

~~(ii)~~ Description of existing environment of the proposed project site including vegetation, wildlife, land uses, ~~and historic and cultural resources~~, soil, geology, topography, ~~weather~~, ~~air~~water quality; if project is proposed in or adjacent to surface waters and/or groundwater

~~(3) (iii)~~ Description of socio-economic characteristics of the project including income and employment, education, infrastructures, law enforcement, fire protection, hospital, and medical facilities designation as applicable, and historical and cultural resources;

~~(4) (iv)~~ Discussion of alternatives to the proposed project size/design considered during project planning and how the preferred alternative was selected;

~~(5) (v)~~ Description of the direct, indirect, and cumulative environmental and socio-economic effects, both positive and negative, which may result from the project, i.e., including:

~~(i)~~ Impacts to environmental resources i.e. air and water quality, noise and dust levels, sedimentation and erosion, plant and wildlife habitat and populations, infrastructure capacity (short and long term), traffic assessment; and aesthetic impacts of development;

~~(ii) (vi)~~ Impacts to cultural resources;

~~(iii)~~ Impacts to government infrastructure capacity (short and long term) including power/sewer/water infrastructures, and road adequacy and traffic, as well as public services including education, law enforcement, fire protection, hospital, and medical facilities; and

~~(iv)~~ Socio-economic characteristics and potential impacts of the project including projected employment and employee compensation rates (hourly or salary ranges).

~~(6)~~ Description of how impacts have been avoided or minimized and how any unavoidable impacts will be mitigated;

~~(7) (vii)~~ Evaluation of alternative management measures to control nonpoint source pollution and a description of management measures selected for incorporation in the proposed project; ~~and~~

~~(8) (viii)~~ Evaluation of the proposed project based on the Specific Criteria for Major Sitings provision of § 15-10-505, and a description of how those specific criteria will be affected by the project; and

~~(21) If the project meets the definition of a major siting as found by the CRM agencies, or if the CRM Director deems applicable to APC permits, the applicant shall provide the following Project specific plans. The time frames for the submission of the plans shall be specified within their respective conditions of the CRM permit. Additional types, numbers, and/or quality of plans may also be required prior to certification of completeness or permit issuance or as a condition of the permit at the discretion of the DCRM Director or the CRM agency officials.~~

~~(i) Copies of the construction plans and specifications must be signed and sealed by a CNMI licensed architect and engineer in their respective discipline. Final plans shall include excavation, earthmoving, and storm water control.~~

~~(ii) Final master site plan.~~

~~(9) (22) For all permit Agency Officials. At minimum, major siting applications, including temporary permits for emergency repairs and APC permits, all dimensions shall be stated in English units (i.e., must include: inches and feet).~~

~~(23) Only subsections (1) through (6)i Conceptual site development plan;~~

~~(ii) Elevation plans of the project including a side profile of the project;~~

~~(iii) The following conceptual erosion control and (22) drainage plans:~~

~~(1) Slope and elevation map;~~

~~(2) Watershed, flow direction, and drainage map;~~

~~(3) Preliminary drainage and erosion control map; and~~

~~(4) Preliminary stormwater nonpoint source management plan.~~

~~(iv) For lots adjacent to the shoreline, development of "high rise" structures equivalent to six stories in height or greater or more than sixty feet above aregrade requires a view corridor plan indicating projected aesthetic impacts of the proposed development from one datum line perpendicular to the nearest shoreline or beach and providing an inventory of existing views, impacts on existing views, and proposed mitigation measures to protect scenic views;~~

~~(v) Estimated solid waste production during construction and operations and solid waste management plan;~~

~~(vi) For major siting projects that propose to provide fifty (50) or more new rooms or twenty-five (25) or more full-time staff positions, a traffic impact assessment; and~~

(vii) For major siting projects that propose to employ fifty (50) workers or more, working housing plan must be provided detailing where staff housing, if any, will be provided (on-site or off-site) and specifying what, if any, transportation services will be available to staff housed off-site.

(10) If any concerns were raised by the community during required for applications for temporary permits for emergency repairs. However, if the Director notification process, these concerns and proposed solutions should be summarized in the appropriate subsection of the Environmental Impact Assessment (EIA) report.

(11) If the DCRM Director or CRM Agency Official requests information regarding any other of the additional application materials mentioned above, applicant must provide such information as well.

(24) Only subsections (1) through (7), (10), (11), (15), (18), (19), and (22) above are required for applications for permits for APC developments. However, if the Director requests information regarding any other of the application materials mentioned, applicant must provide such information as well.

§

#### §15-10-207 Certification of Completion of Application.

Within thirty days of the date on which an application for a CRM permit is received by the CRM Office, the DCRM Director shall review the application and either certify its completeness ~~to the applicant~~ or notify the applicant of any defects or omitted necessary information. After the submission of additional information, the Director shall have fifteen working days in which to assess the completeness of the application: or refer the application to the CRM Agency Board for a supplemental CRM Board determination of completeness. The ~~time~~ date commencing review of an application specified in §15-10-220 shall begin on the date an application is certified complete. If the application is certified complete upon the condition that additional information be submitted, the date commencing review under section § 15-10-220 shall be the date that all supplemental information is submitted and accepted by the Director. This provision shall not apply to APC and emergency permits.

#### **§15-10-210 Notice of Application**

The ~~CRMD~~DCRM Office shall cause notice of each application for a CRM permit, (except for temporary permits), to be published in a newspaper of general circulation ~~within~~ the Commonwealth and to the DCRM website within fifteen days of receipt of the application. The notice shall state the nature, scope, and location of the proposed project, invite comments by the public, provide information on requesting a public hearing and provide information on the procedure for appealing any permit decision.

§

#### **§15-10-215 Review of Application**

(a) APC Permits. See §15-10-105 for provisions related to review of application APC permits.

(b) Major Siting Permits

(1) The DCRM Director and the CRM ~~agency officials~~Agency Officials shall have sixty days ~~following from the date of the~~ certification of completion of application to grant or deny a major siting permit. For the purposes of section 9(a) of the Coastal Resources Management Act of 1983 (~~PL 3-47-2 CMC § 1532(a)~~), the term “receipt of any request for review” shall mean CRM certification of completion of a permit application.

(2) The CRM Office shall review the application, publish notice of its contents, schedule a permit hearing ~~if mandatory or requested by a CRM agency official or the public pursuant to~~, and transmit the application to the CRM ~~agency officials~~Agency Officials for review. The ~~CRMD~~DCRM Office shall provide technical findings on the impacts of proposed projects to assist CRM ~~agency officials~~Agency Officials in reaching a unanimous decision on CRM permit applications and shall ensure compliance of CRM permit decisions with this chapter and ~~ENMI PL 3-47-2 CMC §1532(d)~~. Where unanimous decision cannot be reached, the matter shall be submitted to the Governor for his determination pursuant to section 9(d) of ~~PL 3-47-2 CMC §1532(d)~~. If the Governor subsequently approves the project proposal, a permit with appropriate conditions shall be issued by the DCRM Office and signed by the Governor.

~~(c) Review Period. The sixty day period of review for major siting permits shall begin on the day the application is certified to be complete by the CRM Office.~~

§

#### **§15-10-220 CRM Permit Hearing**

When a hearing on a permit application is required or requested pursuant to this section the DCRM Director shall schedule the hearing, inform the party or parties involved of the hearing date and publish notices of the hearing two times in a newspaper of general circulation in the Commonwealth at least fourteen days prior to the hearing. The DCRM Director at his/her discretion may require that notice be posted at the proposed site no later than one week before the scheduled public hearing.

(a) When Permit Hearing Appropriate. The DCRM Director shall schedule a CRM permit hearing if:

- (1) The proposed project is determined to be a major siting by the CRM ~~agency officials; or Agency Officials;~~
- (2) The proposed project does not constitute a major siting, but falls within one of the coastal APCs and ~~the applicant, CRM agency official, or people~~ a hearing is required pursuant to subsection (a)(4) below, ~~submit a written request for a public hearing; or;~~
- (3) If a CRM ~~agency official~~ Agency Official requires a hearing on a proposed project; or
- (4) A petition signed by at least five people requesting a public hearing is received by ~~the CRM Office~~ DCRM within fourteen days of the date the application is published in the newspaper as required in §15-10-215.

~~(b) [Reserved]~~

(c) Presiding Officer. The DCRM Director or his ~~or~~ her designee shall preside at CRM permit hearings. The presiding officer shall control the taking of testimony and evidence. Evidence offered in a hearing need not conform ~~with~~ to any prescribed rules of evidence; further, the presiding officer may allow and limit evidence and testimony in any manner he / she reasonably determines to be just and efficient.

(d) Public Invited. CRM permit hearings shall be open to the public.

(e) Location. Public meetings may be held at any location within the Commonwealth. Public hearings pursuant to permit applications shall be conducted on the island where the proposed project is located. Appellate hearings shall be held on the same island as the permit hearings, or if no CRM permit hearing was held, on the island where the proposed project is located. All other public hearings shall be conducted on Saipan.

(f) Parties. Any party to a hearing on a CRM permit application may appear on his/her own behalf. Parties may appear through an authorized representative of a partnership, corporation, trust or association. An authorized employee or officer of a government department or agency may represent the department or agency in any hearings.

(g) Record. The CRM Office shall provide for an audio recording or a stenographic record of CRM permit hearings. Transcription of the record shall not be required unless requested by a CRM permit applicant, or the ~~DCRM~~ Director, and except for the latter, any party requesting transcription shall pay the cost incurred in the preparation of the transcript. Public access to the contents of the record and CRM records retention responsibilities are discussed in part 1200 of this chapter.

§

(h) Resolution of new issues. If as a result of a public hearing new issues are raised or upon discovery of additional significant impacts not previously addressed by the applicant, the Director may request supplemental information to assist the regulatory agencies in rendering a decision on a major siting permit. This request for supplemental information shall toll the sixty (60) day review period from the date of the request until such time as the applicant has adequately addressed the deficiency by providing adequate information.

#### **§15-10-225 Filing of Documents**

Documents filed in support of, or in opposition to, CRM permit applications shall conform to the following standards.

(a) Form and Size. Pleadings and briefs shall be bound by staple in the upper left-hand corner or spiral binding and shall be typewritten upon white paper eight-and-a-half by eleven inches

(8½" x 11") in size. Tables, maps, charts, exhibits or appendices, if larger, shall be folded to that size where practicable. ~~Text shall appear on one side of the paper and shall~~ Text must be double-spaced, except that footnotes and quotations in excess of a few lines may be single-spaced. Pages shall be numbered and if submission exceeds ten pages, a paginated "table of contents" shall be included. Submission of digital copies of such materials is encouraged.

(b) Title and Number. Petitions, pleadings, briefs, and other documents shall show the title and number of the proceeding and the name and address of the party or its attorney.

~~(e) Signatures.~~

(c) Content and review policies. Permit applications must contain a sufficient level of detail to support review of potential environmental effects to terrestrial, coastal, and marine resources as well as review of effects of proposed avoidance, minimization, and mitigation activities.

(i) Full review of environmental effects. To support full review of a proposed action, all applications must provide a full "application form" as well as any and all attachments required by the DCRM Office, described in § 15-10-206. Environmental effects of proposed actions must be considered together if the actions are functionally or economically related to other actions.

(ii) Full review of project proposals. Project proposals may not be submitted "piecemeal" even if the project will be phased; rather, a full proposal must be submitted in order to assess potential direct and cumulative impacts. Investigative soil surveys and archeological surveys may be conducted prior to submission of a major siting application.

(iii) Independent utility required. Proposed projects must pass the "independent utility test." To have independent utility, an action must independently fulfill a recognizable purpose, and may not segment a larger action which is designed to accomplish a single purpose.

(d) Completion of materials. All submitted materials must be completed in their entirety. Questions in permit application must be answered directly. Major siting applications must include an "environmental impact assessment" as described in § 15-10-206 that includes analysis

of proposed action and alternatives, as well as description of any likely adverse effects of the project that cannot be avoided. Submissions that state “Please refer to Environmental Impact Assessment” or “Attachment” in response to application questions without providing corresponding page numbers will be returned as incomplete.

(e) Signatures. The original of each application, petition, amendment or other legal document shall be signed in ink by the party or its counsel. If the party is a corporation or a partnership, the document may be signed by a corporate officer or partner. Motions, petitions, notices, pleadings and briefs may be signed by an attorney. Certifications as to truth and correctness of information in the document shall be by affidavit or declaration under penalty of perjury by the person charged with making the statements contained therein.

(f) ~~(d)~~ Copies. Unless otherwise required, there shall be filed with the ~~CRM~~DCRM Office an original ~~and five~~as well as a digital copy of the application file (PDF or Word-readable format) via email, thumb drive, or on a CD with the application package. Additional copies of ~~each document~~applications, exhibits, plans, etc., must be provided if requested by DCRM.

**§ 15-10-230 Decision on CRM Application**

(g) Application of Open Government Act. Unless otherwise required, all permit applications and supporting documents are considered public records as described in § 15-10-030 and are discoverable under the Open Government Act as established in 1 CMC §§ 9901 - 9916.

**§15-10-230 Decision on CRM Application**

The CRM ~~agency officials~~Agency Officials shall review the CRM permit application, hearing transcripts, if any, DCRM technical findings, supporting documentation and relevant laws, rules and regulations, and issue a unanimous written decision to grant, deny, or grant with conditions, a CRM permit in accordance with the policies of ~~CNMI PL 3-47 (2 CMC §§1501, et seq-)~~, and applicable rules and regulations. In reviewing a CRM permit application, the following procedures shall apply:



(a) Voluntary Disqualification. CRM ~~agency officials~~Agency Officials participating in decisions regarding CRM permits shall do so in an impartial manner. They shall not contribute to decisions on CRM permits where there exists an appearance of bias, or where actual bias may prevent them from exercising independent judgment. Should a CRM ~~agency official~~Agency Official determine, after considering the subject matter of a CRM permit application, that bias, or the appearance of bias, might appear to prevent him from exercising independent judgment, he or she shall excuse ~~himself~~themselves from that decision and appoint an alternate with comparable qualifications to act in his or her stead.

(b) Disqualification by Challenge. If a CRM ~~agency official~~Agency Official refuses to disqualify himself or herself under subsection (a), an applicant or affected person may petition the DCRM Director at any time prior to the issuance of a permit decision for disqualification of a CRM ~~agency official~~Agency Official because of bias or the appearance of bias. A petition for disqualification shall be accompanied by a declaration under the penalty of perjury containing facts supporting the assertion of bias. The ~~DCRM~~ Director shall review the petition and determine whether the facts give rise to a significant inference of bias, and if so, he or she shall inform the challenged CRM ~~agency official~~Agency Official that he/she is disqualified. If a CRM ~~agency official~~Agency Official is disqualified the DCRM Director shall appoint a qualified alternate from the same department, to act in the disqualified CRM ~~official's~~Official's stead. Alternates are also subject to disqualification by challenge of a party or affected person.

(c) Quorum for Decision. At least four CRM ~~officials~~Agency Officials qualified to vote ~~for on~~ the permit application ~~on~~ hand are required for ~~the~~ quorum ~~necessary to vote on a decision~~ to grant or deny that permit application.

(d) Unanimous Decision Required. Decisions regarding issuance or denial of CRM permits by the CRM ~~officials~~Officials shall be by unanimous vote. Attendance for all CRM officials at the meeting to vote on the permit ~~request~~ is not required, but ~~a quorum is necessary, and~~ the decision shall be by unanimous vote of the attending ~~officials~~Officials. Disagreements among the CRM ~~agency officials~~Agency Officials shall be mediated by the DCRM Director, and he or she shall assist in the preparation of a joint decision in order to achieve unanimous consent. ~~Further, the~~

~~DCRM Director shall certify that each CRM permit decision complies with CNMI PL 3-47 ( et seq.) and applicable rules and regulations.~~

(1) The fact that an agency declines to vote for or against the issuance of a permit shall not affect whether a unanimous decision has been made, but a decision regarding the issuance of a permit must be made by at least four voting CRM ~~officials~~Officials, and the vote must be unanimous amongst all voting CRM ~~officials~~Agency Officials.

(2) The determination on whether CRM ~~agency officials~~Agency Officials have unanimously agreed to the issuance of a CRM permit is based on the vote by CRM ~~officials~~Officials in attendance at the meeting to vote on whether to issue the permit. If there was a unanimous decision to award or not award a permit, that decision ~~was~~is deemed ~~to be made at that~~as a unanimous vote ~~by all CRM Regulatory Agencies~~.

(3) If, after the vote and while a permit is being sent to CRM ~~agencies~~Agency Officials to be signed, a CRM ~~agency~~Agency Official that had voted to issue a permit refuses to sign, that will be considered a vote against the measure, and there will no longer be a unanimous decision regarding the issuance of a permit. In that case, the Director shall forward the application to the Governor to resolve the deadlock, as per ~~subsection (e)~~part (f) below.

~~(4)~~ (4) The permit does not need to be signed by a non-voting CRM ~~agency~~Agency Official in order to be valid.

(e) Compliance with Coastal Resource Management Act. The Director shall certify that each CRM permit decision complies with 2 CMC §§1501, et seq. and applicable rules and regulations.

(f) Deadlock Resolution by Governor. In the event that the unanimity required by subsection (d) is not obtained, and/or the DCRM Director is unable to certify that a unanimous decision of CRM ~~agency officials~~Agency Officials complies with ~~CNMI PL 3-47 (2 CMC 1501, et~~

seq.) and/or applicable rules and regulations, the ~~DCRM~~ Director shall forward the CRM permit application to the Governor for resolution of the deadlock.

(1) ~~(1)~~ Referral. Determination that a deadlock exists regarding a decision over a CRM permit application shall be made by the ~~DCRM~~ Director within the sixty -day period of review by CRM ~~agency officials~~ Agency Officials specified by §15-10-215. A deadlocked CRM permit application shall be referred to the Governor for resolution within ten days following this determination.

(2) ~~(2)~~ Supporting Documentation. In addition to the deadlocked CRM permit application, the ~~DCRM~~ Director shall forward all supporting documentation, including additional briefs, if any, filed by the applicant, and statements of support or opposition by CRM ~~agency officials~~ Agency Officials. If a deadlock results solely from the ~~DCRM Director's~~ Director denial of certification of compliance with CRM laws, then he or she shall supply a statement of his or her objections. If a deadlock results from dispute among CRM ~~agency officials~~ Agency Officials, then statements reflecting the divergent views on the CRM permit application shall be obtained from the CRM ~~agency officials~~ Agency Officials and forwarded with CRM permit application to the Governor for his or her review.

(3) ~~(3)~~ Decision. After receipt of the deadlocked CRM permit application and accompanying documents, briefs and statements referred to above, the Governor shall have thirty days to render his or her decision. He or she may grant, deny or conditionally grant a CRM permit, ~~but he~~ He or she must issue written findings of facts and conclusions of law for his or her decision.

(4) Review. The decision of the Governor in a deadlock resolution under this section shall be conclusive for purposes of permit issuance or denial. Parties objecting to the Governor's decision may, if they seek review of the Governor's decision, appeal directly to the Appeals Board.

~~(4)~~

(g) Written Findings and Conclusions. Decisions rendered by the CRM ~~agency officials~~Agency Officials on granting, denying or conditionally granting CRM permits shall be accompanied by written findings of facts and conclusions of law. The ~~CRMD~~DCRM Office shall assist the ~~agency officials~~Agency Officials in preparing a consensus draft of findings of fact and conclusions of law for signature by CRM ~~agency officials~~Agency Officials and the ~~DCRM~~ Director.

~~(g)~~

(h) Issuance of CRM Permit. If the CRM ~~agency officials~~Agency Officials unanimously agree on the issuance or conditioned issuance of a CRM permit and the DCRM Director certifies that the CRM permit complies with ~~CNMI PL 3-47 (2 CMC §§1501, et seq.)~~, and applicable rules and regulations, the CRM permit shall be issued. ~~The CRM Office shall prepare a written CRM permit stating the terms and conditions of issuance and obtain the signatures of the following on the CRM permit:~~

~~(1) All CRM agency officials that voted for the issuance of the permit; and~~

~~(2) The DCRM director.~~

~~(h)~~ Issuance of CRM Permit in Case of CRM Permit Deadlock. In the case of a deadlocked CRM permit application, if the Governor finds that it is proper to grant or conditionally grant a CRM permit, then the CRM Office shall prepare a written CRM permit stating the terms and conditions of issuance and obtain the signatures of the following on the CRM permit:

(1) ~~The Governor;~~

~~(2) All CRM agency officials, whether they~~Agency Officials that voted to issue for the issuance of the permit or not; and

~~(3) (2) The DCRM Director.~~

~~(h)~~

(i) Issuance of CRM Permit in case of Deadlock. In the case of a deadlocked decision on a CRM permit application, if the Governor finds that it is proper to grant or conditionally grant a CRM permit, then the DCRM Office shall prepare a written CRM permit stating the terms and conditions of issuance and obtain the signature of the Governor.

(j) He/She Who Decides Must Hear. In those cases where a public hearing is held on a CRM permit application, the CRM ~~agency officials~~Agency Officials shall review and consider the matters discussed or presented at the hearing. To this end, CRM ~~agency officials~~Agency Officials shall, whenever practicable, attend CRM permit hearings, and if unable to attend a hearing, they shall listen to the audio recording of the hearing, or obtain and read a stenographic transcript prior to rendering any decision on the affected CRM permit application.

(i)

(k) Notice. Within ~~ten~~fourteen days of the issuance of a CRM permit decision, CRM shall publish notice of such issuance in a newspaper of general circulation in the Commonwealth.

§

#### **§15-10-235 Appeal of CRM Permit Decision**

Any aggrieved person as defined ~~in~~at §15-10-020 may appeal the decision of CRM ~~agency officials~~Agency Officials or in the case of ~~ana~~ APC development, the DCRM ~~Director's~~Director decision to grant, deny, or condition a new CRM permit to the CRM Appeals Board by filing a notice of the appeal with the ~~CRM~~DCRM Office within thirty days of the issuance of the CRM permit decision. In the absence of an appointed CRM Appeal Board at the time that the appeal is filed, the appeal shall be to the Superior Court as set forth in Administrative Procedure Act 1 CMC §§ 9101 et seq. The DCRM Director shall then schedule an appellate hearing before the CRM Appeals Board.

(a) Disqualification; Voluntary or by Challenge. In the same manner and for the same reasons specified for CRM ~~agency officials~~Agency Officials in §15-10-230, the three members of the CRM Appeals Board shall render decisions on CRM permit applications in an impartial manner. They shall voluntarily disqualify themselves for bias or the appearance of bias, and they are subject to disqualification by challenge in the manner prescribed for CRM ~~agency officials~~Agency Officials in §15-10-230.

(b) Quorum, Vote. At least two members of the CRM Appeals Board shall constitute a quorum and must be present to act upon review of ~~the~~ CRM ~~agency official~~Agency Officials' decision and the vote of at least two members is necessary for board action on the appeal.

- (c) Briefs, Statements. Any aggrieved person who requests an appeal before the CRM Appeals Board shall file with the CRMDCRM Office within fifteen days following its request for appeal, a written statement of objections to the CRM permit decision. In addition, any existing party may within ten days of receipt of appellant's statement, submit to the CRMDCRM Office a statement or brief providing arguments in support of or in opposition to, the permit decision. Statements filed under this subsection shall be filed in accordance with the format and standards listed in §15-10-225 and will be included in the CRM permit application file.
- (d) Contents of Notice of Appeal. Any notice of appeal filed with the CRM Office shall contain all of the following:
- (1) The nature of the petitioner's interest in the CRM permit;
  - (2) The effect of the CRM permit on the petitioner's interest; and
  - (3) The extent that the petitioner's interest is not represented by CRM, the applicant, or other aggrieved persons.
- (e) Service of Papers. All parties to an appeal shall serve all other parties with any papers that are required to be filed at the CRMDCRM Office and such service shall occur on the same day as filing at the CRMDCRM Office.
- (f) Papers Considered by CRM Appeals Board. For the purpose of reviewing the CRM permit application decision, the CRM Appeals Board shall receive and review all of the following:
- (1) Findings of facts and conclusions of law adopted by the CRM ~~agency~~ officials; Agency Officials;
  - (2) CRM permit application;
  - (3) CRM permit, if issued;
  - (4) Record of the CRM permit hearing, if any;
  - (5) Statements filed with the CRMDCRM Office in support of, or in opposition to, the appeal; and
  - (6) Any other documents, correspondence, or testimony considered in the permit decision-making process.

- (g) Oral Argument. Upon written request to the ~~CRM~~DCRM Office by the appellant or other party to the appeal, oral argument shall be permitted. The scope of the oral argument shall be limited to the written statements in support of, or in opposition to, the appeal. Oral argument shall be scheduled by the DCRM Director before the full membership of the CRM Appeals Board. Oral argument shall be heard after the submission of written statements by the appellant and opponents, if any, and within twenty-five days after the issuance of the CRM permit by CRM ~~agency officials~~Agency Officials.
- (h) Scope of Appeal. In reviewing the CRM permit decision of CRM ~~agency officials~~Agency Officials, the CRM Appeals Board shall reverse the decision below, and remand if necessary when:
- (1) It is clearly erroneous in light of CRM rules and regulations and the policies established in ~~CNMI PL 3-47 (2 CMC §§1501, et seq.)~~; or
  - (2) It is in violation of applicable federal law or CNMI constitutional or statutory provisions; or
  - (3) It is arbitrary or capricious; or
  - (4) It was not issued in accordance with required procedures.
- (i) Written Decision. After reviewing the record and considering the arguments, the CRM Appeals Board shall render a written decision detailing the reasons in support of its determination. The decision of the Board shall be the final administrative decision, subject to judicial review. In drafting its decision, the Appeals Board may utilize the resources of the ~~CRM~~DCRM Office.
- (j) Automatic Affirmance. If no decision is rendered by the CRM Appeals Board within thirty days of the date of the hearing, the DCRM Director shall issue a notice of summary affirmance of the CRM permit decision. The party or parties aggrieved by the CRM permit decision, as defined at §15-10-020, may then appeal to the Commonwealth Superior Court, pursuant to §15-10-245.

§

**§15-10-240 Commonwealth Superior Court**

Any person aggrieved by a final decision of the CRM Appeals Board may seek judicial review in accordance with ~~et seq. In the event that the CRM Appeals Board does not have a quorum within sixty days, the decision of CRM agency officials, CNMI Governor, or the DCRM Director shall be considered summarily affirmed and the aggrieved party may seek judicial review from the Commonwealth Superior Court in accordance with~~ et seq. 2 CMC §§1501, et seq.

**Part 300 - Standards for CRM Permit Issuance**

**§15-10-301 General Standards for all CRM Permits**

In the course of reviewing all APC permits and major siting permits, the CRM ~~agency officials~~ Agency Officials and the DCRM Director shall require the applicant to demonstrate by a fair preponderance of evidence that the project will not have a significant adverse impact on the coastal environment or its resources. ~~The CRM program agency officials and Director shall also base their decisions on technical findings and the policy set out in section 3 of Public Law 3-47. Adverse impacts may include but are not limited to those defined at § 15-10-020.~~

**§ 15-10-303 Standards to avoid adverse impacts**

The CRM Agency Officials and DCRM shall also base their decisions on technical findings and the policy set out in section 3 of 2 CMC § 1511. Adverse impacts may include but are not limited to those defined at § 15-10-020(c).

**§15-10-305 General Criteria for CRM Permits**

The CRM ~~agency officials~~ Agency Officials and the DCRM Director shall consider all of the following when evaluating CRM permit applications, including those for APC ~~development~~ developments permits, APC permits, and major siting permits:

(a) Cumulative Impact. The DCRM Director and CRM ~~agency officials~~ Agency Officials shall ~~determine~~ assess the “cumulative impact” of proposed projects as defined in § 15-10-020(x). This determination shall consider the impact of existing uses and activities on coastal resources and determine whether the added direct and secondary impact(s) of the proposed project seeking a



CRM permit will result, when added to the existing use, in a significant degradation of the coastal resources. Consideration shall include potential coastal nonpoint source pollution, watershed setting, and receiving waters of the watershed in which a project is situated, and ability to accommodate future climatic change where relevant information is available. Where applicable, cumulative impact analysis should also consider, and minimize potential negative impacts to cultural resources and aesthetic enjoyment of coastal resources. Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense, and may include actions that minimize or avoid adverse impacts by limiting the magnitude or degree or the action or mitigation to restore the ecosystem functions or values of the affected environment.

- (b) Compatibility. The DCRM Director and CRM ~~agency officials~~ Agency Officials shall determine, to the extent practicable, whether the proposed project is compatible with existing adjacent uses and is not contrary to designated land and water uses being followed or approved by the Commonwealth government, its departments, or agencies.
- (c) Alternatives. The DCRM Director and CRM ~~agency officials~~ Agency Officials shall determine whether or not a reasonable alternative site exists for the proposed project.
- (d) Conservation. The DCRM Director and CRM ~~agency officials~~ Agency Officials shall determine, to the extent practicable, the extent of the impact of the proposed project, including construction, operation, maintenance, and intermittent activities, on its watershed and receiving waters, marine, freshwater, wetland, and terrestrial habitat, and preserve, to the extent practicable, the physical and chemical characteristics of the site necessary to support water quality and living resources now and in the future.
- (e) Compliance with Local and Federal Laws. The DCRM Director and CRM ~~agency officials~~ Agency Officials shall require compliance with federal and CNMI laws, including, but not limited to, air and water quality standards, land use, federal and CNMI constitutional standards, and applicable permit processes necessary for completion of the proposed project.

- (f) Right to a Clean and Healthful Environment. Projects shall be undertaken and completed so as to maintain and, where appropriate, enhance and protect the Commonwealth's inherent natural beauty and natural resources, so as to ensure the protection of the people's constitutional right to a clean and healthful environment.
- (g) Effect on Existing Public Services. Activities and uses which would place excessive pressure on existing facilities and services to the detriment of the Commonwealth's interests, plans and policies, shall be discouraged.
- (h) Adequate Access. The DCRM Director and CRM ~~agency officials~~ Agency Officials shall determine whether the proposed project would provide adequate public access to and along the shoreline.
- (i) Setbacks. The DCRM Director and CRM agency officials shall determine whether the proposed project provides adequate space between the building footprint of a project and identified hazardous lands including floodplains, erosion-prone areas, storm wave inundation areas, air installation crash and sound zones, and major fault lines, unless it can be demonstrated that such development does not pose unreasonable risks to the health safety, and welfare of the people of the Commonwealth, and complies with applicable laws.
- (j) Management Measures for Control of Nonpoint Source Pollution. The DCRM Director and CRM ~~agency officials~~ Agency Officials shall determine if the management measures outlined in the permit application are adequate for the control of nonpoint source pollution resulting from project construction, operations, and maintenance, including intermittent activities such as repairs, routine maintenance, resurfacing, road or bridge repair, cleaning, and grading, landscape maintenance, chemical mixing, and other nonpoint sources. DCRM may impose additional conditions to include management measures for control of nonpoint source pollution that are a result of particular site conditions, such as soil type, soil erodibility, soil permeability, slope, drainage patterns, and other issues, in order to prevent potential nonpoint source pollution impacts on adjacent or downstream APCs.

§

(k) Buffers for environmentally sensitive areas. The DCRM Director and CRM Agency Officials shall determine the adequacy of vegetative buffer zones between the project footprint and environmentally sensitive areas including high risk flood zones, wetlands, and highly erodible slopes, and shorelines, considering current conditions and future projections as they are available and applicable.

**§15-10-310 Specific Criteria; Areas of Particular Concern; Generally**

Prior to the issuance of any APC permit for a proposed project within an APC, the ~~CRM agency officials and the DCRM Director~~Director, with support of the DCRM Permitting Section and Technical Staff, shall evaluate the proposed project in terms of its compatibility with the standards and relative priorities listed below in this part and the general standards provided above in § 15-10-305. If a proposed project is to be located in more than one APC, CRM permit standards and policies for each applicable APC shall be evaluated in a single CRM permit decision. If more than one project requiring a CRM permit is proposed for a particular location, the project determined by the CRM ~~regulatory officials~~Agency Officials to be the most compatible with the general and specific standards provided herein shall be given priority over the less compatible project. The Permit Manager and Technical Staff shall make recommendations to the DCRM Director to grant, deny, or issue an APC permit with conditions. CRM Agency Officials may be included in APC review at the request of their offices or the DCRM Director, and may incorporate conditions into APC permits to address specific resource management concerns at the discretion of the DCRM Director.

§

**§15-10-311 Specific Criteria; Areas of Particular Concern; Impact Avoidance, Minimization, and Mitigation Required**

If a proposed project or activity is likely to have negative impacts to coastal resources within an APC, avoidance, minimization, and mitigation of impacts shall be required.

- (a) Development of Mitigation Guidance. DCRM shall develop and publish policy guidance to support wise management of coastal resources, and will require mitigation of impacts

through permit conditions for proposed projects or through enforcement actions for permit violations or unpermitted activities.

(b) Payments, Fees, and Offsets. DCRM may develop policies to support offsets or fees to minimize and mitigate impacts where impacts are unavoidable. Where quantifiable, values of ecosystem services may be assessed and may be included in mitigation requirements in order to protect and enhance coastal resource management within Areas of Particular Concern.

**§15-10-315 Specific Criteria; Areas of Particular Concern; Lagoon and Reefs**

(a) Area Defined. The area consisting of a partially enclosed body of water formed by sand spits, bay mouth bars, barrier beaches, or coral reefs within the Commonwealth.

(b) Management Standards. Any project proposed for location within the lagoon and reef APC shall be evaluated to determine its compatibility with the following standards:

- (1) Subsistence usage of coastal areas and resources shall be ensured;
- (2) Living marine resources, particularly fishery resources, shall be managed so as to maintain optimum sustainable yields;
- (3) Significant adverse impacts to reefs and corals shall be prevented;
- (4) Lagoon and reef areas shall be managed so as to maintain or enhance subsistence, commercial, and sport fisheries; as well as commercial marine sports operations;
- (5) Lagoon and reef areas shall be managed so as to assure the maintenance of natural water flows, natural circulation patterns, natural nutrient and oxygen levels and to avoid the discharge of toxic wastes, sewage, petroleum products, siltation, and destruction of productive habitat;
- (6) Areas and objects of ~~historie~~historical and cultural significance shall be preserved and maintained; and
- (7) ~~Underwater~~ Lagoon and reef preservation areas shall be designated where practicable.

(c) ~~Lagoon and Reef APC~~; Use Priorities. Activities listed within a use priority category are neither priority-ranked nor exhaustive. Use priorities categories for the ~~lagoon~~Lagoon and ~~reef~~Reef APCs of the Northern Mariana Islands are as follows:

(1) Highest:

- (i) Projects promoting conservation of open space, high water quality, ~~historie,~~important ecosystem qualities or historical and cultural resources;
- (ii) Projects promoting or enhancing public recreation and access;
- (iii) Water-dependent projects which are compatible with adjacent uses;
- (iv) Sport and small-scale taking of edible marine resources within sustainable levels;
- ~~(v)~~(v) Sustainable operation of commercial water sports activities;
- (vi) Activities related to the prevention of beach erosion; or
- ~~(vi)~~vii) Projects preserving high value coral reef and seagrass areas supporting fish and wildlife habitat.

(2) Moderate:

- (i) Commercial taking of edible marine resources within sustainable levels;
- (ii) Aquaculture projects which do not adversely affect the productivity of coastal waters or natural beach processes; or
- (iii) Piers and docks which are constructed with floating materials or which, by design, do not impede or alter natural shoreline processes and littoral drift.

(3) Lowest:

- (i) Point source discharge of drainage water which will not result in significant permanent degradation in the water quality of the lagoon; or
- (ii) Dredging and filling to construct piers, launching facilities, and boat harbors, if designed to prevent or mitigate adverse environmental impacts.

(4) Unacceptable:

- (i) Discharge of untreated sewage, petroleum products, or other hazardous materials;
- (ii) Taking of sand and aggregate materials not associated with permitted activities and uses;

~~(iii)~~(iii) With the exception of permissible fishing activities, no harassing or taking of protected marine species;

(iv) Destruction of coralline reef matter not associated with permitted activities and uses;

~~(iv)~~-v) Dumping of trash, litter, garbage, or other refuse into the lagoon, or at a place on shore where entry into the lagoon is likely;

~~(v)~~-vi) Dredge and fill activities not associated with permitted construction of piers, launching facilities, infrastructure, and boat harbors.

(d) Seagrass ~~and seaweed~~ habitat within ~~lagoon~~Lagoon and ~~reef~~Reef APC.

(1) Management standards. Any proposed project within any seagrass APC shall thoroughly document existing configuration and composition of seagrass habitat within the proposed project area prior to any modifications through the submission of a biological assessment prepared by a marine biologist or similarly qualified professional shall be submitted to the DCRM office to support project review. Proposed modification(s) shall be evaluated to determine its compatibility with the following standards, as well as the management standards for the lagoon and reef APC as listed at §15-10-315(b).

(2) Use priorities. Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for sea grass habitat areas are as follows:

(i) Highest: Preservation of natural seagrass ~~and seaweed~~ beds, which protect the shoreline from erosion and prevent the movement of sand in the lagoon.

(ii) Moderate: Projects that are designed to enhance tourism in the CNMI directly by making swimming areas in front of hotels more appealing to hotel guests and other tourists, ~~that~~ but minimize any reduction or modification in seagrass ~~and seaweed~~ habitat ~~seagrass and seaweed~~.

(iii) Lowest: Projects that do not directly enhance the CNMI as a tourist destination and that have the effect of modifying and or reducing a seagrass ~~and seaweed~~ habitat.

(iv) Unacceptable

(A) Any project that does not minimize damage to sea grass habitat areas ~~according to the provisions of NMIAC § 15-10-315(d)(3).~~

(B) Any project that violates the moratorium on ~~seaweed, seagrass, and or~~ sea cucumber harvest provision of 2 CMC §5601, to the extent that the moratorium is current and applicable.

(C) Any project not associated with permitted dredging that allows for the motorized removal of seagrass ~~and seaweed.~~

⌘

(e) Seagrass ~~and seaweed~~ habitat modification

(i)1 To the extent practicable, reduction in the area of seagrass ~~and seaweed~~ habitat by direct actions associated with a permitted project shall be avoided.

(i)2 In the event that reduction in the area of seagrass ~~and seaweed~~ habitat by direct actions associated with a permitted project are unavoidable, the following shall apply: Permit applicants must document existing configuration and composition of seagrass habitat within the proposed project area prior to any modifications. In the case of safe swimming zones designated by Department of Public Safety where hotels are directly fronting or adjacent to the Saipan Lagoon, a given swimming zone may be cleared only to the point that 50% of a given swimming zone is clear of seagrass and seaweed, as authorized by Public Law 15-41-~~7~~. Mitigation of removed seagrass may be required to reduce impacts to coastal resources. If seaweed, algae, and seagrass are present in a swimming area, removal of seaweed or algae should be conducted before seagrass is removed. In the event that 50% or more of a given swimming zone is naturally barren of seagrass and seaweed, no further removal is permitted. No permit for the removal of seagrass ~~and seaweed~~ will be issued unless a hotel swimming zone is properly demarcated with appropriate buoys pursuant to Department of Public safety designation and in consultation with the DCRM, Marianas Visitor Authority and adjacent land owners. Under no circumstances will motorized removal of ~~seagrass~~sea grass of any kind be permitted ~~in a safe swimming zone.~~

§

**§15-10-320 Specific Criteria; Areas of Particular Concern; Managaha and Anjota Islands**

(a) Management Standards. Management standards for Managaha Island and Anjota Island shall be the same as the managements standards applied to Lagoon and Reefs, at §15-10-315(b).

(b) Use Priorities, Managaha Island. Use priority categories for Managaha Island (Saipan), in addition to those listed for general lagoon and reef APCs, shall be as follows:

- (1) Highest. Maintenance of the island as an uninhabited place used only for cultural and passive recreational purposes.
- (2) Moderate. Improvements for the purposes of sanitation and navigation.
- (3) Lowest. Commercial activity situated on the island related to cultural and passive recreational pursuits.
- (4) Unacceptable. Development, uses, or activities which preclude or deter or are unrelated to the use of the island by residents of the Commonwealth for cultural or passive recreational purposes.

(c) Use Priorities, Anjota Island (Rota). Use priority categories for Anjota Island shall be as follows:

- (1) Highest. Maintenance of that part of the island outside the port and industrial APC as a wildlife sanctuary and for passive recreation.
- (2) Unacceptable. Expansion of the port and industrial section of Anjota Island which would encroach upon or have significant adverse impact upon the maintenance of a wildlife preserve or upon recreational uses of the island.

**§**

**§15-10-325 Specific Criteria; Areas of Particular Concern; Coral Reefs.**

(a) Management Standards: Management standards for Coral Reefs shall be the same management standards applied to Lagoon and Reefs, at §15-10-315(b).

(b) Use priorities: The use priority categories for the coral reefs of the Northern Mariana Islands chain shall be as follows:

- (1) Highest:



- (i) Maintenance of highest levels of primary productivity; or
- (ii) Creation of underwater preserves in pristine areas- or restoration projects in impacted areas.

(2) Moderate-(i) Mitigation or experimental coral enhancement projects; or

(ii) Dredging of moderately productive corals and reefs associated with permitted uses and activities-

, and associated mitigation activities (3) Lowest. Taking of corals for cultural use (i.e. production of lime).

(4) Unacceptable:

- (i) Destruction of reefs and corals not associated with permitted projects; or
- (ii) Taking corals for other than scientific study.

§

**§15-10-330 Specific Criteria; Areas of Particular Concern; Wetlands and Mangroves**

(a) Area Defined. The geographic area of particular concern which includes areas that are inundated or saturated by surface or ground water without a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of plant or aquatic vegetation typically adapted for life that requires saturated or seasonally in saturated soil conditions for growth and reproduction. ~~Wetlands include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries, and similar areas in the Northern Mariana Islands chain.~~ The presence or absence of these three criteria (soils, plants, and hydrology) is considered when assessing the presence and value of wetland systems by applying the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Hawaii and Pacific Islands Region. Wetlands include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries, and similar areas in the Northern Mariana Islands chain.

(b) Management Standards. Any project proposed for location within the wetland and mangrove APC shall be evaluated to determine its compatibility with the following standards:

- (1) Significant adverse impact on natural drainage patterns, the destruction of important habitat; and the discharge of toxic substances shall be prohibited; adequate water flow, nutrients; and oxygen levels shall be ensured;

- (2) The natural ecological and hydrological processes of mangrove areas shall be preserved;
- (3) Critical wetland habitat shall be maintained and, where possible, enhanced so as to increase the potential for survival of rare and endangered flora and fauna;
- (4) Public landholding in and adjacent to the wetland and mangrove APC shall be maintained and, to the extent possible, increased, for the purpose of access and/or hazard mitigation, through land trades with the Department of Public Lands or any of its successor agencies, land purchases, creation of easements; or through taking by eminent domain;~~and~~

~~(5)~~(5) Ecologically protective buffers shall be established and maintained based on wetland valuation and environmental considerations, with a standard 50-foot minimum buffer requirement for all wetlands over 300 square feet, and up to 200 feet depending on wetland valuation and the need for protection. If this buffer would result in the taking of all economic value and use from the property, the minimum buffer size may be adjusted at the discretion of the DCRM Director and mitigation may include off-site or in-kind compensatory mitigation proposals; and

(6) Wetland resources shall be utilized for appropriate agriculture, recreation, education, public open space; and other compatible uses which would not degrade ecosystem functions and productivity.

(7) Wetland delineations shall be completed using the current approved federal manual and supplements.

(8) Wetland valuations shall be completed using the current rule on “CNMI Rapid Assessment Methodology (RAM).” RAM reports shall be submitted with wetland determination requests to DCRM Permitting Section’s Wetland Specialist for confirmation. Minimum buffers for wetlands with the following RAM classifications are:

\_\_\_\_\_ A. “Low” - 50-foot minimum buffer;

\_\_\_\_\_ B. “Medium” – 75-foot minimum buffer; and

\_\_\_\_\_ C. “High” – 100-foot minimum buffer.

\_\_\_\_\_ D. The DCRM Director may consider proposals to average buffer area that include enhancement and maintenance proposals of vegetated buffers or that may

otherwise support use priorities and further the “no net loss” policy, which aims to preserve overall functions and values of wetland systems in the CNMI.

(9) To further the CNMI “no net loss” policy, any loss of wetlands shall be compensated or replaced at a minimum 2:1 replacement ratio.

(c) Use Priorities. Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the wetland and mangrove APC are as follows:

(1) Highest:

- (i) Preservation and enhancement of wetland and mangrove areas; or
- (ii) Preservation of wildlife, primary productivity, conservation areas; and historical properties in ~~both~~ wetland and mangrove areas.

(2) Moderate:

- (i) Non-intensive agriculture benefitted by inundation, low density grazing;
- (ii) Infrastructure corridors designed to avoid significant adverse impacts to natural hydrological processes and values as wildlife habitat;
- (iii) Non-commercial recreation including light duty, elevated, non-permanent structures such as footbridges, observation decks, and similar non-enclosed recreational and access structures; or (iv) Construction of “green infrastructure” measures to reduce flood risks, improve water quality, and enhance buffer areas or wetland habitat.

(3) Lowest:   

(i) Residential development designed to avoid adverse environmental impacts and which is not susceptible to damage by flooding; or (ii) Filling activities associated with flood control or necessary infrastructure corridors.

(4) Unacceptable:

- (i) Land fill and dumping not associated with flood control and infrastructure corridors or other allowable activities and uses; ~~or~~

(ii) Land clearing, grading, or removal of natural vegetation not associated with allowable activities, which would result in extensive sedimentation of wetland, mangrove areas, and coastal waters;

§(iii) Development of commercial or industrial structures within the wetland without appropriate on- or off-site mitigation; or

(iv) Development of structures within the wetland buffer that would significantly impair or threaten the ecological and hydrological functions of the adjacent wetland system.

**§15-10-335 Specific Criteria, Areas of Particular Concern; Shorelines**

(a) Area Defined. The geographic area of particular concern consisting of the area between the mean-high water mark tide line or the edge of a shoreline cliff and one hundred fifty feet inland on the islands of the Northern Mariana Islands chain.

(b) Management Standards. Any project proposed for location within the shoreline APC shall be evaluated to determine its compatibility with the following standards:

(1) The impact of onshore activities upon wildlife, coastal and marine systems, or aesthetic resources, as well as natural coastal processes shall be minimized;

(2) The effects of shoreline development on natural beach processes shall be minimized;

~~(3) The~~ (3) The effects of onshore and nearshore activities or development shall minimize changes to existing shoreline morphology and vegetation;

(4) The unpermitted taking of sand, gravel, or other aggregates and minerals from the beach and near shore areas shall not be allowed; including sand, gravel, or other aggregates and minerals within the APC; and

~~(4) Removal of hazardous debris from beaches and coastal areas shall be strongly encouraged;~~

(5) Where possible, public landholding along the shore shall be maintained and increased, for the purpose of access and hazard mitigation, through land trades with the

Department of Public Land, or its successor agency, land purchases, creation of easements, and where no practicable alternative exists, through the constitutional authority of eminent domain.

(c) Additional Considerations for ~~Permits~~permits on ~~Shorelines~~shorelines. In addition to deciding whether the proposed project is consistent with the above standards, CRM agency officials shall consider the following in their review of coastal permit applications:

~~(1)~~i Whether the proposed project is water-dependent or water-oriented in nature;

~~(2)~~ii Whether the proposed project is to facilitate or enhance coastal recreational, subsistence, or cultural opportunities. (i.e., docking, *utt*, fishing, swimming, picnicking, navigation devices);

~~(3)~~iii Whether the existing land use, including the existence of roadways, has irreversibly committed the area to uses compatible with the proposed project, particularly water oriented uses, and provided that the proposed project does not create adverse cumulative impacts;

~~(4)~~iv Whether the proposed project is a single-family dwelling in an existing residential area and would occur on private property owned by the same owner as of the effective date of the program, of which all or a significant portion is located in the shoreline APC, or no reasonable alternative is open to the property owner to trade land, relocate, or sell to the government;

~~(5)~~v Whether the proposed project would be safely located on a rocky shoreline and would cause significant adverse impacts to wildlife, vegetation, marine or scenic resources;

~~(6)~~vi Whether the proposed project is designed to prevent or mitigate shoreline erosion; and

~~(7)~~vii Whether the proposed project would be more appropriately located in the port and industrial APC.

(d) Evaluation of Marinamarina and ~~Small Boat Harbor Project Permits~~small boat harbor project permits. In addition to deciding whether the proposed project is consistent with the

above standards, marina and small boat harbor projects shall be evaluated for consistency with the following performance standards and goals:

- (1) Effective runoff control shall be implemented which includes the use of pollution prevention activities and the proper design of hull maintenance areas;
- (2) Shoreline stabilization shall be implemented ~~where erosion is a~~ has contributed to nonpoint source pollution problem; or where erosive forces are contributing to chronic shoreline retreat. Where ever possible, soft stabilization using re-vegetation measures, green infrastructure, and other “living shoreline” alternatives should be implemented instead of hard stabilization and shoreline armoring;
- (3) Effective fuel station design shall be implemented to prevent spills and leaks and allow for efficient and effective cleanup of spills;
- (4) Effective sewage management facilities shall be installed where needed to reduce the release of sewage to surface waters. Facilities shall be designed to allow for efficient and effective maintenance and signage shall be posted to facilitate the public’s use of the facility;
- (5) Effective fish waste management shall be implemented through restrictions, public education, and/or facilities for proper disposal of fish waste;
- (6) Petroleum control shall be implemented to reduce the amount of fuel and oil from boat bilges and fuel tank air vents and other vessel activities from entering marina and surface waters;
- (7) Boat cleaning operations shall minimize, to the extent practicable, the release of harmful cleaners and solvents as well as paint from in-water hull cleaning;
- (8) Public education management, outreach, and training shall promote marina activities that minimize environmental impact; and
- (9) Boating activities within marina areas shall conform to the Department of Public Safety Boating Safety Regulations (NMIAC, Title 150, Chapter 20).

(e) Use Priorities. Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the shoreline APCs of the entire Northern Mariana Islands chain are as follows:

- (1) Highest:

- (i) Public recreational uses of beach area, including resource conservation, the creation of public shoreline parks, and construction of permissible structures enhancing access and use in the shoreline setback area, such as barbecue grills, picnic tables, ~~docks, or~~ shelters, ~~or boardwalks;~~
- (ii) Compatible water-dependent development which cannot be reasonably accommodated in other locations;
- (iii) Traditional cultural and ~~historie~~historical practices;
- (iv) Preservation of fish and wildlife habitat;
- (v) Preservation of natural open areas of high scenic beauty and scientific value;
- ~~or~~
- (vi) Activities related to the prevention of beach erosion through non-structural means;
- (vii) Floating, non-permanent docks or boardwalks that are designed to withstand long-term impacts of natural coastal processes and that are compatible with other relevant regulations; or
- (viii) Beach habitat enhancement and removal of debris. Removal of debris such as unexploded ordinance, marine and other debris from beaches and coastal areas in consultation with DCRM to mitigate unavoidable impacts.

(2) Moderate:

- (i) Single-family dwellings in existing residential areas;
- (ii) Agriculture/aquaculture, which requires or is enhanced by conditions inherent in this APC; ~~or~~
- (iii) Improvements to or expansion of existing water-oriented structures which are compatible with designated land uses and do not otherwise conflict with or obstruct public recreational use of coastal areas or other water-dependent or water-related uses; ~~or~~
- (iv) Projects that result in enhancements of existing structures that may include upgraded building standards or on-site hazard mitigation or adaptation projects.

(3) Lowest:

- (i) Projects which result in growth ~~or improvements to of~~ existing commercial, non-recreational ~~public,~~ or multi-unit residential uses; or

(ii) Water related and new water-oriented development compatible with designated land uses, which cannot be accommodated in other locations and which neither conflicts with recreational uses nor restricts access to or along the shoreline.

(4) Unacceptable:

- (i) New commercial structures, industrial structures, or non-recreational public structures which are not water-dependent, water-oriented, or water-related;
- (ii) Disposal of litter and refuse; or
- (iii) The taking of sand for other than cultural usage, and mining of gravel and extraction of minerals, oil and gas, or other extractive uses.

§

**§§ 15-10-340 Specific Criteria; Areas of Particular Concern; Ports and Industrial Areas**

(a) Area ~~Defined~~defined. The land and water areas of particular concern surrounding the commercial ports of the Northern Mariana Islands which consists of projects, industrial uses, and all related activities.

(b) Management Standards. Any project proposed for location within the port and industrial APC shall be evaluated to determine its compatibility with the following standards:

- (1) Projects shall be undertaken and completed so as to maintain and, where appropriate, enhance and protect the Commonwealth's inherent natural beauty and natural resources and so as to ensure the protection of the people's constitutional right to a clean and healthful environment;
- (2) In the siting of port and industrial development, its suitability in terms of meeting the long-term economic and social expectations of the Commonwealth;
- (3) Recognize the limited availability of the port and industrial resources in making allocation decisions;
- (4) Ensure that development is done with respect for the Commonwealth's inherent natural beauty and the people's constitutionally protected right to a clean and healthful environment;
- (5) Develop improvements to infrastructure in the port and industrial APC;



- (6) Prohibit projects which would result in significant adverse impacts, including cumulative impacts on coastal resources outside the port and industrial APC;
- (7) Conserve shoreline locations for water-dependent projects;
- (8) Consider and assist in resolution of possible conflicts by identifying and planning for the potential exercise of military retention area options affecting port resources;
- (9) Locate, to the maximum extent practicable, petroleum based coastal energy facilities within the port and industrial APC;
- (10) Consider development proposals from the perspective of federal port related opportunities and constraints which are applicable to the Commonwealth; and
- (11) The amount of shoreline frontage utilized by any project, regardless of the extent to which the project may be water-dependent, shall be minimized to the greatest extent practicable.

(c) Use Priorities. Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the port and industrial APCs in the entire Northern Mariana Islands chain are as follows:

- (1) Highest:
  - (i) Water-dependent port and industrial activities and uses located on the APC shoreline;
  - (ii) Industrial uses that are not water-dependent but would cause significant adverse impacts if situated outside the port and industrial APC and would not be sited directly on the port and industrial APC shoreline, and would not preclude the opportunity for water-dependent activities and uses; or
  - (iii) Industries and services that support water-dependent industry and labor, which are not located on the port and industrial APC shoreline and do not interfere with water-dependent uses.
- (2) Moderate:
  - (i) Recreational boating facilities; or
  - (ii) Clearing, grading, or blasting which does not have long-term adverse effects on environmental quality, drainage patterns, or adjacent APCs, so long as the activity is related to the permitted project.

- (3) Lowest:
  - (i) Indefinite storage or stockpiling of hazardous materials;
  - (ii) Indefinite storage of goods, not awaiting water-borne transport, in a shorefront location; or
  - (iii) Uses or activities which are acceptable in other APCs and which do not enhance or are not ~~reasonable~~reasonably necessary to support permissible uses, activities and priorities in the port and industrial APC.
- (4) Unacceptable:
  - (i) Non-port and industrial related activities and uses which, if permitted, would result in conversion to other uses at the expense of port and industrial related growth, or would induce port and industrial related growth into other APCs or areas; or
  - (ii) Uses and activities which would have a significant adverse impact on other APCs, the American Memorial Park, Anjota Preserve, ~~historie~~historical properties, and other significant coastal resources.

§

**§15-10-345 Specific Criteria; Areas of Particular Concern; Coastal Hazards**

- (a) ~~(a)~~-Area Defined. Areas identified as a coastal ~~flood~~high hazard flood zones, (V & VE) in the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), shall be considered a coastal hazards APC.
- (b) Management Standards. Any project proposed for location within the coastal hazards APC shall be evaluated to determine its compatibility with the following standards:
  - (1) If the project will have a detrimental impact on existing landforms or coastal processes that provide natural resistance from the forces of coastal hazards such as beaches, wetlands, shoreline / stand vegetation, and cliff lines, impacts to these coastal resources shall be avoided to the maximum extent possible;
  - (2) If the project is located in a geologically unstable zone such as cliff lines, severe slopes; (greater than 30%), coastal headlands; or outcroppings, appropriate mitigation to prevent threat to human life, safety; and the environment must be applied;

~~(3) If the project design, form, or use tends to make the structure (or auxiliary structures) more vulnerable to the effects of coastal hazards such as high winds, wave energy, flooding, and storm surge, the plans must be certified by a CNMI licensed structural engineer to ensure potential impacts and threats to human life and safety are minimized;~~

~~(4)~~ -

(3) If the project is located within an area which has historically been known to flood or be at high risk to storm wave inundation or erosion, all design plans must be approved by the DPW Building Control Officer for compliance with the applicable building code; and

~~(5)~~4 If construction of the project may endanger human life or safety due to its design or siting, it shall not be allowed.

(c) In addition to deciding whether the proposed project is consistent with the above standards, the CRM ~~agency officials~~Agency Officials and the DCRM Director shall consider the following in their review of coastal applications:

(1) Whether the project is shoreline dependent;

(2) Whether the project is located in an area where potentially hazardous construction or unsafe structures already exist;

(3) Whether the project is receiving funding by any entity of the federal or local government for its design or construction;

(4) Whether the project will enhance or facilitate recreational or cultural opportunities;

(5) Whether access to or from the shoreline is enhanced or the level of safety to or along the shoreline is increased;

~~(6)~~(6) Whether the project has been reviewed and certified by a coastal engineer to ensure reduced risks to public safety and the environment;

(7) Whether the project is designed to prevent or mitigate for shoreline erosion; and

~~(7)~~8 Whether the project meets the requirements of the applicable building code for structures in flood or storm hazard zones that include elevated walls or floors, or areas designed to mitigate run-off.

(d) Use Priorities. Activities listed within a use priority category are neither priority ranked nor exhaustive. Use priority categories for the ~~coastal hazard~~ Coastal Hazard APCs of the entire Northern Marianas Island chain are as follows:

(1) Highest:

- (i) Projects which preserve or enhance the natural defense of the shoreline against storm wave attack and flooding without the use of shoreline hardening/armoring;
- (ii) Public recreational uses of beach area, including the creation of public shoreline parks and the preservation of open space and vegetation along the shoreline;
- (iii) Traditional cultural and ~~historie~~ historical practices;
- (iv) Preservation of fish and wildlife habitat; or native vegetation; or
- (v) Preservation of natural open areas of high scenic beauty and/or scientific value.

(2) Moderate:

- (i) Projects which promote pedestrian access to and from ~~remote~~ shoreline areas; ~~or~~
  - (ii) Projects which conserve or enhance native coastal vegetation or mitigate impacts of natural coastal processes;
  - (iii) Projects which conserve or enhance native coastal vegetation or reduce risks of impacts through implementation of adaptation projects;
  - (iv) Projects which result in the improvement of existing structures in terms of increasing resilience to coastal hazards; or
  - (v) Improvements to, or expansion of, existing water oriented structures which are located in low risk hazard areas, are compatible with designated land uses, and do not pose a risk to the health and safety of the public.

(3) Lowest:

- (i) Transportation facilities, public infrastructure or shoreline dependent projects which cannot be reasonably accommodated in other areas;
- (ii) Projects which modify natural shoreline features such as cliffs, beaches, vegetative buffers, or rocky shorelines; or

(iii) Projects which result in the ~~start, growth, installation~~ or ~~improvement~~ placement of commercial, public, or multi-unit/single residential uses in areas identified or known to be in high coastal hazard zones;

(ii) ~~Transportation facilities, public infrastructure, or shoreline dependent projects which cannot be reasonably accommodated in other areas; or~~

(iii) ~~Projects which require the installation or placement of shore protection structures.~~

(4) Unacceptable:

(i) Projects which degrade or modify natural shoreline protective feature such as beaches, cliffs, vegetative buffers, or rocky shorelines;

(ii) Projects which require hard shore protection to facilitate or accommodate ~~structural entities of~~ the development, unless these developments are associated with boating or marine based facilities; or

(iii) Projects which interfere or disrupt the natural shoreline processes such as littoral transport or coastal dynamics.

§

#### **§15-10-350 Height Density, Setback, Coverage, and Parking Guidelines**

(a) Application of ~~Guidelines, Generally~~ guidelines, generally. The following building design and site utilization guidelines will be applied to all projects requiring a CRM permit unless governed by zoning law ~~pursuant to or if, as set forth in § 15-10-025. The~~ CRM ~~agency officials in writing, and~~ Agency Officials with concurrence by DCRM Director, may grant an exception in writing with concurrence by the Director. An exception may only be granted when the applicant can demonstrate that there will be no significant impacts on scenic, historical, coastal, biological, and water resources. ~~However, no~~ No exception may be granted for shoreline setbacks ~~unless otherwise provided for in subsection (b).~~. In order to be consistent with the ~~1990~~ latest adopted CNMI Building Code (~~PL 6-45~~) (2 CMC §§7101, et seq.), building heights will be measured according to the definition provided by the appropriate sections of the applicable building code.

(b) Shoreline Setbacks.

(1) Scope of Regulations. The shoreline setback regulations herein prescribed apply to all coasts of the Commonwealth except for the port and industrial APCs where no shoreline setback regulations shall apply. Shoreline setbacks shall be measured inland from the ~~mean-high water level-tide line~~. For purposes of the regulations in this section the front of any lot shall be that side parallel to the coastline and/or ocean.

(2) Shoreline Setbacks:

(i) Shoreline setback A, from 0-35 feet. Beach and shoreline reservation zone for use as public access and recreation. Generally, structures are prohibited.

(ii) Shoreline setback B, from ~~35-75~~100 feet. No vertical construction, which will obstruct the visual openness and continuity of the shoreline area, is permitted. Open space, rest and recreation areas, swimming pools, terraces, landscaping and related outdoor improvements are allowed. Parking areas are not permitted.

(iii) Shoreline setback C, from ~~75-100~~125 feet. Single-story structures, covered porches, trellises and similar improvements not to exceed 12-feet in height measured from the natural grade line. Parking is permitted if otherwise allowed by law, however, negative impacts to water quality and shoreline dynamics must be avoided, minimized, and mitigated.

(iv) Shoreline setback D, greater than ~~100~~125 feet. Building height based on §15-10-~~350~~360(c). If the building is higher than 2 stories, ~~100~~150 feet from shorelinehigh tide line shall be considered the property line.

(3) Setbacks for ~~Small~~Special Shoreline Lots. For any lot where thirty percent or more of the land area of the lot is affected by the mandatory shoreline setback above, such shoreline setback regulations are modified as follows:

(i) Shoreline setback A-1, from 0-~~20~~30 feet. Beach recreation zone for use as public access and recreation.

(ii) Shoreline setback B-1, from ~~20-60~~30-70 feet. Shall be open space with no vertical construction or parking permitted.

(iii) Shoreline setback C-1, from ~~60~~70-100 feet. Single and two-story structures only, with the total height not to exceed 20 feet.

(iv) Shoreline setback D-1, greater than 100 feet. Building height based on §15-10-~~350~~360(c).

(c) Height and Side Yard Setback.

(1) High Rise Development. All high rise developments defined as a structure more than six stories or more than sixty feet above grade are encouraged to locate in areas of existing high rise development. High rise construction is only permissible subject to the following conditions:

(i) High rise structures proposed seaward of any coastal road must be set back one foot from the front and back property lines for each one foot in the overall height of the building;

(ii) In order to create view corridors, the applicant for high rise development on a lot adjacent to the shoreline lots will be required to draw one datum line perpendicular to the shoreline or beach. All high rise structures shall be orientated so that the longest lateral dimension is parallel to the datum line;

~~(iii)~~ ~~(iii)~~ The project design shall incorporate substantial landscaping and tree planting to reduce/screen the visual bulk and mass of buildings as seen from public places such as roads, parks, and other public areas; and

~~(iv)~~ ~~(iv)~~ The DCRM Director's discretion, the applicant shall ~~may be asked~~ to prepare a view corridor plan which shall include an inventory of existing views, impacts on existing views, and proposed mitigation measures to protect scenic views.

(2) Multi-unit Residential. Multi-unit residential buildings must be ~~set back~~setback one foot from the front and back of property lines for each one foot in the overall height of the building. All multi-unit residential buildings must be set back at least 10 feet from the side property lines.

(3) Commercial. Commercial buildings must be ~~set back~~setback one foot from the front and back property lines for each one foot in the overall height of the building. All commercial buildings must be ~~set back~~setback at least 10 feet from the side property lines. The DCRM Director may allow a smaller side setback upon a determination that the adjacent property is being or is substantially likely to be used for commercial or industrial purposes.

- (4) Hotel & Resort. Hotel and resort buildings must be ~~set back~~setback one foot from the front and back property lines for each one foot in the overall height of the building.
- (5) Industrial. Industrial buildings shall be ~~set back~~setback a minimum of 20 feet from all property lines. The DCRM Director may allow less than a 20 -foot setback upon a determination that the adjacent property is being or is substantially likely to be used for industrial purposes.

(d) Lot Coverage Density and Parking Guidelines. Lot coverage for structures means the footprint of buildings on the site and does not consider the floor area of upper floors or the overall density of the development. Where the first floor is elevated above the ground level, its lot coverage ratio shall be based on the proposed use for the area below the structure. The lot coverage ratio for open space is considered to include plazas, terraces, decks, and other outdoor areas which are not covered or walled, landscaped areas, recreation and open space improved or unimproved natural areas, covered storm water disposal areas, and pedestrian walkways. The continuity, conservation, and maintenance of open space must be provided for; any later modification must be first approved.

(1) One and Two Family Residential:

- (i) Maximum lot coverage by buildings is 40% for lots on which not all dwellings are connected to a public sewer and 60% for lots on which all dwellings are connected to a public sewer.
  - (ii) In developments consisting of more than four lots, the developer and/or subdivider must provide common use open space at a ratio of one acre of common use open space per every five acres of private lots. Up to 50% of the required common open space may be open space useable by the community included in public schools or similar public facilities.
- (2) Multi Unit Residential. Maximum lot coverage by buildings is 60%. A minimum of 1.25 parking spaces must be provided for each dwelling unit.
  - (3) Commercial. Maximum lot coverage by structures is 75%. A minimum of one parking space must be provided for each 200 square feet of commercial space; one parking space for each 150 square feet of office space; and one parking space for every four restaurant seats.



(4) Hotel & Resort:

(i) For buildings exceeding 35 feet in height. Maximum lot coverage by structures is 20%. Maximum lot coverage by parking, roads, and service entries is 35%. Minimum lot coverage for open space is 45%.

(ii) For buildings less than 35 feet in height. Maximum lot coverage by structures is 35%. Maximum lot coverage by parking, roads and service entries is 35%. Minimum lot coverage for open space is 30%.

(iii) A minimum of 1 parking space for every 5 guest units must be provided.

(5) Industrial. An adequate number of parking spaces for employees and customers must be provided.

(e) Nothing in this section shall be interpreted to prohibit ~~CRMDCRM~~ from imposing additional buffer zones to protect environmentally sensitive resources as appropriate.

#### **Part 400 - Standards for APC Creation and Modification**

##### **§15-10-401 Authority**

The CRM ~~agency officials~~Agency Officials or the DCRM Director may seek designation of any area within the Commonwealth as an APC or propose a change in any APC boundary. Further, the DCRM Director may review requests from private parties for designation or modification of APCs.

§

##### **§15-10-405 Procedure**

Requests for new or modified APCs shall include detailed documentation supporting the APC designation or boundary change. The documentation shall be based on criteria set forth in §15-10-410 below, but may include other information pertinent to the area nominated or proposed boundary change. Within thirty days of a nomination or proposed boundary change, the DCRM Director shall circulate it to the CRM ~~agency officials and the CRM Coastal Advisory Council.~~Agency Officials. The DCRM Director shall, within that same period, publish notice of the nomination or proposed boundary change, describing the area involved, in a newspaper of general circulation within the Commonwealth. The ~~CRMDCRM~~ Office shall be available to receive public comment for a period of ~~forty-five~~thirty days from the date such notice is

published. Within the ~~forty-five~~thirty-day minimum comment period, the CRM ~~agency officials~~ and the CRM Coastal Advisory Council Agency Officials shall submit to the CRMDCRM Office comments and recommendations, and a public hearing shall be conducted by the CRMDCRM Office. Within thirty days after the closure of the comment period, ~~the CRM Coastal Advisory Council shall, after adequate consideration of the comments received, issue a recommendation on the nomination to~~ the CRM agency officials ~~who~~ shall make the final decision regarding the proposed creation or modification.

§

#### **§15-10-410 Criteria for Creation and Modification**

In reviewing a request for designation or modification of an APC, the DCRM Director and the CRM ~~agency officials~~ Agency Officials shall consider whether the areas require special management because they are:

- (a) Areas of unique, scarce, fragile, or vulnerable natural habitat; have a unique or fragile physical configuration (e.g. Saipan lagoon); are of historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National or CNMI Register of Historic Places);
- (b) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife and endangered species and the various trophic levels in the food web critical to their well-being;
- (c) Areas of substantial recreational value or potential;
- (d) Areas where developments and facilities are dependent either upon the utilization of, or access to, coastal waters, or of geographic significance for industrial or commercial development or for dredge spoil disposal;
- (e) Areas of urban concentration where shoreline utilization and water uses are highly competitive;

(f) Areas which, if development were permitted, might be subject to significant hazard due to storms, slides, floods, ~~erosions~~erosion, stormwater, sedimentation, settlement, or salt water intrusion;

(g) Areas needed to protect, maintain, or replenish coastal lands or resources, including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches and offshore sand deposits; or

(h) Areas needed for the preservation or restoration of coastal resources due to the value of those resources for conservation, recreational, ecological, or aesthetic purposes.

§

#### **§15-10-415 New APC Standards and Use Priorities**

Upon a determination to designate a new APC, the DCRM Director shall draft management standards and use priorities. Designation of the area as an APC and publication of the new standards and use priorities shall be effected by publication of the designated APC and standards and use priorities in the Commonwealth Register pursuant to 1 CMC 9101, et seq.

#### **Part 500 - Standards for Determination of a Major Siting**

##### **§15-10-501 Determination of Major Siting**

(a) The determination of whether a proposed project, inside or outside a coastal APC, constitutes a major siting shall be issued by the ~~CRM Office based on a documented majority of CRM program agencies stating the rationale therefore. Major siting is defined in~~ DCRM Director if clearly covered by 15-10-020(uu). The DCRM Director may refer permit applications to the CRM Agency Board in cases where determination of whether a project proposal is not straightforward or where further consideration or review of an application has been requested by a CRM Agency Official. Where any CRM Agency Official questions a major siting determination, the issue shall be resolved by majority vote of the CRM Agency Officials.

(b) All major sitings shall be in conformity with the policy enumerated in section ~~3 of PL 3-47~~ 2 CMC §1511.

(c) Any project determined to be a major siting must apply for a major siting permit.

§

#### **§15-10-505 Specific Criteria for Major Sitings**

The CRM ~~agency officials~~Agency Officials and the DCRM Director shall evaluate a proposed project found to constitute a major siting based on the specific criteria listed below, as well as the general criteria for all major siting and APC permits at §15-10-301 and general standards at §15-10-305. A major siting application must contain an evaluation by the applicant of the proposed project based on the criteria below, as required by §15-10-206.

(a) Project Site Development. The proposed project site development shall be planned and managed so as to ensure compatibility with existing and projected uses of the site and surrounding area.

(b) Minimum Site Preparation. Proposed projects shall, to the extent practicable, be located at sites with pre-existing infrastructure, or which require a minimum of site preparation (e.g. excavation, filling, ~~and~~ removal of vegetation, utility connection).

(c) Adverse Impact on Fish and Wildlife. The proposed project shall not adversely impact fragile fish and wildlife habitats, or other environmentally sensitive areas.

(d) Cumulative Environmental Impact. The proposed project site shall be selected and developed in order to avoid and minimize adverse primary, secondary, or cumulative environmental impacts. (e) Full project proposal required. Environmental effects of proposed actions must be considered together if the actions are functionally or economically related to other actions. Project proposals must not be submitted "piecemeal" even if the project will be phased; rather, a full proposal must be submitted in order to assess potential direct and cumulative impacts.

(f) Future Development Options. The proposed project site shall not unreasonably restrict the range of future development options in the adjacent areas.

(⊕)

(g) Mitigation of Adverse ~~Impact.~~ Impacts. Wherever practicable, adverse impact(s) of the proposed project on the environment shall be mitigated. Mitigation shall include the incorporation of management measures for the control of nonpoint source pollution- and with general management objectives to limit risk of loss and damage from sea level rise and coastal flooding. Where data is available, current and future risks should be considered when assessing potential direct, indirect, and cumulative impacts, and proposing avoidance, minimization, and mitigation measures. To limit avoidable impacts from coastal hazards, major siting proposals must meet or exceed flood hazard reduction standards as codified in Chapter 155-10.2 Part 200.

(h) ~~(g)~~ Cultural-~~historie~~historical/Scenic Values. Consider siting alternatives that promote the Commonwealth's~~Commonwealths~~ goals with respect to cultural-~~historie,~~ historical, and scenic values.

(h) Watershed Conservation. In regard to site development (including roads, highways, and bridges), avoid development, to the extent practicable, of areas that are particularly susceptible to erosion and sediment loss; preserve areas that provide important water quality benefits and/or are necessary to maintain riparian and aquatic biota; and/or protect to the extent practicable the natural integrity of water bodies and natural drainage systems.

## **Part 600 - CRM Permit Conditions**

### **§15-10-601 Use of Conditions in CRM Permits**

CRM ~~agency officials~~Agency Officials may delineate the scope of an approved activity, or otherwise limit CRM permits; by issuing conditions to CRM permits. The conditions shall be set out individually in writing, shall be accompanied by a specific reason for each condition, and shall be issued contemporaneously with the CRM permit. In permitted projects of an ongoing nature, the requirement for satisfaction of or compliance with the CRM permit conditions shall continue for the duration of the permitted activity. Violation of a CRM permit condition at any time shall be cause for the DCRM Director to take enforcement action pursuant to parts 800 and 900.

§

### **§15-10-605 Purpose and Scope**

The purpose of issuing CRM permits subject to specific conditions is to ensure that a permitted project complies with part 300, Standards for CRM Permit Issuance, and CRM program policies. Any lawful requirement consistent with the standards and policies referred to above may be the basis of a CRM permit condition.

§

**§15-10-610 Mandatory Conditions**

All CRM permits shall contain at least the following conditions:

(a) Inspection. The DCRM Director or his designee shall have the right to make reasonable inspections of the out-of-doors portions of a permitted project site at any reasonable time in order to assess compliance with the CRM permit and its conditions.

(b) Timing and Duration.

(1) Permitted physical development of the project site subject to a CRM permit shall begin within the time frame specified for project commencement on the permit. The maximum time allowed for project commencement shall be one year. The construction of the project shall be completed within the time frame specified on the permit for project completion. The maximum time allowed for ~~project completion~~construction shall be three years unless it can be demonstrated that the scope of the project construction requires additional time ~~for construction purposes (only)~~. Upon project completion, the permittee shall deliver a completion certificate to the ~~CRM~~DCRM Office ~~that issued the permit~~. If the project construction is not completed within the time frame specified in the permit, the permit condition specifying expiration will be reviewed by the DCRM Director who ~~will do one of the following:~~may extend or amend the permit condition for good cause.

(i) ~~Extend or amend the permit; or~~

(2) \_\_\_\_\_

~~(ii) Terminate the permit.~~

~~(2) If the DCRM Director grants an extension of the permit, a fee equaling fifty percent of the original permit fee shall be assessed. The DCRM Director shall have the discretion to waive this fee if the project has been substantially completed. Substantial completion means, the project is over seventy five percent structurally complete as certified by a CNMI licensed architect or engineer.~~

~~(3)~~All conditions attached to the permit shall be of perpetual validity unless action is taken to amend, suspend, revoke or otherwise modify the CRM permit.

(c) Duty to Inform. The CRM permit holder, whether it be the applicant or a successor in interest, shall be required to notify the DCRM Director in writing if he/she has knowledge that any information in the CRM permit application was untrue at the time of its submission or if he/she has knowledge of any unforeseen adverse environmental impacts of the permitted project. A CRM permit holder shall further have the duty to inform any successor in interest of the permit granted and the conditions attached thereto, if any; and the successor in interest shall, within five days thereafter, advise the ~~CRM~~DCRM Office of his/her interest in writing.

(d) Compliance with Other Law-~~(s)~~. The CRM permit is valid only if the permitted project is otherwise lawful and in compliance with other necessary governmental permits.

(e) The following conditions will be included in every permit involving construction of any kind:

(1) The permittee shall be responsible for preventing discharge of construction site chemicals through the proper use of best management practices as described in the document Construction Site Chemical and Material Control Handbook for the following activities: material delivery and storage; material use, spill prevention and control; hazardous waste management; concrete waste management; vehicle and equipment cleaning, maintenance and fueling; and

(2) Where appropriate, the project shall preserve, enhance, or establish buffers along surface water bodies and their tributaries.

§

**§15-10-615 Insurance Condition**

(a) When a permit is granted with a condition that permittee must obtain insurance for the activities engaged in by permittee, that insurance must be obtained from an insurer licensed by the CNMI Department of Commerce to sell and supply such insurance in the Commonwealth, and otherwise legally competent to sell and supply such insurance. The failure to obtain such insurance is grounds for non-issuance or revocation of permit.

(b) When a permit contains a condition requiring the permittee to obtain insurance, the permittee must include proof of insurance provided by the insurer with its permit application. Such proof of information must include the name of the insurer, the name of the insured, the policy number, the effective date and expiration date of the policy, a coverage and limit of liability description if applicable, and a contact address and telephone number for the insurer. The failure to provide such documentation is grounds for non-issuance or revocation of permit.

(c) The submittal of insurance information to the DCRM or any CRM agency in a permit application shall be considered a grant of permission by the permittee to the DCRM or any CRM agency the authority to contact the insurer listed to make inquiries as to the insurance policy listed in the permit application.

## **Part 700 - CRM Permit Amendment**

### **§15-10-701 CRM Permit Amendment**

(a) Amendment of ~~Permit~~ permit for ~~Change~~ change in ~~Scope~~ scope or ~~Nature~~ nature of ~~Project~~ project. An amended DCRM permit shall be required of all permitted projects before they are significantly altered or substantially expanded. Such an amendment shall require submittal of a revised DCRM permit application to the DCRM Office. ~~Alterations~~ Significant alterations and substantial expansions requiring amended DCRM permits include, but are not limited to, project changes which exceed ~~\$5000~~ 50,000.00 of the monetary value of the permitted project as described in the original DCRM permit application. ~~Where a substantially new project is proposed, a new and different permit must be obtained~~ Fees for the amended permit fees will be based on the fee structure described in § 15-10-205(h)(5), with a minimum \$200 administrative fee assessed for all major siting permit amendments. Where multiple proposals indicate a “piecemeal” development approach, the DCRM permitting section may recommend that the DCRM Director table all applications until they can be considered as a full project proposal, and a new major siting application fee may be assessed. Where a substantially new project is proposed, a new and different permit must be obtained, following the CRM application protocols for major siting proposals as outlined in § 15-10-200.



(b) Amendment of Permit on Request of CRM Agency. A CRM agency At the recommendation of the DCRM Director or at the request of a CRM Agency Board member, other project amendments may require an application for an amendment. In these cases, permit amendment proposals shall be publically noticed as specified in § 15-10-220. Following the CRM permit hearing, at the discretion of the DCRM Director or request of the CRM Agency Board, the CRM Agency Board may convene to issue permit amendment or the DCRM Office may issue the amended permit for the Agency Board to review.

(c) Amendment of permit on request of CRM Agency Official. A CRM Agency Official may request the inclusion of a condition to a permit, after the decision to award the permit but prior to actual issuance of permit to permittee, or at any time after the issuance of the permit. The permit shall be amended by the inclusion of the proposed condition if the CRM agency officials decide to include the condition through the same process as the original permit, as set forth in § 15-10-235.

§

(d) New Environmental Impact. If the permitted project has a newly discovered adverse environmental impact, corrective action(s) and/or permit amendment or modification may be required.

#### **§15-10-705 Transfer of Interest**

If a property interest in the project is transferred, the and permitted use remains unchanged, DCRM shall be notified of the transfer in writing upon execution or within 30 days thereof. The CRM Office shall issue a new permit in the name of the successors in interest within 30 days of receiving notice of the transfer. A permit issued under this section shall be identical in respect to terms and conditions to the permit issued to the predecessor in interest. If transferee proposes to alter currently permitted use, a letter with supporting information including transfer execution and explaining proposed change must be submitted to DCRM. Failure to notify DCRM of a transfer of interest or substantial change in project scope may result in revocation of the existing permit, notice of violation under § 15-10-900, and/or reapplication requirements.

#### **Part 800 - Enforcement of CRM Permits**

### §15-10-801 Purpose

The provisions of this part are intended to establish procedures whereby the DCRM Director may enforce the terms and conditions of CRM permits. Final actions of the DCRM Director based upon this part are final agency ~~actions~~action reviewable directly by the Commonwealth Superior Court pursuant to the Administrative Procedure Act, 1 CMC §§9101, et seq.

§

### §15-10-805 Grounds for Action

The DCRM Director shall take action to enforce compliance with CRM program policies and CRM permit conditions ~~in any of the following cases:~~ for violation of permit conditions, regulations, or material misstatement.

~~(a) Misstatement. The CRM permit applicant, a party or any participant in a hearing on the CRM permit application made a material misstatement that directly and significantly affected the CRM permit decision.~~

~~(b) Permit Violation. The CRM permit applicant or its successor in interest, has violated a material term or condition of the CRM permit.~~

§

~~(c) Supervening Illegality. The permitted project, as constructed or operated, has become unlawful by subsequent case law, statute, regulation, or other illegality.~~

~~(d) New Environmental Impact. The permitted project has a newly discovered adverse environmental impact.~~

### §15-10-810 Warning

The DCRM Director, upon a determination that a permitted project ~~violates one or more provisions of~~ is in violation of §15-10-805, may issue a ~~notice of intent to undertake CRM permit enforcement proceedings unless warning and require~~ the CRM permit holder ~~accomplish~~to accomplish corrective measures ~~within seven days. The DCRM Director may extend the time for compliance at his / her discretion.~~ This warning procedure shall ~~not~~neither affect nor limit the DCRM ~~Director's~~Director's duties, powers, and responsibilities under

### §15-10-815 Permit Enforcement Notice

§15-10-815. If after thirty days of the date the DCRM Director issued a notice of intent under public health and/or safety is threatened, immediate corrective action may be required. Where no feasible corrective action will remedy the violation, DCRM may proceed directly to an

enforcement action under § 15-10-815. If the CRM permit holder has failed to take corrective action, or continues to be in violation of its CRM permit ~~or in the case of an ongoing violation,~~, the DCRM Director may issue a written permit enforcement notice to the CRM permit holder.

**§15-10-815 Permit Enforcement Notice**

A Permit Enforcement Notice may be issued by the DCRM Director for any permit violation in accordance with § 15-10-805. The DCRM Director shall issue a written permit enforcement notice to the CRM permit holder ~~as follows:~~

(a) Content of Notice. A permit enforcement notice shall include a statement of facts or conduct constituting the violation and shall indicate the intended action to be taken by the DCRM Director. The permit enforcement notice may require the permittee to cease and desist activities and undertake corrective actions. If the DCRM Director intends to impose a fine for the violation(s), the permit enforcement notice shall state the proposed amount of the fine. A permit enforcement notice shall provide for permit enforcement hearings, if requested, and inform the CRM permit holder of ~~his~~their responsibilities and rights under this part. The notice shall inform the permit holder that unless ~~he requests~~they request a permit enforcement hearing within 30 days, in writing, the proposed sanction will be imposed.

(b) Service. A permit enforcement notice shall be delivered by the CRM Office staff in person to the CRM permit holder, or served by certified U.S. mail addressed to the CRM permit holder, or ~~his~~their designated agent. ~~Proof of service shall be made by affidavit.~~

(c) Response to Notice. If the CRM permit holder believes the statement of facts or conduct constituting violation in the permit enforcement notice is inaccurate, and desires a permit enforcement hearing, he/she shall respond in writing to the DCRM Director within thirty days of service of the permit enforcement notice. This response shall include a written statement indicating the CRM permit holder's arguments.

§

**§15-10-820 ~~Emergency~~ Enforcement Action and Suspension**

If the DCRM Director determines that a CRM permit holder has willfully violated a provision of § 15-10-805, or if the public health, safety, or welfare imperatively requires considerations require immediate action, the DCRM Director may order ~~emergency summary~~ suspension of a CRM permit pending proceedings for revocation or other action, notwithstanding, any notice requirement under § 15-10-815. The Director may issue a fine with the suspension of the permit with cause. If a permit enforcement hearing is requested, the proceeding shall be promptly instituted and determined pursuant to § 15-10-825.

§

#### **§15-10-825 Permit Enforcement Hearing**

Upon receipt of a request for permit enforcement hearing, the DCRM Director shall schedule a hearing within ~~fifteen~~forty-five days. The request for an enforcement hearing shall not stay the imposition of specified penalties. The DCRM Director or ~~his~~their designee shall preside at CRM enforcement hearings, shall control the taking of testimony and evidence and shall cause to be made an audio recording or stenographic record of CRM enforcement hearings. Evidence presented at such hearings need not conform with any prescribed rules of evidence but may be limited by the DCRM Director in any manner she/he reasonably determines to be just and efficient and promote the ends of justice. Permit enforcement hearings shall conform to the provisions of the Administrative Procedure Act, 1 CMC §§9108, et seq. The DCRM Director shall issue a decision within ~~ten~~fifteen days of the close of the enforcement hearing and all orders shall be in writing and accompanied by written findings of fact and conclusions of law. The standard of proof for such hearing shall be by the preponderance of the evidence.” The decision of the DCRM Director shall be final as within the CRM program. Appeal from an enforcement decision shall be to the Commonwealth Superior Court within thirty days following service of the DCRM Director’s written enforcement decision on the offending party.

#### **§§15-10-830 Remedies**

Upon a determination by the DCRM Director and/or CRM agency officials that a violation did occur, the DCRM Director may order any or all of the following remedies:

(a) Revocation. The CRM permit may be revoked in its entirety.

(b) Suspension. The CRM permit may be temporarily suspended for a given period, or until the occurrence of a given event or satisfaction of a specific condition.

(c) Corrective Measures. Measures may be ordered of the CRM permit holder so that the project conforms to the CRM permit terms and conditions.

(d) Civil Fines. The DCRM Director may impose a civil fine in an amount not to exceed \$10,000 per day for each day the violation of the CRM permit occurred pursuant to 2 CMC §1543(a). For purposes of computing a fine, any day that the DCRM Director finds that a violation of the CRM permit occurred may be counted. The DCRM Director shall, in his or her discretion, set fines in an amount calculated to compel compliance with DCRM permit conditions, applicable law, and any order issued by the Director, taking into consideration the value of the existing and potential damage to the environment caused by the violation, efforts at compliance, and/or any other factors that the Director finds relevant to the calculation.

(e) Supplemental environmental projects. The DCRM Director may allow supplemental environmental projects to address environmental impacts of a violation in lieu of penalties or portions of penalties assessed. These measures may be proposed by the alleged violator to mitigate damages that may otherwise be assessed. If a supplemental environmental project or projects is proposed by the alleged violator and approved by the DCRM Director, outcomes for the project or projects will be detailed in the final settlement agreement and the project proponent will bear any and all project implementation costs unless otherwise agreed. Any actions or duties required by law shall not form the basis of a supplemental environmental project.

## **Part 900 - Enforcement of CRM Standards and Policies**

### **§15-10-901 Purpose**

The provisions of this part are intended to establish procedures whereby the DCRM Director and/or CRM agency officials may enforce penalties against persons conducting activities or

participating in projects within the jurisdiction of the CRM program without a required CRM permit. The actions of the DCRM Director and/or CRM agency officials based upon this part are agency action reviewable by the Commonwealth Superior Court.

§

#### §15-10-905 Investigation

~~(a) The DCRM Director shall have the authority to investigate suspected violations of CNMI PL 3-47 (2 CMC §§1501, et seq.), or the regulations promulgated in this chapter. If practicable, the DCRM Director shall first request the person or persons having knowledge or custody of the information to voluntarily produce or allow access to it. If voluntary production of or access to the information is not forthcoming, the DCRM Director may implement the following measures to compel disclosure.~~

~~(b) Authority to Search.~~

~~(1) Consent from Permit Application. The DCRM Director or his designee may enter, at any reasonable time, the site of a proposed project for which there exists a signed CRM permit application on file with the CRM Office.~~

~~(2) Permit Authorization. The DCRM Director or his designee may enter, at any reasonable time, the site of a project for which there has been granted a CRM permit.~~

~~(3) Search Warrant. The DCRM Director may, if necessary, apply to the Commonwealth Superior Court for a search warrant allowing entry onto a project site on land or water subject to CRM program jurisdiction, pursuant to applicable law of administrative searches, regardless of the existence of a pending CRM permit application or a currently valid CRM permit.~~

§

#### §15-10-910 Conditions Warranting Investigation

The DCRM Director may act pursuant to this part upon reasonable determination that a violation of CNMI PL 3-47 (2 CMC §§1501, et seq.), ~~or~~, or the regulations promulgated in this chapter, or CRM administrative orders issued under this chapter, has occurred. Such violations include, but are not limited to, projects undertaken without a required CRM permit and activities that ~~do not conform to the CRM permit terms and conditions under~~ otherwise violate these regulations.

§

#### §15-10-915 Warning

Upon a determination that a violation of law subject to CRM program jurisdiction has occurred, the DCRM Director may issue a ~~cease and desist order~~warning to the person(s) responsible for the violation and state ~~notice of the~~ intent to undertake legal proceedings unless corrective measures are undertaken. The ~~letter~~warning shall state the corrective measures necessary and shall provide for a period in which compliance shall be effected.

§

**§15-10-920 Enforcement**

Upon a determination that a person other than a CRM permit holder is in violation of ~~CNMI PL 3-47 (2 CMC §§1501, et seq.),~~ or applicable rules and regulations or administrative orders issued ~~thereunder~~there under, the DCRM Director ~~shall~~may promptly issue an enforcement notice to the offending party. The enforcement notice shall be delivered personally to the offending party or, if such service is not reasonably possible, it may be sent by certified mail to his or her residence or place of business.

(a) Content of Enforcement Notice.

(1) Completed Violation. If acts constituting a violation are complete and the violation is not of an ongoing nature, the enforcement notice shall include a statement of the facts and conduct constituting the violation, the amount of an imposed fine, if any, a warning not to repeat the unlawful activity and a statement that a hearing on the findings of violation or of size of the fine is available if the DCRM Director is so requested, in writing, within seven days of service of the enforcement notice.

(2) Continuing Violation. If acts constituting a violation are of an ongoing nature or likely to be repeated, the enforcement notice shall include a statement of facts and conduct constituting the violation, a statement of an imposed, continuing fine, if any, an order to cease and desist the activity giving rise to a violation, a warning that additional fines may be imposed for failure to cease and desist the prohibited activity and a statement that an enforcement hearing on the finding of violation or size of the fine is available if the DCRM Director is so requested, in writing, within seven days of service of the enforcement notice.

(b) Response to Notice. If the party to whom enforcement notice is sent objects to the finding of violation, or seeks an enforcement hearing on the fine, he shall submit a written response to the enforcement notice within seven days of service of the enforcement notice. Failure to provide written response or to demand an enforcement hearing within the prescribed period shall be deemed a waiver of defenses and the right to an enforcement hearing and the fine, as set in the enforcement notice, shall upon expiration of the seven day period, become immediately due and payable to the CNMI Treasurer. All fines shall be paid by check made payable to the Treasurer of the CNMI. A copy of the payment receipt shall be provided to the CRM Office by the violator.

§

#### **§15-10-925 Determination of Fines and Penalties**

The DCRM Director shall, in his / her sound discretion, set fines in an amount calculated to compel compliance with applicable law and administrative orders and shall consider the value of the existing and potential damage to the environment proximately caused by the violation described in part 800 and ~~part 900~~. In no event however, shall any fine imposed exceed the ceiling imposed by 2 CMC §1543. In addition, the DCRM Director may order the offending party to cease and desist from the activity that is in violation, take mitigation measures to cure the violation, or seek any other remedy available at law or in equity.

#### **§15-10-930 Enforcement Hearing**

If a written response to an enforcement notice is filed with the ~~DCRM Director~~ CRM Office requesting an enforcement hearing, it shall be conducted by ~~CRM Administrator~~ DCRM Director pursuant to §15-10-825. ~~The decision of the DCRM Director shall be final as within the CRM program. Appeal from an enforcement decision shall be to the Commonwealth Superior Court within thirty days following service of the DCRM Director's written enforcement decision on the offending party.~~

§

#### **§15-10-935 Enforcement by Commonwealth Superior Court**

Fines and cease and desist orders issued by the DCRM Director for purposes of enforcement constitute official agency orders and must be complied with, by persons determined in violation of CRM program policies or CRM permit conditions. In the event fines are imposed or cease



and desist orders are issued, and compliance with either is refused, the DCRM Director may file in Commonwealth Superior Court seeking court enforcement.

§

**§15-10-940 Enforcement by Criminal Prosecutions**

If the DCRM Director has reason to believe that a person in violation of CRM program policies or CRM permit conditions or administrative orders issued ~~thereunder~~there under has committed criminal offense within the definition provided in 2 CMC §1543(b), (d), he / she shall promptly submit a report of the violation to the Attorney General.

~~§ 15-10-945 Administrative Order~~

~~For purposes of and administrative orders shall be any orders issued by the DCRM Director for enforcement of CRM policies and regulations pursuant to~~

**Part 1000 - Public Information and Education**

**§15-10-1001 Public Information and Education**

The ~~CRMDCRM~~ Office shall make information and educational materials available to the public and CRM ~~agency officials~~Agency Officials. The CRM Office, under the direction of the DCRM Director, shall assist a CRM permit applicant, CRM ~~agency officials~~Agency Officials, the Governor and the CRM Appeals Board, by explaining the policies and procedures of the CRM permit process.

(a) Vernacular. When requested and reasonably necessary, the ~~CRMDCRM~~ Office shall provide translation of official business into the appropriate vernacular.

(b) Media. The ~~CRMDCRM~~ Office shall, to the extent practicable, develop and maintain a continuing program of public information and education. Information regarding coastal resources management and conservation shall be disseminated through newspapers, television, radio, posters, and brochures supplied by the ~~CRMDCRM~~ Office.

(c) Public Hearings. Any hearing or meeting held for purposes of the CRM permit or enforcement process, or the Coastal Advisory Council, shall be open to the public.

(d) APC Maps. The ~~CRMDCRM~~ Office shall maintain a current series of island maps clearly showing the areas of particular concern.

## **Part 1100 - CRM Coastal Advisory Council**

### **§15-10-1101 Creation**

Pursuant to ~~CNMI PL 3-47 § 6 (-2 CMC §§1521-22~~, a CRM Coastal Advisory Council (CAC) shall be established, consisting of those members listed in §15-10-020.

§

### **§15-10-1105 Adopt Internal Procedures**

The CAC shall adopt internal procedures which shall govern its meetings.

### **§15-10-1110 Advise CRM**

The CAC shall advise the ~~CRMDCRM~~ Office and the DCRM Director on any proposed change in the CRM program or the CRM permit process or any proposed rules and regulations considered useful for implementing the CRM program.

### **§15-10-1115 Conduct Meetings**

The CAC shall conduct meetings from time to time in public sessions, in order to receive information from the public on the impact or advisability of programs and policies in the CRM program. Meetings shall be scheduled by the Council or as requested by the DCRM Director, as he or she deems necessary for purposes of obtaining input and advice, and shall be scheduled at least twice each calendar year.

## **Part 1200 - CRM Public Records**

### **§15-10-1201 Retention**

The ~~CRMDCRM~~ Office shall retain and preserve the following documents for ~~a minimum of~~ five years following their receipt or acquisition, unless the ~~CRMDCRM~~ Office determines that they shall be retained for a longer period of time. After five years, all pertinent materials shall be safely stored. Files may be retained digitally and/or as paper copies.

(a) CRM Permit Application Materials. All applications, permits, variances, pleadings, motions, affidavits, charts, petitions, statements, briefs or other documentation submitted in support of or opposition to applications for CRM permits or variances, or prepared by the ~~CRM~~DCRM Office in the course of the CRM permit process, shall be retained and preserved.

(b) CRM Hearing Records. Stenographic or tape recordings of all CRM permit or enforcement hearings and written minutes of ~~CAC~~Agency Board meetings shall be retained and preserved.

(c) Coastal Resources Materials. All studies, guides, plans, policy statements, charts, special reports, or educational materials, ~~or the information obtained or prepared by the CRM Office in order to provide public education~~ shall be retained and preserved.

(d) Best Management Practices. ~~CRM~~ DCRM shall provide access to reference documents, including, Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters published under the authority of section 6217(G) of the Coastal Zone Management Act Reauthorization Amendments of 1990, United States Environmental Protection Agency Office of Water, Washington, DC, and relevant ~~BMP~~best management practices (BMP) documents published by Office of Ocean and Coastal Resources Management, Environmental Protection Agency, Natural Resources Conservation Service and other local and federal agencies.

§

#### **§15-10-1205 Public Access to CRM Records**

All CRM ~~program~~government records shall be available for inspection ~~for a period of five years~~ by any person during established business hours at the ~~CRM~~DCRM Office in Saipan except as otherwise provided by law.

~~(a) Minutes and Transcripts. Minutes of CAC~~

(a) Public Information Requests. All official records including official correspondence, permit applications, and final issued permits shall be made available to the public upon submission of a written request, pursuant to the "Open Government Act" as established in 1 CMC §§ 9901 - 9916. Requests may be submitted to the DCRM Director, with Legal Counsel copied. If the request is for permitting or federal consistency information, Permit Manager may also be copied

on the request. If request is for enforcement information, the Chief Enforcement Officer may be copied on the request. Requests will be considered "received" on the date when request letter(s) has/have been stamped by DCRM's Administrative section.

(a) Minutes and Transcripts. Minutes of CRM Agency Board meetings and transcripts or tapes of CRM permit or enforcement hearings shall be made available upon request to the public within thirty days after the meeting or hearing involved, except where the disclosure would be inconsistent with law, ~~or where the public distribution of minutes of meetings held in executive session would defeat the lawful purpose of the executive meeting.~~ All CRM permit or enforcement hearings must be open to the public, and all transcripts of the hearing shall be made available upon request; provided, however, that those persons requesting transcription shall pay the costs of transcription at the time of the request.

(b) Copies of Documents. Copies of CRM public government records shall be made available to any member of the public requesting them provided that reasonable fees or costs incurred in reproducing the records shall be paid by check into the CNMI Treasury by the requesting party.

(c) Denial of Inspection. Any person aggrieved by a denial of access to CRM program government records, or transcription or copying thereof, may apply to the Commonwealth Superior Court for an order directing inspection or copies or extracts of CRMDCRM program public records. The court shall grant the order after hearing upon finding that the denial was not for just and proper cause.

## **Part 1300 - CRM Access to Records**

### **§ 15-10-1301 Director Access**

~~The Director, on behalf of him or herself, the CRM Office, the CRM agency officials, the Governor, the CRM Appeals Board, and the CRM Coastal Advisory Council, shall have access to such records necessary for conducting official CRM business, except as provided by law.~~

### **§ 15-10-1305 CNMI Government Records**

~~The DCRM Director shall have access to relevant CNMI governmental records for the purpose of obtaining information for official CRM business. This access may include government reports,~~

~~reviews, policy statements, and any other data not protected as confidential by law. The DCRM Director shall keep his or her requests reasonable in scope and accompany his or her requests for information with payment for copying or gathering of specific information.~~

§

#### **§15-10-1310 Private Records**

The DCRM Director may request from interested parties only such records and documents deemed necessary for the CRM permit process.

#### **§ 15-10-1315 Public Records**

All coastal resource related studies, data, including geospatial information, reports, and records developed using federal or state funding are public record(s) and shall be made available upon request in accordance with applicable federal requirements.

#### **Part 1400 - Computation of Time**

##### **§15-10-1401 Computation of Time**

In computing any period of time under this chapter, the time begins with the day following the act, event or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which event, the period runs until the end of the next work day. When the prescribed period of time is ten days or less, Saturdays, Sundays, or holidays within the designated period shall be excluded from the computation. Where time is computed using business days, time shall be computed as Monday – Friday, excluding government holidays.

#### **Part 1500 - Federal Consistency**

##### **§15-10-1501 General Law**

Pursuant to the requirements of Section 307 of the federal Coastal Zone Management Act of 1972, as amended, and its implementing regulations found at 15 C.F.R. Part 930, Federal activities and development projectsactions which directly affectmay have reasonably foreseeable effects on uses or resources of the coastal zone must be conducted or supportedundertaken in a manner which is, to the maximum extent practicable, consistent with the CRM enforceable policiespolices as approved by the National Oceanic and Atmospheric Administration. Federally licensed or permitted activities and the provisions for federal financial assistance for activities

~~affecting land or water uses of the coastal zone must be consistent with the CRM program. Furthermore, any federal agency proposing to undertake any development project in the coastal zone shall insure that the project is, to the maximum extent practicable, consistent with the CRM program. The implementation of these federal consistency provisions will be carried out in accordance with and federal regulations at~~

§

#### **§15-10-1505 Standard for Determining Consistency**

The DCRM shall apply the following enforceable standards in making consistency determinations:

- (a) The goals and policies set forth in CNMI Public Law 3-47 ~~((2 CMC §§1501, et seq.))~~;
- (b) The standards and priorities set forth in this chapter;
- (c) Federal air and water quality standards and regulations, to the extent applicable to the Commonwealth of the Northern Mariana Islands; and
- (d) Air and water quality standards and regulations of the CNMI, including, but not limited to, the CNMI Underground Injection Control Regulations ((NMIAC, Title 65, Chapter 90)) and the CNMI Drinking Water Regulations ((NMIAC, Title 65, Chapter 20)); and
- (e) Any additional policies, regulations, standards, priorities and plans that are enforceable and incorporated into any amendment of the CRM program in the future as approved by the National Oceanic and Atmospheric Administration.

§

#### **§15-10-1510 Federal Activities and Development Projects**

~~(a) A federal development project includes any federal activity involving~~(a) Actions undertaken by federal agencies that may have reasonably foreseeable effects on uses or resources of the coastal zone are subject to review for consistency with the CRM enforceable policies. Actions undertaken by a federal agency include development projects such as the planning, construction, modification, or removal of public works, facilities, or other structures; and the acquisition,

utilization or disposal of land or water resources. Actions by federal agencies may also include funding assistance to parties other than state or local government entities when such activities may have reasonably foreseeable effects.

~~(b) Federal activities include those federal agency actions which are either development projects or licenses, permits, or assistance actions as described herein below. Examples include federal agency activities requiring a federal permit and federal assistance to entities other than the local government.~~

(b) Although federal lands in the CNMI are excluded from the CRM program jurisdiction pursuant to section ~~7 of PL 3-47 ()~~, 2 CMC §1513, federal activities occurring on federal lands which result in spillover impacts which directly may affect the Commonwealth's coastal zone are subject to review pursuant to the Coastal Zone Management Act of 1972, as amended, and must be consistent, to the maximum extent practicable, with the enforceable policies of the CRM program.

(c) In the event that a federal agency plans to undertake a federal activity, including a development project, which ~~is likely to directly affect~~ may have reasonably foreseeable effects on uses or resources of the coastal zone, the federal agency must ~~notify~~ submit a consistency determination for the proposed activity to DCRM of the proposal at least ninety days before any final decision on the federal action, unless both the federal agency and DCRM agree to an alternative notification schedule. Such notification must include a brief statement indicating how the proposed project will be undertaken in a manner consistent, to the maximum extent practicable, with the CRM program. The federal agency's consistency determination must be based upon an evaluation of the relevant provisions of the CRM program. Consistency determinations must include:

- (1) A detailed description of the proposed project;
- (2) The project's associated facilities;
- (3) The combined, cumulative coastal effect of the project; and
- (4) Data and information sufficient to support the federal agency's conclusion.

(d) If ~~the~~ DCRM does not issue a written response within sixty days from the receipt of the federal agency notification, the federal agency may presume that DCRM agrees that the activity

is consistent with the CRM program. The Commonwealth may extend the review time period ~~of by~~ not more than fifteen days, unless the federal agency agrees to longer or additional extension requests. DCRM agreement shall not be presumed if DCRM requests an extension of time within the sixty day review period.

(e) DCRM's concurrence with or objection to a federal agency's consistency determination must be set forth in writing with reasons and information supporting the agreement or disagreement and sent to the federal agency. In case of disagreement, DCRM will attempt to resolve its differences with the federal agency's consistency determination within the ninety day notification period.

(f) In the event that the DCRM and the federal agency are unable to come to an agreement on the manner in which a federal activity or development project may be conducted or supported in a manner consistent, to the maximum extent practicable, with the DCRM enforceable policies, the DCRM or federal agency may request mediation of the disagreement pursuant to the procedures set forth in ~~and~~ section 307 of the Federal Coastal Zone Management Act of 1972 (PL 92-583, as amended) and 15 CFR 930, subpart H.

§

#### **§15-10-1515 Federal Licenses and Permits**

(a) Federal licenses and permits include any authorization, certification, approval or other form of permission which any federal agency is empowered to issue to an applicant.

(b) An applicant includes any individual or organization, except a federal agency, which, following management program approval, files an application for a federal license or permit to conduct an activity affecting the coastal zone.

~~(c) An~~

(c) If an applicant for a federal permit is not required to obtain a permit under these regulations, the applicant for a federal license or permit for an activity affecting the coastal zone must file, along with the application, a certification that the activity will be conducted in a manner consistent with the CRM enforceable policies. A copy of the application and certification, along with all necessary data and information as approved by the National Oceanic and Atmospheric



Administration, should also be sent to the DCRM. The federal agency shall not issue the license or permit unless DCRM concurs in the consistency certification or its concurrence is presumed because DCRM has failed to respond in six months. The applicant's consistency certification statement, which will then be reviewed along with the application by DCRM, must be accompanied by sufficient information to support the applicant's consistency determination.

(d) Listed Federal Agency Licenses and Permits.

(1) The federal agency licenses and permits that the DCRM will review for consistency with the DCRM enforceable policies are those listed in the Procedures Guide for Achieving Federal Consistency with the CNMI DCRM enforceable policies (available from DCRM), incorporated and made a part hereof. If, in the future, it is found that the issuance of other types of federal permits and licenses ~~cause direct and significant impact~~may have reasonably foreseeable effects on coastal land and water uses or resources; of the said listing will be expanded coastal zone, DCRM may request approval from the National Oceanic and Atmospheric Administration to review the activity as necessary provided at 15 C.F.R. 930.54.

(2) DCRM shall be responsible for providing the above list to the relevant federal agencies that in turn shall make the information available to applicants.

~~(e) If any project which requires a federal license or permit also requires a coastal permit, applications for both should be filed simultaneously. A certification of consistency with the DCRM enforceable policies shall be filed with both applications. The~~

(e) For projects or developments that require a permit under the Coastal Resource Management Rules and Regulations, the issuance or denial of a DCRM permit will indicate consistency or the lack of consistency with the CRM program and the DCRM shall notify the federal agency of the DCRM permitting decision for its use in its federal permitting decision.

(f) Certification of Consistency.

(1) A certification of consistency shall include the following clause: "The proposed activity complies with the CNMI CRM program and will be conducted in a manner consistent with such program."

(2) Supporting information must be attached to the certification. This information will include a detailed description of the proposal, a brief assessment of the probable coastal zone effects, and a brief set of findings indicating that the proposed activity, its associated facilities and their effects, are all consistent with the provisions of the CRM program, including the application standards listed in 15-10-1505 above.

(g) Interested parties may assist the applicant in providing information to the DCRM. In addition, the DCRM will, upon the request of the applicant, provide assistance to the applicant in developing the assessment and findings required.

(h) DCRM review begins at the time the office receives both the applicant's consistency certification and the supporting information and determines that the information is complete. Timely public notice of the proposed activity will be made by DCRM. The public notice will include a summary of the proposal, an announcement that information submitted by the applicant is available for public inspection, and a statement that public comments are invited.

(i) Certification of Consistency Decisions.

(1) At the earliest practicable time and within six months after the date of receipt, ~~the CRM~~DCRM will notify the issuing federal agency of its concurrence or objection. If DCRM has not issued a decision within three months after the date of receipt, it must notify the applicant and the federal agency of the status of the matter and the basis for further delay, if any.

(2) In the event that ~~CRM~~DCRM objects to the applicant's consistency determination, the office must set out its objection, in writing, with reasons and supporting information and alternative measures, if they exist, which, if adopted, would permit the activity to be conducted in a manner consistent with the CRM program. A ~~CRM~~DCRM objection will include a statement informing the applicant of a right to appeal to the Secretary of Commerce as provided in section 307 of the Federal Coastal Zone Management Act, as amended.

§

**§15-10-1520 Federal Assistance**

(a) Federal assistance means assistance provided under a federal grant program to an applicant agency through grant or contractual agreements, loans, subsidies, guarantees, insurance or other forms of financial aid for activities which affect the coastal zone.

(b) An applicant refers to any unit of the CNMI government, which, following CRM program consistency concurrence, submits an application for federal assistance.

(c) The DCRM shall be notified of any application which meets or exceeds listed federal assistance thresholds submitted to the Planning and Budget Affairs Office for any federal assistance program listed in the Catalog of Federal Domestic Assistance ~~in addition to applications or an application~~ to the Office of Ocean and Coastal Resource Zone Management for Coastal Energy Impact Program grants.

(d) Application for federal assistance for activities affecting the coastal zone must go through the clearinghouse notification and review process to ensure that the DCRM has an opportunity to review the proposed action for consistency with the CRM program. Such applications must include a certification of consistency which meets the information requirements set out in this chapter.

~~(e) If a coastal permit is required for a project utilizing federal assistance, then the coastal permit and the federal assistance application shall be filed simultaneously.~~

(f) In the event that DCRM finds that the proposed federal assistance is not consistent with the CRM program during the 90-day review timeframe, the application shall not be approved unless the DCRM's objection is resolved through informal discussions among the federal program agencies, the applicant, and the DCRM, or unless the objection is set aside on appeal to the Secretary of Commerce pursuant to section 307 of the Federal Coastal Zone Management Act. The DCRM's objection must be set forth in writing with reasons, supporting information and alternative measures. ~~The Planning and Budget Affairs Office~~ The DCRM must then notify the applicant agency and the federal agency of DCRM's objection and must inform the applicant agency of its right to appeal to the Secretary of Commerce. If DCRM does not object to an

application proposal during the clearinghouse process, the federal agency may grant the federal assistance.

## **~~Part 1600—Water Sports Permits~~**

### **~~§ 15-10-1601 Water Sports Permits~~**

~~The CRM shall have the right and responsibility to permit all commercial water sports activities in the CNMI. All rules and regulations pertaining to such permits shall be found at. Until rules and regulations pertaining to water sports permits are promulgated by the CRM, CRM may permit water sports operators and their operations by means of the regulations of~~

## **~~Part 1700—Miscellaneous Provisions~~**

### **~~§ 15-10-1701 Severability Provision~~**

~~If any provision of this chapter or the application of any provision of this chapter to any person or any other instrumentality or circumstances shall be held invalid by a court of competent jurisdiction the remainder of this chapter and the application of the affected provision to other persons, instrumentalities and circumstances, shall not be affected thereby.~~

### **~~§ 15-10-1705 Savings~~**

~~The repeal of the CRM Rules and Regulations which notice of adoption was published in Commonwealth Register [volume] 7, number 7 at [page] 3883, does not release or extinguish any penalty, forfeiture or liability incurred or right accrued or accruing under such law. The regulation shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty or forfeiture.~~

~~Retrieved from ""~~

- ~~• This page was last modified on 23 February 2015, at 20:19.~~



**COMMONWEALTH CASINO COMMISSION**

Commonwealth of the Northern Mariana Islands

P.O. Box 500237

Saipan, MP 96950

Tel: 1 (670) 233-1857/58

Fax: 1 (670) 233-1856

Email: info@cnmicasinocommission.com



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**BEFORE THE COMMONWEALTH CASINO COMMISSION**

**EDWARD DELEON GUERRERO, in his  
official capacity as Executive Director of  
the Commonwealth Casino Commission,  
Plaintiff-Petitioner,**

v.

**GOLD MANTIS CONSTRUCTION  
DECORATION (CNMI), LLC  
#CCC-PCVL-2017-0004 (Provisional  
Licensee)  
Defendant/Respondent.**

**DEI # 17-0004(i)**

**COMPLAINT NO. 17-001**


**FINAL ORDER CONFIRMING  
STIPULATED AGREEMENT**

**GOOD CAUSE SHOWN**, and after consideration at the August 24, 2017 public meeting of the Commission, the parties' stipulated resolution is hereby CONFIRMED. Provisional License #CCC-PCVL-2017-0004 is hereby reinstated. Licensee shall submit a completed application for a regular Casino Vendor License, with all supporting papers, within sixty (60) days of the entry of this Order. Licensee shall fully cooperate with the Executive Director by providing information regarding all employees, officers, managers, directors, etc. of the licensee and shall bar from further employment any person the Executive Director deems unfit for licensure. Licensee shall hire or retain a compliance officer who is well-versed in the laws and regulations of the United States of America and the Commonwealth of the Northern Mariana Islands. Licensee shall pay \$192,000.00 in settlement of all claims alleged in the First Amended Complaint and all other claims, known or unknown as of August 7, 2017.

This Order shall be published in the Commonwealth Register and be available for public review.

SO ORDERED this 24th day of August 2017.

For the Commonwealth Casino Commission,

  
\_\_\_\_\_  
Juan M. Sablan  
Chairman



Commonwealth of the Northern Mariana Islands  
**Office of the Attorney General**

2<sup>nd</sup> Floor Hon. Juan A. Sablan Memorial Bldg.  
Caller Box 10007, Capitol Hill  
Saipan, MP 96950

**EDWARD MANIBUSAN**  
Attorney General

**LILLIAN A. TENORIO**  
Deputy Attorney General

**OAG 17-02**

August 31, 2017

*Subject:* Public Benefit Provisions in DPL Lease Agreement

**Opinion of the Attorney General**

**I. QUESTIONS PRESENTED**

Can DPL legally require a potential or existing lessee to construct homestead infrastructure or create a deposit in escrow that will provide funding for future homestead infrastructure?

**II. SHORT ANSWERS**

The public benefit provisions are problematic from a legal stand point. As the Mariana Public Land Corporation's (MPLC) predecessor, DPL holds public lands in trust for people of Northern Marianas Descent (NMDs). *Dep't of Public Lands v. Commonwealth*, 2010 MP 14 ¶ 12. All revenue generated from public lands goes to the Marianas Public Land Trust (MPLT). *Id.* ¶ 34. Prioritizing public benefit provisions to the detriment of rent would amount to a violation of fiduciary duty. Ultimately, public benefit clauses are legitimate if securing the public benefit does not result in lower rent.

**III. LAW**

The Commonwealth Supreme Court considered DPL's role in the Commonwealth's constitutional framework in *Dep't of Public Lands v. Commonwealth*, 2010 MP 14. Under the original constitution, MPLC held public lands in trust for NMDs, and all revenue from public lands was transferred to MPLT. *Id.* ¶ 6. After existing for 12 years, MPLC was dissolved and its functions were transferred to the executive branch. *Id.* ¶ 11. The current incarnation is DPL.

In 2009, the Commonwealth passed PL 16-31, which required land compensation judgments to be paid out of revenues generated from public lands. *Id.* ¶ 13. The Secretary of DPL contested the constitutionality of the measure, and a certified question between DPL and the Commonwealth was presented to the Supreme Court. *Id.* ¶ 1. DPL argued that under Commonwealth Article XI, § 5(g), DPL's budget was submitted to the legislature for "informational purposes only," and thus could not be used to pay land compensation. The Commonwealth argued that the limitations under § 5(g) expired when the functions of MPLC were transferred to the executive branch, and thus the revenue could be used for land compensation.

Civil Division  
Telephone: (670) 237-7500  
Facsimile: (670) 664-2349

Criminal Division  
Telephone: (670) 237-7600  
Facsimile: (670) 234-7016

Attorney General's Investigative  
Telephone: (670) 237-7625  
Facsimile: (670) 234-7016

Division Domestic Violence Intervention Center  
Telephone: (670) 664-4583  
Facsimile: (670) 664-4589

The Court disagreed with both parties, holding that PL 16-31 infringed on MPLT's function of collecting revenues generated from public lands to hold in trust for NMDs. The Court explained that "the revenues generated from the management and disposition of public lands are trust funds that must go to [MPLT] to be held for the benefit of people who are of Northern Marianas descent." *Id.* ¶ 34. Therefore, by directing these trust funds to land compensation instead of to MPLT, PL 16-31 violated the Constitution.

While the holding of *Dep't of Public Lands v. Commonwealth* is narrow, its reasoning can be applied to the issue at hand.

#### IV. OPINION

Public benefit clauses are constitutional so long as the addition of a public benefit clause does not compromise or impair the ability of DPL to negotiate the best rent from the lease of public lands. *Dep't of Public Lands v. Commonwealth* considered a situation in which revenue already collected would be diverted away from MPLT. Under similar reasoning, any lease term that unnecessarily results in a diminution of rent would impair MPLT's function of collecting and investing the revenue from public land. First, this situation presents an inverse of the situation the Court confronted in *Dep't of Public Lands v. Commonwealth*: reducing revenue in exchange for a public benefit clause would impair MPLT's function of collecting revenue from public land. Second, DPL holds public land in trust, and the funds generated from public land are trust funds. It would be a breach of fiduciary duty to reduce the rent received in exchange for public benefit clauses. This is not to say that the purpose of this public benefit clause, i.e., providing homestead infrastructure, would not benefit NMDs. Rather, the decision as to how the trust funds should be invested and used is constitutionally vested in MPLT. Importantly, however, any public benefit clause that can be agreed without impairing the ability of DPL to negotiate the best rent from the lessee is constitutional because it would not impair the functions of MPLT.

Furthermore, a discussion of the fiduciary duties of DPL and the Secretary of DPL is necessary. DPL's enabling statute provides that the Secretary "shall be held to strict standards of fiduciary care." 1 CMC § 2802.

Black's Law Dictionary defines the word "fiduciary" as:

1. Someone who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, loyalty, due care, and disclosure.
2. Someone who must exercise a high standard of care in managing another's money or property

Black's Law Dictionary (10th ed. 2014). Public land is held in trust by DPL for the benefit of NMDs. Under this arrangement, DPL is a fiduciary that owes a high standard of care to NMDs in managing their property (i.e., public lands). Under the Restatement (Third) of Trusts, a trustee owes a duty of prudence to the beneficiaries:

- (1) The trustee has a duty to administer the trust as a prudent person would, in light of the purposes, terms, and other circumstances of the trust.
- (2) The duty of prudence requires the exercise of reasonable care, skill, and caution.
- (3) If the trustee possesses, or procured appointment by purporting to possess, special facilities or greater skill than that of a person of ordinary prudence, the trustee has a duty to use such facilities or skill.

Restatement (Third) of Trusts § 77 (2007). Therefore, DPL and the DPL Secretary are bound to use best practices and sound business judgment to manage and dispose of public land in a way that maximizes revenue without committing waste.

Applying these principles to leases of public land, DPL and the Secretary's primary consideration is, first and foremost, maximizing the rental value of the trust property. Public benefit provisions which require a lessee to agree to other obligations are a consideration of much lower priority. The primacy of rental value is apparent from DPL's enabling statutes: 1 CMC § 2808 sets out extensive requirements regarding rental price of public lands that DPL must adhere to. However, DPL's enabling statutes do not mention public benefit provisions at all. DPL and the Secretary cannot reduce the rental value of the property in order to secure a public benefit. Likewise, DPL and the Secretary cannot compromise or imperil lease negotiations by insisting on a public benefit provision which imposes other obligations rather than maximizing the rental value of the property.

Public benefit provisions are acceptable if the rental price or the lease negotiations are not imperiled by the public benefit provisions and are voluntarily entered into by the lessee. Conversely, over insistence on public benefit obligations to the detriment of the rental price or the lease negotiation itself is extremely problematic, and under certain circumstances could be considered a violation of the fiduciary duty to NMDs or abuse of public office. Therefore, a good rule of thumb is that public benefit provisions are unacceptable as they may diminish the true value of the trust land when they are forced on a lessee or become a major stumbling block in lease negotiations.

## V. CONCLUSION

Public benefit clauses are legal so long as the public benefit can be secured without reducing the rent received from the property. DPL holds public lands in trust for NMDs and the revenue generated from public lands are trust funds that must be remitted to MPLT. A public benefit-clause that is negotiated in return for a lower rent violates the constitution under this framework.

  
EDWARD MANIBUSAN  
Attorney General