

Kosrae Island Resource Management Program Regulations for Development Projects

Part I. General Provisions.

1.1 Authority. These regulations are promulgated and issued by the Development Review Commission pursuant to Title 7, Chapter 4 of the Kosrae Code. These regulations have the force and effect of law.

1.2 Purpose. The purpose of these regulations is to implement Title 7, Chapter 4 of the Kosrae Code by establishing The Environmental Impact Assessment ("EIA") process is intended to help the general public and government officials make decisions with the understanding of the environmental consequences of their decisions, and take actions consistent with the goal of protecting, restoring, and enhancing the environment. In addition, these regulations are intended to:

(a) Integrate the EIA process into the early planning of projects to insure timely consideration of environmental factors in order to avoid delays; and

(b) Identify at an early stage the significant environmental issues requiring further study and de-emphasize insignificant issues, thereby defining the scope of the Environmental Impact Statement ("EIS").

1.3 Applicability. These regulations shall apply to all development projects, as defined herein, as follows:

(a) On going development projects of a continuous nature such as, by way of example, dredging, quarrying, etc., shall be in compliance with these regulations within three months from the effective date of these regulations.

(b) Development projects in progress on the effective date of these regulations shall comply immediately to the extent possible, and fully within three months of the effective date of these regulations.

(c) All new development projects that begin on or after the effective date of these regulations shall comply fully with these regulations.

1.4 Definitions. As used herein, unless the context otherwise requires, the term:

(a) "Accelerated erosion" means the removal of the surface of the land through the combined action of human activities and natural processes, at a rate greater than that which would result through the action of natural processes alone.

(b) "Accelerated sedimentation" means the sedimentation resulting from the combined action of human activities and natural processes resulting from storms, heavy rains, and high winds at a rate greater than that which would result through the action of natural processes alone.

(c) "Acceptable level" means that:

(1) All significant environmental effects that can feasibly be avoided have been eliminated or substantially lessened.

(2) The DRC, TAC and Program Office have found that any remaining, not feasibly avoidable significant impacts are acceptable considering the balance of the benefits of a proposed project against its not feasibly avoidable environmental risks.

(d) "Areas of particular concern" mean areas identified by the land use plan as being of importance to the health of the environment or lifestyle of Kosraeans. Until the land use plan is officially adopted "areas of particular concern" will include mangroves, coral reefs, harbors, shorelines and any historical site.

(e) "Conveyance channel" means a channel other than an interceptor channel used for the conveyance of water through a project area.

(f) "Cumulative impact" means the impact on the environment which results from the incremental impact of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what agency or person undertakes such other activities. Cumulative impacts can result from individually minor but collectively significant activities taking place over a period of time.

(g) "Development project" means the construction, alteration, movement, fill, removal, disposal or any other modification to the land or coastal areas. A development project can include, but is not limited to the installation, placing, or building of surface structures, land reclamation, navigation channels, harbors, utility lines, piers, shopping centers, clearing land, causeways, golf courses, apartment complexes, hotels, schools, roads, parking areas, or any other similar activity.

(h) "Development Review Commission" or "DRC" means the 5-member group appointed by the Governor that is responsible for overseeing the wise use and protection of Kosrae's resources, balancing the needs of economic and social development with those of environmental quality and respect for traditional ways.

(i) "Diversion terrace" means a channel or dike constructed upslope of a project for the purpose of diverting storm water away from the unprotected slope.

(j) "Earthmoving" means any construction or other activity which disturbs or alters the surface of the land, a coral reef or bottom of a lagoon, including, but not limited to excavations, dredging, embankments, land reclamation in a lagoon, land development, subdivision development, mineral extraction, ocean disposal, and the moving, depositing or storing of soil, rock, coral or earth.

(k) "Effects" means direct or indirect results which are reasonably foreseeable, are caused by an activity and occur either close to the time and place of the activity, or are manifested at a subsequent time. Effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations have the same meaning. Effects may be ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

(l) "Environmental Assessment" or "EA" means the completion of a Development Review Permit Application and subsequent critical review by the Program Office staff and TAC and DRC members to determine if a more comprehensive EIS should be conducted.

(m) "Environmental Impact Assessment" or "EIA" means the process by which all environmental, social, cultural and economic impacts of a project, including project alternatives, are identified and analyzed before the decision to approve the project is made. The EIA is used to predict the likely economic, social, cultural and ecological consequences of a proposed activity; i.e., the effect on the environment. The EIA is intended to help in planning to prevent or reduce adverse effects to acceptable levels before investment is committed.

(n) "Environmental Impact Statement" or "EIS" means a comprehensive and detailed document that describes a proposed development project, the types of impacts likely to be caused by the proposed project, consequences of those impacts and ways to modify the project or otherwise to lessen the impacts. The requirements of an EIS are listed under Part VI of these regulations. This document is similar to documents required under 25 F.S.M.C. 702, Environmental Impact Assessment Statement (EIA Statement), and as to those of the U.S. National Environmental Policy Act (P.L. 91-190, as amended).

(o) "Erosion" means the natural process by which the surface of the land is worn away by the action of water, wind or chemical action.

(p) "Excavation" means, but is not limited to, a cavity formed by quarrying, dredging, uncovering, displacing, or relocating soil, coral or rock.

(q) "Fill" means a deposit of soil, rock, coral or other material placed by humans.

(r) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(s) "Human environment" means the natural and physical environment and the relationship of people with that environment.

(t) "Interceptor channel" means a channel or dike constructed across a slope for the purpose of intercepting storm water, reducing the speed of water flow, or diverting it to outlets where it can be disposed.

(u) "Impacts" see definition of "Effects".

(v) "Mitigation" means the reduction of adverse effects of a proposed action by considering in sequential order:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action (i.e., building in another location or not at all);

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation (i.e., scaling down a project size or impact);

(3) Rectifying the impact by repairing, rehabilitating or restoring the affected environment (i.e., return impacted area to original state or close to it);

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking corrective measures. (i.e., repair siltation screens and continually implement ways to reduce impacts); and if none of the others are possible;

(5) Compensating for the impact by replacing or providing substitute resources or environments (i.e., repair lost functions and values of impacted areas).

(w) "Person" means an individual, partnership, trust, corporation, association, clan, lineage, or any other private entity, a government or any of its subdivisions or entity thereof.

(x) "Pollutant" means one or more substances or forms of energy which, when present in the air, land or water, are or may be harmful or injurious to human health, welfare, or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.

(y) "Practicable" means available or capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(z) "Program Office" means the Program Director and other staff who are delegated by the DRC to assist them in their duties.

(aa) "Scope" means the range of actions, alternatives, and impacts to be considered in an environmental impact assessment. Scoping is a process whereby the range of impacts and alternatives to be considered in the EIS are defined.

(bb) "Sediment" means soils or other surface materials transported as the result of land erosion or earthmoving activity.

(cc) "Sedimentation" means the process by which sediment is deposited on the bottom of a body of water, including, but not limited to, rivers, streams, ponds, lakes, the bottom of lagoons or the tops of reefs.

(dd) "Sedimentation retention boom" means a watertight membrane suspended from floats and weighted at the bottom in water bodies arranged in a manner that will confine sediments to a local area.

(ee) "Significant impact" is defined in the context of considering the harmful results of a development project on the human and natural environment. In determining whether an impact is significant, the following criteria may be considered:

(1) The number of people affected;

(2) The duration of an effect (short and long-term);

(3) The proportion of a natural resource that is damaged or consumed:

(4) The location of a project in a sensitive area (historic site, coastal area, marine conservation area);

(5) The relationship to other components of the project or other projects in the region; and

(6) The intensity of severity of an impact (irreversible and cumulative)

(ff) "Stabilization" means the proper placing, grading, and/or covering of soil, rock or earth, including the use of vegetation, to ensure its resistance to erosion, sliding, or other movement.

(gg) "Subdivision" means the division or redividing of a lot, tract, or parcel of land by any means into two or more lots, for the purpose, whether immediate or in the future, of leasing, transfer of ownership, building, or lot development.

(hh) "Technical Advisory Committee" or "TAC" means the ten-member advisory committee consisting of representatives from the Bureau of Planning and Statistics, Division of Agriculture and Forestry, Division of History and Culture, Division of Land Management, Division of Marine Resources, Division of Tourism, Division of Environmental Health and Sanitation, Division of Construction and Engineering, Department of Public Works and the Kosrae Utility Authority.

Part II. Initial Environmental Impact Assessment.

2.1 Purposes.

(a) Identify environmental impacts;

(b) Enable the project proponent to modify a project, mitigating potentially significant impacts before an EIS is conducted;

(c) Facilitate environmental assessment early in the design of a project;

(d) Eliminate unnecessary Environmental Impact Statements.

The initial EIA is to insure that the decision making process reflects environmental values, and that alternatives will not be foreclosed prior to completion of the EIA process.

2.2 Content. The content of an initial assessment shall include an Environmental Impact Assessment Checklist, completed by the project proponent and submitted with a completed Development Review Permit application. Attached to the Environmental Impact Assessment Checklist shall be the following information:

(a) A description of the project including the location of the project;

(b) An identification of the environmental setting;

(c) A discussion of ways to mitigate the significant impacts identified, if any;

(d) An examination of whether the project is compatible with zoning

requirements or plans, if any;

(e) The name of the person or persons who prepared or participated in the initial assessment.

Part III. Development Review Permit Process.

3.1 Development Review Process. A Development Review Permit shall be required for development projects that fall within the parameters of Section 7.402 of Title 7 of the Kosrae Code or for development projects satisfying any of the following criteria:

(a) involve any earthmoving activities;

(b) located below the mean high water mark (includes mangroves);

(c) costs over \$5,000;

(d) incompatible with surrounding land uses;

(e) disposal or removal of dredged materials, including all sandmining operations;

(f) use, handling or disposal of toxic or hazardous chemicals, pesticides, petroleum, oil and lubrication.

3.2 Exemptions. A Development Review Permit shall not be required:

(a) When land is tilled or plowed for small-scale (no greater than a 2,500 sq. ft. total area) agricultural purposes;

(b) For a residential dwelling that is built within a 10,000 square foot area, and is not part of a subdivision, provided the landowner contacts the Program Office or DRC and informs them of the course and type of building materials and location;

(c) For activities associated with the normal maintenance, operation and improvement of existing households.

3.3 Content of Development Review Permit Application. Application shall be made by the property owner, operator, or other responsible person on forms furnished by the Development Review Commission and shall include the following:

(a) The name of the person, agency or group filling out the application.

(b) The name of the person who owns the parcel of land to be developed and proof of ownership. If the applicant is not the same person owning the land, the consent of the owner must be given in writing.

(c) Estimated project start and completion dates.

(d) Location of the proposed project on a map, including municipality, area of municipality (inkul), and tract number.

(e) An accurate, scaled site plan showing all existing and proposed natural and human-made features in relation to the project.

(f) A description of the proposed project including its purpose and intended use, any construction and earthmoving activities and other alterations to the land and water landscapes.

(g) A description of the public utilities needed for the construction and operation of the project, including any needed toilet facilities and sewage disposal systems.

(h) Detailed plans for improvements or construction including siting, dimensions, building materials and any other use made of the project area.

(i) Plans for any proposed earthmoving activities below the mean high water mark showing elevation, slope, drainage, material to be used, compaction and other related information.

(j) If the project involves any earthmoving activities, the project proponent must also submit an erosion and sedimentation control plan according to specifications in 6.2 of these regulations.

(k) All applicants must acknowledge and agree that the actual development activities will be in accordance with the plans and specifications submitted and approved by the DRS. Furthermore, the applicant must agree to comply with all applicable federal, state and municipal laws and regulations.

3.4 Initial Project Consultation. The project proponent consults with the Program Office about the project. The program Office will determine if a Development Review Permit, and other permits are needed. Foreign investors must secure a Foreign Investment Permit from the Foreign Investment Board before applying for a Development Review Permit.

3.5 Application & EIS Review. The Development Review Permit application, together with a completed Environmental Impact Assessment Checklist (and attachments) shall be submitted to the Program Office. The Program Office will consult with the TAC, following the criteria listed in 4.1 of these regulations to decide if an EIS is required. The Technical Advisory Committee critically reviews all proposed projects for their potential impacts and EIS requirement. TAC acts as a technical advisor to the DRC and can recommend that conditions be placed on the permit and other alternatives to minimize and mitigate the project's negative impacts. Within 5 days of submitting its permit application to the Program Office, the project proponent shall be notified if an EIS is required, including the scope of the EIS.

3.6 Summarize Recommendations. If no EIS is required, within 14 days following receipt of a permit application from the Program Office, the Chairman of the TAC shall have the opportunity to compile its recommendations and forward them to the DRC for review.

3.7 Public Information Meeting. The DRC reviews the application and determines if a public information meeting is needed whenever it is reasonably foreseeable that a project will result in a significant impact to the environment.

DRC will ensure that all affected persons will have the opportunity to provide input, written or oral, for the project.

3.8 DRC Decision. DRC makes a decision on approving the Development Review Application, taking into consideration TAC recommendations, and results from public meetings if determined necessary. The DRC can condition a permit on changes in the siting, design standards or construction methods to minimize harmful environmental impacts. DRC will also critically review a required EIS. The DRC's final decisions and conditions will be formally explained in writing. If no EIS is involved, the DRC must make its decision to approve a permit application within a maximum of 14 days upon receiving it from the TAC. If an EIS is required, the DRC will have a maximum of 15 days from the close of the EIS comment period to review the Final EIS, and another 15 days to make a decision on whether to approve or disapprove the permit application.

3.9 Permit Status. DRC will either approve or disapprove the permit application according to the following:

(a) Project Approved Without Conditions - the initial EIA identified no significant environmental impacts so the project can proceed as specified in the Development Review Permit Application.

(b) Project Approved With Conditions - the initial EIA or EIS has identified significant impacts that must be substantially lessened or minimized to an acceptable level before the project can proceed. The DRC will impose conditions specific to each project, that may include changes in the siting, design standards and construction methods. The project proponent must follow these conditions or will be in violation of these regulations.

(c) Project Disapproved - After identifying the significant impacts through the EIA or EIS, the DRC may decide to deny a permit if the significant impacts cannot be substantially lessened or minimized to an acceptable level. This decision reflects a determination that the project, if implemented, will significantly degrade the environmental quality or Kosraean traditional lifestyle.

The DRC will return the application and its decision to the Program Office, who then notifies the project proponent.

3.10 Appeal Process. The project proponent can appeal the DRC's decision to impose permit conditions or to disapprove a permit application by stating in writing, within 90 days of the DRC's action, the reasons for the appeal. The DRC will review the project in light of these concerns and make a final decision within 30 days.

3.11 Permit Issued. The Program Office will formally issue a permit to the project proponent, based on DRC's decision, only after other necessary permits have been obtained. The Program Office will inform the project proponent of regulations that must be followed throughout the construction and operation of the project. The project proponent must display the permit in a visible location (e.g., local project office, dwelling wall, on-site) throughout the time the permit is required.

3.12 Project Monitoring. The Program Office will be responsible for periodically overseeing the monitoring project sites to (1) ensure that all permit conditions are met and (2) submit a monthly operational report to the DRC and

TAC Chairman that includes, but is not limited to, a summary of project site inspections and non-compliance with permit conditions. This monthly operational report shall be maintained at the Program Office and made available for public inspection.

Part IV. Comprehensive Environmental Impact Statement.

4.1 Decision to Conduct EIS. An EIS shall be prepared whenever the DRC determines that the project may have a significant impact on the environment, or when there is serious public controversy concerning potential environmental impacts of a project. The preparation of an EIS will be required if one or more of the following criteria are applicable to a project proposal:

(a) It is reasonably foreseeable that the project will cause a significant environmental impact on:

- Marine and coastal resources
- Mangrove resources
- Social/cultural/historical resources
- Plants and animals (especially endangered species)
- Human health and welfare

(b) It is reasonably foreseeable that the project will fail to comply with the all applicable minimum and environmental quality standards for water and air quality, waste management and noise control.

(c) It is reasonably foreseeable that the project will disturb more than 10,000 square feet of land surface.

(d) It is reasonably foreseeable that the project will require more than 5,000 cubic yard of fill.

(e) It is reasonably foreseeable that the project will be incompatible with surrounding land and water uses.

(f) It is reasonably foreseeable that the project is controversial and will invoke public opposition.

(g) The project involves a foreign investment permit.

4.2 EIS Procedures and Public Involvement. Once it is determined that an EIS will be required for a project, the project proponent shall follow the procedures contained in this section.

(a) The project proponent shall prepare a Draft EIS. The contents of the EIS are specified in Part V of these regulations.

(b) After completing the Draft EIS, copies shall be provided by the project proponent to the DRC Commissioner, TAC Chairman, public agencies having jurisdiction by law with respect to the project, the mayor's office of each municipality, Kosrae Public Library and persons having special interest or expertise with respect to any environmental impact involved. Such persons shall be identified by the project proponent after consultation with the Program Director. The Program Office shall make a public radio announcement that the Draft EIS is available for

public inspection.

(c) Within 10 days after receipt of the Draft EIS from the DRC, the TAC shall have the opportunity to evaluate the Draft EIS considering format, content, and objectivity. The Program Office shall forward these comments to the project proponent.

(d) The project proponent shall provide at least a 30 day period for public agencies and the general public to review and comment on a Draft EIS. The project proponent shall grant a reasonable extension of the comment period if the request is justified as determined by the DRC, and if the request is received before the close of the comment period.

(e) A public information meeting on the Draft EIS shall be held if the project proponent or DRC determines it would facilitate public involvement or it is anticipated that there will be substantial controversy. Adequate notice shall be given of all such public meetings in a timely manner.

(f) The Program Office shall compile comments received from persons who reviewed the Draft EIS or attended a public information meeting and forward them to the project proponent. All comments received shall be published as an appendix to the final EIS.

(g) The project proponent shall prepare a final EIS, the contents of which are specified in Part V of these regulations. The Final EIS shall be submitted to those parties listed in 4.2(b) of these regulations.

(h) The Program Office shall certify that the Final EIS has been completed in compliance with these regulations, and shall make it available for public inspection at the Program Office. The Program Office shall make a public radio announcement that the Final EIS is available for public inspection.

(i) The TAC and general public will have 15 days from the date the Final EIS becomes available to review it and submit their comments to the DRC. The project proponent shall grant a reasonable extension of the comment period if the request is justified as determined by the DRC and received before the close of this final comment period. The DRC review of the Final EIS and permit application shall be in accordance with 3.8 and 5.3 of these regulations.

4.3 Project Approval. Where the decision of the DRC allows the occurrence of significant impacts which are identified in the Final EIS but are not mitigated to a level of insignificance, the DRC must state in writing the reasons to support its action. The statement of these reasons must be included in the record of the project approval. Final project approval shall not occur until approval of the EIS by the DRC.

Part V. Contents of Environmental Impact Statements.

Environmental Impact Statements shall contain the information outlined in this part. The recommended format for the EIS is as follows:

5.1 Summary of EIS. Each statement shall contain a brief summary of the proposed action and its consequences in language sufficiently simple so that the issues can be understood by the average person. The summary shall stress the

major conclusions, areas of controversy, the issues to be resolved, the choice among alternatives, and how to mitigate the unavoidable significant impacts.

5.2 Description of the Purpose, Scope and Need for Project. This section shall include:

(a) a statement of the goals and objectives sought by the proposed project, including why the project is needed and the expected direct and indirect benefits to society;

(b) a description of the precise location and boundaries of the proposed project and associated facilities shown on a detailed, preferably topographic, map;

(c) a description of the technology to be used, inputs of capital, labor and natural resources, and duration of the construction period and operating life;

(d) a description of the specific requirements of the proposed action for the consumption of power and water, the disposal of sewage and other waste material, roads, and other local infrastructure needed.

The description of the project shall not supply extensive detail beyond that needed for evaluation and review of the environmental impacts, but shall include all portions and phases of the project, including, but not limited to planning, acquisition, development and operation.

5.3 Description of the Environmental Setting. This section shall include:

(a) a description of the environment, both natural and human, in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective. Special emphasis shall be placed on environmental resources to the region, including historical sites, endangered species and socio-cultural resources;

(b) Specific reference to related projects in the region, both public and private, both existent and planned, shall also be included for purposes of examining the possible cumulative impacts of such projects;

(c) a discussion of any inconsistencies between the proposed project and applicable land-use regulations and policies.

5.4 Environmental Impacts of the Proposed Project, Including Alternatives. The EIS shall present the environmental impacts of the proposed project and alternatives in comparative form, thereby defining the issues and providing a clear basis for choice among options by the reviewers. This section shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives that might reduce environmental degradation or use natural resources more efficiently, including the alternative of no action;

(b) Describe each alternative in sufficient detail so that the reviewers can evaluate their comparative merits;

(c) Identify the project proponent's preferred alternative or alternatives;

(d) Identify any significant environmental impacts, either direct or indirect, that cannot be avoided, including:

(1) predictions of changes in natural resources, ecological systems, environmental systems, environmental quality and physical processes attributed to the project if implemented;

(2) socio-economic changes resulting from impacts on natural resources and the environment;

(3) socio-cultural impacts; and

(4) cumulative effects.

(e) Include appropriate mitigation measures to minimize the significant environmental impacts;

(f) Describe the relationship between the short-term use of the environment and the sustainability and enhancement of long-term productivity; and

(g) Identify any irreversible or irretrievable commitments of resources from the proposed project.

5.5 Organizations and Persons Consulted. The EIS shall contain a list of names of the persons who organized and prepared the report, their qualifications, and a listing of organizations and persons who were consulted.

5.6 Standards of Adequacy of the EIS. The EIS shall be prepared with a degree of analysis sufficient to enable the DRC to make a decision which takes into account all environmental consequences. An evaluation of the environmental effects of a proposed project and its alternatives need not be exhaustive, but its sufficiency is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIS inadequate; the key element is full disclosure of all available information.

Part VI. Erosion and Sedimentation Control.

6.1 General Requirement. Except where expressly exempted by these regulations, all earthmoving activities within Kosrae State shall be conducted in accordance with these regulations and in such a way as to prevent accelerated erosion and accelerated sedimentation. To accomplish this, all persons engaging in earthmoving activities shall design, implement, and maintain erosion and sedimentation control measures which effectively prevent accelerated erosion and accelerated sedimentation. The erosion and sedimentation control measures must be set forth in a plan, must be available at all times at the site of the project, and must be filed with the DRC.

6.2 Erosion and Sedimentation Control Plan.

(a) The erosion and sedimentation control plan should be prepared by a person knowledgeable in erosion and sedimentation control methods and techniques.

(b) The erosion and sedimentation control plan should be prepared to prevent acceleration of erosion and acceleration of sedimentation and shall consider all factors which contribute to erosion and sedimentation, including, but not limited to, the following:

(1) The topographic and/or hydrographic features of the project area.

(2) The types, depth, slope, and area of the soils, coral, and/or reef.

(3) The original state of the area as to plant and animal life.

(4) Whether any coral reef which may be affected by the earthmoving is

alive or dead.

(5) The proposed alteration to the area.

(6) The amount of runoff from the project site based on the project's land area.

(7) The staging of earthmoving activities.

(8) Temporary control measures and facilities for use during earthmoving activities.

(9) Permanent control measures and facilities for long-term protection.

(10) A maintenance program for the control facilities including disposal of materials removed from the control facilities or project area.

(c) If the project involves an earthmoving activity in a lagoon, reef, or any body of water, the plan should show existing marine life populations as well as minimum and maximum turbidities.

6.3 Erosion and Sedimentation Control Measures and Facilities.

(a) General Requirements. The erosion and sedimentation control facilities set forth below shall be incorporated into all earthmoving activities unless the designer of the erosion and sedimentation control plan shows that alteration of these measures and/or facilities, or inclusion of other measures and/or facilities, will prevent accelerated erosion and accelerated sedimentation.

(b) Control Measures.

(1) Limiting Exposed Area. All earthmoving activities shall be planned in such a manner as to minimize the area of disturbed land, mangrove, reef, or lagoon.

(2) Containment of Underwater Sedimentation. All sedimentation resulting from underwater earthmoving activities shall be contained, confined, and restricted by the best available means in such a manner that turbidities will be kept to a minimum.

(3) Velocity Control. All permanent facilities for the conveyance of water around, through, or from the project site shall be designed to reduce the velocity of flow in the facilities to a speed that will not cause significant erosion.

(4) Stabilization. Within a section or area of the project, all slopes, channels, ditches, or any disturbed area shall be stabilized as soon as possible after the final grade or final earthmoving has been completed.

(5) Interim Stabilization. Where it is not possible to permanently stabilize a disturbed area immediately after the final earthmoving has been completed or where the activity stops for more than fourteen days, interim stabilization measures shall be promptly implemented.

(6) Containment of Fills and Reclaimed Land Within Bodies of Water or

Tidal Zones. Before filling or development activities occur within a body of water or tidal zone, adequate seawalls and/or breakwater facilities shall be constructed to safely contain the fill without failure and to prevent accelerated sedimentation.

(7) Collection of Runoff. All runoff from a project area shall be collected and diverted to facilities for removal of sediment.

(8) Solids Separation. Runoff from a project area shall not be discharged into the waters of Kosrae State without effective means to prevent sedimentation.

(c) Control Facilities.

(1) Sedimentation Retention Booms. These facilities must be used to restrict accelerated sedimentation around earthmoving or related activities on reefs or in lagoons in all cases, except when a finding has been made after actual demonstration that no facilities are needed to prevent accelerated sedimentation. Approval of use of alternate facilities or a finding that no facilities are necessary shall be made in writing by the DRC.

(2) Diversion Terraces.

(i) Diversion terraces shall be constructed upslope of a project area to convey runoff around the project area. They shall have sufficient capacity to convey such runoff without overflowing.

(ii) Diversion terraces shall be grasses or lined with erosion resistant materials to prevent accelerated erosion within the channel.

(iii) Outlet structures shall be designed to reduce the discharge velocity to that which will not cause accelerated erosion, and shall be stabilized before use.

(3) Seawalls and Breakwater Facilities. Seawalls and/or breakwaters to contain fill or reclaimed land shall be sufficiently watertight to prevent accelerated sedimentation, well constructed on a solid foundation, and to a level at least two feet above the highest tide or flood level of historical knowledge. These facilities should be planned, designed, and constructed under the direction of a person trained and experienced in building seawalls and breakwater facilities.

(4) Interceptor Facilities.

(i) Interceptor channels may be used within a project area to reduce the speed of flow of surface runoff and thus prevent accelerated erosion.

(ii) Water collected by interceptor channels shall be conveyed to sedimentation basins or to vegetated areas, but not directly to streams or other bodies of water.

(iii) Outlets to vegetated areas shall be designed to reduce the discharge velocity to that which will not cause accelerated erosion.

(5) Channels of Conveyance. All channels of conveyance shall be designed and/or grassed or lined with erosion resistant materials so as to [reduce] the speed of flow of surface runoff so as not to cause accelerated erosion.

(6) Solids Separation Facilities.

(i) A basin for settling solids out of water shall be structurally sound and have sufficient capacity to hold the water that drains into the basin until the solids have settled out.

(ii) The basin shall be cleaned when the settling of solids has reduced the capacity of the basin by 25%.

(iii) Outlet structures shall be designed to allow only adequately settled water to be discharged, and at a rate that will not cause accelerated erosion.

(7) Hydraulic Dredged Fills. The discharge from pumps or hydraulic dredges used to construct fills shall be sufficiently treated and retained with dikes, levees, seawalls, or other structures for a sufficient period of time so that accelerated sedimentation will not take place in the waters which receive the effluent. Transmission pipelines transporting fill material will be maintained in a watertight condition at all times of times of excavation and fill operation.

(8) Barges, Scows, or Vessels for Hauling Dredged Material. Such vessels operating in waters of Kosrae State will be sufficiently tight and secure so that accelerated sedimentation will not occur by reason of leaking or premature dumping due to faulty mechanisms.

6.4 Restoration.

(a) Stabilization. Upon completion of the project, all areas which were disturbed by the project shall be stabilized so that accelerated erosion and/or accelerated sedimentation will be prevented.

(b) Interim Control Measures. Any erosion and sedimentation control facility required or necessary to protect areas from erosion during the stabilization period shall be maintained until stabilization is completed.

(c) Final Measures. Upon completion of stabilization, all unnecessary or unusable control facilities shall be removed, the areas shall be graded, and the soils shall be stabilized.

Part VII. Right of Entry. (pursuant to K.S.C. Section 11.1301)

Whenever it is necessary to effectuate the authority granted to the DRC pursuant to Chapter 13 of Title 11 of the Kosrae Code, the DRC, or any member, agent, or employee of the DRC when duly authorized by the DRC or by court order, may, at reasonable times, enter any establishment or public or private property.

Part VIII. Enforcement. (pursuant to K.S.C. Section 11.1302)

8.1 Violations Subject to Enforcement. Any person who violates any provision of these regulations shall be subject to enforcement action by the DRC. Such enforcement action may include, but is not limited to, issuance of an order to cease and desist from such violation, imposition of a civil penalty of not more than \$10,000 for each day of such violation, or commencement of civil action to enjoin such violation.

8.2 Civil Action. The DRC may commence a civil action in a court of competent jurisdiction requesting any of the following remedies:

(a) The issuance of an injunction against the offending party; and

(b) An action seeking civil penalties of not more than \$10,000 for each day of the violation.

8.3 Penalties. Any civil penalties assessed under 8.1 or 8.2 of these regulations shall be paid to the Treasury of Kosrae State for credit to the Revenue Fund of Kosrae State.

8.4 Issuance of Cease and Desist Order.

(a) When the DRC determines that a violation of these regulations is taking place or threatening to take place within its jurisdiction, the DRC shall issue an order to cease and desist and direct those persons not complying with these regulations to do one of the following:

(1) Cease operations and comply forthwith;

(2) Comply in accordance with a time schedule set by the DRC; or

(3) In the event of a threatened violation, take appropriate remedial or preventive action.

(b) Cease and desist orders of the DRC shall become effective upon issuance, and final as to the DRC upon issuing findings after a hearing. Copies shall be served upon the person being charged with the violation of the requirements by either personally delivering a copy to the person or his agent or by service of registered mail.

(c) A hearing to determine the authenticity of the facts upon which the cease and desist order was issued shall be conducted by the DRC, adequate notice of which and opportunity to appear and be heard shall be afforded to all interested parties.

Part IX. False Statements.

Any person who knowingly or negligently:

(a) makes any false statement, representations or certification in any application, record, report, plan, or other document filed or required to be maintained by the DRC pursuant to law, these regulations or by any permit or lawful order; or

(b) falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained by the DRC pursuant to law, these regulations or by any permit or lawful order, may be subject to a development permit disapproval, the imposition of permit approval conditions, the issuance of a cease and desist order, or any other reasonable or practicable remedial measures as determined by the DRC.

Part X. Severability.

If any provision of these regulations or the application of any provision in these regulations to any person or circumstance is held invalid, the application of such provision to other persons or circumstances and the remainder of these

regulations shall not be affected thereby.

The provisions of these regulations have been reviewed by the Office of the Attorney General and are found to conform with law.

Signed by Jim O'Brien, Office of the Attorney General on January 11, 1994.