

**5 GCA GOVERNMENT OPERATIONS
CH. 65 LAND CONSERVATION ACT**

**CHAPTER 65
LAND CONSERVATION ACT**

- Article 1. General Provisions.
- Article 2. Agricultural Preserves.
- Article 3. Contracts.
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- Article 5. Eminent Domain or Other Acquisition.

**ARTICLE 1
GENERAL PROVISIONS**

- § 655101. Citation of Chapter.
- § 655102. Definitions.
- § 655103. Inclusion within Agricultural Preserve.

§ 655101. Citation of Chapter.

This Chapter shall be known as the Guam Land Conservation Act.

SOURCE: GC § 12500 as added by P.L. 12-225. In the 1974 Supplement to the Government Code, this Chapter is found as GC § 12600 et seq. All SOURCE references in this Chapter are to P.L. 12-225 unless noted otherwise.

§ 655102. Definitions.

As used in this Chapter, unless otherwise apparent from the context:

(a) *Agricultural commodity* means any and all plant and animal products produced in this territory for commercial purposes.

(b) *Agricultural use* means use of land for the purpose of producing an agricultural commodity for commercial purposes.

(c) *Prime agricultural land* means any of the following:

(1) Land which supports livestock used for the production of food and fiber and which has an actual carrying capacity equivalent to at least one animal unit per acre as defined by the U. S. Department of Agriculture.

(2) Land planted with fruit or nut- bearing trees, vines, bushes or crops which have a non-bearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the

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production of unprocessed agricultural plant production not less than Two Hundred Dollars (\$200) per acre.

(3) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than Two Hundred Dollars (\$200) per acre for three of the previous five years.

(d) *Agricultural preserve* means an area devoted to either agricultural use, recreational use as defined in subsection (h) or an open space use as defined in subsection (i) or any combination of such uses, and compatible uses as designated by the Department.

(e) *Compatible use* is any use determined by the Department or by this Chapter to be compatible with the agricultural, recreational, or open space use of land within the preserve and subject to contract. Compatible use includes agricultural use, recreational use, or open space use unless the Department finds after notice and hearing that such use is not compatible with the agricultural, recreational or open space use to which the land is restricted by contract pursuant to this Chapter.

(f) *Department* means the Department of Agriculture.

(g) *Director* means the Director of the Department of Agriculture.

(h) *Recreational use* is the use of land by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, hunting, or other outdoor games or sports for which facilities are provided for public participation. Any fee charged for the recreational use of land as defined in this subsection shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public.

(i) *Open space use* is the use or maintenance of land in such a manner as to preserve its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, or to provide essential habitat for wildlife.

SOURCE: GC § 12501.

§ 655103. Inclusion within Agricultural Preserve.

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Notwithstanding any provision of this Chapter to the contrary, the following may be included within an agricultural reserve pursuant to this Chapter:

- (a) Land devoted to recreational use;
- (b) A wildlife habitat area which is a land or water area designated by the Department as an area of great importance for the protection or enhancement of the wildlife resources of this territory;
- (c) A submerged area which is any land determined by the Department to be submerged or subject to tidal action and found by the Department to be of great value to the territory as an open space.

When such land is included within an agricultural preserve, the Department may contract with the owner for the purpose of restricting land to recreational or open space use and uses compatible therewith in the same manner as provided in this Chapter for land devoted for agricultural use. For the purpose of this section, where the term agricultural land is used in this Chapter it shall be deemed to include land devoted to recreational use and land within a wildlife habitat area or a submerged area, and where the term agricultural use is used in this Chapter it shall be deemed to include recreational and open space use.

SOURCE: GC § 12503.

**ARTICLE 2
AGRICULTURAL PRESERVES**

- § 655201. Establishment of Preserves.
- § 655202. Rules Governing Administration and Establishing of Preserves.
- § 655203. Alteration of Boundaries.
- § 655204. Territorial Land Use Commission Involvement.
- § 655205. Removal of Land from Preserve.
- § 655206. Filing of Map; Keeping Current.
- § 655207. Utility Facilities as Compatible Use.

§ 655201. Establishment of Preserves.

Beginning January 1, 1974, the Department, after a public hearing may establish agricultural preserves. No later than thirty (30) days prior

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to any such hearing the Department shall publish in a newspaper of general circulation in the Territory a notice which shall include a legal description, or the assessor's parcel number, of the land which is proposed to be included within the preserve. Such preserve shall be established for the purpose of defining the boundaries of those areas within which the Department will be willing to enter into contracts pursuant to this Chapter. An agricultural preserve shall consist of no less than ten hectares; provided, that in order to meet this requirement, two or more parcels may be combined if they are contiguous or if they are in common ownership.

The Department may establish agricultural preserves of less than ten hectares if it finds that smaller preserves are necessary due to the unique characteristics of the agricultural enterprises in the area, and that the establishment of preserves of less than ten hectares is consistent with the general plans of the Department.

An agricultural preserve may contain land other than agricultural land, but the use of any land within the preserve and not under contract shall within two years of the effective date of any contract on land within the preserve be restricted by zoning or other suitable means in such a way as not to be incompatible with the agricultural use of the land, the use of which is limited by contract in accordance with this Chapter.

Failure on the part of the Department to restrict the use of land within a preserve but not subject to contract shall not be sufficient reason to cancel or otherwise invalidate a contract.

SOURCE: GC § 12504.

§ 65202. Rules Governing Administration and Establishing of Preserves.

For the purposes of this Chapter, the Department shall adopt rules governing the administration of agricultural preserves, including procedures for initiating, filing and processing requests to establish agricultural preserves. Such rules shall be applied uniformly throughout the preserve, shall enumerate those uses which are to be considered to be compatible uses, and may require the payment of a reasonable application fee. The same procedure that is required to establish an agricultural preserve shall be used to disestablish or to enlarge or diminish the size of an agricultural preserve.

SOURCE: GC § 12505.

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§ 655203. Alteration of Boundaries.

In the event any proposal to disestablish or to alter the boundary of an agricultural preserve will remove land under contract from such a preserve, notice of the proposed alteration or disestablishment and the date of the hearing shall be furnished by the board or council to the owner of the land by certified mail directed to him at his latest address known to the Department. Such notice shall also be furnished by first class mail to each owner of land in that preserve which has a common boundary with the land to be removed from the preserve.

SOURCE: GC § 12506.

§ 655204. Territorial Land Use Commission Involvement.

Any proposal to establish an agricultural preserve shall be submitted to the Territorial Land Use Commission. Within thirty (30) days after receiving such a proposal, the Territorial Land Use Commission shall submit a report thereon to the Department; provided, however, that the Department may extend the time allowed for an additional period not to exceed thirty (30) days.

The report shall include a statement that the preserve is consistent, or inconsistent, with general plans, and the Department shall make a finding to such effect. Final action on the establishment of an agricultural preserve may not be taken by the Department until the report required by this section is received from the Territorial Land Use Commission, or until the required thirty days have elapsed and any extensions thereof granted by the Department have elapsed.

SOURCE: GC § 12507.

§ 655205. Removal of Land from Preserve.

The effect of removal of land under contract from an agricultural preserve shall be the equivalent of notice of nonrenewal by the Department and the Department shall, at least sixty (60) days prior to the next renewal date following the removal, serve a notice of nonrenewal as provided in § 65307. Such notice of nonrenewal shall be reported as provided in § 655310.

SOURCE: GC § 12508.

§ 655206. Filing of Map; Keeping Current.

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Whenever an agricultural preserve is established and so long as it shall be in effect, a map of such agricultural preserve shall be filed and kept current by the Department of Agriculture with the Department of Land Management.

SOURCE: GC § 12509.

§ 655207. Utility Facilities as Compatible Use.

Notwithstanding any determining of compatible uses by the Department pursuant to this Chapter, unless the Department, after notice and hearing, makes a finding to the contrary, the erection, construction, alteration, or maintenance of electric, water, or communication utility facilities are hereby determined to be compatible uses within any agricultural preserve. No land occupied by electric, water or communication utility facilities shall be excluded from an agricultural preserve by reason of such use.

SOURCE: GC § 12510.

**ARTICLE 3
CONTRACTS**

- § 655301. Authority of Department to Contract.
- § 655302. Equality of Contracts.
- § 655303. Land on which Department may Contract.
- § 655304. Contracts.
- § 655305. Terms of Contract.
- § 655306. Term of 20 or More Years.
- § 655307. Notice of Nonrenewal.
- § 655308. Termination of Contract.
- § 655309. Information Furnished by Landowner.
- § 655310. Recording the Contract.
- § 655311. Enforcement of Contract.

§ 655301. Authority of Department to Contract.

The Department may, by contract, limit the use of agricultural land for the purpose of preserving such land pursuant and subject to the conditions set forth in the contract and in this Chapter. A contract may

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provide for restrictions, terms and conditions, including payments and fees, more restrictive than or in addition to those required in this Chapter.

SOURCE: GC § 12511.

§ 655302. Equality of Contracts.

If such a contract is made with any landowner, the Department shall offer such a contract under similar terms to every other owner of agricultural land within the agricultural preserve in question.

However, except as required by other provisions of this Chapter, the provisions of this section shall not be construed as requiring that all contracts affecting land within a preserve be identified, so long as such differences as exist are related to differences in location and characteristics of the land, pursuant to uniform rules adopted by the Department.

SOURCE: GC § 12512.

§ 655303. Land on which Department may Contract.

The Department may not contract with respect to any land pursuant to this Chapter unless the land (a) is devoted to agricultural use, and (b) is located within an area designated as an agricultural preserve.

SOURCE: GC § 12513.

§ 655304. Contracts.

Every contract shall:

(a) Provide for the exclusion of uses other than agricultural and other than those compatible with agricultural use, for the duration of the contract;

(b) Be binding upon, and inure to the benefit of, all successors in interest to the owner. Whenever land under a contract is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided land, any of the rights of the owner of a portion of the divided land, and any of the rights of the owner of the original contract, including the right to give notice of nonrenewal and to petition for cancellation. The effect of any such action by the owner of a parcel created by the division of land under contract shall not apply to the owners of the remaining parcels and shall have no effect on the contract as it applies to the remaining parcels of the divided land.

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SOURCE: GC § 12514.

§ 655305. Terms of Contract.

Each contract shall be for an initial term of no less than ten years. Each contract shall provide that on the anniversary date of the contract, or such other annual date as specified by the contract, a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in § 655307.

SOURCE: GC § 12515.

§ 655306. Term of 20 or More Years.

Notwithstanding the provisions of § 655305, if the initial term of the contract is for twenty years or more the contract may provide that on the anniversary date of the contract or such other annual date as specified by the contract beginning with the anniversary date on which the contract will have an unexpired term of nine years, a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided by § 655307.

SOURCE: GC § 12516.

§ 65307. Notice of Nonrenewal.

If either the landowner or the Department desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract upon the other party in advance of the annual renewal date of the contract. Unless such written notice is served by the landowner at least ninety days prior to the renewal date or by the Department at least sixty days prior to the renewal date, the contract shall be considered renewed as provided in § 655305 or § 655306.

Upon receipt by the owner of a notice from the Department of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The Department may, at any time prior to the renewal date, withdraw the notice of nonrenewal. Upon request by the owner, the Department may authorize the owner to serve a notice of nonrenewal on a portion of the land under a contract.

SOURCE: GC § 12517.

§ 65308. Termination of Contract.

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If the Department or the landowner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

SOURCE: GC § 12518.

§ 655309. Information Furnished by Landowner.

The landowner shall furnish the Department with such information as it shall require in order to enable it to determine the eligibility of the land involved.

SOURCE: GC § 12519.

§ 655310. Recording the Contract.

No later than twenty days after the Department enters into a contract with a landowner pursuant to this Chapter, the Department shall record with the Department of Land Management a copy of the contract, which shall describe the land subject thereto, together with a reference to the map showing the location of the agricultural preserve in which the property lies. From and after the time of such recordation such contract shall impart such notice thereof to all persons as is afforded by the recording laws of the Territory.

SOURCE: GC § 12520.

§ 655311. Enforcement of Contract.

The Territory or landowner may bring any action in court necessary to enforce any contract including but not limited to an action to enforce the contract by specific performance or injunction.

SOURCE: GC § 12521.

**ARTICLE 4
CANCELLATION**

- § 655401. Purpose.
- § 655402. Request by Landowner.
- § 655403. Conditions of Approval.

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- § 655404. Assessment of Land; Determination of Cancellation Fee; Deferred Taxes; Waiver of Payment; Distribution of Deferred Taxes.
- § 655405. Recording of Cancellation Certificate.
- § 655406. Public Hearing.
- § 655407. Protest by Other Owners in Preserve.

§ 655401. Purpose.

It is hereby declared that the purpose of this Article is to provide relief from the provisions of contracts entered into pursuant to this Chapter only when the continued dedication of land under such contracts to agricultural use is neither necessary nor desirable for the purposes of this Chapter.

SOURCE: GC § 12522.

§ 655402. Request by Landowner.

A contract may not be cancelled except pursuant to a request by the landowner, and as provided by this Article.

SOURCE: GC § 12523.

§ 655403. Conditions of Approval.

The landowner may petition the Department for cancellation of any contract as to all or any part of the subject land. The Department may approve the cancellation of a contract only if it finds:

- (a) that the cancellation is not inconsistent with the purposes of this Chapter; and
- (b) that cancellation is in the public interest.

The existence of an opportunity for another use of the land involved shall not be sufficient reason for the cancellation of a contract. A potential alternative use of the land may be considered only if there is no proximate, noncontracted land suitable for the use to which it is proposed the contracted land be put.

The uneconomic character of an existing agricultural use shall likewise not be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

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SOURCE: GC § 12524.

§ 655404. Assessment of Land; Determination of Cancellation Fee; Deferred Taxes; Waiver of Payment; Distribution of Deferred Taxes.

(a) Prior to any action of the Department giving tentative approval to the cancellation of any contract, the assessor shall determine the full cash value of the land in accordance with 11 GCA §§ 24305, 24306, 24307 as though it were free of the contractual restriction imposed pursuant to *[\\$19312.4 of the Government Code.] The assessor shall then determine the amount of deferred taxes and certify same to the Department as the cancellation valuation of the land for the purpose of determining the cancellation fee.

NOTE: *This is the section number given in P.L. 12-225; however, no equivalent section number in the current law has been identified by the Compiler which may be cited here.

(b) Prior to giving tentative approval to the cancellation of any contract the Department shall determine and certify to the landowner the amount of the cancellation fee which he must pay the government of Guam, as deferred taxes upon cancellation. That fee shall be an amount equal to fifty percent (50%) of the cancellation valuation of the property.

(c) If it finds that it is in the public interest to do so the Department may waive any such payment or any portion thereof, or may make such payment or a portion thereof contingent upon the future use made of the land and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been cancelled, provided:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used for a purpose would produce a greater economic return to the owner,

(2) The Department has determined it is in the best interests of the program to conserve agricultural use that such payment be either deferred or not required.

(d) When deferred taxes required by this section are collected, they shall be transmitted by the Treasurer of Guam to the General Fund.

SOURCE: GC § 12525.

§ 655405. Recording of Cancellation Certificate.

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Upon tentative approval of the cancellation petition, the Department of Agriculture shall record in the Department of Land Management a certificate which shall set forth the name of the owner of such land at the time the contract was cancelled with the amount of the cancellation fee certified by the Department as being due pursuant to this Article, the contingency of any waiver or deferment of payments, and a legal description of the property. From the date of recording of such certificate the contract shall be finally cancelled and, to the extent cancellation fee has not yet been paid, a lien shall be created and attached against the real property described therein and any other real property owned by the person named therein as the owner. Such lien shall have the force, effect and priority of a judgment lien. Nothing in this section or in § 655404 shall preclude the Department from requiring payment in full of the cancellation fee prior to the cancellation becoming effective.

In no case shall the cancellation of a contract be final until the notice of cancellation is actually recorded as provided in this section. Notwithstanding any other provision of law, any payments required by § 655404 shall not create nor impose a lien or charge on the land as to which a contract is cancelled except as herein provided.

Upon the payment of the cancellation fee or any portion thereof the Department of Agriculture shall record with the Department of Land Management a written certificate of the release in whole or in part of the lien.

SOURCE: GC § 12526.

§ 655406. Public Hearing.

No contract may be cancelled until after the Department has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be published in a newspaper of general circulation for ten days prior to such hearing, and shall be mailed to each and every owner of land under contract, and any portion of which is situated within the same agricultural preserve and within one mile of the exterior boundary of the land upon which the contract is proposed to be cancelled.

SOURCE: GC § 12527.

§ 655407. Protest by other Owners in Preserve.

The owner of any property located in the agricultural preserve may protest such cancellation to the Department conducting the hearing.

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SOURCE: GC § 12528.

**ARTICLE 5
EMINENT DOMAIN OR OTHER ACQUISITION**

§ 655501. Public Improvements Within Preserve.

§ 655502. Voiding of Contract by Eminent Domain.

§ 655501. Public Improvements Within Preserve.

(a) It is the policy of the Territory of Guam to avoid, whenever practicable, the location of any territorial public improvements of public utilities, and the acquisition of land therefor, in agricultural preserves.

(b) It is further the policy of the Territory that, whenever it is necessary to locate such improvements, they shall, whenever practicable, be located upon land other than land under contract pursuant to this Chapter.

(c) It is further the policy of the Territory that any agency or entity proposing to locate such an improvement shall, in considering the relative costs of parcels of land and development of improvements, give consideration to the value of the public land, and particularly prime agricultural land within an agricultural preserve.

SOURCE: GC § 12529.

§ 655502. Voiding of Contract by Eminent Domain.

When any action in eminent domain for the condemnation of the fee title of an entire parcel of land subject to a contract is filed or when such land is acquired in lieu of eminent domain for a public improvement by a public agency or whenever there is any such action or acquisition by the federal government or power of the federal government, such contract shall be deemed null and void as to the land actually being condemned or acquired as of the date the action is filed and for the purposes of establishing the value of such land, the contract shall be deemed never to have existed.

Upon termination of such a proceeding, the contract shall be null and void for all land actually taken or acquired.

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When such an action to condemn or acquire less than all of a parcel of land subject to a contract is commenced, the contract shall be deemed null and void as to the land actually condemned or acquired and shall be disregarded in the valuation process only as to the land actually being taken, unless the remaining land subject to contract will be adversely affected by the condemnation, in which case the value of that damage shall be computed without regard to the contract.

When such an action to condemn or acquire an interest which is less than the fee title of an entire parcel or any portion thereof, or land subject to a contract is commenced, the contract shall be deemed null and void as to such interest and for the purpose of establishing the value of such interest only shall be deemed never to have existed, unless the remaining interests in any of the land subject to the contract will be adversely affected, in which case the value of that damage shall be computed without regard to the contract.

The land actually taken shall be removed from the contract. Under no circumstances shall land be removed that is not actually taken, except that when only a portion of the land or less than a fee interest in the land is taken or acquired, the contract may be cancelled with respect to the remaining portions or interest upon petition of either party and pursuant to the provisions of Article 4.

For the purpose of this section, a finding by the Department that no authorized use may be made of the land if the contract is continued on the remaining portions or interest in the land may satisfy the requirements of subsections (a) and (b) of § 655401.

SOURCE: GC § 12530.
