

CHAPTER 40-60

LAND MANAGEMENT RULES AND REGULATIONS

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Chapter Authority: 2 CMC § 2122(j).

Chapter History: Amdts Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Amdts Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

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

Part 001 - General Provisions

§ 40-60-001 Authority

The rules and regulations in this chapter are promulgated by the Authority in accordance with 2 CMC § 2101, et seq., and subsequent amendments thereto, which, amongst other things, authorizes the Commonwealth Ports Authority to enter into leases granting the privilege of using or improving Commonwealth Ports Authority property for any port-connected purposes and port-related operations

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-002 Purpose

The purpose of this chapter is to establish a procedure for the administration of leasing and permitting of Commonwealth Ports Authority real property.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-003 Applicability

This Chapter applies to all agreements involving the Commonwealth Ports Authority's real property except for those agreements governed under the Commonwealth Ports Authority Concession Regulations.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-004 Definitions

As used in this Chapter the term:

- (a) "Applicant" means any person who submits an application for a land use authorization under this Chapter.
- (b) "Authority" means the Commonwealth Ports Authority.
- (c) "CPA" means the Commonwealth Ports Authority.
- (d) "CPA lands" means lands or interests in lands, including adjacent waters, that are administered by the Commonwealth Ports Authority.
- (e) "Executive Director" means the Executive Director of the Commonwealth Ports Authority or his designee.

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- (f) “Holder” means a person that has a current and effective land use authorization.
- (g) “Land use authorization” means any authorization to use CPA lands issued under this Chapter.
- (h) “Lease” means an authorization to possess and use CPA lands for a fixed period of time.
- (i) “Permit” means a short-term revocable authorization to use CPA land or property for specified purposes.
- (j) “Permittee” means a person that has been awarded a Permit.
- (k) “Proponent” means any person who submits a land use proposal either on his own initiative or in response to a notice for submission of such proposals.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-005 Authorized Use

Any use not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized under this Chapter.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-006 Terms and Conditions

- (a) In all land use authorizations, CPA reserves the right to use CPA lands or to authorize the use of CPA lands by the general public in any way compatible or consistent with the authorized land use and such reservations shall be included as a part of all land use authorizations. Authorized representatives of CPA and other individuals conducting official business on behalf of Federal and CNMI agencies shall, at all times, have the right to enter the premises to conduct such official business. Holders shall not close or otherwise obstruct the use of roads or trails commonly in public use.
- (b) As additional terms and conditions of each land use authorization, each Holder shall:
 - (1) Carry out the purposes of applicable law and regulations issued thereunder;
 - (2) Minimize damage to scenic, cultural, and aesthetic values; fish and wildlife habitats; and otherwise protect the environment;
 - (3) Comply with air and water quality standards established pursuant to applicable Federal or CNMI law; and
 - (4) Comply with CNMI standards for public health and safety, environmental protection, siting, construction, operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.

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(c) Land use authorizations shall also contain such other terms and conditions as the Executive Director considers necessary to:

- (1) Protect or advance CPA, CNMI, and Federal property and economic interests;
- (2) Manage efficiently CPA or CNMI public lands that are subject to the use or adjacent to or occupied by such use;
- (3) Protect lives and property;
- (4) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes;
- (5) Require the use to be located in an area which shall cause the least damage to the environment, taking into consideration feasibility and other relevant factors; and
- (6) Otherwise protect the public interest.

(d) Holders shall not cut, remove, use, or destroy any mineral or vegetative materials, including timber, without an express written authorization explicitly permitting such activities from the Executive Director.

(e) Holders shall not use CPA lands for any purposes other than those specified in the land use authorization without the approval from the Executive Director.

(f) Liability provisions:

(1) Holders and all owners of any interest in, and all affiliates or subsidiaries of any Holder shall pay CPA the full value for all injuries or damage to CPA lands or other property of CPA caused by the Holder or by its employees, agents, or servants, or by a contractor, its employees, agents, or servants. Holders shall be held to standards of strict liability where the Executive Director determines that the activities taking place on the area covered by the land use authorization present a foreseeable hazard or risk of danger to CPA lands or other property of CPA. Strict liability shall not be applied where such damages or injuries result from acts of war or negligence of CPA.

(2) Holders of a land use authorization and all owners of any interest in, and affiliates or subsidiaries of any Holder shall pay third parties the full value of all injuries or damage to life, person, or property caused by the Holder, its employees, agents, or servants or by a contractor, its employees, agents, or servants.

(3) Holders shall indemnify or hold harmless CPA against any liability for damages to life, person or property arising from the unauthorized occupancy or use of the CPA lands under the land use authorization. Where a land use authorization is issued to any entity that has no legal power to assume such liability with respect to damages caused by it to lands or property, such as CNMI government agencies, such entity in lieu thereof shall be required to repair all damages.

(g) The Executive Director may require a bond or other security satisfactory to him/her to insure the fulfillment of these regulations and the terms and conditions of the land use authorization.

(h) Any land use authorization existing on the effective date of this regulation is not affected by this regulation and shall continue to be administered the statutory authority under which it was issued. However, upon execution of an amendment or renewal, the

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holder of a land use authorization shall be considered to have agreed to convert the entire authorization to the current legal authority at the time of approval of the amendment or renewal.

(i) Holders that have complied with the provisions of their land use authorization, may, upon the filing of a request for renewal, be considered the preferred user for a new land use authorization provided that the CPA lands are not needed for another use. Renewal, if granted, shall be subject to new terms and conditions.

(j) Land use authorizations may be transferred in whole or in part but only under the following conditions:

(1) Holders may not transfer, sublease, assign, mortgage, encumber, or otherwise alienate or transfer their land use authorization or any interest therein, except with the express prior written consent of the Executive Director;

(2) The Executive Director may modify the terms and conditions of the land use authorization and the transferee shall agree, in writing, to comply with and be bound by the terms and conditions of the authorization as modified; and

(3) Transfers shall not take effect until approved by the Executive Director.

(k) If CPA lands included in a lease or easement are to be disposed of, the conveyance shall be made subject to the lease or easement. Permits shall be revoked prior to disposal of CPA lands.

Modified, 1 CMC § 3806(g).

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-007 Penalties for Unauthorized Use

(a) Any use, occupancy, or development of CPA lands without authorization under this Chapter shall be considered a trespass. Anyone determined by the Executive Director to be in trespass on CPA lands shall be notified of such trespass and shall be liable to CPA for:

(1) The administrative costs incurred by CPA as a consequence of such trespass; and

(2) A reasonable rental rate, as determined by the Executive Director, for the lands for the current year and past years of trespass; and

(3) Rehabilitating and stabilizing the lands that were the subject of such trespass, or if the person determined to be in trespass does not rehabilitate and stabilize the lands determined to be in trespass within the period set by Executive Director in the notice, he shall be liable for the costs incurred by CPA in rehabilitating and stabilizing such lands.

(b) In addition, the following penalties may be assessed by the Executive Director for a trespass not timely resolved:

(1) For non-willful trespass, the penalty shall be twice the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years; and

(2) For knowing and willful trespass, three times the fair market value which has accrued since the inception of the trespass, not to exceed a total of 6 years.

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(c) For any person found to be in trespass on the CPA lands under this section, the Executive Director may take action under § 40-60-008 to terminate, revoke, or cancel any land use authorization issued to such person under this Chapter.

(d) Failure to satisfy the liability and penalty requirements imposed under this section for unauthorized use of CPA lands may result in denial of a use authorization under this Chapter.

(e) Any person who knowingly and willfully uses CPA lands without the authorizations required by this Chapter, may, in addition to the civil penalties provided for in this part, be subject to a fine of not more than \$1,000.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-008 Termination and Suspension

(a) Land use authorizations may be terminated under the following circumstances:

(1) If a land use authorization provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the land use authorization shall thereupon automatically terminate by operation of law upon the occurrence of such event.

(2) Noncompliance with applicable law, regulations, or terms and conditions of the land use authorization.

(3) Failure of the Holder to use the land use authorization for the purpose for which it was authorized. Failure to construct or nonuse for any continuous six-month period shall constitute a presumption of abandonment and termination.

(4) Mutual agreement that the land use authorization should be terminated.

(5) If payment is on a monthly basis, nonpayment of rent for two consecutive months, following notice of payment due.

(6) So that the public lands covered by the permit can be disposed of or used for any other purpose.

(b)(1) Upon determination that there is noncompliance with the terms and conditions of a land use authorization which adversely affects the public health, safety or welfare or the environment, the Executive Director shall issue an immediate temporary suspension.

(2) The Executive Director may give an immediate temporary suspension order orally or in writing at the site of the activity to the Holder or a contractor or subcontractor of the Holder, or to any representative, agent, employee, or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the Executive Director shall confirm the order by a written notice to the Holder addressed to the Holder or the Holder's designated agent. The Executive Director may also take such action considered necessary to require correction of such defects.

(3) The Executive Director may order immediate temporary suspension of an activity regardless of any action that has been or is being taken by another Federal agency or CNMI agency.

(4) An order of temporary suspension of activities shall remain effective until the Executive Director issues an order permitting resumption of activities.

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(5) Any time after an order of suspension has been issued, the Holder may file with the Executive Director a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(6) The Executive Director may render an order to either grant or deny the request to resume within 10 working days of the date the request is filed. If the Executive Director does not render an order on the request within 10 working days, the request shall be considered denied.

(c) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a land use authorization, the Executive Director shall give written notice to the Holder of the legal grounds for such action and shall give the Holder a reasonable time to correct any noncompliance.

(2) After due notice of termination or suspension to the Holder of a land use authorization, if noncompliance still exists after a reasonable time, the Executive Director shall give written notice to the Holder that the land use authorization is suspended or terminated.

(3) The Executive Director shall lift suspension order when he determines that the violation causing such suspension has been rectified.

(d) Upon termination, revocation, or cancellation of a land use authorization, the Holder shall remove all structures and improvements except those owned by the Authority within 30 days of the notice of termination, revocation, or cancellation and shall restore the site to its pre-use condition, unless otherwise agreed upon in writing or in the land use authorization. If the Holder fails to remove all such structures or improvements within a reasonable period, they shall become the property of the Authority, but that shall not relieve the Holder of liability for the cost of their removal and restoration of the site.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-009 Applicable Laws

This Chapter and any land use authorization issued hereunder shall be interpreted in accordance with the laws of the Commonwealth of the Northern Mariana Islands.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-010 Severability

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

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-011 Attorney's Fees

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In the event CPA files any civil action with a court of competent jurisdiction to enforce any term or provision of this Chapter or any land use authorization, including any lease or permit, issued hereunder, or for breach of any such term or condition, Holder shall pay CPA its reasonable attorney's fees and court costs, if CPA is successful.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-015 Repealed

[Repealed].

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Part 100 - Leases

§ 40-60-101 Policy

(a) Leases shall be used to authorize use of CPA lands involving, among other things, substantial construction, development, or land improvement. A lease conveys a possessory interest and is revocable only in accordance with its terms and the applicable provisions of this Chapter.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-102 Long-term Leases

(a) Any lease with a term of more than five years must be approved by the Board of Directors of the Commonwealth Ports Authority to become effective.

(b) No term of any lease shall exceed the maximum term allowable by law.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-103 Short-term Leases

(a) The Executive Director may approve and execute leases with a term of five years or less. For leases of more than five years, approval by the Board of Directors of the Commonwealth Ports Authority is required.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

Subpart A - Unsolicited Proposals

§ 40-60-104 Unsolicited Proposals

(a) Land use authorizations may be offered under this Subpart on a negotiated, non-competitive basis, when, in the judgement of the Executive Director, no competitive

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interests or equities exist, such as prior use of the lands, or where competitive bidding would represent unfair competitive and economic disadvantage to the originator of the unique land use concept. The land use authorization shall not be for less than fair market value.

(b) Any Proponent who seeks to use CPA lands may contact the Executive Director to discuss the land use proposal. This contact should be made as early as possible so that administrative requirements and potential conflicts with other land uses can be identified.

(c) The Executive Director will discuss with the Proponent the proposal, the suitability or non-suitability of the requested land use based on the Authority's preliminary examination of existing land use plans, where available, local zoning ordinances, and any other pertinent information. The Executive Director will discuss the general requirements for the types of land use which may be granted. The Executive Director may request additional information, including, but not limited to: the Proponent's qualifications; associated clearance and other permits or licenses which may be required; and environmental and management considerations.

(d) A proposal for a land use authorization shall be submitted in writing to the CPA Administrative Office on the island the land is located.

(e) The submission of a proposal gives no right to use CPA lands.

Modified, 1 CMC § 3806(a).

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-105 Application for New Permit

(a) Proposals for a land use authorization shall include a description of the proposed land use in sufficient detail to enable the Executive Director to evaluate the feasibility of the proposed land use; the impacts, if any, on the environment, the public or other benefits for the proposed land use; the approximate cost of the proposal; any threat to the public health and safety posed by the proposal; and whether the proposal is, in the Proponent's opinion, in conformance with CPA plans, programs, and policies for the CPA lands covered by the proposal. The description shall include but not be limited to:

- (1) Details of the proposed uses and activities;
- (2) A description of all facilities for which authorization is sought, including access needs and special types of easements that may be needed;
- (3) A map of sufficient scale to allow all of the required information to be legible;
- (4) A legal description of primary and alternative project locations; and
- (5) A schedule for construction of any facilities.

(b) The proposal shall include the name, legal mailing address, and telephone number of the land use Proponent.

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History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-106 Proposal Review

(a) A land use proposal shall, upon submission, be reviewed by the Executive Director to determine if the CPA lands covered by the proposal are appropriate for the proposed land use.

(b) If the proposal is found to be appropriate for further consideration, the Executive Director shall examine the proposal and make one of the following determinations:

(1) The proposed land use in conformance with the appropriate land use plan or port masterplan and can be approved;

(2) The proposed land use has not been addressed in an existing land use plan or port masterplan and shall be referred to the CPA Board of Directors for either approval or to proceed under Subpart B of this Part;

(3) The proposed land use is not in conformance with the approved land use plan or port masterplan and may not be approved.

(c)(1) If a proposed land use does not meet the requirements of this Subpart or is found not to be in conformance with the land use plan or port masterplan, the Executive Director shall so advise the Proponent and shall provide a written explanation of the reasons the proposed use does not meet the requirements of this Chapter and/or is not in conformance with an existing land use plan.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

Subpart B - CPA Initiated Land Use Proposals

§ 40-60-107 Notice of Realty Action

(a) Land use authorizations may be offered under this Subpart if, in the judgment of the Executive Director, a competitive interest exists or if no equities, such as prior use of the lands, warrant non-competitive land use authorization. Land use authorizations shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project, and the bid offered. Land use authorizations under this Subpart must be at least at fair market value. Each bidder shall submit information required by the notice of realty action.

(b) A notice of realty action indicating the availability of CPA lands for use shall be issued and published when a determination has been made that such CPA lands are available for a particular use.

(c) The notice shall include the use proposed for the CPA lands and shall notify the public that applications for land use shall be considered.

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(d) The notice of realty action shall be published once a week for 3 weeks in a newspaper of general circulation in the CNMI.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-108 Filing of Applications for Land Use Authorizations

(a) Only after publication of a notice of realty action shall an application for a land use authorization be filed with CPA.

(b) The filing of an application gives no right to use the public lands.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-109 Application Content

(a) Proposals for a land use authorization shall include a reference to the notice of realty action under which the application is filed and a description of the proposed land use in sufficient detail to enable the Executive Director to evaluate the feasibility of the proposed land use, the impacts, if any, on the environment, the public or other benefits for the proposed land use, the approximate cost of the proposal, any threat to the public health and safety posed by the proposed use and whether the proposed use is in conformance with CPA plans, programs, and policies. The description shall include, but not be limited to:

- (1) Details of the proposed uses and activities;
- (2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;
- (3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and
- (4) A schedule for construction of any facilities.

(b) Additional information:

(1) After review of the project description, the Executive Director may require the applicant(s) to fund or take any other action, such as providing studies or additional data, or both, to ensure compliance with other applicable laws and regulations.

(2) An application for the use of CPA lands may require additional private, CNMI, local or other Federal agency licenses, permits, easements, certificates, or other approval documents. The Executive Director may require the applicant to furnish such documents, or proof of application for such documents, as part of the application.

(3) The Executive Director may require evidence that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain and terminate the authorized land use.

(c) The application shall include the name and legal mailing address of the Applicant.

(d) Business Associations. If the Applicant is other than an individual, the application shall include the name and address of an agent authorized to receive notice of actions pertaining to the application.

(e) If any of the information required in this section has already been submitted as part of a land use proposal submitted under Subpart A of this Part, the application need only refer to that proposal by filing date and the office the proposal was previously submitted. The applicant shall certify that there have been no changes in any of the information.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-110 Application Review

Every application shall be reviewed to determine if it conforms to the notice of realty action. If the application does not meet the requirements of this Chapter, the application may be denied, and the Applicant shall be so advised in writing, with an explanation.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-111 Applicant Selection

(a) After review of applications filed, the Executive Director shall select one application for further processing. The Executive Director shall provide public notice of the selection of an Applicant and notify the selected Applicant, in writing, of the selection.

(b) The selected land use Applicant shall submit any additional information that the Executive Director considers necessary to process the land use authorization.

(c) The Executive Director may commence negotiations with the selected Applicant to determine the terms of the land use authorization. If the Executive Director and the selected Applicant cannot come to an agreement as to the terms of the land use authorization within 45 days from the notice of selection, the Executive Director may, but is not required to, select another applicant.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-112 Reimbursement of Costs

(a) When two or more applications are submitted for a land use authorization, each applicant shall be liable for the identifiable costs of processing the application. Where the costs of processing two or more applications cannot be readily identified with particular applications, all applicants shall be liable for such costs, to be divided equally among them.

(b) The selected land use applicant shall reimburse CPA for the reasonable administrative and other costs incurred by CPA in processing a land use authorization application and for the monitoring of construction, operation, maintenance, rehabilitation, or restoration of the facilities or lands.

(c) The Executive Director may, before beginning any processing of a land use authorization application, require payment, as may be needed, to cover the estimated costs of processing the application. Before granting a land use authorization, the Executive

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Director may assess and collect any underpayment of the actual costs of processing after furnishing the applicant with a statement of costs.

(d) A selected applicant who withdraws, in writing, a land use application before a final decision is reached on the authorization is responsible for all costs incurred by CPA in processing the application up to the day that the Executive Director receives notice of the withdrawal and for all costs subsequently incurred by CPA in terminating the proposed land use authorization process. Reimbursement of such costs shall be paid within 30 days of receipt of notice from the Executive Director of the amount due.

(e) The Executive Director may require advanced payments for the monitoring of construction, operation, maintenance, rehabilitation, or restoration of the facilities or lands.

(f) Upon expiration of the land use authorization, the selected applicant shall submit a payment for any unpaid costs incurred or that may be reasonably incurred by CPA for the monitoring of construction, operation, maintenance, rehabilitation, or restoration of the facilities or lands.

(g) If payments, as required by this section, exceeds actual costs to CPA, the Executive Director may issue a refund or adjust the next billing to reflect the overpayment. Neither an Applicant nor a Holder shall offset or otherwise deduct any debt due to or any sum claimed to be owed them by CPA without the prior written approval of the Executive Director.

(h) When through partnership, joint venture, or other business arrangement, more than one person, partnership, corporation, association or other entity jointly make application for a land use authorization, each such party be jointly and severally liable for the costs under this Chapter.

(i) Requests for modification of or addition to the land use authorization or reconstruction or relocation of any authorized facilities shall be treated as a new application for cost recovery purposes and are subject to the cost requirements of this Chapter.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

Part 200 - Temporary Use Permits

§ 40-60-201 Policy

(a) To establish a uniform land use policy regarding the application, review, and award of short-term non-commercial or commercial permits, including Temporary Grazing Permits, Revocable Berthing Permits, CPA Field Permits, and CPA Office Use Permits, to use CPA lands without erecting any permanent improvement thereon.

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

(c) Permits may be used to authorize uses of CPA lands and property. Permits shall not exceed 5 years. Permits convey no possessory interest. Permits are renewable at the discretion of the Executive and may be revoked for any reason whatsoever and for other reasons in accordance with its terms and applicable provisions of this Chapter.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-202 Application for New Permit

Any individual seeking a new permit to use CPA property must file a completed application for a new temporary use permit with the Executive Director. Such person shall obtain the appropriate application form from the Authority.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-203 Application Form

The Executive Director shall make available permit application form for the temporary use of CPA lands. Application forms shall be made available at the Authority's offices in Saipan, Tinian, and Rota.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-204 Application Fee

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

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-205 Review and Award of Permit

(a) The Executive Director shall review each application for a temporary permit to use CPA land. In approving or denying an application, the Executive Director may consider, among other things, whether the Applicant has previously complied with past CPA-issued permits, the Applicant's ability to successfully carry out the permitted activity, and the Applicant's current ability to comply with the permit terms and conditions and this Chapter. If multiple applications are received and the Applicants appear to equally qualify for a permit, the successful Applicant will be selected by drawing lots.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-206 Permit Not Assignable

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

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-207 Prohibited Uses

(a) Unless provided written authorization by the Executive Director, the following restrictions shall apply to the use of CPA land covered by a temporary use permit:

- (1) No employee barracks shall be constructed on CPA land.
- (2) No residential structure shall be constructed on CPA land.
- (3) No extension of any business other than agricultural/nursery shall be made.
- (4) No mining, drilling, extraction of land, mineral, or soil shall be made on CPA land.
- (5) Permittee shall not use CPA land as a waste deposit or landfill.
- (6) Permittee shall not store explosives, dangerous chemicals, flammable and inflammable liquids or other hazardous materials on CPA land.
- (7) Permittee shall not conduct any hazardous activities on CPA land.
- (8) No permit will be issued for CPA lands within 100 feet from any port perimeter fence.
- (9) Permittee shall not transplant any permanent trees growing on CPA land, such as coconut trees, fruit trees, or breadfruit.
- (10) Permittee shall not use moored balloons, kites, amateur rockets, or unmanned fee balloons within five miles of the boundary of any airport.
- (11) Permittee shall not allow or partake in any political activity.
- (12) Permittee shall not allow or use fireworks.
- (13) Permittee shall not use or allow the use of alcohol.
- (14) Permittee shall not allow or use drones.
- (15) Permittee shall not allow or use all-terrain vehicles.
- (16) Permittee shall not fire any firearms.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-208 Proper Maintenance of CPA Lands

All permittees shall properly maintain CPA lands at all times. A permittee shall not commit any waste of the property nor shall he remove any existing trees, or vegetation without first obtaining written approval from the Executive Director. A permittee shall not allow litter, garbage, or other refuse to accumulate on the property that it damages or destroys.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-209 Utilities

All electrical, water, telephone or other utility services may only be installed after first receiving permission from the Executive Director. All installations are at permittee's expense and must be in permittee's own name. Permittee shall pay any and all utility bills and invoices as they come due. No utility provider shall be allowed to place any lien or

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encumbrance on CPA lands or any fixtures attached thereto as a result of a permittee's failure to pay any sums due for such utility services.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-210 Indemnification and Release of Liability

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

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-211 Unilateral Modification

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

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-212 Monitoring for Compliance

The Authority may conduct regular visual inspections, including unannounced inspections, of the permitted premises and take such measures or actions needed to correct any violation of the permit terms and conditions and this Chapter. The Permittee or others acting for or on behalf of the Permittee shall not prohibit CPA from conducting such inspections.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-213 Renewal

Any renewal application shall be subject to approval by the Executive Director. Permittees seeking renewal must satisfy any and all outstanding payments and obligations due to the Authority before the renewal application is approved. Any Permittee who has complied with the terms of his permit throughout the duration of the permit and is seeking renewal of his permit shall be given priority over other Applicants unless the Authority in its best judgment determines otherwise. Any decision to reject a Permittee's renewal application and to award a new permit to another Applicant must be for good and justifiable reasons and shall not be based on arbitrary or capricious reasons. Any existing Permittee making a renewal application may be allowed to continue the use and occupancy of CPA land described by the canceled permit, pending the final decision of the Authority on the renewal application.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-214 Application Denial and Grievance Appeals

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

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

Subpart A - Temporary Grazing Permits

§ 40-60-215 Permit Fees

Permit fees for Temporary Grazing Permits shall be assessed on a per acreage basis. For any land use not stated below, the Authority may impose a different rate, provided it is reasonable.

- (a) For non-commercial cattle grazing: \$30.00 minimum per hectare per year.
- (b) For non-commercial agriculture (i.e. subsistence farming): \$30.00 minimum per hectare per year.
- (c) For short-term commercial activities: \$30.00 minimum per hectare per year, plus three percent of that portion of Permittee's quarterly business gross revenues attributable to the gross income received by Permittee from commercial agricultural activity on CPA land covered by the permit. Permittee shall submit a copy of his monthly BGRT within thirty days after the end of each month along with any payment due. Permittee shall, at all times, keep complete books and records evidencing all commercial transactions conducted on the permitted land.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-216 Security Deposit

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

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-217 Construction and Improvements

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

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

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

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

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

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

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

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

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

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

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-218 Waiver of Aircraft Noise and Pollution Claims

Permittee shall waive any claim or cause of action for aircraft nuisance, noise pollution, or other nuisance or pollution. Permittee waives any claims for damages suffered for the loss of, or injury to, its property, including crops and livestock, against CPA, any airline, or any aircraft operator conducting business or operating at any airport under the Authority's control.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-219 Application Denial and Grievance Appeals

(a) Notwithstanding any contrary regulation, including § 40-60-008, Temporary Grazing Permits issued under this Subpart may be terminated under any of the following conditions:

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

(2) A party may terminate a permit, to be effective forty-five days after written notice to the other party.

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- (3) Authority shall not be liable to the Permittee for damages suffered due to any early termination of the permit.
- (4) Any permit issued hereunder shall include a waiver of any claim for assistance which might be afforded under the Federal Relocation Assistance Act.
- (5) Upon termination, Permittee shall be solely responsible for removing any temporary improvements within the time allowed in the notice of termination.
- (6) Upon termination, permittee shall be responsible for restoring the land to the satisfaction of the Authority.
- (7) If permittee fails to restore CPA land to the satisfaction of the Authority, the Authority will make such restoration and deduct any and all costs and expenses incurred from the security deposit.
- (8) If the security deposit is insufficient to pay such expenses and costs, permittee shall reimburse the Authority for the additional expenses incurred by the Authority.
- (9) In the event the permittee fails to reimburse the Authority for any costs and expenses incurred, the Authority may file suit for damages to recover such costs and expenses. If successful in such suit, it shall be entitled to recover court costs and attorney's fees incurred.

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021).

§ 40-60-220 Review and Award of Permit [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-225 Appeal of Rejection of Application [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-230 Restrictions on Who May Apply [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Part 300 - Minimum Terms and Conditions of Permits [Deleted]

§ 40-60-301 Uniform Permit [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-305 Term of Permit [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-310 Other Conditions of Renewal [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-315 Rentals [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-320 Security Deposit [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-325 Construction of Improvements [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-330 Restrictions on Use [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-335 Monitoring for Compliance [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-340 Proper Maintenance of CPA Lands [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-345 Utilities [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-350 Permit Not Assignable [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-355 Waiver of Aircraft Noise and Pollution Claims [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-360 Termination [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-365 Indemnification and Release of Liability [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-370 Right to Appeal [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-375 Unilateral Modification [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-380 Attorney's Fees [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Part 400 - Miscellaneous Provisions [Deleted]

§ 40-60-401 Applicable Laws [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-405 Severability [Deleted]

History: Adopted 43 Com. Reg. 47556 (Sept. 28, 2021); Proposed 43 Com. Reg. 46004 (May 28, 2021); Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).