

CHAPTER 85-30.6
SUBMERGED LAND RULES AND REGULATIONS

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TITLE 85: DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter Authority: 1 CMC §§ 2653, 2654; 2 CMC §§ 1201-1231

Chapter History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

Commission Comment: 45 Com. Reg. 49607 removed and relocated NMIAC Title 140-60 to NMIAC Title 85. 45 Com. Reg. 49607 proposed codifying under Title 85.30.4 but Title 85.30.4 is already codified for MARIANA CROW CONSERVATION AREA. Accordingly, the Commission has codified 45 Com. Reg. 49607 under Title 85.30.6.

Part 001 - General Provisions

§ 85-30.6-001 Summary

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

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-005 Purpose

(a) The purpose of this chapter is to establish procedures, Rules, and Regulations for the use of the Commonwealth of the Northern Marianas Islands submerged lands. Since these are Commonwealth resources, the Department of Lands Natural Resources reserves the right in its discretion, to deny any request for a lease if such denial is determined to be in the interest of the Commonwealth or if the proposed use conflicts with an obligation under DLNR's Mandate.

(b) The Submerged Lands Act, PL 1-23 as amended by PL 6-13, was enacted to provide a management philosophy for the Commonwealth's finite resources found in the submerged lands extending 200 miles offshore, which are held in public trust (2 CMC §§ 1201 et seq.). In 2006, the Commonwealth lost authority over all but its internal submerged lands pursuant to *Northern Mariana Islands v. United States*, 399 F.3d 1057 (9th Cir. 2006) cert. denied 547 U.S. 1018. 48 U.S.C. § 1705 and Proclamation No. 9077, Fed. Reg. 3479 (Jan. 15, 2014), granted the Commonwealth of the Northern Mariana Islands title and authority over submerged lands extending three geographical miles seaward from its coastline. PL 18-42 made the Department Responsible for the management, use, and disposition of these submerged lands and granted the authority to promulgate regulations to that end.

(c) Under 1 CMC §§ 2653, 2654 and 2 CMC § 1221, DLNR is charged with interpreting and administering the Submerged Lands Act and promulgating rules and regulations to further the purposes of the Submerged Lands Act and its Departmental Mandate. The purpose of the Rules and Regulations in this chapter is to manage federal, Commonwealth, and private uses of Commonwealth submerged lands. Coordinated management is necessary to resolve the increasing number of conflicts that may arise between development and preservation of environmental quality, resource conservation, and public rights to use these resources.

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(d) Activities on submerged lands must conform to various resource planning and protection laws administered by other Commonwealth agencies such as the Division of Coastal Resources Management Office, the Bureau of Environmental and Coastal Quality, and the Historical Preservation Office. The Commonwealth Port Authority is charged with developing port terminal facilities and has authority over certain waters within the Tanapag Lagoon on Saipan, the West Harbor on Rota, and Tinian Harbor on Tinian.

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

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-010 Definitions

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

(b) The “BECQ” shall mean the Bureau of Environmental and Coastal Quality.

(c) “Commercial Use” shall mean the sale, advertising, offering for sale, contracting for sale, exchange, distribution for consideration, or solicitation for purchase to the general public of any goods or other property, real, personal, or tangible, or of any service.

(d) “Commercial purpose” shall mean the motivation behind an action or use is to aid or accomplish the sale, advertising, offering for sale, contracting for sale, exchange, distribution for consideration, or solicitation for purchase to the general public of any goods or other property, real, personal, or tangible, or of any service.

(e) The “CPA” shall mean the Commonwealth Ports Authority.

(f) The “Department” means Department of Natural Resources.

(g) The “CRM” shall mean the Division of Coastal Resources Management.

(h) “Filling” is addition of fill material into waters of the Commonwealth. The term generally includes the following activities:

(1) Placement of fill that is necessary for the construction of any structure;

(2) The building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction;

(3) Residential, and other uses;

(4) Causeways or road fills;

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- (5) Dams and dikes;
- (6) Artificial islands;
- (7) Property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments;
- (8) Beach nourishment;
- (9) Levees;
- (10) Fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and
- (11) Artificial reefs.

(i) The “HPO” shall mean the Historic Preservation Office.

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

(k) “Regular use” shall mean the use of submerged lands for at least some portion of one day a month for six months out of the year.

(l) The “Secretary” shall mean the Secretary of the Department of Lands and Natural Resources.

(m) “Specific use activities” are defined in part 500 herein.

(n) “Structure” shall mean any object placed upon submerged lands for more than a week other than a working anchor or any object constructed on submerged lands. Submerged moorings and related tackle for a watercraft which is not greater than 100 feet length overall and has either a Certificate of Documentation from the United States Coast Guard with a recreational endorsement or a Commonwealth Certificate of number with a pleasure use designation shall not be considered “structures” for purposes of these regulations.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

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

§ 85-30.6-101 Application

(a) Application to the Department will be deemed to have been made when the Department receives a complete appropriate application for a specific use activity as defined in part 200 herein and pays all applicable application fees.

(b) Actions Taken by the Department and Notification.

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- (1) The Department shall review all applications within 45 working days of their receipt and shall request additional information from the applicant and/or the permitting agency when
 - (2) If the proposed project is not within Commonwealth-submerged land, the Department will notify the applicant.
 - (3) When the proposed project has potentially significant impact on public uses, the Secretary shall schedule a public meeting. The Department will notify the general in compliance with 1 CMC § 9910. Written comments addressing public use issues will be accepted for a fourteen day period following publication in the newspaper. The time period for a Department decision will be extended until 30 days following the meeting.
- (c) All applications shall be reviewed to assess the potential impact on fisheries development and adverse impact on marine resources within submerged lands. Applications may be denied where the Secretary finds there is an undue adverse impact from such use or an inability to sufficiently mitigate the adverse impacts.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-105 Application Fees

- (a) No fee for solely Commonwealth government projects shall be assessed. The Secretary may waive the fee for a Federal government project if it is determined to be in the interest of the Commonwealth.
- (b) All Application Fees are non-refundable and must be paid prior to the processing of an application.
- (c) Unless otherwise specified by law or regulation, all other application fees shall be \$100.00.
- (d) If the Secretary determines that evaluation of the application will cost the Commonwealth in excess of \$2,500.00, then the Secretary may require the applicant to pay some or all of the costs of evaluation, prior to evaluating the applicant. The applicant shall have 30 days from the date of receiving notice of the Secretary's instruction to pay the required costs or request reconsideration. If the applicant does not pay the requested sum or request reconsideration in 30 days, then the application shall be deemed abandoned and denied.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022)

§ 85-30.6-110 Applicant Not Owner of Abutting Upland

When an application is made for the use of submerged land which extends within 200 feet of the boundary of adjacent upland owners, the Secretary shall require the applicant to receive the adjacent owner's written permission before the application will be considered.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022)

Part 200 - General Terms and Conditions of Lease

§ 85-30.6-201 Uses Requiring a Lease

A lease is required for the use of submerged lands when the applicant seeks the regular use of a specific parcel of submerged lands, and;

- (a) The proposed use of the specified area of submerged lands would substantially interfere with the ability of others to use the area;
- (b) The proposed use is to dredge, fill or erect permanent causeways, bridges, marinas, wharves, docks, pilings, moorings, aquaculture, or other permanent structures on submerged land in the Commonwealth;
- (c) The applicant seeks the regular use of an anchorage or mooring for a watercraft which is greater than 100 feet length overall and does not have either a Certificate of Documentation from the United States Coast Guard with a recreational endorsement or a Commonwealth certificate of number with a pleasure designation;
- (d) The use involves the extraction of resources from or beneath the specified area of submerged lands; or
- (e) The use would substantially alter the submerged lands.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-205 Special Provisions Relating to Leases

For the purposes of determining if a lease is necessary based upon the regular usage by a party, unless otherwise specified within this chapter, regular use of submerged lands within a 785.398 square foot circle (a circle with a 500 foot radius) requires the leasing of submerged lands. The lease may be for a parcel of land less than this.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-210 Uses Requiring Regulatory Permit

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

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-215 Terms of Lease

The Following limitations are put on the term of every lease.

- (a) Initial Term

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Unless otherwise specified by Commonwealth law or regulation, the initial term for the lease shall not exceed 25 years. The Secretary retains discretion to specify a shorter initial term and reserves the right to amend the lease from time to time during its term to conform with current policies, restrictions, and fees.

(b) Extension of Term

Extension of the Term of the Lease may be requested only during the last five years or 25% of the term, whichever is less time, of the principle lease. If granted, the lease term shall be extended by not more than fifteen years and shall be updated to conform with current policies and fees.

(c) Renewal

(1) Lease renewal may be granted at the end of the lease term in the discretion of the Secretary.

(d) Option

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

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-220 Change in Use Under Lease, License or Permit

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

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-225 Assignment

(a) Leases containing an assignment clause are assignable with 30 days advance written notice to the Secretary and the Department's prior, written approval is required for the assignment to be effective. The Secretary may withhold or delay written approval at the Secretary's sole discretion. The assignment may be denied by the Secretary if he finds that the assignment would change the nature or intensity of the use, or if the continued use is not in the best interest of the Commonwealth. An administrative processing fee equal to the initial application fee for the use at the time of the transfer will be charged when a lease is transferred.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-230 Termination

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A lease may terminate where:

- (a) The lessee fails to comply with the terms of the lease and corrective action, acceptable by the Secretary, is not taken within 30 days of written notice; or
- (b) When an applicant fails to sign and return a lease within 90 days of issuance, it shall be deemed void on the 91st day.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-235 Improvements

Upon the expiration, cancellation, or termination of a lease, regardless of the reason therefor, the lessee shall have 90 days to remove its property, unless otherwise provided in the lease. The Department shall become the owner of all improvements and structures erected upon the submerged lands not so removed. The Department may require as a term of the lease that the lessee will remove all such improvements and structures at lessee's expense and restore the submerged lands to the condition in which they existed at the commencement of the lease term.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-240 Reconsideration

Within 30 days of notification of a decision made pursuant to the regulations in this chapter, the applicant, lessee or other interested party may petition the Secretary to reconsider such decision by submitting a written request therefor. Exhaustion of this remedy is required before an applicant, lessee or other interested party may seek any other remedy at law or equity.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-245 Bond or Insurance Required

If the Secretary determines that the proposed use under a lease creates, either directly or indirectly, a significant risk of harm to the submerged lands or related interest, then the Secretary shall require the applicant to post a bond or maintain an insurance policy sufficient to cover the possible harm as a term of the lease. Such bond and/or insurance shall be endorsed in favor of the Commonwealth.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-250 Unauthorized Occupation or Use of Submerged Lands

Occupation or use of submerged lands, without first obtaining a lease as required by this chapter is unlawful. Unauthorized occupation or use of submerged lands is grounds to deny any future application for a lease and also grounds to cancel any other existing lease held by the offending party. The

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Department is authorized to enter, seize, and impound any unlawfully moored vessel or other personal property found occupying or using submerged lands in violation of these regulations without liability for loss or destruction thereof.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

Part 300 - Additional Requirements for Dredging, Filling, and Fastland Use Lease Applications

§ 85-30.6-301 Dredging Leases

- (a) The applicant shall submit information as required by the Secretary.
- (b) Dredging leases shall expire prior to the term granted when any Commonwealth or federal regulatory permits for the dredging expire, unless an extension is granted to the Commonwealth or federal regulatory permit.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-305 Filling Leases Applications

- (a) Conditions. A lease for the filling of Commonwealth submerged land may be approved if the Secretary is satisfied that all of the following conditions exist:
 - (1) There is neither a practical alternative to filling for use of the proposed site nor a reasonable opportunity for relocation to another suitable site that does not require filling; and
 - (2) Public trust rights and purposes and other public rights and customs will not be unreasonably impaired; and
 - (3) All appropriate regulatory permits have been obtained.
- (b) Requirements. The Secretary may require:
 - (1) That a signed map prepared by a registered land surveyor showing the location and boundary of the proposed site shall be filed with and accepted by the Department prior to filling;
 - (2) Monumentation of the submerged land boundary;
 - (3) That the fill materials be removed from the submerged land at the termination of the lease;
 - (4) Free public access over the premises for water dependent or associated uses be provided including walkways; and/or
 - (5) Other mitigating measures.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

Part 400 - Calculation of rental Fees for Lease

§ 85-30.6-401 General Provisions

- (a) No fee shall be charged for projects carried out solely by the Commonwealth government, its agencies or instrumentalities. This fee waiver shall not extend to the contractors retained by the Commonwealth, its agencies or instrumentalities.

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(b) The Secretary shall retain full discretion in negotiating the fees of any lease with the Federal Government. The Secretary may waive, reduce, or increase any fee if it is determined to be in the interest of the Commonwealth.

(c) If more than one fee rate is applied to a single lease then the highest fee rate shall be used to calculate the fee.

(d) In addition to any other fee for a lease, as a term of any lease, the lessee shall pay for any damage from the use to the submerged lands, including coral reefs and sea grass. Fees for damages, if estimable prior to the execution of the lease, may be prorated over the term of the lease. The lessee shall be responsible for any actual damage in excess of the estimated damage. Unless otherwise provided, the fees for damages to submerged lands may be recovered after the damage occurs, and payment of these fees shall be a condition of the continuation of the lease.

(1) The value of coral reefs shall be determined by the study of Pieter van Beukering, Ed., *The Economic Value of Coral Reefs of Saipan* (March 2006). When CRM and/or BECQ publish a comparable study which updates the value of coral reefs of the Northern Mariana Islands and/or Saipan, the most recent publication shall determine the valuation. The value of the reef shall be adjusted for inflation at the rate of the Consumer Price Index every year after the publication of the most recent study. If the reef in question is not identified in the most recent publication, then the inflation adjusted average value of the reefs included in the report shall be used to calculate the value of the reef in question, unless a reasonably reliable independent basis exists for a higher valuation.

(2) Payment for damages to submerged lands shall not act as a release for the damage to submerged lands or alleviate the lessee from liability arising from the use or damage under other provisions of federal and Commonwealth law.

(e) The secretary may also require a fee in the amount necessary to return the submerged lands to their original condition after the completion of the lease.

(f) All fees are non-refundable.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-405 Lease Rental Fees

(a) Except as otherwise provided for in this chapter, lease rental fees shall be determined by multiplying the area in square feet to be leased by the current square foot rental rate. Square foot rental rates determined by this method shall not exceed fair market value per square foot increased by no more than 10% cumulatively for each year of the term of the lease.

(1) The fair market value per square foot shall be determined by an appraisal.

(2) The Appraisal shall be paid for by the applicant. DLNR shall select the appraiser.

(b) The minimum lease rental fee shall be \$1,200.00 per year.

(c) Lease rental fees are payable in advance on an annual basis.

(d) For determination of the rental fee for a cable lease, a one-foot wide right of way for cables

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shall be used unless otherwise indicated within the lease or these regulations.

(e) For determination of the rental fee for a pipeline lease, a minimum one foot wide right of way shall be used unless otherwise indicated within the lease or these regulations. For pipelines whose diameter is greater than one foot, the diameter will be used for rental fee determination.

(f) To the extent a cable installation, pipeline installation, or other lease precludes the use of adjacent submerged lands, the lessee shall be required to pay based upon the entire exclusion area.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-410 Alternate Fee Determination Methods

The Secretary may calculate rental fees in one of the following manners if it will result in a higher rental fee than the method set forth in § 85-30.6-405

(a) For commercial, closed-system pipeline, the Secretary may determine lease rental fees based upon volume of material transported.

(b) Where dredging materials or other materials are removed from submerged lands for profit or where dredging is for non- navigational purposes, the Secretary may establish the fee based upon the fair market value of materials removed.

(c) For other types of uses, the Director may establish the lease rental fee based on the value determined by appraisal, when any of the following conditions exist:

- (1) The rental value is significantly greater than the current standard square foot value;
- (2) The use is for upland purposes; or
- (3) The area is filled.

(d) For leases for commercial purposes the secretary may determine the lease rental fee to be 1% of gross revenue generated by the commercial use.

(1) All fees shall be payable on an annual basis for the forthcoming year based upon projected gross revenue.

(2) If at the end of the year actual gross revenues have exceeded the projected gross revenues upon which the fee was calculated, the lessee has an affirmative duty to disclose this fact to the Department and make payment for a fee amount based upon the actual gross revenue. Any payment already received for the year in question shall be applied to this balance. Failure to report excess revenue and make payment shall in the discretion of the Secretary result in the termination of the lessee or a penalty fee of three times the amount owed.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-415 Government Uses

(a) Free Public Use. If a government use of Commonwealth-owned submerged lands is to provide general public access to the waters and if there is no fee charged for use of the land or associated facility, then there shall be no lease rental fee charged by the Department. This lease shall not be

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assignable without the Secretary's approval.

(b) Minimal User Fee. No lease fee is charged when:

- (1) The Government acting alone uses the submerged lands for general public access to the Commonwealth's waters;
- (2) Use is controlled and operated by the Commonwealth government; and
- (3) Any fees for the use of the area are used exclusively for the operation and maintenance of the same facility. The government shall send the Department an annual financial statement, in full, of the revenues and expenditures of the facility. This lease shall not be assignable without the Secretary's approval.

(c) Quasi-government Uses. Commonwealth Utility Corporation in creating sewer and water districts shall obtain non-assignable leases. There shall be no lease rental fee charged by the Department.

(d) Commercial. To the extent that a government use of submerged lands is for generating general revenue is operated by a commercial enterprise or is otherwise an amenity in furtherance of a commercial purpose, then all standard lease fees, terms and conditions shall apply.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-420 Late Fee Payments

(a) Any lease fee which is more than 30 days past due shall be subject to interest. The rate of interest shall not exceed the highest conventional rate of interest charged for commercial unsecured loans by Commonwealth banking institutions. This rate shall be determined by the Banking Commission of the Commonwealth.

(b) No application which would legitimize a pre-existing use shall be considered until all uncollected fees, including those specified by § 85-30.6-435.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

Part 500 - Specific Use Activities

§ 85-30.6-501 Aquaculture

Aquaculture is the culture or farming of food fish, shellfish, or other aquatic plants and animals. Properly managed, it can result in long term over short term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity, guidelines.

(a) Aquacultural activities and structures shall be located in areas where the navigational access of upland owners, recreational boaters, and commercial traffic is not significantly restricted.

(b) Recognition shall be given to the possible detrimental impact aquacultural development

might have on the visual access of upland owners and on the general aesthetic quality of the shoreline area.

§ 85-30.6-505 Archeological Areas and Historic Sites

Historical and archeological areas are often located on shorelines because water provided an important means of transportation and subsistence. These sites are nonrenewable resources and many are in danger of being lost through present day changes in land use and urbanization. Because of their rarity and the educational link they provide to our past, these locations should be preserved. Where possible, sites should be permanently preserved for scientific study and public observation.

(a) If the applicant is applying for a lease in an area known or reasonably believed to possess historical or archeological value, the applicant must consult with professional archeologists to identify areas containing potentially valuable archeological data, and to establish procedures for recovering the data through HPO in order to obtain approval of the application.

(b) As a condition of any lease, the lessee has an affirmative duty to disclose the discovery of anything of historical or archeological value to the Secretary and HPO as soon as possible after discovery. The lessee shall take no action that will damage the historical or archeological value of the site until consulting with professional archeologists to identify areas containing potentially valuable archeological data and to establish procedures for recovering the data through the HPO. Failure to comply with section shall be grounds for termination of any lease.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-510 Breakwaters

Breakwaters are protective structures usually built offshore to protect beaches, bluffs, dunes, harbor areas from wave action. However, because offshore breakwaters are costly to build, they are seldom constructed to protect the natural features alone, but are generally constructed for navigational purposes also. Breakwaters can be either rigid in construction or floating. The rigid breakwaters, which are usually constructed of rip rap or rock, have both beneficial and detrimental effects on the shore. All breakwaters eliminate wave action and thus protect the shore immediately behind them. They also obstruct the free flow of sand along the coast and have the potential to starve the downstream beaches. Floating breakwaters do not have the same negative effect on sand movement as rigid breakwaters, but cannot withstand extensive wave action and thus can be impractical with present construction methods in many areas.

(a) Floating breakwaters are preferred to solid landfill types in order to maintain sand movement and fish habitat.

(b) Solid breakwaters shall be constructed only where design modifications can eliminate potentially detrimental effects and consideration given for natural current and sediment flow, wave patterns, and over all flushing characteristics.

(c) The restriction of the public use of the water surface as a result of breakwater construction must be recognized and must be considered in granting shoreline leases for their construction.

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Modified, 1 CMC § 3806(g).

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022); Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

Commission Comment: In subsection (b), the Commission deleted the word “in” before “natural” to correct a manifest error.

§ 85-30.6-515 Bulkheads

(a) Bulkheads or seawalls are structures erected parallel to and near the high-water mark for the purpose of protecting adjacent uplands from the action of waves or currents. Bulkheads are constructed of steel, lumber, or concrete piling, and may be either of solid or open piling construction. For ocean exposed locations, bulkheads do not provide a long-lived permanent solution, because eventually a more substantial wall is required as the beach continues to recede and larger waves reach the structure.

(b) While bulkheads and seawalls may protect the uplands, they do not protect the adjacent beaches by speeding up the erosion of the sand in front of the structures. The construction of bulkheads and seawalls designed to protect the immediate upland area and proposals for landfill must comply with the regulations for that specific activity.

(1) Bulkheads and seawalls shall be located and constructed in such a manner which will mitigate in adverse effects on nearby beaches and will minimize alterations of the natural shoreline.

(2) Where bulkheads are essential, a shallow zone shall be maintained against the bulkheads with not more than a 3:1 slope starting at least ten feet from the bulkhead.

(3) Bulkheads and seawalls shall be constructed in such a way as to minimize damage to fish and shellfish habitats. Open-piling construction is preferable in lieu of the solid type.

(4) The effect of a proposed bulkhead on public access to publicly owned shorelines shall be considered.

(5) Bulkheads and seawalls shall be designed to blend in with the surroundings and not to detract from the aesthetic qualities of the shoreline to the greatest extent feasible.

(6) The construction of bulkheads shall be permitted only where they provide protection to upland areas or facilities, not for the indirect purpose of creating land by filling behind the bulkhead.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-520 Dredging

Dredging is the removal of earth from the bottom of a stream, river, lake, bay, or other water body for the purposes of deepening a navigational channel or to obtain use of the bottom materials for landfill. A significant portion of all dredged materials are deposited either in the water or immediately adjacent to it, often resulting in problems of water quality.

(a) Dredging shall be controlled to minimize damage to existing ecological, archaeological, cultural, and natural resources of both the area to be dredged and the area for deposit of dredged materials, which shall be non-wetland areas.

(b) Programs must include long-range plans for the deposit and use of spoils on land. Spoil

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deposit sites in water areas should also be identified by government in cooperation with the Division of Fish & Wildlife. Depositing of dredge material in water areas shall be allowed only for habitat improvement, to correct problems of material distribution adversely affecting fish and shellfish resources, or where the alternatives of depositing material on land is more detrimental to shoreline resources than depositing it in water areas.

(c) Dredging of bottom materials for the single purpose of obtaining fill material shall be banned.

(d) The dredged site shall be designed to contain the material to prevent dispersal into adjacent wetland areas and prevent adverse impacts.

(e) Every application for a lease involving a dredging project shall include an environmental protection plan that must include a temporal analysis of the biological activities with which dredging might conflict. For example, the dredging may have a severe impact on the submerged grass community wherein a commercially important species must use for some portion of their life cycle in the same grass flats.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-525 Jetties and Groins

(a) Jetties and groins are structures designed to modify or control sand movement. A jetty is generally employed at inlets for the purpose of navigation improvements. When sand being transported along the coast by waves and currents arrives at an inlet, it flows inward on the flood tide to form an inner bar, and outward on ebb tide to form an outer bar. Both formations are harmful to navigation through the inlet. A jetty is usually constructed of steel, concrete or rock. The type depends on foundation conditions and wave, climate and economic considerations. To be of maximum aid in maintaining the navigation channel, the jetty must be high enough to completely obstruct the sand stream. The adverse effect of a jetty is that sand is impounded at the updrift jetty and the supply of sand to the shore downdrift from the inlet is reduced, thus causing erosion. Groins are barrier-type structures extending from the backshore seaward across the beach. The basic purpose of a groin is to interrupt the sand movement along a shore. Groins can be constructed in many ways using timber, steel, concrete, or rock, but can be classified into basic physical categories as high or low, long or short, and permeable or impermeable. Trapping of sand by a groin is done at the expense of the adjacent downdrift shore, unless the groin system is filled with sand to its entrapment capacity.

(ab) The Secretary must consider sand movement and the effect of proposed jetties or groins on that sand movement. The Secretary may require conditions sufficient to compensate for the adverse effects of the structures either by artificially transporting sand to the downdrift side of an inlet with jetties, or by artificially feeding the beaches in case of groins as a condition of any lease.

(c) Special attention shall be given to the effect these structures will have on wildlife propagation and movement, and to the design of these structures which will not detract from the aesthetic quality of the shoreline.

Modified, 1 CMC § 3806(g).

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History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-530 Marinas

Where this chapter conflicts with regulations of Outer Cove Marina or Smiling Cove Marina, regulations specific to that location shall govern. Where this chapter conflicts with the regulations of Outer Cove Marina or Smiling Cove Marina, regulations specific to that location shall govern. Marinas are facilities which provide boat launching, storage, supplies, and services for small pleasure and fishing craft. There are two basic types of marinas. The open-type construction (floating breakwater and/or open-pile work) and solid-type construction (bulkhead and/or landfill). Depending upon the type of construction, marinas affect fish and shellfish habitats.

- (a) In locating marinas, provisions sufficient to protect or offset the marine resources that may be harmed by construction and operation of the facility shall be made as a condition of approval of any lease.
- (b) Marinas shall be designed in a manner that will reduce damage to marine resources and be aesthetically compatible with adjacent areas.
- (c) Sufficient operational procedures for fuel handling and storage in order to minimize accidental spillage and provide satisfactory means for handling those spills that do occur shall be required as a condition of any lease. Applicants must specifically show that their operational procedures are sufficient to withstand typhoon conditions.
- (d) Shallow-water embayments with poor flushing action shall not be considered for overnight and long-term moorage facilities.
- (e) All water areas in the marina should be well flushed to allow proper circulation.
 - (1) The depth of the boat basins and access channels shall not exceed that of the receiving body of water;
 - (2) Basins and channels shall not be located in areas of poor water circulation;
 - (3) Channels shall have gentle grades, with no sills or bottom holes;
 - (4) Canals shall be tapered toward the headwater both in vertical and horizontal planes;
 - (5) Floating docks should be used if possible, and if not possible, docks shall be built on pilings rather than on a solid base.
- (f) The depth of the water basin shall not exceed the depth of light penetration during calm conditions.
- (g) The impacts of storm water runoff shall be mitigated to ensure that the rate, volume, and quality are approximately the same as runoff naturally flowing into the basin.
- (h) The boat channel shall be well marked, and boaters required to stay in the designated channel. The impacts of storm water runoff should be mitigated to ensure that the rate, volume, and quality are approximately the same as runoff naturally flowing into the basin.

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- (i) The boat channel entrance should be well marked, and boaters required to stay in the designated channel.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-535 Mining

Mining is the removal of naturally occurring materials from the earth for economic use. The removal of sand and gravel from submerged lands of the Commonwealth usually results in erosion of land and silting of water. These operations can create silt and kill bottom-living animals. The removal of sand from submerged lands can deplete a limited resource which may not be restored through natural processes.

- (a) When rock, sand, gravel, and minerals are removed from submerged lands, adequate protection against sediment and silt production should be provided.
- (b) When removal of sand and gravel from submerged lands is permitted by existing legislation, it should be taken from the least sensitive biophysical areas of the beach.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-540 Moorage Anchors; Permanent

Permanent anchors are fixed to submerged lands to provide for ongoing and intermittent anchorage of watercraft and serve to eliminate the need for and the damages caused by a watercraft's working anchor(s). Requiring small areas of submerged land to accommodate the anchor bulk, moorings also include sections of chain or other appropriate pendant material attached to a floating buoy. Moored watercraft swing in an arc around the center point of the anchor. Moorings are preferred to the use of working anchors as they cause less damage and disturbance to submerged lands and are more secure than working anchors.

- (a) Permanent moorage anchors shall be designed and installed with due regard for typhoon, wind, and wave conditions.
- (b) Any area designated for permanent moorage anchors shall be well removed from fairways and located so as not to interfere with general navigation.
- (c) Sanitation facilities of moored watercraft must meet applicable standards and be adequately serviced prior to and during the use of a mooring. DLNR has the authority to inspect the sanitation facilities of moored watercrafts prior to and during the use of the mooring. Failure to maintain sufficient sanitation by the moored watercrafts shall be grounds for termination of the use of the mooring.
- (d) Any watercraft which is greater than 100 feet length overall and does not have either a Certificate of Documentation from the United States Coast guard with a recreational endorsement or a Commonwealth certificate of number with a pleasure use designation that seeks the regular use of an anchorage within the Saipan lagoon shall be required to use a permanent mooring.

- (e) Submerged moorings for a watercraft which is less than 100 feet length overall and has either

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a Certificate of Documentation from the United States Coast Guard with a recreational endorsement or a Commonwealth certificate of number shall not require a lease. The impact upon submerged lands and marine resources of these moorings when properly sited is minimal. They have little to no commercial value or impact and are not a type of use the Submerged Lands Act was intended to regulate. Easing access to these moorings will further the regulatory purpose of protecting submerged lands and marine resources by reducing the usage of working anchors and encouraging watercraft owners to use moorings that would otherwise be too burdensome to obtain.

- (1) Such moorings shall not be sited on a location where the mooring, use of the mooring, or construction of the mooring interferes with navigation or with leases issued by DLNR or where they will have an adverse environmental impact or damage anything of archaeological value.
- (2) Before placing or using a mooring, the intended user must register the mooring with DLNR and gain written approval to use or construct the mooring from the Secretary for the siting.
- (3) After registration, the registrant will have use of the mooring for three years. Thereafter, the registrant must seek the written permission of the Secretary for the continued use of the mooring.
- (4) Transfer or assignment of the mooring is not allowed. Permitting the use of the mooring by a watercraft which is greater than 100 feet length overall or has neither a Certificate of Documentation from the United States Coast Guard with a recreational endorsement nor a Commonwealth certificate of number shall result in the registrant of the mooring to lose all right to the use of the mooring.
- (5) The use of the mooring is required to obtain and comply with all other appropriate regulations and regulatory permits as a condition to the continuing use of the mooring.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-545 Piers

A pier or dock is a structure built over or floating upon the water, used as a landing place for marine transport, fisheries or recreational purposes. While floating docks generally create less of a visual impact than those on piling, they constitute an impediment to boat traffic and shoreline trolling. Floating docks can also alter beach sand patterns in areas where tides and littoral drift are significant. The Secretary shall consider the following factors when evaluating any lease application involving piers or docks:

- (a) The use of floating docks shall be preferred in those areas where scenic values are high and where conflicts with recreational boaters and fishermen will not be created.
- (b) Open-pile piers shall be preferred where water circulation is needed to support marine resources, where there is significant littoral drift, and where scenic values will not be impaired.
- (c) Priority shall be given to the use of community piers and docks in major waterfront subdivisions. In general, priority shall be given to the cooperative use of piers and docks.
- (d) The Commonwealth shall consider the capacity of the shoreline sites to absorb the impact of waste discharges from boats including gas and oil spillage.

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

§ 85-30.6-550 Buffer Zones

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

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022).

Part 600 - Miscellaneous Provisions

§ 85-30.6-601 Severability Provision

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

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022); Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

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Appendix A

List of Government Contacts

	For Activities Affecting:	Contact and/or Apply for Permit To:
1.	Coastal wetlands, areas of open tidal waters greatponds streams, rivers, brooks and other wetlands	Coastal Resources Management Office Governor's Office Sixth Floor, Nauru Building Saipan, MP 96950 Tel. No. (670) 234-6623/7320
2.	Port resources	Commonwealth Port Authority Saipan International Airport P.O. Box 1055 Saipan, MP 96950 Tel. No. (670) 234-8315/5962
3.	Dredging in submerged lands	Division of Environmental Quality Department of Public Health and Environmental Services Dr. Torres Hospital P.O. Box 1304 Saipan, MP 96950 Tel. No. (670) 6114/698*
4.	Aquaculture and scientific research in the marine environment	Division of Fish and Wildlife Department of Natural Resources Lower Base, Tanapag Saipan, MP 96950
5.	Historical and Cultural resources	Historic Preservation Office Community and Cultural Affairs Department Lower Base, Tanapag Saipan, MP 96950 Tel. No. (670) 322-9722

Applications to any of the above agencies for use of submerged lands will automatically be forwarded to the Department of Natural Resources. Applications for conveyances for activities that do not require a permit from another agency should be made in a letter to the Department discussing the applicant's request and the reasons justifying approval. The Department may be contacted directly at Capitol Hill, Saipan, MP 96950 (670) 322-9830/9834.

* So in original.

Modified, 1 CMC § 3806(f), (g).

History: History: Amdts Adopted 45 Com. Reg. 49607 (Mar. 28, 2023); Amdts Proposed 44 Com. Reg. 048358 (Apr. 28, 2022); Adopted 11 Com. Reg. 6065 (Mar. 15, 1989); Proposed 10 Com. Reg. 5762 (Dec. 15, 1988).

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Commission Comment: The Commission corrected the spelling of “automatically” and “Department.” In the first line of the table, the Commission deleted the repeated words “streams, rivers, brooks.”