Chapter 2401-61 ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL IMPACT STATEMENT REGULATIONS

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Environmental Assessment and Environmental Impact Statement Regulations
GENERAL PROVISIONS

2401-61-01 Authority
The Environmental Quality Protection Act (RPPL No. 1-58), Title 24 Palau National Code, Sections 101, et. seq., as amended, (the "Act") establishes general standards for environmental review by the Republic of Palau Environmental Quality Protection Board which shall ensure that environmental concerns are given appropriate consideration in decision-making along with economic and technical considerations.

(Effective September 12, 2020)

2401-61-02 Purpose
The purpose of these Regulations is to:

(A) Establish standard criteria and procedures for preparation of technical documents describing proposed actions to determine if a Categorical Exclusion (CX), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS) is applicable based on the scope and characteristics of a proposed action, planned location, and the potential for significant environmental impacts.

(B) Integrate environmental and social evaluations into the early planning stages for proposed actions to guide action proponents in their environmental and social analyses, to ensure due consideration of environmental and social impacts, to identify any significant environmental and social concerns, and to avoid unnecessary delays for actions.

(C) Encourage action proponents to make responsible decisions regarding the environmental and social consequences of their decisions, and require action proponents to take actions consistent with the Environmental Quality Protection Act's goals of protecting, restoring, or enhancing the natural environment of the Republic of Palau.

(Effective September 12, 2020)

2401-61-03 Definitions
As used herein, unless the context otherwise requires, the term:

(A) "Acceptance" (or "accepted" or "acceptable" or "acceptability" according to context) means a formal determination that the applicant's EA/EIS, fulfills the definitions and content requirements of EA/EIS as provided by these Regulations and the latest version of the Republic of Palau EA and EIS Regulations Implementation Guidance Manual, adequately describes all identifiable environmental impacts, and satisfactorily responds to all public/private comments and recommendations received during the review of the EA/EIS. Acceptance does not mean that the action is environmentally sound or unsound nor denotes the grant of any permits required under the Environmental Quality Protection Act and any regulations promulgated thereunder, but only that the document complies with 24 PNC Sections 101, et seq.

(B) "Action" means any program or project to be initiated by an applicant.

(C) "Agency" means any department, office, board, or commission of any state government or the national government of the Republic of Palau.
(D) “Applicant” means any person who, pursuant to statute, ordinance, or rule, officially requests approval from the Board for a proposed action.

(E) “Approval” means a discretionary consent required from an agency prior to actual implementation of an action.

(F) “Biodiversity” means biological diversity and the variability among living organisms from all sources including, but not limited to, terrestrial, marine, and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species (genetic), between species (species), and of ecosystems.

(G) “Categorically Excluded” means an action that is excepted from drafting and filing an EA or EIS and is among a class of actions determined to have a high probability of minimal or no significant impact on the environment.

(H) “Clearing” means to remove, cut down, ringbark, push over, poison, or destroy vegetation or foliage by any means including, but not limited to, by burning, flooding, draining, or the use of machinery or hand tools but excluding:

1. The harvesting of crops at existing farms or agriculture facilities;
2. Clearing to maintain existing infrastructure such as buildings, fences, and roads;
3. Clearing to remove or reduce imminent risk the vegetation or foliage poses to people or infrastructure; and
4. Clearing to establish or maintain a necessary fire management line to a maximum width of twenty (20) meters.

(I) “Environment” means humanity’s surroundings inclusive of all the physical, economic, and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, air, water, minerals, flora, fauna, biodiversity, ambient noise, and objects of historic, cultural, or aesthetic significance.

(J) “Environmental Assessment” or “EA” means a written evaluation by an applicant to determine whether an action may have direct or indirect significant environmental impacts or cumulative impacts. The initial EA filed for public review shall be referred to as the “Draft EA” and shall be distinguished from the “Final EA” which is the document that has incorporated the public’s comments and the applicant’s responses to those comments. The Final EA is the document that shall be evaluated for acceptability by the Board.

(K) “Environmental Impact” means an effect of any kind, whether immediate or delayed, on any component of the whole of the environment.

(L) “Environmental Impact Statement” “EIS” means an informational document prepared in compliance with 24 PNC Sections 101, et seq. and these Regulations which discloses the environmental impacts or effects of a proposed action, effects of a proposed action on the economic, health, and social welfare of the community, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects. The initial EIS filed for public review shall be referred to as the “Draft EIS” and shall be distinguished from the “Final EIS” which is the document that has incorporated the public’s comments and the applicant’s responses to those comments. The Final EIS is the document that shall be evaluated for acceptability by the Board.

(M) “Environmental Professional” means a person who possesses: a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and five (5) years of full-time relevant experience; sufficient
specific and relevant training necessary to exercise professional judgement to develop opinions and conclusions regarding cause-effect relationships between actions and environmental impacts; specific areas of knowledge (e.g., marine biology) required to determine possible impacts from the action; and if necessary, subcontractors with specific areas of knowledge (e.g., Palau’s unique socio-economic circumstances, engineering, general biology, marine biology, botany, ecology, chemistry) required to determine possible impacts from the action.

(N) “Environmental Quality Protection Board” or “EQPB” or “Board” means Republic of Palau Environmental Quality Protection Board, or their authorized representative.

(O) “Finding of No Significant Impact” or “FONSI” means a determination by the Board that a given action not otherwise exempt does not have a significant effect on the environment and therefore does not require the preparation of an Environmental Impact Statement.

(P) “Invasive Species” means any live specimen of a species, subspecies, or lower taxon of animals, plants, fungi, or micro-organisms, and including any part, gametes, seeds, eggs, or propagules of such species, as well as any hybrid, varieties, or breeds that might survive and subsequently reproduce, introduced outside its natural range whose introduction has been found to threaten or adversely impact upon biodiversity and related ecosystem services.

(Q) “Person” includes any individual, partnership, firm, association, trust, estate, private or public corporation, or other legal entity and includes any department, office, board, or commission of the National Government or of any state government.

(R) “Significant Impact” means an important, meaningful, or serious impact on the environment, either in the context of the setting of the proposed development activity, or in the context of the intensity of the proposed development activity’s effect on the environment.

(S) “Single Family Residence” means a structure for a family with maximum of four (4) bedrooms with a maximum of two (2) persons per bedroom.

(Effective September 12, 2020)

PRELIMINARY PROPOSAL

2401-61-04 Submission of Preliminary Proposal
Each applicant shall submit to EQPB a fully completed General Permit Application, together with all required documentation and applicable fees. This General Permit Application will serve as the applicant’s Preliminary Proposal.

(Effective September 12, 2020)

2401-61-05 Review of Preliminary Proposal
(A) Upon review and acceptance of a Preliminary Proposal, EQPB will determine the appropriate course of review, either a Categorical Exclusion (CX), an Environmental Assessment (EA), or Environmental Impact Statement (EIS). EQPB shall make this determination pursuant to the process detailed in Figure 1 below.
1. A Categorical Exclusion (CX) is applicable for an action that is determined to have non-significant or discountable impact(s) that can be managed by other applicable Regulations.

2. An Environmental Assessment (EA) is required for an action when it is not yet determinable if there will be any significant impacts and whether other impacts may be avoided or minimized.

3. An Environmental Impact Statement (EIS) is required for an action that is likely to have a significant impact(s) that cannot be reduced to non-significant or discountable through avoidance or minimization and where mitigation will be required.

(B) CX actions will be required to submit appropriate Part II permit applications to EQPB and receive approvals before proceeding with the action.

(C) For each action requiring an EA or an EIS, EQPB will schedule a scoping meeting with the applicant and may also schedule a preliminary site visit if deemed necessary by EQPB. Upon completion of the scoping meeting and preliminary site visit, EQPB will issue a Notice of Course of Review pursuant to Section 2401-61-07.

Figure 1. EA/EIS Process Flow Chart

Environmental Assessment and Environmental Impact Statement Regulations
2401-61-06 Significance Criteria
In determining whether an action may have a significant impact on the environment, EQPB shall consider every phase of a proposed action; the expected consequences; direct, indirect and cumulative impacts; as well as the short and long-term impacts of the action. In most instances, an action shall be determined to have a significant impact on the environment if one (1) or more of the following significance criteria are applicable:

(A) Involves an irrevocable commitment to loss or destruction of any natural or cultural resource or any use within a historic or cultural site as designated by the Bureau of Cultural and Historical Preservation;
(B) Any use of land or waters that have been or may be classified as a conservation area by the national and/or state governments;
(C) Curtails the range of protected or beneficial uses of the environment;
(D) Conflicts with the Republic of Palau long-term environmental policies or goals and guidelines as expressed in the Environmental Quality Protection Act and any revisions thereof and amendments thereto, any regulations promulgated thereunder and relevant court decisions, and adopted National or State plans (including, but not limited to, master plans, land use plans/zoning, designation of conservation areas, etc.);
(E) Substantially affects the economic or social welfare of the community;
(F) Substantially affects public health or safety;
(G) Involves a substantial secondary impact, including, but not limited to, population changes or effects on public facilities or infrastructure;
(H) Involves a substantial degradation of environmental quality or loss of biodiversity, whether genetic, species, and/or ecosystem;
(I) Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
(J) Substantially affects a rare, threatened or endangered species, or its habitat;
(K) Detrimentally affects air or water quality or ambient noise levels;
(L) Significantly affects an environmentally sensitive area including, but not limited to, flood plain, erosion-prone area, geologically hazardous land, estuary, lagoon, reef area, mangrove swamp, fresh water, or marine waters; and/or
(M) Creates a substantial, demonstrable negative aesthetic effect.

(Effective September 12, 2020)

2401-61-07 Notice of Course of Review
Upon determination of the appropriate regulatory process for an action EQPB will issue a written Notice of Course of Review to the applicant advising whether an EA or EIS is required. For Categorical Exclusion actions, approved permits will serve as the Notice of Course of Review.

(Effective September 12, 2020)
2401-61-08  Prohibition Against Clearing

(A) No person shall conduct any clearing activities on the area to be developed until such time as that person has received all applicable permits from EQPB. Applicants shall not conduct any clearing activities on the proposed action site until such time as the applicant has completed the required Environmental Assessment or Environmental Impact Statement and EQPB has issued all applicable permits. If an applicant/person wishes to conduct limited clearing activities for purposes of conducting a survey, site assessment, or for purposes of site access, the applicant/person must request permission from EQPB in writing and must receive approval in writing from EQPB prior to conducting any clearing activities. If a applicant/person wishes to conduct limited clearing activities for purposes of removing invasive species, the applicant/person must request permission from EQPB in writing and must receive approval in writing from EQPB prior to conducting any clearing activities.

(B) The granting of a permit under these Regulations shall not relieve the holder of the permit from complying with all other state and national laws of the Republic of Palau, including, but not limited to, laws relating to clearing activities.

(Effective September 12, 2020)

CATEGORICAL EXCLUSIONS (CX)

2401-61-09  Applicability

After review of a Preliminary Proposal, some classes of actions shall be exempted and categorically excluded from preparation of an Environmental Assessment or Environmental Impact Statement. Categorically Excluded actions have been determined to have non-significant or discountable impacts or impacts that can be mitigated or managed by other applicable regulations. Categorically Excluded actions are not exempt from complying with any other applicable statutes, rules, or regulations. All applicable permits must be issued before a CX action may commence.

(Effective September 12, 2020)

2401-61-10  Categorically Excluded Actions

(A) The following list represents Categorically Excluded classes of actions:

(1) Operations, repairs, or maintenance of existing structures, roads, facilities, equipment, or topographical features involving negligible or no expansion or change of use beyond that currently existing.

(2) Replacement or reconstruction of existing structures and facilities where the new structure or facility will be located generally on the same site and will have substantially the same purpose, capacity, height, and dimensions as the structure replaced.

(3) Basic short term (not more than six [6] months) data collection, research, experimental management, and resource evaluation activities which do not result in serious or major disturbance to an environmental resource.
(4) Construction and location of single, new, small facilities or structures, and the alteration and modification of same, and installation of new, small equipment and facilities, and the alteration and modification of same including:
   (a) Single family residences not in conjunction with the building of two (2) or more of such units;
   (b) A multi-unit structure designed for not more than eight (8) total bedrooms with a maximum of two (2) persons per bedroom that will be connected to a public sewer system, and not in conjunction with the building of any other structure;
   (c) Stores, offices, and restaurants designed for total occupant load of twenty (20) persons or less, and not in conjunction with the building of any other structures;
   (d) Accessory or appurtenant structures to Subsections (a)-(c) above including, but not limited to, garages, carports, patios, swimming pools, and fences;
   (e) Extensions of water, sewer, electrical, gas, telephone, and other essential public utility services except that extensions of public utilities in submerged lands, conservation areas, and other environmentally sensitive areas shall not be Categorically Excluded;

(5) Interior alterations or renovations involving activities such as partitions, plumbing, and electrical and telecommunication conveyances;

(6) Demolition of structures, except those structures located on any cultural or historical site;

(7) Maintenance of existing navigational channels; and

(8) Any other action the Board determines in its sole discretion has no obvious or reasonable potential for significant impacts.

(B) All exemptions for Categorically Excluded actions in this Section are inapplicable when the cumulative impact(s) of successive actions of the same type, in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(C) All exemptions for Categorically Excluded actions in this Section are inapplicable when the actions will result in the loss of or reduction in population of any rare, endangered, or protected species.

(Effective September 12, 2020)

ENVIRONMENTAL ASSESSMENT (EA)

2401-61-11 Applicability
Upon EQPB review of a Preliminary Proposal, and except as otherwise provided, an EA shall be required for any action when further assessment is needed to determine if the action will have any significant impacts and whether such impacts may be avoided or minimized.

(Effective September 12, 2020)
2401-61-12 EA Preparer Qualifications
An EA must be prepared by a qualified Environmental Professional as defined by these Regulations.

(Effective September 12, 2020)

2401-61-13 Draft EA Content Requirements

(A) The Draft EA must be prepared according to format and include all information as required in the latest version of the Republic of Palau EA and EIS Regulations Implementation Guidance Manual (template provided). The Applicant is responsible for identifying all potential environmental impacts and shall not rely solely upon government agency review process to expose potential environmental impacts. The Draft EA must include the following information:

1. An executive summary presenting a concise, non-technical outline of the proposed action and including the results of impact and risk assessments, the proposed management actions, and the conclusions reached;

2. An outline of all relevant laws, policies, and plans which are applicable to the proposed action including all required national and state government permits/approvals for the proposed action;

3. A brief description of the proposed action including, but not limited to, the action location, size and layout, maps detailing the action location and any relevant nearby environmental features and resources, proposed action activities, estimated resource requirements, any predicted gas/air emissions, implementation schedule (construction and operations), estimated action costs, analysis of action alternatives, and action benefits;

4. Description of baseline environment conditions relevant to the action site and surrounding area including, but not limited to, climate, topography, land zoning and use, water, marine, air, noise, aquatic and terrestrial plant life (noting presence of rare, endangered, and/or protected species), aquatic and terrestrial animal life (noting presence of rare, endangered, and/or protected species), human communities, local and national economy, and social, historical, and cultural resources;

5. Impact assessment detailing the action’s potential negative and positive impacts to the baseline environment conditions and the environment’s potential negative and positive impacts to the action and including all methodology used for assessing said impacts;

6. Cumulative impact assessment in the context of previous, existing, and reasonably foreseeable future developments;

7. A brief description listing the avoidance and minimization measures to be implemented by the applicant to avoid or reduce any anticipated negative impacts, identifying best practices or industry standards to be implemented by the applicant, and providing a monitoring plan for determining the success of such avoidance and minimization measures;

8. A presentation of the Environmental Professional’s and the applicant’s conclusions and recommendations for advancing the action, including, but not
limited to, recommending key environmental management and mitigation measures that applicant should implement; and

(9) Any other information required pursuant to the most recent version of the Republic of Palau EA and EIS Regulations Implementation Guidance Manual and any other information that may be requested by the Board if the Board determines that more information is necessary to properly assess potential environmental impacts.

(B) Actions that require critical utilities and services must also provide the following information and approved Plans in the Draft EA:

(1) For any action for which there is a wastewater discharge, the Draft EA shall not be considered complete unless the applicant has included a Wastewater Treatment and Disposal Plan detailing the proposed wastewater management systems for collection, conveyance, treatment, and disposal of wastewater in compliance with EQPB Wastewater Treatment and Disposal Regulations or the applicant has obtained approval from the relevant sewer system authority for connection to a public sewer.

(2) For any action with a drinking water demand, the Draft EA shall not be considered complete unless an adequate water source has been identified and all technical matters of water abstraction, treatment, storage, and distribution are in accordance with drinking water engineering and public health established acceptable standards of practice for drinking water systems.

(3) For any action with an electric power demand, the Draft EA shall not be considered complete unless verification of available utility power is provided by PPUC, or relevant electric power provider, or an adequate alternative source has been identified and all technical matters of power generation and distribution are in accordance with established acceptable engineering standards of practice.

(4) For any action where solid waste will be generated, the Draft EA shall not be considered complete unless a comprehensive Solid Waste Collection and Disposal Management Plan has been submitted in compliance with EQPB Solid Waste Management Regulations.

(C) The applicant shall file a hard-copy of the original (signed) Draft EA with the Board, along with one (1) hard copy and one (1) electronic copy of the Draft EA. The Board may require the applicant to submit extra copies if it deems necessary.

(Effective September 12, 2020)

2401-61-14 Public/Private Sector Comment Requirements

(A) Upon acceptance of the Draft EA, the Board shall issue a Notice of Availability which shall state the name of the applicant, a brief description of the scope and location of the action, and providing notice that the EA is available for public/private sector review and comment. The Board shall be responsible for the advertisement of the Notice of Availability of the Draft EA and for distribution of the Draft EA for public/private sector review.

(B) The Board shall develop a list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) and a list of public repositories where copies of an EA shall be available.
(C) The period for public review and for submitting written comments shall commence as of the date the Notice of Availability of the Draft EA is advertised and shall continue for a period of fourteen (14) calendar days. Written comments to the Board, with a copy of the comments to the applicant, must be received by the Board, or postmarked, within said fourteen (14) calendar day period. Upon written request and upon good cause shown, the Board may extend the period for comments for a period not to exceed fourteen (14) additional calendar days. Any late comments need not be considered or responded to by the applicant or the Board, unless the Board requires a response from the applicant.

(D) The applicant shall respond in writing to the comments received or postmarked during the fourteen (14) day review period and shall incorporate or append the comments and applicant’s responses thereto into the Final EA within thirty (30) calendar days of the end of the fourteen (14) day review period. Upon written request and upon good cause shown, the Board may extend the period for applicant’s response to comments for a period not to exceed sixty (60) additional calendar days. The applicant’s response to comments shall include:

1. Discussion of the validity, significance, and relevance of the comments; and
2. Discussion as to how each comment was evaluated and considered in planning the proposed action.

(E) The applicant’s response shall endeavor to resolve conflicts, inconsistencies, or concerns. Comments and responses shall be incorporated or appended in the Final EA.

(F) If the applicant does not respond to comments received within thirty (30) calendar days from the end of the review period, or if requested, within the extended period for response, the Board shall consider the EA application to be abandoned and shall take no further action unless a new application, complete with all applicable application fees, is submitted.

(Effective September 12, 2020)

2401-61-15 Final EA Content Requirements

The Final EA shall consist of a revised version of the Draft EA as prepared from substantive and beneficial comments and comments received from public/private sector parties. In the event of a disagreement between the applicant and the Board as to whether a particular comment or recommendation is substantive and beneficial, the Board shall have sole discretion in determining whether the comment or recommendation is substantive and beneficial. The Final EA shall present documentation on:

(A) Comments and recommendations received on the Draft EA either verbatim or in summary;
(B) A complete list of persons, organizations, and public agencies commenting on the Draft EA;
(C) Applicant’s responses to all comments and recommendations raised in the review and consultation process. The response of the applicant to comments received may take the form of a revision of the Draft EA or may be an attachment to the Draft EA. The response shall describe the resolution of significant environmental issues raised (e.g., revisions to the proposed action to mitigate anticipated impacts or objections). In particular, when the applicant’s position is at variance with recommendations and objections raised in the comments, the applicant’s position shall be justified in detail.
giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

(D) The applicant shall file a hard-copy of the original (signed) Final EA with the Board along with one [1] hard copy and one [1] electronic copy of the Final EA. The Board may require the applicant to submit extra copies if it deems necessary.

(Effective September 12, 2020)

2401-61-16 Reimbursement for EA Expenses

(A) The applicant shall reimburse the Board for its reasonable expenses incurred relating to advertisement and distribution of the Draft EA and Final EA.

(B) This Section shall not be applicable to national or state government actions so long as such actions are 100% financed by national or state government funds. However, this Section shall be applicable in the event of a joint venture between the national or state government and a third party.

(C) The Board shall submit an itemized list of reimbursable costs to the applicant prior to the issuance of a Notice of Determination, and applicant shall pay same prior to the issuance of any Notice of Determination and within thirty (30) calendar days of the Board’s submission of an itemized list. These reimbursed expenses are non-refundable in the event an application is denied.

(Effective September 12, 2020)

2401-61-17 Notice of Determination

(A) After reviewing an applicant’s Final EA, the Board shall issue a Notice of Determination as follows:

(1) If the Board determines that impacts are discountable, non-significant, or may be avoided or minimized, the Board will issue a Finding of No Significant Impact (FONSI).

(2) If the Board determines there are significant impacts, and that avoidance or minimization of such impacts cannot be achieved, the Board will issue a Notice of Determination stating that preparation of an EIS is required.

(B) As soon as practicable after any determination is made, a Notice of Determination will be delivered to the applicant by EQPB.

(C) A notice of determination shall indicate in a concise manner:

(1) Identification of applicant or proposing agency;

(2) Brief description of proposed action;

(3) Determination;

(4) Reasons supporting determination, and;

(5) Name, address, and phone number of contact person for further information.

(D) Upon issuance of a FONSI, the Board shall approve the proposed action and shall issue any applicable permits provided the applicant’s application is in compliance with all applicable EQPB Regulations and relevant national and state laws.

(Effective September 12, 2020)
ENVIRONMENTAL IMPACT STATEMENT (EIS)

2401-61-18 Applicability
An Environmental Impact Statement (EIS) shall be required when an EA does not support a FONSI and for all actions that will or may have a significant impact (meet one or more of significance criteria listed above) that must be mitigated.

(Effective September 12, 2020)

2401-61-19 EIS Preparer Qualifications
An EIS must be prepared by a qualified Environmental Professional as defined by these Regulations.

(Effective September 12, 2020)

2401-61-20 Draft EIS Content Requirements
(A) The Draft EIS must be prepared according to format and include all information as required in the latest version of the Republic of Palau EA and EIS Regulations Implementation Guidance Manual (template provided). The Applicant is responsible for identifying all potential environmental impacts and shall not rely solely upon government agency review process to expose potential environmental impacts. The Draft EA must include the following information:

(1) An executive summary presenting a concise, non-technical outline of the proposed action and including the results of impact and risk assessments, the proposed management actions, and the conclusions reached;
(2) An outline of all relevant laws, policies, and plans which are applicable to the proposed action including all required national and state government permits/approvals for the proposed action;
(3) A detailed description of the proposed action including, but not limited to, the action location, size and layout, maps detailing the action location and any relevant nearby environmental features and resources, proposed action activities, estimated resource requirements, any predicted gas/air emissions, implementation schedule (construction and operations), estimated action costs, analysis of action alternatives, action benefits, and a cost-benefit analysis;
(4) Description of baseline environment conditions relevant to the action site and surrounding area including, but not limited to, climate, topography, land zoning and use, water, marine, air, noise, aquatic and terrestrial plant life (with population estimates and spatial range of rare, endangered, and/or protected species), aquatic and terrestrial animal life (with population estimates and spatial range of rare, endangered, and/or protected species), human communities, local and national economy, and social, historical, and cultural resources;
(5) Impact assessment detailing the action’s potential negative and positive impacts to the baseline environment conditions and the environment’s potential negative and positive impacts to the action and including all methodology used for assessing said impacts;
(6) Cumulative impact assessment in the context of previous, existing, and reasonably foreseeable future developments;

(7) A brief description listing the avoidance and minimization measures to be implemented by the applicant to avoid or reduce any anticipated negative impacts, identifying best practices or industry standards to be implemented by the applicant, and providing a monitoring plan for determining the success of such avoidance and minimization measures;

(8) A detailed description of consultation activities with the local community, land/resource owners, and relevant stakeholders along with a detailed list of comments and/or recommendations raised during said consultation and applicant’s responses to the comments and/or recommendations raised during said consultation;

(9) A presentation of the Environmental Professional’s and the applicant’s conclusions and recommendations for advancing the action, including, but not limited to, recommending key environmental management and mitigation measures that applicant should implement; and

(10) Any other information required pursuant to the most recent version of the Republic of Palau EA and EIS Regulations Implementation Guidance Manual and any other information that may be requested by the Board if the Board determines that more information is necessary to properly assess potential environmental impacts.

(B) Actions that require critical utilities and services must provide the following information and approved Plans in the Draft EIS:

(1) For any action for which there is a wastewater discharge, the Draft EIS shall not be considered complete unless a Wastewater Treatment and Disposal Plan has been approved by EQPB for the wastewater management system or connection to a public sewer has been approved by the relevant sewer system authority. This requirement means that all wastewater management systems for collection, conveyance, treatment, and disposal must be in compliance with EQPB Wastewater Treatment and Disposal Regulations and approved by the Board.

(2) For any action with a drinking water demand, the Draft EIS shall not be considered complete unless an adequate water source has been identified and all technical matters of water abstraction, treatment, storage, and distribution are in accordance with drinking water engineering and public health established acceptable engineering standards of practice for drinking water systems.

(3) For any action with an electric power demand, the Draft EIS shall not be considered complete unless verification of available utility power is provided by PPUC, or relevant electric power provider, or an adequate alternative source has been identified and all technical matters of power generation and distribution are in accordance with established acceptable engineering standards of practice.

(4) For any action where solid waste will be generated, the Draft EIS shall not be considered complete unless a comprehensive Solid Waste Collection and Disposal Management Plan has been approved by EQPB.
(B) For actions where the national government, state government, its boards, agencies or commissions is the applicant, the applicant shall prepare the EIS in accordance with 24 PNC Sections 141 through 143, and these Regulations.

(C) The applicant shall file a hard-copy of the original (signed) Draft EIS with the Board, along with one [1] hard copy and one [1] electronic copy of the Draft EIS. The Board may require the applicant to submit extra copies if it deems necessary.

(Effective September 12, 2020)

2401-61-21 Public/Private Sector Consultation Requirements

(A) Upon acceptance of the Draft EIS, the Board shall issue a Notice of Availability which shall state the name of the applicant, a brief description of the scope and location of the action, and providing notice that the EIS is available for public/private sector review and comment. The Board shall be responsible for the advertisement of the Notice of Availability of the Draft EIS and for distribution of the Draft EIS for public and private sector review.

(B) The Board shall develop a list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) and a list of public repositories where copies of an EIS shall be available.

(C) The period for public review and for submitting written comments shall commence as of the date the Notice of Availability of the Draft EIS is advertised and shall continue for a period of thirty (30) calendar days. Written comments to the Board, with a copy of the comments to the applicant, must be received by the Board, or postmarked, within said thirty (30) calendar day period. Upon written request and upon good cause shown, the Board may extend the period for comments for a period not to exceed thirty (30) additional calendar days. Any late comments need not be considered or responded to by the applicant or the Board, unless the Board requires a response from the applicant.

(D) The applicant shall respond in writing to the comments received or postmarked during the thirty (30) day review period and shall incorporate or append the comments and applicant’s responses thereto into the Final EIS within thirty (30) calendar days of the end of the thirty (30) day review period. Upon written request and upon good cause shown, the Board may extend the period for applicant’s response to comments for a period not to exceed sixty (60) additional calendar days. The applicant’s response to comments shall include:

1. Discussion of the validity, significance, and relevance of the comments; and
2. Discussion as to how each comment was evaluated and considered in planning the proposed action.

(E) The applicant’s response shall endeavor to resolve conflicts, inconsistencies, or concerns. Comments and responses shall be incorporated or appended in the Final EIS.

(F) At the Board’s discretion the Board shall hold a public hearing regarding the action within thirty (30) calendar days of the date of the Notice of Availability of the Draft EIS.

(G) If the applicant does not respond to comments received within thirty (30) calendar days from the end of the review period, or if requested, within the extended period for response, the Board shall consider the EIS application to be abandoned and shall take no further action unless a new application, complete with all applicable application fees, is submitted.
(Effective September 12, 2020)

2401-61-22 Final EIS Content Requirements
The Final EIS shall consist of a revised version of the Draft EIS as prepared from substantive and beneficial comments and recommendations received from public/private sector consulting parties. In the event of a disagreement between the applicant and the Board as to whether a particular comment or recommendation is substantive and beneficial, the Board shall have sole discretion in determining whether the comment or recommendation is substantive and beneficial. The Final EIS shall present documentation on:

(A) Comments and recommendations received on the Draft EIS either verbatim or in summary;

(B) A complete list of persons, organizations, and public agencies commenting on the Draft EIS;

(C) Applicant’s responses to all comments and recommendations raised in the review and consultation process. The response of the applicant to comments received may take the form of a revision of the Draft EIS or may be an attachment to the Draft EIS. The response shall describe the resolution of significant environmental issues raised (e.g., revisions to the proposed action to mitigate anticipated impacts or objections). In particular, when the applicant’s position is at variance with recommendations and objections raised in the comments, the applicant’s position shall be justified in detail giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

(D) The applicant shall file a hard-copy of the original (signed) Final EIS with the Board along with one (1) hard copy and one (1) electronic copy of the Final EIS. The Board may require the applicant to submit extra copies if it deems necessary.

(Effective September 12, 2020)

2401-61-23 Reimbursement for EIS Expenses

(A) The applicant shall reimburse the Board for its reasonable expenses incurred relating to advertisement and distribution of the Draft EIS and Final EIS and any fees paid to specialists required to review the EIS.

(B) This Section shall not be applicable to national or state government actions so long as such actions are 100% financed by national or state government funds. However, this Section shall be applicable in the event of a joint venture between the national or state government and a third party.

(C) The Board shall submit an itemized list of these reimbursable costs to applicant prior to the issuance of a decision on the applicant’s EIS and applicant shall pay same prior to the issuance of any decision on the action and within thirty (30) calendar days of the Board’s submission of an itemized list. These fees are non-refundable in the event an application is denied.

(Effective September 12, 2020)
2401-61-24 Notice of Decision

(A) Acceptability of a Final EIS shall be evaluated on the basis of whether the Final EIS, in its completed form, represents an informational instrument which fulfills the definition of an EIS; adequately discloses and describes all identifiable environmental impacts; provides for avoidance, minimization, or mitigation of all identifiable environmental impacts; and satisfactorily responds to public/private comments and recommendations.

(B) A Final EIS shall be deemed acceptable only if all the following criteria are satisfied:

1. Procedures for assessment, consultation process, a review responsive to comments, and the preparation and submission of the Final EIS, have all been completed satisfactorily as specified in these Regulations;
2. Content requirements described in these Regulations and in the latest version of the Republic of Palau EA and EIS Regulations Implementation Guidance Manual have been satisfied, and;
3. Applicant has satisfactorily responded to comments and recommendations submitted during the public/private review process and said responses have been incorporated into or appended to the EIS.

(C) Upon acceptance or non-acceptance of the Final EIS, a Notice of Decision shall be issued by the Board and served on the applicant. For any non-accepted EIS, the Notice of Decision shall contain specific findings and reasons for non-acceptance. The Board shall publish the Notice of Decision explaining the Board’s acceptance or non-acceptance. Acceptance of a Final EIS shall be a condition precedent to the use of state or national government lands or funds in implementing the proposed action.

(E) Upon acceptance of the Final EIS, the Board shall have sole discretion to approve or deny the proposed action in light of the public policy provided by Title 24 of the Palau National Code, Section 102. As soon as practicable after any approval or denial is made, EQPB shall notify the applicant in writing of the Board’s approval or denial which writing shall include a brief summary of the reasons supporting the Board’s approval or denial of the proposed action. If the Board approves the applicant’s proposed action, the Board shall issue any applicable permits provided the applicant’s application is in compliance with all applicable EQPB Regulations and relevant national and state laws.

(Effective September 12, 2020)

SUPPLEMENTAL ENVIRONMENTAL ASSEMENTS AND ENVIRONMENTAL IMPACT STATEMENTS

2401-61-25 General
An EA/EIS that is accepted with respect to a particular action is usually qualified by action size, scope, location and timing, among other things. If there is any substantial change in any of these action characteristics, the original EA/EIS shall no longer be acceptable because an essentially different action would be under consideration. As long as there is no substantial change in a proposed action, the EA/EIS associated with that action shall be deemed acceptable. If there is any substantial change to the action, as determined by the Board, a Supplemental EA/EIS shall be prepared and reviewed as provided by these Regulations.

(Effective September 12, 2020)

Environmental Assessment and Environmental Impact Statement Regulations 17
2401-61-26 Determination of Applicability
The Board shall be solely responsible for determining whether a Supplemental EA/EIS is required. Applicants shall prepare for public review the Supplemental EA/EIS whenever the proposed action for which an EA/EIS was accepted has been substantially changed to the extent that new or different environmental impacts are anticipated. A Supplemental EA/EIS shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously considered or addressed.

(Effective September 12, 2020)

2401-61-27 Contents
The contents of the Supplemental EA/EIS shall be the same as required by these Regulations for the Final EA/EIS and may incorporate by reference unchanged material from the same. In addition, the Supplemental EA/EIS shall fully document the proposed changes from the original EA/EIS and shall completely and thoroughly discuss the EA/EIS processes followed for these changes, the positive and negative aspects of these changes, and shall comply with the content requirements provided by these Regulations and the latest version of the Republic of Palau EA and EIS Regulations Implementation Guidance Manual, inclusive, as they relate to the changes.

(Effective September 12, 2020)

2401-61-28 Procedures
The requirements for consultation, filing public notice, distribution, public review, comments and response, and acceptance procedures, shall be the same for the Supplemental EA/EIS as is prescribed by these Regulations for a Draft EA/EIS.

(Effective September 12, 2020)

ENVIRONMENTAL IMPACT FEES

2401-61-29 Environmental Impact Fees
Whether or not an action requires an EA or EIS, the applicant shall pay a non-refundable Environmental Impact Fee. The Environmental Impact Fee shall be paid within thirty (30) calendar days after the applicant has obtained all necessary permits to commence an action, but prior to the commencement of any construction relative to that action. The Environmental Impact Fee shall be paid by check, made payable to the National Treasury of the Republic of Palau, and in accordance with the following fee schedule:

(A) There shall be no fee for national or state government actions so long as such actions are 100% financed by national or state government funds. In the event of a joint venture between the national or state government and a third party, the action shall be subject to the fees stated in this Section.

(B) All other fees for actions shall be based upon the greater of:
(1) An appraisal of construction costs for structures affixed to the ground pursuant to the following schedule:

<table>
<thead>
<tr>
<th>FEE AMOUNT</th>
<th>ACTION ESTIMATED COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0.00</td>
<td>Less than or equal to $50,000.00</td>
</tr>
<tr>
<td>$20.00</td>
<td>Greater than $50,000.00 but less than or equal to $100,000.00</td>
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<tr>
<td>$250.00</td>
<td>Greater than $100,000.00 but less than or equal to $500,000.00</td>
</tr>
<tr>
<td>$500.00</td>
<td>Greater than $500,000.00 but less than or equal to $1,000,000.00</td>
</tr>
<tr>
<td>.15% of the Estimated Cost of the Action</td>
<td>Greater than $1,000,000.00</td>
</tr>
</tbody>
</table>

or,

(2) A fee which is generated by the Board after an examination of the action’s EIS.

(Effective September 12, 2020)

**ENFORCEMENT**

2401-61-30 Enforcement
Nothing in these Regulations shall be construed to allow any person to avoid the requirements of the Environmental Quality Protection Act, and the regulations promulgated thereunder, including these Environmental Assessment and Environmental Impact Statement Regulations. Any person in violation of any of the provisions of these Regulations shall be subject to enforcement and court action under 24 PNC Sections 161 through 172, inclusive.

(Effective September 12, 2020)

**MISCELLANEOUS PROVISIONS**

2401-61-31 Severability
If any provision of these Regulations or the application thereof to any person or circumstance is held invalid by a court decision, statute, or otherwise, the invalidity shall not affect other provisions or applications of these Regulations which can be given effect without the invalid provision or application, and to this end, the provisions of these Regulations are declared to be severable.

(Effective September 12, 2020)

2401-61-32 Effective Date and Repealer
These Regulations shall take effect as provided by 6 PNC § 127, at which time the EQPB Environmental Impact Statement Regulations preexisting heretofore shall be repealed.

(Effective September 12, 2020)
2401-61-33  Protected Areas
Any action subject to the provisions of these Regulations shall comply with the terms, conditions, provisions and management plans for any National, State or traditional conservation area, preserve or other protected area as established by law.

(Effective September 12, 2020)

The above EQPB Environmental Assessment and Environmental Impact Statement Regulations were adopted pursuant to the Administrative Procedure Act this 13th Day of August 2020:

Adopted By: Initial Date
Elia Yobeck, Chairman [Initial] 8/13/20
Florence Yamada, Vice Chairman 8/13/20
Juliet Ngotel, Member 8/13/20
Jack Melotel, Member 8/13/20
Benjamin Adelbai, Member 8/13/20
Benjamin Yobeck, Member

Approved this 13th day of August 2020.

Tommy E. Remengesau, Jr.
President