the Commonwealth government executive branch, changing agency names and official titles, and effecting numerous other revisions.

Part 100 - Lease, Licenses and Permits of and Constructive Easement; Review of Applications

§ 145-60-101 Application

(a)(1) Application to the Department will be deemed to have been made when the Department receives a complete appropriate permit application for a specific use activity as defined in part 200 herein.
(2) Note: Almost all activities involving or proximate to the waters of the Commonwealth require a permit, license and/or conveyance of property interest from the Commonwealth. The Department makes conveyances of Commonwealth property interests only. The appropriate Commonwealth agencies to contact for more information about permits and licenses are noted in appendix A.

(b) Actions Taken by the Department and Notification.
(1) The Department shall review all applications within 45 working days of their receipt and shall request additional information from the applicant and/or the permitting agency when necessary.
(2) If the proposed project is not on Commonwealth-owned submerged land, the Department will notify the applicant.
(3) Note: If the proposed project is not within Commonwealth-submerged land, the Department will notify the applicant of the action to be taken. In addition to notifying the applicant, the Department shall give notification of pending action to the Department of Environmental Quality, Coastal Resources Management Office, and Historic Preservation Office for applications to CRMO for coastal wetland alteration applications and the CPA for projects in harbor areas as applicable.
(4) When the proposed project has potentially significant impact on public uses. The Directors will schedule a public meeting. The Department will notify the general public by publishing notice of the application in a newspaper of local circulation at least two weeks prior to the public informational meeting. Written comments addressing public use issues will be accepted for a fourteen day period following publication in the newspaper. The time period for a Department decision will be extended until 30 days following the meeting.

(c) All applications will be reviewed to assess the potential beneficial impact on fisheries development and adverse impact on marine resources within submerged lands. Applications may be denied where, in the opinion of the Director, there is an undue adverse impact on such use or ability to mitigate any impacts.

Modified, 1 CMC § 3806(c), (e), (f), (g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The original paragraphs of subsections (a) and (b) were not designated. The Commission designated subsections (a)(1) and (a)(2) and (b)(1) through (b)(4).

In subsection (b)(4), the Commission corrected the spelling of "public" and changed "of public meeting" to "a public meeting" to correct manifest errors.

§ 145-60-105 Uses Requiring a Lease

Leases or easements are required in order to dredge, fill or erect permanent causeways, bridges, marinas, wharves, docks, pilings, moorings, aquaculture, or other permanent structures on submerged land in the Commonwealth.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission corrected the spelling of "permanent." The Commission inserted a comma after the word "aquaculture" pursuant to 1 CMC § 3806(g).

§ 145-60-110 Uses Not Requiring a Conveyance

All uses of submerged lands require leases, easements, or constructive easements except as otherwise provided herein. Conveyances are not required for transitory public uses, such as recreation, fishing, and navigation.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission corrected the spelling of "constructive."

§ 145-60-115 Uses Requiring Commonwealth Regulatory Permits

A conveyance from the Department for a use other than an easement or lease requiring permits from Commonwealth and/or federal agencies shall be conditioned upon issuance of and adherence to all applicable permits.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission changed "require" to "requiring" to correct a manifest error.

Part 200 - General Terms and Conditions; Use Permits Lease, Easement or Constructive Easement Other than Dredging Leases

§ 145-60-201 Constructive Easements

(a) Owners of all structures located upon submerged lands on November 3, 1988, shall be deemed to have been granted a constructive easement therefor and are permitted continual use. The term will have begun on that date and shall end on November 3, 2013.

(b) Any significant change in use, either in nature or intensity, of an existing constructive easement shall require a lease or easement. Grantees of constructive easements must request a determination from the Department prior to any change of use. Note: Any proposed project, which will occupy a new area, in addition to the area conveyed by constructive easement, shall require a lease or easement.

Modified, 1 CMC § 3806(f).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-205 Use Permits

Use permits may be granted for specific uses requiring a conveyance, provided that the use either:

(a) Is for the exclusive benefit of the abutting upland owner including the Marianas Public Land Corporation for charitable purposes, as defined in the U.S. Internal Revenue Code, section 501(c)(3);

(b) Occupies a total of not more than 500 square feet of Commonwealth submerged land for any lawful purpose;

(c) Occupies a total of not more than 2,000 square feet of Commonwealth submerged land for the commercial landing or processing of natural products, including aquaculture, in the marine waters or directly related purposes, including fueling, loading or selling of these products and those uses included in § 145-60-210(a); or

(d) Is for harbor improvement by the CNMI or federal governments.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission created the section title.

§ 145-60-210 Leases

Leases may be granted, upon approval of the Legislature, for the following uses:

(a) Commercial landing, processing of natural products of the ocean, and exploration or exploitation of petroleum or mineral deposits using more than 2,000 square feet of Commonwealth submerged land; or

(b) All other uses occupying more than 500 square feet.

(c) If the Director requires a buffer zone around a leased area, a buffer zone shall be not more than 30 feet in width around a permanent structure or area and may also be leased for a period of not more than 25 years except as extended by statute. The buffer zone shall be permitted for the same fees and rents as the fair market value of the leased area it is protecting.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission created the section title.

§ 145-60-215 Terms of Conveyance

Including use permits, leases, easements or constructive easements.

(a) Initial Term
Unless otherwise specified, the initial conveyance term may be granted for a period of time not to exceed 25 years.

(b) Extension of Term
Conveyance term extension may be requested only during the last five years of the principle conveyance document. If granted, the conveyance term will be extended by not more than fifteen years and shall be updated to conform with current policies and fees.

(c) Renewal
(1) Lease and easement renewal may be granted at the end of the conveyance term upon approval of three-quarters of the CNMI Legislature considering, among other reasons, the public interest, policy conflicts and any history of noncompliance with conveyance terms by applicant.
(2) A constructive easement may be renewed in the form of a lease or license.

(d) Option
An option to obtain a lease from the Department for a specific area of submerged lands for a period of time not to exceed one year may be negotiated. The option fee may be less than the anticipated annual lease rental fee. The option may only be executed for the sole purpose originally given by the Department.

Modified, 1 CMC § 3806(f).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-220 Applicant Not Owner of Abutting Upland

When an applicant is made for the use of submerged land which extends in front of adjacent upland owners, the Director shall require the applicant to receive the adjacent owner's written permission before a conveyance will be considered.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-225 Change in Use Under Lease, License or Permit

When holders of leases, licenses or permits wish to change the nature or intensity of the use of the lands beyond the uses specified in the conveyance, they must request prior Department approval. Significant changes will be considered under the same criteria used to review new applications, and if approved will require a new conveyance, and approval of the Legislature. A significant change would be a change in the specific use, but is not limited to this.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-230 Assignment

(a) Leases, licenses, and permits containing assignment clauses are assignable with 30 day advance notice and the Department's prior, written approval. An administrative processing fee will be charged when conveyances are transferred.

(b) Constructive easements will continue when there is a change in ownership, if there is no change in area occupied or use.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission inserted a comma after the word "licenses" in subsection (a) pursuant to 1 CMC § 3806(g).

§ 145-60-235 Termination

A lease, license, or permit, constructive easement may terminate where:

(a) The contractual obligations are not being complied with and corrective action, acceptable by the Director, is not taken within 30 days of written notice; or

(b) When an applicant fails to sign and return a lease, license, permit, or instrument within 90 days of issuance, the instrument shall be deemed void on the 90th day.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission inserted commas after the words "license" in the initial paragraph and "permit" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 145-60-240 Improvements

Upon the expiration, cancellation, or termination of a conveyance, regardless of the reason therefor, the conveyee shall have 90 days to remove its property, unless otherwise provided in the lease, license, or permit. The Department shall become the owner of all improvements and structures erected upon the leased premises not so removed. The Department may require as a term of the conveyance that the conveyee will remove all such improvements and structures at conveyee's expense and to restore the premises to the condition in which they existed at the commencement of the conveyance term.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

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

§ 145-60-245 Reconsideration

Within thirty days of notification of a decision made pursuant to the regulations in this chapter, the applicant, or any aggrieved party, as defined, may petition the Director to reconsider such decision by submitting a written request therefor.

Modified, 1 CMC § 3806(d), (e), (g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission corrected the spelling of "aggrieved."

Part 300 - Dredging and Filling Leases; Fastland Use

§ 145-60-301 Dredging Leases

(a) The applicant shall submit information as required by the Director. See information on specific uses part 500 dredging.

(b) Dredging leases shall expire when any Commonwealth or federal regulatory permits for the dredging expire, unless an extension is granted under the later.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-305 Filling Leases Applications (See Definition of Filling)

(a) Conditions. A conveyance for the filling of Commonwealth submerged land may be approved if the Director is satisfied that all of the following conditions exist:
(1) There is neither a practical alternative to filling for use of the proposed site nor a reasonable opportunity for relocation to another suitable site that does not require filling; and
(2) Public trust rights and purposes and other public rights and customs will not be unreasonably impaired; and
(3) All appropriate regulatory permits have to be obtained.

(b) Requirements. The Director may require:
(1) That a signed map prepared by a registered land surveyor showing the location and boundary of the proposed site shall be filed with and accepted by the Department prior to filling;
(2) Monumentation of the submerged land boundary;
(3) That the fill materials be removed from the submerged land at the termination of the conveyance;
(4) Free public access over the premises for water dependent or associated uses be provided including walkways; and/or
(5) Other mitigating measures.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-310 Fastland Use Applications

(a) Conditions. Applications for the purpose of siting a fastland use on submerged land or request for conversion from water dependent or associated use to upland use on Commonwealth submerged land may be approved if the applicant demonstrates to the satisfaction of the Director that all of the following conditions exist:
(1) The project is not feasible at any reasonably available alternative site;
(2) There is no current or reasonably anticipated unmet demand in the area for water dependent or associated uses; and

(3) Public trust purposes and other public rights and customs will not be unreasonably impaired.

(b) Requirements. The Director may require:
(1) The lease period to be less than 25 years.
(2) Free public access for water dependent uses be provided; and/or
(3) Other mitigating measures.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Part 400 - Fees

§ 145-60-401 Fee Schedules

There are two fee schedules.

(a)(1) No fee for government projects.
(2) $25.00 fee for permits and licenses.
(3) For all others, the fee shall be as follows:
(Projects costs shall be based upon appraisal of construction plans of structures to be built in the area.)

Fee Amount	Size of Project
$25.00	Under or equal to $30,000.00
$75.00	Over $30,000, but less than or equal to $50,000.00
$150.00	Over $50,000.00 but less than or equal to $250,000.00
$200.00	Over $250,000.00, but less than or equal to $500,000.00
$275.00	Over $500,000.00, but less than or equal to $1,000,000.00
$350.00	Over $1,000,000.00

(b) For each $1 million increment in the cost/size of the project, there shall be assessed an additional fee of $250.00.

(c) In addition to this filing fee, there shall be an annual rental fee for leases.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission created the section title. The last two paragraphs were not designated. The Commission designated subsections (b) and (c).

In the opening sentence, the Commission inserted the final period. In subsection (c), the Commission changed “annum” to “annual” to correct a manifest error.

§ 145-60-405 Lease Rental Fees

Standard Method of Fee Determination.

(a) Except as otherwise provided for in this section, lease rental fees shall be determined by multiplying the area in square feet to be leased by the current square foot rental rate. Square foot rental rates determined by this method shall not exceed fair marked value per square foot increased by 10% cumulatively for each year that has elapsed since 1988 further adjusted by the cumulative increase in the United States Consumer Price Index as it applies to the Commonwealth. The appraisal shall be paid for by the applicant. DNR shall select the appraiser.

(b) The minimum lease rental fee shall be $1,200.00 per year. When the minimum rental fee is used, payment shall be made for 5-year periods payable in advance.

(c) Lease rental fees above the minimum are payable in advance on an annual basis.

(d) For determination of the rental fee for a cable lease, a one-foot right of way for cables shall be used unless otherwise indicated.

(e) For determination of the rental fee for a pipeline lease, a minimum one foot right of way shall be used unless otherwise indicated. For pipelines whose diameter is greater than one foot, the diameter will be used for rental fee determination.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: In subsection (a), the Commission corrected the spelling of “appraisal” and inserted the word “by” before “the applicant” to correct manifest errors.

§ 145-60-410 Dredging Fees

There shall be a flat fee of $150.00 for a dredging lease for public navigational purposes and for other purposes where the Director elects not to use the appraisal method described in § 145-60-415 below. The Director shall add additional fees for disturbing the submerged environment including displaced sea grass and corals.

Modified, 1 CMC § 3806(c).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-415 Alternate Fee Determination Methods

(a) For commercial, closed-system pipeline, the Director may determine lease rental fees based upon volume of material transported.

(b) Where dredging materials are removed for profit or where dredging is for non-navigational purposes, the Director may establish the dredging fee based upon the fair market value of materials removed.

(c) For other types of uses, the Director may establish the lease rental fee based on the value determined by appraisal, when any of the following conditions exist:
(1) The rental value is significantly greater than the current standard square foot value;
(2) The use is for upland purposes; or
(3) Area is filled.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-420 Government Uses

(a) Free Public Use. If a government use of Commonwealth-owned submerged lands is to provide general public access to the waters and if there is no fee charged for use of the land or associated facility, then there shall be no lease rental fee charged by the Department. This lease shall not be assignable without the Director's approval.

(b) Minimal User Fee. No lease fee is charged when:
(1) Government uses the submerged lands for general public access to the Commonwealth's waters;
(2) Use is controlled and operated by the Commonwealth government; and
(3) Any fees for the use of the area are used exclusively for the operation and maintenance of the same facility. The government shall send the Department an annual financial statement, in full, of the revenues and expenditures of the facility. This lease shall not be assignable without the Director's approval.

(c) Quasi-government Uses. Commonwealth Utility Corporation in creating sewer and water districts shall obtain non-assignable leases. There shall be no lease rental fee charged by the Department.

(d) Commercial. To the extent that a government use of submerged lands is for generating general revenue is operated by a commercial enterprise or is otherwise an amenity in furtherance of a commercial purpose, then all standard lease fees, terms and conditions will apply.

Modified, 1 CMC § 3806(f).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-425 Rental Adjustments to Existing Leases

The Director may revalue lease fees every 5 years to adjust rental rates or to reflect changes in lease policies.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-430 Late Fee Payments

(a) Any lease fee which is more than 30 days past due shall be subject to interest. The rate of interest shall not exceed the highest conventional rate of interest charged for commercial unsecured

loans by Commonwealth banking institutions. This rate shall be determined by the Banking Commission of the Commonwealth.

(b) No conveyance application which would legitimize a pre-existing use shall be considered until all uncollected fees for past use are paid in full plus interest at a rate determined by the Banking Commission.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Part 500 - Specific Use Activities

§ 145-60-501 Introduction

This section contains guidelines for the regulation of use activities proposed for submerged lands. Each topic, representing a specific use or group of uses, is broadly defined and followed by several guidelines. These guidelines represent the criteria upon which judgments for proposed shoreline developments will be based. These guidelines have been prepared in recognition of the flexibility needed to carry out effective planning. Any departure from these guidelines must, however, be compatible with the intent of the act as enunciated in 2 CMC § 1201. The guidelines are adopted regulations, however, and must be complied with both in permit application and review.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: This section was originally the introductory paragraph to § 1.9, codified at part 500. The Commission created the section title.

§ 145-60-505 Aquaculture

Aquaculture is the culture or farming of food fish, shellfish, or other aquatic plants and animals. Properly managed, it can result in long term over short term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity, guidelines.

(a) Aquacultural activities and structures should be located in areas where the navigational access of upland owners, recreational boaters, and commercial traffic is not significantly restricted.

(b) Recognition should be given to the possible detrimental impact aquacultural development might have on the visual access of upland owners and on the general aesthetic quality of the shoreline area.

(c) As aquaculture technology expands with increasing knowledge and experience, emphasis should be placed on structures which do not significantly interfere with navigation or impair the aesthetic quality of Commonwealth shorelines.

(d) Shellfish resources and conditions suitable for aquaculture only occur in limited areas. The utility and productivity of these sites is threatened by activities and developments which reduce water quality such as waste discharges, nonpoint runoff, and disruption of bottom sediments. Proposed developments and activities should be evaluated for impact on productive aquaculture areas. Identified impacts should be mitigated through permit conditions and performance standards.

(e) Aquaculture is a preferred, water-dependent use. Water surface, column, and bedland areas suitable for aquaculture are limited to certain sites. These sites are subject to pressures from competing uses and degradation of water quality. A special effort should be made through the CRM program to identify and resolve resource use conflicts and resource management issues in regard to use of identified sites.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-510 Archeological Areas and Historic Sites

Historical and archeological areas are often located on shorelines because water provided an important means of transportation and subsistence. These sites are nonrenewable resources and many are in danger of being lost through present day changes in land use and urbanization. Because of their rarity and the educational link they provide to our past, these locations should be preserved. Guidelines:

(a) The developer must consult with professional archeologists to identify areas containing potentially valuable archeological data, and to establish procedures for recovering the data through the CNMI Historical Preservation Office, (HPO).

(b) Where possible, sites should be permanently preserved for scientific study and public observation. In areas known to contain archeological data, special conditions should be attached to the CRM permit providing for a site inspection and evaluation by an archeologist to ensure that possible archeological data are properly recovered. Such a condition also requires approval by HPO before work can resume on the project following such an examination.

Modified, 1 CMC § 3806(f),(g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: In subsection (b), the Commission changed “condition” to “conditions” to correct a manifest error.

§ 145-60-515 Breakwaters

Breakwaters are another protective structure usually built offshore to protect beaches, bluffs, dunes, harbor areas from wave action. However, because offshore breakwaters are costly to build, they are seldom constructed to protect the natural features alone, but are generally constructed for navigational purposes also. Breakwaters can be either rigid in construction or floating. The rigid breakwaters, which are usually constructed of rip rap or rock, have both beneficial and detrimental effects on the shore. All breakwaters eliminate wave action and thus protect the shore immediately

behind them. They also obstruct the free flow of sand along the coast and starve the downstream beaches. Floating breakwaters do not have the negative effect on sand movement, but cannot withstand extensive wave action and thus are impractical with present construction methods in many areas. Guidelines:

(a) Floating breakwaters are preferred to solid landfill types in order to maintain sand movement and fish habitat.

(b) Solid breakwaters should be constructed only where design modifications can eliminate potentially detrimental effects and consideration given for natural current and sediment flow, wave patterns, and over all flushing characteristics.

(c) The restriction of the public use of the water surface as a result of breakwater construction must be recognized and must be considered in granting shoreline permits for their construction.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: In subsection (b), the Commission deleted the word "in" before "natural" to correct a manifest error.

§ 145-60-520 Bulkheads

(a) Bulkheads or seawalls are structures erected parallel to and near the high-water mark for the purpose of protecting adjacent uplands from the action of waves or currents. Bulkheads are constructed of steel, lumber, or concrete piling, and may be either of solid or open piling construction. For ocean exposed locations, bulkheads do not provide a long-lived permanent solution, because eventually a more substantial wall is required as the beach continues to recede and layer waves reach the structure.

(b) While bulkhead sand seawalls may protect the uplands, they do not protect the adjacent beaches by speeding up the erosion of the sand in front of the structures. The following guidelines apply to the construction of bulkheads and seawalls designed to protect the immediate upland area. Proposals for landfill must comply with the guidelines for that specific activity. See shoreline protection. Guidelines:

(1) Bulkheads and seawalls should be located and constructed in such a manner which will not result in adverse effects on nearby beaches and will minimize alterations of the natural shoreline.

(2) Where bulkheads are essential, a shallow zone should be maintained against the bulkheads with not more than a 3:1 slope starting at least ten feet from the bulkhead.

(3) Bulkheads and seawalls should be constructed in such a way as to minimize damage to fish and shellfish habitats. Open-piling construction is preferable in lieu of the solid type.

(4) Consider the effect of a proposed bulkhead on public access to publicly owned shorelines.

(5) Bulkheads and seawalls should be designed to blend in with the surroundings and not to detract from the aesthetic qualities of the shoreline.

(6) The construction of bulkheads should be permitted only where they provide protection to upland areas or facilities, not for the indirect purpose of creating land by filling behind the bulkhead.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). The Commission inserted a comma after the word "lumber" in subsection (a) pursuant to 1 CMC § 3806(g).

§ 145-60-525 Commercial Development

Commercial developments are those uses which are involved in wholesale and retail trade or business activities. Commercial developments range from small businesses within residences to high-rise office buildings. Commercial developments are intensive users of space because of extensive floor areas and because of facilities, such as parking, necessary to service them. Guidelines:

(a) Although many commercial developments benefit by a shoreline location, priority should be given to those commercial developments which are particularly dependent on their location and/or use of the shorelines of the Commonwealth and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines.

(b) New commercial developments on shorelines should be encouraged to locate in those areas where current commercial uses exist.

(c) An assessment should be made of the effect a commercial structure will have on a scenic view significant to a given area or enjoyed by a significant number of people.

(d) Parking facilities should be placed inland away from the immediate water's edge and recreational beaches.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-530 Dredging

Dredging is the removal of earth from the bottom of a stream, river, lake, bay, or other water body for the purposes of deepening a navigational channel or to obtain use of the bottom materials for landfill. A significant portion of all dredged materials are deposited either in the water or immediately adjacent to it, often resulting in problems of water quality. Guidelines:

(a) Dredging should be controlled to minimize damage to existing ecological values and natural resources of both the area to be dredged and the area for deposit of dredged materials, which should be non-wetland areas.

(b) Programs must include long-range plans for the deposit and use of spoils on land. Spoil deposit sites in water areas should also be identified by government in cooperation with the Division of Fish & Wildlife. Depositing of dredge material in water areas should be allowed only for habitat improvement, to correct problems of material distribution affecting adversely fish and shellfish resources, or where the alternatives of depositing material on land is more detrimental to shoreline resources than depositing it in water areas.

(c) Dredging of bottom materials for the single purpose of obtaining fill material should be discouraged.

(d) The dredged site should be designed to contain the material to prevent dispersal into adjacent wetland areas and prevent adverse impacts.

(e) The environmental protection plan should include a temporal analysis of the biological activities with which dredging might conflict. For example, the dredging may have a severe impact on the submerged grass community wherein a commercially important species must use for some portion of their life cycle in the same grass flats.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission inserted a comma after the word "bay" in the initial paragraph pursuant to 1 CMC § 3806(g).

§ 145-60-535 Jetties and Groins

Jetties and groins are structures designed to modify or control sand movement. A jetty is generally employed at inlets for the purpose of navigation improvements. When sand being transported along the coast by waves and currents arrives at an inlet, it flows inward on the flood tide to form an inner bar, and outward on ebb tide to form an outer bar. Both formations are harmful to navigation through the inlet. A jetty is usually constructed of steel, concrete or rock. The type depends on foundation conditions and wave, climate and economic considerations. To be of maximum aid in maintaining the navigation channel, the jetty must be high enough to completely obstruct the sand stream. The adverse effect of a jetty is that sand is impounded at the updrift jetty and the supply of sand to the shore downdrift from the inlet is reduced, thus causing erosion. Groins are barrier-type structures extending from the backshore seaward across the beach. The basic purpose of a groin is to interrupt the sand movement along a shore. Groins can be constructed in many ways using timber, steel, concrete, or rock, but can be classified into basic physical categories as high or low, long or short, and permeable or impermeable. Trapping of sand by a groin is done at the expense of the adjacent downdrift shore, unless the groin system is filled with sand to its entrapment capacity. Guidelines:

(a) Applicant must consider sand movement and the effect of proposed jetties or groins on that sand movement. Provisions can be made to compensate for the adverse effects of the structures either by artificially transporting sand to the downdrift side of an inlet with jetties, or by artificially feeding the beaches in case of groins.

(b) Special attention should be given to the effect these structures will have on wildlife propagation and movement, and to the design of these structures which will not detract from the aesthetic quality of the shoreline.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission inserted a comma after the word "concrete" in the initial paragraph pursuant to 1 CMC § 3806(g).

§ 145-60-540 Marinas

Marinas are facilities which provide boat launching, storage, supplies, and services for small pleasure and fishing craft. There are two basic types of marinas. The open-type construction (floating breakwater and/or open-pile work) and solid-type construction (bulkhead and/or landfill). Depending upon the type of construction, marinas affect fish and shellfish habitats. Guidelines:

(a) In locating marinas, special plans should be made to protect the marine resources that may be harmed by construction and operation of the facility.

(b) Marinas should be designed in a manner that will reduce damage to marine resources and be aesthetically compatible with adjacent areas.

(c) Special attention should be given to the design and development of operational procedures for fuel handling and storage in order to minimize accidental spillage and provide satisfactory means for handling those spills that do occur and for typhoon winds and waves.

(d) Shallow-water embayments with poor flushing action should not be considered for overnight and long-term moorage facilities.

(e) All water areas in the marina should be well flushed to allow proper circulation. The follow serves as guides.
(1) The depth of the boat basins and access channels should not exceed that of the receiving body of water;
(2) Basins and channels should not be located in areas of poor water circulation;
(3) Channels should have gentle grades, with no sills or bottom holes;
(4) Canals should be tapered toward the headwater both in vertical and horizontal planes;
(5) Floating docks should be used if possible, and if not possible, docks should be built on pilings rather than on a solid base.

(f) The depth of the water basin should not exceed the depth of light penetration.

(g) The impacts of storm water runoff should be mitigated to ensure that the rate, volume, and quality are approximately the same as runoff naturally flowing into the basin.

(h) The boat channel entrance should be well marked, and boaters required to stay in the designated channel.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: In subsection (e)(4), the Commission corrected the spelling of “tapered.” The Commission inserted a comma after the word “supplies” in the initial paragraph pursuant to 1 CMC § 3806(g).

§ 145-60-545 Mining

Mining is the removal of naturally occurring materials from the earth for economic use. The removal of sand and gravel from shoreline areas of the Commonwealth usually results in erosion of land and silting of water. These operations can create silt and kill bottom-living animals. The removal of sand from marine beaches can deplete a limited resource which may not be restored through natural processes. Guidelines:

(a) When rock, sand, gravel, and minerals are removed from shoreline areas, adequate protection against sediment and silt production should be provided.

(b) When removal of sand and gravel from marine beaches is permitted by existing legislation, it should be taken from the least sensitive biophysical areas of the beach.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission inserted a comma after the word "gravel" in subsection (a) pursuant to 1 CMC § 3806(g).

§ 145-60-550 Moorage Anchors; Permanent

Permanent anchors are fixed to submerged lands to provide for ongoing and intermittent anchorage of marine vessels and serve to eliminate the need for and the damages caused by a vessel's working anchor(s). Requiring small areas of submerged land to accommodate the anchor bulk, moorings also include sections of chain attached to a floating buoy. Moored vessels swing in an arc around the center point of the anchor. Guidelines:

(a) Permanent moorage anchors are preferred to use of working anchors in areas where important benthic organisms (e.g. corms, seagrasses, shellfishes) are subject to destruction from dropping, removing, dragging of a vessel's anchor, or sedimentation.

(b) Permanent moorage anchors should be designed and installed with due regard for typhoon, wind, and wave conditions.

(c) Any area designated for permanent moorage anchors should be well removed from fairways and located general navigation will not endanger or be endangered by unlighted vessels.*

*So in original.

(d) Special attention should be given to ensure that sanitation facilities of moored vessels meet applicable standards and are adequately serviced.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission inserted a comma after the word "wind" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 145-60-555 Outdoor Advertising, Signs and Billboards

These are publicly displayed boards whose purpose is to provide information, direction, or advertising. Signs may be pleasing or distracting, depending upon their design and location. A sign, in order to be effective, must attract attention; however, a message can be clear and distinct without being offensive. There are areas where signs are not desirable, but generally it is the design that is undesirable, not the sign itself.

(a) Off-premise outdoor advertising signs should be limited to areas of high-intensity land use, such as commercial and industrial areas.

(b) Size, height, density, and lighting limitations for signs within submerged lands shall be as follows:
(1) All signs within the submerged lands shall be colored white with the international orange geometric shapes.
(2) When a buoy is used within the submerged lands as a regulatory marker for sign, it shall be white with horizontal bands of international orange placed completely around the buoy circumference. One band shall be at top of the buoy body with second band placed just above the waterline of the buoy. The area of the buoy body visible between the two bands shall be white. Geometric shapes shall be placed on the white portion of the buoy body, and shall be colored international orange. A square or rectangular shape is the authorized geometric shapes for instructions, directions, or informational letters. The sign shall be white with an international orange border.
(3) When a diamond or circular geometric shape associated with meaning of the marker is included, it shall be centered on the sign-board.
(4) The size, shape, material, and construction of all markers shall be fixed and floating or feet above the water level on high tide condition. They shall be observable under normal conditions of visibility at a distance such that the significance of the marker or aid will be recognizable before the observer stands into danger.
(5) Numbers, letters, or words on a regulatory marker shall be placed in a manner to enable them to be clearly visible to an approaching boat within the submerged land’s water ways. They shall be block style, well proportioned, and as large as the available space permits. Numbers and letters on red or black backgrounds shall be white numbers, and letters on white backgrounds shall be black.
(6) The use of reflectors or retroreflective materials shall be discretionary when used on buoys having general significance, red reflectors or retroreflective materials shall be used on solid colored red buoys; green reflectors or retroreflective materials shall be used on solid colored black buoys; white reflectors or retroreflective materials shall only be used for all other buoys including regulatory markers, except that orange reflectors, or retroreflective materials maybe used on orange portion of regulatory markers.
(7) The use of navigational lights on aids to navigation is discretionary. When used, lights on solid colored buoys shall be regularly flashing, regularly occulting,* or equal internal lights. For ordinary purposes, the frequency of flashes may not be more than 30 flashes per minute. For sharp turns or to mark wrecks on water way, the frequency of flashes may not be less than 60 flashes per minute.

*So in original.

(c) Vistas and viewpoints should not be degraded and visual access to the water from such vistas should not be impaired by the placement of signs within submerged lands.

(d) When feasible, signs should be constructed against existing buildings to minimize visual obstructions of the shoreline and water bodies.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: In the opening paragraph, the Commission corrected the spelling of "undesirable." In subsection (b)(2), the Commission corrected the spelling of "circumference." In subsection (b)(6), the Commission deleted the repeated word "materials." In subsection (b)(7), the Commission inserted the word "to" before "mark wrecks." Finally, in subsection (d), the Commission changed "minimum" to "minimize" to correct a manifest error.

§ 145-60-560 Piers

A pier or dock is a structure built over or floating upon the water, used as a landing place for marine transport, fisheries or recreational purposes. While floating docks generally create less of a visual impact than those on piling, they constitute an impediment to boat traffic and shoreline trolling. Floating docks can also alter beach sand patterns in areas where tides and littoral drift are significant. Guidelines:

(a) The use of floating docks should be encouraged in those areas where scenic values are high and where conflicts with recreational boaters and fishermen will not be created.

(b) Open-pile piers should be encouraged where water circulation is needed to support marine resources, where there is significant littoral drift, and where scenic values will not be impaired.

(c) Priority should be given to the use of community piers and docks in major waterfront subdivisions. In general, encouragement should be given to the cooperative use of piers and docks.

(d) The Commonwealth should consider the capacity of the shoreline sites to absorb the impact of waste discharges from boats including gas and oil spillage.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

§ 145-60-565 Ports and Water-related Industries

Ports are centers for water-borne traffic and as such have become gravitational points for industrial/manufacturing firms. Heavy industry may not specifically require a waterfront location, but is attracted to port areas because of the variety of transportation available. Guidelines:

(a) Water-dependent industries which require frontage on navigable water should be given priority over other industrial uses.

(b) Port facilities should be designed to permit viewing of harbor areas from view points, waterfront restaurants, and similar public facilities which would not interfere with port operations or endanger public health and safety.

(c) Sewage treatment, water reclamation, desalinization, and power plants should be located where they do not interfere with and are compatible with recreational, residential, or other public uses of the water and shorelands.

(d) The cooperative use of docking, parking, cargo handling and storage facilities should be strongly encouraged in waterfront industrial areas. Where feasible, transportation and utility corridors should be located upland to reduce pressures for the use of waterfront sites.

(e) Since industrial docks and piers are often longer and greater in bulk than recreational or residential piers, careful planning must be undertaken to reduce the adverse impact of such facilities on other water-dependent uses and shoreline resources. Because heavy industrial activities are associated with industrial piers and docks, the location of these facilities must be considered a major factor determining the environmental compatibility of such facilities.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission inserted commas after the words “restaurants” in subsection (b) and “desalinization” in subsection (c) pursuant to 1 CMC § 3806(g).

§ 145-60-570 Recreation

Recreation is the refreshment of body and mind through forms of play, amusement, or relaxation. Water-related recreation accounts for a very high proportion of all recreational activity in the Commonwealth. The recreational experience may be either an active one involving boating, swimming, fishing, or hunting or the experience may be passive such as enjoying the natural beauty of a vista of a saltwater area. Guidelines:

(a) Priority will be given to development, other than single-family residences which are exempt from the permit requirements of the act, which provide recreational uses and other improvements facilitating public access to shoreline.

(b) Access to recreational locations such as fishing and shelling areas should be a combination of areas and linear access (parking areas and easements, for example) to prevent concentrations of use pressure at a few points.

(c) The development should encourage the linkage of shoreline parks and public access points through the use of linear access. Many types of connections can be used such as hiking paths, bicycle trails, and/or scenic drives.

(d) Attention should be directed toward the effect the development of a recreational site will have on the environmental quality and natural resources of an area.

(e) The permit preserve and enhance scenic views and vistas.*

*So in original.

(f) To avoid wasteful use of the limited supply of recreational shoreland, parking areas should be located inland away from the immediate edge of the water and recreational beaches. Access should be provided by walkways or other methods.

(g) Recreational developments should be of such variety as to satisfy the diversity of demands from groups in nearby population centers.

(h) The supply of recreation facilities should be directly proportional to the proximity of population and compatible with the environment designations.

(i) Facilities for intensive recreational activities should be provided where sewage disposal and vector control can be accomplished to meet public health standards without adversely altering the natural features attractive for recreational uses.

(j) In locating proposed recreational facilities such as playing fields and golf courses and other open areas which use large quantities of fertilizers and pesticides in their turf maintenance programs, provisions must be made to prevent these chemicals from entering water. If this type of facility is approved on a shoreline location, provision should be made for protection of water areas from drainage and surface runoff.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: In subsection (g), the Commission corrected the spelling of "population." In subsection (j), the Commission changed "location" to "locating" to correct a manifest error. The Commission inserted a comma after the word "fishing" in the initial paragraph pursuant to 1 CMC § 3806(g).

§ 145-60-575 Residential Development

The following guidelines should be recognized in the development of any subdivision on the shorelines of the Commonwealth. Guidelines:

(a) Residential development over water should not be permitted.

(b) Floating homes are to be located at moorage slips approved in accordance with the guidelines dealing with marinas, piers, and docks. In planning for floating homes, the government should ensure that waste disposal practices meet health regulations, homes are not located over highly productive fish food areas, and homes are located to be compatible with the intent of the designated environments.

(c) Residential developers should be required to indicate how they plan to preserve shore vegetation and control erosion during construction.

(d) Sewage disposal facilities, as well as water supply facilities, must be provided in accordance with appropriate health regulations. Store drainage facilities should be separate, not combined with sewage disposal systems.

(e) Adequate water supplies should be available so that the ground water quality will not be endangered by overpumping.

(f) Residential developments should utilize centrally located marina facility rather than providing navigation access to individual lots.

Modified, 1 CMC § 3806(g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: In the opening paragraph, the Commission corrected the spelling of "subdivision."

§ 145-60-580 Shoreline Protection

Flood protection and shoreline modifications are those activities occurring within the shoreline and wetland areas which are designed to reduce overbank flow of high waters and stabilize eroding streambanks. Reduction of flood damage bank stabilization to reduce sedimentation, and protection of property from erosion are normally achieved through watershed and flood plain management and by structural works. Such measures are often complementary to one another and several measures together may be necessary to achieve the desired end. Guidelines:

(a) Use sloping riprap walls for erosion control rather than bulkheads whenever possible.

(b) Riprapping and other bank stabilization measures should be located, designed, and constructed so as to avoid the need for channelization and to protect the natural character of the streamway.

(c) Where flood protection measures such as dikes are planned, they should be placed landward of the streamway, including associated swamps and marshes and other wetlands directly interrelated and interdependent with the stream proper.

(d) Flood protection measures which result in channelization should be avoided.

(e) If either bulkheads or riprap walls are necessary, they should be located behind all marshland and as far upland as possible.

(f) Access should be provided over wetlands by piers. While creating disruptions to upland vegetative communities, such placement minimizes the adverse impacts to the wetlands.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission inserted a comma after the word "designed" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 145-60-585 Utilities

Utilities are services which produce and carry electric power, gas, sewage, communications, and oil. At this time the most feasible methods of transmission are the lineal ones of pipes and wires. The installation of this apparatus necessarily disturbs the landscape but can usually be planned to have minimal visual and physical effect on the environment. Guidelines:

(a) Upon completion of installation/maintenance projects on shorelines, banks should be restored to pre-project configuration, replanted with native species and provided maintenance care until the newly planted vegetation is established.

(b) Whenever these facilities must be placed in a shoreline area, the location should be chosen so as not to obstruct or destroy scenic views. Whenever feasible, these facilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Part 600 - Miscellaneous Provisions

§ 145-60-601 Severability Provision

If any provision of the rules and regulations in this chapter, or the application of any provision of these rules and regulations to any person or any other instrumentality or circumstances shall be held invalid by a court of competent jurisdiction, the remainder of these rules and regulations and the application of the affected provision to other persons, instrumentalities and circumstances, shall not be affected thereby.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Appendix A

List of Government Contacts

	For Activities Affecting:	Contact and/or Apply for Permit To:
1.	Coastal wetlands, areas of open tidal waters great ponds streams, rivers, brooks and other wetlands	Coastal Resources Management Office Governor's Office Sixth Floor, Nauru Building Saipan, MP 96950 Tel. No. (670) 234-6623/7320
2.	Port resources	Commonwealth Port Authority Saipan International Airport P.O. Box 1055 Saipan, MP 96950 Tel. No. (670) 234-8315/5962
3.	Dredging in submerged lands	Division of Environmental Quality Department of Public Health and Environmental Services Dr. Torres Hospital P.O. Box 1304 Saipan, MP 96950 Tel. No. (670) 6114/698*
4.	Aquaculture and scientific research in the marine environment	Division of Fish and Wildlife Department of Natural Resources Lower Base, Tanapag Saipan, MP 96950
5.	Historical and Cultural resources	Historic Preservation Office Community and Cultural Affairs Department Lower Base, Tanapag Saipan, MP 96950 Tel. No. (670) 322-9722

Applications to any of the above agencies for use of submerged lands will automatically be forwarded to the Department of Natural Resources. Applications for conveyances for activities that do not require a permit from another agency should be made in a letter to the Department discussing the applicant's request and the reasons justifying approval. The Department may be contacted directly at Capitol Hill, Saipan, MP 96950 (670) 322-9830/9834.

* So in original.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: The Commission corrected the spelling of “automatically” and “Department.” In the first line of the table, the Commission deleted the repeated words “streams, rivers, brooks.”

CHAPTER 145-70
TEMPORARY OCCUPANCY RULES AND REGULATIONS

Chapter Authority: N.M.I. Const. art. XI, 1 CMC §§ 2801–2810.

Chapter History: Amdts Adopted 45 Com. Reg. 49938 (July 28, 2023); Amdts Proposed 45 Com. Reg. 49759 (May 28, 2023); Amdts Adopted 44 Com. Reg. 48893 (Sept. 28, 2022); Amdts Proposed 44 Com. Reg. 48842 (Aug, 28, 2022); Amdts Adopted 42 Com. Reg. 43871 (Aug. 28, 2020); Amdts Proposed 42 Com. Reg. 43642 (June 28, 2020); Amdts Adopted 42 Com. Reg. 43224 (Feb. 28, 2020); Amdts Proposed 41 Com. Reg. 42997 (Dec. 28, 2019); Amdts Adopted 41 Com. Reg. 42802 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42740 (July 28, 2019); Amdts Adopted 41 Com. Reg. 42800 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42730 (July 28, 2019); Amdts Adopted 39 Com. Reg. 40376 (Nov. 28, 2017); Amdts Proposed 39 Com. Reg. 39951 (Sept. 28, 2017); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Department of Public Lands adopted the regulations proposed at 37 Com. Reg. 37247 (Nov. 28, 2015) with modifications set forth at 38 Com. Reg. 37440 (Jan. 28, 2016). The Commission numbered unnumbered sections and subsections included in the proposed regulations pursuant to 1 CMC § 3806(a). The Commission changed capitalization for the purpose of conformity throughout the chapter pursuant to 1 CMC § 3806(f).

Part 001 - General Provisions

§ 145-70-001 Authority

The regulations in this chapter are promulgated by the Department of Public Lands pursuant to the authority set forth in Article XI of the Commonwealth Constitution and Public Law 15-2 (1 CMC § 2801 *et. seq.*).

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 42 Com. Reg. 43224 (Feb. 28, 2020); Amdts Proposed 41 Com. Reg. 42997 (Dec. 28, 2019); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission inserted a period at the end of the section to correct a manifest error.

§ 145-70-005 Purpose

These promulgated rules and regulations govern new leases, lease renewals, new temporary occupancy agreements, and temporary occupancy agreement renewals of public lands whether by permit, lease, or temporary authorization as in conformity with the obligation to objectively manage the use and disposition of public lands set forth at 1 CMC § 2801 *et. seq.* No commercial use of public lands is authorized or permitted without a valid lease, temporary occupancy agreement, permit, or concession agreement authorized by these regulations.

The Department of Public Lands (DPL) shall enforce these regulations to the extent allowed by law. DPL shall issue written notice of violation to any person or entity using or occupying public lands without authorization or in violation of these regulations for any activity or purpose.

History: Amdts Adopted 42 Com. Reg. 43224 (Feb. 28, 2020); Amdts Proposed 41 Com. Reg. 42997 (Dec. 28, 2019); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

§ 145-70-010 Definitions

(a) "Applicant" means the person, persons, entity, or entities that have submitted a proposal to the DPL to lease or otherwise use public lands including respondents to requests for proposals issued by DPL for the leasing, development, or use of public lands, including without limitation persons or entities who have responded to one or more land use RFPs issued by the DPL.

(b) "Commercial Use" means used for revenue generating activities. Active use means the actual physical operations or facilities generating revenue. Passive use means a supplementary use that augments the revenue generating operations or facility (e.g. parking lots). For purposes of these regulations, residential dwellings (e.g. condominiums, apartments or houses) are not recognized as Commercial Use, except that all development shall have no more than 2% of passive use dedicated to employee housing.

(c) "Department" means the Department of Public Lands (DPL).

(d) "Government" means, for purposes of the regulations in this chapter, the departments and agencies of the CNMI Government other than the Department of Public Lands, unless otherwise specified in these regulations.

(e) "Lessee" means the person, persons, entity, or entities holding leasehold interests in public lands.

(f) "Matured Lease" means a lease over premises that has approached its 40th year or expiration with no extension periods remaining, meets the conditions of Public Law 20-84, and the preexisting lessee has submitted a proposal for a new lease, as authorized by PL 20-84, prior to maturity.

(g) "Occupant" means the person or entity whose name appears on the temporary occupancy agreement.

(h) "Owner" means the person, persons, entity, or entities holding fee simple title in lands that are not public lands.

(i) "Permanent Structure" means a structure placed on or in the ground or attached to another structure or fixture in a fixed position and intended to remain in place for more than 6 months.

(j) "Permittee" means a person or persons given a permit by DPL and whose name appears on the permit.

(k) "Principal" means the Applicant personally or a person employed by the Applicant with the legal authority to negotiate, decide, and enter into agreements on behalf of the Applicant.

(l) "Public Lands" means all those lands defined as public lands by N.M.I. Const. art. XI, § 1 including improvements thereon.

(m) "Secretary" means the Secretary of the Department of Public Lands.

(n) "Related Party" means the person, persons, entity, or entities who participate in the funding or operations of the Applicant or Lessee's development or proposed development including without limitation parent companies in multinational company structures, as well as controlling or major shareholders. For the avoidance of doubt, Related Party shall include persons or entities that provide funding to an applicant or lessee. Transactions that, because of their nature, may be indicative of the existence of related parties include:
(1) Borrowing or lending on an interest-free basis or at a rate of interest significantly above or below market rates prevailing at the time of the transaction.
(2) Making loans with no scheduled terms for when or how the funds will be repaid.
(3) Lack of sufficient working capital or credit to continue the business, or lack of complete business plan or financial projections.

(o) "Request for Proposal" (RFP) means an open solicitation made through a bidding process by DPL to determine interest of potential lessees to lease and develop certain public lands at terms determined by or acceptable to DPL.

History: Amdts Adopted 42 Com. Reg. 43224 (Feb. 28, 2020); Amdts Proposed 41 Com. Reg. 42997 (Dec. 28, 2019); Amdts Adopted 41 Com. Reg. 42802 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42740 (July 28, 2019); Amdts

Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Part 100 - Lease Policies

§ 145-70-101 General Requirements and Restrictions

(a) No right or interest in or to public lands shall be created orally. Any right to use, access, or enjoy public lands must be in writing signed by the Secretary in full compliance with these regulations or is void *ab initio*. Public lands shall be leased only for Commercial Use. Consideration and preference must first be given to non-productive developed public land or underutilized public land before undeveloped land is considered for development. Consideration for entering into a lease shall be consistent with DPL's fiduciary duties to its beneficiaries. The Secretary of DPL shall have reasonable discretion regarding issues not anticipated by these regulations.

(b) Every lease shall be properly documented via a written lease agreement and such other documents deemed necessary or appropriate by DPL to complete the transaction. All duly executed lease agreements shall be recorded at the Commonwealth Recorder's Office by the party receiving an interest in Public Land in accordance with 2 CMC § 4913. The Department shall strictly enforce all terms of every lease requirement imposed as a condition of legislative approval of a lease or lease extensions, if any. Leases for mining shall require appropriate environmental impact study, damage mitigation plan, and restoration plan, an assessment on the value of minerals to be mined, and any other studies required by law or DPL as a condition precedent to possession. All costs including those for appraisals, surveys, topographical surveys, geotechnical reports, studies, etc. whether required by the DPL or the Government shall be borne by Applicant.

(c) Eligibility. All Applicants must be current and in good standing with the Department of Finance Division of Revenue and Taxation, all licensing and regulatory authorities, and with the DPL.
(1) Individuals – must be at least 18 years of age.
(2) Businesses – must be duly formed, in good standing and authorized to do business in their jurisdiction of origin AND in the CNMI and must provide all documentation required by the DPL to confirm such status.
(3) All Applicants must demonstrate credit worthiness, ability to pay rent, and ability to fund all proposed development, and to comply with all the conditions and covenants of the lease agreement to the satisfaction of the Secretary.

(d) Restrictions.
(1) It is DPL's preference not to lease public lands where the proposed structures/facilities will overlap boundaries of adjacent private lands.
(i) If necessary and in the best interest of DPL's beneficiaries, the DPL may permit such development provided that all such proposed development and construction of facilities that will occupy both private and public lands shall be performed in a manner to facilitate and simplify segregation of improvements on the public lands from those on adjacent private lands upon expiration or termination of the lease. Alternatively, a land trust consisting of the private lands and

public lands may be formed with the DPL as trustee, or the fee simple title to the private lands may be assigned to DPL, at Lessee's expense. For the avoidance of doubt, such permitted improvements shall be designed and constructed to be free and independent from private land improvements so that upon expiration or termination of the Lease, when the DPL takes possession of the improvements, such improvements and DPL's (or its designee's) operation thereof shall not be dependent upon adjacent private lands. This restriction shall not apply if the fee simple interest in the private lands is assigned or transferred to the DPL as described herein.

(ii) Before commencement of construction or development, Lessee shall be required to place on deposit with DPL the amounts necessary to perform such segregation at the expiration or termination of the lease, as estimated by an engineer selected by DPL and periodically deposit additional amounts to adjust upward for general inflation.

(2) Notwithstanding the foregoing, for minor developments such as parking structures attached to adjacent improvements, if such improvements will be of little value to the DPL, the Secretary may waive the obligations set forth in subsection (1) above if the Applicant places on deposit concurrent with the execution of the lease the projected cost of demolition and removal of improvements, and restoration of leased premises.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 42 Com. Reg. 43224 (Feb. 28, 2020); Amdts Proposed 41 Com. Reg. 42997 (Dec. 28, 2019); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

§ 145-70-105 Procedures for Issuing Leases, Extensions, and Renewals

(a) The DPL will deal only with the Principals of the Applicant.

(b) DPL shall satisfy its fiduciary duties by taking the following steps towards entering into new leases, extensions, or renewals:

(1) Properties not under lease – DPL shall select proposals that provide DPL the greatest revenue over the course of the lease term. All leases must be aligned with DPL's land use plan. In all instances, the DPL shall negotiate lease terms most favorable to its beneficiaries.

(i) Unsolicited Proposals – If the DPL receives a proposal or application to lease Public Land, it shall upon conclusion of negotiations (if any), publish a Notice of Proposed Lease of Public Land in accordance with Public Law 15-2 and these regulations, to determine if there are other interested parties, and consider public comments. If a second or other proposals are received during the notice period, the DPL may either select the most beneficial proposal or issue an RFP.

(ii) Solicited Proposals – If the DPL solicits proposals to lease specific parcels or tracts of Public Lands and two or more proposals are received by the DPL, DPL may select the most beneficial proposal. If only one proposal is received the DPL may award the sole Applicant, re-issue the Request for Proposal, or reserve the relevant parcels for future disposition.

(2) Properties under lease – if a current Lessee is interested in re-leasing, extending, or renewing its lease, DPL shall:

(i) Thoroughly review the performance of the lessee to determine if re-leasing or extending the lease is in the best interest of its beneficiaries.

(ii) Issue a Notice of Proposed Lease of Public Lands in accordance with 1 CMC § 2807 up to four years prior to expiration, but only if an extension or renewal of the existing lease is determined

to be in the best interest of DPL and its beneficiaries, and no other firm has indicated an interest to lease affected parcel.

(iii) If additional proposals are received in response to such Notice, or if DPL has knowledge of one or more additional interested parties, DPL shall issue an open RFP at least two years prior to the expiration of the existing lease if in DPL's judgment the second proposal is in the best interest of DPL and is significantly advantageous to the proposal of the existing lessee.

(iv) If a competing proposal does not materially enhance the existing lessee's proposal, operations, or otherwise project to materially increase the revenue to DPL, and lessee has satisfied all the covenants and conditions of its existing lease, it is DPL's preference to renew the lease with the current lessee with lease payments comparable to that proposed or implied by the best competing proposal, but in no case shall DPL accept lease rent less than what was established in any preceding period.

(v) If a current lessee does not intend on re-leasing, extending, or renewing, DPL shall issue an open RFP at least two years prior to the expiration of the existing lease.

History: Amdts Adopted 42 Com. Reg. 43224 (Feb. 28, 2020); Amdts Proposed 41 Com. Reg. 42997 (Dec. 28, 2019); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

§ 145-70-110 Lease Agreement Requirements

DPL shall include in lease agreements provisions typical of commercial practices. All public land leases are on a "triple net" basis "as is where is". All leases shall conform to the following: provisions:

(a) Legal Description of the property(ies) subjected to the lease.

(b) Purpose – a detailed description of the intended development and operations.

(c) Term – the effective date and duration of the lease shall not exceed 40 years. Note: Upon expiration of the term, the property including all improvements shall revert to DPL for renewal, extension, or re-leasing to the highest best bidder as determined by these regulations in accordance with CNMI law.

(d) Fees, Security Deposit, Costs.

(1) Prior to the preparation of any lease or supporting document, the Applicant shall deposit an administrative processing fee equal to the greater of $5,000, or 0.50% of the estimated value of the subject property, not to exceed $100,000.

(2) Prior to any lease approval, lessee must deposit at least 5% of the total cost of the proposed project to which the lease pertains. These funds will be held by the DPL to secure construction start up, and remediation costs. However, for large projects that certified engineers estimate will require more than two years to construct and will be constructed in phases, lessee shall deposit 5% of each phase, or an amount mutually agreeable to both parties prior to construction commencement (for clarity, 5% prior to the commencement of each subsequent phase). Provided, however, that each phase is constructed in a manner that allows for the facility within each phase

to be operatable independent of other phases. DPL may seek the assistance of the Department of Public Works to certify each phase complete.

(3) The security deposit requirement shall also apply to lease extensions or renewals where one or more key factors for approval is lessee's proposal to further develop the property it currently occupies.

(4) Upon execution of a lease for public lands, lessee shall deposit as security $250,000 that shall be maintained for the duration of the lease term. Funds remaining on account with the DPL after the completion of the proposed development in excess of $250,000 shall be released to lessee upon completion of the project development. Remaining funds shall be retained as security, and Lessee shall be obligated to maintain a constant balance for the term of the lease.

(5) Funds shall forfeit to DPL should the project be cancelled or start date delayed more than one year from the execution of the lease. Mere ceremonious commencement (i.e. groundbreaking or ribbon cutting without materially beginning and continuing construction) will not avoid forfeiture.

(6) All costs related to the lease including underwriting, leasehold fee simples, surveys, topographical surveys consolidations, excavation, studies, recordings, etc. shall be borne by Applicant or Lessee. In the event of Lessee's failure to perform any obligation under a lease, DPL may (but shall not be obligated to) expend funds held in Lessee's account (including security deposits) to satisfy such obligation to the extent feasible (e.g. to procure surveys, appraisals, or insurance).

(e) Rental Rates.

Rent derived from public lands shall be based on the value of the property, and actually computed and collected on that basis; provided, that the DPL shall, within the limits set by fiduciary duty and the provisions of Public Law 15-2 and 20-84, have discretion in negotiating basic rents and additional rents upward taking into account changing economic conditions and other relevant trends and factors including other land transactions deemed substantially similar to the proposed lease. For the avoidance of doubt the Secretary of DPL may determine that a property's true value is greater (but not less than) an appraised value determined by independent appraisal.

(1) New Leases – shall include new leases, and renewals.

(2) Basic Rent shall be based on the value of the fee simple title to the property. It is the policy of DPL to collect at least 5% of a property's value each year for the term of the lease as base rent. DPL may cap the base rent at $4 million for a large development project that will require more than two years to complete if DPL determines that the capital investment in the project will be no less than $36 million and will benefit the economic development of the Commonwealth.

(3) In no event shall the rent in subsequent years be less than the amounts in previous years of the lease.

(4) Properties shall be re appraised and basic rent adjusted upward to market every five years based on an updated appraisal. For the purpose of determining basic rent, the value in subsequent periods shall include all improvements on the property less the value of improvements made by the Lessee during the term of the lease.

(5) New Leases – shall be based on the value of the fee simple interest including improvements (if any).

(6) Extensions – shall be based on the appraised value of the fee simple interest including improvements less the value of improvements made by the Lessee since the inception of the lease.

(7) Renewals – shall be treated as new leases for purposes of determining rent.

(8) Matured Leases – All leases approaching maturity that meet the conditions of Public Law 20-84 entering a new lease shall be appraised on the value of the fee simple interest to the property. DPL shall collect up to 3% of Fair Market Value on the property for each year of the term of the matured lease as basic rent. Basic rents for matured leases shall be determined by the following formula which takes into consideration the level of cost proposed for capital improvements by lessees relative to the replacement cost for existing improvements but basic rent shall not be below 1.5% per year regardless of the results of this formula unless there is reasonable justification. For clarity, the replacement cost of improvements is the cost to replace an improvement with another improvement having the same utility (basically, the cost for a brand-new replacement) determined by appraisal reports. Capital investments are additions of a permanent structural change or the restoration of aspects of structures or facilities on a property that will either enhance the property's overall value or prolong its useful life.

Formula	(Level of Improvements)	Basic Rate	Result
(1-	Cost Proposed for Capital Improvements / Replacement Cost for Existing Improvements	) X 3%	= Rent Rate

Example:

(1-	15,000,000 / 50,000,000	)	X 3%	=	2.10%
	0.70		X 3%	=	2.10%

Table Illustration	Cost Proposed for Capital Improvements / Replacement Cost for Existing Improvements					
1 -	0.00%	1.00	X	3%	=	3.00%
1 -	5.00%	0.95	X	3%	=	2.85%
1 -	10.00%	0.90	X	3%	=	2.70%
1 -	15.00%	0.85	X	3%	=	2.55%
1 -	20.00%	0.80	X	3%	=	2.40%
1 -	25.00%	0.75	X	3%	=	2.25%
1 -	30.00%	0.70	X	3%	=	2.10%
1 -	35.00%	0.65	X	3%	=	1.95%
1 -	40.00%	0.60	X	3%	=	1.80%
1 -	45.00%	0.55	X	3%	=	1.65%
1 -	50.00%	0.50	X	3%	=	1.50%

(9) Additional Rent – Percentage of Business Gross Receipts – due to the scarcity of public lands and in accordance with its fiduciary duties owed to its beneficiaries, DPL shall charge additional rent that allows its beneficiaries to participate in the revenues generated as a result of the lease. This rent shall be charged as a percentage of Lessee's Business Gross Receipts (BGR) and shall also apply to the BGR of Lessee's subtenants, concessionaries and others permitted to engage in commercial activity upon the leased premises. DPL may cap the additional rent due at $5 million for a large development project that will require more than two years to complete if DPL determines that the capital investment in the project will be no less than $36 million and will benefit the economic development of the Commonwealth. DPL may grant a waiver from the BGR additional rent requirement for non-governmental telecommunications service providers upon a determination by DPL that such a waiver is in the best interest of the public land beneficiaries. For the sake of clarity, BGR includes enterprise BGR, not just BGR derived from parts of the

enterprise situated on public lands. The additional rent per year for every year of the lease term shall be as follows:

Business Gross Receipt Payment Schedule

Annual BGR Amounts

Tier	From	To	% of BGR	Minimum Per Tier
1	$ -	$ 50,000.49	1.50%	
2	$ 50,000.50	$ 100,000.49	1.45%	$ 750
3	$ 100,000.50	$ 200,000.49	1.39%	$ 1,445
4	$ 200,000.50	$ 400,000.49	1.34%	$ 2,780
5	$ 400,000.50	$ 800,000.49	1.28%	$ 5,340
6	$ 800,000.50	$ 1,600,000.49	1.22%	$ 10,240
7	$ 1,600,000.50	$ 3,200,000.49	1.17%	$ 19,520
8	$ 3,200,000.50	$ 6,400,000.49	1.11%	$ 37,280
9	$ 6,400,000.50	$ 12,800,000.49	1.06%	$ 71,040
10	$ 12,800,000.50	and Over	1.00%	$ 135,040

(10) Passive Uses – Rent for standalone leases of public lands for use as parking area or activities that supplement the actual enterprise shall be basic rent and additional rents as outlined in this subsection. Additional rent shall be assessed based on the ratio of public lands to lessee's other lands on the BGR of the entire enterprise supplemented by the public lands (e.g. Lessee's private land area is 10,000 square meters. Lessee wants to expand parking area by leasing 400 square meters of public lands. The ratio of public lands for use as parking is 400/10,000 = 4.0%. Rent will therefore be assessed at basic rent, plus 4.0% x applicable % of BGR x BGR).

(11) All rental amounts payable under all lease agreements and reimbursement of costs incurred by DPL as a result of enforcing the lease shall be fully assessed and collected from the Lessee.

(12) Lease rental payments shall be collected when due or timely pursuit of default provisions of the lease agreement shall be made.

(13) Past due rental payments of any amount shall bear interest at one and one half percent (1.5%) per month compounded monthly, from the date it becomes due until fully paid.

(14) Application of Rent Payments – Rent payments shall be applied in the following order (with oldest receivables in each category being credited first):

(i) Outstanding cost reimbursements due to DPL first.

(ii) Penalties due second.

(iii) Past due interest third.

(iv) Rent last.

(f) Construction Quality, Maintenance, Repairs, Alterations.

(1) Construction repairs and alterations shall be in good workmanlike manner and in compliance with applicable laws, regulations, ordinances, and building codes.

(2) Maintenance – Lessee shall maintain its leased premises in the level of condition at industry standards of similar facilities for the duration of the lease.

(3) Alterations – Lessee shall inform DPL of any proposed alterations or improvements exceeding 1.00% of the total cost of the facility or will result in the reducing the value of the

property by more than 1.00% shall be subject to DPL's prior approval. Proposed alterations shall be in line with or enhancive to existing operations and lessee shall submit pro forma financial statements showing the additional revenues (or revenue reduction) anticipated as a result of the alteration. DPL may require additional documentation for a proper assessment.

(g) Financing – Submission by lessee (and related party if any portion of the operations will be continuously funded by the related party) of the following periodically as required in the lease agreement: audited financial statements, annual reports of lessee, related parties, and subtenants, and CNMI BGR tax filings from lessee.
(1) No later than sixty days after lessee's fiscal year, financial statements audited by a certified public accountant certified in the United States comparing financial information of the past two years including any restatements on its profit and loss and cash flow statements, change in ownership and owner's equity, and balance sheet.
(2) Applicants and lessees with less than $500,000 in BGR may submit management prepared financial statements together with a certified tax transcript for the corresponding period in lieu of audited statements.
(3) Publicly held corporations and corporations required to issue annual reports to their shareholders shall submit their annual report to shareholders to DPL at the time of issuance. Lessees shall submit to DPL all periodic reports required by the CNMI Department of Commerce before the filing deadline.
(4) Financial statements from lessee and subtenants shall include a schedule of gross receipts indicating sources and deductions in support of the gross receipts fee and any other documents DPL may deem necessary to properly determine lessee's compliance with conditions or covenants of the lease.
(5) Submit CNMI BGR tax filings upon filing but no later than one tax period after the filing deadline.

(h) Guarantees. The following guaranties and security are required for all public lands leases:
(1) Guarantees from all related parties to guaranty lessee's obligations under the lease and funding of the proposed development.
(2) Formal written resolutions authorizing the guarantee for each guarantor other than individual guarantors.
(3) Performance bond, completion bond, deposit, stand by letter of credit, guarantee of payment, any finance document, or a combination thereof covering 100% of development cost. The performance bond, completion bond, deposit, stand by letter of credit, or combination thereof covering 100% of the development costs must be submitted to DPL for its approval, such approval being in the sole discretion of DPL.

(i) Assignment and Subleases – Leases shall not be assigned or subleased in part or in whole without the prior written consent of the DPL.
(1) Proposed assignees and sublessees shall be subject to the same eligibility requirements, qualifying factors, and level of scrutiny as lessees.
(2) Leases of less than five years from date of execution or within five years from date of expiration shall not be assignable.
(3) In no instance shall the deposits of applicant or lessee be refunded until assignee or subtenant deposits equal or greater amounts with DPL.

(4) Lessee and assignee or subtenant shall provide DPL a complete and accurate copy of their proposed assignment agreement and/or sublease showing the total consideration given for or in connection with the assignment or subleasing transaction.
(5) DPL shall charge a fee of 25% of the value of the monthly/annual sublease fee or assignment fee, if any.

(j) Renewals, Extensions – DPL will consider proposals to renew or extend leases no sooner than the latter of the completion of construction or two years after the commencement date of the lease agreement, and thereafter, at least two years prior to the expiration of an existing lease. Such consideration shall be based on the lessee's performance under its existing lease.
(1) Consideration for renewal and extension shall be based on lessee's performance on its existing lease and subject to the same eligibility requirements, qualifying factors, and level of scrutiny as new lessees. Lessees with more than three late payments within the previous 24-month period shall be ineligible for renewal or extension.
(2) Base rent for renewals shall be based on the appraisal of the property including improvements.

(k) Mortgage.
(1) The lessee and its permitted successors and assigns may, subject to the express prior written approval of the DPL, mortgage its lease and its interest in the property provided that no holder of any mortgage of the lease, or any one claiming by, through or under any such mortgage shall, by virtue thereof, except as otherwise specified in the lease agreement acquire any greater rights hereunder than the lessee.
(2) No mortgage of the lease or the lessee's interest in the leased property, in whole or in part, by the lessee or the lessee's successors or assigns shall be valid, unless:
(i) At the time of the making of such mortgage, there shall be no default under any of the agreements, terms, covenants and conditions to be performed by the lessee under the lease;
(ii) The mortgage shall be subject to all the agreements, terms, covenants and conditions of the lease;
(iii) The mortgage shall reserve to the DPL prior right, and in the event of lessee's default under the same and after notice of the same character and duration as required to be given to Lessee, to correct the default or to purchase the same and terminate the lease.
(3) The mortgage shall contain the following provisions: The consent by the DPL to an assignment, transfer, management contract, or subletting may be granted, denied or made subject to such conditions as the DPL finds it in the best interest of its beneficiaries.
(4) All proceeds from the facility secured by the mortgage shall be used solely for the improvement of the leased property.

(l) Termination, Recapture.
(1) Notice shall be given to lessees who are in material default as follows: 1st notice with 30 days to cure, final notice with 15 days to cure, and notice of termination effective immediately.
(2) DPL may terminate a lease agreement that remains in default forty-five days after the 1st notice has been delivered unless otherwise stated in these regulations for reasons including without limitation:
(i) Failure to consistently and significantly reduce past due rents, fees, or taxes or other charges required to be paid by lessees;

(ii) Other material defaults due to non performance including without limitation failure to complete development in accordance with the development plan and projections upon which a lease is based;
(iii) Abandonment; and
(iv) Use of the property other than lessee's proposed purpose and as stated in the lease.
(3) DPL may recapture all or portions of properties under lease in the event the use of the property is not consistent with the proposed development as stated in the lease or in the event of under-utilization of public lands when such lands may have a higher and better use via notice to lessee.

(m) Holdover.
(1) If a lessee fails to vacate the leased property upon the expiration, termination or cancellation of its lease, Lessee shall be deemed a holdover tenant.
(2) The fee during any holdover period shall be not less than 150% of the latest basic rent amount, and additional rent.
(3) Payment of the holdover fee shall in no way constitute a limitation upon any rights or remedies the DPL may be entitled to pursue for violation of the lease, for trespass or illegal possession or for any other cause of action arising out of the holdover tenant's failure to vacate the premises including the right to evict the holdover tenant without court action, and the cost thereof to be paid by the holdover tenant.

(4) The lessee shall be responsible, at its sole cost and expense and even after termination of the lease, for removing any person or entity, authorized or unauthorized by the lessee, from the premises who may have been on the premises prior to the termination of the lease and continues to occupy a portion of the premises thereafter. The failure of the lessee to remove the person or entity from the premises at the end of the lease constitutes a holdover.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 45 Com. Reg. 49938 (July 28, 2023); Amdts Proposed 45 Com. Reg. 49759 (May 28, 2023); Amdts Adopted 42 Com. Reg. 43871 (Aug. 28, 2020); Amdts Proposed 42 Com. Reg. 43642 (June 28, 2020); Amdts Adopted 42 Com. Reg. 43224 (Feb. 28, 2020); Amdts Proposed 41 Com. Reg. 42997 (Dec. 28, 2019); Amdts Adopted 41 Com. Reg. 42802 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42740 (July 28, 2019); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: [Historical codification comments removed.] In codifying 42 Com. Reg. 43224, the Commission retained subsections (e)(2)-(4) and (e)(9)-(14) as unmodified although those subsections had portions omitted from the adopted regulation. In codifying 42 Com. Reg. 43871, the Commission retained subsections (e)-(m) as unmodified although those subsections were omitted from the adopted regulation.

§ 145-70-115 Lease Form

All leases shall be in a form substantially similar to that set forth in Appendix A below.

History: Amdts Adopted 41 Com. Reg. 42802 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42740 (July 28, 2019); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: In codifying 38 Com. Reg. 37440 (Jan. 28, 2016), the Commission included the lease form included in Appendix A of this chapter. The Commission substituted "set forth below" with "set forth in Appendix A below" pursuant to 1 CMC § 3806(d).

§ 145-70-120 Underwriting Requirements

In order for the DPL to properly assess and compare proposals, Project Details – All proposals submitted shall include the following:

(a) Qualifying Criteria.
(1) Character – Evidence of experience in and knowledge of the industry of the proposed development and evidence that applicant and related parties are in good standing with taxing and regulatory authorities, creditors, and depository institutions.
(2) Capacity – Evidence of a combined net worth of applicant and related parties of at least 30% of the proposed development cost with current free cash flow to cover at least 150% of basic rent.
(3) Capital – Evidence of combined liquid capital (cash or cash equivalents) to cover at least 20% of the total cost of development or attestation from a reputable investment bank experienced in funding similar projects on applicant group's ability to raise 105% of the capital required to fund the development including applicant's capital.

(b) Business plan including financial projections, opportunities and risks, and who or what the competition is in its industry. Pro forma financial statements including profit and loss statement, cash flows, and balance sheet for first five years of the proposed development, and revenue projections over the life of the lease. If multiple revenue generating activities will be conducted, pro forma statements shall show revenues from each activity including the subletting of commercial space to tenants. Business plans must address the areas of market analysis, financial viability, and operational issues.

(c) Financial Documents.
(1) Evidence of adequate financing showing commitment to fund the proposed development project and satisfy payment obligations under the proposed lease including documents showing the funding source and an attestation to the legal nature of funds.
(2) Financial Statements of applicant, guarantors, related party, or equity investors/shareholders of the Applicant. Audited statements are required for companies with business gross revenues of $500,000 or greater.

(d) Ownership, Structure, Resolutions to Enter Lease, Guarantees, Authorizations.
(1) List of owners having an ownership interest in the applicant of 10% or greater.
(2) Certified entity formation documentation, certificate of incumbency, and transactional authorizations of lessee and related parties. If lessee or any related party is not a domestic entity or resident individual, such party shall first be domesticated and authorized to do business in the Commonwealth. Foreign documents and signatures shall be authenticated and legalized (or apostilled if originated in Hague Convention jurisdiction). An organizational chart showing the relationship of parent companies, subsidiaries, and related parties involved in the funding and operations of the proposed development shall be provided.

(3) Formal resolution from applicant authorizing applicant to enter a lease with the DPL and designating a specific director or officer of applicant to negotiate and execute the lease agreement and related transactional documents.
(4) Formal resolution from each related party identifying its authorized signatory and authorizing related party to provide full financial support for the proposed project and to guarantee applicant's obligations under the lease agreement.
(5) Evidence of ability to secure performance bond, completion bond and/or stand by letter of credit as security for lessee's development obligations under the lease.
(6) Agreement to issue personal guarantee from all related parties.
(7) Written authorization from applicant and related parties for creditors, banks, financiers, and depository institutions to release information to DPL regarding account balances, credit standing, and general business conduct of applicant and related parties.

(e) Construction Plans and Specifications. Applicant shall provide:
(1) Architectural layout and design of the development overall with its application, and the same shall be updated at each phase of development.
(2) Renderings showing the proposed layout, elevations of the facility and how it will be situated on the premises.
(3) Timeline for construction schedule and cost schedule updated at each phase of development.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission inserted open parentheses to subsections (a)(1)–(3); changed "incumbency" and "apostiled" in subsection (d)(2) to "incumbency" and "apostilled" respectively; changed "and/ or" to "and/or" in subsection (d)(5); and inserted a period at the end of subsections (d)(5) and (d)(6).

Part 200 - Policies and Procedures for Temporary Occupancy of Public Lands

§ 145-70-201 Scope

DPL's authority does not extend to the issuance of land use permits and licenses. "Land use" in the licensing and permitting context generally involves the regulation of specific uses or activities, without regard to ownership or authorization to occupy land. The authorities that regulate "land use" in the Commonwealth include Zoning, BECQ, Historic Preservation Office, DLNR Division of Fish and Wildlife, and other Government regulatory agencies that issue permits and licenses pursuant to their respective enabling legislation. DPL, however is charged with management of the use of public lands, subject to its land use plan and all other land use regulations and regulatory agency approvals. The regulations in this Part describe how the DPL will manage and authorize such public land use, and the fees and charges that will be imposed therefore. These regulations neither supersede, nor amend the Commonwealth's land use regulations.

Modified, 1 CMC § 3806(a).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission numbered this section and created the section title.

§ 145-70-202 General Requirements

(a) The temporary occupancy of public lands or properties may be authorized via easements pursuant to § 145-70-205, Temporary Occupancy Agreements (TOA) pursuant to § 145-70-210 (which may take the form of permits, temporary authorizations (TA), and other agreements appropriate for the activity to be conducted): or concessions agreements pursuant to § 145-70-215.. The activity for which the premises will be used must be permitted by the land use permitting agencies of the CNMI and applicable laws. Except as otherwise stated in these agreements shall generally:

(1) Provide a benefit to the public;

(2) Be short term (i.e., revocable and for periods not more than five years) or intermittent in nature;

(3) Be uniform in expiration dates, as follows:

Types of Agreements	**Expiration Dates**
Non-Exclusive Beachfront Concession	December 31st
Agricultural and Grazing Permit	January 31st
Parking Permit (Parking/Encroachment)	February 28th
Signboard and Maintenance	March 31st
Encroachment, Container Storage, and Staging	April 30th
Roadside Vendor, Telecommunication Tower, Rock Quarry	May 31st

(4) Be reviewed periodically for compliance;

(5) Prohibit the construction of permanent structures;

(6) Provide non-exclusive rights to the land or property;

(7) Be non-transferable, non-assignable, and cannot be sold, subjected to mortgage, or used as collateral;

(8) Self-terminate should occupant or operator cease to exist or ceases the activity described in the application; and

(9) Require compliance with all business licensing, permitting, and regulatory requirements for business or other activities to be conducted including without limitation all zoning, building and other permits as applicable.

(10) Property valuations for purposes of calculating fees for TOA's may be determined by DPL's in-house appraiser or by an appraiser designated according to DPL's discretion.

Modified, 1 CMC § 3806(a), (f).

History: Amdts Adopted 44 Com. Reg. 48893 (Sept. 28, 2022); Amdts Proposed 44 Com. Reg. 48842 (Aug, 28, 2022); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission renumbered this section from § 145-70-201 to § 145-70-202.

§ 145-70-205 Occupancy and Easements for Private Telecommunications

(a) Non-exclusive occupancy rights or easements granted to non-governmental telecommunications service providers may be granted for multiple year terms up to 25 years in total. Occupancy or proposed uses that sever, transect, or present a material impediment to the use of the surface land or air above or otherwise render the burdened and/or adjacent lands undevelopable, shall not be eligible for easement or similar authorization contemplated in this section but instead, shall only be authorized through leases of fully burdened parcels on commercially reasonable terms in accordance with the leasing regulations set forth herein.

(b) Underground Telecommunication Cables - The activity involving the use of public lands to lay, maintain and operate underground telecommunication cable wires and related telecommunication equipment. Upon promulgation of these regulations the annual fee for buried cable trenches shall be 5.0% per year of 50.0% of average market price of lands on the island where the trenching will occur. DPL may grant a waiver from the annual fee for underground telecommunication cable wires and related telecommunication equipment upon a determination by DPL that such a waiver is in the best interest of the public land beneficiaries. Average market price shall be an area-weighted average determined by DPL based on recent publicly available real estate sales data for fee simple land transactions.

(c) Telecommunication Tower - The activity involving the use of small parcels of public lands to, erect, maintain and operate commercial pedestals, access nodes underground telecommunication cable wires and radio transmitter antenna, and or wireless communication equipment shelter for cellular telephones, paging systems or similar related wireless telecommunication equipment. The annual fee for the use of public land for this purpose shall be 8.00% of the estimated fair market value. In environmentally, historically, or otherwise sensitive areas including tourist destinations, such activity (if permitted in DPL's sole discretion) may be subject to space-sharing conditions as imposed by DPL.

Modified, 1 CMC § 3806(a), (e).

History: Amdts Adopted 45 Com. Reg. 49938 (July 28, 2023); Amdts Proposed 45 Com. Reg. 49759 (May 28, 2023); Amdts Adopted 41 Com. Reg. 42800 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42730 (July 28, 2019); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: [Historical codification comments removed.]

§ 145-70-210 Temporary Occupancy Agreement

Temporary Occupancy Agreements (TOA) shall be used for the temporary occupancy of certain public lands laying fallow at the time of application where no proposals have been received by DPL for the long term lease of those lands. In any case, TOA's do not in any way grant an interest in the land, written or implied, and the new construction of permanent structures shall not be allowed. Allowable purposes include short-term agricultural use, temporary livestock grazing, sporting or social events, or planning activities in anticipation of a lease. TOAs are subject to

termination upon 30 day's written notice by DPL. DPL will consider issuing 5-year agricultural permits to NRCS eligible candidates.

For applications submitted by CNMI government entities for sporting events, signboards/banners, filming, and social events, DPL may provide an annual TOA for multiple department/agency requests throughout the period covered by the TOA provided, however, that the department/agency submits a written request to the Secretary for each occurrence. The Secretary may approve such requests via letterhead within thirty days of receipt after which the request shall be deemed approved if no action is taken by the Secretary. All fees and insurance requirements may be waived provided that the department/agency indemnify DPL of all risks and liabilities.

(a) The following apply to all TOA's:
(1) All TOAs are terminable by DPL at will;
(2) Applications for renewal (if any) shall be made annually two months prior to expiration or as solicited via a Request for Proposal or at auction;
(3) Unless otherwise provided in this section the fee per use shall be an annual charge of 8% of estimated value but not less than $250 per month and 3% of revenue generated, or such greater amount as bid;
(4) TOAs are non-exclusive with the exception of Agricultural, Staging, and Quarry which shall be exclusive and limited to the activities performed directly by Occupant;
(5) Property shall be used solely as outlined in the application for TOA in accordance and DPLs regulations for the operations of the Occupant;
(6) DPL can demand the removal of any and all structures at any time at Occupant's expense;
(7) Liability insurance shall be required with exception of Agricultural (Farming and/or Livestock) and Residential Maintenance. The policy shall name DPL and the Commonwealth as co-insured, with a minimum coverage of $50,000 in an action for wrongful death, $200,000 for each occurrence, $100,000 in bodily injury per person, and $100,000 in property damage for each occurrence, or such higher amounts as DPL may reasonably require.

(b) Agricultural use shall be limited to family subsistence (non-commercial) purposes and shall only be permitted as follows:
(1) Farming - limited to up to 2,000 square meters (per household) of public lands determined by DPL to be suitable for farming, the annual application fee shall be $150 per TOA; and
(2) Livestock - limited to up to 250,000 (25 Hectares) square meters (per household) of public lands for cattle grazing 50,000 square meters (5 Hectares) for livestock and/or goat grazing, and 20,000 square meters (2 Hectares) for confined livestock, the annual application fee shall be $150 per TOA. TOA's shall be assessed an annual fee of $10 per 10,000 square meters (equivalent to 1 hectare) but shall not exceed 250,000 square meters as follows:

Area Size	Per Hectare Fee	Annual Application Fee	Annual TOA Fee
0.01 – 1 Hectare	$10	$150	$160
1.1 – 2 Hectares	$20	$150	$170
2.1 – 3 Hectares	$30	$150	$180
3.1 – 4 Hectares	$40	$150	$190
4.1 – 5 Hectares	$50	$150	$200

5.1 – 6 Hectares	$60	$150	$210
6.1 – 7 Hectares	$70	$150	$220
7.1 – 8 Hectares	$80	$150	$230
8.1 – 9 Hectares	$90	$150	$240
9.1 – 10 Hectares	$100	$150	$250
10.1 – 11 Hectares	$110	$150	$260
11.1 – 12 Hectares	$120	$150	$270
12.1 – 13 Hectares	$130	$150	$280
13.1 – 14 Hectares	$140	$150	$290
14.1 – 15 Hectares	$150	$150	$300
15.1 – 16 Hectares	$160	$150	$310
16.1 – 17 Hectares	$170	$150	$320
17.1 – 18 Hectares	$180	$150	$330
18.1 – 19 Hectares	$190	$150	$340
19.1 – 20 Hectares	$200	$150	$350
20.1 – 21 Hectares	$210	$150	$360
21.1 – 22 Hectares	$220	$150	$370
22.1 – 23 Hectares	$230	$150	$380
23.1 – 24 Hectares	$240	$150	$390
24.1 – 25 Hectares	$250	$150	$400

(3) Agricultural uses in excess of the limitations in this subsection, or which require fixed terms shall be subject to the lease requirements of these regulations.

(i) Occupants with permits to use properties for livestock/grazing prior to and through the effective date of the regulation of February 2016 and subsequent amendments thereafter that (A) have been continuously used/maintained and (B) are currently bound by USDA agricultural program support grant requirements, shall be exempt from the 25 Hectare limit as long as occupant continues to utilize the entire area and receive and is bound by USDA program agricultural grant requirements.

(c) Vehicular Parking - The activity that involves a location(s) and designated area(s)/assignment(s) on public land where motor vehicles may be temporarily stored or parked shall only be permitted under a temporary occupancy agreement as follows:

(1) Temporary vehicular parking spaces are categorized as primary, secondary, and tertiary parking zones. The parking zone descriptions for Rota and Tinian, respectively are shown in Schedule 145-70-210(c)(1). The parking zones for Saipan are tied to the Saipan Zoning districts as follows:

Primary	**Secondary**	**Tertiary**
GC: Garapan Core	IN: Industrial	AG: Agriculture
GE: Garapan East	VC: Village Commercial	RU: Rural
BR: Beach Road		VR: Village Residential
MC: Mixed Commercial		
PR: Public Resource		

(2) The annual permit fee per square meter shall be $10 for primary, $6 for secondary, and $2 for tertiary zones.
(3) Parking Permit Fees - Non-Income Generating Non-Commercial Humanitarian or Social Welfare Non-Profits (Charitable Organizations, NMC Foundation, Health & Social Welfare, and Churches). The annual permit fee per square meter shall be $2 for All Zones.

(d) Signboards/Banners - The activity that involves erecting or placement of a temporary board, poster, banner, a piece of cloth or bunting, placard, or other temporary sign varying in size, color, and design which is temporarily displayed, posted, erected, hung, or tied in a certain public location or tract of land to advertise or to convey information or a direction shall only be permitted as follows:
(1) Public lands zones for the placement of signboards or banners are categorized as primary, secondary, and tertiary zones identical to Vehicular Parking.
(2) CNMI government and non-commercial Humanitarian or Social Welfare non-profit organizations shall not be charged a fee for local government funded signboards for public awareness purposes. The fees for the placement of signboard by other Applicants are shown in the tables below:

SIGNBOARD PERMIT STANDARD FEES

	Primary Zone	**Secondary Zone**	**Tertiary Zone**
Annually	$600	$350	$250
Monthly	$100	$ 70	$ 50

SIGNBOARD PERMIT FEES – NON-COMMERCIAL NON-PROFITS

	All Zones
Annually	$250
Monthly	$50

(3) Political signboards: political signboards are charged an administrative processing fee of $50 along with a semi-annual fee of $100 and cannot be erected sooner than six months before the election date. A candidate may erect and place a maximum of 10 signboards on its respective electoral senatorial district. A Candidate running for office on a CNMI wide election may erect and place a maximum of 20 signboards on each senatorial district.
(i) No signboard shall be placed on the western beach side along Tun Thomas P. Sablan and along Beach Road in Saipan, or such other areas as determined by DPL.
(ii) No signboard shall be placed or erected on any trees on public land.
(iii) No signboard shall be placed or erected on any utility poles.
(iv) No signboard shall be placed or erected within 50 feet from any traffic light.
(v) No signboard shall be placed or erected within 6 feet of any road pavement and any public right-of-way.
(vi) No signboard shall be placed on any public buildings, facilities, monuments, public parks, and tourist sites.
(vii) No signboard exceeding dimensions of 4ft by 8ft shall be placed on public land.

(e) Roadside Vendors - The activity that involves the use of a temporary structure, vehicle, or mobile canteen for the sale of local produce or fish, other perishables or non-perishable items such as handicrafts, trinkets, souvenirs, or other goods, at a permitted distance from the side of a road or thoroughfare at a location(s) or designated area(s)/assignment(s) on public land shall be permitted on the same financial terms as other concession TOA: A monthly fee of at least $250 per concession (up to 100 square feet) shall be charged in addition to 1% of BGR.

(f) Maintenance – The activity that involves the clearing and cutting of brush or vegetation for no-use purposes (ex. fire break) may be permitted as follows:
(1) Up to 300 square meters of public lands adjacent to an occupant's private property may be cleaned and maintained under a maintenance permit. Residential maintenance permits shall be assessed a non-refundable application fee of $20 per year.
(2) Commercial maintenance permits inclusive of commercial beachfront properties within 150 ft. high water mark for beautification purposes (non-exclusive) shall be assessed a non-refundable application fee of $100 per year and shall be subject to an assessment equal to 2% of the estimated fair market value of the premises annually.

(g) Filming/Photography – The activity involving the use of public lands in the production of video or motion picture films, commercial advertisement filming, photography, and other activities that involve video or film production at certain locations or areas of public lands.
(1) The fee for engaging in commercial motion/still filming or photography on public land in any location in the CNMI is $250 per day with the exception of Managaha which is $500 per day plus location credits within the publication indicating that the film or photograph was taken in the CNMI, the island, and the specific location. Use of any part of a day is charged as one full day. One full day is defined as a continuous 24-hour period beginning at 12:01 a.m. DPL may use discretion in waiving any fee(s) when requested by Marianas Visitors Authority (MVA) on a case-by-case basis, when the commercial motion/still filming or photography on public land promotes the CNMI.
(2) The fee for still/portrait photography not for commercial publication, sale, or distribution (e.g. family portrait intended for sale only to the subject family) shall be $1,000 per year per commercial photographer.
(3) The occupant shall provide DPL a copy of the finished product, and location credits within the product indicating that the film or photograph was taken in the CNMI, the island, and specific location.
(4) Applicants must submit a copy of their CNMI business license, sufficient liability insurance, and an approved CRM (to the extent required) permit along with their application.

(h) Staging – The activity involving the temporary use of public lands to store or place construction equipment, materials, tool sheds, contractor's trailer or field office, and for storage or stockpiling of applicant's materials (e.g. coral, aggregate, or manufactured sand), and other similar uses incidental to a construction project may be permitted as follows: the fee for the temporary use of public land for a staging area is 8% of the estimated fair market value per permit year, or a fraction thereof.

(i) Quarry – A large, open excavation or pit from which rock products or other minerals are extracted by excavation, cutting, or blasting (this definition also includes mining activities).

(1) The permit shall specify the type of materials the permittee is authorized to extract and sell.
(2) Upon promulgation of these regulations, the minimum annual rent shall be a total of $12,000. Each year following promulgation of these regulations, the minimum annual rent shall increase by 5% in each subsequent year. Additionally, permittee shall pay a royalty fee of at least $3 per cubic yard of limestone materials extracted, plus 0.5% of BGR, or such greater amounts as proposed for each category.
(3) Extraction of other materials shall be subject to additional permitting and assessed a higher royalty fee as a percentage of market prices as quoted on a major U.S. commodities exchange for those materials or minerals.

(j) Encroachment – The activity involving the temporary use of public land for commercial or residential purposes may be permitted as follows:
(1) The annual fee for the temporary permitted encroachment on public land for commercial purposes is based on 8% of the estimated fair market value or 3% of gross receipts if this amount is greater than the annual permit fee. Assessment of rent against gross receipts shall be apportioned pro-rata based upon increase of business capacity (i.e., showroom space, seating capacity, or the like) by virtue of the encroachment unless the encroachment is deemed by DPL to be of strategic value. However, where an applicant's business could not proceed or continue without the use of public land (e.g., landlocked parcel, no parking, insufficient ingress or egress, etc.), no such apportionment will apply, and fees will be assessed upon 100% of the business' gross receipts.
(2) The annual fee for the encroachment of public land for residential applicant purposes is 8% of the estimated fair market value. Permanent structures will only be permitted under an encroachment permit if they precede the effective date of these regulations (February 8, 2016)* and they are located on land that DPL is permitted to lease by law and regulation.

(k) Community Events – The activity involving the temporary short-term use of public land for government or non-commercial activities that benefit the community (e.g., festivals, holiday celebrations, parades, and the like) may be permitted without charge upon approval by the Secretary, provided the permitted event or activity shall be no more than 45 days in duration.

(l) Non-Use – The activity involving the entry upon public land to survey, appraise, or gather other information necessary or helpful to an applicant to lease public lands; or to enter upon public land to construct authorized improvements for public benefit.

*So in original.

Modified, 1 CMC § 3806(c), (e), (f), (g).

History: Amdts Adopted 41 Com. Reg. 42800 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42730 (July 28, 2019); Amdts Adopted 39 Com. Reg. 40376 (Nov. 28, 2017); Amdts Proposed 39 Com. Reg. 39951 (Sept. 28, 2017); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: [Historical codification comments removed.]

In codifying 41 Com. Reg. 42800 (Sept. 28, 2019), the Commission retained subsections (f) to (l) as unmodified although they were omitted from the proposed regulation at 41 Com. Reg. 42730 (July 28, 2019).

§ 145-70-215 Concession Agreements

Concession agreements grant the concessionaire the right to conduct business operations from a designated area, zone, or venue on terms determined by DPL.

(a) Upon receipt of request for a non-exclusive concession, DPL will determine the desirability of the proposed area use and past performance and/or experience (if any) of the proposed concessionaire. If acceptable to the DPL and if consistent with designated use, zoning, surrounding activities, DPL may issue a notice of intent.

(b) DPL may issue an RFP or conduct an auction if there are two or more similar competing interests with respect to a given non-exclusive concession area, or in any instance at the discretion of the Secretary. DPL shall issue an RFP or conduct an auction with respect to the exclusive Managaha Island Master Concession.

(c) Monthly fees of at least $250 per concession (up to 200 square feet) shall be charged in addition to 3% of BGR. Concessions negotiated through RFP or auction may be subject to higher fees based upon applicant's proposal or bid amount.

(d) The Premises shall be used solely for the business operations of the Occupant. Subconcessions for non-exclusive concessions are not permitted. Any change in ownership of occupant shall be considered an assignment. Assignments are not permitted for non-exclusive concession agreements or permits. (Only one non-exclusive concession agreement is allowed per applicant, permittee, and/or principal.)

(e) All concession agreements are terminable by DPL at will. The term of any non-exclusive concession agreement shall be shall be for no longer than one year per concession agreement with a maximum holdover of 12 months. The exclusive Managaha Island Master Concession may be for a term of up to ten years with an option to extend the term by an additional five years at DPL's discretion.

(f) Applications for renewal of non-exclusive concession agreements (if any) shall be made annually at least two months prior to expiration or as solicited via a Request for Proposal or at auction. Applications for renewal of the exclusive Managaha Island Master Concession (if any) shall be made at least one year prior to expiration or as solicited via a Request for Proposal or at auction.

(g) Criteria for evaluating an application/proposal for a concession agreement under consideration shall be the same as those outlined in the regulation on leases. For renewals, if a competing proposal does not materially enhance the existing concessionaire's proposal, operations, or otherwise project to materially increase the revenue to DPL, and the concessionaire has satisfied all the covenants and conditions of its existing concession agreement, it is DPL's preference to renew the concession agreement with the current concessionaire with payment comparable to that proposed or implied by the best competing proposal, but in no case shall DPL accept rent less than what was established in any preceding period.

(h) Non-exclusive beach concessions for beach and ocean recreational activities shall be limited as follows:
(1) Concessions for activities involving commercial motorized and non-motorized water craft shall not be permitted outside of the area designated by the BECQ – Coastal Resource Management Office and shall occur only within specific zones authorized by DPL.
(i) Concessions are restricted to areas adjacent to boundary corners of hotels, or if no hotel is located in the vicinity, to the perimeter boundaries of the public land perpendicular to the high water mark.
(ii) Beach concession agreements will be limited to twenty five total concessions per year due to limited space and safety concerns and in an effort to maintain a peaceful beach experience for those not participating in concession activities. The number of beach concession agreements may be limited to a lesser amount if the Division of Fish and Wildlife, Coastal Resources Management Office or other CNMI government and federal governments* determines that the marine sports activities cause an impact on marine life species and/or their habitats are disrupted, harmed, or destroyed resulting from such activities.
(2) Enforcement procedures shall be as follows:
(i) A first violation of agreement terms or conditions will result in a citation and fine of $200.00.
(ii) A second violation within 30 days of any citation shall result in an order to show cause not to terminate the agreement. A hearing shall be scheduled within 15 days if requested by concessionaire. If no hearing is requested, Concessionaire's authorization shall be terminated with immediate effect. Violators shall not be eligible for a concession agreement for three years following any termination.

(i) Liability insurance shall be required. The policy shall name DPL and the Commonwealth as co-insured, with a minimum coverage of $100,000 in bodily injury per person. $300,000 in bodily injury aggregate, and $100,000 in property damage for each occurrence, or such higher amounts as DPL may reasonably require.

*So in original.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 44 Com. Reg. 48893 (Sept. 28, 2022); Amdts Proposed 44 Com. Reg. 48842 (Aug, 28, 2022); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission struck the figure "(90)" in subsection (g)(3) and struck the figures "(30)", "(15)", and "(3)" in subsection (g)(4)(ii) as a mere repetitions of written words. Commission inserted open parentheses to subsections (a)–(g); changed "desirablity" in subsection (a) to "desirability"; changed "Subconcesions" in subsection (d) to "Subconcessions"; changed "an Concession" to "a concession" in subsection (f); and changed "boudary", "vacinity", and "perimiter" in subsection (g)(1)(i) to "boundary", "vicinity", and "perimeter" respectively.

§ 145-70-220 Occupancy not Covered in this Part

Proposed occupancy and use of public lands not covered under this Part shall be evaluated and determination made by the Secretary for the best interest of its beneficiaries.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission substituted "Part" for the term "Subsection" in the section title and the body of the section.

Part 300 - Policies on Appraisals for Leases

§ 145-70-301 Appraisals

(a) Procedures are hereby established for the regular appraisal of all public lands leased for commercial purposes, which ensure that the fair market value basis for computation of basic rent for any given lease is updated no less frequently than every five years. All appraisal reports shall be reviewed by DPL's staff appraiser for completeness of the technical aspects, and to certify if the appraised value meets or exceeds the fair market value of the property. The findings of the staff appraisers shall be for internal use only. As this information may affect the negotiation of lease terms it shall be held confidential during negotiations. DPL may discuss any areas of concern with the independent appraiser and the applicant.

(b) The cost of appraisals and their review shall be borne by applicant or lessee and in no instance shall DPL reimburse the cost to lessee or offset any such costs or expenses against rent. However, DPL shall require the appraiser to acknowledge that DPL is the client and that the report is being prepared on behalf of DPL.

(c) Appraisals shall be first prepared by an independent U.S.-CNMI certified general real estate appraiser who is licensed to do business in the CNMI. The appraiser shall acknowledge that the appraisal report is being prepared in accordance with the requirements of the appraisal standards and procedures for the benefit of the Department of Public Lands.

(d) All appraisals must be performed and completed in compliance with the current Uniform Standards of Professional Appraisal Practice (USPAP) and the CNMI issued regulations and procedures by the Board of Professional Licensing.

(e) The Secretary shall review all appraisal reports for reasonableness, and shall use the value shown in the report as a guide to assess annual base rent. The value may be adjusted upwards for reasonableness if deemed appropriate by the Secretary to take into account the strategic value of the property and recent real estate sales or lease transactions that were not adequately considered by the appraiser in DPL's opinion.

(f) Lessee shall re-appraise the fee simple interest of the leased property every five years on the anniversary of the lease and if necessary rent shall be adjusted upward to current value based on the new appraisal as adjusted by the Secretary in conformance with these regulations.

Modified, 1 CMC § 3806(a), (f).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission numbered the leading paragraph (a) and accordingly renumbered the following subsections consecutively.

Part 400 - Application Processing Fees

§ 145-70-401 Fee Schedule

DPL shall charge an application fee to recover the cost of processing. Unless otherwise stated in these regulations, the application and renewal processing fees are as follows:

Transaction	Application Fee
Application for TOA (other than Agriculture and Concessions)	$ 50
Renewal of TOA	$ 50
Amendment of TOA	$ 50
Application for Concession/Subconcession	$ 75
Renewal of Concession/Subconcession	$ 75
TOA for Agriculture: Farming	$ 250
Livestock	$ 225
Amendment of Lease Agreement	$ 1,500
Lease Agreement Extension	$ 2,500
Assignment of Lease Agreement	$ 2,500
Sublease Agreement	$ 2,500
Renewal of Sublease Agreement	$ 2,500

Modified, 1 CMC § 3806(b).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission rearranged the material under Part 400 under this section to fit harmoniously with the Code.

Part 500 - Request for Proposal Requirements

§ 145-70-501 Request for Proposals

DPL may issue RFPs at the discretion of the Secretary. At a minimum, RFPs shall require the following:

(a) A description of the property, including the legal description and physical location in layman's terms making it readily identifiable by interested firms and the general public;

(b) Interested firms shall be allowed to view the property and shall be provided general information on property including photographs, land maps, and boundary descriptions;

(c) Requirement for Proposals. Interested firms shall:
(1) Identify the applicant, and if the applicant is not a natural person, the names of the officers, directors, and principal shareholders or members of the proposed lessee, and including all real parties in interest;
(2) Identify the names of principals, and attorneys that will be involved in negotiating the lease on behalf of the proposed lessee;
(3) Provide a concise statement of the intended use of the property;
(4) Provide a detailed description of proposed structures/facilities to be built on the land including architectural renderings and landscaping. If existing improvements will be replaced with new improvements, proposer shall additionally provide plans for removal and disposal of demolished or excavated materials including a timeline of intended progress;
(5) Provide a Gantt chart showing construction time line, cost per phase if construction will occur in multiple phases, and total cost of improvements;
(6) Provide five-year pro forma financial statements including business gross revenue projections starting in year one of operations including rental income lessee anticipates to receive from subtenants, and the potential BGR of subtenants;
(7) Provide an estimate of number of jobs required for operations (total full time equivalents) and shall provide recruiting plans.

(d) Criteria for comparing competing proposals include:
(1) Rental income to DPL in absolute dollars;
(2) Cost of construction of the development (and anticipated value of improvements);
(3) Lessee's credit worthiness and ability to fund the proposed development;
(4) Consistency of the proposed development with DPL's land use plan and other applicable land use laws and regulations.

(e) In the event two or more proposals are determined to be similarly advantageous, DPL may request more information from respondents for clarification purposes, or conduct in-person interviews to determine the proposal that is most advantageous to DPL and its beneficiaries.

(f) DPL shall always request a best and final offer on the amount of rent payments and public benefit options before selecting the final proposal.

(g) In the event there are more than one interested party in the same property (whether all or portions thereof), priority shall be given to the party that is willing to pay the highest premium above the minimum payment amount and whose proposal is most consistent with the highest and best use of the property.

(h) Criteria for award:
(1) Highest rental income to DPL;
(2) Cost of construction;
(3) Consistency of the proposed development with DPL's land use plan;
(4) Lessee's credit worthiness and ability to fund the proposed development;

(5) Negotiated lease terms most favorable to DPL.

Modified, 1 CMC § 3806(a), (b), (f) (g).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission numbered this section, created the section title, and renumbered subsections (c)(4)[second]–(6) to subsections (c)(5)–(7) respectively. The Commission inserted a semicolon at the end of subsection (c)(6), inserted a period at the end of subsection (c)(7), inserted a period at the end of subsection (e), and changed the period in subsection (h) to a colon.

Appendix A

§ 145-70-115 Lease Form
All leases shall be in the form set forth below.

(Space Above for Recording Purposes Only)

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, MARIANA ISLANDS

LEASE AGREEMENT

(LA __ -_____S)

This Lease Agreement (hereinafter the "Lease") is made and entered into this _____ day of _____ 20[xx] (hereinafter the "Commencement Date"), by and between the **DEPARTMENT OF PUBLIC LANDS** (hereinafter the "DPL"), established under Public Law 15-2, having authority and responsibility over the management, use and disposition of public lands in the Commonwealth, , and **[insert Lessee's Name]** (hereinafter the "Lessee"), a **[insert form of business entity]**.

WITNESSETH:

WHEREAS, the Lessee desires to lease public land on **[insert island]**, Commonwealth of the Northern Mariana Islands, for the purposes set forth on the lease data sheet attached hereto as Schedule 1 (hereinafter the "Lease Data Sheet"); and

WHEREAS, the DPL, being responsible for the management, use and disposition of public lands in the Commonwealth finds it desirable, beneficial and in the interest of the Commonwealth and public land beneficiaries to permit the Lessee to use public land for such purpose; and

WHEREAS, the Lessee has paid a lease application fee in accordance with DPL's regulations.

NOW THEREFORE, in consideration of the mutual covenants and benefits to be derived herein, the parties agree as follows:

ARTICLE 1: GRANT OF LEASE

The DPL leases to the Lessee the below-described public land (hereinafter the "Premises"), more particularly described as follows:

[Insert Legal Description]
[Insert description of existing improvements if any]

ARTICLE 2: PURPOSE

The Lessee shall use the Premises for the purpose set forth on the Lease Data Sheet. No portion of the Premises shall be used as housing or dwelling purposes, whether temporary or permanent. Lessee agrees to use the Premises in a reasonably prudent manner, so as not to cause nuisance or hazards to the public, and not to allow, permit, or suffer, any waste or unlawful, improper or offensive use of the Premises Lessee shall be responsible for obtaining all required licenses and permits for such use from all departments and agencies having jurisdiction over such use.

ARTICLE 3: TERM

The term (hereinafter the "Term") of this Lease shall be for a period of twenty-five (25) years, unless otherwise terminated or cancelled pursuant to applicable provisions of this Lease. The Term shall commence on the Commencement Date as set forth above. Pursuant to P.L 15-2, the DPL may not transfer a leasehold interest in public lands that exceeds twenty-five years including renewal rights.

ARTICLE 4: EXTENSIONS

An extension of up to fifteen years may be granted with approval of the legislature in accordance with P.L. 15-2. Consistent with its fiduciary duty to manage the use and disposition of public lands for the benefit of the collective owners, the DPL will entertain requests for extensions no sooner than two (2) years after completion of all development contemplated hereunder, and no later than two (2) years ~~from~~ before expiration of the Term. The DPL will make its determination to seek legislative approval, or to decline to seek such approval based upon Lessee's actual performance versus its projections provided in connection with the negotiation and execution of this Lease, as well as its compliance record with the DPL prior to Lessee's extension request.

ARTICLE 5. RENT

The Lessee, in consideration of the foregoing, shall pay to the DPL, in the manner prescribed herein, in

lawful money of the United States, Base Rent and Additional Rent for the Premises as follows:

BASE RENT	ADDITIONAL RENT
[Greater of proposed or 5% of fee simple value]	[Percent established by regulation in effect on Commencement Date or greater percentage proposed by Lessee]

A. Base Rent. Lessee shall pay Base Rent as set forth above in advance on an annual basis on each anniversary of the Commencement Date without invoice, notice, or other demand upon or to Lessee.

B. Additional Rent. In addition to the Base Rent provided for above, the Lessee shall pay to the DPL in the manner prescribed herein the percentage of Gross Receipts as described in the above rental schedule from whatever business activity is related to or conducted within the described premises during the Term of this Lease and any extension thereof, and as further defined in Article 40G hereof ("Additional Rent"). This additional amount, shall be paid quarterly, within forty-five (45) days from the end of the calendar quarter, with adjustment, if any, to be made at the end of every calendar year upon submission of the annual certified financial statements as provided in Article 11 hereof. A copy of the Lessee's CNMI Business Gross Revenue Tax Monthly Returns must be submitted concurrently with any payment together with the computation of the quarterly Gross Receipts Rental to substantiate any additional payment or non-payment.

C. Manner of Payment. The Lessee shall discharge its obligation of payment by depositing the payments required under this Article with the DPL, at such location as the DPL may from time to time designate in writing.

D. Time and Payment; Interest; Amortization. All rents payable pursuant to the terms of this Lease shall be deemed to have commenced on the first day of the month after the Commencement Date of this Lease, and shall be paid without prior notice or demand. Past due rental payments shall bear interest at one and one half percent (1.5%) per month compounded monthly, from the date it becomes due until paid. This provision shall not be construed to relieve the Lessee from any default in making any rental payment at the time and in the manner herein specified, but is subject to the amortization provisions set forth herein.

ARTICLE 6. APPRAISAL AND DETERMINATION OF RENTAL AFTER EACH FIVE YEAR PERIOD

For purposes of calculating Guaranteed Minimum Annual Rent during the initial five (5) year period, the parties stipulate that the value of a fee simple estate in the Premises is as set forth on the Lease Data Sheet. At the end of the initial five (5) year period of this Lease and each succeeding five (5) year period, the Base Rent payable by the Lessee to the DPL shall be based upon the percentage of the value of the improved land as of the commencement of each five-year period. An independent appraiser who must be a member of a nationally accepted appraisal society, (selected by agreement between the DPL and the Lessee), will establish the value subject to upward adjustment by the DPL in accordance with the regulations set forth at NMIAC § 145-70-301. In the event that the DPL and the Lessee cannot reach an agreement on the selection of the appraiser, a committee of three (3) arbitrators being selected by the other two will select the appraiser. The cost of appraisal and any arbitration will be borne by the Lessee.

ARTICLE 7. SECURITY DEPOSIT AND PERFORMANCE BONDS.

Within ten (10) days after the Commencement Date, the Lessee shall deposit the sum reflected on the Lease Data Sheet as a Security Deposit with the DPL. The Security Deposit will be held in an interest bearing account of the DPL. This Security Deposit is security that the Lessee will comply with all the terms of this Lease and indicates Lessee's good faith commitment to undertake and complete the construction, development and operation the proposed development. This Security Deposit shall also be security to ensure performance of Lessee's obligations upon the expiration or termination of the Lease.

If the Lessee defaults on this Lease prior to the expiration of this Lease, the DPL shall be able to keep all or part of this Security Deposit to cover unpaid rent, administrative costs, appraisal reports, attorneys' fees, damage to the property, remediation, and/or other expenses.

At the expiration of this Lease, the DPL will inspect and fully document the condition of the Premises. Within thirty (30) days of the expiration of this Lease, if the Lessee has supplied the DPL with a forwarding address and the Lessee has complied with all terms of this Lease, the DPL will return the Security Deposit plus any interest earned, or the DPL will provide the Lessee with a written notice including an itemized list as to why the full Security Deposit amount is not being returned and a check for any remaining Security Deposit owed to the Lessee after such deductions have been made.

The DPL may retain and apply as much of the Security Deposit as necessary as compensation or reimbursement for unpaid rent, administrative costs, attorneys' fees, damages, or other expenses resulting from Lessee's use of the Premises or from any default of the Lease by the Lessee. ~~If d~~During the Term the DPL applies all or part of the Security Deposit for the reasons set forth above, ~~the DPL may~~

~~demand that the~~ Lessee shall replace such sum.

In addition to the Security Deposit, Lessee shall within thirty (30) days after the Commencement Date deliver to the DPL a Completion Bond, Stand by Letter of Credit, or a combination thereof covering 100% of the cost of Lessee's proposed development.

ARTICLE 8. PERMITS, CONSTRUCTION PLANS, AND SPECIFICATIONS

A. Construction Plans and Specifications. Lessee has provided conceptual drawings and specifications depicting its proposed development as a basis for negotiation of this Lease. The Lessee agrees and covenants that within three (3) months from the Commencement Date of this Lease, it will at its own cost, risk and expense, submit to the DPL its complete construction plans and specifications, which shall be consistent with its previously tendered conceptual design of the development of the Premises. Upon submittal by the Lessee, the DPL shall have thirty (30) working days to review the submitted construction plans and specifications and to notify the Lessee of approval or disapproval of the plans. In the event that changes are necessary, the DPL shall give the Lessee reasonable time to make the necessary changes to the plans for re-submittal. If the DPL does not notify the Lessee in writing of the status of the submitted plan within the thirty (30) working day review period, then the plans and specifications are deemed approved. In no event shall construction, demolition, repair or other development activity commence on the Premises unless and until plans have been approved by DPL or the thirty (30) day review period set forth above has expired without comment by DPL.

B. The Lessee agrees and covenants that within six (6) months from the Commencement Date of this Lease, it will at its own expense and risk secure all required CNMI Government and applicable Federal permits for the development and construction to be completed on the Premises and shall immediately commence construction. Copies of such permits must be delivered to the DPL within five (5) days of their issuance. If the Lessee requires additional time to secure the permits, it must notify the DPL in writing of the reason for the delay in securing the necessary approval and its request for extension. The DPL shall review the Lessee's request for extension and provide for additional time if the extension is reasonable, necessary, and is not due to any delay or inaction on the part of Lessee.

ARTICLE 9. CONSTRUCTION SCHEDULE

The Lessee agrees and covenants that within the time hereinafter stipulated it will, at its own cost, risk and expense, fully equip and furnish any improvements, structures and associated facilities within two (2) years after the Commencement Date of this Lease.

ARTICLE 10. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION

All construction, improvements, renovations, and repairs placed on the Premises shall be constructed in good workmanlike manner and in compliance with applicable laws, regulations, ordinances, and building codes. Principal structures serving the primary use (as define defined by Saipan Zoning) of the Premises shall be of reinforced ~~full~~ concrete construction or structural steel for exterior and load bearing walls, roofs, and ceilings; and exterior wall materials shall be engineered and constructed to withstand the harsh local environment and be in serviceable condition for at least 50 years (i.e. no bare or exposed structural steel, framing, or tin roofs, ~~framed structural walls,~~ etc.). Accessory structures (as defined by Saipan Zoning) that serve the principal building may be ~~concrete~~ framed with reinforced concrete or weather-coated structural steel finished with other materials to accentuate the theme of the primary use. All portions of buildings located upon the Premises exposed to perimeter properties or to the public view shall present a pleasant appearance, and all service areas shall be screened from public view. The Lessee shall, at all times during the Term of this Lease and at the Lessee's sole cost and expense, maintain the Premises and all improvements thereon in good order and repair and in a neat, sanitary and attractive condition.

Unless the same are to be promptly replaced with improvements having at least an equal value, no removal or demolition of improvements which has a value in excess of $25,000.00 shall take place without the prior written consent of the DPL. No additions having a value in excess of $100,000.00 shall be constructed on the Premises without the prior written consent of the DPL. The Lessee shall indemnify and hold harmless the DPL and the CNMI Government against liability for all claims arising from the Lessee's failure to maintain the Premises and the improvements situated thereon as hereinabove provided, and / or from the Lessee's violation of any law, ordinance, or regulation applicable thereto.

Within thirty (30) days after the Commencement Date, Lessee shall procure a performance or completion bond in favor of the DPL for the full cost of development and construction contemplated hereunder. The parties' initial estimate of such cost is set forth on the Lease Data Sheet which shall serve as the basis for bonding. In the event of an upward adjustment in construction or development costs, Lessee shall immediately notify the DPL of such, and shall ensure that such bonds are commensurately increased within thirty (30) days thereafter. Failure to procure and maintain such security shall be cause for immediate termination of this Lease by DPL.

Unless specifically authorized on the Lease Data Sheet, Lessee shall not construct structures or other improvements that overlap boundaries of adjacent private lands. Any authorization permitting such must be is set forth on the Lease Data Sheet, and shall be in conformance with DPL's regulations in effect on the Commencement Date AND be consistent with the following principles:

(i) Development and construction of facilities and improvements that will occupy both private and

public lands shall be performed in a manner to facilitate and simplify segregation of improvements on the public lands from those on adjacent private lands upon expiration or termination of the lease, unless a land trust consisting of the private lands and public lands is formed with the DPL as trustee, or fee simple title to the private lands is assigned to DPL, at Lessee's expense prior to development. For the avoidance of doubt, such permitted improvements shall be designed and constructed to be free and independent from private land improvements so that upon expiration or termination of the Lease, when the DPL takes possession of the improvements, such improvements and DPL's (or its designee's) operation thereof shall not be dependent upon adjacent private lands. This restriction shall not apply if the fee simple interest in the private lands is assigned or transferred to the DPL.

(ii) Before commencement of construction or development Lessee shall be required to place on deposit with DPL the amounts necessary to perform such segregation at the expiration or termination of the lease as estimated by an engineer selected by DPL.

(iii)Notwithstanding the foregoing, for minor developments such as parking structures attached to adjacent improvements, if such improvements will be of little value to the DPL, the Secretary may waive the obligations set forth in subsection (a) above if in addition to the Security Deposit the Applicant places on deposit concurrent with the execution of the lease the projected cost of demolition and removal of improvements, and restoration of leased premises.

Lessee shall maintain the quality of the property in serviceable condition for the term of this lease and shall not defer any maintenance that may cause the value of the property to be less than its appraised value had it been properly maintained.

ARTICLE 11. EXCUSED DELAY OF PERFORMANCE

Whenever under this Lease a time is stated within which or by which original construction, repairs, reconstruction or other performance by the Lessee shall be commenced or be or be completed, and a failure or delay in such performance is due, in whole or in part, to fire, explosion, earthquake, storm, flood, drought or other unusually severe weather conditions, strike, war, insurrection, riot, act of God or the public enemy (each a "Force Majeure Event") provided that such failure or delay does not result in whole or in part from the fault or negligence of the Lessee, the period of delay so caused shall be added to the period allowed herein for the completion of such work provided, however, that the Lessee shall notify the DPL in writing within thirty (30) days after the occurrence of any of the above events. Notwithstanding the foregoing, no Force Majeure Event (or combination of them) shall excuse any failure or delay in excess of One Hundred Eighty (180) days.

ARTICLE 12. ANNUAL REPORTS AND AUDIT

The Lessee shall, not later than forty-five (45) days after the end of each calendar year of this Lease, submit to the DPL financial statements certified by a CNMI licensed Certified Public Accountant, which shall include a schedule of gross receipts indicating sources and deductions in support of the gross receipts rental requirement under Article 5A. DPL shall have access to and the right to examine and audit any or all pertinent books, documents, papers and records of the Lessee and its sublessees and concessionaires relating to this Lease during the normal business hours of any working day. Lessee shall insert a similar provision in all subleases, consession and similar agreements pertaining to this right of access, examination, and audit, and shall make available to said representative(s) or agent(s) all books and records of the Lessee or its sublessees and concessionaires which may be requested or may be necessary for completion of a special audit of any or all activities or enterprises conducted on the Premises.

The Lessee shall keep and maintain its accounting and bookkeeping system in accordance with generally accepted accounting principles. The Lessee shall keep its accounting books and records at all times in the English language.

ARTICLE 13. PUBLIC BENEFIT OBLIGATION

As a public benefit, Lessee shall give a local discount of no less than a 10% (or any greater amount set forth on Lease Data Sheet (which shall be mandatory if the local discount is only applicable public benefit)) and such other local benefits acceptable to the Secretary as more fully described on the Lease Data Sheet. Lessee shall allow public parking (non-exclusive), and provide public access, restrooms, and related recreational amenities at all beach and other recreational areas situated upon public land adjacent to the leased Premises as more fully described on the Lease Data Sheet. The Lessee is further obligated to provide proper lighting and security on the Premises and take all other reasonable actions and steps in order to ensure the safety, well-being and protection of its guests and invitees upon the public land that it is utilizing.

ARTICLE 14. SUBLEASE, ASSIGNMENT, TRANSFER, CONCESSIONS

A. Consent Required. Except with the prior consent in writing of the DPL in each instance, Lessee shall not, with respect to development on the public land leased hereby:

(1) Assign, lease, sublease, sell, convey, mortgage, encumber, transfer or dispose of all or any part of Lessee's interest in or to the Premises, or permit the Premises to be used or occupied by others; or

(2) Enter into a management contract or other arrangement by which the activities engaged in on the Premises shall be managed and operated by anyone other than Lessee; or

(3) Grant concessions, permits, or otherwise contract for or permit any business or commercial

enterprise or activities to be constructed or performed on the Premises by any person other than the Lessee, unless the following conditions are met:

(i) The availability of such concession, permit or enterprise shall be advertised by in a newspaper of general circulation in the Northern Mariana Islands;

(ii) First priority in granting the concession, permit or enterprise shall be given to bona fide residents of the Northern Mariana Islands;

(iii) The granting of such concession, permit or enterprise shall be subject to the approval of DPL or its successor.

For the purposes of this condition, "concession, permit or enterprise" shall mean a privilege or right to sell products or perform services, which are peripheral to Lessee's proprietary use of the Premises.

Provided, however, Lessee may sublease this Lease to any affiliate or subsidiary of the Lessee in existence and under joint ownership or control at the time of execution of this Lease, without the consent of the DPL. Provided that such sublease shall in no way relieve Lessee of its responsibilities, obligations, or duties hereunder; and provided further that such assignment or sublease does not result in a change of control as defined in Article 14B.

The consent by the DPL to an assignment, transfer, management contract, or subletting may be granted, denied or made subject to such conditions as the DPL finds it in the best interest of its beneficiaries. Any purported assignment, lease, sublease, sale, conveyance, transfer, mortgage or encumbrance of this Lease, whether written or oral, or any other action for which DPL consent is needed as outlined above, to which the DPL has not given its prior consent is null and void and is of no force or effect and is a violation of this Lease. No sublease, assignment, transfer, or contract shall be valid without the approval of the DPL, and then only if the respective sublessee, assignee, transferee, or other contracting party agrees in writing that the provisions of this Lease bind such sublessee, assignee, transferee, or contracting party. DPL will not consider any assignment, sublease, or transfer during the initial five (5) years of the lease term nor the final five (5) years of the lease term.

Once given, the DPL's consent shall not relieve Lessee, or any subsequent sublessees, assignees or transferees, in any way from obtaining the prior consent in writing of the DPL to any further assignment, transfer, management contract, or subletting.

For purposes of this section, "Premises" includes any portion of the leased premises or any improvement on the leased premises, and "Lessee" includes Lessee's employees, successors and assigns.

B. Change in Control of Lessee. If the sale, assignment, transfer, use, or other disposition of any of the issued and outstanding capital stock of Lessee (or of any successor or assignee of Lessee which is a corporation), or of the interest of any general partner in a partnership owning the leasehold estate created hereby, or of the interest of any

member of a joint venture, syndicate, or other group which may collectively own such leasehold estate, shall result in changing the control of Lessee or such other corporation, partnership, joint venture, syndicate, or other group, then such sale, assignment, transfer, use, or other disposition shall be deemed an assignment of this Lease and shall be subject to all the provisions of this Lease with respect to assignments.

For purposes of this Article, if Lessee is a corporation or a limited liability company, "change of control" shall mean any dissolution merger, consideration, or other reorganization of Lessee, or the sale or other transfer of a controlling percentage of the capital stock of the Lessee, or the sale of at least fifty-one percent (51%) of the value of the assets of the Lessee. The term "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the combined total voting power of all classes of Lessee's capital stock issued, outstanding and entitled to vote for the election of directors.

For purposes of this Article, if Lessee is a partnership, joint venture, syndicate or other group which collectively holds this Lease, "change of control" means a withdrawal or change, voluntary or involuntary or by operation of law, of any partner, individual or entity owning more than fifty-one percent (51%) of the beneficial interest in the partnership, joint venture, syndicate or other group.

For the purposes of this Article, "control" of any corporation shall be deemed to be vested in the person or persons owning more than fifty percent (50%) of the voting power for the election of the Board of Directors of such corporation, and "control" of a partnership, joint venture, syndicate, or other group shall be deemed to be vested in the person or persons owning more than fifty percent (50%) of the general partner's interest in such partnership or of the total interest in such joint venture, syndicate, or other group. For purposes of determining control by a person, members of the family of any assignor or transferor shall be included. For purposes of this section, "members of the family" include a person's spouse, grandparents, parents, brothers and sisters, nephews and nieces, and children by adoption and by blood. Lessee shall furnish an annual statement to the DPL that includes the names and addresses of all stockholders in any corporation or general partners in any partnership holding this lease, showing the number of shares of stock owned by each stockholder of such corporation, or the respective interest of the partners in such partnership, as the case may be. Such statement shall be signed under oath by an officer of each corporation and by a general partner of each partnership holding this lease.

C. Notice to DPL. Lessee shall furnish a statement of ownership/control to the DPL prior to the Commencement Date of this Lease, and on the same date annually thereafter. If Lessee is a corporation, such statement shall include the names and addresses of all principal stockholders and officers in any corporation acting as Lessee, which stockholder(s) own more than ten percent (10%) of the total combined voting power of all classes of Lessee's capital stock issued, outstanding and entitled to vote for the election of directors. If the Lessee is a partnership, joint venture, syndicate or other group, such statement shall include the name, address

and respective interest of each person or entity with an interest in the partnership, joint venture, syndicate or other group.

D. Assignee's Duties. No assignment, sublease or transfer made with DPL's consent shall be effective until there shall have been delivered to DPL an executed counterpart of such assignment, sublease or transfer containing an agreement, in recordable form, executed by the assignor, sublessor or transferor and the proposed assignee, sublessee or transferee in which the latter assumes due performance of the obligations on the former's part to be performed under this Lease to the end of the leasehold term.

E. Assignment or Change In Control Fee. If the DPL consents to an assignment of this Lease or to a change in control of Lessee, as described in Section B of this Article, it shall assess a fee of twenty-five percent (25%) of the gain or profit attributable to the leased land. For purposes of this section the terms "gain" and "profit" are defined as the proceeds from any change in control or assignment less the book value of improvements and fixtures installed by Lessee. Lessee shall pay the fee to DPL at closing of the assignment or the change in control of the Lessee.

G. Transfer Fee. In addition to any other fees due as a result of an assignment or transfer, if the DPL consents to an assignment, or other transfer of the leased Premises, as particularly described in Article 1 of this Lease, it shall assess a fee of 25% of the remaining rent due under this Lease for the remainder of the Term of the Lease. The transfer fee shall be assessed and Lessee shall pay the fee to DPL at closing of the transfer.

ARTICLE 15. STATUS OF SUBLEASES

Termination of this Lease, in whole or in part, by cancellation or otherwise, shall operate either as an assignment to the DPL of any and all such subleases, concessions, and sub-tenancies or shall terminate all such subleases, concession agreements or sub-tenancies at DPL's discretion.

ARTICLE 16. AGREEMENTS FOR UTILITY LINES

The Lessee shall have the right to enter into agreements with public utility companies or with the Government of the Commonwealth of the Northern Mariana Islands and/or any of its agencies to provide utility services, including water, electricity, telephone, television, and sewer lines necessary to the full enjoyment of the Premises and the development thereof in accordance with the provisions of this Lease. Subject to prior consultation with Lessee, the DPL reserves the authority to grant utility rights-of-way across the Premises. The Lessee shall furnish to the DPL executed copies thereof together with a plat or diagram showing the true location of the utility lines to be constructed in accordance therewith. Nothing herein contained shall be deemed to imply an obligation on the part of DPL to furnish Lessee with any water services or

other utilities whatsoever and DPL does not guarantee the availability of same. It is expressly understood that the Lessee shall obtain such services at its sole cost and expense.

ARTICLE 17. RIGHT OF MORTGAGE

The Lessee, its successors and assigns may, subject to the express prior written approval of the DPL, mortgage this Lease and the Lessee's interest hereunder, provided that no holder of any mortgage of this Lease or the Lessee's interest hereunder, or any one claiming by, through or under any such mortgage shall, by virtue thereof, except as provided herein, acquire any greater rights hereunder than the Lessee, and no mortgage of this Lease or the Lessee's interest hereunder, in whole or in part, by the Lessee or the Lessee's successors or assigns shall be valid, unless: (i) at the time of the making of such mortgage, there shall be no default under any of the agreements, terms, covenants and conditions to be performed by the Lessee under this lease; (ii) such mortgage shall be subject to all the agreements, terms, covenants and conditions of this Lease, (iii) any such mortgage shall reserve to the DPL prior right, in the event of Lessee's default under the same and after notice of the same character and duration as required to be given to Lessee, to correct the default or to purchase the same and terminate this Lease; and (iv) such mortgage shall contain the following provisions:

> This instrument is executed upon condition that (unless this condition be released or waived by the DPL or its successors in interest by an instrument in writing), no purchaser or transferee of said Lease at any foreclosure sale hereunder, or other transfer authorized by law by reason of a default hereunder where no foreclosure sale is required, shall, as a result of such sale or transfer, acquire any right, title or interest in or to said Lease or the leasehold estate hereby mortgaged unless (i) the DPL shall receive written notice of such sale or transfer of said Lease within fifteen (15) days after the effective date of such sale or transfer and (ii) a duplicate original copy of the instrument or instruments used to effect such sale or transfer shall be delivered to the DPL within thirty (30) days after the execution and delivery thereof.

Any mortgage entered into shall be in strict compliance with all applicable laws and regulations, including mortgage security instrument laws, or applicable constitutional provisions, in order to be valid and enforceable. The loan secured by this leasehold mortgage shall not exceed the appraised value of the Premises. All funds received pursuant to any mortgage of the leasehold property shall be expended only for leasehold improvements within the Northern Mariana Islands.

ARTICLE 18. RIGHTS OF LEASEHOLD MORTGAGEES

If the Lessee or the Lessee's successors or assigns shall mortgage this Lease or its interest in the Premises in accordance with the provisions of this Lease, then so long as any such leasehold mortgage as hereinafter defined shall remain unsatisfied of record, the following provisions shall apply:

A. Notice to Mortgagee. The DPL shall serve upon the Lessee any notice of default pursuant to the provisions of Article 27 or any other notice under the provisions of or with respect to this Lease. The Lessee shall thereafter serve a copy of such notice upon the holder of the then existing mortgage of this Lease of the Premises. Service of such notice of default upon the Lessee shall be deemed as service on the mortgagee who shall thereafter have the same period as the Lessee for remedying the default or causing the same to be remedied, as is given the Lessee after service of such notice upon it.

B. Remedy. Such leasehold mortgagee of this Lease or the Premises, in case the Lessee shall be in default hereunder, shall, within the period and otherwise as herein provided have the right to remedy such default, or cause the same to be remedied, and the DPL shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been performed by the Lessee.

C. Diligent Prosecution. No default on the part of Lessee in the performance of work required to be performed, or acts to be done, or conditions to be remedied, shall be deemed to exist, if steps shall, in good faith, have been commenced promptly to rectify the same and shall be prosecuted to completion with diligence and continuity in accordance with Article 27 hereof, on "Default", unless otherwise specified in this Lease.

D. Termination. Notwithstanding while the leasehold mortgage remains unsatisfied of record, if any event or events shall occur which shall entitle the DPL to terminate this Lease, and if before the expiration of thirty (30) days after the date of service of notice of termination by the DPL all rent and other payments herein provided for then in default is fully paid, and the Lessee shall have complied or shall be engaged in the work of complying with all the other requirements of this Lease, if any, then in default, then in such event the DPL shall not be entitled to terminate this Lease, and any notice of termination theretofore given shall be void and of no force or effect, provided, however, nothing herein contained shall in any way affect, diminish or impair the right of DPL to terminate this Lease or to enforce any other subsequent default in the performance of any of the obligations of the Lessee hereunder.

E. Notice of Termination. In the event of the termination of this Lease prior to the natural expiration of the term hereof, whether by summary proceedings to dispossess, service of notice to terminate or otherwise, due to default of the Lessee as provided in Article 27 hereof, or any other default of the Lessee, the DPL shall serve upon the holder of the then existing mortgage on this Lease or the Premises written notice of such termination. Nothing herein contained shall release the Lessee from any of its obligations under this Lease, which may not have been discharged or fully performed by any mortgagee of this Lease or the Premises, or its designee.

F. First Mortgage Only. Whenever reference is made herein to the holder of the mortgage on this Lease or the Premises, the same shall be deemed to refer only to the holder of the first record mortgage on this Lease or the Premises, if any, as shown by the records of the Commonwealth Recorder's office. Notice of such mortgage shall be sent to the DPL by certified or registered mail, and include a copy of the recorded mortgage

certified by the Commonwealth Recorder's office as to the date and time of recordation. Any notice or other communication to any such mortgagee by the DPL shall be in writing and shall be served either personally or by certified or registered airmail address to such holder or mortgagee at his/her address appearing on such records or at such other address as may have been designated by notice in writing from such holder or mortgagee to the party serving such notice of communications. Nothing contained in this Article shall be construed so as to require the DPL to serve notices upon or recognize any leasehold mortgagees other than the holder or such first mortgage on this Lease or the Premises, as aforesaid.

ARTICLE 19. STORM, FIRE AND DAMAGE INSURANCE

The Lessee shall procure upon the Commencement Date and shall continue to maintain in force during the entire Term of this Lease or any extension thereof, storm (typhoon) fire and damage insurance for the Premises with a company or companies authorized to do business in the Northern Mariana Islands, with extended coverage endorsements jointly in the names of the Lessee and the DPL, covering the full insurable value of all improvements on the Premises, subject to appropriate co-insurance provisions (no greater than 10%). The policy shall contain a clause requiring that the DPL be given thirty (30) days notice prior to any cancellation or termination of the policy. A copy of such policy or policies or an acceptable certificate shall be deposited with the DPL within thirty (30) days of the same obtained by the Lessee. The Lessee shall pay all premiums and other charges payable in connection with insurance carried by the Lessee. In the event of damage to any permanent improvement on the premises, the Lessee shall reconstruct such improvement in compliance with applicable laws, ordinances, and regulations and in accordance with the applicable provisions of this Lease. Such reconstruction shall commence within six (6) months after the damage occurs and shall be pursued diligently and completed within one (1) year of the occurrence. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all permanent improvements on the Premises during the last five (5) years of the term of this Lease, the Lessee for ninety (90) days shall have the option to agree to reconstruct the damaged improvements. Should the Lessee fail to notify the DPL in writing of the exercise of its option to reconstruct within ninety (90) days of the occurrence of damage, the Premises shall be cleared at the Lessee's expense and upon completion of such clearing this Lease shall terminate. In the event Lessee shall elect not to rebuild damaged improvements during the last five-year term of the Lease, all insurance proceeds accruing as a result of the fire or damage, shall be for the sole benefit of and made payable to the DPL, or its lawful successors and assigns. Any damages incurred or suffered by any sublessee, assignee, mortgagee, or otherwise as a result of such termination shall be borne solely by the Lessee.

ARTICLE 20. LIABILITY INSURANCE

The Lessee shall, from the Commencement Date of this Lease, procure and maintain in force during the entire term of this Lease or any extension thereof, at its sole expense, commercial general liability insurance (all risk) for the Premises and operations conducted thereon, with the DPL and the CNMI Government as named co-insured, in a company or companies authorized to do business in the Northern Mariana Islands, with a minimum coverage of ~~$$1,000,000 per occurrence / $5,000,000~~ $1.000.000 in the aggregate or such higher amounts as the DPL may reasonably require. Copies of such policies shall be delivered to the DPL within thirty (30) days of their issuance, and shall contain a clause requiring at least thirty (30) days' written notice shall be given to the DPL prior to cancellation or refusal to renew any such policies. Lessee agrees that if such insurance policies are not kept in force during the entire term of this Lease, the DPL may procure the necessary insurance, pay the premium therefore, and such premium shall be repaid to the DPL immediately upon the DPL's demand.

All insurance obtained by the Lessee in compliance with this Lease shall be obtained from reputable companies acceptable to the DPL.

ARTICLE 21. NOTICES

Except as otherwise specified herein, all notices required or permitted under this Lease shall be in writing and shall be delivered in person or deposited in the United States mail in an envelope addressed to the proper party, certified or registered mail, postage prepaid as follows:

DPL: Department of Public Lands
P.O. Box 500380
Saipan, MP 96950

LESSEE: [Input from Lease Data Sheet]

or at such other address as the DPL or Lessee may from time to time specify in writing. All notices shall be deemed delivered (1) on the date personal delivery is made, or (2) on the date falling three (3) days after the date of the post mark by the U.S. Post Office of any mail or notice properly addressed and containing sufficient postage.

ARTICLE 22: RESERVATION OF EASEMENTS/MINERAL RIGHTS

This Lease shall be subject to all existing easements, roadways, and rights-of-way across or through the Premises. The DPL and the CNMI Government retain the right at all times to cause the construction, maintenance, operation or repair of public utilities or parts thereof on the premises, including, but not necessarily limited to, electric power transmission, telegraph, telephone and pipelines, and for roads and other community projects. Lessee shall be entitled to no compensation from the DPL or the CNMI government for

such uses of the Premises. The DPL hereby reserves all rights to minerals and resources on the Premises, including the right of access to and use of such parts of the surface of the Premises as may be necessary for the mining and saving of said minerals. The right of ingress to and egress from the Premises upon which public utilities and other improvements have been constructed, and for the purposes of inspection by the DPL, as well as for the performance of official duties in the maintenance, operation and repair of such utilities and other improvements is hereby reserved.

ARTICLE 23. RIGHT OF INSPECTION; INGRESS/EGRESS

A. The DPL, its agents, and representatives shall have, upon reasonable notice, the right to enter the Premises at any time for inspection purposes in order to determine whether the provisions of the Lease are being complied with by the Lessee, to serve notices required under this Lease, or for any other purpose deemed appropriate by the DPL. In addition, DPL shall have the right to inspect and examine all the books, records, documents, and accounts of the Lessee or its sublessees, from time to time upon request.

B. The DPL reserves to the CNMI Government the right to order cessation of all operations on the Premises until further notice should the CNMI Government, any agency thereof, or the DPL determine the Lessee is not exercising a high degree of care in protecting the safety of persons and property in the conduct of its activities on the Premises.

Regardless of the above provisions, it always remains the sole responsibility and duty of the Lessee to ensure that the operation is operated in a safe and healthful manner.

ARTICLE 24. CONDEMNATION

The DPL and Lessee covenant and agree that in the event the whole property hereby leased shall be taken in condemnation proceedings or by any right of eminent domain, or otherwise, for public purposes, then and on the happening of any such event, the DPL or Lessee, may terminate this Lease and the Term hereby granted and all the rights of the Lessee hereunder, and the rent shall be paid up to the date of such condemnation or termination and any unearned rent paid in advance by the Lessee shall be refunded pro rata. In the event any portion of the property hereby leased is condemned or taken by right of eminent domain or otherwise for public purposes, thereby rendering the leased property unsuitable for the purpose of Lessee as stated in Article 2 above, then and on the happening of such event Lessee may terminate this Lease and the Term hereby granted, and all the rights of the Lessee hereunder and the rent shall be paid up to the date of such termination or condemnation and any unearned rent paid in advance by the Lessee shall be refunded pro rata. If Lessee does not terminate this Lease upon such event, then the rent shall be reduced in proportion to the land taken as such bears to the total area of land leased. The DPL and the Lessee may each independently file separate claims

in such proceedings for the purpose of having the value of their respective interests determined, and the award shall be paid accordingly; but if the public or governmental authorities shall object or refuse to permit separate claims to be proved and/or distributed in such manner, the DPL will prosecute all claims for damages to the Premises on behalf of both the DPL and the Lessee (and authority to do so is hereby granted), and after deducting all reasonable expenses incurred by the DPL incident thereto, the balance of said award shall be divided between the DPL and the Lessee as established in that proceeding. In the event the DPL prosecutes the claim on behalf of both parties hereto, all such awards shall be paid to the DPL for the account of the DPL and Lessee as hereinbefore provided.

ARTICLE 25. COVENANT AGAINST DISCRIMINATION

The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, or a physical handicap, or as provided by Commonwealth or Federal laws.

ARTICLE 26. ABANDONMENT / UNDERUTILIZATION OF PREMISES

Should the Lessee fail to use the Premises for the purpose set forth in this Lease for a consecutive period of ninety (90) days without securing the written consent of the DPL, the Lessee shall be deemed to have abandoned the Premises, so that in such event this Lease may, at the option of the DPL, be terminated pursuant to the provisions of Article 27 hereof without further notice to the Lessee.

In the event of a use other than the permitted use set forth on the Lease Data Sheet, or utilization of the Premises that fails to comport with the conceptual design upon which this Lease was based, DPL may recapture all or portions of properties under lease when such lands may have a higher and better use than as actually being used or developed by Lessee. In such case Lessor shall give notice to Lessee and an opportunity to cure or within sixty (60) days reach agreement with the DPL on a proposed course of action to cure or such non-conforming or underutilized portions of the premises shall revert to the DPL.

ARTICLE 27. DEFAULT

Time is of the essence and Lessee shall automatically be in default of this Lease if:

A. Failure to pay. Lessee shall fail to pay any installment or rent hereby reserved or shall fail to pay any taxes or other charges required to be paid by Lessee within thirty (30) days after the due date under the terms of this Lease.

B. Other Breach of Lease. Lessee shall breach any term, provision or covenant of this lease, other than the payment of rent, taxes, or other charges, and fails to cure such breach within thirty (30) days from and after written notice from the DPL.

C. Insolvency or Bankruptcy. Lessee, its successors and assigns, becomes insolvent or file for relief under the United States Bankruptcy Code.

D. Abandonment. Lessee abandons the Premises as provided in Article 26.

Upon the occurrence of Lessee's default of this Lease as described above, all Lessee's rights under this Lease are terminated, including, but not necessarily limited to Lessee's right to use the Premises. Any notices, as may be required by law or this Lease, shall be delivered as provided by Article 21 of this lease.

ARTICLE 28. REMEDIES

Upon termination of Lessee's rights under this Lease pursuant to Article 27, the DPL may terminate this Lease and may, upon fifteen (15) days written notice, enter in, into and upon the leased premises and take possession of all buildings, fixtures and improvements, and evict Lessee without liability of trespass. The remedies herein shall not prejudice the DPL's other rights and remedies at law or equity.

ARTICLE 29. ACCORD AND SATISFACTION

No payment by Lessee or receipt by the DPL of a lesser amount than the annual rent herein stipulated shall be deemed to be other than on account of rents due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent be deemed an accord and satisfaction, and the DPL may accept such check or payment without prejudice to the DPL's right to recover the balance of such rent or pursue any other remedy provided in this lease. In the event that the rent or any other monies which are due hereunder by Lessee are delinquent, the DPL may, upon the receipt of any payments, apply them to any account or period it shall determine in its discretion.

ARTICLE 30. WAIVER OF BREACH

Waiver by the DPL of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of rent by the DPL shall not be deemed to be a waiver of any of the terms or conditions including the remedies of DPL hereof. No covenant herein shall be deemed waived by the DPL unless such waiver is in writing by the DPL.

ARTICLE 31. EXPENSE OF ENFORCEMENT

If an action is brought by the DPL for rent or any other sums of money due under this Lease, or if any action is brought by the DPL to enforce performance of any of the covenants and/or conditions of this Lease, Lessee shall pay reasonable attorney's fees to be fixed by the Court as a part of the costs in any action. Use of in-house counsel or the Office of Attorney General shall not be a basis to reduce or avoid an award of such costs. In such event, fees shall be calculated by multiplying the prevailing hourly rate for private counsel in the Commonwealth by the reasonable number of hours spent in connection with such enforcement activities.

ARTICLE 32. INDEMNIFY, DEFEND AND HOLD HARMLESS

Lessee hereby releases and forever discharges and agrees to defend, indemnify and hold harmless the DPL, the CNMI Government, their successors, employees and assigns, from any and all injury or loss and all liability for injury or loss to persons or property which occur on the Premises or which arise out of or in connection with any activities contemplated under this Lease during the Term of this Lease, any extension thereto or during any holdover by Lessee whether or not such claims, demands or actions are rightfully or wrongfully brought or filed and against all costs incurred by the DPL, the CNMI Government, their successors, employees and assigns therein. In case a claim should be brought or an action filed with respect to the subject of indemnity herein, Lessee agrees the DPL, the CNMI Government, their successors, employees and assigns may employ attorneys of their own selection to appear and defend the claim or action on their behalf, at the expense of the Lessee. The DPL, the CNMI Government, their successors, employees and assigns, at their own option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against them.

ARTICLE 33. QUIET ENJOYMENT

The DPL covenants that the Lessee, upon paying the rent required herein and upon fulfilling all the conditions and agreements required of the Lessee, shall and may lawfully, peacefully and quietly have, hold, use, occupy and possess and enjoy the property during the Term agreed upon without any suit, hindrance, eviction, ejection, molestation, or interruption whatsoever of or by the DPL, or by any other person lawfully claiming by, from, under or against the DPL.

ARTICLE 34. GOVERNMENT REQUIREMENT

Lessee shall procure all licenses, certificates, permits, and other required authorizations from any and all other governmental authorities having jurisdiction over the Operation of the Lessee under this Lease. Lessee shall provide the DPL with copies of all such licenses, certificates, permits and

other required authorizations from other governmental authorities within three (3) months after the Commencement Date of this Lease.

ARTICLE 35. UNLAWFUL USE AND COMPLIANCE WITH LAWS

Lessee covenants and agrees not to use or cause or permit to be used any part of the Premises for any unlawful conduct or purpose. Lessee agrees to comply with all property, building, health, sanitation, safety and other laws and regulations of the Commonwealth of the Northern Mariana Islands, which are in effect or which may hereafter become effective.

ARTICLE 36: HOLDOVER CLAUSE

If the Lessee fails to vacate the Premises upon the expiration, termination or cancellation of this Lease, Lessee shall be deemed a holdover Lessee. Such holdover Lessee shall be obligated to pay the DPL a holdover fee during the holdover period of not less than 150% of the monthly-prorated Base Rent and Additional Rent for the Five Year Period immediately preceding the holder period as provided in Article 5A. Payment of such liquidated damages shall in no way constitute a limitation upon any other rights or remedies the DPL may be entitled to pursue for violation of the Lease, for trespass or illegal possession or for any other cause of action arising out of holdover Lessee's failure to vacate the Premises including the right to evict the Lessee without court action, and the cost thereof to be paid by the Lessee.

ARTICLE 37. CONDITION OF PREMISES

The Lessee acknowledges that it has examined the Premises prior to the making of this Lease and knows the conditions thereof, and that no representations or warranties other than those expressed herein have been made by the DPL. Lessee hereby accepts the Premises as-is in their present condition at the Commencement Date of this Lease.

ARTICLE 38. VACATING THE PREMISES

Upon the expiration or earlier termination or cancellation of the Lease, the Lessee shall quietly and peacefully vacate the Premises and surrender the possession thereof. The DPL may, at its option, require the removal of all improvements and property on the Premises, or it may require all improvements, except removable personal property, trade fixtures and equipment, remain on the Premises and become the property of the DPL after termination of this Lease. Upon the failure or neglect of the Lessee to remove her property from the Premises or restore the Premises, the DPL, its officers or agents, may enter the Premises and remove all persons and property therefrom without recourse to any action or proceeding at law or in equity. Such removal

and/or restoration shall be at the cost and expense of the Lessee, and no claim for damages of any nature whatsoever against the DPL, the CNMI Government or any officer or agent thereof shall be created by or made on account of such removal.

ARTICLE 39. PUBLIC AUDITOR

This Lease is subject to 1 CMC § 7845. The Lessee shall provide, upon request of the Public Auditor of the Commonwealth all records and reports, and shall allow audit, inspection, access and the right to copy her books, records, documents, correspondence, and any other data and material relating to this Lease, to the Public Auditor, and do any other acts required under 1 CMC § 7845. This right of access, inspections, and copying shall continue until the expiration of three (3) years after the final payment under the Lease is made, or such other time as set forth in 1 CMC § 7845.

ARTICLE 40. GENERAL PROVISIONS AND DEFINITIONS

A. Waiver. No waiver of any default of the Lessee hereunder shall be implied from any omission by the DPL to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect the default other than the default specified in the express waiver, and that only for the time and to the extent therein stated. One or more waivers of any covenant, term or condition of this Lease by the DPL shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the DPL to or of any act by the Lessee requiring the DPL's consent or approval shall not be deemed to waive or render unnecessary the DPL's consent or approval to or of any subsequent or similar acts by the Lessee. The acceptance of Lease fees by the DPL shall not be deemed to be a waiver of any of the terms or conditions, including the remedies of the DPL. No covenant of this Lease shall be deemed waived by either party unless such waiver is in writing and signed by the party waiving the covenant.

B. Agreement Complete. It is hereby expressly agreed that this Lease, together with the exhibits attached hereto, contains all of the terms, covenants, conditions and agreements between the parties hereto relating in any manner to the use and occupancy of the Premises, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein and that there are no collateral agreements, stipulations, promises or understandings of any nature whatsoever between the parties hereto relating in any manner to the use and occupancy of the Premises, and none shall be valid or of any force or effect, and that the terms, covenants, conditions and provisions of this Lease cannot be altered, changed, modified or added to except in writing signed by the parties hereto.

C. Interpretation. The language in all parts of this Lease shall be in all cases construed simply, according to its fair meaning, and not strictly for or against the DPL or the Lessee. Captions and paragraph headings contained herein are for convenience and reference only, and shall not be deemed to limit or in any manner restrict the contents of the paragraph to which they relate.

D. DPL's Representative. The authorized representative of the DPL for purposes of this Lease shall be the Secretary of the Department of Public Lands or his/her designee.

E. Lessee's Representative. The authorized representative of the Lessee for purposes of this lease shall be as set forth on the Lease Data Sheet.

F. Law Governing. This Lease shall be governed by the laws and regulations of the Commonwealth of the Northern Mariana Islands, both as to performance and interpretation therein. If any provision of this Lease shall be held invalid under the laws of the Commonwealth of the Northern Mariana Islands for any reason, the same shall in no way impair the validity of the remaining provisions of this Lease, and the remaining provisions of the Lease shall otherwise remain in full force and effect.

G. Gross Receipts. "Gross Receipts", as that term is used herein, means all income or revenue whatsoever, including money and any other thing of value, received by or paid to the Lessee, its sublessees or concessionaires, or received by or paid to others for the use and benefit of any of the aforementioned, derived from business done, sales made or services rendered from, on, or related to the leased Premises, or derived from the subleasing, sub-renting, permitting, contracting, or other use of the same. The Lessee shall not directly or indirectly divert from inclusion in Gross Receipts any income or revenue whatsoever derived from the leased Premises to any other business or enterprise located elsewhere and all revenues from any attempted or inadvertent diversion shall be calculated as revenue hereunder.

The following items may be deducted from the gross receipts:

1) credits for the exchange of goods or merchandise from the premises to another store or stores owned or operated by the Lessee, its parent or affiliate, where such exchange is made solely for the convenience of business and not for the purpose of consummating a sale previously made directly or indirectly from or upon the Premises;

2) to the extent the same shall have been included in "Gross Receipts", there shall be deducted credits to customers for returned merchandise, merchandise trade-ins, exchanges, and merchandise cancellations;; and

3) the amount derived from the sale or other disposition of fixtures, goodwill, improvements, furnishings, equipment, accessory, appliance, utensils or any other item of property: (i) which is either sold outside the ordinary course of the Lessee's business; or (ii) which is not acquired or held by the Lessee as a stock-in-trade or inventory for resale in the ordinary course of the Lessee's business;.

ARTICLE 41. LEASE AGREEMENT BINDING

This Lease and the covenants, conditions and restrictions hereof shall extend to and be binding upon the parties hereto, their heirs, successors and assigns and to any other person claiming to hold or to exercise any interest by, under or through any of the parties hereto.

ARTICLE 42. ADDITIONAL OBLIGATIONS OF LESSEE

Lessee shall perform all responsibilities, obligations, and duties set forth on the Lease Data Sheet as if set forth within the body of this Lease.

ARTICLE 43. PERSONAL / PARENT COMPANY GUARANTEE

In further consideration for this Lease, Lessee's majority shareholder(s) and parent corporation(s) identified on the Lease Data Sheet, jointly and severally guarantee full performance of all terms and conditions to be performed by Lessee under this Lease including but not limited to, prompt payment of any and all obligations that may arise under this Lease as follows:

A. Guarantors, jointly and severally, will in all respects guarantee the due and proper performance of the Lease and the due observance and prompt performance of all obligations, duties, undertakings, covenants, warranties, and conditions by or on the part of the Lessee contained therein and to be observed and performed by Lessee, which guarantee shall extend to included any variation or addition to the Lease throughout its Term and any permitted extension thereof.

B. If Lessee fails to carry out, observe or perform all any of such obligations, duties undertakings, covenants, warranties and/or conditions under the Lease (unless relieved from the performance of any part of the Lease by statute or by the decision of a court or tribunal of competent jurisdiction) the Guarantors will be jointly and severally liable for and shall indemnify the DPL against all losses, damages, costs and expenses, whatsoever which the Beneficiary may incur by reason or in consequence of any such failure to carry out observe

C. The Guarantors, (or any one of them), shall not be discharged or released from this Guarantee by the occurrence of any one or more of the following:-

1. Any alteration to the nature of extent of the Lease;

2. Any allowance of time, forbearance, indulgence or other concession granted to the Lessee under the Lease or any other compromise or settlement of any dispute between the DPL and the Lessee

3. The liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity or any change in the name, composition or constitution of the Lessee or the Guarantor(s).

D. This Guarantee is a continuing guarantee and accordingly shall remain in operation until all obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Lessee under the Lease shall have been satisfied or performed in full and is in addition to an not in substitution for any other security which the DPL may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Lessee.

E. So long as any sums are payable (contingently or otherwise) by the Lessee to the DPL under the terms of the Lease then the Guarantors shall not exercise any right of set off or counterclaim against the Lessee or any other person or prove in competition with the DPL in respect of any payment by the Guarantors hereunder and in case either Guarantor receives any sum from the Lessee or any other person in respect of any payment of the Guarantors hereunder the respective Guarantor shall hold such monies in trust for the DPL so long as any sums are payable (contingently or otherwise) under this Guarantee.

F. Guarantors will not, without prior written consent of the DPL hold any security from the Lessee or any other person in respect of the Guarantors' liability hereunder or in respect of any liabilities or other obligations of the Lessee to the Guarantors. The Guarantors will hold any security held by it in breach of this provision in trust for the DPL.

G. This Guarantee is in addition to and not in substitution for any present and future guarantee lien or other security held by the DPL. The DPL's rights under this Guarantee are in addition to and not exclusive of those provided by law.

~~Guarrantors~~ Guarantors each agree to waive any corporate protection under the law pertaining to such guarantee of full performance hereunder.

IN WITNESS WHEREOF, the parties hereunto set their respective hands, the date and year first written above.

LESSEE

By:_____ Date:_____

NOW IN CONSIDERATION OF THE SUM OF ONE UNITED STATES DOLLAR ($1.00) (THE RECEIPT AND SUFFICIENCY OF WHICH THE GUARANTORS HEREBY ACKNOWLEDGE) THE GUARANTORS HEREBY COVENANT WITH THE DPL AS IS SET FORTH IN ARTICLE 43 ABOVE.

~~GUARRANTORS~~ GUARANTORS

[ ]

By:_____

Name: _____

Title: President

[ ]

By:_____

Name: _____

Title: President

SCHEDULE 1
Lease Data Sheet

Permitted Purpose of Lease:

Lessee Name:

Form of Business Entity:

Lessee's Representative:

Permitted Purpose of Lease:

Lease Term:

Property Description:

Parent Companies / Guarantors:

Fee Simple Value of Premises (applicable during first 5 years of term):

Base Rent during initial 5 year period (in dollars):

Additional Rent (as percent of BGR):

Security Deposit:

Public Benefit Obligations:

Additional Obligations of Lessee:

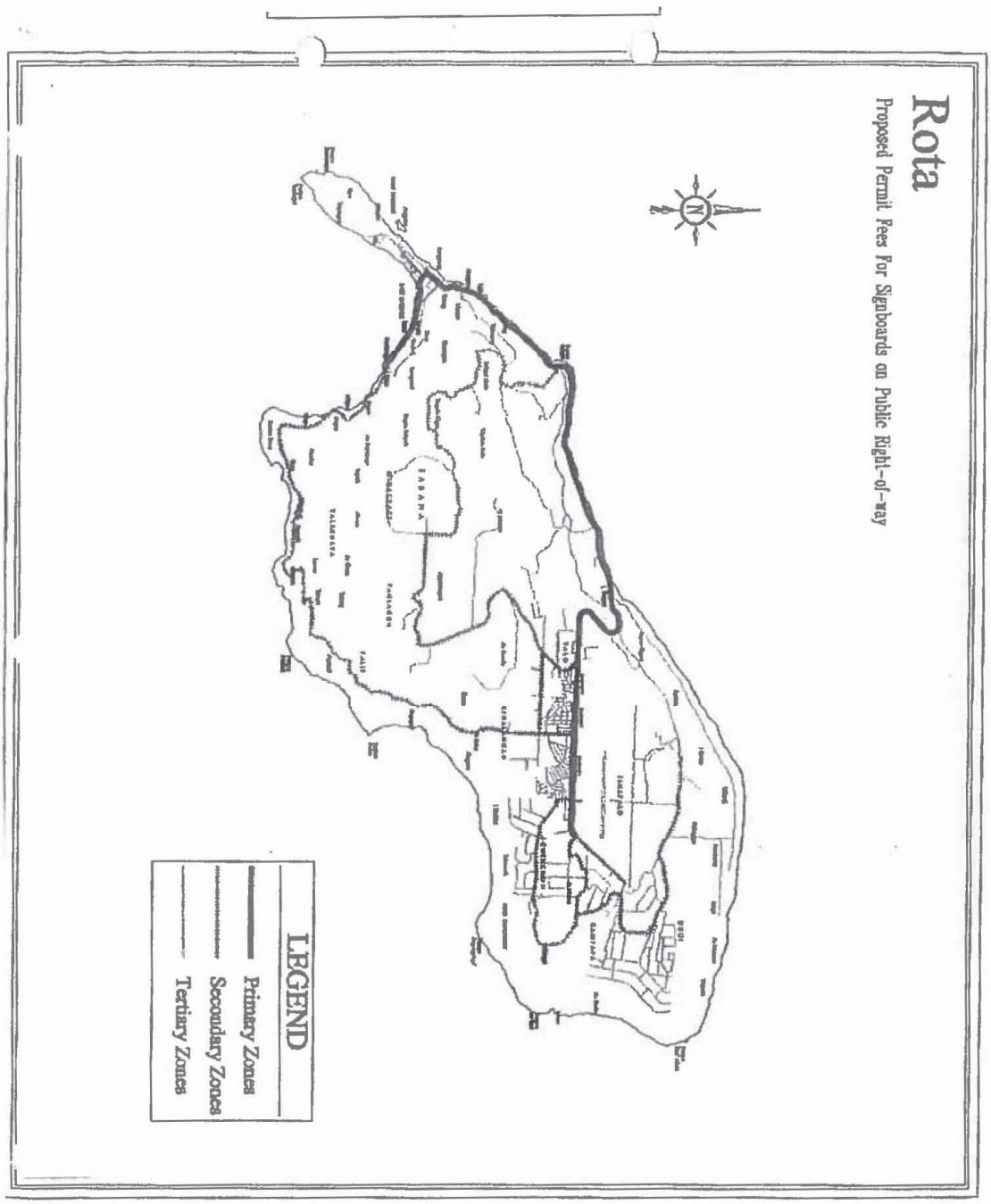
Additional Restrictions upon Lessee:

Specific Authorizations (permitted under body of lease):

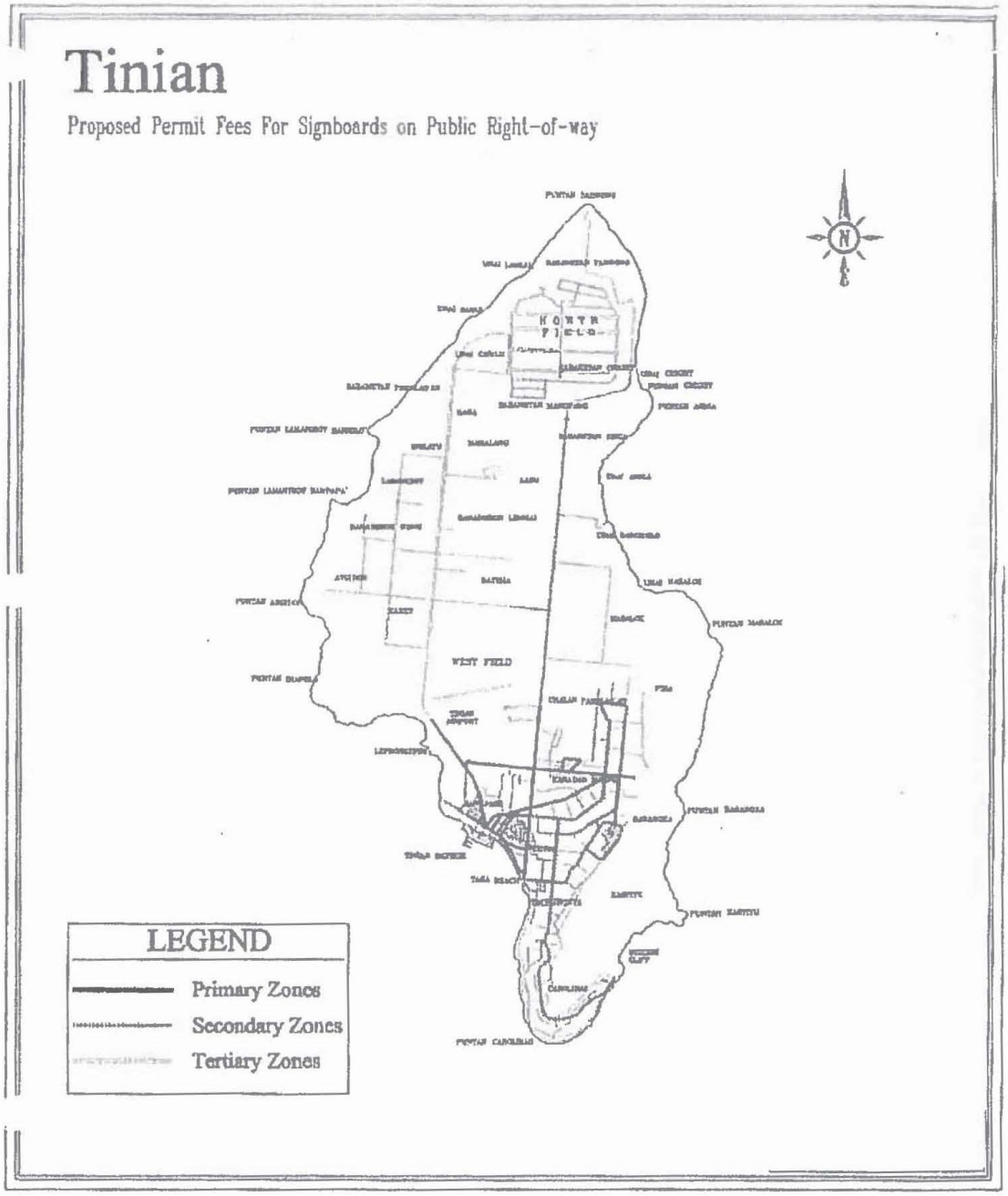
Modified, 1 CMC § 3806(b).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Appendix B



Schedule 145-70-210(c)(1) - Tinian



Modified, 1 CMC § 3806(b).

History: Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission rearranged these maps into Appendix B to fit harmoniously in the Code.

