

**CHAPTER 85-10
DIVISION OF AGRICULTURE**

**SUBCHAPTER 85-10.100
KAGMAN FARM PLOT PROGRAM REGULATIONS**

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Chapter Authority: 1 CMC § 2654

Chapter History: Admts Adopted 45 Com. Reg. 49644 (Apr. 28, 2023); Admts Proposed 44 Com. Reg. 49091 (Oct. 28, 2022); Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

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

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 §§ 2651-2691. PL 10-57 repealed and reenacted chapter 13, division 2 of title 1 of the Commonwealth Code, 1 CMC §§ 2651-2691, and statutorily established the Department of Lands and Natural Resources (DLNR) with the structure, duties and responsibilities set forth in the act. See 1 CMC § 2651 and the commission comment thereto.

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§ 85-10.105 Purpose

The purpose of this permit is to established regulations governing the administration and management of the Kagman Farm Plot program at the Division of Agriculture under the Department of Lands and Natural Resources.

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.110 Permit

The permit will show the date, the name of applicant, his or her assigned farm plot, the size of the farm plot, the farm plot number and a map showing the location of the property on the island of Saipan.

(a) This permit shall be subject to all existing easements, roadways, and rights-of-way across or through the permitted property. The DLNR retains all rights of ingress and egress from those portions of the Farm Plot where public utilities and other improvements are located. This Permit shall not impair, and shall not be construed to impair, the DLNR's right to enter the Farm Plot for the following: to construct, maintain, operate, and repair public utilities, or parts thereof (including electric power transmissions, telegraph lines, telephone lines, pipelines, and drainage systems); to construct, maintain, operate, or repair roads; or to perform any other work for a public purpose.

(b) DLNR reserves the rights to all mineral resources and underground resources on the Farm Plot, and retains 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. This permit does not convey any mining rights or any rights in the minerals to the Permittee.

(c) The permit shall be restricted to citizens and nationals of the United States; provided that they are domiciliaries of the Commonwealth, as prescribed by 2 CMC § 4117.

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.115 Non-Assignment of Permit

This permit or any interest therein shall not be assigned or otherwise transferred by Permittee to a corporation, partnership, or other individual. Any purported assignment or transfer of this permit, whether written or verbal, shall be null and void.

Modified, 1 CMC § 3806 (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.120 Nature and Term of Permit

(a) This Permit authorizes the Permittee to enter and use the Farm Plot for farming. This Permit does not in any manner, substance, or form grant any property interest, whether freehold or leasehold, in the Farm Plot, and it shall not be construed to do so.

(b) The term of the Permit shall commence on the date the permit was issued.

Modified, 1 CMC § 3806 (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.125 Annual Permit Fee

(a) The Permittee shall pay a permit fee of \$0.02 per square meter per annum for the use of the Farm Plot. The permittee shall deliver the annual permit fee to the Department of Public Lands. The fee shall be paid by check payable to the Department of Public Lands and the money will be deposited in a special account to be established for this purpose.

(b) The Permittee shall pay the above fee on or before the date of the last signature on this permit; the Permit shall not become effective until the initial payment is made. The Permittee shall make all subsequent yearly payments on the anniversary date of the permit.

(c) Failure to pay the required annual permit fee within 30 days of the due date shall be grounds for termination of the permit.

Modified, 1 CMC § 3806 (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.130 Renewal

(a) This permit may be extended for any term up to five (5) years upon the request of the Permittee and with the approval of DLNR. If the Permittee wishes to renew the permit, the Permittee shall send or otherwise deliver a written request of renewal to the Secretary of DLNR or his designee at least sixty (60) days before the expiration of this permit.

(b) The Secretary of DLNR will not approve the renewal if the Permittee has failed to comply with the conditions of this permit or the general conditions governing the use of farm plots. If the Secretary of DLNR approves the request for renewal, the renewal will take the form of newly executed permit between DLNR and the Permittee, with the terms and conditions and permit fee to be negotiated prior to renewal. DLNR is under no obligation to renew the permit.

Modified, 1 CMC § 3806 (f).

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History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.135 Limitations On Use; Annual Certification

(a) Use and Inspection

(1) The Permittee shall use the Farm Plot for farming purposes in accordance with the conditions of this Permit and the applicable regulations. The Permittee's failure to use the Farm Plot for farming purposes in accordance with the conditions of this permit and the applicable regulations shall be grounds for termination of the Permit.

(2) DLNR shall inspect the Farm Plot at least once per year and annually certify in writing that the Permittee is using the Farm Plot for farming purposes and in accordance with the conditions of this Permit. If DLNR inspects the Farm Plot and determines that the Permittee is not using the Farm Plot in accordance with this Permit, DLNR shall terminate the Permit in accordance with Article 11.

(b) Perennial Crops

(1) Perennial crops include, but are not limited to, the following: coconut, betel nut, citrus fruits, and mango.

(2) The Permittee shall not plant perennial crops on the Farm Plot, unless otherwise excepted by the Director of Agriculture ("Director"). Bananas may be planted along borders of the Farm Plot and around temporary farm buildings only.

(3) The Director may recommend and approve perennial crops to be planted along borders to serve as infield windbreaks, to control soil erosion as part of a conservation plan, to protect water quality, or to conserve water.

(c) Structures and Improvements

(1) The Permittee may not erect temporary or permanent structures on the Farm Plot without first obtaining written permission from the Director. The Director may authorize the Permittee to erect a structure if he or she determines that the structure is consistent with the use of the land for farming purposes. Examples of permissible structures include, but are not necessarily limited to, barns, storage sheds, and concrete water tanks.

(2) Residential structures. Whether temporary or permanent, residential structures are not consistent with use of the land for farming and shall not be erected on the Farm Plot. These structures are prohibited by 2 CMC § 4117.

(3) Outhouses. Outhouse toilets are permissible provided that they are constructed and used in a manner conforming to the sanitation standards established by the Bureau of Environmental Health, Commonwealth Healthcare Corporation. The Permittee must obtain a permit from the community Sanitation Services and the Division of Environmental Quality before beginning construction of an outhouse.

(4) Hydroponic Facilities. Hydroponic facilities may be built in areas where the Director determines that the soil is not of sufficient depth to make crop farming feasible. The Permittee's permit must specifically provide that hydroponic farming is permitted. Prior to beginning construction of hydroponic facilities, the Permittee must obtain all necessary permits and the approval of the Secretary of DLNR. Permittee shall bear all costs associated with building hydroponic facilities on the Farm Plot.

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(d) Pesticides

(1) If Permittee uses pesticides and/or fertilizers, such use shall be in compliance with the rules and regulations set forth by the Bureau of Environmental and Coastal Quality (BECQ).

(2) Permittee must ensure that BECQ locally certifies all pesticide applicators that he or she is using on their crops. Permittee shall submit to the Division of Agriculture Plant Industry Office a copy of the certification(s) of the pesticides applicator(s). Any use of restricted pesticides on the premises of the Permittee without a valid certification required by the Bureau of Environmental and Coastal Quality is strictly prohibited and could result in termination of the Permit.

(3) Pesticides, insecticides, fungicides, or other chemicals must be secured in a storage area to which no unauthorized persons can gain access. Pesticides should be stored separately from fertilizers. Pesticides can potentially contaminate fertilizers if they are stored together. All empty pesticide containers, such as cans and bottles as well as excess pesticides, must be stored in a secured structure until they can be properly disposed of. The Permittee is solely responsible for preventing poisoning or other injury to a person who comes into the farm plot, whether or not he is authorized or invited to do so. Neither the Commonwealth Government nor any of its agents assume any responsibility or liability arising from or related to the storage or use of chemicals by Permittee.

(e) Animals

(1) Raising of livestock, poultry, and domestic pets within the defined Farm Plots is prohibited as the most appropriate use for the farm plots is for agricultural purposes.

Modified, 1 CMC § 3806 (a), (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.140 Maintenance of Plots

(a) Safe and Sanitary

(1) Permittee shall maintain his or her assigned Farm Plot in a safe and sanitary condition.

(2) Rodent control: Permittee shall be responsible for rodent control on the assigned Farm Plot and is expected to participate in Rodent Control Programs in cooperation with the Division of Agriculture. Crop residue should be promptly plowed or disked under, and trash shall be removed regularly to minimize rodent populations.

(3) Conservation Plan: Each Permittee will develop and implement a conservation plan that is mutually agreed upon by the Permittee, Division of Agriculture, and the Saipan and Northern Islands Soil and Water Conservation District (SWCD). The Permittee shall develop a conservation plan to address erosion control, protection of water, conservation of water, and benefits derived from other natural resources. Technical assistance in making a conservation plan can be obtained from the Natural Resources Conservation Services (NRCS), Saipan and Northern Islands Soil and Water Conservation District (SWCD).

(A) A total resource management system approach is taken with the interdependency of soil, water, and relates plant and animal resource being recognized. Environmentally

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safe systems, which are in harmony with the area, are sought.

(B) Permanent conservation practices such as windbreakers, diversion canals, drainage ditches, and waterways installed by the Division of Agriculture that benefits more than one farm plot will be maintained by the Division. Permanent conservation practices installed as part of the Permittee's conservation plan, such as windbreaks, hedgerows, diversion, waterways, or irrigation systems that benefit individual farm plots will be maintained by the Permittee. No permanently installed conservation systems shall be removed or destroyed without the express written consent of the Director of Agriculture. Any destruction of a conservation practice within the Permittee's assigned plot shall be the responsibility of the Permittee to replace and/or reconstruct a Permittee's own expense. The Permittee shall have made every effort possible to implement the approved conservation plan as scheduled in order to prevent soil erosion on their assigned plot.

(C) The Saipan and Northern Islands Soil and Water Conservation District will be responsible for maintenance and operation of permanent conservation practices install as part of the Kagman Watershed Project. These practices include waterways, mainline irrigations system, drop structures, diversion, wells, wetlands and reservoirs that benefit all Kagman Local Farm Plots.

(D) The Bureau of Environmental and Coastal Quality: Permittees must comply with all BECQ regulations and recommendations regarding the application, storage and handling of pesticides.

(b) Full Utilization

(1) Permittee must fully utilize his or her farm plot to the maximum extent possible throughout the growing season.

(A). "Fully Utilize" is defined as cultivating and growing crops for harvest on at least seventy-five (75%)* of the assigned farm plots.

(B) "Growing Season" is defined as the period of absence of adverse climatic conditions, such as typhoon and flooding rains.

(C) Land lying fallow shall not be considered under cultivation when determining whether the farm plot is being fully utilized if the Permittee has obtained certification from the Director to allow the land to lie fallow. To obtain certification to fallow land, Permittee shall submit a request to the Director with the basis for and duration of the period of fallow. If the Director approves and certifies the request, then the fallowed land shall be excluded from the utilization determination for the period stated in the certification.

(D) Permittee may use assigned plots on a year-round basis (i.e. at times outside of the growing season) at his or her own risk by implementing conservation practices to protect the land from erosion during the rainy season.

(E) Failure to fully utilize the Farm Plot during the growing season may result in termination of the Permit.

(F) If Permittee has a permit for more than one farm plot, the Division of Agriculture shall treat all such plots as one plot, for purpose of the 75% full utilization requirement. Plots may not be subdivided in order to meet the 75% full utilization requirement.

* So in original.

Modified, 1 CMC § 3806 (a), (f).

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History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.145 Permitee Employees

(a) Registration: Before the permittee allows his employees (including farm laborers) to begin working on his plot(s), he shall submit to the Division of Agriculture office the names of all of his employees, and documents to identify the residence status of each employee including but not limited to: a copy of employee's driver's license, if any; a photograph of the employee; the employee's social security number; and a copy of the employee's work permit. If the employee has previously been employed by the Permittee, he shall also submit a copy of the employee's paycheck stub. An updated list of names of all employees or farm laborers must be submitted annually on each anniversary date of the permit. In addition, the Permittee must submit the name of and documentation for any newly hired employee, prior to that employee stating work at the farm plot. Employee registration must be kept current.

(b) Unauthorized Employee: The Director of Agriculture or his representative may evict any person working at the Permittee's assigned plot who is not registered with the Division of Agriculture as an employee of the Permittee. Only those employees registered with the Division of Agriculture will be considered authorized employee of the Permittee.

Modified, 1 CMC § 3806 (a), (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.150 No Obligation to Provide Water or Utility Services

DLNR and the Commonwealth Government do not have an obligation to provide the Permittee with water or other utility services, and this Permit shall not be construed to create such an obligation. It is expressly understood that the Permittee is responsible for obtaining water and utility services at Permittee's sole cost and expense, consistent with Sections 1 and 4 of the Regulations Of The Use Of Irrigation Water, published in the Commonwealth Register on October 26, 2004, Volume 26 Number 10, page 22988.

Modified, 1 CMC § 3806 (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.155 Destruction of Government Property

(a) Permittee shall be responsible for any damage to or removal and destruction of any property of DLNR or the Commonwealth Government caused by the Permittee during Permittee's use and occupancy of the Farm Plot. The Permittee shall promptly restore, repair, or replace the injured property to the satisfaction of DLNR, or otherwise provide adequate compensation, in an amount determined by DLNR, to DLNR to account for the destruction or damage. Failure to make timely repairs required under this Article could

subject the Permit to termination.

(b) If the Farm Plot has improvements designed and/or installed by the Natural Resources Conservation Service (“NRCS”) of the United States Department of Agriculture (“USDA”), the Permittee may not destroy, remove, or otherwise alter such improvements without prior written approval from NRCS. Such improvements may include, but are not limited to the following: irrigation systems, including buried pipelines; above-ground risers and all necessary appurtenances; water storage tanks; tile drains and underground outlets; water diversions, hillside ditches, grasses waterways, and lined waterways; composting facilities; terraces; hedgerows; and windbreakers. If Permittee causes an improvement made by NRCS to be destroyed, altered, or removed without prior approval of NRCS, the Permittee shall promptly restore, repair, or replace the improvement to the satisfaction of NRCS, or otherwise pay for the costs of restoring, repairing, or replacing the improvement.

Modified, 1 CMC § 3806 (a), (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.160 Termination of Permit

(a) It is expressly understood and agreed that DLNR may terminate this permit at any time if the Permittee fails to use the Farm Plot for farming purposes or otherwise violates the Permit conditions.

(b) To terminate this Permit before its natural expiration date, DLNR shall provide the Permittee with sixty days’ advance, written notice. The notice shall state the reason(s) for termination, including any relevant facts, and shall provide a procedure through which the Permittee can show that he or she is in compliance with this Permit or otherwise challenge the basis for termination. DLNR shall have the right to re-enter and take possession of the Farm Plot, or any part thereof, upon the expiration of the sixty days.

(c) The Permittee may terminate this permit at any time by giving thirty days’ advance notice to DLNR. Permittee shall be responsible for any losses associated with early termination.

Modified, 1 CMC § 3806 (a), (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.165 Vacating the Premises

Upon the expiration or earlier termination of this permit, the Permittee shall quietly and peacefully vacate the premises and surrender the possession thereof. Upon the failure or neglect of the Permittee to remove his property from the premises, DLNR or its agents may enter the said premises and remove all persons and property therefrom. Such removal shall be at the cost and expense of the Permittee and no claim for damage of any nature whatsoever against DLNR or its agents thereof shall be created by or made on account of

such removal.

Modified, 1 CMC § 3806 (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.170 Hold Harmless and Indemnity Clause

Permittee shall protect, defend, and hold the Government of the Commonwealth of the Northern Mariana Islands, its officials, employees, agents and successors in interests completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of the Permittee or its officers, agents, employees, contractors, subcontractors, or invitees' use of this Permit and/or the use or occupancy of the Farm Plot regardless of where the injury, death, or damage may occur. The provisions of this section shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this Permit.

Modified, 1 CMC § 3806 (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.175 Successors and Assigns

DLNR and the Division of Agriculture herein shall include their lawful successor agencies. Permittee shall include Permittee's lawful successor and assigns, to the extent otherwise allowed by this permit.

Successor: DLNR - Division of Agriculture

Modified, 1 CMC § 3806 (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).

§ 85-10.180 Compliance with Law

Permittee shall not use the farm plot for any purpose in violation of any applicable Federal or Commonwealth Law, regulation, or order, as such statute, regulation, or order now exists, or may hereafter provide, concerning the use, occupancy, and safety of the farm plot. Permittee shall notify the Director of Agriculture prior to performing any draining, dredging, or filling activities, and any such activities shall be conducted in compliance with applicable laws and regulations. The Permittee shall obtain required government permits prior to conducting any type of activity for which a permit is required on the Farm Plot.

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Modified, 1 CMC § 3806 (f).

History: Amdts Adopted 43 Com. Reg. 46696 (June 28, 2021); Amdts Proposed 43 Com. Reg. 45766 (April 28, 2021).