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ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS

PART I. GENERAL PROVISION.

1.1 Authority.

These regulations are promulgated and issued by the Secretary of Human Resources pursuant to [25 F.S.M.C. 610](#) and [25 F.S.M.C.702](#). These regulations have the force and effect of law.

1.2 Purpose.

The purpose of these regulations is to implement [Section 13](#) of the [Federated States of Micronesia Environmental Protection Act](#) by establishing standard procedures for preparation of an environmental impact assessment statement prior to taking or funding any major action that may significantly affect the quality of the human environment. 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. These regulations provide the directions to achieve this purpose. In addition, these regulations are designed to:

(a) Integrate the EIA process into early planning of projects to insure timely consideration of environmental factors and 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 EIA.

1.3 Definition.

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

(b) "Effects" means:

(1) Direct effects, which are caused by the action and occur at the same time and place;

(2) Indirect effects, which are caused by the actions and are later in time or further removed in distance, but are still reasonably foreseeable. Indirect 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.

(c) "Environmental Impact Assessment" or "EIA" means the conduct of all measures necessary for compliance with the requirements of these regulations. EIA embodies the steps of identifications of potentially or real impacts from projects and their alternatives.

(d) "EIA Statement" means a detailed document setting forth the environmental effects and considerations pertaining to a project as required under 25 F.S.M.C. 702 (therein referred to as an "Environmental Impact Statement"). The term "EIA Statement" is used to distinguish documents prepared according to the requirements of these regulations from those prepared under U.S. NEPA requirements.

(e) "Environmental Impact Statement" means documents required by section 102(2)(c) of the U.S. National Environmental Policy Act (P.L. 91-190, as amended), applicable for U.S. Federal agencies' major actions in the FSM, pursuant to Article VI of the Compact of Free Association.

(f) "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.

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

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

(i) "Initial Assessment" means a concise, preliminary assessment of the environmental impacts of a project.

(j) "Mitigation" means:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (4) Reducing or eliminating the impact over time by preservation or maintenance operation during the life of the action.

(5) Compensating for the impact by replacing or providing substitute resources or environments.

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

(l) "Project Proponent" means the FSM National Government or its agencies or the recipient of funding from the [FSM National Government](#) or its agencies, that proposes to undertake any major action significantly affecting the quality of the human environment.

(m) "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 impact and alternatives to be considered in an EIA is defined.

(n) "Secretary" means the Secretary of the Department of Human Resources.

PART II. RESPONSIBILITIES.

2.1 Project Proponents.

The project proponent conducts an EIA itself or contracts for its conduct, and is responsible entirely for its adequacy, and timely completion.

2.2 Secretary of the Department of Human Resources.

The Secretary receives EIA Statements and reviews them for compliance with [25 F.S.M.C. 702](#) and these regulations in terms of format, adequacy of information and objectivity. The Secretary shall only authorize commencement of projects or release of funds for the proposed project if he determines that the EIA Statement is sufficient. No permits shall issue until approval of the EIA Statement by the Secretary.

PART III. EIA PROCESS.

3.1 Timing.

The project proponent shall commence preparation of an EIA Statement as close as possible to the time the agency is developing or is presented with a proposal so that preparation can be completed in time for the final assessment statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made. The EIA shall be conducted early enough to insure that the decision making process reflects environmental values, and that alternatives will not be foreclosed prior to completion of the EIA process. The EIA Statement shall not be used to rationalize or justify decisions already made.

3.2 Components of the EIA Process.

The environmental impact assessment process is made up of three sequential elements: Identification, Prediction, and Evaluation.

(a) Identification.

This involves the initial work of characterizing the proposed project and its alternatives, characterizing the existing environment, and developing a reasonable scope for the study.

(b) Prediction.

During this phase, the potential impacts selected for study are analyzed and quantified for each of the alternatives.

(c) Evaluation.

This is the culmination of the EIA based on the previous two steps, in which the predicted impacts are summed and compared for the alternatives considered.

3.3 Two Levels of Study in EIA Process - Description.

It is not the intent of these regulations to require an exhaustive environmental impact assessment of all projects large and small. The degree of EIA detail for a project depends upon the significance of its potential environmental impacts. An initial assessment (as required in Part 4) shall be conducted for projects that do not appear to have significant environmental effects. If it becomes apparent that a project may cause significant environmental impacts, either as a result of findings in the initial study or otherwise, a comprehensive EIA must be conducted and an EIA Statement prepared in accordance with procedures described in Parts 5 and 6. See Appendix A for examples of significant environmental impacts.

PART IV. INITIAL ASSESSMENT.

4.1 Applicability.

For all projects subject to the requirements of these regulations, the project proponent shall conduct an Initial Assessment of the project, following the checklist format provided in appendix B. The initial assessment does not require an in-depth consideration of alternatives to the proposed actions. However, potential mitigation measures shall be addressed. If it is found that any aspects of the project, either individually or cumulatively, may cause a significant impact on the environment, then a more comprehensive EIA shall be undertaken as set forth in Part V of these regulations. All phases of project planning, implementation, and operation shall be considered in the initial assessment of the project.

4.2 Purposes.

The Initial Assessment functions dually to evaluate routine projects or projects for which it is uncertain whether there is potential for significant impacts; and as an initial screening and scoping process for major projects. The purposes of an initial study are to:

(a) Identify environmental impacts;

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

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

(d) Eliminate unnecessary EIA Statements.

4.3 Content.

An initial assessment shall contain in brief form:

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

(b) An identification of the environmental setting;

(c) An identification of environmental impact by use of the checklist provided in appendix B;

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

(e) An examination of whether the project is compatible with zoning requirements or plans, if any;

(f) A determination by the project proponent (1) as to whether the project was found to have no significant impacts; (2) was found to have potentially significant impacts that will be mitigated to the point of insignificance; or (3) was found to have potentially significant impacts requiring a more in-depth EIA.

(g) The name of the person or persons who prepared or participated in the Initial Assessment.

4.4 Determination.

The Initial Assessment shall be submitted to the Secretary for review. The determination of whether a project may have a significant impact on the environment calls for careful judgment on the part of the project proponent, based to the extent possible on scientific and factual data. Significance of an activity may vary with the setting. See Appendix A. Where there is a difference of opinion on whether a particular impact should be considered significant, the Secretary shall determine whether the impact is sufficiently significant to require a comprehensive EIA.

PART V. COMPREHENSIVE ENVIRONMENTAL IMPACT ASSESSMENT.

5.1 Decision to Conduct EIA.

If the project proponent or Secretary finds after an initial assessment that a project may have a significant impact on the environment, the project proponent shall conduct or cause to be conducted a comprehensive environmental impact assessment, and prepare or cause to be prepared an EIA Statement. An EIA Statement shall be prepared

whenever it can be fairly argued on the basis of substantial evidence 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. Controversy not related to an environmental issue does not require the preparation of an EIA Statement.

5.2 EIA Procedures and Public Involvement.

When the project proponent determines that an EIA Statement will be required for a project, it shall follow the procedures contained in this section.

(a) Upon determining that an ETA will be required for a project, the project proponent shall send a notice that an ETA is being conducted to all public agencies responsible for resources affected by the project, and/or having jurisdiction by law with respect to the project, or to any person or organization that may be concerned with the impacts of the project. This notice shall request comments on the proposed scope for the ETA.

(b) The scope of the ETA will be developed by the project proponent based on information gathered in the Initial Assessment, comments received, and professional judgment.

(c) The project proponent shall prepare a draft ETA Statement. The contents of the draft ETA Statement are specified in Part 6 of these regulations.

(d) After completing the draft ETA Statement, copies shall be provided to the Secretary, public agencies having jurisdiction by law with respect to the project, and persons having special interest or expertise with respect to any environmental impact involved and any others notified pursuant to subpart 5.2(a).

(e) The Secretary shall evaluate the draft ETA Statement considering format, content, and objectivity, and provide comments to the project proponent.

(f) 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 ETA Statement. The project proponent shall grant a reasonable extension of the comment period if the request is justified and received before the close of the comment period.

(g) A public hearing on the draft EIA Statement shall be held if the project proponent or Secretary determines it would facilitate public involvement or it is anticipated that there will be substantial controversy. Adequate notice shall be given of all public hearings in a timely manner.

(h) The project proponent and Secretary shall evaluate comments received from persons who reviewed the draft EIA Statement or attended a public hearing.

(i) The project proponent shall prepare a final EIA Statement, the contents of which are specified in Part 6 of these regulations. i

(j) The project proponent shall certify that the final EIA Statement has been completed in compliance with these regulations, and shall provide the final EIA Statement to public agencies from whom funding, authorizations, or other approvals are being sought.

5.3 Project Approval.

When an EIA Statement has been prepared for a project, agencies having authority for its funding or approval shall not approve the project as proposed if the agency or agencies finds any practicable alternative or practicable mitigation measures, within its powers or the powers of the project proponent, that would substantially lessen any significant impact the project would have on the environment to an acceptable level. As used in this section, the term "acceptable level" means that:

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

(b) The agencies have found that any remaining, unavoidable significant impacts are acceptable considering the balance of the benefits of a proposed project against its unavoidable environmental risks.

(c) Where the decision of the agency allows the occurrence of significant impacts which are identified in the final EIA Statement but are not mitigated to a level of insignificance, the agency must state in writing the reasons to support its action based on the final EIA Statement and/or other information in the record. The statement of these reasons must be included in the record of the project approval.

(d) Final project approval shall not occur until approval of the EIA statement by the Secretary.

PART VI. CONTENTS OF ENVIRONMENTAL IMPACT ASSESSMENT STATEMENT.

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

6.1 Summary.

Each statement shall contain a brief summary of the proposed action and its consequences in language sufficiently simple 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 significant impacts.

6.2 Description, Purpose, and Need for the Project.

This shall include a statement of the objectives sought by the proposed project, a general description of the project's technical, economic, and environmental

characteristics, considering the principal engineering proposals and supporting utilities, and the precise location and boundaries of the proposed project shown on a detailed, preferably topographic, map.

The description of the project should 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.

6.3 Description of the Environmental Setting.

The EIA Statement shall include a description of the environment 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 and endangered species.

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.

The EIA Statement shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans.

6.4 Environmental Consequences of Alternatives Including the Proposed Project.

The EIA Statement shall present the environmental impacts of the proposal and the alternatives in comparative form, thereby defining the issues and providing a clear basis for choice among options by the reviewers. The section shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, including the alternative of no action;

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

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

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

(e) Identify any significant environmental impacts that cannot be avoided;

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

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

All phases of the proposed project shall be considered when evaluating its impact on the environment, including, but not limited to, planning, acquisition, development, and operation. The discussion shall include direct and indirect significant impacts of the proposed project on the environment, including relevant specifics of the areas the resources involved, physical changes, alterations to ecological systems and changes induced in population, the human uses of the land, and other aspects of the resource base including, but not limited to, scenic quality and public utilities (power, water, sewer, roads, etc.).

6.5 Organizations and Persons Consulted.

The EIA Statement 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.

6.6 Standards of Adequacy of the EIA Statement.

The EIA Statement shall be prepared with a degree of analysis sufficient to enable the project proponent to make a decision which takes account of environmental consequences. An evaluation of the environmental affects 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 EIA Statement inadequate; the key element is full disclosure of all available information.

The Secretary shall determine whether the EIA Statement is sufficient to support a decision to approve release of funds or authorization of the proposed project. In the event that the statement is not sufficient or is not objective in its analysis, the Secretary shall notify the; project proponent within 30 days after the project proponent files the final EIA.Statement. The notification shall set forth the specific.nature of the objection.

PART VII. APPEAL FROM AGENCY ACTION.

Appeals from determinations of the Secretary shall be taken pursuant to procedures set forth in the Federated States of Micronesia Administrative Procedures Act. 17 F.S.M.C. 108 et seq.

APPENDIX A

EXAMPLES OF SIGNIFICANT IMPACTS

A project will normally have a significant impact on the environment if it will:

1. Conflict with adopted plans and established uses of the community where it is to be located.
2. Have a substantial, demonstrable negative aesthetic effect.
3. Substantially affect a rare or endangered species of animal or plant or the habitat of such species.

4. Interfere substantially with the movement of any resident or migratory fish or wildlife species.
5. Substantially diminish habitat for fish, wildlife, or plants.
6. Breach standards relating to solid waste or litter control.
7. Substantially degrade water quality.
8. Contaminate a public water supply.
9. Substantially degrade or deplete ground water resources.
10. Interfere substantially with ground water recharge.
11. Extend a sewer line with capacity to serve new development.
12. Encourage activities which result in the use of large amounts of fuel, water, or energy.
13. Use fuel, water, or energy in a wasteful manner.
14. Disrupt or adversely affect an archaeological site or a property of historic or cultural significance.
15. Induce substantial growth or concentration of population.
16. Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system.
17. Displace a large number of people.
18. Increase substantially the ambient noise levels for adjoining areas.
19. Cause substantial flooding, erosion or siltation.
20. Expose people or structures to major geological hazards.
21. Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the areas affected.
22. Violate any ambient air quality standard, contribute substantially to an existing or projected air quality violation, or expose sensitive receptors to substantial pollutant concentrations.

23. Convert prime agricultural land to non-agricultural use or impair the agricultural productivity of prime agricultural land.

24. Interfere with emergency response plans.

APPENDIX B

INITIAL ASSESSMENT ENVIRONMENTAL CHECKLIST

AYBE NO

1. EARTH. Will the proposed project result in:

- a. Destruction, covering or modification of any unique geologic or physical features?
- b. Creation of steep slopes or other unstable earth conditions?
- c. Any potential for increased wind or water erosion of soils, either on or off the site?
- d. Changes in the channel of a stream, or the bed of the ocean, lagoon?
- e. Exposure of people or property to geological hazards such as landslides, ground failure, or similar hazards?

2. AIR. Will the proposed project result in:

- a. Substantial air emissions or deterioration of existing air quality?
- b. Creation of objectionable odors?

3. WATER. Will the proposed project result in:

- a. Changes in currents, or the course or direction of water movements, in either marine or fresh waters?
- b. Changes in absorption rates, drainage patterns, or the amount of surface runoff?
- c. Alterations to the course or flow of flood waters?
- d. Discharge into surface waters or any alteration of surface water quality including but not limited to temperature, dissolved oxygen, bacteria, or turbidity?

- e. Contamination of ground waters or wells, either from salt water intrusion or surface activities?
- f. Change in the quantity of ground waters, either through direct additions or withdrawal, or through interception of an aquifer by cuts or excavations?
- g. Substantial reduction in the amount or quality of water otherwise available for public water. supplies?
- h. Exposure of people or property to water related hazards such as flooding or tidal waves?

4. PLANT LIFE. Will the proposed project result in:

- a. Destruction of any upland or mangrove forest communities?
- b. Destruction of other important plant communities, such as sea grasses or plants having potential commercial value?
- c. Reduction of the numbers of any unique, rare or endangered plant species?
- d. Introduction of new species of i plants into an area or result in a l barrier to the normal replenishment of existing species?
- e. Reduction in acreage of any agriculture crop?

5. ANIMAL LIFE. Will proposed project result in:

- a. Destruction of any coral reef areas?
- b. Reduction of the numbers of any unique,rare, or endangered animal species?
- c. Introduction of new animal species into an area, or result in a barrier to the migration or movement of animals?
- d. Substantial deterioration of fish or wildlife habitat?

6. NOISE. Will the proposed project result in:

- a. Increase in existing noise levels or exposure of people to severe noise levels?

7. LAND USE. Will the proposed project result in:

- a. Substantial alternation of the present or planned land use of an area?

8. NATURAL RESOURCES. Will the proposed project result in:

- a. A noticeable increase in the rate of use of any natural resources?.
 - b. Substantial depletion of any nonrenewable natural resources?
9. RISK OF UPSET. Will the proposed project result in:
- a. A risk of an explosion or the release of hazardous substances including but not limited to oil, pesticides, chemicals or radiation, in the event i of an accident or upset conditions?
 - b. Possible interference with an emergency response plan?
10. POPULATION. Will the proposed project result in:
- a. Relocation or altered, distribution, density, or growth rate of the human population of an area?
11. HOUSING. Will the proposed project result in:
- a. Changes in existing housing or create a i demand for additional housing?
12. TRANSPORTATION. Will the proposed project result in:
- a. Generation of substantial additional vehicular movement?
 - b. Substantial impact on roads and existing transportation system?
 - c. Alteration to present patterns of l movement of people and/or goods?
13. PUBLIC SERVICES. Will the proposed project effect or result in the need for new or altered services in the following areas:
- a. Police or fire protection?
 - b. Schools?
 - c. Parks or other recreational facilities?
 - d. Hospital?
 - e. Other government services?
14. UTILITIES. Will the proposed project result in ! the need for new systems, or substantial changes in the following:

- a. Power?
- b. Communications?
- c. Water?
- d. Sewage Disposal?
- e. Solid water disposal?

15. HUMAN HEALTH. Will the proposed project result in:

- a. Creation of any health hazard or potential health hazard?
- b. Improvement of human health?

16. AESTHETICS. Will the proposed result in:

- a. Obstruction of any scenic vista?

17. RECREATION. Will the proposed project result in:

- a. Changes in the quality or amount of existing recreational opportunities?

18. CULTURAL RESOURCES. Will the proposed project result in:

- a. Alteration or destruction of archaeological sites?
- b. Adverse physical or aesthetic effects to a historic site?
- c. Potential to cause a physical change which would affect unique cultural values?
- d. Restriction of existing religious or sacred uses within the affected area?

19. Others (please specify)

ADOPTION OF ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS

Pursuant to the authority vested in me by section 610 and section 702 of Title 25 of the Code of Federated States of Micronesia, these Environmental Impact Assessment Regulations are hereby adopted, subject to approval of the President.

Dr. Eliuel Pretrick
Secretary

Department of Human Resources
Federated States of Micronesia

The provisions of these Regulations have been reviewed by the Office of the Attorney General and are found to be in proper legal form.

/s/

Date: 2-1-89

/for/ Jack Warndof
Attorney General
Federated States of Micronesia

These Environmental Impact Assessment Regulations which have been promulgated by the Secretary of the Department of Human Resources in accordance with law are hereby approved and shall become effective immediately.

/s/

Date: February 1, 1989

John R. Haglelgam
President
Federated States of Micronesia