

Regulations Affecting The
National Public Lands Authority

Adopted By Palau Public Lands Authority
On April 6, 1999

SUMMARY OF SECTIONS

Part I: Preliminary Statement

- Section 1: *Purpose*
- Section 2: *Authority*
- Section 3: *Effective Date*
- Section 4: *Scope of Rules*

Part II: Definitions and Abbreviations

Part III: Palau Public Lands Authority Operations

- Section 1: *Board of Trustees*
- Section 2: *Staff*
- Section 3: *Powers and Duties*
 - (A) Public lands
 - (B) Lease of public lands
 - (C) Sale of public lands
 - (D) Acts where majority vote is required

Part IV: Application Process for Leases of Public Lands

- Section 1: *Purpose*
- Section 2: *Application; Fee*
- Section 3: *Procedure for Consideration of Applications*
- Section 4: *Notice of Personal Appearance*
- Section 5: *Determination of Lease Terms*

Part V: Conflicts of Interest/Code of Ethical Conduct of Board Members

- Section 1: *Purpose*

Section 2: *Conflicts of interest*

Section 3: *Standards of Ethical Conduct*

Section 4: *Enforcement*

Part VI: Homestead Program

Section 1: *Homestead Inspection Team*

Section 2: *Pre-inspection procedures*

Section 3: *Inspection criteria*

Section 4: *Homestead priorities*

Part I: Preliminary Statement

Section 1: Purpose

Palau Public Lands Authority (“PPLA”) hereby issues these regulations pertaining to the operations, powers and duties of the national public lands authority and procedures for applying for leases of public lands within the Republic of Palau. PPLA adopts these regulations as a means of carrying out the purposes of P.L. 5-8-10 and to enable PPLA to fulfill its statutory roles of owning, administering, managing and regulating public lands in Palau, and the income therefrom, as well as establishing guidelines and procedures for the operation of state public lands authorities in owning, administering, managing and regulating public lands in their respective states, and the income therefrom. PPLA’s main goals in promulgating these regulations are:

- (A) To identify, preserve, protect and utilize in a beneficial manner all public lands in the Republic of Palau;
- (B) To guide and direct state public lands authorities in the activities respecting public lands held by them;
- (C) To increase the accountability of the members of national public lands authority board of trustees and establish a code of ethical conduct for those officials;
- (D) To standardize the manner in which citizens are allowed to use public lands in Palau and to increase the equality of opportunity and fairness for such use enjoyed by all Palauans; and
- (E) To establish uniform and efficient procedures for the inspection and processing of lands under the Homestead Program.

Section 2: Authority

These regulations are adopted by the Board of Trustees of PPLA pursuant to sections 121 and 125(a) of the Administrative Procedure Act, 6 PNC 121 and 125(a). The Board of PPLA has adopted these regulations under the authority established by 35 PNC 210(i) and 35 PNC 215(c). Specifically with respect to the rights, interests, powers, responsibilities, duties and obligations of state public lands authorities existing under 35 PNC 215(a), see also Koror State Government. et al. v. Republic of Palau, Civil Appeal No. 24-91 (filed Oct. 5, 1993), at 5; Republic of Palau v. Toribiong and Airai State, et al., 2 ROP Intrm. 43, 47 (1990).

Section 3: Effective Date

These regulations shall take effect thirty days after vote by the PPLA Board, provided that the regulations are not rescinded or suspended by the President at an earlier date. The effective date shall pertain to the date upon which all governed persons and entities must be in compliance,

after which date the enforcement provisions of these regulations may be utilized.

Section 4: *Scope of Rules*

These regulations address the areas of (i) PPLA operations; (ii) Applications for leases of public lands (iii) conflicts of interest, and (iv) the homestead program.

Part II: Definitions and Abbreviations

As used herein:

- (A) PPLA shall refer to Palau Public Lands Authority, which entity was created under 35 PNC 203 and enjoys perpetual existence pursuant to 35 PNC 210(a).
- (B) The Board shall refer to the Board of Trustees of PPLA.
- (C) State PLA(s) shall refer to any state public lands authority duly created and constituted pursuant to state legislation enacted in accordance with 35 PNC 215(a).
- (D) State PLA board(s) shall refer to the board(s) of trustees of any state public lands authority.
- (E) PNC shall refer to the Republic of Palau National Code, as amended.
- (F) Public lands shall have the meaning set forth in 35 PNC 101.
- (G) State public lands shall refer to public lands located within a given state and conveyed by quitclaim deed to that state's PLA or otherwise owned by that state s PLA.
- (H) The Homestead Program shall refer to the program created under 35 PNC 801, et seq.

Part III: PPLA Operations

Section 1: *Board of Trustees*

Members of the Board shall be appointed and serve in accordance with 35 PNC 204-209. Board members are subject to and bound by the ethics/conflict of interest regulations set forth in Part V of these regulations. Board members shall make every effort to regularly attend and vote at all meetings of the Board except where their absence cannot be avoided. Board members shall recognize that, as individuals, they have no power or legal authority to act on behalf of the Board, except as expressly authorized by a majority vote of the Board. This provision shall not restrain the Chairman or officers of the Board from performing regular duties that fall within their regular

responsibilities as Board officers.

Section 2: *Staff*

PPLA staff shall be employed and shall serve in accordance with the directives of the Board and the provisions of PNC Title 33 (Public Employment). The Executive Director shall oversee staff functions and performance and shall report as requested to the Board on staffing matters.

Section 3: *Powers and Duties*

PPLA's powers and duties are set forth generally at 35 PNC 210. In carrying out this role, PPLA and the Board shall conduct operations as follows:

- (A) Public lands. PPLA shall:
- (i) Identify, survey as necessary, inventory, and maintain records of all public lands held or claimed by PPLA.
 - (ii) Where title is deemed to be uncertain, take all necessary steps, administratively and legally, to secure clear title to such lands.
 - (iii) Effect positive, beneficial public use of such lands to the extent possible and advisable.
 - (iv) Safeguard the public nature of such lands to the extent advisable by preventing exclusive private use, except where such private use is secured through a valid lease or other agreement.
 - (v) Assure that all uses of public lands comport with applicable land use and zoning laws, permits and other applicable legal requirements and laws.
 - (vi) Assure that all uses of public lands comport with applicable environmental laws and that the objective of environmental protection of public lands is accorded appropriate weight in the Board's public land use decisions.
 - (vii) Assure that all uses of public lands comport with applicable national historical preservation laws and policies.
 - (viii) Utilize public lands so as to provide for the creation and maintenance of areas for present and future public uses, including recreational uses, public parks and beaches, historical and ecological preservation purposes, marine and wetlands areas, and other designated public use districts.
 - (ix) Convey national public lands to duly constituted state PLAs pursuant to 35 PNC 210(j) in instances where such conveyance is requested by the

corresponding state PLA and where the following criteria all are met:

- (a) the requesting state PLAs meets all applicable legal requirements established by law and by PPLA's regulations;
- (b) the land in question has been identified to the Board's satisfaction by means of a land survey or other appropriate means of identification;
- (c) the Board has satisfied itself that title and documentation issues are not an impediment to transfer of the land in question;
- (d) the land in question is not needed for an existing or planned national use;
- (e) the requesting state has presented valid reasons for desiring such transfer and presented an acceptable general description of the uses to which the land will be put; and
- (f) there exists no significant public interest that would be adversely affected by such transfer.

(ix)[sic] If PPLA conveys land to a duly constituted state PLA which subsequently ceases to operate for a period of six months, PPLA shall act as trustee of all such lands until such time as the state PLA begins active operations. PPLA may act after less than six months to the extent that failing to do so may jeopardize the interests of the people of that state.

(B) Leases of public lands.

- (i) Where the Board deems exclusive private use of public lands appropriate, it may execute a lease for such private use, if the following conditions of such lease are met:
 - (a) Unless the lease in question is for a legitimate public or charitable purpose, the lease results in a fair and reasonable income for the National Treasury in order to promote and develop national public lands for the benefit of the people of Palau.
 - (b) The lease specifies a term not longer than the longest period allowed by law.

- (c) The lease specifically describes the leased premises and improvements and includes a map whenever possible.
 - (d) The lease stipulates that all improvements located upon the premises shall be or become the property of PPLA upon termination of the lease, except that, where a lessee has added improvements that can be removed without harm to the property, these may be removed by the lessee. Any improvements added to the property by the lessee during the term of the lease must be consistent with applicable zoning, building and other laws and regulations.
 - (e) The lease stipulates that the lessee shall use the property in such a manner as not to commit waste but rather to maintain the natural, improved and environmental qualities of the subject lands and improvements.
 - (f) The lease specifies that the lessee may not enter into a sublease respecting the subject lands or improvements without express written approval from PPLA. The lease further specifies that to obtain such approval, the lessee must make available to PPLA its sublease agreement and any other documents or information that PPLA requests in its effort to assess whether permitting such sublease is in the interest of the citizens of the Republic of Palau.
 - (g) The lease rate complies with subpart (ii) of this regulation.
- (ii) For each lease of public lands, PPLA will assess a minimum annual rent that is reasonable, taking into consideration the unique characteristics of the property and the intended use of the property. For land that has been appraised, it will usually be reasonable to charge between 3-8% of the assessed value of the land as minimum annual rent. Each lease must also provide for a means to adjust the minimum annual rent amount for inflation at regular intervals.
 - (iii) In addition to the minimum annual rent provided for in this section, commercial leases executed pursuant to this section may contain a term requiring that the commercial lessee annually pay PPLA as additional rent an annual sum up to 4% of the lessee's gross revenue during the lease period.
 - (iv) Where there is more than one applicant for a lease of public lands and when determining the amount of gross revenue rent to charge, the Board should consider the following factors:

- (a) other land owned by, leased by or available to the applicant for the purposes for which the lease is sought;
- (b) the applicant's intended use of the property;
- (c) the applicant's prior record of land use, if any;
- (d) whether the applicant is Palauan;
- (e) whether the lessee will create jobs for Palauans;
- (f) the financial condition of the applicant;
- (g) the amount of capital that lessee will contribute for development of the land; and
- (h) the impact the intended use will have on the environment.

For residential leases, priority may be given to applicants with fewer lots available for his or her use.

- (v) If, during the term of any lease of public lands entered into pursuant to this section the Board determines that the lessee has violated any law or regulation applicable to said lease, or has failed to adhere to the terms of the lease, including payment of rent, the Board shall have the right to terminate the lease upon 60 days' notice in the case of residential leases, or 120 days' notice in the case of commercial leases. The Board's right of termination shall also arise if, after the passage of at least six (6) months of the lease term, it concludes that the lessee has not taken significant steps toward utilization of the premises.

(C) Sale of Public Lands.

- (i) It is the policy of PPLA to only sell land if it is determined that such sale is in the best interest of the people of Palau and only after a determination is made that the land will not be needed for a national or state governmental purpose.
- (ii) If PPLA wishes to sell public lands, it must give public notice containing a description of the land, identification of the party wishing to purchase the land, the proposed price per square meter, a statement of the party's intended use of the land, a date by which applications for purchase of such land must be submitted to PPLA for consideration, and the date, time, and place of the PPLA Board

meeting where sale of these lands shall be considered.

- (iii) Notice shall be given at least 90 days prior to the date by which applications for purchase are due in the following manner:
 - (a) By posting notice on the land involved in both English and the principal local language of the state in which the land is situated;
 - (b) By posting notice in the languages specified in subsection (a) above at the state office and the principal meeting place in the village in which or nearest to which the land is situated;
 - (c) By posting notice at the post office and the office of the clerk of the Supreme Court;
 - (d) By placing an advertisement on both a local radio and television station;
 - (e) By mailing notice to each Palau consular office;
 - (f) By delivering notice to the Association of State Governors of Palau; and
 - (g) By public notice by any other means that the PPLA Board and its director may deem advisable.
- (iv) Any member of the public may submit written comments in favor of or against the proposed sale of public lands as described in the notice. Such comments must be submitted to PPLA at least fourteen (14) days before the PPLA Board meeting where the sale of such lands will be discussed. The Director shall furnish all board members with copies of all comments submitted to PPLA.
- (v) The Board must consider all applicants that apply to purchase public lands. The Board should consider the intended use of the land, as well as the factors listed above in Section B(iv) pertaining to leases of public land. The Board must also consider the issues raised in written comments by members of the public regarding the sale of public land.
- (vi) The Board should follow the same procedures as delineated in Part IV below for the lease of public lands in its decision regarding the sale of public lands, except that all votes of the board to sell public

lands must pass by two-thirds of all members of the Board.

- (vii) The deed of sale of any public lands shall specifically provide that the land cannot be conveyed, except by will or trust, within five years of the date of purchase.
- (D) Acts where majority vote is required. The following acts by PPLA shall be invalid and void *ab initio* unless approved by a prior vote of the majority of a quorum of the Board and specifically recorded by a written record of the Board's minutes:
- (i) Execution of any deed, lease, or other written agreement conveying or encumbering public lands, except that the sale of public lands shall require a two-thirds vote of all members of the Board.
 - (ii) An action to condemn property.
 - (iii) Promulgation of any regulation.

PART IV: APPLICATION PROCESS FOR LEASES OF PUBLIC LANDS

Section 1: Purpose

PPLA seeks to implement a uniform procedure for persons or entities seeking to lease public lands. The application process is designed to fairly and expeditiously process applications for public lands while assuring that the Board has all pertinent information to allow it to make decisions that are in the best interest of the people of the Republic of Palau.

Section 2: Application; Fee

Each applicant for a lease of public lands shall submit four (4) copies of a completed application form with all requested documents to PPLA along with an application fee in the amount of \$40 for a commercial lease to a Palauan individual or company, \$150 for a commercial lease to a foreign individual or company and \$5 for a residential lease.

Section 3: Procedure for Consideration of Applications

- (A) The Executive Director or his/her designee will review each application to determine whether it contains all required information within 15 days of receipt of the application. If the application is incomplete, the Executive Director or his/her designee will notify the applicant of the additional materials needed to process the application within 20 days of receipt of the application. If the applicant does not provide the requested information within fortyfive (45) days after such notice, the

application will be considered abandoned and the applicant will have to re-apply for further consideration.

- (B) If the application is complete, the Executive Director will circulate a summary of the application and a recommendation to the Board members within thirty (30) days of receipt of the application. The Executive Director will add to the agenda of the next regularly scheduled Board meeting consideration of the application for lease of public lands.
- (C) The Board will consider the application at its next scheduled meeting. The Board may either vote to approve or to reject the application or to refer the application for further investigation. If the Board decides to refer the application for further investigation, it will notify the applicant within seven (7) days and request any further information that the applicant should provide. To the extent practicable, the further investigation should be completed by the next regularly scheduled board meeting. At that meeting, the Board may vote to approve or to reject the application or to refer it for further investigation.
- (D) If the Board rejects the application, the Executive Director or his/her designee shall notify the applicant in writing within seven (7) days of the Board's decision to deny the application. If the Board approves the application, it must notify the applicant and inform him/her that the Board will begin considering the terms of the lease.

Section 4: *Notice of Personal Appearance*

At any time, the Board may decide that it would be helpful for the applicant to personally appear at a meeting to discuss the application. The Executive Director shall then notify the applicant at least fifteen (15) days prior to the next regularly scheduled meeting that the Board requests that he/she attend the meeting to discuss the application. Within the notice of personal appearance of the applicant, the Board may also require additional copies of the completed application form documents provided for in Section 2.

Section 5: *Determination of Lease Terms*

- (A) The Board may make a decision regarding lease terms at the time it approves the application, or it may refer to a committee for investigation a recommendation concerning the terms of the lease. Once such terms are established by the committee, PPLA's attorney shall finalize a lease agreement to be voted upon at the next regularly scheduled Board meeting.
- (B) Upon a final vote accepting the terms of a lease for public lands, the Executive Director or his/her designee shall send the applicant a copy of the lease agreement within five (5) days. The applicant will have twenty (20) days to accept, reject, or make a counter proposal. If no action is taken by the applicant within twenty (20)

days, the offer will be deemed to be rejected. If the applicant makes a counter proposal, it shall be presented to the Board at the next regularly scheduled meeting.

PART V: CONFLICTS OF INTEREST/CODE OF ETHICAL CONDUCT OF BOARD MEMBERS

Section 1: Purpose

PPLA is an agency established under the laws of the Republic of Palau to own and administer public lands within the Republic, and the states thereof, *in trust* for the people of Palau. As such, the members of the PPLA Board serve as trustees of the people of the Republic and the states. This public trust carries with it a solemn obligation to perform the duties of members of the board of trustees with the highest degree of commitment to the interests of the Palauan people and to the Republic. Accordingly, to carry out that duty to the fullest extent possible and to perform the functions of trustee in a manner that is beyond reproach or suspicion, each member of the Board shall remain insulated from political, financial, familial, clan, or other private interference or influence in discharging his or her duties as trustee.

Section 2: Conflicts of interest

A conflict of interest is any situation in which a member of the Board has an *actual or potential personal interest* in a matter pending, or known to be due to become pending, before that body. In construing this section, “actual or potential personal interest” shall be understood in its broadest sense, and members shall strive to avoid even the appearance of impropriety in order to preserve the integrity of the body on which they serve. By way of illustration, the following situations are examples where a conflict of interest may be said to exist:

- (A) The Board is addressing issues that directly affect land owned by the member, his or her immediate family or clan, or a business enterprise in which he or she has an economic interest;
- (B) The member is in a position to realize a direct or probable economic gain or loss as a result of the action taken by the Board; and
- (C) The member intends to capitalize, or assist others in capitalizing, on an action taken by the Board by exploiting his or her knowledge of confidential internal board activities.

Section 3: Standards of Ethical Conduct

Board members shall uphold the following standards of conduct:

- (A) Each member shall perform his or her duties in accordance with these regulations and all applicable laws and regulations of the Republic of Palau.

- (B) Each member shall avoid conflicts of interest, or the potential or appearance thereof, in carrying out the duties of trustee and shall refrain from participating in any discussion or vote of the board respecting any matter where the member knows or believes there exists such an actual or potential conflict. A member who believes that an actual or potential conflict exists, or who is uncertain as to whether a given situation creates such a conflict, shall disclose the existence and nature of the conflict to the entire board at the next board meeting.
- (C) No member shall solicit or accept any money, property, gift, favor or other benefit from any person or entity which he or she knows or suspects or should reasonably know or suspect has been offered in connection with the discharge of his or her duties as a member of the Board. Where such an offer has been made to a member, that member shall disclose all facts surrounding the offer to the entire board at the next board meeting.
- (D) No member shall use his or her position on a board to enrich or benefit himself or herself or any immediate family member, the member's clan, or a business enterprise in which the member has an economic interest.
- (E) No member shall use confidential or insider information obtained by virtue of board membership to benefit himself or herself or any other person.

Section 4: Enforcement

- (A) Where it appears to any member of the Board that another Board member has violated these regulations concerning ethical conduct and conflicts of interest or any other national or state law or regulation governing the conduct of members of PPLA Board, the Board shall first establish a special committee to investigate whether the suspected member has a conflict of interest or has engaged in conduct which constitutes an ethical violation. The committee shall immediately notify that member of the allegations and request that the member rectify the violation by voiding or reversing the action which constituted or followed from the alleged conflict, as well as all consequences of such action to the extent possible. If the member refuses to rectify the violation, the special committee will investigate the allegation and make a report to the Board at the next regularly scheduled meeting. After the report, the Board may vote to take action regarding the allegations, to refer it back to the special committee for further investigation, or to declare that the member did not act inappropriately.
- (B) If PPLA finds there has been an ethical violation or a conflict of interest by any member of the Board, it may remove such person from his or her position as trustee upon a majority vote of the Board. If PPLA finds there has been a violation of these regulations, it must determine whether there are any actions taken by the PPLA Board which may not have been taken but for the vote or endorsement of the member who was found to have engaged in an ethical

violation or conflict of interest. If such actions have been taken, the Board must either ratify the prior action by a majority vote or declare such prior action void by a majority vote.

- (C) To the extent that a member of the Board has received anything of value as a result of action taken in violation of the ethical or conflict of interest rules, the member shall disgorge such profits to PPLA. PPLA may take whatever legal action is necessary to recover illegally obtained profits or to void any transactions which were entered into as a result of action by a member with a conflict of interest or as the result of an ethical violation.
- (D) Should a Board member be charged with a felony, upon a finding of guilt by the trial court and prior to the completion of the appellate process, the Board may vote to remove by majority vote said Board member for violation of these rules of ethical conduct. At such time the conviction becomes final, the Board member shall be removed as a trustee by operation of these regulations.

PART VII: HOMESTEAD PROGRAM

Section 1: *Homestead Inspection Team*

The homestead inspection team shall inspect all homesteads where the claimant seeks a certificate of compliance. The team shall report its findings to the Board, which will then make a recommendation to the President on whether to issue the certification under 35 PNC 810(a). Inspection of homestead claims for verification purposes pursuant to 35 PNC 805 shall be conducted by a team consisting of one representative from any of the following agencies:

- (A) PPLA
- (B) Bureau of Land and Survey, Ministry of State
- (C) Agriculture Division, Ministry of Natural Resources & Development
- (D) Bureau of Historical Preservation
- (E) Entomology Office, Ministry of Natural Resources & Development

Section 2: *Pre-inspection procedures*

The following pre-inspection procedures shall be complied with by the inspection team to the greatest extent possible:

- (A) Prior to inspection, assemble all available documentation, maps or other evidence relating to the homestead claim;

- (B) Provide at least ten (10) days' notice to the public of the inspection; and
- (C) Instruct the claimant to indicate the boundaries of the homestead claim.

Section 3: Inspection criteria

In evaluating a homestead claim, the following factors should be weighed by members of the inspection team:

- (A) Claimant's compliance with the terms of the permit;
- (B) The quality and quantity of the evidence introduced to support the claimant's claim;
- (C) The existence of conflicting evidence or conflicting claims against the property at issue;
- (D) The representations made to the claimant or to others by National Government officials respecting the homestead property, the permit or related matters;
- (E) Any other salient facts respecting the historical use of the property at issue;
- (F) The interests of the National Government;
- (G) The interests of the government of the state in which the property is located;
- (H) The amount of land at issue;
- (I) The degree of certainty with which homestead borders can be ascertained; and
- (J) The claimant's level of compliance with national and state laws, regulations and policies, including those relating to environmental protection and historical preservation.

Section 4: Homestead priorities

In evaluating a homestead claim and making recommendations thereon to the President, the Board shall be guided by the following policies, objectives and priorities:

- (A) To fulfill the goals and objectives of the Homestead Program;
- (B) In cases of conflict, to reward the efforts of those who have endeavored to utilize or develop the subject property consistent with the goals and objectives of the Homestead Program;

- (C) To promote the beneficial use of the lands of Palau;
- (D) To create greater equity in the ownership of lands in Palau;
- (E) In cases where the homestead claimant and his heir(s) are deceased, to reward the efforts of those in the claimant's family who have given effort toward preservation of the homestead claim.

THE FOREGOING REGULATIONS ARE HEREBY ADOPTED THIS 6th DAY OF APRIL, 1999 BY THE BOARD OF TRUSTEES, PALAU PUBLIC LANDS AUTHORITY.

Tadashi Sakuma, Chairman