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REGULATIONS GOVERNING LAND MODIFICATION ACTIVITIES

PART I—GENERAL PROVISIONS

§1. Authority

1) These regulations are promulgated by the Republic of the Marshall Islands Historic Preservation Office with the approval of the Minister of Interior and Outer Islands Affairs pursuant to §8 (a) of the Historic Preservation Act 1991.

§2. Effective Date

These regulations shall come into force thirty (30) days after their approval by the Cabinet.

§3. Interpretation

In these regulations, unless the context otherwise requires:

- (1) "Adaptive use" means the use of a cultural and historic property for a contemporary purpose or purposes, usually different from its historical use and usually with some alteration of its character, but retaining its major significant historical characteristics.
- (2) "Agency" means any agency of the Government or Local Governments of the Republic, including any independent board or commission.
- (3) "Artifact" means any object related to, derived from, or contained in a cultural and historic property that is important in the study, interpretation or public appreciation of such property.

(4) "Council" means the Advisory Council for Historic Preservation created by § 9 Historic Preservation Act 1991.

(5) "Cultural and historic property" means any site, structure, district, landmark, building, object, or combination thereof, that:

(a) is included in the Republic of the Marshall Islands National Register of Historic Places;

(b) is determined by the Historic Preservation Office to be eligible for the National Register; or

(c) meets any of the criteria set forth in § 5 of these regulations.

Cultural and historic properties may be recognized as such individually or as members of "groups" of like or unlike properties whose numbers and locations can be specified, or as "classes" of like properties whose characteristics can be specified but whose precise total numbers and locations may not be specifiable.

(6) "Cultural heritage" means any aspect of the culture of the Republic as expressed in the oral traditions.

(7) "Cultural Resource Management" means those skills required to survey, classify and evaluate the cultural and historical properties and the cultural heritage of the Republic and to manage these properties and that heritage in accordance with the Historic Preservation Act 1991 and the applicable regulations.

(8) "Cultural Resource Officer" means an individual who has a para-professional training in Cultural Resource Management and who is a councils member of one of the certified Local

Government of the Republic as defined Article IX of the Constitution of Republic of the Marshall Islands.

(9) "Culture" means the traditions, beliefs, traditional practices, arts, crafts and other social institutions of the people of the Republic, or of a particular community within the Republic.

(10) "Data recovery" means the study of a cultural and historic property, by or under the supervision of qualified scholars with expertise appropriate to the property, and including appropriate analysis and dissemination of study results, in order to recover, understand, and make available information about the property.

(11) "Development" means the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining or extraction of any materials, change in the density or intensity of use of land, including, but not limited to, subdivision of land and any other division of land including lot parcelling; change in the intensity of use of water, ecology related thereto, or alteration of the size of any structure, including any facility of any private, public, or municipal government or utility, and the removal of any significant vegetation.

(12) "Historic sites" means those cultural resources and terrestrial, intertidal and submarine sites and landscapes that were produced since the advent of written records in the Marshall Islands and that are of archaeological or historical interest. These sites, mainly from the pre-German, German and Japanese periods preceding the build-up of the

military installations for World War II, include but are not limited to the following: house sites, service structures (e.g., cisterns), historic middens, cemeteries, aircraft wrecks, shipwrecks, and harbor structures. Sites from World War II include but are not limited to the following: concrete structures (e.g., manshelters, command buildings, cisterns, bomb magazines), gun emplacements, tanks, aircraft, vehicles, harbor structures (e.g., piers, docks), revetments (both soil and concrete), runways (including aprons and taxi ways), concrete lined wells and water cisterns, and submerged resources such as shipwrecks, aircraft wrecks, vehicles, tanks and other war materiel.

(13) "HPO" or "Office" means the Historic Preservation Office established under § 4 of the Historic Preservation Act of 1991.

(14) "Human remains" means any part of the human body which has been part of a burial site, or any other site, and which has been encountered or uncovered in the process of scientific investigations or construction work or otherwise.

(15) "Impact" means any modification in an element of a cultural and historic property that tends to damage or reduce the integrity of that element. The term includes:

(a) "direct impacts", which are caused by a given action and occur at the same time and place; and

(b) "indirect impacts", which are caused by a given action and occur later in time or farther removed in distance, but are reasonably foreseeable. Indirect impacts may include, but are not limited to, the inducement of population

growth, the inducement of changes in the density or distribution of land uses, and changes in traffic patterns.

(16) "Interpretation" means making understandable to the general public a cultural and historic property, or the information and artifacts it contains, for purposes of education and enlightenment.

(17) "Landmark" means any geographical or geomorphological feature associated with oral traditions or historic events of the Republic.

(18) "Oral traditions" means that body of knowledge of the indigenous people of the Marshall Islands about their past, including their beliefs, traditional practices (including traditional medicine and medical practices), skills, environment, and their spiritual world, which has been handed down, primarily in spoken form, from generation to generation.

(19) "Parties" to consultation under the provisions of these regulations means the agency or agencies involved in the action subject to review, the HPO, and any other person, organization, or group with a financial, professional, or cultural interest in the action or property involved.

(20) "Permitting" means issuance of a written license or warrant, including any condition, to any person, empowering such person to do some act not forbidden by law, but otherwise not allowed without such authority, or the modification or amendment of any permit or condition thereof subsequent to its issuance.

(21) "Person" means the Government or a Local Government of the Republic of the Marshall

Islands or any agency or department thereof; the Government of the United States of America or any agency or department or any municipality thereof; any sovereign state or nation; any public or private institution; any public or private corporation, association, partnership, joint venture or other legal entity; any lessee or other occupant of property; or any individual, acting singly or as part of a group.

(22) "Plan", depending on the context in which it is used, means:

(a) the design, specifications, and schedule of a development action;

(b) the Marshall Islands Cultural and Historic Preservation Plan, or a local cultural and historic preservation plan, developed pursuant to § 7 of the Historic Preservation Act 1991, designed to ensure that cultural and historic properties are wisely integrated into contemporary land uses and development; or

(c) a plan for treatment of a particular cultural and historic property or group of such properties subject to impact by a development action or actions.

(23) "Predictive model" means an element of a cultural and historic preservation plan which, on the basis of existing information and extrapolation, predicts the distribution and density of various classes of cultural and historic properties over a given island or other area.

(24) "Prehistoric sites" means those cultural resources and terrestrial, intertidal and submarine sites and landscapes that were produced by the pre-literate, indigenous people of the Marshall Islands

and that are of archaeological interest. These sites include but are not limited to the following: artifact scatters, buried gardening features, buried occupation layers, coral slab alignments, coral lined paths, fishtraps/weirs, fortifications, gardening features, house pavements, house platforms, platforms and enclosures, burials and cemeteries, shell middens and wells.

(25) "Preservation" means the identification, evaluation, recording, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, or reconstruction of a cultural and historic property, or any combination of the foregoing activities.

(26) "Project" means any structure, use, development or other activity subject to review under these regulations, or where the context so indicates, a preservation activity carried out pursuant to these regulations.

(27) "Records" of a preservation activity mean the notes, other documents, photographs, forms, files, electronic records, maps, specifications, and other material describing the activity, its results, the property involved, and any data recovered from or pertaining to the property.

(28) "Regulated activity on private lands" means any use of private lands that is subject to issuance of a permit by any agency, or that is wholly or partly dependent on financial, technical, or other forms of assistance by any agency, including but not limited to those activities requiring permits or assistance under the Coast Conservation Act 1988, the National Environmental Protection Act 1984, any

regulations adopted under those Acts, or any other applicable law of the Republic.

(29) "Rehabilitation" means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use, while preserving or restoring the property's significant historical or cultural elements.

(30) "Restoration" means the process of accurately recovering the form and details of a property as it appeared at a particular period of time by removing later work and replacing missing original work.

(31) "Republic" means the Republic of the Marshall Islands.

(32) "Scientific identification" means the study of artifacts, other material, and information derived from or relating to a cultural and historic property or properties, for purposes of increasing knowledge about such properties or about topics of scientific or humanistic research. Such study may include destructive activities such as the gassification of samples for radiometric age determination, where appropriate.

(33) "Significant element" of a cultural and historic property means an element integral to the property's cultural or historical significance, the disturbance of which will impair such significance. Where pertinent, a significant element may be present in the environment surrounding the property, or in its airspace, as well as or rather than in the property itself.

(34) "Significance level" means the classification of the significance of a resource for the cultural heritage of the Republic. Resources shall be classified

as 'very significant' 'significant', 'less significant', 'insignificant' and of 'undetermined significance', the criteria for which are set forth in § 6 of these regulations.

(35) "Submerged resources" are those prehistoric or historic sites and artifacts located in the intertidal or subtidal zone within the internal, archipelagic or territorial waters of the Republic as defined in §§ 5, 6 and 7 of the Marine Zones (Declaration) Act 1984.

(36) "Survey",

(a) when used as a noun, means a systematic, planned effort to identify, record, and evaluate cultural and historic properties, in a manner consistent with applicable professional standards; and

(b) when used as a verb, means the act of conducting a survey as defined in Paragraph (a) of this Subsection, whether at a general level, as in the survey of an entire island, or at the level of a particular parcel or tract of land.

(37) "Traditional sites" means those sites, landmarks and locations to which oral traditions of the indigenous people of the Marshall Islands are attached. These sites include but are not limited to the following: places on the reef, patch-reefs, raised micro atolls, tidal pools, channels in the reef and stretches in the landscape. A prehistoric or historic site may also be a traditional site.

(38) "Use" of a cultural and historic property means its use for traditional cultural purposes, for scientific or humanistic study, or for productive contemporary purposes. Such use may, in the public inter

est, require the alteration of the property's significant elements or even its total destruction.

(39) "Wartime context", with reference to a cultural and historic property associated with World War II, means the context in which the property was made or used during World War II, as opposed to a context to which it may have been removed after World War II.

PART II—PURPOSE OF REGULATIONS

§ 4. Survey and Identification in Advance of Development.

- (1) Public lands shall not be disposed of, nor activities permitted on public or private lands, that might damage cultural and historic properties without first complying with these regulations.
- (2) Identification of cultural and historic properties in advance of development shall be conducted in a manner consistent with the standards promulgated by the HPO under these regulations.
- (3) The results of all surveys to identify cultural and historic properties shall be provided to the HPO for review and approval.
- (4) All surveys to identify cultural and historic properties in advance of development shall take into account the urban and regional social, cultural, customary, traditional, historical and environmental contexts of such properties and the economic, social, demographic, and land use effects that the subject development may have, if any, beyond the boundaries of the development site.

PART III—CRITERIA FOR CULTURAL AND HISTORIC PROPERTY

§ 5. Criteria for Recognition as a Cultural and Historic Property.

In the absence of a formal determination by the HPO, a property shall be recognized as having cultural and historic value if it appears to meet one or more of the following criteria:

- (1) Possession of cultural value: the property is viewed by a group of people as important in maintaining the group's cultural identity (e.g., a traditional site).
- (2) Possession of social value: the property plays an ongoing important role in the social life of a group (e.g., a traditional fishing location).
- (3) Possession of interpretive value: the property has current or potential use as an exhibit for educational purposes.
- (4) Possession of research archaeological value: the property contains important information pertinent to a significant archaeological research question or questions.
- (5) Possession of archival archaeological value: the property represents a class of properties identified in the Marshall Islands Cultural and Historic Preservation Plan, or in a local cultural and historic preservation plan, as containing information that should be preserved for archival purposes.
- (6) Possession of architectural excellence: the property is expressive of the work of a master designer or builder, or otherwise is a fine example of the architect's craft.

(7) Possession of architectural representativeness: the property is representative of an important style or period in the Republic's architectural history.

(8) Possession of historical ambience: the property conveys a "sense of place", a character that is perceived by local residents or others as being both "out of the past" and worth retaining.

(9) Possession of aesthetic value: the property is perceived by local residents or others as both "out of the past" and pleasing to the eye.

(10) Possession of social historical value: the property is associated with a particular historical period, process, or trend in the social history of the Republic of the Marshall Islands.

(11) Possession of particularistic historical value: the property is associated with a particular person or event important in the Republic's history (e.g., a place significantly associated with the 1944 invasion of the Marshall Islands).

§ 6. Classification of the Significance Level of Prehistoric, Historic and Traditional Sites.

(1) Prehistoric Sites. The levels of significance of prehistoric sites in the Marshall Islands shall be classified as follows:

(a) "Very significant". A prehistoric site is considered to be very significant if:

(i) the resource is the only one of its kind known on the atoll concerned;

(ii) the resource is part of an ensemble of sites, even if the individual sites as such would not be considered to be very significant;

(iii) the resource is rich in cultural artifacts and undisturbed by construction activities;

(iv) the resource is particularly well preserved;
or

(v) the resource is connected with oral traditions important beyond the limits of the individual atoll on which the resource is located.

(b) "Significant". A prehistoric site is considered to be significant if:

(i) the resource is the only one of its kind known on the islet concerned;

(ii) the resource is rich in cultural artifacts and relatively undisturbed by construction activities;

(iii) the resource is well preserved; or

(iv) the resource is connected with oral traditions.

(c) "Less significant". A prehistoric site is considered to be less significant if:

(i) the resource is largely disturbed by construction activities; or

(ii) the resource is one of many of similar kind on the islet concerned, but does not form part of an ensemble of sites or features; or

(iii) the archaeological character of the resource is doubtful; and

(iv) the resource is not connected with any oral traditions.

(d) "Insignificant". A prehistoric site is considered to be insignificant if:

(i) the resource is completely disturbed by construction activities or erosion;

- (ii) the resource is already largely destroyed; or
- (iii) the resource is abundant on the islet concerned, but does not form a part of an ensemble of sites or features, and sufficient well preserved examples of the resource will remain intact.

(e) "Undetermined significance". A prehistoric site is considered to be of undetermined significance if little or no detailed survey work has been undertaken. It is a rebuttable presumption that the significance level of any prehistoric site of undetermined significance is "significant".

In the event that a prehistoric site and a traditional site are identical, the traditional character of the site shall take precedence, and the site is automatically classified as "significant" even if the significance level determined on archaeological grounds only is lower.

(2) Historic Sites. The levels of significance of historic sites in the Marshall Islands shall be classified as follows:

(a) "Very significant". A historic site is considered to be very significant if:

- (i) the resource is the only one of its kind known in the Republic; or
- (ii) the resource is part of an ensemble of sites, even if the individual sites as such would not be considered to be very significant; or
- (iii) the resource is considered to be a prime example of the workmanship of a particular architect, builder or craftsman; or
- (iv) the resource is rich in cultural artifacts and undisturbed by construction activities; or

(v) the resource is particularly well preserved and shows little or no alterations to the original appearance of the structure; or

(vi) the resource is connected with historic events or persons or oral traditions important beyond the limits of the individual atoll on which the resource is located.

(b) "Significant". A historic site is considered to be significant if:

(i) the resource is the only one of its kind known on the atoll or island concerned; or

(ii) the resource is considered to be a good example of the workmanship or a particular architect, builder or craftsman; or

(iii) the resource is rich in cultural artifacts and relatively undisturbed by construction activities; or

(iv) the resource is well preserved and shows only limited alterations to the appearance of the original structure; or

(v) the resource is connected with historic events or persons or oral traditions important for the individual atoll on which the resource is located.

(c) "Less significant". A historic site is considered to be less significant if:

(i) the resource is considered to be a reasonably good example of the workmanship of a particular architect, builder or craftsman; or

(ii) the resource is well preserved by shows substantial alterations to the appearance of the original structure; or

(iii) the resource is not well preserved but shows only limited alterations to the appearance of the original structure; or

(iv) the resource is one of many of a similar kind on the atoll or island concerned, but does not form part of an ensemble of sites or features; or

(v) the historic character of the resource is doubtful; and

(vi) the resource is not connected with any oral traditions.

(d) "Insignificant". A historic site is considered to be insignificant if:

(i) the resource is completely disturbed by construction activities or erosion; or

(ii) the resource is not well preserved and shows substantial alterations to the original appearance; or

(iii) the resource is already largely destroyed; or

(iv) the resource is abundant on the atoll concerned, but does not form part of an ensemble of sites or features, and sufficient well preserved examples of the resource will remain intact.

(e) "Undetermined significance". A historic site is considered to be of undetermined significance if little or no detailed survey work has been undertaken. It is a rebuttable presumption that the significance level of any historic site of undetermined significance is "significant".

(3) Traditional Sites. All traditional sites shall be classified as "significant".

PART IV - USE OF CULTURAL AND HISTORIC PROPERTIES

§ 7. Protection of Cultural and Historic Properties.

(1) Land shall not be disposed of or used for any activity, without permit, that in the opinion of the Historic Preservation Office and the Advisory Council for Historic Preservation might damage cultural and historic property significant to the cultural heritage of the Republic.

(2) The willful removal of artifacts, and the destruction, removal, disturbance, displacement, or disfigurement of any cultural and historic property on public or private lands or in the waters of the Republic, without a permit issued by the HPO, is prohibited; provided that the cultural and historic property has been designated as such, or is eligible for designation as such, by the HPO.

§ 8. Land Use Activities.

(1) The following activities are exempt from the requirements of this section, except as provided in Subsection (2) below:

(a) clearing of vegetation using hand tools;

(b) agricultural activities on lands which have been historically used for such activities, providing such activities do not involve grading or excavation;

(c) hunting, fishing and trapping involving no development;

(d) preservation of scenic, historic, and scientific areas, including wildlife preserves, involving no development;

(e) expansion or improvement of an existing structure, unless the structure has been identified by the

HPO as a cultural and historic property, as a contributing element of a cultural and historic property, or as lying within a cultural and historic property that could be damaged by the action;

(f) regrading or paving of already graded land surfaces; and

(g) replacement, acquisition, or improvement of non-structural capital equipment involving no development.

(2) The Council may determine that an activity that would ordinarily be exempt from the requirements of this section must be reviewed in accordance with this section, where it finds after consideration of the activity and of public comments, if any, that the activity may do damage to a cultural and historic property.

§ 9. Permitting Procedure.

(1) Any agency or person that may dispose of public lands, use or permit use of public lands for a nonexempt activity, conduct or issue a permit for the conduct of a nonexempt activity on private lands, shall comply with the following procedures at the earliest possible stage in planning. Failure to comply until it is too late reasonably to consider alternatives to the action as planned shall constitute noncompliance with these regulations.

(2) The agency or person responsible for undertaking, assisting, permitting, or reviewing a nonexempt activity (hereinafter, the "agency") shall:

(a) review the Marshall Islands Cultural and Historic Preservation Plan and any applicable local cultural and historic preservation plan; and

(b) review the predictive model maintained by the HPO, in consultation with the HPO, to determine the need for and the scope of any survey.

(i) Where the HPO has completed a detailed survey of all lands subject to direct and indirect impact, no further survey shall be required except as may be needed to define relationships between any identified cultural and historic properties and the proposed activity.

(ii) Where the predictive model indicates that cultural and historic properties will not be found on any lands subject to direct or indirect impact, no survey shall be required.

(iii) Where the predictive model indicates that cultural and historic properties may be found on lands subject to direct or indirect impact, but a survey has not yet been conducted, a survey shall be required.

(iv) Where there is insufficient information to serve as a reliable basis for predicting whether cultural and historic properties may be found, a survey shall be required.

(v) If a survey is not required, and no cultural and historic properties are known, the HPO shall so advise the agency in writing. The agency may then proceed, complying with Subsection 8 of this section where applicable.

(vi) If a survey is not required, and cultural and historic properties are known on the lands subject to direct or indirect impact, the HPO shall so advise the agency in writing. The agency shall then comply with Subsection 7 or 8 of this section, whichever is applicable.

(vii) If a survey is required, the agency shall:

(A) afford the HPO a reasonable opportunity to conduct a survey, in accordance with the schedule set forth in section 11;

(B) transfer funds, or where applicable require a permittee to transfer funds, to the HPO to conduct the survey in a shorter time period than allowed by section 11. Funds to be transferred include, where applicable, transportation costs, per diem, equipment rental and salaries; or

(C) conduct the survey itself, or where applicable require a permittee to conduct a survey, using supervisory personnel approved by the HPO and in a manner consistent with the standards promulgated by the HPO pursuant to the "Regulations Regarding The Conduct of Archaeological And Anthropological Research In The Republic 1991", and provide the report of the survey to the HPO for review and approval. If a survey under this Subparagraph (C) is chosen, then the HPO may, at its discretion, assign a member of the HPO staff to the survey, the expenses and salaries of whom shall be covered by the agency conducting the survey.

(3) All surveys shall take into account pertinent Republic of the Marshall Islands National Standards, or where such standards have not yet been promulgated, United States Government standards and relevant international recommendations.

(4) If a survey results in the identification of a cultural and historic property subject to direct or indirect impact, the survey report shall contain recommendations for the avoidance or mitigation of such impact,

recommendations for the significance of the cultural and historic property in accordance with section 6 of these regulations and, where feasible, recommendations for enhancement of beneficial effects on the property.

(5) If a survey results in the finding that no cultural and historic properties are subject to direct or indirect impact, the HPO upon approving the report shall so advise the agency in writing. The agency may then proceed, complying with Subsection 8 of this section where applicable.

(6) If a survey results in the finding that cultural and historic properties are subject to direct or indirect impact, the HPO upon approving the report shall so advise the agency in writing. The agency shall then comply with Subsection 7 or 8 of this section, whichever is applicable.

(7) Where the HPO finds that a cultural and historic property will be directly or indirectly impacted by the disposal or use of public lands:

(a) The HPO shall report the finding, together with recommendations as to how the anticipated impacts can be avoided or mitigated, to the agency and the Council.

(b) The Council shall review the findings and recommendations of the HPO to determine their consistency with the policies set forth in section 3 of the Historic Preservation Act 1991.

(c) The Council shall request, receive, and review the comments of the agency involved in the action, of any potential recipient or user of the lands, and of the public.

(d) The Council may modify the findings and recommendations, or direct the the HPO to do so, in or-

der to make them consistent with the policies set forth in section 3 of the Historic Preservation Act 1991.

(e) Upon determining that the findings and recommendations are consistent with the policies in section 3 of the Historic Preservation Act 1991, the Council shall approve them and so advise the agency.

(f) Upon receipt of the findings and recommendations approved by the Council, the agency shall modify the proposed action to accommodate the recommendations, and shall include the findings, recommendations, and a description of the modifications in any planning and environmental document required for the action, or shall desist from the proposed action.

(g) Should the agency be unable or unwilling to comply with the recommendations, it may consult with the HPO to modify the recommendations, and request their resubmission to the Council. Such consultation shall be guided by the policies set forth in section 3 of the Historic Preservation Act 1991, and shall afford the public a reasonable opportunity to participate.

(8) Where an agency proposes to issue a permit for, or assist, a nonexempt regulated activity on private land, upon receipt of the findings and recommendations of the HPO pursuant to this section, the agency shall:

(a) include the report, or a synopsis thereof approved by the HPO, in any planning and environmental document required for the activity;

(b) make the full report, if any, available to the public at a convenient location; and

(c) publish notice of the availability of the report.

(9) Within thirty (30) days after promulgation of a report or synopsis in an environmental document pursuant to this section, or after publication of notice pursuant to this section, whichever is later, any person may appeal the HPO's findings and recommendations to the Council. An appeal shall be made in writing, in English or in Marshallese, and a copy shall be provided to the HPO. Upon receipt of an appeal, the HPO shall consult with the appellant, the agency, and any other appropriate party, if any, to seek agreement on a course of action that will remove the objection.

(10) Notwithstanding Subsection 9 of this section, the HPO may without consultation recommend to the Council that an appeal be rejected as frivolous, and the Council may reject the appeal as such, if the HPO finds and documents that the standards set forth in section 12 of these regulations are not met by the appeal.

(11) Where the HPO has determined that a cultural and historic property or properties will be directly or indirectly impacted by the proposed action, or if as the result of an appeal it is determined that such a property or properties will be impacted, the parties involved, including but not limited to the HPO, the agency responsible for the action, permit, or assistance, and other persons with financial, professional, or cultural interests in the lands or properties involved, shall consult to determine feasible and prudent means, if any, to avoid, mitigate, or satisfactorily reduce the level of impact to the property or properties. Unless the parties mutually agree to a longer time, the consultation shall be completed within thirty (30) days after the close of the comment period provided for in

Subsection 9 of this section. Consultation shall be carried out as follows:

(a) The agency responsible for permitting or assisting the activity shall publish notice of the beginning of consultation, advising the public of the location and time of the first consultation meeting and inviting public participation.

(b) The agency or the applicant for a permit or assistance shall provide the HPO with a plan for treating the cultural and historic property or properties subject to impact. This plan shall take into account the property's significance, with reference to section 6 of these regulations, and pertinent national, federal, and international standards and guidelines, and shall be consistent with the policies set forth in section 3 of the Historic Preservation Act 1991 and the standards set forth in the "Regulations Regarding The Conduct of Archaeological And Anthropological Research In The Republic 1991", as applicable. The plan may include:

- (i) provision for preservation of a property in place and unchanged;
- (ii) provision for the adaptive use of a property;
- (iii) provision for data recovery, including analysis, dissemination of results, and curation of artifacts and records;
- (iv) provision for project design to ensure sympathetic treatment of a property's significant elements;
- (v) such other provisions as may be appropriate to the property and the activity; and

(vi) a rationale, based on the public interest and taking into account the policies set forth in section 3 of the Historic Preservation Act 1991, for destroying or damaging the property without avoiding, mitigating, or satisfactorily reducing the level of damage.

(c) The parties shall review the plan and consult to determine what changes may be needed, if any, in order to ensure its prudence, feasibility, and consistency with the policies in section 3 of the Historic Preservation Act 1991 and other provisions of law. Consultation shall be directed toward determining feasible and prudent means to avoid, mitigate or satisfactorily reduce the level of damage to the property. Should it be proposed not to pursue such means, the burden of proof shall be on those so proposing to demonstrate why such a proposal is in the public interest.

(d) The HPO shall consult with the Cultural Resource Officer of the local government and the appropriate Iroij, Alap and Dri Jerbal to solicit their opinions, which shall be incorporated into the plan.

(e) Subject to Paragraph (f) of this Subsection, once the parties have agreed on a plan, they shall indicate their agreement in writing. The plan shall become a binding part of the permitted or assisted activity, and shall be enforced by the agency responsible for issuing the permit or providing the assistance.

(f) If the historic or cultural property affected has a significance level of "significant" or "very significant", the plan agreed upon by the parties shall be submitted to the Advisory Council for Historic Preservation for final approval.

(g) The agency responsible for issuing the permit or providing the assistance shall publish the results of the consultation.

(12) Should the parties be unable to agree on a plan, they shall submit a report to the Advisory Council for Historic Preservation. This report, which may contain separate sections prepared by parties holding different opinions, shall outline the consultation undertaken, identify the issues that separate the parties, and offer recommendations including options for the Council's action. The Council shall then decide on the course of action to be taken. The Council's decision shall be binding.

(13) If the HPO, after the completion of these proceedings, has reason to believe that the cultural or historic site is not only "very significant" but of national or international significance, the HPO may, through the Office of the Attorney General, initiate condemnation proceedings for the taking of that property for public use upon the payment of just compensation in accordance with Article II, section 5 of the Constitution.

(14) During the course of construction or land use, should a cultural and historic property be discovered that was not previously identified and considered in accordance with this Act:

(a) Work shall be halted by those responsible for the activity, in the immediate vicinity of the property. Work may continue on elements of the activity that do not threaten the property.

(b) Having halted work, the party responsible for the activity shall contact the HPO and cooperate with the HPO in an on-site inspection.

(c) The HPO shall consult with the party responsible for the activity, to establish interim measures to protect the property as needed with minimum impediment to the construction or land use activity.

(d) The party responsible for the activity shall contact known persons having financial, professional, or cultural interests in the property, if any, and arrange for prompt consultation with these persons and the HPO.

(e) If as a result of this consultation agreement is reached concerning the proper treatment of the property, this agreement shall become a binding part of the activity, which may then proceed in compliance with the agreement.

(f) Should the HPO determine during the on-site inspection that the property falls into a class determined by the Council not to be cultural and historic, or that immediate data recovery or other preservation actions can and should be undertaken and will be effective in preserving the property's significant elements, the HPO may waive the collective requirements of Paragraphs (d), (e) and (f) of this Subsection, contingent upon conduct of the preservation actions, if any, determined by the HPO to be appropriate.

(15) The HPO may at its discretion or at the request of an agency elect to exercise its authorities and responsibilities under this Act on a programmatic basis rather than with reference to individual projects. Programmatic consultation shall be carried out in the manner prescribed in this section, but with reference to an entire program rather than to individual actions and projects. Programmatic agreements between the HPO and other persons or agencies shall be submitted to the

Council for review and approval, and shall become effective upon approval by the Council. Should agreement not be reached, individual actions under the subject program shall be reviewed on an individual basis in accordance with this Act.

(16) Where both these regulations and §§ 106 or 110 of the United States National Historic Preservation Act of 1966, as amended, apply to an action, compliance with both authorities shall be coordinated to the extent feasible.

(a) Cultural and historic properties shall be assumed to be eligible for the United States National Register of Historic Places unless the United States Keeper of the National Register otherwise determines.

(b) Where the Council determines that a property, group of properties, or class of properties is not cultural and historic, or the HPO determines that a property subject to impact is not cultural and historic, if a party objects to this determination and the objection is not rejected as frivolous pursuant to this section, a question shall be determined to exist and the Keeper of the National Register shall be asked to make a final determination of the property's eligibility for the National Register.

(c) Reports, plans, recommendations and decisions developed under these regulations shall be provided to responsible United States Federal agencies for submission to the United States Advisory Council on Historic Preservation for review under section 106 or 110(f) of the United States National Historic Preservation Act of 1966, as amended, whichever is applicable, in a manner consistent with the regulations of the United States Advisory Council on Historic Preservation .

(d) To the extent feasible, parties consulting under these regulations on an activity or program in which a on United States Federal agency is involved shall coordinate their consultation with the involved United States Federal agency and the United States Advisory Council on Historic Preservation, and shall encourage the United States Federal agency to obtain the United States Advisory Council on Historic Preservation comments pursuant to §§ 106 or 110(f) of the United States Historic Preservation Act of 1966, as amended, during consultation and review pursuant to this section.

(e) Notwithstanding paragraphs (a) to 9d) of this subsection, the applicant has to comply with the provisons of these regulations as set out in subsections (1) to (18) of this section. Failure to comply with any of these provisions shall constitute a punishable offense.

§ 10. Results of investigations to remain in public domain.

The information resulting from the survey, data recovery or any other mitigation process, including the scientific investigation of any artifacts, shall remain in the public domain. Such information, including all records of the survey, excavation and artifacts, shall be curated in accordance with accepted museum and laboratory practice, and published as appropriate.

§ 11. Schedule for the Conduct of Surveys.

(1) Where an agency or other person requests that the HPO conduct a survey under section 9 of these regulations, the HPO shall use the following schedule to determine the time needed to conduct the survey:

(a) On Majuro Atoll: one (1) month per acre or fraction thereof subject to direct or indirect impact.

(b) On other atolls or islands serviced by air transportation: two (2) months per acre or fraction thereof subject to direct or indirect impact.

(c) On all other atolls or islands: three (3) months per acre or fraction thereof subject to direct or indirect impact.

(d) Underwater: negotiable depending on weather conditions, turbidity, depth, location, danger of sharks, and other conditions.

All time limits are subject to extension in the event of typhoons, tidal waves or other natural disasters, or in the event of refusal of a landowner or tenant to grant access to that property.

(2) The agency or person requesting that the HPO conduct a survey shall transfer funds to cover:

(a) travel costs, including air fare, boat hire, vehicle hire and equipment rental, where applicable;

(b) per diem if the survey area is not on Majuro Atoll or if the survey requires one or more overnight stays; and

(c) material expenses related to underwater survey.

§ 12. Criteria for Appeals.

Where an appeal is filed pursuant to section 9(9) of these regulations, the HPO may recommend to the Council that the appeal be rejected as frivolous if it does not meet the following criteria.

(a) the appeal must present an allegation of fact that contradicts the finding, recommendation, or decision being appealed;

(b) the appeal must present supporting evidence which would tend to establish the validity of the allegation of fact; and

(c) the allegation presented in the appeal must be one that has not previously been received and addressed by the Council.

§ 13. Costs

(1) Except in cases where undue hardship would result, it shall be the sole responsibility of the party whose actions damage the subject cultural or historic property to bear the costs of avoiding, mitigating or satisfactorily reducing the level of damage.

(2) Unless excluded under Subsection (3) of this section, undue hardship may be claimed in those circumstances where:

(a) the construction applied for is destined for private domestic use only; or

(b) the area affected by the construction is 0.25 acres or less; or

(c) the costs of mitigation exceed five (5) percent of the total construction budget.

(3) Undue hardship may not be claimed in circumstances where:

(a) the construction is funded by United States Federal funds;

(b) the construction is funded by overseas aid;

(c) the construction is funded by the National Government or any local government of the Republic; or

(d) the construction is funded by companies with more than thirty (30) percent overseas capital.

(4) If undue hardship is claimed under Subsection 2(c) of this section, the contractor shall provide five (5) percent of the final and total construction budget to the HPO. The HPO shall conduct the mitigation using the funds provided and additional funds drawn from the Historic Preservation Office Fund as established under §14 of the Historic Preservation Act 1991.

(5) Any application for a permit shall be accompanied by:

(a) a statement where the funding for the construction originates. A signed, certified copy of an affidavit filed with the court of the Republic shall constitute such statement; and

(b) a receipt for a payment of one hundred dollars (\$100) payable to the HPO; or

(c) proof that the intended construction is for private domestic use only. A signed, certified copy of an affidavit filed with the court of the Republic shall constitute such proof. For purposes of this section, "private domestic use" includes the construction of a privately owned restaurant/take-out with

(i) less than five hundred (500) square meters of ground space; and

(ii) less than thirty (30) percent overseas capital.

§ 14 Violations

1) A person who violates any provision of these regulations or requirement thereunder, shall be subject to enforcement action by the Historic Preservation Office.

2) Any violation of these regulations constitutes a punishable offense under Section 21 of the Historic Preservation Act 1991.