

TWELFTH GUAM LEGISLATURE
1973 (FIRST) Regular Session

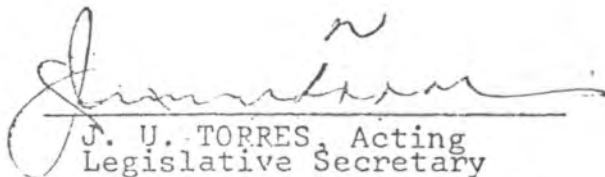
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CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 38, "An add Chapter V-A to Title XIV of the Government Code of Guam to declare as a territory recreational area government-owned land between the mean high watermark and privately-owned land, to protect and preserve public rights in the ocean shore and to authorize the reacquisition of such ocean shore where a portion has been lost to private ownership and no public rights exist therein as a result of dedication, prescription or otherwise; to amend Public Law 10-71; to amend Section 17203 of the Government Code of Guam; and to authorize an appropriation for the reacquisition of ocean shore", was on the 30th day of March, 1973, duly and regularly passed.


F. T. RAMIREZ
Speaker

ATTESTED:

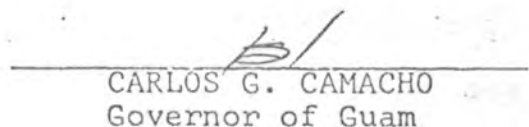

J. U. TORRES, Acting
Legislative Secretary

This Act was received by the Governor this 12th day
of April, 1973 at 10:35 o'clock a. M.

/s/ KEITH L. ANDREWS

KEITH L. ANDREWS
Attorney General of Guam

APPROVED:



CARLOS G. CAMACHO
Governor of Guam

DATED: Apr. 24, 1973
9:30 A.M.

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TWELFTH GUAM LEGISLATURE
1973 (FIRST) Regular Session

Bill No. 38

Introduced by

P. J. Bordallo
J. F. Ada
G. M. Bamba
P. M. Calvo
A. L. Cristobal
J. R. Duenas
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C. T. C. Gutierrez
F. G. Lujan
A. M. Palomo
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R. F. Taitano
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AN ACT TO ADD CHAPTER V-A TO TITLE XIV. OF THE GOVERNMENT CODE OF GUAM TO DECLARE AS A TERRITORY RECREATIONAL AREA GOVERNMENT-OWNED LAND BETWEEN THE MEAN HIGH WATERMARK AND PRIVATELY-OWNED LAND, TO PROTECT AND PRESERVE PUBLIC RIGHTS IN THE OCEAN SHORE AND TO AUTHORIZE THE REACQUISITION OF SUCH OCEAN SHORE WHERE A PORTION HAS BEEN LOST TO PRIVATE OWNERSHIP AND NO PUBLIC RIGHTS EXIST THEREIN AS A RESULT OF DEDICATION, PRESCRIPTION OR OTHERWISE; TO AMEND PUBLIC LAW 16-71; TO AMEND SECTION 17203 OF THE GOVERNMENT CODE OF GUAM; AND TO AUTHORIZE AN APPROPRIATION FOR THE REACQUISITION OF OCEAN SHORE.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Chapter V-A is hereby added to Title XIV of
3 the Government Code of Guam to read as follows:

4 "CHAPTER V-A

5 Ocean Shores: Territory Recreational Areas

6 Section 13450. Legislative findings. The Legislature
7 declares that:

8 (a) The traditional pattern of land ownership of
9 land abutting the beaches and ocean shores of Guam is
10 that a strip of dry land between the mean high water-
11 mark as can be physically established from the latest
12 tide elevation data published by the U. S. Coast and

1 Geodetic Survey, and privately-owned land is owned by
2 the government for general use of the inhabitants of
3 the island, being open and available to all users, both
4 for recreational purposes and as a means of livelihood
5 for thrownet fishermen;

6 (b) The shore side boundaries of privately-owned
7 real properties which were surveyed before World War II
8 did not extend to the mean high watermark, as can be
9 testified to respecting the privately-owned land along
10 Agana Bay in the organized villages of Asan, Piti
11 and Agat;

12 (c) Since World War II, an increasing amount of
13 the government-owned land abounding the sea has been
14 alienated and lost to private ownership;

15 (d) Although fee title to the ocean shore may have
16 vested in private individuals, the Legislature recognizes
17 that over the years the public has made frequent and
18 uninterrupted use of such ocean shore and recognizes,
19 further, that where such use has been legally sufficient
20 to create rights or easements in the public through
21 dedication, prescription, grant, or otherwise, that it
22 is in the public interest to protect and preserve such
23 public rights or easements as a permanent part of Guam's
24 recreational resources;

25 (e) The indiscriminate building of structures on
26 the ocean shores of Guam creates a menace to the well-
27 being of the people of the territory by increasing the
28 pollution of tidal waters, and such construction, in
29 addition, deprives the people of Guam of their right
30 to untrammelled use of beach areas above the mean
31 high watermark;

1 (f) Such construction destroys the natural beauty
2 of Guam's ocean shores, one of the territory's greatest
3 natural resources; and

4 (g) Finally, in spite of the enactment of certain
5 laws and the adoption of numerous resolutions for the
6 protection and preservation of the beach areas of Guam,
7 the Executive Branch of the government, which has the
8 responsibility for enforcing these laws and implementing
9 the resolutions adopted, has failed to adequately pre-
10 serve and protect that strip of said land above the
11 mean high watermark which belongs to the people of
12 Guam.

13 Section 13451. Legislative Policy. The Legislature
14 of Guam hereby declares as the public policy of the
15 territory of Guam that it is the public right to have
16 unrestricted access to the ocean shores of Guam for
17 common use by all the people of Guam, and therefore
18 that strip of public land above the high mean water-
19 mark must be preserved and protected for all generations
20 to assure free access to the beaches of the territory
21 to the maximum extent, to preserve the natural beauty
22 of Guam's beaches, and to alleviate the health problems
23 caused by construction near tidal areas. It is, there-
24 fore, the purpose of this Chapter to forever preserve and
25 maintain the sovereignty of the territory heretofore
26 legally existing over the ocean shore of the territory
27 so that the public may have the free and uninterrupted
28 use thereof; to protect, settle and confirm the public
29 rights to the use of the ocean shore heretofore acquired
30 by public dedication, prescription, or otherwise. and
31 to authorize the reacquisition of the ocean shore where

1 a portion thereof has been lost to private ownership and
2 no public rights exist therein as a result of dedication,
3 prescription, or otherwise.

4 Section 13452. Construction and interpretation.
5 The Legislative findings and policy set forth in
6 Sections 13450 and 13451 shall govern in the interpre-
7 tation of any provision in this Chapter.

8 Section 13453. Definitions: 'ocean shore',
9 'territory recreational area'. As used in this Chapter,
10 unless the context requires otherwise:

11 (1) 'Ocean shore' means the land between the
12 mean low waterline and a series of lines connecting
13 angle points located at a distance of twenty-five
14 (25) feet inland from the two (2) feet contour line
15 as established and described by the U. S. Coast
16 and Geodetic Survey. The angle points shall be
17 so selected as to secure maximum parallelism of the
18 twenty-five (25) feet setback line with two (2) feet
19 contour.

20 (2) 'Territory recreational area' means a land or
21 water area, or combination thereof, under the juris-
22 diction of the Department of Land Management, used
23 by the public for recreational and fishing purposes.

24 Section 13454. Ownership of Guam ocean shore.
25 Ownership of that part of the ocean shore of Guam
26 between mean high tide and extreme low tide, excepting
27 such portions as may have been disposed of by the
28 territory prior to January 1, 1972, is vested in the
29 territory of Guam and is declared to be a territory
30 recreational area.

31 Section 13455. Vesting of public rights in Guam

1 ocean shore. All public rights or easements in any
2 part of the ocean shore of Guam legally acquired through
3 express dedication, implied dedication, prescription, grant,
4 or otherwise are confirmed and declared vested exclusively
5 in the territory recreational area. No land subject to
6 rights vested pursuant to this section shall, after
7 the effective date of this Act, be registered pursuant
8 to the provisions of Article I, Chapter IV, Title IV,
9 Part IV, Division Second of the Civil Code of Guam,
10 unless the registration is in the name of the government
11 of Guam or clearly sets forth the existence of rights
12 in the government of Guam.

13 Section 13456. Acquisition of Guam ocean shore. The
14 Governor is hereby authorized and directed to acquire
15 ownership of or interests in any part of the ocean shore
16 of Guam where such lands are held in private ownership;
17 provided, however, the Governor shall not acquire owner-
18 ship of or interests in any such ocean shore if it is
19 unregistered and frequent and uninterrupted use of the
20 ocean shore by the public has been legally sufficient
21 to create rights and easements in the public which are
22 confirmed and vested pursuant to Section 13455 of this
23 Chapter; and provided further that any interest in such
24 ocean shore acquired by the Governor which is less than
25 full ownership thereof shall be sufficient to permit
26 the Department of Land Management to administer the
27 interest acquired as a territory recreational area.
28 Such acquisition from private owners shall either
29 be by condemnation, exchange, or negotiated purchase,
30 except that the price for such negotiated purchases shall
31 not exceed the most recent appraised value of such

1 property for real property taxes under Chapter IV,
2 Title XX, Government Code of Guam, and if by exchange
3 with government-owned property, only if the government-
4 owned property to be exchanged has been included in the
5 inventory of government land, or amendments thereto,
6 provided under Section 13505.1 of the Government Code
7 of Guam.

8 Section 13457. Guam ocean shore not to be alienated:
9 j judicial confirmation of public rights in ocean shore.
10 No portion of the ocean shore of Guam or any interest
11 therein vested by Sections 13454 and 13455 of this
12 Chapter or hereafter acquired by the territory of Guam
13 or any political subdivision thereof shall be alienated
14 by any agencies, departments, commissions or corporations
15 of the territory except as expressly provided by law;
16 provided, however, the restriction on alienation shall
17 not apply to a judicial sale of such land resulting
18 from a condemnation action brought by the United States
19 of America or to an exchange of said land made pursuant
20 to Section 13525(c) of this Code. The Department of
21 Land Management, when necessary shall undertake appro-
22 priate court proceedings to protect, settle and confirm
23 all public rights and easements vested in the territory
24 pursuant to Sections 13454 and 13455 of this Chapter.

25 Section 13458. Title and rights of territory un-
26 impaired. Nothing contained in this Chapter shall be
27 construed to relinquish, impair or limit the sovereign
28 title or rights of the territory of Guam in its shores
29 as the same may exist before or after the effective
30 date of this Chapter.

(c) Failure to pay taxes on property in control of

1 Section 13459. Liability of property owners of
2 ocean shore. The owner or person in control of any
3 property subject to a public easement declared a
4 territory recreational area by Section 13455 of this
5 Chapter or acquired as ocean shore for a territory
6 recreational area pursuant to Section 13456 of this
7 Chapter shall not be liable for any injury to another
8 person or damage to property of another resulting from
9 a condition of the property within either area, unless
10 the injury or damage results from a condition that he
11 created and that he knew of or in the exercise of reason-
12 able care, should have known was likely to cause injury
13 to persons or damage to property.

14 Section 13460. Landowner declaration of continuing
15 control of land along ocean shore: effect: failure to file.

16 (a) In any court proceedings involving prescrip-
17 tive rights of the public over unregistered property
18 abutting, adjacent or contiguous to the ocean shore,
19 an instrument executed and filed as provided by Sub-
20 section (b) of this section shall be an act and declara-
21 tion admissible as evidence of the intent of the owner
22 or person in control of property to exercise dominion and
23 control over his property.

24 (b) The declaration shall describe the property
25 and shall be signed and acknowledged. It shall state
26 that the public is granted permission to use the
27 property, or a specifically described portion of the
28 property, and that the public use may be for certain
29 purposes which shall also be described. The declaration
30 shall be filed in the Department of Land Management.

31 (c) Failure of the owner or person in control of

1 property to execute and file the declaration as provided
2 in Subsection (b) of this section shall not imply an
3 intent to relinquish dominion and control over his
4 property."

5 Section 2. Public Law 10-71, Tenth Guam Legislature, is
6 hereby amended to read as follows:

7 "Section 1. Section 13405 is hereby amended
8 to the Government Code of Guam to read as follows:

9 'Section 13405. Acquisition of
10 Recreational Land. The Legislature finds that
11 the acquisition of land to provide recreational
12 facilities fulfills a public purpose and is
13 necessary for the preservation of the health
14 and welfare of the people of Guam. Accordingly,
15 the Governor is authorized to set aside, if
16 government owned, the following amounts of land
17 to be used to provide recreational facilities
18 over the period 1966 thru 1985:

- 19 (1) 45 acres of beaches (6,650 lineal
20 feet of beach);
21 (2) 879 picnic units (115 acres);
22 (3) 922 camp sites (185 acres);
23 (4) Easements for hiking and riding trails
24 of a length of 144 miles;
25 (5) 32 acres of land for boating facilities;
26 (6) 12 acres of surfing beach land
27 (1,780 lineal feet).'

28 Provided, however, the Governor shall not acquire
29 under the authority granted by this section to
30 acquire beaches and surfing beach land any ocean
31 shore (as defined in Section 13453(1) of this

1 Code) if it is unregistered and frequent un-
2 interrupted use of the ocean shore by the public
3 has been legally sufficient to create rights and
4 easements in the public which are confirmed and
5 vested pursuant to Section 13455 of this Code.

6 Section 2. All costs of acquisition shall be paid
7 out of the Land Acquisition Fund established by Section
8 13978 of the Government Code of Guam."

9 Section 3. Subparagraph (b) of Section 17203 of the
10 Government Code of Guam is hereby amended to read as follows:

11 "(b) Along any beach in the territory of Guam, no
12 building may be constructed within thirty-five feet (35')
13 of the mean high watermark bounding said beach, nor may
14 any building higher than twenty feet (20') be constructed
15 within seventy-five feet (75') of the said mean high
16 watermark. For the purpose of this section, the term,
17 'beach' does not include those areas where the shoreline
18 is a cliff or bluff higher than twenty-five feet (25'),
19 nor shall it include those areas where the shoreline is
20 bounded by village lots containing no more than a
21 thousand (1000) square meters in those villages wherein
22 residences have been constructed along the shoreline
23 since prior to the Second World War, and the term
24 'building' included any structure except a retaining
25 wall that cannot be seen."

26 Section 4. All costs of acquisition shall be paid out of
27 the Land Acquisition Fund established by Section 13978 of the
28 Government Code of Guam. There is hereby authorized to be
29 appropriated from the Land Acquisition Fund, as the initial
30 appropriation to implement the purpose of Chapter V-A of the
31 Government Code of Guam, the sum of Two Hundred Fifty Thousand
32 Dollars (\$250,000).