

CHAPTER 63
GUAM TERRITORIAL SEASHORE PROTECTION ACT OF 1974

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§ 63101. Short Title.

This Chapter may be cited as the Guam Territorial Seashore Protection Act of 1974.

SOURCE: GC §13410 enacted by P.L. 12-108.

§ 63102. Findings.

The people of the territory of Guam hereby find and declare that the Guam Territorial Seashore Reserve is a distinct and valuable natural resource belonging to all the people of Guam and existing as a delicately balanced ecosystem; that the permanent protection of the natural, scenic, and historical resources of the seashore reserve is a paramount concern to the present and future residents of this island; that in order to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marinelife, and other ocean resources, and the natural environment, it is necessary to preserve the ecological balance of the seashore reserve and prevent its deterioration and destruction; that it is the policy of this territory to preserve and protect the resources of the seashore reserve for the enjoyment of the current and succeeding generations, and that to protect the seashore reserve, it is necessary:

- (a) To study the seashore reserve to determine the ecological planning principles and assumptions needed to ensure conservation of its resources;

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(b) to prepare, based upon such study and in full consultation with all affected governmental agencies and departments, private interests and the general public, a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation, management, and development of the seashore reserve;

(c) To ensure that any development which occurs in the seashore reserve during the study and planning period will be consistent with the objects of this Chapter;

(d) That the Board of Directors, Territorial Seashore Protection Commission, is hereby charged with the responsibility of implementing the provisions of this Chapter.

SOURCE: GC §13411 enacted by P.L. 12-108.

§ 63103. Definitions.

(a) *Commission* means Guam Territorial Seashore Protection Commission.

(b) *Board* means the Board of Directors of the Commission.

(c) *Seashore Reserve* means that land and water area of Guam extending seaward to the ten (10) fathom contour, including all islands within the Government's jurisdiction except Cabras Island and those Villages wherein residences have been constructed along the shoreline prior to the effective date of the Seashore Act, and extending inland to the nearer of the following points:

(1) From the mean high water line for a distance on a horizontal plane of ten (10) meters.

(2) From the mean high water line to the inland edge of the nearest public right-of-way.

(d) *Development* means, on land, in or under water, 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 splits; change in the intensity of use of water, ecology related thereto, or of access thereto; construction or reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility, and the removal of major vegetation.

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(e) *Improved residential property* means a detached, noncommercial residential dwelling, the construction of which was begun before September 1, 1972, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Commission shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated.

(f) *Person* includes any individual, organization, partnership, and corporation, including any utility and any agency of federal, territorial, and local government.

(g) *Plan* means the Guam Seashore Reserve Plan.

(h) *Sea* means the Pacific Ocean or the Philippines Sea.

SOURCE: GC §13412 enacted by P.L. 12-108; subsection (c) amended by P.L. 12-209 and repealed and reenacted by P.L. 13-154:2.

§ 63104. Commission Creation, Membership and Compensation.

(a) There is hereby created a Guam Territorial Seashore Protection Commission (hereinafter referred to as the *Commission*), consisting of the seven members of the Territorial Land Use Commission and the members shall hold office so long as they remain members of the Territorial Planning Commission.

(b) Commission members shall serve without compensation except that each member shall be paid a per diem of Fifty Dollars (\$50) for each day's attendance at a meeting of the Commission. Such remuneration shall not exceed One Hundred Dollars (\$100) per month.

SOURCE: GC 13413 enacted by P.L. 12-108 and R/R by P.L. 13-52:1; subsection (b) as amended by P.L. 15-148:11.

§ 63105. Conflict of Interest.

(a) No member of the Commission or employee of the Commission shall participate, in any official capacity whatsoever, in any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which any of the following has a financial interests; the member or employee himself; his spouse, his child; his partner; any organization in which he is then serving or has, within two (2) years prior to his selection or appointment to or employment by the Commission, served in the capacity of officer, director, trustee, partner, employer or employee;

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any organization within which he is negotiating for or has any arrangement or understanding concerning prospective partnership or employment.

(b) In any case within the coverage of this section, the prohibitions herein contained shall not apply if the person concerned advises the Board in advance of the nature and circumstances thereof, including full public disclosure of the facts which may potentially give rise to a violation of this article, and obtains from the Board a written determination that the contemplated action will not adversely affect the integrity of the Commission. Any such determination shall require the affirmative vote of two-thirds of the members of the Board.

(c) Any person who violates any provision of this section shall be guilty of a felony.

SOURCE: GC §13414 enacted by P.L. 12-108; subsection (c) as amended by P.L. 13-187:112.

§ 63106. Powers and Duties.

The Board may:

(a) Accept grants, contributions, and appropriations;

(b) Employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary;

(c)(1) Through coordination and assistance with other government departments and agencies, acquire lands, waters, and interests therein with the boundaries of the seashore reserve, by donation, purchase with donated or appropriated funds, by exchange for government land, or transfer. All property owned by the territory of Guam within the seashore reserve is hereby dedicated for the purpose of this Chapter.

(2) With respect to improved residential property acquired for the purposes of this Chapter, which is beneficially owned by a natural person and which the Board determines can be continued in that use for a limited period of time without undue interference with the administration, development, or public use of the coastal reserve, the owner thereof may on the date of its acquisition by the Commission retain a right of use and occupancy of the property for noncommercial residential purposes for a term, as the owner may elect, ending either (a) at the death of the owner or his spouse, whichever occurs later, or (b) not more than twenty-five (25) years from the date of acquisition. Any right so retained may during its existence be transferred or assigned. The Commission shall have paid to such owner the

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fair market value of the property on the date of such acquisition, less the fair market value on such date of the right retained by the owner.

(3) The Board may terminate a right of use and occupancy retained pursuant to this subsection upon a determination that such use and occupancy is being exercised in a manner not consistent with the purposes of this Chapter, and upon tender to the holder of the right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination;

(d) Contract for any professional services if such work or services cannot satisfactorily be performed by its employees;

(e) Be sued and sue to obtain any remedy to restrain violations of this Chapter. Upon the request of the Commission, the Attorney General shall provide necessary legal representation;

(f) Adopt any regulations or take any action it deems reasonable and necessary to carry out the provisions of this Chapter, but no regulations shall be adopted without a prior public hearing.

SOURCE: GC §13415 enacted by P.L. 12-108.

§ 63107. Commission Responsibilities.

The Commission shall:

(a) Elect a chairman.

(b) Appoint an Administrator who shall not be a member of the Commission and who shall have the responsibility for the administration of this Act under the supervision of the Commission.

(c) Prepare, adopt and submit to the Legislature for implementation the Guam Seashore Reserve Plan.

(1) The plan shall be based on detailed studies of all the factors that significantly affect the seashore reserve.

(2) The plan shall be consistent with all of the following objectives:

(A) The maintenance, restoration, and enhancement of the overall quality of the seashore reserve environment, including, but not limited to, its amenities and aesthetic values.

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(B) The continued existence of optimum populations of all species of living organism.

(C) The orderly, balanced utilization and preservation, consistent with sound conservation principles, of all living and non-living seashore reserve resources.

(D) Avoidance of irreversible and irretrievable commitments of seashore reserve resources.

(E) Public access for maximum visual and physical use and enjoyment of the seashore reserve by the public.

(3) The plan shall consist of such maps, text and statements of policies and objectives as the Commission determines are necessary.

(4) The plan shall contain at least the following specific components:

(A) A precise, comprehensive definition of the public interest in the seashore reserve.

(B) Ecological planning principles and assumptions to be used in determining the suitability and extent of allowable development.

(C) A component which includes the following elements:

(i) A land-use element.

(ii) A conservation for the preservation and management of the scenic and other natural resources of the seashore reserve.

(iii) A public access for maximum visual and physical use and enjoyment of the coastal reserve by the public.

(iv) A recreation element.

(v) A population element for the establishment of maximum desirable population densities.

(vi) An educational or scientific use element.

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(D) Reservations of land or water in the seashore reserve for certain uses, or the prohibition of certain uses in specific areas.

(E) Recommendations for the governmental policies and powers required to implement the planning including the organization and authority of the governmental agency or agencies which should assume permanent responsibility for its implementation.

(d) Publish objectives, guidelines, and criteria for the collection of data, the conduct of studies, and the preparation of recommendations for the plan within six (6) months after its first meeting.

(e) Prepare its definitive conclusions and recommendations, including recommendations for areas that should be reserved for specific uses or within which specific uses should be prohibited, which it shall, after public hearing, adopt and submit to the Legislature no later than January, 1976.

(f) On or before December 1, 1975, adopt the coastal reserve plan and submit it to the Legislature for its adoption and implementation.

SOURCE: GC §13416 enacted by P.L. 12-108 as amended by P.L. 12-210.

§ 63108. Interim Permit Control.

(a) General provisions.

(1) On or after June 1, 1974 any person wishing to perform any development within the seashore reserve shall obtain a permit authorizing such development from the Commission, and, if required by law, from any other governmental department or agency. No permit shall be issued without the affirmative votes of a majority of the Board members.

(2) No permit shall be issued unless the Board has first found:

(A) That the development will not have any substantial adverse environmental or ecological effect, and

(B) That the development is consistent with the purpose and objectives of this Chapter.

The applicant shall have the burden of proof on all issues.

(3) All permits shall be subject to reasonable terms and conditions in order to ensure that:

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(A) Access to beaches, recreation and historical areas, and natural reserves is increased to the maximum extent possible by appropriate dedication.

(B) There is no substantial interference with or detracting from the line of sight toward the sea from the territorial highway nearest the coast.

(C) Adequate and properly located public recreation areas and wildlife preserves are reserved.

(D) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon coastal reserve resources.

(E) Alterations to existing land forms and vegetation, and construction of structures shall cause minimum danger of floods, landslides, erosion or siltation.

(4) If prior to the effective date of this Chapter, a building permit has been issued, no person who has obtained a vested right thereunder shall be required to secure a permit under this section, provided that no substantial changes may be made in any such development, except in accordance with the provisions of his Chapter. Any such person shall be deemed to have such vested rights if, prior to April 1, 1973 he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work and materials necessary thereof.

(5) Notwithstanding any provision in this section to the contrary, no permit shall be required for the following types of development:

(A) Repairs and improvements not in excess of Seven Thousand Five Hundred Dollars (\$7,500) to existing single-family residences; provided that the Agency shall specify by regulation those classes of development which involve a risk of adverse environmental effect and may require that a permit be obtained.

(B) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the coastal reserve, pursuant to a permit from the United States Army Corps of Engineers.

(b) Permit procedure.

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(1) The Board shall prescribe the procedures for permit applications and may require a reasonable filing fee and the reimbursement of expenses.

(2) The Board shall give written public hearing. Such hearing shall be set no less than twenty-one (21) nor more than ninety (90) days after the date on which the application is filed.

(3) The Board shall act upon an application for permit within sixty (60) days after the conclusion of the hearing.

(4) Any person including an applicant for a permit, aggrieved by the decision or action of the Board shall have a right to judicial review of such decision or action by filing a petition for a writ of mandamus, pursuant to §1084 et. seq. of Civil Procedure Code of Guam within sixty (60) days after such decision is made.

(5) Any person may maintain an action for declaratory and equitable relief to restrain violations of this Chapter. No bond shall be required for an action under this subsection.

(6) Any person may maintain an action for the recovery of civil penalties provided in § 63109.

(7) The provision of this Section shall be in addition to any other remedies available at law.

(8) Any person who prevails in a civil action brought to enjoin a violation of this Chapter or to recover civil penalties shall be awarded his costs, including reasonable attorney fees.

SOURCE: GC §13417 enacted by P.L. 12-108; subsection (a)(1) as amended by P.L. 12-210.

NOTE: P.L. 12-210 purported to amend §13416 (F)(1). The Editor, GC 1974 Suppl., reflected the amendment in §13417(a)(1) as he determined that to be the legislative intent.

§ 63109. Penalties.

(a) Any person who violates any provisions of this Chapter shall be subject to a civil fine not to exceed Ten Thousand Dollars (\$10,000).

(b) In addition to any other penalties, any person who performs any development in violation of this Chapter shall be subject to a civil fine not

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to exceed Five Hundred Dollars (\$500) per day for each day in which such violation persists.

SOURCE: GC §13418 enacted by P.L. 12-108.

§ 63110. Severability.

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SOURCE: GC §13419 enacted by P.L. 12-108.

§ 63111. Authorization for Appropriation.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Chapter.

SOURCE: GC §13420 enacted by P.L. 12-108.

§ 63112. Fees.

The following fee schedule is established:

- | | |
|---------------------|---------|
| (1) Wetland Permit | \$75.00 |
| (2) Seashore Permit | \$75.00 |

All money collected under this Section *shall* be deposited in the Department of Land Management Land Survey Revolving Fund (LSRF).

SOURCE: Added by P.L. 29-002:V:III:9 (May 18, 2007).
