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Amended Submerged Lands Act
Department of Natural Resources 5762

PUBLIC NOTICE

Attorney General Opinions published between
November 15, 1988 and December 15, 1988
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Commonwealth of the Northern Mariana Islands

Office of the Director
Department of Natural Resources
Capital Hill
Saipan, Mariana Islands 96950

Cable Address:
Gov. NMJ Saipan
Telephone 322-9830/9834

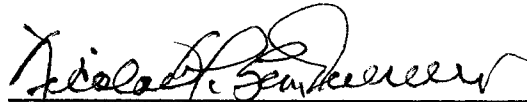
Public Notice of Proposed Rules and Regulations

Pursuant to the requirements of the Administrative Procedure Act, 1 CMC Section 9104, the Director of the Department of Natural Resources notifies the public that he proposes to promulgate rules and regulations for the amended Submerged Lands Act, Public Law 6-13.

The public may submit written comments and recommendations regarding the proposed regulations during the next 30 days after this date of publication in the Commonwealth Register. Comments should be submitted to the Director at the following address:

Office of the Director
Department of Natural Resources
Capital Hill
Saipan, MP. 96950

Dated this 5th day of December 1988.



Nicolas M. Leon Guerrero
Director, Natural Resources



Commonwealth of the Northern Mariana Islands

Office of the Director
Department of Natural Resources
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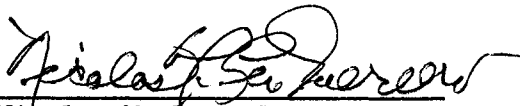
NOTISIA PARA I PUPBLIKU POT I MA PROPONI NA AREKLAMENTO YAN REGULASION

Pot debidi u-maconsigi i Administrative Procedure Act, 1 CMC Section 9104, I Direktot i Departamenton i Natural Resources ha infotoma i Pupbliku na ha propone para ufatinaise pat hunaguahaye areklamento yan regulasion para i ma-amendan i Submerged Land Act, Public Law 6-13.

I Pupbliku sinaha man satmite rekomendasion yan testimoniu pot este i ma propone na regulasion gi duranten i trienta (30) dias dispues de ma Pupbliku gi Commonwealth Register. I testimoniu debe na u-ma satmite guato gi Direktot gi esti na address:

Office of the Director
Department of Natural Resources
Capital Hill
Saipan, MP. 96950

Mafecha esti na dia 5th gi December 1988.


Nicolas M. Leon Guerrero
Director, Natural Resources

Proposed Submerged Land Regulations

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SUBMERGED LAND REGULATIONS

SUMMARY: These rules set forth the Department's regulations and policies relating to the use and lease of submerged lands within the Commonwealth. In particular, these rules 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.

Section 1.1 PURPOSE

The purpose of these rules 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.

[NOTE: In 1979, the Submerged Lands Act was promulgated to provide for the exploration, development, and extraction of petroleum or mineral deposits [2 CMC Sections 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 Sections 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.

The purpose of these rules 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.

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.

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.

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

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.

Section 1.2 DEFINITIONS

- A. An "aggrieved party" is a person who has a property interest in the land or who is an adjacent land owner.
- B. The "Department" means Department of Natural Resources.
- C. The "Director" shall mean the Director of the Department of Natural Resources.
- D. "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.
- E. "Ordinary high water mark" 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.

F. "Specific use activities" are defined in Section 4.9 herein.

Section 1.3 LEASE, LICENSES, AND PERMITS AND CONSTRUCTIVE EASEMENT - REVIEW OF APPLICATIONS

A. Application

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 Section 3.4 herein.

[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]:

2. Actions Taken by the Department and Notification. 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.

If the proposed project is not on Commonwealth-owned submerged land, the Department will notify the applicant.

[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.]

When the proposed project has potentially significant impact on public uses. The Directors will schedule of 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 (14) day period following publication in the newspaper. The time period for a Department decision will be extended until 30 days following the meeting.

3. All applications will be reviewed to assess the potential beneficial impact on fisheries development adverse impact on marine resources with submerged lands and 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.

B. 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.

C. 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.

D. Uses Requiring Commonwealth Regulatory Permits

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

1.4 GENERAL TERMS AND CONDITIONS - LEASE, EASEMENT OR CONSTRUCTIVE EASEMENT OTHER THAN DREDGING LEASES

A. Constructive Easements

1. Owners of all structures located upon submerged lands on (effective date of legislation) November 3rd 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 3rd, 2013).
2. 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.]

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

1. 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);

2. Occupies a total of not more than 500 square feet of Commonwealth submerged land for any lawful purpose;
 3. 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; or
 4. Is for harbor improvement by the CNMI or Federal Governments.
- C. Leases may be granted, upon approval of the legislature, for the following uses:

1. 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
2. All other uses occupying more than 500 square feet.
3. If necessary, a buffer zone of not more than 30 feet in width around a permanent structure may also be leased for a period of not more than 25 years.

D. Terms of Conveyance

1. Initial Term

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

2. Extension of Term

Conveyance term extension may be requested only during the last five years of the principle lease. 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.

3. Renewal

a. Lease and easement renewal may be granted at the end of the conveyance term upon approval of three-quarters of the Legislature considering, among other reasons, the public interest, policy conflicts and any history of non-compliance with conveyance terms by applicant.

b. A constructive easement may be renewed in the form of a lease or license.

4. 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 three years may be negotiated. The option fee may be less than the anticipated annual lease rental fee.

E. Applicant not owner of abutting upland

When an application 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.

F. 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.

G. Assignment

1. Leases, licenses and permits 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.
2. Constructive easements will continue when there is a change in ownership, if there is no change in area occupied or use.

H. Termination: A lease, license or permit, constructive easement may terminate where:

1. 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
2. The applicant fails to sign and return, a lease, license, permit or instrument within 90 days of issuance. In such a case, the instrument shall be deemed void on the 90th day.

I. 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.

J. Reconsideration

Within thirty (30) days of notification of a decision made pursuant to these regulations hereunder, the applicant, or any aggrieved party, as defined, may petition the Director to reconsider such decision by submitting a written request therefor.

1.5 DREDGING LEASES

1. The applicant shall submit information supporting the need for the project.
2. Dredging leases shall expire when any Commonwealth or Federal regulatory permits for the dredging expire, unless an extension is granted under the later.

1.6 FILLING LEASES (See definition of filling.)

A. Applications

1. 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:
 - a. 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
 - b. Public trust rights and purposes and other public rights and customs will not be unreasonably impaired; and
 - c. All appropriate regulatory permits have been obtained.
2. Requirements. The Director may require:
 - a. That a signed map prepared by a registered land surveyor showing the location and

boundary of the proposed site shall be filled with and accepted by the Department prior to filling;

- b. Monumentation of the submerged land boundary;
- c. That the fill materials be removed from the submerged land at the termination of the conveyance;
- d. Free public access over the premises for water dependent or associated uses be provided including walkways; and/or
- e. Other mitigating measures.

4.7 UPLAND USE

A. Applications.

- 1. Conditions. Applications for the purpose of siting an upland 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:
 - a. The project is not feasible at any reasonably available alternative site;
 - b. There is no current or reasonably anticipated unmet demand in the area for water dependent or associated uses; and

c. Public trust purposes and other public rights and customs will not be unreasonably impaired.

2. Requirements. The Director may require:

- a. The lease period to be less than 25 years.
- b. Free public access for water dependent uses be provided; and/or
- c. Other mitigating measures.

1.8 FEES There are two fee schedules,

- A. (a) No fee for government projects.
- (b) \$25.00 fee for permits and licenses.
- (c) For all others, the fee shall be as follows:

(Project costs shall be based upon appraisal of construction plans of structures to be built in the area.

<u>FEE AMOUNT</u>	<u>SIZE OF PROJECT</u>
\$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

For each \$1 million increment in the cost/size of the project, there shall be assessed an additional fee of \$250.00.

In addition to this filing fee, there shall be an annual rental fee for leases.

B. Lease Rental Fees

1. 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 air market 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.

C. 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 Section D below. The Director shall add additional fees for disturbing the submerged environment including displaced sea grass and corals

D. Alternate Fee Determination Methods

1. For commercial, closed-system pipeline, the Director may determine lease rental fees based upon volume of material transported.
2. Where dredged 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.
3. For othe 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:
 - a. The rental value is significantly greater than the current standard square foot value.
 - b. The use is for upland purposes; or
 - c. Area is filled.

E. Government Uses

1. 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.

2. Minimal user fee. No lease fee is to 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.
3. 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.
4. 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.

F. 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.

G. Late Fee Payments

1. 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.
2. 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.

H.9 Specific Use Activities

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 Section 1201. The guidelines are adopted regulations, however, and must be complied with both in permit application and review.

1. 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.

2. 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.

3. 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.

(e) Shallow-water embayments with poor flushing action should not be considered for overnight and long-term moorage facilities.

(f) All water areas in the marina should be well flushed to allow proper circulation. The follow serves as guides.

(i) The depth of the boat basins and access channels should not exceed that of the receiving body of water;

(ii) Basins and channels should not be located in areas of poor water circulation;

(iii) Channels should have gentle grades, with no sills or bottom holes;

- (iv) Canals should be tapered toward the headwater both in vertical and horizontal planes;
- (v) Floating docks should be used if possible, and if not possible, docks should be built on pilings rather than on a solid base.
- (g) The depth of the water basin should not exceed the depth of light penetration.
- (h) 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.
- (i) The boat channel entrance should be well marked, and boaters required to stay in the designated channel.

4. 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.
- (d) 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.

5. 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 (5) 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 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 mark wrecks on water way, the frequency of flashes may not be less than 60 flashes per minute.

- (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 minimum visual obstructions of the shoreline and water bodies.

6. 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.
- (f) Residential developers should be required to indicate how they plan to preserve shore vegetation and control erosion during construction.

- (g) Sewage disposal facilities, as well as water supply facilities, must be provided in accordance with appropriate health regulations. Storm drainage facilities should be separate, not combined with sewage disposal systems.
- (h) Adequate water supplies should be available so that the ground water quality will not be endangered by overpumping.
- (i) Residential developments should utilize centrally located marina facility rather than providing navigation access to individual lots.

7. 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 preproject 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.

8. 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.
- (f) 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.

9. Bulkheads. 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 larger waves reach the structure.

While bulkhead and 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:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) Consider the effect of a proposed bulkhead on public access to publicly owned shorelines.

(e) Bulkheads and seawalls should be designed to blend in with the surroundings and not to detract from the aesthetic qualities of the shoreline.

(e) 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.

10. Breakwaters. Breakwaters are another protective structure usually built offshore to protect beaches, bluffs, dunes, or 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 riprap 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 in 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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, a 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.

16. 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.
- (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 location 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.

17. Permanent Moorage Anchors 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. corals, 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.
- d. Special attention should be given to ensure that sanitation facilities of moored vessels meet applicable standards and are adequately serviced.

Section §.10 SEVERABILITY PROVISION

If any provision of these Rules and Regulations, 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.

APPENDIX A

FOR ACTIVITIES AFFECTING: CONTACT AND/OR APPLY FOR
PERMIT TO:

- | | |
|--|---|
| 1. Coastal wetlands, areas of open tidal waters great ponds streams, rivers, brooks, 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) 6114/6984 |
| 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.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE ATTORNEY GENERAL
2ND FLOOR - ADMINISTRATION BLDG., CAPITOL HILL
SAIPAN, MP 96950

ALEXANDRO C. CASTRO
ATTORNEY GENERAL
CAPITOL HILL OFFICE
TEL: (670) 322-4311/4312
FAX: (670) 322-4320

JOHN F. BIEHL
DEPUTY ATTORNEY GENERAL
SUSUPE OFFICE
TEL: (670) 234-7111/7771/6207

ERIC S. SMITH
Assistant Attorney General
Chief, Civil Division
TEL: (670) 322-4311/4312

RICHARD WEIL
Assistant Attorney General
Chief, Solicitor Division
TEL: (670) 234-7111/7771/6207

EDWARD L. HAYDEN
Assistant Attorney General
Chief, Criminal Division
TEL: (670) 234-7111/7771/6207

PUBLIC NOTICE

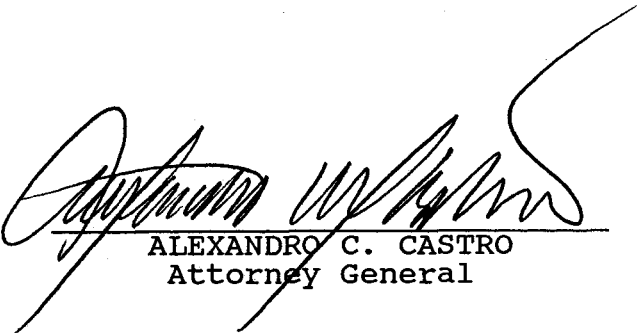
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Date: December 15, 1988


ALEXANDRO C. CASTRO
Attorney General