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CH. 76 HISTORICAL OBJECTS AND SITES**

**CHAPTER 76
HISTORICAL OBJECTS AND SITES**

NOTE: This Chapter was repealed by P.L. 25-069 (July 8, 1999) when it was transferred to the Department of Chamorro Affairs. After the Legislature discovered that such a transfer would cause the loss of federal funds, P.L. 25-072 (Sept. 30, 1999) undid all of the changes to this Chapter caused by P.L. 25-069. This Chapter was never recodified after its revival, so the Legislature again clarified matters in P.L. 27-089 (May 6, 2004), which also repealed and reenacted Article 6 of this Chapter.

- Article 1. General Provisions.
- Article 2. Conservation of Archaeological Resources.
- Article 3. Protection and Recovery of Underwater Historic Property and Sites.
- Article 4. Guam Institute of Spanish-Chamorro Culture. [Repealed]
- Article 5. Preservation Procedures to Guide Territorial Agencies.
- Article 6. Guam Preservation Trust.

**ARTICLE 1
GENERAL PROVISIONS**

- § 76101. Purpose.
- § 76102. Definitions.
- § 76103. Historic Preservation and Restoration.
- § 76104. Administration.
- § 76105. Acquisitions and Gifts.
- § 76106. Condemnation.
- § 76107. Interest Acquired.
- § 76108. Operation of Parties.
- § 76109. Conveyance of Properties.
- § 76110. Contracts.
- § 76111. Entry Upon Private Land.
- § 76112. Excavation and Removal of Prehistoric and Historic Remains or Objects on Private Lands.
- § 76113. Court Actions.
- § 76114. Guam Museum as a Depository for Certain Specimens and Objects.
- § 76115. Designation of Historic Sites.

§ 76101. Purpose.

Whereas the Legislature has determined that the historic, archaeological, architectural, and cultural heritage of Guam is among her most important environmental assets and furthermore that the rapid social and economic development of contemporary society threatens to destroy the remaining vestiges of this Spanish-Chamorro heritage, it is declared to be the public policy and in the public interest of this territory to engage in a comprehensive program of historic preservation, undertaken at all levels of the government of this territory, and to promote the use and conservation of such property for education, inspiration, pleasure, and enrichment of the residents of this territory.

SOURCE: GC § 13985 enacted by P.L. 10-068 (July 30, 1969). Repealed and reenacted by P.L. 12-126 (May 3, 1974).

§ 76102. Definitions.

When used in this Chapter *department* means the *Department of Parks and Recreation*.

(a) *Historic preservation* means the research, protection, restoration, and rehabilitation of sites, buildings, structures, and objects significant in the history, architecture, archaeology, or culture of Guam.

(b) *Historic property* means any building, structure, object, area, or site that is significant in the history, architecture, archaeology, or culture of Guam or the nation.

SOURCE: GC § 13985.1 enacted by P.L. 10-068 (July 30, 1969), repealed and reenacted by P.L. 12-126 (May 3, 1974), and amended by P.L. 12-209 (Jan. 23, 1975).

§ 76103. Historic Preservation and Restoration.

The Department in cooperation with the Territorial Land Use Commission and the Territorial Seashore Protection Commission shall establish a comprehensive program for historic preservation, restoration, and presentation, which shall include but not be limited to the following:

- (a) Plans to acquire, restore, and preserve historic areas, buildings, and site significant to Guam's past;
- (b) Establish and maintain the Guam Register of Historic Places;
- (c) Establish regulations on the uses of such areas;

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(d) Develop a territory wide survey of historic areas, buildings, and sites with a phased preservation and restoration development plan and accompanying budget and land use recommendations;

(e) Provide for matching grants-in-aid to private agencies for projects which will fulfill the purposes of this Chapter;

(f) Seek assistance for the territorial historic preservation and restoration program by applying for technical assistance and funds from the federal government and private agencies and foundations for the purposes of this Chapter;

(g) Employ sufficient professional and technical staff for the purposes of this Chapter;

(h) Advise and cooperate with other public and private agencies engaged in similar work;

(i) Submit an annual report and budget to the Governor and the Legislature by February 1st of each year, with recommendations for programs of historic preservation and restoration.

SOURCE: GC § 13985.2 enacted by P.L. 10-068 (July 30, 1969), repealed and reenacted by P.L. 12-126 (May 3, 1974), and amended by P.L. 20-151:6 (Mar. 21, 1990). Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:6. However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:VI:13(c) (Sept. 30, 1999), which reverted the amendment of P.L. 20-151:6.

2016 NOTE: Subsection designations were altered to adhere to the Compiler's codification and alpha-numeric schemes pursuant to authority granted by 1 GCA § 1606.

§ 76104. Administration.

All territorial projects and programs relating to historic preservation and restoration shall come under the authority of the Department.

SOURCE: GC § 13985.3 enacted by P.L. 10-068 (July 30, 1969), and repealed and reenacted by P.L. 12-126 (May 3, 1974).

§ 76105. Acquisitions and Gifts.

(a) For the purpose of protecting or preserving any historic property, the Department may acquire, preserve, restore, hold, maintain, operate, or dispose of such properties, together with such adjacent or associated lands as may be necessary for their protection, preservation, maintenance, or operation. Such property may be real or personal in nature, and in the case of

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real property, the acquisition may include the fee or any lesser interest therein. Property may be acquired by gift, grant, bequest, devise, lease, purchase, condemnation, or otherwise. Property may be acquired by the Department, using such funds as may be appropriated for such purpose.

(b) The Department may receive gifts and grants from public and private sources to be used for the purposes of this Chapter.

SOURCE: GC § 13985.4 enacted by P.L. 12-126 (May 3, 1974).

2016 NOTE: Subsection/subitem designations were added to adhere to the Compiler's codification and alpha-numeric schemes pursuant to authority granted by 1 GCA § 1606.

§ 76106. Condemnation.

In the event that a property which has been found by the Department to be important for public ownership or assistance is in danger of being sold, used, or neglected to such an extent that its historical or cultural importance will be destroyed or seriously impaired, or that the property is otherwise in danger of destruction or serious impairment, the Department in cooperation with the Department of Land Management may acquire the historical property or any interest therein by condemnation under the laws of this territory. All condemnation proceedings shall be instituted and prosecuted in the name of the territory.

SOURCE: GC § 13985.5 enacted by P.L. 12-126 (May 3, 1974).

§ 76107. Interest Acquired.

In the case of real property, the interest acquired shall be limited to that estate, agency, interest, or term deemed by the Department to be reasonably necessary for the continued protection or preservation of the property. The Department may acquire the fee simple title, but where it finds that a lesser interest, including any development right, negative or affirmative easement in gross or appurtenant covenant, lease, or other contractual right of or to any real property, to be the most practical and economical method of protecting and preserving historical property, the lesser interest may be acquired.

SOURCE: GC § 13985.6 enacted by P.L. 12-126 (May 3, 1974).

§ 76108. Operation of Properties.

Any historic property acquired, whether in fee or otherwise, may be used, maintained, improved, restored, or operated by the Department for any public purpose within its powers and not inconsistent with the purpose of the

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continued preservation of the property. Such historic property shall not be subject to condemnation unless such method of acquisition is first approved by the Governor.

SOURCE: GC § 13985.7 enacted by P.L. 12-126 (May 3, 1974).

§ 76109. Conveyance of Properties.

In appropriate cases, the Department of Land Management with the concurrence of the Department may acquire or dispose of the fee or lesser interests to any historic property, including adjacent and associated lands, for the specific purpose of conveying or leasing the property back to its original owner or to any such other person, firm, association, corporation, or other organization under such covenants, deed restrictions, lease, or other contractual arrangements as will limit the future use of the property in such a way as to insure its preservation. In all cases where property is conveyed, it shall be subjected by covenant or otherwise to such rights of access, public visitation, and other conditions or restrictions of operation, maintenance, restoration, and repair as the Department may prescribe, or to such conditions as may be agreed upon between the Department and the grantee or lessee or accomplish the purposes of this section.

SOURCE: GC § 13985.8 enacted by P.L. 12-126 (May 3, 1974).

§ 76110. Contracts.

The Department may enter into and carry out contracts with the Federal government or any agency thereof under which the Federal government or agency grants financial or other assistance to the Department to further the purposes of this Chapter. The Department may agree to and comply with any reasonable conditions not inconsistent with territorial law which are imposed on such grants. Such grant funds or other assistance may be accepted from the Federal government or agency and expended whether or not pursuant to a contract. The Department may further enter into and carry out contracts with any private party to further the purpose of this Chapter.

SOURCE: GC § 13985.9 enacted by P.L. 12-126 (May 3, 1974).

§ 76111. Entry Upon Private Land.

The Department is authorized to enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof; provided that no member, employee or agent

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of the Department may enter any private building or structure without the express consent of the owner or occupant thereof.

SOURCE: GC § 13985.10 enacted by P.L. 12-126 (May 3, 1974).

§ 76112. Excavation and Removal of Prehistoric and Historic Remains or Objects on Private Lands.

(a) Before any prehistoric remains or objects are excavated or removed from private lands by the Department, the Department or its designated representatives may, for the purpose of examining the remains or objects, enter upon the land and make investigations. The entry shall not constitute a cause of action in favor of the owner of the land, except for damages resulting from willful acts or negligence on the part of the Department or its designated representatives.

(b) Removal of any prehistoric or historic remains or objects from private lands shall be made in the presence of the owner as witness. Whenever any prehistoric or historic remains or objects are excavated or removed from private lands by the Department or its designated representatives, the owner of such lands shall be compensated for the loss of such remains or objects at a sum mutually agreed upon by the Department and the owner, or if no agreement is reached, the amount of compensation shall be determined by trial in the Superior Court and measured by the fair market value of such remains, assessed as of the date of its removal by the Department or its designated representatives, and established by the testimony of experts qualified in the appraisal of such remains or objects.

SOURCE: GC § 13985.11 enacted by P.L. 12-126 (May 3, 1974).

§ 76113. Court Actions.

Where any violation of this Chapter occurs, or is likely to occur, which will result in unauthorized or improper demolition, alteration, or transfer of historic property, the Attorney General, any agency of the territory, any person, partnership, corporation, association, organization, or other legal entity may maintain an action in the Superior Court for declaratory and equitable relief against the territory, any person, partnership, corporation, association, organization, or other legal entity for the protection of a historic property and the public trust therein. Any party who prevails in an action brought under the provisions of this section shall be awarded his costs, including reasonable attorney fees.

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SOURCE: GC § 13985.12 enacted by P.L. 12-126 (May 3, 1974).

§ 76114. Guam Museum as a Depository for Certain Specimens and Objects.

Any specimen and object of natural history and of botanical, ethnological, or archaeological value or interest, and any book, treatise, or pamphlet relating to natural history, botany, ethnology, or archaeology now in the possession of the University of Guam, or any territorial department, bureau, or board, or which may hereafter come into the possession of the university or the department, bureau, or board, if and when the same is no longer needed for scientific investigation, for study, or for any other purpose by the university or the department, bureau, or board may, at the request of the museum be transferred and delivered by and with the consent of such department, bureau, or board having possession of to the museum or exchanged with the museum, and whereupon, in any such case, the title thereto shall become vested in the museum, provided, that the specimens and objects so transferred to the museum are made available at all reasonable times by the museum for study and examination by the officials of the university or such department, bureau, or board.

SOURCE: GC § 13985.13 enacted by P.L. 12-126 (May 3, 1974).

§ 76115. Designation of Historic Sites.

The Department shall designate particular places as places of historic interest, and take such action, including the erection of signs or markers, as may be appropriate for public recognition and appreciation of such sites.

SOURCE: GC § 13985.14 enacted by P.L. 12-126 (May 3, 1974).

ARTICLE 2
CONSERVATION OF ARCHAEOLOGICAL RESOURCES

- § 76201. Declaration of Legislative Intent.
- § 76202. Definitions.
- § 76203. Archaeological Resources on Government Land.
- § 76204. Archaeological Investigation, Recording, and Salvage; Appropriations.
- § 76205. Prehistoric and Historic Sites and Remains.

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- § 76206. Permits to Examine Ruins, Excavate, and Gather Objects on Public Lands.
- § 76207. Monuments: Reservation of Land; Relinquishment of Private Claims.
- § 76208. Excavation and Removal of Prehistoric and Historic Remains on Private Lands.
- § 76209. Cooperation of Other Governmental Units.
- § 76210. Field Investigations on Private Lands.
- § 76211. Penalties.
- § 76212. Prehistoric or Historic Objects; Public Property.
- § 75213. Reproductions of Prehistorical or Historical Objects; Representation as Originals; Penalties.
- § 76214. Removal and Trespass.

§ 76201. Declaration of Legislative Intent.

The Legislature declares that the public has an interest in the preservation and protection of the territory's archaeological resources; that the public has a right to the knowledge to be derived and gained from a scientific study of these resources, and that therefore it is the purpose of this article to provide that activities for the preservation, excavation, study, and exhibition of the territory's archaeological resources be undertaken in a coordinated and organized manner for the general welfare of the public as a whole.

SOURCE: GC § 13985.15 enacted by P.L. 12-126 (May 3, 1974).

§ 76202. Definitions.

As used in this article:

(a) *Field investigation* means the study of the traces of human culture at any land or water site by means of surveying, digging, sampling, excavating, or removing surface or subsurface objects, or going on a site with that intent.

(b) *Site* means any aboriginal mound, homesite, earthwork, village location, burial ground, historic or prehistoric ruin, quarry, cave, or other location which is or may be the source of important archaeological data.

(c) *Specimens* means all relics, artifacts, remains, objects, or any other evidence of a historical, prehistorical, archaeological, or

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anthropological nature, which may be found on or below the surface of the earth, and which have scientific or historic value as objects of antiquity, as aboriginal relics or as archaeological samples.

SOURCE: GC § 13985.16 enacted by P.L. 12-126 (May 3, 1974).

§ 76203. Archaeological Resources on Government Land.

The territory reserves to itself the exclusive right and privilege of field investigation on sites owned or controlled by the territory, its agencies, departments, or institutions in order to protect and preserve archaeological and scientific information and objects. All new information and objects deriving from government lands shall remain the property of the territory and be utilized for scientific or public educational purposes.

SOURCE: GC § 13985.17 enacted by P.L. 12-126 (May 3, 1974).

§ 76204. Archaeological Investigation, Recording, and Salvage; Appropriations.

Whenever any public construction or improvement of any nature whatsoever is undertaken by any government agency on lands which are controlled or owned by the territory and which are sites of historic or prehistoric interest and value, or locations of prehistoric or historic remains, one percent of the appropriation for such public construction or improvement, or so much thereof as may be necessary, shall be expended by the department for the archaeological investigation, recording, and salvage of such sites or remains when it is deemed necessary by the department.

SOURCE: GC § 13985.18 enacted by P.L. 12-126 (May 3, 1974).

§ 76205. Prehistoric and Historic Sites and Remains.

(a) The Department shall locate, identify, and preserve in the Guam Register of Historic Places information regarding prehistoric and historic sites, locations, and remains. The Department of Land Management shall clearly designate on its records and cadastral maps of the territory, the location of all prehistoric and historic sites, or locations and remains.

(b) Before any public construction or improvement of any nature whatsoever is undertaken by the territory, or any governmental agency or officer, the head of such agency or such officer shall first examine the Department's records and cadastral map of the area to be affected by such public construction or improvement to determine whether any site listed upon the Guam Register of Historic Places is present. If so designated, the

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proposed public construction or improvement shall not be commenced, or, in the event it has already begun, continued, until the head of such agency or such other officer shall have advised the Department of the proposed public construction or improvement and shall have secured the concurrence of the Department or, as hereafter provided, shall have secured the written approval of the Governor.

If the concurrence of the Department is not obtained within ninety days after the filing of a request therefor with the Department or after the filing of a notice of objections by the Department with the agency or officer seeking to proceed with any project, such agency or officer may apply to the Governor for permission to proceed notwithstanding the nonconcurrence of the Department and the Governor may take such action as he deems best in overruling or sustaining the Department.

(c) Before any construction, alteration, or improvement of any nature whatsoever is undertaken or commenced on a designated private prehistoric or historic site listed on the Guam Register of Historic Places by any person, he shall give to the Department three (3) months notice of intention to construct, alter, or improve the site.

After the expiration of the three-month notification period, the Department shall either commence condemnation proceedings for the purchase of the site or remains, permits the owner to proceed with his construction, alteration, or improvement, or undertake or permit the recording and salvaging of any historical information deemed necessary to preserve Spanish-Chamorro history, by any qualified agency for this purpose.

Any person who violates the provisions of the first paragraph of this subsection shall be guilty of a petty misdemeanor.

(d) Inclusion of any historic site structure, building or object on the Guam Register of Historic Places shall be by the majority affirmative vote of the Guam Historic Preservation Review Board.

SOURCE: GC § 13985.19 enacted by P.L. 12-126 (May 3, 1974). Subsection (c) as amended by P.L. 13-187:114 (Sept. 2, 1976). Subsection (d) amended by P.L. 20-151:27 (Mar. 21, 1990). Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:27. However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:VI:13(c) (Sept. 30, 1999), which reverted the amendment of P.L. 20-151:27.

§ 76206. Permits to Examine Ruins, Excavate, and Gather Objects on Public Lands.

Permits for the examination of ruins, excavation of archaeological sites, and the gathering of objects of antiquity upon lands owned or controlled by the territory may be granted by the Department to persons or institutions which they deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as the Department may prescribe; provided, that the examinations, excavations, and gatherings are undertaken for the benefit of public museums, universities, colleges, or other recognized public scientific or educational institutions, with a view to increasing the knowledge of such objects and that the gatherings may be made for permanent preservation in public museums if so deemed by the Department.

SOURCE: GC § 13985.20 enacted by P.L. 12-126 (May 3, 1974).

§ 76207. Territorial monuments.

Upon recommendation of the Historic Preservation Review Board, the Governor may declare by executive order historic landmarks, structures or objects located on lands owned or controlled by the government to be territorial monuments.

SOURCE: GC § 13985.21 enacted by P.L. 12-126 (May 3, 1974), and R/R by P.L. 20-151:11 (Mar. 21, 1990). Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:11. However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:IV:13(c) (Sept. 30, 1999), which reverted the repeal and reenactment of P.L. 20-151:11.

§ 76208. Excavation and Removal of Prehistoric and Historic Remains on Private Lands.

Before any prehistoric or historic remains are excavated or removed from private lands by the Department, the department or its designated investigators shall first secure the written approval of the owner of such lands. Whenever the value of the private prehistoric or historic site is diminished by the excavation or removal of prehistoric or historic remains by the Department, the owner of the site, shall be compensated for the loss, at a monetary sum mutually agreed upon by the Department and the owner or at a monetary sum set by the court.

SOURCE: GC § 13985.22 enacted by P.L. 12-126 (May 3, 1974).

§ 76209. Cooperation of Other Governmental Units.

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All agencies, departments, institutions, and commissions, shall cooperate fully with the Department in the preservation, protection, excavation, and evaluation of specimens and sites and to that end:

(a) When any agency finds or is made aware by an appropriate historical or archaeological authority that is operation in connection with any territory, territory assisted, territory licensed, or contracted project, activity, or program adversely affects or may adversely affect scientific, historical, or archaeological data, such agency shall notify the Department and shall provide the Department with appropriate information concerning the project, program, or activity. The provisions of this section shall be made known to contractors by the territorial agencies doing the contracting.

SOURCE: GC § 13985.23 enacted by P.L. 12-126 (May 3, 1974). Subsections (b) and (c) repealed by P.L. 20-151:25 (Mar. 21, 1990).

§ 76210. Field Investigations on Privately Owned Lands.

It is the declared intention of the Legislature that field investigations on privately owned lands should be discouraged except in accordance with both the provisions and spirit of this Chapter; and persons having knowledge of the location of archaeological sites are encouraged to communicate such information to the Department.

SOURCE: GC § 13985.24 enacted by P.L. 12-126 (May 3, 1974).

§ 76211. Vandalism and Unlawful Taking of Historic Properties and Sites.

It shall be unlawful for any person to take, appropriate, evacuate, injure, or destroy any prehistoric or historic ruin or monument or object of antiquity situated on lands owned or controlled by the territory without the permission of the Department. Any person, firm or contractor who violates this Section shall be guilty of a petty misdemeanor and shall be fined not more than Five Thousand Dollars (\$5,000) or imprisoned not more than sixty (60) days or both. Any prehistorical and historical objects and remains which have been taken without a permit shall be seized, deposited, and preserved in public museums by the Department.

SOURCE: GC § 13985.25 enacted by P.L. 12-126 (May 3, 1974), amended by P.L. 13-187:115 (Sept. 2, 1976), and by P.L. 20-151:14 (Mar. 21, 1990). Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:14. However, P.L. 25-069:9 (July 8, 1999)

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was itself repealed by P.L. 25-072:IV:13(c), which reverted the amendment of P.L. 20-151:14.

§ 76212. Prehistoric or Historic Objects; Public Property.

(a) The Department shall, subject to the provisions of this Chapter, determine the disposition of such prehistoric *or* historic properties wheresoever located within the territorial limits of the Island of Guam. Any person who disturbs properties of prehistoric or historic significance *or* removes such properties from their sites without approval or concurrence from the Historic Preservation Office *shall* be guilty of a felony of the third degree.

(b) When a private landowner *or* lessee in the territory discovers properties which may be of historic significance on his property, he *shall* report the location of such objects, without disturbing the properties, to the Department. All prehistoric and historic properties *shall* be returned to the people of Guam, with the Guam Museum serving as the depository for said properties.

(c) (1) The transfer of prehistoric and historic properties, antiquities, and objects returned to and in the inventory of the government of Guam to entities, governments, *or* organizations outside of the territorial limits of the Island of Guam *shall not* be effectuated without legislative concurrence.

(2) The Department *shall* assist the legislative committee with oversight over the Department's State Historic Preservation Office, in drafting a Legislative Resolution for legislative concurrence. Such Resolution *shall* be considered a substantive Resolution and require a public hearing, committee report, and *shall* be included on the Session agenda for debate or discussion during Legislative Session.

(3) The Resolution *shall* request specifically, to transfer historical objects to entities, governments, or organizations outside of the territorial limits of the Island of Guam. The Resolution *shall* indicate the complete inventory of historical object(s) to be transferred, the location the historical object(s) is/are proposed to be transferred to, and the length of time the affected historical object(s) *shall* remain outside the territorial limits of the Island of Guam.

SOURCE: GC § 13985.26 enacted by P.L. 12-126 (May 3, 1974), amended by P.L. 13-187:116 (Sept. 2, 1976), and P.L. 29-147:2 (Jan. 30, 2009). Subsections (a), (b),

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(c) added by P.L. 30-180:1 (Aug. 16, 2010), renumbered to subsection (c) (1), (2), (3) by the Compiler pursuant to the authority of 1 GCA § 1606.

2016 NOTE: Subsection and subitem designations were added/alterd to adhere to the Compiler's codification and alpha-numeric schemes pursuant to authority granted by 1 GCA § 1606.

§ 76213. Reproduction of Prehistorical or Historical Objects, Representation as Originals; Penalties.

If shall be unlawful to reproduce or forge a prehistorical or historical object with the intent to represent it as an original. Any person who violates this section shall be guilty of a petty misdemeanor.

SOURCE: GC § 13985.27 enacted by P.L. 12-126 (May 3, 1974), and amended by P.L. 13-187:117 (Sept. 2, 1976).

§ 76214. Removal and Trespass.

It shall be deemed an act of trespass for any person, natural or corporate, to remove artifacts and antiquities of the kind described herein from the private land of any owner thereof without his permission being first obtained, and any person so doing shall be guilty of a petty misdemeanor.

SOURCE: GC § 13985.28 enacted by P.L. 12-126 (May 3, 1974), and amended by P.L. 13-187:118 (Sept. 2, 1976).

ARTICLE 3
PROTECTION AND RECOVERY OF
UNDERWATER HISTORIC PROPERTY AND SITES

- § 76301. Declaration of Legislative Intent.
- § 76302. Definitions.
- § 76303. Title to Underwater Historic Property.
- § 76304. Custody of Underwater Historic Property.
- § 76305. Salvage Research.
- § 76306. Permits.
- § 76307. Penalties.

§ 76301. Declaration of Legislative Intent.

The Legislature declares that the public has an interest in the protection and salvage of underwater historic properties situated under the navigable

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waters and territorial seas of the territory; that the public has a right to the knowledge to be derived and gained from a scientific study of these materials; and that therefore it is the purpose of this article to provide that activities for the protection, recovery, study, and exhibition of underwater historic properties be undertaken in a coordinated and organized manner for the general welfare of the public as a whole.

SOURCE: GC § 13985.29 enacted by P.L. 12-126 (May 3, 1974).

§ 76302. Definitions.

As used in this article, *underwater historic property* means any shipwreck, vessel, cargo, tackle, or underwater archaeological specimen, including any found at refuse sites or submerged sites of former habitation, that has remained unclaimed for more than ten (10) years on the bottoms of any waters.

SOURCE: GC § 13985.30 enacted by P.L. 12-126 (May 3, 1974).

§ 76303. Title to Underwater Historic Property.

Subject to any statute of the United States and any vested riparian rights, the title to all bottoms of navigable water within Guam's boundaries and the title to any underwater historic property lying on or under such bottoms is declared to be in the territory, and such bottoms and underwater historic properties shall be subject to the exclusive dominion and control of the territory.

SOURCE: GC § 13985.31 enacted by P.L. 12-126 (May 3, 1974).

§ 76304. Custody of Underwater Historic Property.

The custodian of underwater historic properties as defined in § 76301 and § 76302 shall be the Department which shall administer the preservation and protection of these properties as hereinafter directed by this article. The Department is empowered to prescribe such rules and regulations as may be necessary to preserve, protect, and recover any or all underwater historic properties.

SOURCE: GC § 13985.32 enacted by P.L. 12-126 (May 3, 1974).

§ 76305. Salvage Research.

The Department shall establish a center responsible for salvage research in areas designated by the Department as endangered by the lease, sale, or use of public or private lands.

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SOURCE: GC § 13985.33 enacted by P.L. 12-126 (May 3, 1974).

§ 76306. Permits.

(a) Any qualified persons, firm, or corporation desiring to conduct any type of exploration or recovery operations, in the course of which any underwater historic property or part thereof may be removed, displaced, or destroyed, shall first make application to the Department for a permit to conduct such operations.

(b) If the Department finds that the granting of such permit is in the best interest of the territory, it may grant such applicant a permit for such a period of time and under such conditions as the Department deems to be in the best interest of the territory.

(c) Such permit may provide for the fair compensation to the permittee in terms of a percentage of the reasonable cash value of the objects recovered or a fair share of the objects recovered, such fair compensation or share to be determined by the Department.

(d) Superior title to all objects recovered shall be retained by the territory unless or until they are released to the permittee by the Department.

(e) All exploration and recovery operations undertaken pursuant to a permit issued under this section shall be carried out under the general supervision of the Department and in accordance with the rules and regulations prescribed under § 76304 and in such manner that the maximum amount of historic, scientific, archaeological, and educational information may be recovered and preserved in addition to the physical recovery of items.

(f) Permits may be renewed upon or prior to expiration upon such terms as the Department may specify.

(g) Holders of permits shall be responsible for obtaining permission of any federal agencies having jurisdiction prior to conducting any salvaging operations.

SOURCE: GC § 13985.34 enacted by P.L. 12-126 (May 3, 1974).

2016 NOTE: Subsection designations were added to adhere to the Compiler's codification and alpha-numeric schemes pursuant to authority granted by 1 GCA § 1606.

§ 76307. Penalties.

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Any person violating the provision of this article or any rules and regulations duly established thereunder shall be guilty of a petty misdemeanor and in addition, shall forfeit to the territory any artifacts or objects collected.

SOURCE: GC § 13985.35 enacted by P.L. 12-126 (May 3, 1974), and amended by P.L. 13-187:119 (Sept. 2, 1976).

2008 COMPILER NOTE ON ARTICLE 4: Public Law 27-089:3 (May 6, 2004) directed that Articles 1-5 of this chapter be restored pursuant to P.L. 25-072:IV:13 (Sept. 30, 1999). However, Article 4 was not part of the reenactments of P.L. 25-072:IV:13. The specific repeal of Article 4 was done by P.L. 20-151:24 (Mar. 21, 1990), which repeal was never undone by subsequent legislation.

ARTICLE 5
PRESERVATION PROCEDURES TO
GUIDE TERRITORIAL AGENCIES

- § 76501. Declaration of Legislative Intent.
- § 76502. Responsibilities of Territorial Agencies.
- § 76503. Severability.
- § 76504. Treatment of Human Remains.
- § 76505. Enforcement and Power of Arrest.
- § 76506. Guam Register of Historic Places.
- § 76507. Guam Historic Preservation Review Board Established.
- § 76508. Guam Historic Preservation Review Board: Duties.
- § 76509. Historic Preservation Review Board.
- § 76510. Historic District Zones.
- § 76511. Certificate of Approval.
- § 76512. Historic Preservation Archaeological Mitigation Fund, Established.

§ 76501. Declaration of Legislative Intent.

The Legislature declares it to be the public policy of this territory to provide leadership in preserving, restoring, and maintaining the historic, architectural, archaeological, and cultural environment of this territory and

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that therefore it is the purpose of this article to provide that the instrumentalities of the territory administer the historic properties under their control in a spirit of stewardship and trusteeship for future generations and conduct their activities, plans, and programs in a manner consistent with preservation and enhancement of historic properties and sites.

SOURCE: GC § 13985.41 enacted by P.L. 12-126 (May 3, 1974).

§ 76502. Responsibilities of Territorial Agencies.

All agencies, departments, bureaus, and commissions of the territory shall:

(a) Consult the Guam Historic Preservation Officer before demolishing, altering, or transferring any property under the jurisdiction that is potentially of historical, architectural, archaeological, or cultural significance, including, but not limited to, any property listed on the territorial register.

(b) Initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of properties under their ownership that are listed on the territorial or national register; such measures and procedures shall comply with applicable standards prescribed by the Department.

(c) Develop plans for the maintenance, through preservation, rehabilitation, or restoration, of historic properties under their ownership in a manner compatible with preservation objectives and which do not result in an unreasonable economic burden to public interest.

(d) institute procedures to assure that their plans, programs, codes, and regulations contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, archaeological, or cultural significance.

(e) Submit annually procedures required pursuant to Paragraphs (b), (c) and (d) to the Department and the Institute for review and comment.

(f) Determine whether their existence is no longer necessary in view of the Institute's responsibilities and if so, to report same to the Institute, the Governor, and the Legislature within ninety (90) days of the effective date of this Act.

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SOURCE: GC § 13985.42 enacted by P.L. 12-126 (May 3, 1974). Subsection (a) amended by P.L. 20-151:26 (Mar. 21, 1990). Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:26. However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:IV:13(c) (Sept. 30, 1999), which reverted the amendment of P.L. 20-151:26.

§ 76503. Severability.

If any provision of this Law or the application thereof to any person is held invalid, the invalidity does not affect other provisions or applications of the Law which can be given effect without the invalid provisions or application; and to this end the provisions of this law are severable.

SOURCE: Enacted by P.L. 12-126:22 (May 3, 1974). Numbered and codified by Compiler.

§ 76504. Treatment of human remains.

Human remains shall receive respect and consideration when discovered. Disturbance of burials shall be avoided when possible, but when necessary shall be at the expense of the developers, using procedures and standards acceptable to the Guam Historic Preservation Officer. Anthropological review of human remains shall be at a minimal level and only for the time authorized by the Guam Historic Preservation Officer prior to reburial

SOURCE: Added as GC § 13985.43 by P.L. 20-151:18 (Mar. 21, 1990). Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:18. However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:IV:13(c) (Sept. 30, 1999), which reverted the enactment of P.L. 20-151:27.

§ 76505. Enforcement and power of arrest.

The Director, the Guam Historic Preservation Officer and other designated employees of the Department shall have arresting and citation powers over persons, firms and contractors who are in violation of any of the provisions of this Chapter.

SOURCE: Added as GC § 13985.51 by P.L. 20-151:15 (Mar. 21, 1990). Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:15. However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:IV:13(c) (Sept. 30, 1999), which reverted the enactment of P.L. 20-151:15.

§ 76506. Guam Register of Historic Places.

The Department's Historic Resources Division shall maintain a register of places found to be significant in the history, prehistory and culture of

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Guam. The Department with the advice and consent of the Guam Historic Preservation Review Board shall issue rules, regulations and guidelines to implement the Guam Register of Historic Places in an orderly and effective manner.

SOURCE: Added as GC § 13985.52 by P.L. 20-151:10 (Mar. 21, 1990). Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:10. However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:IV:13(c) (Sept. 30, 1999), which reverted the enactment of P.L. 20-151:10.

§ 76507. Guam Historic Preservation Review Board established.

There is hereby created a Guam Historic Preservation Review Board (the *Board*), which Board shall consist of five (5) members, and five (5) alternates appointed by the Governor with the consent of the Legislature. At least one (1) member of the Board shall be knowledgeable in historic preservation and a majority shall be recognized professionals in the disciplines of history, prehistoric and historic archeology, or architecture. At least one (1) member must be knowledgeable of traditional Chamorro society and culture.

SOURCE: Added as GC § 13985.60 by P.L. 20-151:7 (Mar. 21, 1990).

§ 76508. Guam Historic Preservation Review Board: Duties.

It shall be the duty of the Board to:

- (a) Enter historic properties into the Guam Register of Historic Places;
- (b) Evaluate applications for nominating properties to the National Register of Historic Places;
- (c) Review the Guam survey of the Guam Historic Properties;
- (d) Review the content of the comprehensive preservation plan established pursuant to § 76103 of this Code;
- (e) Serve as the Board of Directors of the Guam Preservation Trust Fund;
- (f) Serve as the State Historic Review Board for purposes related to the National Historic Preservation Act, Public Law 89-665.

SOURCE: Added as GC § 13985.61 by P.L. 20-151:8 (Mar. 21, 1990).

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2016 NOTE: Subsection designations were altered to adhere to the Compiler's codification and alpha-numeric schemes pursuant to authority granted by 1 GCA § 1606.

§ 76509. Historic Preservation Review Board.

(a) Tenure. The members of the Board shall serve for four (4) years; provided, that of the members first appointed, two (2) shall serve for four (4) years, one (1) shall serve for three (3) years, one (1) shall serve for two (2) years, and one (1) shall serve for one (1) year. Replacement terms shall expire at the end of the four (4) years.

(b) Compensation. Members shall be compensated Fifty Dollars (\$50) for each Board meeting they attend, not to exceed One Hundred Dollars (\$100) per month. Members traveling on official business shall receive per diem at the established government of Guam rates.

(c) Quorum. Four (4) members of the Board shall constitute a quorum for the transaction of official business.

SOURCE: Added as GC 13985.62 by P.L. 20-151:9 (Mar. 21, 1990).

§ 76510. Historic district zones.

The Territorial Land Use Commission and the Guam Historic Preservation Review Board shall jointly establish zoning controls for all registered historic properties, including but not limited to the Agana Historic District and the Inarajan Architectural Historic District. Nothing in this Section shall affect the powers given the Guam Historic Preservation Review Board in subsection (c) of 76205 of this Code.

SOURCE: Added as GC § 13985.62 by P.L. 20-151:17 (Mar. 21, 1990). This is the same GC section number as was added in § 76509, above. Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:17. However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:IV:13(c) (Sept. 30, 1999), which reverted the enactment of P.L. 20-151:17.

2016 NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference to section 13985.19(c) of the Government Code was altered to reflect its codification in the GCA.

§ 76511. Certificate of approval.

(a) A certificate of approval must be issued by the Guam Historic Preservation Officer before any action affecting potential historic sites or objects is undertaken, including, but not limited to:

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- (1) Building permits;
- (2) Grading permits;
- (3) Clearing permits;
- (4) Foundation permits;
- (5) Leases and lease renewals of government land;
- (6) Application for surplus federal real estate;
- (7) Government infrastructure improvement projects;
- (8) Government construction, including clearing and grading;
- (9) Submittal of federal grant applications for construction, land use or improvements; and
- (10) Applications to Territorial Land Use Commission and Territorial Seashore Protection Commission.

(b) The Guam Historic Preservation Officer shall have the authority to prohibit activities listed in subsection (a) and may issue cease work orders on projects when there is evidence of adverse impact or potential destruction of cultural or historical features on the property. In the event that there is no alternate recourse in protecting or salvaging the cultural or historical significance of the property, the decision of the Guam Historic Preservation Officer to deny issuance of a permit or to cease work on projects shall prevail.

(c) Higher authority shall not override the decision of the Guam Historic Preservation Officer, except through procedures adopted pursuant to Subsection (d) of this Section. If work has already begun where items of cultural or historical significance have been disturbed, the developer shall be responsible for the restoration of the property to its original form and the burden of expense shall be on the developer.

(d) The problems of projects with potential impact on cultural or historic features may be resolved by the Guam Historic Preservation Officer through agreement or mitigation. Such resolution may include, but need not be limited to, project redesign, relocation, curation and display of cultural resources, and land dedication to the Guam Preservation Trust. The Guam Historic Preservation Review Board shall develop the criteria for resolution

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of any controversial finding in accordance with the Administrative Adjudication Law.

(e) After a Certificate of Approval *or* permitting approval has been issued for a requested action as enumerated in subsection (a), any unauthorized disturbances of prehistoric *or* historic properties *shall* be subject to fines of up to Fifty Thousand Dollars (\$50,000.00) and/or imprisonment of up to three (3) years for each violation.

SOURCE: Added as GC § 13985.70 by P.L. 20-151:16 (Mar. 21, 1990). Public Law 25-069:9 (July 8, 1999) repealed P.L. 20-151:16. However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:IV:13(c) (Sept. 30, 1999), which reverted the enactment of P.L. 20-151:16. Subsection (e) added by P.L. 29-147:3 (Jan. 30, 2009).

§ 76512. Historic Preservation Archaeological Mitigation Fund, Established.

(a) Notwithstanding any other provision of law, there is hereby created, within the Department of Parks and Recreation, the “*Historic Preservation Archaeological Mitigation Fund*”, which *shall* be a fund separate and apart from the General Fund and from any other special funds of the government of Guam. Any and all funds generated through fines imposed by the Historic Preservation Office of the Department of Parks and Recreation *shall* be deposited into the Historic Preservation Archaeological Mitigation Fund. The Director of the Department *shall* administer said funds independently from the General Fund, with a minimum requirement of dual signatures for the expenditure of any funds within the authorized guidelines.

(b) (1) Expenditures of the Fund *shall* be restricted to the following areas, and for the following purposes:

(A) the contracting of archaeological services as determined by the Historic Preservation Office;

(B) public education and awareness activities; and

(C) the purchase of supplies, materials and equipment to support the activities outlined in Subsections (A) and (B) above.

(2) Funds from the Historic Preservation Archaeological Mitigation Fund shall *not* be expended for personnel services, but used solely for operations as highlighted above; provided, however, that any monies received pursuant to § 76602(b) of Title 21 GCA shall be expended for the hiring of Historic Preservation Specialists to enforce

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the provisions of this Chapter generally and, more specifically, to prevent the harming of any prehistoric and historic properties and sites, ruins, monuments, and artifacts, as well as to advance the registration of prehistoric and historic cultural sites. The Historic Preservation Office of the Department of Parks and Recreation may hire retired Historic Preservation Specialists if a critical need arises. Retired Historic Preservation Specialists may receive their retirement annuity while employed on this temporary basis. Retired Historic Preservation Specialists may be hired only in the position title of Historic Preservation Specialist III and below, only at Step I, and *shall not* receive sick and annual leave. The Director of the Department of Parks and Recreation *shall* provide to *I Liheslaturan Guåhan* a monthly financial report on the funds generated each month, within ten (10) days following the preceding month. This Fund *shall not* be subject to any transfer authority of I Maga'låhen Guåhan [the Governor].

SOURCE: Added by P.L. 29-147:4 (Jan. 30, 2009). Subsection (b) amended by P.L. 33-066:XII:35 (Sept. 5, 2015).

2016 NOTE: Subsection designations added and altered pursuant to the authority of 1 GCA § 1606.

ARTICLE 6
GUAM PRESERVATION TRUST

- § 76601. Guam Preservation Trust.
- § 76602. Guam Preservation Trust Income.
- § 76603. Limitation to Purposes of Trust.
- § 76604. Power of the Trust.
- § 76605. Exemption from Executive Budget Act and Government Procurement Law.
- § 76606. Responsibilities of the Trust.
- § 76607. Line of Credit Authorized.
- § 76608. *I Liheslatura* [Legislative] Appropriations.
- § 76609. Abatement of Taxes.

§ 76601. Guam Preservation Trust.

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There is hereby established as a public, non-profit corporation, the Guam Preservation Trust (the 'Trust'). The Trust shall have the following purposes, which are within its powers:

- (a) To seek grants and donations;
- (b) To acquire title to threatened Guam properties for the preservation of their historical value, whether in fee simple, by leasehold, or by easement, and whether through donation, transfer, dedication, or purchase;
- (c) To award grants for the following:
 - (1) Historic property documentation and historic register nomination;
 - (2) Architectural and archeological history and documentation of historic structures and sites;
 - (3) Protection of historic structures and sites through stabilization, rehabilitation, reconstruction, or restoration, including adequate lighting when appropriate on such sites being utilized for non-profit and non-commercial purposes, such as private homes, schools, churches, public buildings and facilities, except that commercial activity is allowable on such sites pursuant to a signed covenant between the Guam Preservation Trust and the registered owners when part of the proceeds of such commercial activity is used for the general maintenance of such sites;
 - (4) Ethnography and oral history of Guam; and
 - (5) Archival and archaeological research and investigations for locating, recording and protecting sites of historic or prehistoric interest and value.
- (d) To prepare a Guam Preservation Trust Master Plan identifying, by order of priority, the buildings, structures and sites which in the opinion of the Trust are deserving of preservation and which shall be preserved. The Trust shall hold a public hearing on the proposed plan and shall transmit the plan to I Liheslaturan Guåhan sixty (60) days prior to its implementation; and

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(e) To support other activities directly related to increasing the public appreciation of and benefit from historical places including public interpretation and presentation.

SOURCE: Added as GC § 13985.80 by P.L. 20-151:12 (Mar. 21, 1990), repealed and reenacted by P.L. 21-007:1 (Apr. 19, 1991), and P.L. 27-089:2 (May 6, 2004).

§ 76602. Guam Preservation Trust Income.

(a) Fifty percent (50%) of all fees collected pursuant to § 66408 of Division 2 of Title 21 of the Guam Code Annotated, shall be deposited in the Guam Preservation Trust Fund. Fines collected under § 76211 of Division 2 of Title 21 of the Guam Code Annotated, shall be deposited into the Guam Preservation Trust Fund. Guam Preservation Trust funds shall be maintained separate and apart from all other government funds. The Department of Administration, as custodian for the fees and fines collected pursuant to this Section, shall transfer all such funds to the Trust no less than on a quarterly basis. Any and all interest accrued on such funds shall also be transferred to the Trust. The amounts within the Guam Preservation Trust Fund shall be used by the Trust only for the purposes expressed in this Article 6, and shall not be subject to any transfer authority of *I Maga'låhen Guåhan* (the Governor).

(b) Revenue for Historic Preservation Archaeological Mitigation Fund. One Hundred Thousand Dollars (\$100,000) of the fees collected pursuant to subsection (a) of this Section shall be transferred to the Historic Preservation Archaeological Mitigation Fund in equal monthly installments.

SOURCE: Added as GC § 13985.82 by P.L. 20-151:13 (Mar. 21, 1990), repealed and reenacted by P.L. 27-089:2 (May 6, 2004), and amended by P.L. 33-066:XII:32 (Sept. 5, 2015).

§ 76603. Limitation to Purposes of Trust.

Expenditures by the Trust shall be limited to purposes of the Trust and may not be used for any operation of the Department of Parks and Recreation or any other agency, department, bureau, division, office, instrumentality or branch of the government of Guam.

SOURCE: Added as GC § 13985.83 by P.L. 21-007:2 (Apr. 19, 1991). Repealed by P.L. 25-072:13(b) (Sept. 30, 1999), and reenacted by P.L. 27-089:2 (May 6, 2004).

§ 76604. Power of the Trust.

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The Trust shall have the following powers in coordination with its purposes:

- (a) To sue and be sued in its own name;
- (b) To hire its own legal counsel;
- (c) To hire or contract for the management of Trust assets and the conduct of Trust business;
- (d) To enter into and execute contracts and instruments of every kind and nature, necessary or convenient to the exercise of its powers and functions;
- (e) To have all corporate powers provided by law.

SOURCE: Added as GC § 13985.84 by P.L. 21-007:3 (Apr. 19, 1991). Repealed by P.L. 25-072:13(b) (Sept. 30, 1999), and reenacted by P.L. 27-089:2 (May 6, 2004).

§ 76605. Exemption from Executive Budget Act and Government Procurement Law.

The Trust is exempt from the provisions of the Executive Budget Act (5 GCA Chapter 4).

SOURCE: Added as GC § 13985.85 by P.L. 21-007:4 (Apr. 19, 1991). Repealed by P.L. 25-072:13(b) (Sept. 30, 1999), and reenacted by P.L. 27-089:2 (May 6, 2004).

§ 76606. Responsibilities of the Trust.

The Trust is subject to the following responsibilities:

- (a) A fiduciary duty toward the funds and purposes of the Trust;
- (b) The preparation of an annual audit report which is to be submitted to I Maga'lahren Guåhan [the Governor] and I Liheslaturan Guåhan [the Legislature] within sixty (60) days after the end of each fiscal year; and
- (c) Establish guidelines relative to the Abatement of Taxes as provided in Section 21 of Public Law 20-151.

SOURCE: Added as GC § 13985.86 by P.L. 21:007:5 (Apr. 19, 1991). Repealed by P.L. 25-072:13(b) (Sept. 30, 1999), and reenacted by P.L. 27-089:2 (May 6, 2004).

§ 76607. Line of Credit Authorized.

The Guam Preservation Trust Fund may be encumbered as collateral for a loan or line of credit to advance its grant programs pursuant to a Guam

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Historic Preservation Master Plan as described in § 76601(d) of this Article. The Trust is authorized to enter into such agreements necessary for the acquisition of the loan or line of credit, with any lending institution chosen under its procurement regulations and/or policies. Neither the Board of Directors nor the employees of the Trust shall incur any personal liability for any loan agreement lawfully entered into.

SOURCE: Added by P.L. 27-089:2 (May 6, 2004).

§ 76608. *I Liheslatura* [Legislative] Appropriations.

I Liheslatura [The Legislature] may, from time to time, appropriate funds from the General Fund for deposit in the Guam Preservation Trust Fund. Such funds, when appropriated, shall be paid directly to the Trust.

SOURCE: Added by P.L. 27-089:2 (May 6, 2004).

§ 76609. Abatement of Taxes.

The Director of Revenue and Taxation shall grant an abatement of property taxes on private property which is included within a historic preservation easement executed by the private owner and approved by the Guam Preservation Trust's Board of Directors.

SOURCE: Added by P.L. 20-151:21 (Mar. 21, 1990); repealed and transferred to Department of Chamorro Affairs as 5 GCA § 87150 by P.L. 25-069:1 (July 8, 1999); However, P.L. 25-069:9 (July 8, 1999) was itself repealed by P.L. 25-072:IV:13(g) (Sept. 30, 1999) and returned to this Article by Compiler by direction of P.L. 27-089:3 (May 6, 2004).
