

PARKS, RECREATION AND HISTORIC PRESERVATION

**GUAM STATE HISTORIC
PRESERVATION OFFICE / GUAM
HISTORIC RESOURCES DIVISION
PROGRAM AREA ON REVIEW AND
COMPLIANCE**

PERFORMANCE AUDIT
FY 2018 through FY 2023

OPA Report No. 25-05
March 2025





Guam State Historic Preservation Office / Guam Historic Resources Division Program Area on Review and Compliance

**Performance Audit
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Table of Contents

Executive Summary	3
Introduction.....	9
Background	9
Program Area on Review and Compliance	10
Applicable Laws, Regulations, and Policies	13
Results of Audit.....	14
Concerns Regarding GSHPO/GHRD’s Law and Rules and Regulations.....	14
GSHPO/GHRD’s Operations Not in Line with Enabling Statute	14
Need for Comprehensive Mapping and Survey of Guam	16
GSHPO/GHRD’s Rules and Regulations Require Adjudication Process	17
Unauthorized Imposition of Requirements by the GSHPO/GHRD Officials	18
Deficiencies in the GSHPO/GHRD Permit Application Review Process	20
Review and Compliance Applications	20
Certificate of Approval Applications	21
DPW Permit Application Form Requires Clear Labeling of GSHPO/GHRD	22
Conclusion and Recommendations	23
Classification of Monetary Amounts.....	25
Management Response and OPA Reply	26
Appendix 1: Objective, Scope, and Methodology	28
Appendix 2: Applicable Laws, Regulations, and Policies	29
Appendix 3: Active 21 GCA 76 Section Timeline	36
Appendix 4: Active 21 GCA 77 Section Timeline	40
Appendix 5: OAG Assistant Attorney General Legal Advice	44
Appendix 6: Company A Letter to the Attorney General.....	47
Appendix 7: Letter to the GHPO	52
Appendix 8: Compliance Testing Criteria.....	56
Appendix 9: RC Application Database.....	56
Appendix 10: COA Application Database.....	58
Appendix 11: GSHPO/GHRD Management Responses	59
Appendix 12: DPW Management Response.....	63
Appendix 13: Status of Audit Recommendations	64



Executive Summary
Guam State Historic Preservation Office (GSHPO)/
Guam Historic Resources Division (GHRD)
Program Area on Review and Compliance
OPA Report No. 25-05, March 2025

Our audit of the Guam State Historic Preservation Office's / Guam Historic Resources Division (GSHPO/GHRD) Program Area on Review and Compliance for fiscal years (FY) 2018 to 2023 revealed several concerns regarding GSHPO/GHRD's law and rules and regulations, to include:

1. GSHPO/GHRD's Current Operations Not in Line with Enabling Statute;
2. The Need for a Comprehensive Mapping and Survey of Guam;
3. GSHPO Rules and Regulations Require Adjudication Process; and
4. GSHPO/GHRD Officials Imposing Unauthorized Requirements.

In addition, deficiencies were identified in our review of GSHPO/GHRD's Permit Application Review Process. Although majority of the application files tested for both Review and Compliance (RC) and Certificate of Approval (COA) applications had the required documents for clearance (i.e. ownership documents, vicinity maps, stamps and signatures), we identified several applications files that did not properly conclude the permit review process due to missing reports (i.e. site inspection reports, Guam Historic Resources Division Reports, and archeological reports).

On average, the time for an application to be received, reviewed, and cleared took 10 days for RC applications, which exceeds GSHPO/GHRD's policy to complete review of applications within five business days (for those with no issues or COA requirement). There is no policy on how long a COA application review should take, but we found that it takes an average of 37 days for GSHPO/GHRD to complete reviews of COA applications.

These concerns and deficiencies cited elevates the need for corrective action to streamline GSHPO/GHRD's statutory authority with current operations, and improve its review and permit clearance process while still preserving and promoting the rich cultural heritage of Guam.

What is GSHPO/GHRD?

GSHPO/GHRD is under the Department of Parks and Recreation (DPR), and is one of the several agencies responsible for reviewing and providing clearance for permits to allow parties to conduct work on their job sites (i.e. building and highway encroachment projects). From FY 2018 to FY 2023, GSHPO/GHRD processed over 5 thousand (K) RC applications, averaging about 900 per year. This volume highlights GSHPO/GHRD's crucial role in ensuring that construction and land development activities comply with preservation laws and guidelines. GSHPO/GHRD's COA database shows that from FY 2018 to FY 2023, 246 applications contained concerns, which only 50 of 246 (or 20%) have been completed or cancelled, while the remaining 196 (80%) are still pending.

GSHPO/GHRD Operations Not in Line with Enabling Statute

Multiple sections of the codified law, Guam Code Annotated (GCA), contain long-standing rules that no longer align with GSHPO/GHRD operations. For example, 21 GCA Chapter 77, Section 77302 designates the Guam Historic Preservation Officer (GHPO) as the Executive Director of the

Guam Preservation Trust Fund (GPT). However, GPT operates as a separate agency with its own Executive Director, and SHPO/GHPO has no involvement in its management. Additionally, the law does not explicitly mention the “Guam State Historic Preservation Office,” referring instead to entities like the DPR, the Guam Historic Resources Division, and the Guam Historic Preservation Review Board. This ambiguity has caused confusion over the roles and responsibilities of GSHPO/GHRD or DPR in their responsibility over preservation laws. Given that current operations may not fully align with codified law, this suggests that at some point after the laws were established, a decision was made for the GSHPO/GHRD to operate contrary to the GCA—without legislative approval.

Our analysis of the original legislation and subsequent amendments highlights the outdated nature of these laws. Of the current codified laws relevant to GSHPO/GHRD, 54% were enacted in the 1970s, 6% in the 1980s, 18% in the 1990s, 14% in the 2000s, and only 4% for both the 2010s and 2020s. The most recent amendments were made in 2021-2022. GSHPO/GHRD has drafted updated legislation to address these inconsistencies, but it has not been introduced. Given that current operations may not fully align with codified law, this suggests that at some point after the laws were established, a decision was made for the GSHPO/GHRD to operate contrary to the GCA—without legislative approval. Key updates in the draft include:

1. Clear definitions of the “Historic Preservation Office” and its separation from DPR to place it under the Governor of Guam.
2. Revised office positions, funding sources, and authority to better reflect current operations.
3. Shifting the financial responsibility for construction, alteration, or improvements on historical-cultural properties from DPR to private landowners or developers.

One significant proposal in the draft is the transfer of financial responsibility for mitigating impacts on historical-cultural resources to developers. Under current law, DPR assumes responsibility for the removal of remains and compensates landowners for property value losses, with developers liable only if work disturbs significant resources. This responsibility was first addressed in the 1990s with Bill No. 486, which included a provision requiring developers to conduct a historical survey on the land to be developed at their own expense. However, this section was removed prior to the bill's passage, indicating that the Guam Legislature at the time did not intend to include such a requirement in the COA process.

Need for Comprehensive Mapping and Surveys of Guam

Despite legal mandates since the 1990s, DPR and GSHPO have not fulfilled its responsibility of developing a comprehensive island-wide database of historic and archaeological sites. While GSHPO maintains a database for assessing project impacts, gaps in mapping often necessitate additional surveys before permit approval, causing delays.

The reliance on GSHPO’s internal records affects operational efficiency, compliance, and public access to historical data, which can affect informed land purchases. To address this, DPR and GSHPO should prioritize updating and publicly sharing a complete mapping database to fulfill legal requirements and improve accessibility.

GSHPO/GHRD's Rules and Regulations Require Adjudication Process

GSHPO/GHRD is currently working with the Office of the Attorney General (OAG) to adjudicate its updated rules, regulations, and standard operating procedures. However, these have yet to be formally adopted under the Administrative Adjudication Act. Concerns have been raised about GSHPO/GHRD's authority, with a December 2023 letter from DPR Acting Director highlighting legal instances that were exceeded by GSHPO/GHRD.

The agency currently operates based on legal advice from a former Assistant Attorney General in 2021 (see Appendix 5). Prior to the advice, they followed internal guidelines of a former DPR Director previously developed without rule-making authority. Those guidelines were not published as part of the Guam Administrative Rules (GAR) and cannot be legally enforced. Despite efforts to secure an official AG opinion on the matter, no response has been received from the current OAG administration.

Unauthorized Imposition of Requirements by GSHPO/GHRD Officials

Our audit confirmed that the former State Archaeologist/Guam Territorial Archaeologist of GSHPO/GHRD imposed requirements and conditions on permit applications that exceeded the agency's statutory authority. Notable examples include the State Archaeologist:

1. Unilaterally ordering a contractor to stop work and remove its equipment from a project site without proper authority.
2. Requiring a private party to construct facilities, including a reburial monument, public restroom, and parking stalls, as conditions for permit approval.

These actions raised concerns from affected parties, leading to a review by the Attorney General's Office (OAG), which determined that these actions were beyond GSHPO's legal authority. To prevent future overreach, DPR has mandated GSHPO/GHRD to seek OAG approval for any permit conditions beyond its statutory scope.

Additionally, another official had an existing programmatic agreement with one party. This agreement outlines several obligations as noted in their letter to the OAG. The agreement appeared to reflect mutual consent between the parties. Although this was agreed to, our office finds that the requirements imposed were unjustified and exceeded the bounds of Guam law in regards to GSHPO/GHRD's authority.

Deficiencies in RC Applications

Out of 71 sampled RC applications, we were only able to review 61. Six were federal projects, for which the relevant documents were unavailable due to the project's confidentiality, and four were non applicable.

We noted a major deviance in one procedural requirement. According to GSHPO/GHRD's permitting process flowchart, a report should be generated after the archaeologist's determination to conclude the process. It was found that 55 of these applications (or 90%) had no report prepared or was not attached within the folder, 5 (or 8%) application included a report, and one (or 2%) could not be determined due to incomplete documentation.

While the remaining required documents were found in majority of the 61 regular applications tested, we found the following deficiencies:

- One (2%) application did not have a vicinity map within their application.
- One (2%) did not have a site plot plan as part of their required documents.
- Three (5%) were missing ownership documents.
- Five (8%) did not have a copy of a contractor's license, or a clearance from the CLB.
- One (2%) application was not stamped and assigned an RC number.
- Three (5%) did not have record of a site inspection or research on job site being done.
- Two (3%) did not have record of a no impact determination.
- Two (3%) permit applications did not contain a signature.
- One (2%) did not have proof of a site inspection done where impact was identified.
- Three (5%) of the applications were not inputted in their physical tracking log.
- One (2%) did not have COAs attached to their application.
- Two (3%) of the 61 applications were also considered incomplete, as we could not determine its compliance.

Deficiencies in COA Applications

Additionally, we reviewed GSHPO/GHRD's COA application database from FY 2018 through FY 2023. Similar to the regular application database, the sample was adjusted from 25 applications to 22, as one was a federal project and two were non-applicable due to being a different type of application.

Two significant deficiencies were noted. First, 11 (or 50%) COA applications were not logged in GSHPO/GHRD's physical COA tracking log, while the other 10 (or 45%) were logged, and the remaining 1 (or 5%) were not applicable. This inconsistency between the digital and physical tracking systems poses a risk to proper project tracking, as some projects may be marked as incomplete or still pending.

Second, 9 (or 41%) applications, lacked a copy of the COA in their folder. Although all selected projects were part of the COA database, we were unable to locate the COA in the application folders. Without a COA, it is unclear if these documents were issued to the applicants, as required by GSHPO/GHRD's permitting process flowchart.

Of the 22 COA applications tested, we also found majority of them had the required documents for clearance. However, we identified the following deficiencies:

- Three (14%) were missing ownership documents.
- Four (18%) did not have a copy of a contractor's license, or a clearance from the CLB.
- One (5%) did not have record of a site inspection or research on job site being done.
- Two (9%) did not have record of a no impact determination.
- Two (9%) permit applications did not contain a signature.
- Four (18%) did not have proof of a site inspection done where impact was identified.
- 11 (50%) of the applications were not inputted in their physical tracking log.
- Nine (41%) did not have COAs attached to their application.

- A recurring issue was the lack of documentation, highlighting weaknesses in record-keeping practices.

Application Review Timeframe

Another noteworthy finding was the efficiency of the receipt and clearance of an application. The average review time for RC applications was 10 days, exceeding the 5-day policy. Only 22 (36%) of 61 RC applications were reviewed timely, the shortest being 0 days and the longest 55 days. Six (10%) did not contain clearance dates. Additionally, 13 (21%) applications were cleared on the same day, violating GSHPO/GHRD's policy prohibiting same-day reviews.

For COA applications, the average review time was 37 days, exceeding the 30-day goal of GSHPO/GHRD. 12 (55%) of COA applications were reviewed timely, ranging from 0 to 205 days. One (or 5%) of the applications did not contain a signed clearance. Four (18%) were cleared on the same day, violating the same-day review policy.

DPW Permit Application Form Requires Clear Labeling of GSHPO/GHRD

The Department of Public Works (DPW) uses permit application forms to guide applicants in obtaining the necessary clearances for their projects. These forms list agencies, including DPR, from which applicants may need to obtain clearance. According to DPW's Deputy Director, it is understood that references to DPR on the form imply GSHPO/GHRD, a practice also communicated to permitting office staff.

However, the GHPO has noted the current format of the application increases the risk for misdirection or circumvention of GSHPO/GHRD processes, as applicants may mistakenly approach DPR for services or bypass GSHPO/GHRD entirely. Furthermore, untrained staff may misinterpret the form, providing incorrect guidance and exacerbating the issue. Such errors can result in delays, applicant frustration, and noncompliance with preservation laws if required steps are overlooked.

Conclusion and Recommendations

The concerns and deficiencies highlighted emphasize the need for corrective action to streamline GSHPO/GHRD's statutory authority with current operations, and improve its review and permit clearance process while still preserving and promoting the rich cultural heritage of Guam. We acknowledge that GSHPO/GHRD is currently in works to address these matters, but we want to reiterate the following recommendations:

1. The GSHPO/GHRD, its oversight chair, and the Guam Legislature should collaborate to draft and implement amendments that streamline operations and prevent conflicts within this legislative period.
2. DPR and GSHPO should prioritize updating their database by surveying unassessed areas to fulfill their responsibility of creating a comprehensive island-wide record of historic and archaeological sites. Additionally, the database should be made publicly accessible to enhance transparency and informed decision-making.
3. Ensure that their Rules and Regulations and Standard Operating Procedures undergo a thorough review and approval process through the Administrative Adjudication Act.

4. DPR and GSHPO/GHRD should establish procedures to ensure the agency operates within its statutory authority and obtains necessary approvals for non-standard permit conditions.
5. Implement a stringent permit application review process, including a detailed checklist of requirements, documentation of project status and completion, and a systematic approach to storing and organizing application files for greater efficiency.
6. DPW to revise their permit application form to accurately reflect the roles of the relevant agencies, ensuring proper routing of applications. Specifically, clearly identifying GSHPO/GHRD on the form.



Benjamin J.F. Cruz
Public Auditor

Introduction

This report presents the results of our performance audit conducted on the Guam State Historic Preservation Office's (GSHPO)/Guam Historic Resources Division (GHRD) Program Area on Review and Compliance. In August 2023, the Public Auditor received inquiries regarding delays in application reviews by GSHPO/GHRD. One issue garnered media attention, particularly after the Office of the Attorney General (OAG) received a letter from a local company, outlining complaints against GSHPO. In response to these concerns, the Public Auditor initiated an audit.

Our audit objectives were: 1) to determine whether GSHPO/GHRD's use of statutory authority aligns with applicable laws, regulations, and policies, and 2) to determine whether GSHPO's processing of permits complies with applicable rules and regulations. Our review covers fiscal years (FY) FY 2018 to FY 2023, encompassing the tenures of the past and present-day Guam Historic Preservation Officers. Additionally, our review of permit and certificate of approval applications spans the same period.

The objectives, scope, and methodology for this audit are detailed in Appendix 1.

Background

GSHPO/GHRD holds a pivotal role in preserving and promoting the rich cultural heritage of Guam. Their main goal is safeguarding the island's historic resources, ensuring their protection, and fostering an understanding of Guam's diverse cultural history. The office operates within the framework of national historic preservation laws, as well as local regulations specific to Guam.

Under the purview of the Department of Parks and Recreation's (DPR), GHRD/GSHPO is led by the Guam Historic Preservation Officer (GHPO). The GHPO shall administer the comprehensive program for historic preservation, restoration, and presentation prescribed by 21 Guam Code Annotated (GCA) §76103, including but are not limited to 1) establishing a register of historic places, 2) seeking assistance for territorial historic preservation by applying for federal funds, and 3) establishing regulations on the uses of historic areas. This position is created in the classified service under DPR, the holder of which position shall be the State Historic Preservation Officer (SHPO) for federal purposes. Supporting the GHPO are a team comprising of four program coordinators, a computer data librarian, a secretary typist, two historians, a state archaeologist, a staff archaeologist, and two historic preservation specialists.

The functions of GSHPO/GHRD span across six distinct program areas.

1. Survey and Inventory – Survey activities involve the direct location, identification, and assessment of historic and archaeological resources, while inventory activities relate to the utilization and maintenance of existing information on the presence or absence of these resources.
2. Preservation Planning – A process that organizes preservation activities - identification, evaluation, registration, and treatment of historic properties in a logical sequence.
3. Guam and National Register – Focuses on documenting and evaluating historic or archaeological resources to assess their potential eligibility for listing in either the National Register of Historic Places or the Guam Register.

4. Review and Compliance – Determining impacts and adverse effects on historic properties, GSHPO/GHRD attends numerous meetings, conducts numerous site inspections; reviews and comments on numerous archaeological reports, environmental assessments, scopes of work, research designs, and mitigation plans; including reviewing hundreds of permits and development projects.
5. Administration - Activities pertinent to budget formulation and execution, personnel management, finance, property management, equal opportunity, and other "overhead" functions not directly attributable to the other Program Areas.
6. Other – General outreach programs, public education activities, Historic American Buildings Survey and Historic American Engineering Record programs, and maintaining the Historic Preservation Program website

Separately, there is Guam Historic Preservation Review Board that typically comprises of individuals with expertise in various fields and is advisory to the DPR and the Governor. Members may include representatives from government agencies, academic institutions, and community organizations dedicated to preserving Guam's unique heritage.

Program Area on Review and Compliance

In the context of this audit, which was initiated based on the concerns with the permit clearance process, the primary focus will be on the "Review and Compliance" program area. In this program area, the primary function is that GSHPO/GHRD reviews projects subject to federal or local permitting processes to ensure they comply with historic preservation laws. This involves assessing potential impacts on historic resources and proposing measures to avoid or mitigate adverse effects.

Regarding construction projects, GSHPO/GHRD must adhere to stringent protocols when human remains are discovered. These remains are treated with respect and consideration, and disturbances to burials are avoided whenever possible. In cases where disturbance is necessary, developers bear the responsibility and follow procedures and standards acceptable to the Guam Historic Preservation Officer.

Before any prehistoric remains or objects are excavated or removed from private lands by DPR, DPR or its designated representatives may examine the remains or objects, enter upon the land and make investigations. Removal of any prehistoric or historic remains or objects from private lands shall be made in the presence of the owner as witness, with DPR compensating the owner of such lands for the loss of such remains or objects mutually agreed upon by DPR and the owner. If there is no agreement reached, the amount of compensation is determined by trial in the Superior Court.

DPR is one of the several agencies responsible for reviewing and providing clearance for permits to allow parties to conduct work on their job sites. From FY 2018 to FY 2023, GSHPO/GHRD processed over 5 thousand (K) permit applications, averaging about 900 per year. This volume highlights GSHPO/GHRD's crucial role in ensuring that construction and land development activities comply with preservation laws and guidelines. The GHPO estimated that 93% of applications are processed without issue, while the remaining 7% have concerns, of which only 3% of those requiring a full survey. GSHPO/GHRD's database shows that from FY 2018 to FY 2023, 246 applications contained concerns, which only 50 of 246 (or 20%) have been completed

or cancelled, while the remaining 196 (80%) are still ongoing or pending. Typically, permit applications are issued within five (5) working days, and applications with concerns are responded to within 30 days, though some cases may take longer to clear.

Figure 1: Department of Public Works (DPW) Application Process

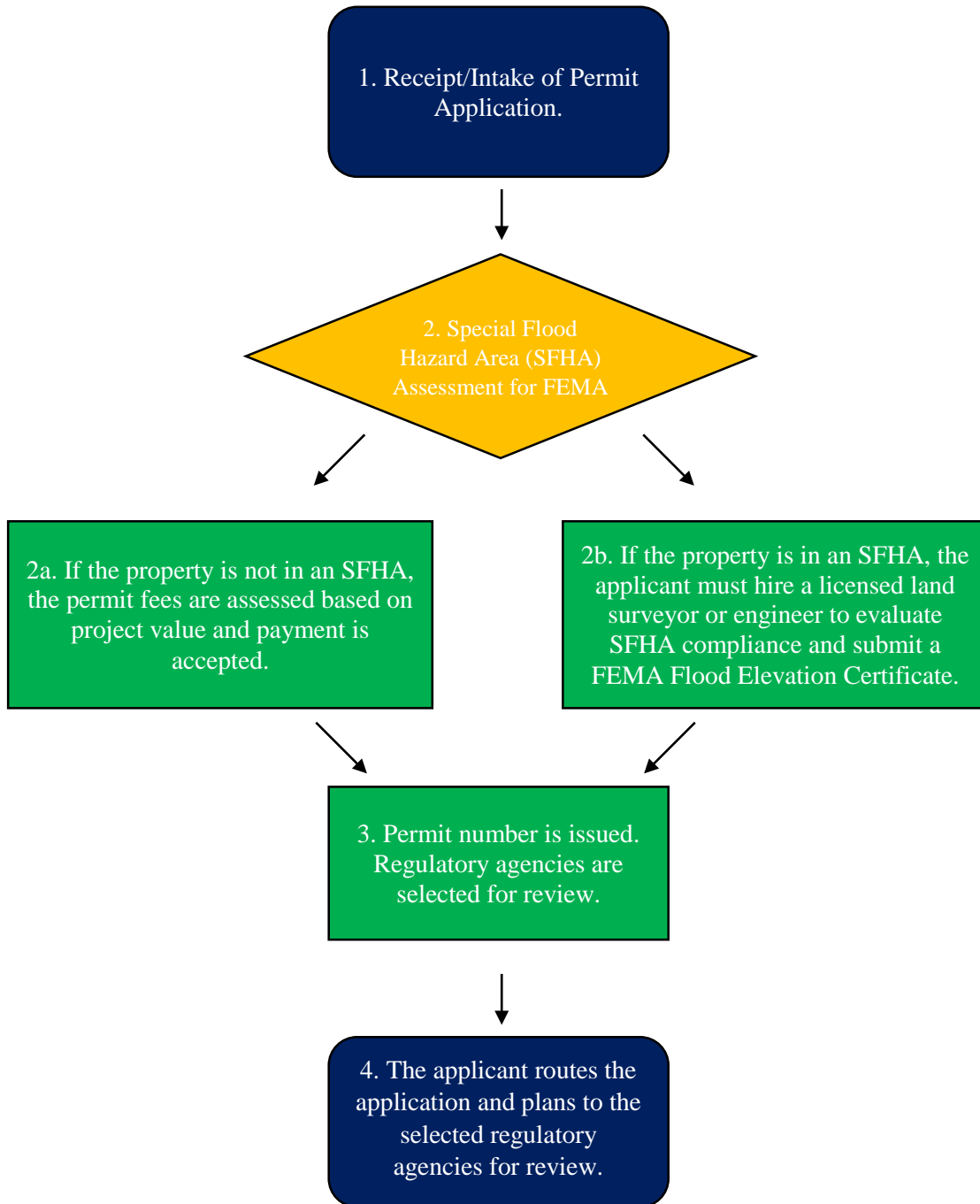
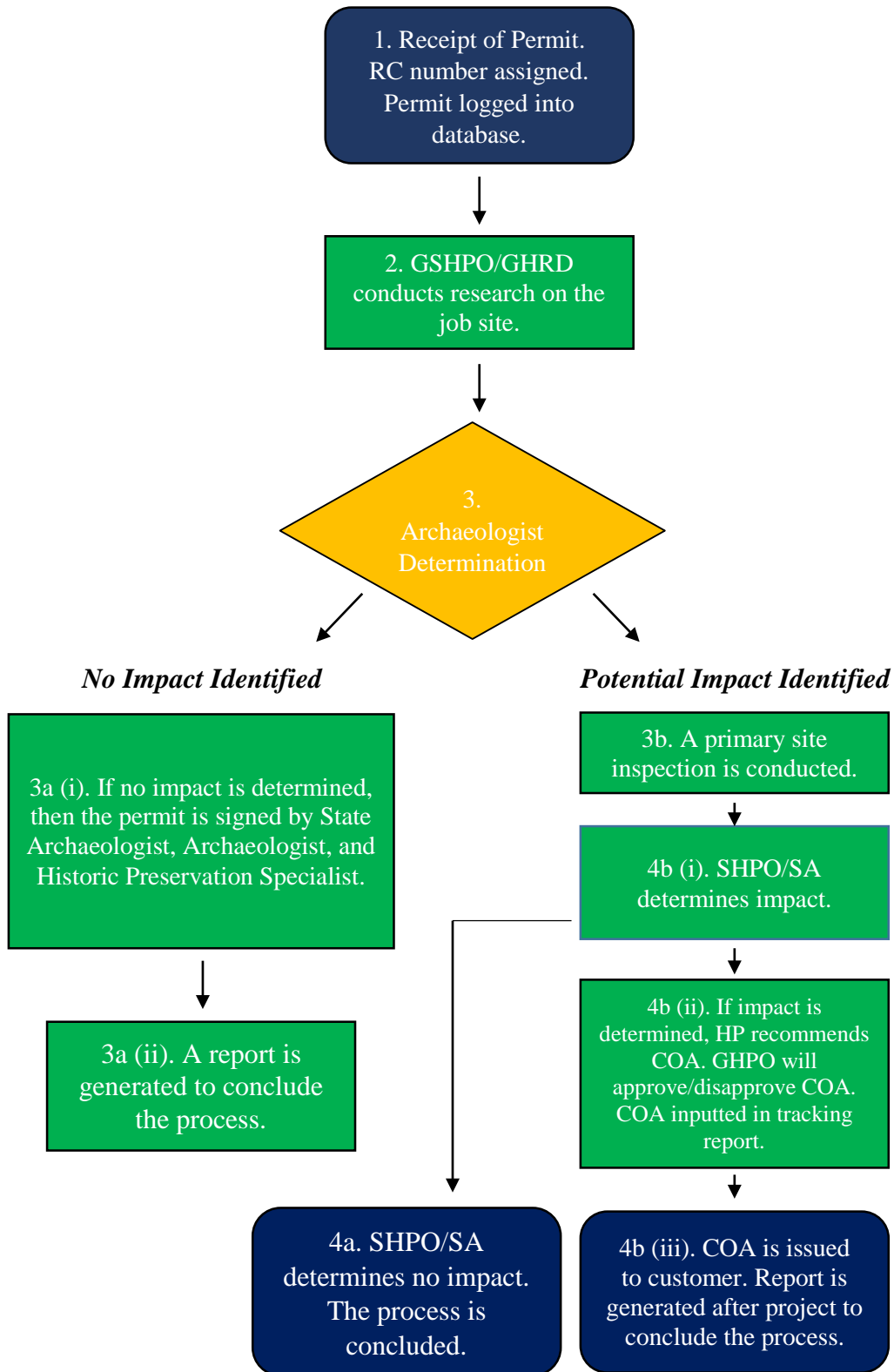
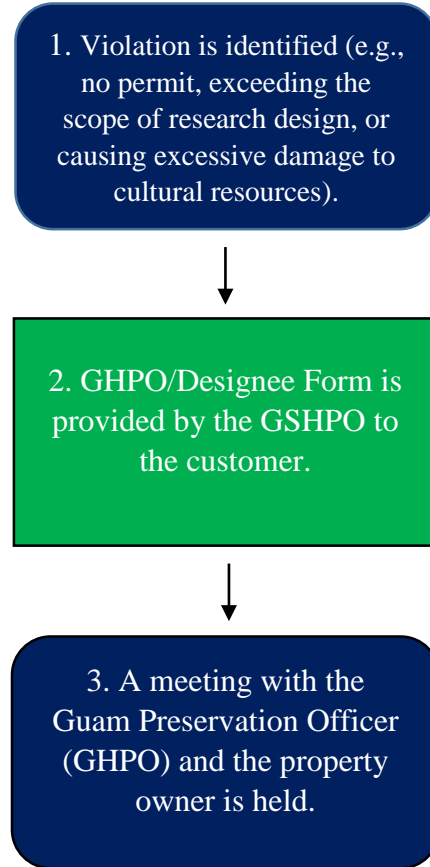


Figure 2: GSHPO/GHRD Application Process



Cease Work Order



Applicable Laws, Regulations, and Policies

We found the following references applicable to GSHPO/GHRD and its Program Area on Review and Compliance, relevant specifically towards the permit application process:

- **Historical Objects and Sites** – 21 GCA Ch. 76
- **Parks and Recreation** – 21 GCA Ch. 77
- **Policy on Reviewing DPW Permit Applications** – DPR
- **Certificate of Approval Flowchart** – GSHPO/GHRD

In addition, GSHPO/GHRD, DPR, and DPW has their own rules and regulations and policies. See Appendix 2 for the applicable laws, regulations and policies.

Results of Audit

Based on our review of the laws, rules and regulations, and permit applications database and files for GSHPO/GHRD's Program Area on Review and Compliance, we found several findings related to the execution of the program, specifically:

1. Concerns Regarding GSHPO/GHRD's Law and Rules and Regulations
 - a. GSHPO/GHRD's Operations Not in Line with Enabling Statute
 - b. Need for Comprehensive Mapping and Survey of Guam
 - c. GSHPO/GHRD's Rules and Regulations Require Adjudication Process
 - d. Unauthorized Imposition of Requirements by GSHPO/GHRD Officials
2. Deficiencies in the GSHPO/GHRD Permit Application Review Process
 - a. Review and Compliance Applications
 - b. Certificate of Approval Applications
 - c. DPW Permit Application Form Requires Clear Labeling of GSHPO/GHRD

Concerns Regarding GSHPO/GHRD's Law and Rules and Regulations

GSHPO/GHRD's Operations Not in Line with Enabling Statute

Multiple sections of codified law (GCA) contain long-standing rules that no longer align with GSHPO/GHRD operations. For example, 21 GCA Chapter 77, Section 77302 designates the GHPO as the Executive Director of the Guam Preservation Trust Fund (GPT). However, GPT operates as its own non-profit, public corporation with its own Executive Director, and SHPO/GHPO has no involvement in its management. Additionally, 21 GCA Section 76508 establishes the Guam Historic Preservation Review Board (GHPRB) as the Board of Directors for GPT as well. While GPT's Board of Directors expresses interest in supporting GSHPO and discusses potential collaboration during its meetings, they have not formally convened as the GHPRB for further discussion or coordination.

Additionally, 21 GCA Chapters 76 and 77 do not mention the term "Guam State Historic Preservation Office." Instead, the role of historic preservation for historical property would fall under DPR. The only entities relevant to historic preservation referenced in the law is DPR, the Guam Historic Resources Division (which is the GSHPO), and the Guam Historic Preservation Review Board, which serves as an advisory board of DPR and the Governor. This has caused confusion with the applicability and interpretation of the law as it pertains to DPR or GSHPO/GHRD's role in the handling of preservation laws.

We logged the original legislation, and all amendments and revisions relating to GSHPO/GHRD and DPR. As shown in Tables 1 through 3, the majority of active legislation was drafted over 50 years ago, with 54% originating in the 1970s. The 1980s account for 6%, the 1990s for 18%, the 2000s for 14%, while only 4% was enacted in both the 2010s and 2020s. The most recent amendments were made in 2021-2022. Given that current operations may not fully align with codified law, this suggests that at some point after the laws were established, a decision was made for the GSHPO/GHRD to operate contrary to the GCA—without legislative approval.

Table 1: Title 21 GCA Ch. 76 Section Timeline

Public Law	Date Signed Into Law	Sections Active in Current GCA	%
P.L. 10-068	7/30/1969	0	0%
P.L. 12-126	5/3/1974	28	49%
P.L. 12-209	1/23/1975	1	2%
P.L. 13-187	9/2/1976	3	5%
P.L. 20-151	3/21/1990	13	22%
P.L. 21-07	4/19/1991	0	0%
P.L. 25-69	7/8/1999	0	0%
P.L. 25-72	9/30/1999	0	0%
P.L. 27-89	5/6/2004	8	14%
P.L. 29-147	1/30/2009	1	2%
P.L. 30-180	8/19/2010	1	2%
P.L. 33-66	9/5/2015	1	2%
P.L. 36-107	9/12/2022	1	2%
TOTAL		57	100%

See Appendix 3 for detailed view on each section and law drafted/revision timeline.

Table 2: Title 21 GCA Ch. 77 Section Timeline

Public Law	Date Signed Into Law	Sections Active in Current GCA	%
P.L. 12-209	1/23/1975	6	22%
P.L. 13-187	9/2/1976	1	4%
P.L. 14-006	3/3/1977	0	0%
P.L. 14-012	4/5/1977	0	0%
P.L. 14-033	6/3/1977	0	0%
P.L. 15-132	7/2/1980	1	4%
P.L. 15-148	1/8/1981	1	4%
P.L. 16-44	10/13/1981	0	0%
P.L. 16-62	2/8/1982	2	8%
P.L. 16-105	8/6/1982	0	0%
P.L. 18-15	8/16/1985	1	4%
P.L. 19-48	12/30/1988	0	0%
P.L. 20-117	1/18/1990	1	4%
P.L. 20-151	3/21/1990	5	18%
P.L. 20-188	6/11/1990	0	0%
P.L. 21-105	5/29/1992	1	4%
P.L. 25-69	7/8/1999	0	0%
P.L. 25-72	9/30/1999	0	0%
P.L. 27-106	10/1/2004	1	4%
P.L. 28-78	12/5/2005	0	0%
P.L. 30-65	11/27/2009	2	8%
P.L. 31-179	2/3/2012	1	4%
P.L. 35-139	1/16/2021	2	8%
P.L. 36-52	8/17/2021	1	4%
TOTAL		26	100%

See Appendix 4 for detailed view on each section and law drafted/revision timeline.

Table 3: 21 GCA 76/77 Section Timeline Breakdown

Timeframe	Sections Active in Current GCA	%
1960's	0	0%
1970's	39	47%
1980's	5	6%
1990's	20	24%
2000's	12	15%
2010's	3	4%
2020's	4	4%
	83	100%

Notably, GSHPO/GHRD provided a draft of updated legislation, but it has not been introduced. The GHPO made efforts with current and past senators to introduce this draft; however, it has not come to fruition. This draft proposes several key updates, such as clear definitions of the “Historic Preservation Office,” the separation of GSHPO from DPR to the Governor of Guam, and revised office’s positions, funding sources, and authority. References to DPR have been amended to state GHPO, shifting the authority and burden of responsibility to their office. Many changes aim to streamline procedures, and expand definitions to reflect their current operational needs.

A major proposed update in the draft is shifting the financial responsibility for construction, alteration, or improvements on historical-cultural properties from DPR to private landowners or developers. Under current law, DPR assumes responsibility for the removal of remains and compensates landowners for property value losses, with developers liable only if work disturbs significant resources.

This responsibility was first addressed in the 1990s with Bill No. 486, which included a provision requiring developers to conduct a historical survey on the land to be developed at their own expense. However, this section was removed prior to the bill's passage, indicating that the Guam Legislature at the time did not intend to include such a requirement in the COA process.

We recommend GSHPO/GHRD, along with its oversight chair and the Guam Legislature, reassess the current codified law and work to introduce amended legislation that can streamline operations and prevent conflicts within this legislative period.

Need for Comprehensive Mapping and Survey of Guam

Despite longstanding legal mandates dating back to the 1990s under 21 GCA 76 Section 76103 and 21 GCA 77 Sections 77301 and 77303, DPR and GSHPO has not fulfilled its responsibility of developing a comprehensive island-wide database of historic and archaeological sites. While GSHPO maintains a database to assess the project impacts on historical artifacts within job sites, there are cases that more mapping and surveys are required.

Certain projects require additional surveys before permit approval. GSHPO determines the need for surveys based on factors such as prior site disturbances and the age of past studies, typically requiring an updated study if more than twenty years have passed. In cases of already disturbed

land, there are usually no issues, whereas a more extensive project would have to be monitored. As a result, project applicants may face delays due to the case-by-case determination for clearance.

The absence of a comprehensive mapping system has led to dependence on GSHPO's internal database, potentially impacting operational efficiency and compliance with preservation laws. This deficiency also affects civilians and businesses purchasing land, who lack readily available information to determine if a property contains historical artifacts. Furthermore, it limits public access to historical and archaeological data, despite 21 GCA 76 Section 76201 affirming the public's right to such knowledge. To address these issues, we recommend DPR and GSHPO prioritize updating their database by conducting surveys on areas that have not been assessed in order to comply with its initial responsibility of developing a comprehensive island-wide database of historic and archeological sites. In addition, this mapping database should be publicly available.

GSHPO/GHRD's Rules and Regulations Require Adjudication Process

Discussions and interviews with officials from GSHPO/GHRD confirmed that the agency is in the process of adjudicating its rules and regulations with the Office of the Attorney General (OAG). Although GSHPO/GHRD officials have drafted updated rules, regulations, and standard operating procedures, these have not yet been promulgated into law or undergone the adjudication process. Under 21 GCA §77207 and 5 GCA Chapter 9, DPR is required to adopt, and promulgate rules as necessary (...) for the guidance of all agencies.

Concerns were raised about GSHPO/GHRD's authority and responsibilities under the Guam Code Annotated (GCA). Additionally, a letter from the Acting Director of the Department of Parks and Recreation (DPR) raised doubts about GSHPO/GHRD's authority, citing specific GCA provisions that were exceeded.

When asked about what guidance they use for their operations, the GHPO mentioned that they currently rely on the legal advice provided by a former assistant Attorney General in 2021. Prior to the guidance, they followed internal guidelines of a former DPR Director previously developed without rule-making authority. These guidelines were not developed pursuant to any rule-making authority and have not been published as part of the Guam Administrative Rules (GAR), meaning they cannot be legally used.

Since receiving the 2021 legal advice, the office has made efforts to shift its operations accordingly. However, prior to the completion of the previous Attorney General's (AG) term, GSHPO/GHRD was unable obtain an official AG opinion on the matter. Efforts to contact the current OAG administration for a legal opinion have so far been unsuccessful. In an email dated May 9th, 2024, our office inquired with the AG for a response regarding the legal opinion provided then, but no official response has been received as of the release of this audit.

According to 21 GCA Chapter 76 Section 76511(d), the Guam Historic Preservation Review Board shall develop the criteria for resolution of any controversial finding in accordance with the Administrative Adjudication Law. As there are concerns with the permit process, this would assist GSHPO/GHRD in addressing issues related to projects with potential impacts on cultural or historic features. While the agency continues to work on formally adopting its rules and

regulations, we recommend that their drafted rules properly go through the Administrative Adjudication Act.

Unauthorized Imposition of Requirements by the GSHPO/GHRD Officials

Our audit confirmed that the former State Archaeologist/Guam Territorial Archaeologist of GSHPO/GHRD imposed requirements and conditions on permit applications that exceeded the agency's statutory authority. Notable examples include the State Archaeologist:

1. Unilaterally ordering a contractor to stop work and remove its equipment from a project site without proper authority.
2. Requiring a private party to construct facilities, including a reburial monument, public restroom, and parking stalls, as conditions for permit approval.

Additionally, in August 2023, one of the affected parties (Company A) raised their concerns with the OAG, citing a potential conflict of interest with another official. Upon reviewing the related documents, we found that the timeline of events warranted closer examination. Specifically, a programmatic agreement between the involved parties was formalized in March 2022, while the conflict cited in the letter dates back to June 2021.

The programmatic agreement outlined several obligations for Company A, including:

1. Securing all necessary permits for their projects, along with adherence to specified submission timelines.
2. Contracting an archaeologist to oversee related activities.
3. Bearing all costs associated with archaeological excavations, mitigation, analysis, reporting, and the reburial of human remains.
4. Collaborating with GSHPO/GHRD to finalize the placement of a reburial monument and plaque.

Despite Company A's agreement to the terms, they expressed dissatisfaction in their August 2023 letter to the OAG. While the agreement appeared to reflect mutual consent between the parties, we had concern regarding the fairness of the terms. Specifically, we find that the requirements imposed still exceeded the bounds of Guam law in relation to GSHPO/GHRD's authority. Given this overreach, we deem the inclusion of these provisions in the contract to be unjustified.

In December 2023, DPR Acting Director issued a letter to the GHPO addressing these overreaching requirements. The letter emphasized GSHPO/GHRD's limited authority as defined by Guam law and rescinded unauthorized conditions imposed on private projects. Specific legal provisions were highlighted, including:

1. The removal of prehistoric or historic remains must be conducted by DPR.
2. DPR must compensate private property owners for the removal of prehistoric or historic remains or objects.
3. DPR holds the authority to determine whether disturbing a burial is necessary. If deemed necessary, the removal is performed at the developer's expense under procedures and standards approved by the SHPO.

Although GSHPO/GHRD may require private developers to remove remains when necessary, it cannot impose additional requirements beyond what is stipulated by law. Once remains are removed, DPR assumes responsibility for proper care and reburial at its expense.

To prevent future unauthorized imposition requirements, DPR has mandated that GSHPO/GHRD seek the OAG's approval for any proposed permit conditions that exceed the agency's clearly defined statutory authority. Moreover, the Governor of Guam, effective April 9, 2024, designated the DPR's Acting Director as the SHPO for limited purposes, specifically to oversee telecommunication company permits and ensure compliance with the Guam Public Employees Ethics Code. Please see the timeline below.

Timeline of Events: Company A and GSHPO

- **June 2021** – The GHPO approached Company A to solicit sponsorship for personal side business.
- **June 10, 2021** - The GHPO sent an email and proposal to Executive Vice President of Company A. Company A also had pending projects with GSHPO/GHRD.
- **October 6, 2021** – GHPO notifies Company A of a partnership with a different company.
- **March 31, 2022** – Programmatic agreement signed between Company A and GSHPO/GHRD to streamline project processes.
- **February 6, 2023** – After receiving a letter of concern from Company A, the DPR Acting Director requested for Company A's RC files from the GHPO.
- **March 20, 2023** – Company A sent a letter to the GHPO, with a copy to the DPR Acting Director and the Governor, in response to the GHPO's formal reply and to urge immediate and constructive addressal of four issues listed.
- **April 7, 2023** – The GHPRB received a letter from a law firm regarding Company A. A recommendation was made to the GHPRB to seek guidance from the AG's Office prior to discussion and action.
- **April 26, 2023** – Company A requested expedited processing of projects via letter to the Guam Historic Preservation Review Board. No response received.
- **August 2, 2023** – Company A sends letter to the Attorney General regarding issues with GSHPO/GHRD dating back from 2021 through 2023.
- **December 1, 2023** – DPR Acting Director requires GHPO to obtain approval from the Attorney General for permit conditions imposed on a party exceeding Guam law.
- **March 18, 2024** – Company A emails the DPR's Acting Director regarding ongoing GSHPO/GHRD issues.
- **April 5, 2024** – DPR Acting Director removes GHPO from reviewing telecommunications company permits.
- **April 9, 2024** – The Governor of Guam designates the DPR Acting Director as Acting State Historic Preservation Officer for limited purposes related to telecommunication company permits.

To align GSHPO/GHRD's practices with Guam law, we recommend that GSHPO/GHRD, its oversight chair, and the Guam Legislature should draft and implement amendments to clarify and streamline operational practices to prevent future conflicts or overreach within this legislation period. Additionally, DPR along with GSHPO/GHRD should establish procedures to ensure

GSHPO/GHRD operates strictly within its statutory authority and secures necessary approvals for non-standard permit conditions.

Deficiencies in the GSHPO/GHRD Permit Application Review Process

Review and Compliance Applications

Our audit scope looked into GSHPO/GHRD's permit database from FY 2018 through FY 2023. From their records, we identified 5,200 "review and compliance (RC)" projects and selected a sample of 71 regular applications scaled across the six years. During our testing, we were only able to review 61 regular applications. Six were federal projects, for which the relevant documents were unavailable due to the project's confidentiality, and the remaining four were non-applicable as they were related to different applications involving other agencies.

Appendix 9 provides a detailed listing of the criteria tested, including the required documents and procedures involved in the permit process. Key documents include vicinity maps and ownership records, while essential procedures involve stamping and recording RC numbers, conducting site inspections, and completing reports. These criteria form a comprehensive framework to ensure all applications adhere to procedural and documentation requirements, supporting compliance and effective preservation oversight.

We noted a major deviance in one procedural requirement. According to GSHPO/GHRD's permitting process flowchart, a report should be generated after the archaeologist's determination to conclude the process. It was found that 55 of these applications (or 90%) had no report prepared or was not attached within the folder, 5 (or 8%) applications included a report, and one (or 2%) could not be determined due to incomplete documentation.

While the remaining required documents were found in majority of the 61 regular applications tested, we found the following deficiencies:

- One (2%) application did not have a vicinity map within their application.
- One (2%) did not have a site plot plan as part of their required documents.
- Three (5%) were missing ownership documents.
- Five (8%) did not have a copy of a contractor's license, or a clearance from the CLB.
- One (2%) application was not stamped and assigned an RC number.
- Three (5%) did not have record of a site inspection or research on job site being done.
- Two (3%) did not have record of a no impact determination.
- Two (3%) permit applications did not contain a signature.
- One (2%) did not have proof of a site inspection done where impact was identified.
- Three (5%) of the applications were not inputted in their physical tracking log.
- One (2%) did not have COAs attached to their application.
- Two (3%) of the 61 applications were also considered incomplete, as we could not determine its compliance.

See Appendix 9 for detailed results.

Certificate of Approval Applications

From their Certificate of Approval (COA) database which included 247 entries from FY 2018 to FY 2023, we selected 25 applications for testing. These applications, which included RC projects that contained additional concerns, required a COA to proceed. Similar to the regular application database, the sample was adjusted from 25 applications to 22, as one application was a federal project and two were non-applicable due to being a different type of application.

Two significant deficiencies were noted. First, 11 (or 50%) COA applications were not logged in GSHPO/GHRD's physical COA tracking log, while the other 10 (or 45%) were logged, and the remaining 1 (or 5%) were not applicable. This inconsistency between the digital and physical tracking systems poses a risk to proper project tracking, as some projects may be marked as incomplete or still pending.

Second, 9 (or 41%) applications, lacked a copy of the COA in their folder. Although all selected projects were part of the COA database, we were unable to locate the COA in the application folders. Without a COA, it is unclear if these documents were issued to the applicants, as required by GSHPO/GHRD's permitting process flowchart.

Of the 22 COA applications tested, we also found majority of them had the required documents for clearance. However, we identified the following deficiencies:

- Three (14%) were missing ownership documents.
- Four (18%) did not have a copy of a contractor's license, or a clearance from the CLB.
- One (5%) did not have record of a site inspection or research on job site being done.
- Two (9%) did not have record of a no impact determination.
- Two (9%) permit applications did not contain a signature.
- Four (18%) did not have proof of a site inspection done where impact was identified.
- 11 (50%) of the applications were not inputted in their physical tracking log.
- Nine (41%) did not have COAs attached to their application.

A recurring issue for both sets of applications was the lack of documentation, highlighting weaknesses in record-keeping practices. After testing, we requested for any missing or deficient items to which GSHPO stated that the items requested were not in order at the time, consistently inputted, and/or misfiled. However, the office reiterated that their process has improved beyond the scope of our audit. The GSHPO highlighted that there were major improvements to their permit processing in FY 2024.

See Appendix 10 for full detailed results.

Application Review Timeframe

Another noteworthy finding was the efficiency of the receipt and clearance of an application. The average review time for RC applications was 10 days, exceeding the 5-day policy. Only 22 (or 36%) of 61 RC applications were reviewed timely, the shortest being 0 days and the longest 55 days. However, GSHPO/GHRD's policy also states that applications should not be reviewed, discussed, or replied to with the applicant on the day they are submitted. Yet, 13 (or 21%) of the

RC database had been received and cleared within the same date, violating GSHPO/GHRD's policy prohibiting same-day reviews. Six (10%) did not contain clearance dates.

For COA applications, the average review time was 37 days. GSHPO/GHRD aims to provide a response within 30 days; however, COA projects and its complications can extend this timeframe. The number of days between receipt and clearance of COA applications range from 0 to 205 days. 12 (or 57%) applications were cleared within 30 days of receipt. One (or 5% applications did not contain a clearance date. Furthermore, four (or 19%) applications were cleared within the date of receipt, violating the same-day review policy.

Overall, we recommend GSHPO/GHRD refine their policies and controls to ensure a rigorous permit application review process. To ensure consistency and thoroughness of the review process, GSHPO/GHRD staff should develop a detailed checklist of requirements (e.g. reports required when impact is determined, COA must be issued to applicant, signatory required), and document status changes and completion. We also recommend that GSHPO/GHRD institute a systematic approach to storing and organizing permit applications files for greater efficiency, as we identified a risk missing documents during our sample testing.

DPW Permit Application Form Requires Clear Labeling of GSHPO/GHRD

The Department of Public Works (DPW) uses permit application forms to guide applicants in obtaining the necessary clearances for their projects. DPW staff highlight the agencies from which applicants need clearances based on their type of project. DPR is one of the agencies listed on the application form. According to DPW's Deputy Director, it is understood that references to DPR on the form imply GSHPO/GHRD, which is also trained to staff at the permitting office.

However, the GHPO has noted the current format of the application increases the risk for misdirection or circumvention of GSHPO/GHRD processes, as applicants may mistakenly approach DPR for services or bypass GSHPO/GHRD entirely. Furthermore, untrained staff may misinterpret the form, providing incorrect guidance and exacerbating the issue. Such errors can result in delays, applicant frustration, and noncompliance with preservation laws if required steps are overlooked.

To reduce the risk, we recommend that DPW revise the permit application form to accurately reflect the roles of the relevant agencies. Specifically, the form should replace references to DPR with GSHPO/GHRD or include a separate field explicitly indicating the need for GSHPO/GHRD clearance. This update would eliminate confusion, ensure proper routing of applications, and streamline the permitting process for both applicants and government agencies.

Conclusion and Recommendations

This report outlines the findings of our performance audit concerning the GSHPO/GHRD's Program Area on Review and Compliance. Several significant issues were identified, emphasizing the need for corrective action to align GSHPO/GHRD's operations with its statutory authority and to improve current operations and practices. The primary findings of the audit are as follows:

1. **Concerns Regarding GSHPO/GHRD's Rules and Regulations and Law:**

- **GSHPO/GHRD's Operations Not in Line with Enabling Statute:** The current GCA provisions governing GSHPO/GHRD are outdated, with some legislation dating back over 50 years. The laws fail to reflect the agency's role and responsibilities adequately.
- **Need for Comprehensive Mapping and Surveys of Guam:** Despite legal mandates since the 1990s, DPR and GSHPO have not fulfilled their responsibility of developing a comprehensive island-wide database of historic and archaeological sites.
- **GSHPO/GHRD's Rules and Regulations Require Adjudication Process:** GSHPO/GHRD is in the process of adjudicating its rules and regulations with the OAG. Historically, operations relied on internal guidelines that lacked legal authority, prompting changes in operations accordingly following 2021 legal advice.
- **Unauthorized Imposition of Requirements by GSHPO/GHRD Officials:** Officials exceeded authority by imposing conditions on permits. These actions prompted concerns from affected parties, leading to a review by the Attorney General and subsequent corrective measures by DPR, which emphasized GSHPO/GHRD's limited authority and required future oversight to ensure compliance with Guam law.

2. **Deficiencies in the GSHPO/GHRD Permit Application Review Process:**

- **Review and Compliance Applications:** The audit of the GSHPO/GHRD permit database from FY 2018 to FY 2023 revealed a major deviance from preparing reports for applications, which is a procedure required in their permitting process flowchart. Additional minor deficiencies are noted in Appendix 9.
- **Certificate of Approval Applications:** The audit of the Certificate of Approval (COA) database had two major deficiencies including the failure to record COA application on GSHPO/GHRD's physical tracking log and the absence of COA copies within application files. Other deficiencies are detailed in Appendix 10.
- **DPW Permit Application Form Requires Clear Labeling of GSHPO/GHRD:** The audit identified a risk with the DPW permit application form, where applicants may be directed to DPR instead of GSHPO/GHRD for historic preservation clearances, causing confusion and potential misdirection.

We acknowledge that the GSHPO/GHRD is currently in works to address these matters, but we want to reiterate the following recommendations:

1. The GSHPO/GHRD, its oversight chair, and the Guam Legislature should collaborate to draft and implement amendments that streamline operations and prevent conflicts within this legislative period.
2. DPR and GSHPO should prioritize updating their database by surveying unassessed areas to fulfill their responsibility of creating a comprehensive island-wide record of historic and archaeological sites. Additionally, the database should be made publicly accessible to enhance transparency and informed decision-making.
3. Ensure that their Rules and Regulations and Standard Operating Procedures undergo a thorough review and approval process through the Administrative Adjudication Act.
4. DPR and GSHPO/GHRD should establish procedures to ensure the agency operates within its statutory authority and obtains necessary approvals for non-standard permit conditions.
5. Implement a stringent permit application review process, including a detailed checklist of requirements, documentation of project status and completion, and a systematic approach to storing and organizing application files for greater efficiency.
6. DPW to revise their permit application form to accurately reflect the roles of the relevant agencies, ensuring proper routing of applications. Specifically, clearly identifying GSHPO/GHRD on the form.

Classification of Monetary Amounts

No.	Finding Description	Questioned Cost	Potential Savings	Unrealized Revenues	Other Financial Impact	Total Financial Impact
Concerns Regarding GSHPO/GHRD's Law and Rules and Regulations						
1.	GSHPO/GHRD's Operations Not in Line With Enabling Statute	\$0	\$0	\$0	\$0	\$0
2.	Need for Comprehensive Mapping and Surveys of Guam	\$0	\$0	\$0	\$0	\$0
3.	GSHPO's Rules and Regulations Require Adjudication Process	\$0	\$0	\$0	\$0	\$0
3.	Unauthorized Imposition of Requirements by GSHPO/GHRD Officials	\$0	\$0	\$0	\$0	\$0
Deficiencies in the GSHPO/GHRD Permit Application Review Process						
1.	Review and Compliance Application	\$0	\$0	\$0	\$0	\$0
2.	Certificate of Approval Application	\$0	\$0	\$0	\$0	\$0
3.	DPW Permit Application Form Requires Clear Labeling of GSHPO/GHRD	\$0	\$0	\$0	\$0	\$0

Management Response and OPA Reply

On January 30, 2025, the OPA provided the GSHPO/GHRD with a draft report for a management response. Following this, on February 12, 2025, an exit conference took place between OPA and GSHPO/GHRD, discussing the findings and recommendations of the Program Area on Review and Compliance performance audit. GSHPO/GHRD submitted its official management response on February 13, 2025.

GSHPO/GHRD Response: GSHPO/GHRD acknowledges the findings and recommendations of the OPA audit and is actively working with Senator Shelley Calvo and the Governor's Office to introduce legislative amendments that clarify its role and functions. The audit highlighted the dual role of GSHPO/GHRD, which operates both as a federally recognized entity overseeing compliance with U.S. historic preservation laws and as a division within the Department of Parks and Recreation responsible for enforcing Guam's historic preservation regulations. To address these issues, GSHPO/GHRD proposes legislative and regulatory updates, including the adjudication of its rules, the formal definition of the State Archaeologist's responsibilities, and improvements to application processing procedures. The State Archaeologist position is currently undergoing a transition following concerns over unauthorized actions, which stemmed from longstanding misuse of the role. Additionally, GSHPO/GHRD supports the OPA's recommendation to refine the DPW permit application process to ensure accurate routing and clear agency roles.

Ultimately, GSHPO/GHRD recommends reorganization as an autonomous entity under the Office of the Governor to enhance its authority and efficiency in historic preservation efforts on Guam.

OPA Reply: The OPA acknowledges GSHPO/GHRD's response and its commitment to addressing the audit findings. We will continue to support GSHPO/GHRD in its efforts to ensure these improvements are effectively carried out and lead to enhancements in Guam's historic preservation governance.

In addition, discussions between OPA and DPW regarding the final audit finding were held on February 20, 2025, with DPW providing an official response on March 11, 2025.

DPW Response: The Building Permit Application form currently lists the Department of Parks and Recreation for clearance, with routing to GSHPO/GHRD. Under 21 GCA Chapter 66, the required agency approvals are specified. Any modifications to the clearance process would require legislative amendment.

OPA Response: We acknowledge DPW's agreement with our recommendation to update the permit application forms and will bring this matter to the legislature's attention.

During the QAR process, OPA identified an additional finding and recommendation regarding the need for a comprehensive mapping and survey of Guam. GSHPO/GHRD was given the opportunity to respond on February 24, 2025, with GSHPO/GHRD providing an official response on February 28, 2025.

GSHPO/GHRD Response: GSHPO/GHRD confirms that despite existing law, a comprehensive island survey was never acquired, but only built project by project. It would be ideal to get to that level, but it is cost prohibitive. They agree with the recommendation, and strive to fulfill the intentions of the long-standing law.

OPA Response: Once again, we acknowledge the GSHPO/GHRD's response and efforts in addressing our audit findings.

See Appendix 11 for GSHPO/GHRD's detailed management response.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress in implementing the audit recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year.

We sincerely appreciate the cooperation and assistance provided by the staff and management of GSHPO/GHRD throughout the audit process.

OFFICE OF PUBLIC ACCOUNTABILITY

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Appendix 1: Objective, Scope, and Methodology

Objective

The objectives of the audit were: 1) to determine whether GSHPO/GHRD's use of statutory authority aligns with applicable laws, regulations, and policies, and 2) to determine whether GSHPO/GHRD's processing of permits complies with applicable rules and regulations.

Scope

Our review covers FY 2018 to FY 2023, encompassing the tenures of the past and present-day Guam Historic Preservation Officers. We examined the codified law related to GSHPO, tracing its origins to the current version. Additionally, our review of permit and certificate of approval applications spans FY 2018 to FY 2023.

Methodology

To accomplish our objective, we performed the following:

- Conducted meetings with GSHPO/GHRD to gain insight of their operations;
- Obtained and analyzed applicable documents from GSHPO/GHRD;
- Researched laws, rules and regulations, policies and procedures, and hotline tips to obtain an understanding of the agency;
- Verify timeline of GSHPO/GHRD laws from origination to present day; and
- Compare and contrast the different variations of the laws and determine its original intention.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Prior Audit Coverage

We reviewed prior performance audits completed by our office. There were no prior audits of the GSHPO/GHRD or relevant audits that were identified.

Historical Objects and Sites - Title 21 Guam Code Annotated (GCA) Chapter 76*§ 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:

- (1) Plans to acquire, restore, and preserve historic areas, buildings, and site significant to Guam's past;
- (2) Establish and maintain the Guam Register of Historic Places;
- (3) Establish regulations on the uses of such areas;
- (4) 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;
- (5) Provide for matching grants-in-aid to private agencies for projects which will fulfill the purposes of this Chapter;
- (6) 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;
- (7) Employ sufficient professional and technical staff for the purposes of this Chapter;
- (8) Advise and cooperate with other public and private agencies engaged in similar work;
- (9) 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.

§ 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.

§ 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.

§ 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 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.

§ 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.

§ 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.

§ 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.

§ 76508. Guam Historic Preservation Review Board: Duties.

It shall be the duty of the Board to:

1. Enter historic properties into the Guam Register of Historic Places;
2. Evaluate applications for nominating properties to the National Register of Historic Places;
3. Review the Guam survey of the Guam Historic Properties;
4. Review the content of the comprehensive preservation plan established pursuant to § 76103 of this Code;
5. Serve as the Board of Directors of the Guam Preservation Trust Fund;
6. Serve as the State Historic Review Board for purposes related to the National Historic Preservation Act, Public Law 89-665.

§ 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.

§ 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.

§ 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:

- (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 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.

Parks & Recreation – 21 GCA Chapter 77

§ 77301. Guam Historic Resources Division Created.

There is hereby created the Guam Historic Resources Division within the Department of Parks and Recreation, which division shall be responsible for establishing a comprehensive historic preservation program for Guam.


§ 77302. Guam Historic Preservation Officer.

The position of Guam Historic Preservation Officer is hereby created in the classified service under the DPR (the “Department”), the holder of which position shall be the State Historic Preservation Officer for federal purposes. The Director of Parks and Recreation (the “Director”) shall select a qualified candidate to fill the position based on training, work experience and education pertinent to cultural resources management. The Guam Historic Preservation Officer shall be under the supervision of the Director and shall be the head of the Historical Resources Division of the Department and Executive Director for the Guam Preservation Trust Fund.


§ 77303. Guam Historic Preservation Officer; Duties.

The Guam Historic Preservation Officer shall administer the comprehensive program for historic preservation, restoration and presentation prescribed by 21 GCA § 76103.

Policy on Reviewing DPW Permit Applications – DPR



DEPARTMENT OF PARKS AND RECREATION
STATE HISTORIC PRESERVATION OFFICE
 475-6338 / 6292; Fax: 477-2822



POLICY ON REVIEWING DPW PERMIT APPLICATIONS

1. DPW Permit Applications of various sort, must include adequate documentation before they are submitted to the Guam Historic Resources Division (GHRD) for staff review. To expedite reviews, all Permit Applicants must comply with the policies stated herein. Most importantly, applicants must include all items being requested below in numbers 3, 4, 5, and if applicable, item no. 6.
2. GHRD staff will “officially” receive all DPW Permit Applications submitted for our review. Applications will not be reviewed/discussed/or replied to with the Applicant on the day it is submitted. GHRD staff will notify the Applicant within five (5) working days on the status of the Permit Application.
3. **BEFORE PERMIT APPLICATIONS ARE ACCEPTED BY GHRD STAFF**, Applications must include and contain the following documents with all the appropriate notations:
 - A. Vicinity Map: Indicate the applicable Lot No., Block No., and Tract No. A Title block must be indicated on all sheets. Drawing Scales should not be less than 3/16”=1’-0” except on civil drawings. The map must contain location and street names and must be legible.
 - B. Site or Plot plan: Show the Property boundaries, Public rights of way, Utility easements, Zoning setbacks, Access/egress to existing road, existing and finished grade elevations, Finished floor elevation of the Proposed Structure, Existing Pavements, Existing Structures, Utility connections. Show all existing Utilities within 100 ft. e.g. GWA Water/Sewer lines, GPA Power poles & Service drops, GTA Pedestals and Service lines.
 - C. Include copies of Dept. of Land Management (DLM) recorded Property Map, Ownership documents or Lease Agreement, Notice of Action (GLUC) if applicable.
 - D. Include a copy of the Contractor’s License. For self-construction, a copy of CLB Provisionary License. If a provisionary license is not applicable, application must be approved by One Stop Administrator.
 - E. **FEDERAL INVOLVEMENT MUST BE DISCLOSED**, i.e., if project, etc., is federally funded in whole or in part, or if a federal permit, license or clearance is/are required. An official letter may be required, from the appropriate federal agency delegating legal responsibility for compliance with Section 106, or the letter of findings, determination, and concurrence between the federal agency and the Guam State Historic Preservation Officer.
4. Applications must be signed by the Owner. If the application is prepared by someone other than the Owner, then it must be accompanied by a duly verified affidavit from the Owner that the Applicant is authorized to prepare and submit such application, and to act on behalf of the Owner.
5. If applicable, a Letter of Authorization to act on behalf of the “customer,” the “client,” the “firm,” or such other.
6. A Certificate of Approval (COA) must be issued before any action affecting potential historic sites or objects is undertaken. The COA will state the conditions upon which the permit application is being approved. The Permit Application may be approved with the notation: “Approved with conditions as stated in COA No.: _____, Attached.” The Applicant / customer must sign the COA and follow conditions.

TE
 HISTORIC PRESERVATION OFFICE,
 DEPT. OF PARKS AND RECREATION
 DATE: 4 Jan 23

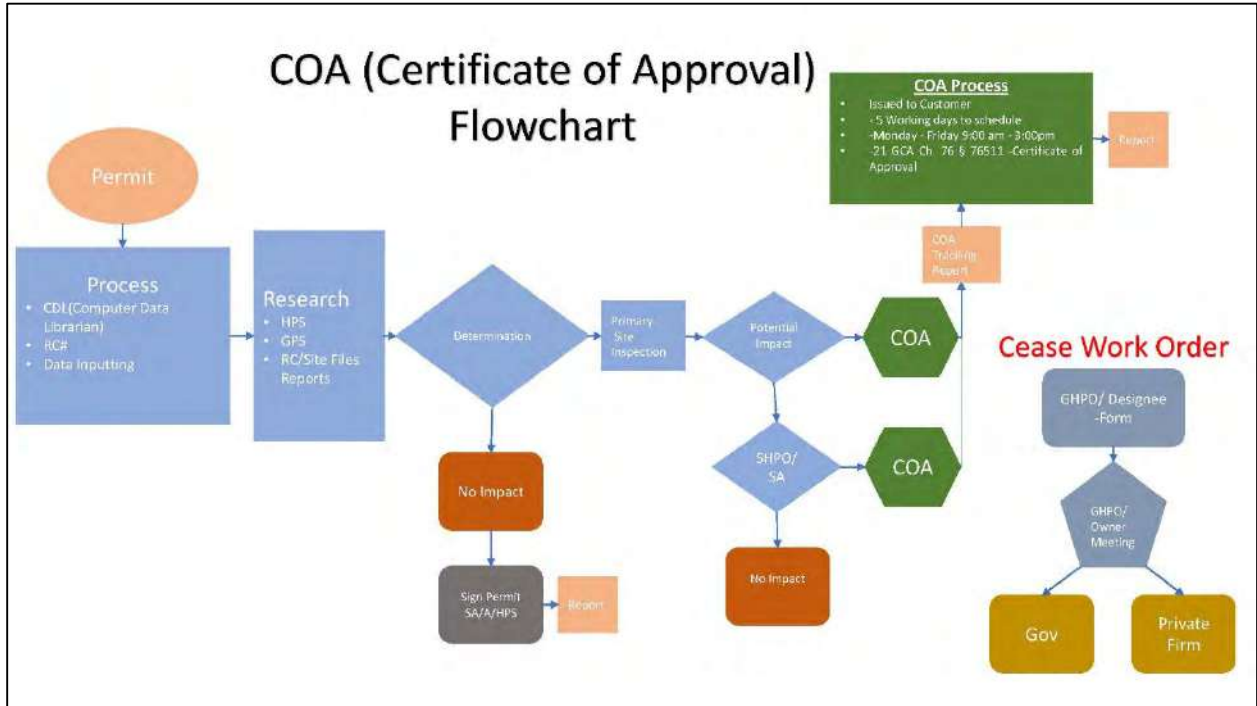
To be completed by GHRD Staff:

Staff Name: _____

Staff Phone No.: _____

Date: _____

Certificate of Approval Flowchart – GSHPO/GHRD



Appendix 3: Active 21 GCA 76 Section Timeline

Latest Active Revision	21 GCA 76 Sections	P.L. 10-068 7/30/1969	P.L. 12-126 5/3/1974	P.L. 12-209 1/23/1975	P.L. 13-187 9/2/1976	P.L. 20-151 3/21/1990	P.L. 21-07 4/19/1991	P.L. 25-69 7/8/1999	P.L. 25-72 9/30/1999	P.L. 27-89 5/6/2004	P.L. 29-147 1/30/2009	P.L. 30-180 8/19/2010	P.L. 33-66 9/5/2015	P.L. 36-107 9/12/2022
5/3/1974	§ 76101.													
1/23/1975	§ 76102.													
3/21/1990	§ 76103.													
5/3/1974	§ 76104.													
5/3/1974	§ 76105.													
5/3/1974	§ 76106.													
5/3/1974	§ 76107.													
5/3/1974	§ 76108.													
5/3/1974	§ 76109.													
5/3/1974	§ 76110.													
5/3/1974	§ 76111.													
5/3/1974	§ 76112.													
5/3/1974	§ 76113.													
5/3/1974	§ 76114.													
5/3/1974	§ 76115.													

Key	
	Original Section Drafted
	Amendment to Section
	Section Repealed/Reverted
	Active Section in Current GCA

Appendix 3: Active 21 GCA 76 Section Timeline

Latest Active Revision	21 GCA 76 Sections	P.L. 10-068 7/30/1969	P.L. 12-126 5/3/1974	P.L. 12-209 1/23/1975	P.L. 13-187 9/2/1976	P.L. 20-151 3/21/1990	P.L. 21-07 4/19/1991	P.L. 25-69 7/8/1999	P.L. 25-72 9/30/1999	P.L. 27-89 5/6/2004	P.L. 29-147 1/30/2009	P.L. 30-180 8/19/2010	P.L. 33-66 9/5/2015	P.L. 36-107 9/12/2022
5/3/1974	§ 76201.		Active					Repealed	Repealed					
5/3/1974	§ 76202.		Active					Repealed	Repealed					
5/3/1974	§ 76203.		Active					Repealed	Repealed					
5/3/1974	§ 76204.		Active					Repealed	Repealed					
3/21/1990	§ 76205.		Active		Amendment	Active		Repealed	Repealed	Repealed				
5/3/1974	§ 76206.		Active					Repealed	Repealed					
3/21/1990	§ 76207.		Original			Active		Repealed	Repealed	Repealed				
5/3/1974	§ 76208.		Active					Repealed	Repealed					
3/21/1990	§ 76209.		Active			Active		Repealed	Repealed					
5/3/1974	§ 76210.		Active					Repealed	Repealed					
3/21/1990	§ 76211.		Original		Amendment	Active		Repealed	Repealed	Repealed				
8/19/2010	§ 76212.		Original		Amendment			Repealed	Repealed		Active	Active		
9/2/1976	§ 76213.		Original		Active			Repealed	Repealed					
9/2/1976	§ 76214.		Original		Active			Repealed	Repealed					

Key	
	Original Section Drafted
	Amendment to Section
	Section Repealed/Reverted
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5/3/1974	§ 76301.		Active					Repealed	Repealed					
5/3/1974	§ 76302.		Active					Repealed	Repealed	Repealed				
5/3/1974	§ 76303.		Active					Repealed	Repealed	Repealed				
5/3/1974	§ 76304.		Active					Repealed	Repealed	Repealed				
5/3/1974	§ 76305.		Active					Repealed	Repealed	Repealed				
5/3/1974	§ 76306.		Active					Repealed	Repealed	Repealed				
9/2/1976	§ 76307.		Drafted		Active			Repealed	Repealed	Repealed				
5/3/1974	§ 76501.		Active					Repealed	Repealed					
3/21/1990	§ 76502.		Active			Active		Repealed	Repealed					
5/3/1974	§ 76503.		Active					Repealed	Repealed					
3/21/1990	§ 76504.					Active		Repealed	Repealed	Repealed				
3/21/1990	§ 76505.					Active		Repealed	Repealed	Repealed				
3/21/1990	§ 76506.					Active		Repealed	Repealed	Repealed				
3/21/1990	§ 76507.	Drafted				Active		Repealed	Repealed					
3/21/1990	§ 76508.					Active		Repealed	Repealed					
3/21/1990	§ 76509.					Active		Repealed	Repealed					
3/21/1990	§ 76510.					Active		Repealed	Repealed					
1/30/2009	§ 76511.					Active		Repealed	Repealed	Repealed	Active			
9/5/2015	§ 76512.										Drafted		Active	

Key	
Drafted	Original Section Drafted
Amendment	Amendment to Section
Repealed	Section Repealed/Reverted
Active	Active Section in Current GCA

Appendix 3: Active 21 GCA 76 Section Timeline

Latest Active Revision	21 GCA 76 Sections	P.L. 10-068 7/30/1969	P.L. 12-126 5/3/1974	P.L. 12-209 1/23/1975	P.L. 13-187 9/2/1976	P.L. 20-151 3/21/1990	P.L. 21-07 4/19/1991	P.L. 25-69 7/8/1999	P.L. 25-72 9/30/1999	P.L. 27-89 5/6/2004	P.L. 29-147 1/30/2009	P.L. 30-180 8/19/2010	P.L. 33-66 9/5/2015	P.L. 36-107 9/12/2022
5/6/2004	§ 76601.													
9/12/2022	§ 76602.													
5/6/2004	§ 76603.													
5/6/2004	§ 76604.													
5/6/2004	§ 76605.													
5/6/2004	§ 76606.													
5/6/2004	§ 76607.													
5/6/2004	§ 76608.													
5/6/2004	§ 76609.													

Key	
	Original Section Drafted
	Amendment to Section
	Section Repealed/Reverted
	Active Section in Current GCA

Appendix 4: Active 21 GCA 77 Section Timeline

Latest Active Revision	21 GCA 77 Sections	P.L. 12-209 1/23/1975	P.L. 13-187 9/2/1976	P.L. 14-006 3/2/1977	P.L. 14-012 4/5/1977	P.L. 14-033 6/3/1977	P.L. 15-132 7/2/1980	P.L. 15-148 1/8/1981	P.L. 16-44 10/18/1981	P.L. 16-62 2/8/1982	P.L. 16-105 8/6/1982	P.L. 18-15 8/16/1985	P.L. 19-48 12/30/1988
11/27/2009	§ 77101.												
1/23/1975	§ 77102.												
3/21/1990	§ 77103.												
2/3/2012	§ 77104.												
8/17/2021	§ 77104.1.												
11/27/2009	§ 77104.2.												
1/16/2021	§ 77105.												

Latest Active Revision	21 GCA 77 Sections	P.L. 20-117 1/18/1990	P.L. 20-151 3/21/1990	P.L. 20-188 6/11/1990	P.L. 21-105 5/29/1922	P.L. 25-69 7/8/1999	P.L. 25-72 9/30/1999	P.L. 27-106 10/1/2004	P.L. 28-78 12/5/2005	P.L. 30-65 11/27/2009	P.L. 31-179 2/3/2012	P.L. 35-139 1/16/2021	P.L. 36-52 8/17/2021
11/27/2009	§ 77101.												
1/23/1975	§ 77102.												
3/21/1990	§ 77103.												
2/3/2012	§ 77104.												
8/17/2021	§ 77104.1.												
11/27/2009	§ 77104.2.												
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Key	
	Original Section Drafted
	Amendment to Section
	Section Repealed/Reverted
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Appendix 4: Active 21 GCA 77 Section Timeline

Latest Active Revision	21 GCA 77 Sections	P.L. 12-209 1/23/1975	P.L. 13-187 9/2/1976	P.L. 14-006 3/2/1977	P.L. 14-012 4/5/1977	P.L. 14-033 6/3/1977	P.L. 15-132 7/2/1980	P.L. 15-148 1/8/1981	P.L. 16-44 10/18/1981	P.L. 16-62 2/8/1982	P.L. 16-105 8/6/1982	P.L. 18-15 8/16/1985	P.L. 19-48 12/30/1988
1/8/1981	§ 77106.												
1/16/2021	§ 77107.												
2/8/1982	§ 77108.												
1/23/1975	§ 77109.												
2/8/1982	§ 77110.												

Latest Active Revision	21 GCA 77 Sections	P.L. 20-117 1/18/1990	P.L. 20-151 3/21/1990	P.L. 20-188 6/11/1990	P.L. 21-105 5/29/1922	P.L. 25-69 7/8/1999	P.L. 25-72 9/30/1999	P.L. 27-106 10/1/2004	P.L. 28-78 12/5/2005	P.L. 30-65 11/27/2009	P.L. 31-179 2/3/2012	P.L. 35-139 1/16/2021	P.L. 36-52 8/17/2021
1/8/1981	§ 77106.												
1/16/2021	§ 77107.												
2/8/1982	§ 77108.												
1/23/1975	§ 77109.												
2/8/1982	§ 77110.												

Key	
	Original Section Drafted
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	Section Repealed/Reverted
	Active Section in Current GCA

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8/16/1985	§ 77112.												
1/23/1975	§ 77113.												
10/1/2004	§ 77114.												
7/2/1980	§ 77115.												
1/23/1975	§ 77116.												
5/29/1992	§ 77117.												
9/2/1976	§ 77118.												

Latest Active Revision	21 GCA 77 Sections	P.L. 20-117 1/18/1990	P.L. 20-151 3/21/1990	P.L. 20-188 6/11/1990	P.L. 21-105 5/29/1922	P.L. 25-69 7/8/1999	P.L. 25-72 9/30/1999	P.L. 27-106 10/1/2004	P.L. 28-78 12/5/2005	P.L. 30-65 11/27/2009	P.L. 31-179 2/3/2012	P.L. 35-139 1/16/2021	P.L. 36-52 8/17/2021
8/16/1985	§ 77112.												
1/23/1975	§ 77113.												
10/1/2004	§ 77114.												
7/2/1980	§ 77115.												
1/23/1975	§ 77116.												
5/29/1992	§ 77117.												
9/2/1976	§ 77118.												

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1/18/1990	§ 77119.												
1/23/1975	§ 77121.												
1/23/1975	§ 77122.												
3/21/1990	§ 77301.												
3/21/1990	§ 77302.												
3/21/1990	§ 77303.												
3/21/1990	§ 77304.												

Latest Active Revision	21 GCA 77 Sections	P.L. 20-117 1/18/1990	P.L. 20-151 3/21/1990	P.L. 20-188 6/11/1990	P.L. 21-105 5/29/1922	P.L. 25-69 7/8/1999	P.L. 25-72 9/30/1999	P.L. 27-106 10/1/2004	P.L. 28-78 12/5/2005	P.L. 30-65 11/27/2009	P.L. 31-179 2/3/2012	P.L. 35-139 1/16/2021	P.L. 36-52 8/17/2021
1/18/1990	§ 77119.												
1/23/1975	§ 77121.												
1/23/1975	§ 77122.												
3/21/1990	§ 77301.												
3/21/1990	§ 77302.												
3/21/1990	§ 77303.												
3/21/1990	§ 77304.												

Key	
	Original Section Drafted
	Amendment to Section
	Section Repealed/Reverted
	Active Section in Current GCA



[Redacted]

Fwd: Field Investigation Requirements

1 message

Fri, Jun 25, 2021 at 8:25 AM

To: [Redacted]

blind copy...per [Redacted] request.

----- Forwarded message -----

From: [Redacted]
Date: Mon, Jun 21, 2021 at 4:10 PM
Subject: Re: Field Investigation Requirements
To: [Redacted]
Cc: [Redacted]

Hi [Redacted]

I am just following up on this request for guidance that was previously made by [Redacted] as the Acting SHPO. I have currently drafted the Information and Guidance Memorandum, but it is still being reviewed by the AG. In the meantime, I provided [Redacted] email and phone guidance, and I discussed this briefly with you via telephone when you returned. I am hearing some rumblings from the Governor's Office about this issue again, and I think there may be concerns that the SHPO's office has returned to placing restrictions on private landowners that are not supported by the law. Here is a synopsis of the issues and the guidance on these issues:

Issue #1: The first issue presented is whether the SHPO may require an applicant for a permit covered by 21 GCA § 76511(a) involving a privately owned parcel of real property to submit to a field investigation prior to the issuance of a Certificate of Approval by the SHPO for purposes of administration and compliance with the NHPA and/or Guam's historic preservation program.

Guidance #1: Public Law 20-151, establishes Article 5, including 21 GCA § 76511 and many of Guam's local preservation laws. The stated intent of P.L. 20-151 is to allow the government of Guam to impose restrictions and regulate private lands as well as public lands: "It has also been determined that *the burden of actively preserving Guam's cultural resources must be shared by both government and private resources*. It is therefore the purpose of this Act to provide the mechanism necessary to strengthen and improve Guam's historic preservation laws and programs for the benefit of the people of Guam." P.L. 20-151 Section 1, lines 6-11 (emphasis added).

It further authorizes the SHPO to participate in permitting processes through 21 GCA § 76511, and to "prohibit activities listed in subsection (a) and ... issue cease work orders on projects when there is evidence of adverse impact or potential destruction of cultural or historical features on the property." 21 GCA § 76511(b).

Under P.L. 20-151, both the SHPO and private landowners must share the burden of actively preserving historic and cultural resources. A major part of this burden placed on the SHPO is the development of a comprehensive survey of Guam lands and historic properties: "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: ... (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;" 21 GCA § 76103(d).

In conducting the Guam-wide survey of historic and cultural sites, "[t]he Department shall locate, identify, and preserve in the Guam Register of Historic Places information regarding prehistoric and historic sites, locations, and remains." 21 GCA § 76205(a). As part of the survey, the locations and sites must be mapped and recorded. Id. Field investigations are the method through which DPR (and the SHPO) locates and surveys historic sites and properties. 21 GCA § 76202(a). DPR is specifically granted the authority to enter into real property, public and private, for the purposes of conducting field investigations and compiling the Guam-wide survey of historic properties: "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 of the Department may enter any private building or structure without the express consent of the owner or occupant thereof." 21 GCA § 76111 (emphasis added).

Although DPR is discouraged from conducting field investigations on privately owned property, such action by DPR is

discouraged from conducting field investigations on privately owned property, such action by DPR is specifically permitted by law: 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." 21 GCA § 76210.

Thus, part of the burden placed on private landowners is the requirement that DPR, the SHPO, and designated employees must be allowed access to private lands in order to conduct field investigations and surveys, when such action is requested by the SHPO as part of the permitting process. The SHPO may require an applicant for a permit covered by 21 GCA § 76511(a) involving a privately owned parcel of real property to submit to a DPR-conducted field investigation prior to the issuance of a Certificate of Approval by the SHPO, in order for the SHPO to accomplish the Guam-wide survey of historic sites in furtherance of Guam's historic preservation program. However, nothing in the statutes mandates a field investigation for every privately owned or developed property. In fact, field investigations by the SHPO on these properties are discouraged. 21 GCA § 76210. Therefore, the SHPO must evaluate each CO application on a case-by-case basis and determine in the SHPO's discretion whether such survey or field investigation should be required in each case.

Issue #2: The second issue presented concerns the manner in which the SHPO may require an applicant for a permit covered by 21 GCA § 76511(a) involving a privately owned parcel of real property to comply with the provisions of 21 GCA § 76511, specifically, whether the SHPO may require applicants to hire and pay for a qualified private-sector archaeologist to plan and conduct field investigations, or other related expenses, prior to the issuance of a Certificate of Approval by the SHPO for purposes of administration and compliance with the NHPA and/or Guam's historic preservation program.

Guidance #2: Prior to its passage, Public Law 20-151 was introduced to the Legislature of Guam as Bill No. 486 (LS) (20th Legislature). The original Bill No. 486 (LS) contained this language: "Section 11. Historical Survey. Developers of land either public or private shall conduct a historical survey on the land to be developed *at their own expense* ninety (90) days prior to undertaking an activity stated in Section 9. The developer shall submit an impact statement to the Department with the results of the survey. Activities, such as home improvements[sic] and projects not exceeding One Hundred Thousand Dollars (\$100,000.00) are exempted from the provision under this Section." Bill No. 486 (LS) (20th Legislature) (emphasis added).

This section was specifically removed from Bill 486 prior to passage as P.L. 20-151. Originally, this Section 11 was placed between the sections that became 21 GCA § 76511(a), (b), (c), and (d). Section 10 became 21 GCA § 76511(a), requiring a COA from the SHPO, and Section 12 became 21 GCA § 76511(b), (c), and (d), allowing the SHPO to stop projects and order the cessation of work. The original Section 11 would have required anyone seeking to develop private property for a project of more than \$100,000.00 to conduct their own historical survey and pay for it as part of the Certificate of Approval process, if the bill had passed with this language. However, the Legislature rejected this section and removed it from the bill. By deleting this original Section 11 prior to passage of the law, it is very clear that the Legislature of Guam did not intend to require developers of private land to conduct a field investigation or historical survey at their own expense as part of the Certificate of Approval process.

This conclusion accords with the plain language of Guam's statutes: "[t]he Department shall locate, identify, and preserve in the Guam Register of Historic Places information regarding prehistoric and historic sites, locations, and remains." 21 GCA § 76205(a) (emphasis added). It is the specifically stated duty of DPR and the SHPO to survey, locate, and identify historic places and items. It is not the duty of private landowners or developers to survey, locate, and identify historic places and items for the government of Guam.

Even for historic locations that are already listed on Guam's Register of Historic places, the responsibility to take action in the furtherance of the interests of historic preservation is affirmatively placed upon DPR and the SHPO. The private landowner/developer must provide notice of an intent to develop a site, and then must allow DPR and the SHPO to perform their historic preservation duties, but the private landowner/developer is *not required* to actively elicit or initiate any preservation actions including a field investigation:

"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(sic) 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.*"

21 GCA § 76205(c) (emphasis added).

Guam's historic preservation laws clearly place the requirement and the burden of conducting the Guam-wide historical survey and field investigations on DPR, GHRD, and the SHPO; and the in order to accomplish these tasks, these offices must "[e]mploy sufficient professional and technical staff for the purposes of this Chapter;" 21 GCA § 76103(g). DPR, the GHRD, and the SHPO cannot pass this cost and this burden on to private landowners and developers by requiring these private parties to hire professional and technical persons to perform the responsibilities and functions of the SHPO.

While the burden of conducting an historical field investigation or survey is placed by law upon the SHPO and staff, it is useful to note that the process of surveying property for inclusion on a state register or inventory may also be accomplished by professional consultants, other state and federal agencies complying with state and federal legislation, other private associations, and private property owners. Nothing in the statutes prevents a private landowner or developer from privately hiring archaeologists or similar professionals to assist with development projects, and no law prevents the SHPO from doing the same. Guam's historic preservation laws specifically state that in performing historic preservation duties, the SHPO may "[a]dvise and cooperate with other public and private agencies engaged in similar work;" 21 GCA § 76103(h)(emphasis added). The SHPO may not require such private hire; but so long as the SHPO and the private party mutually agree, the SHPO may accept private work to meet the duties and responsibilities of the SHPO with regard to historic preservation, when such assistance is offered. See also, 21 GCA § 76511(d) ("The problems of projects with potential impact on cultural or historic features may be resolved by the [SHPO] through agreement").

Conclusion: In short, can the SHPO require a private landowner/developer to allow DPR and the SHPO to conduct a field investigation on private lands? **Yes.** Can the SHPO require a private landowner/applicant to hire and pay for a private field investigation? **No.** If the SHPO requires a field investigation, then the SHPO must conduct the survey or other investigation of the real property (or the SHPO can hire a private field study at the SHPO's cost, not the landowner's cost), because it is the SHPO's duty to "[d]evelop a territory wide survey of historic area, building, and sites" 21 GCA § 76103(d). Although the SHPO may, by agreement, accept privately or independently produced field investigations, 21 GCA 76511(d) (for example, if the landowner wanted to hire a private archaeologist to conduct the survey in order to hasten the process, this would be acceptable), **but**, the Guam Legislature specifically rejected placing the burden and cost of developing and producing the territory wide survey on private landowner or developers. This burden and duty has been placed on DPR and the SHPO. The SHPO may work with private landowners and archaeological firms, but only if the private landowner offers to hire this work, for such reasons as expediting a required survey, **not** because the SHPO required the landowner to hire a private field study/survey by refusing to issue a permit.

Again, under Guam's historic preservation laws, the SHPO's Office cannot require private landowners to privately pay for any historical preservation work. The SHPO can only require that a private landowner allow the SHPO to enter privately owned land in order for the SHPO to perform the SHPO's duties. The SHPO can halt or cease work through the permitting process, but only in order for the SHPO to enter the land and conduct the SHPO's work, not to require the landowner to hire and pay for historic preservation work at the cost of the landowner.

This e-mail communication and guidance constitutes legal advice regarding the issues presented.

I hope this is helpful to you in dealing with these issues. As always, if you have any questions, you can call me or send me an e-mail.

Sincerely,

[Redacted Signature]

Assistant Attorney General

Office of the Attorney General

Solicitor Division

590 S. Marine Corps Drive, Suite 802

Tamuning, Guam 96913

[Redacted Contact Information]

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VIA HAND-DELIVERY AND
VIA EMAIL: [REDACTED]

[REDACTED]
Attorney General of Guam
Office of the Attorney General
590 S. Marine Corps Dr., Suite 901
Tamuning, Guam 96913

RE: Guam Historic Preservation Office

Dear Attorney General [REDACTED]

I am the President and Chief Executive Officer of [REDACTED]. I write to you concerning significant, serious problems [REDACTED] is encountering with the Guam Historic Preservation Office ("GHPO"). [REDACTED] has more than twenty-five (25) projects that have been stalled for two years due to the arbitrary and unreasonable actions or inaction of the GHPO. We have no recourse but to turn to you for assistance in this matter.

Background

A. GHPO's arbitrary requirements and unreasonable delays.

[REDACTED] is currently engaged in building and expanding Guam's critical telecommunications infrastructure to benefit island residents, the military, and visitors to Guam. Some of these projects include the \$29.7 million United States Department of Agriculture, Rural Utilities Service Reconnect 3 Grant project to build out broadband in southern villages to help over 8,000 unserved or underserved villagers. [REDACTED] is also developing much needed submarine cable infrastructure capacity at the [REDACTED] Cable Landing Project, which will benefit all island residents, businesses, anchor institutions, and the local and federal government sectors. There is also a [REDACTED] Building project that will benefit the military and civil aviation, as well as nearby residents. All of these projects are critical and essential to Guam.

[REDACTED] submitted applications for construction, building, and other permits to the Government of Guam for the above-mentioned projects. GHPO is one of the agencies which must review [REDACTED] applications and issue certificates of approval for each application. Since 2021, [REDACTED] has filed twenty-nine (29) applications with GHPO for certificates of approval to proceed with these projects. After numerous meetings with GHPO staff, only four of the 29 applications were finally approved and cleared. There has been little to no progress with the other applications, many of which involve federal funding or grants which are in jeopardy of being lost.

GHPO's actions raise three issues. First, GHPO issued letters to [REDACTED] requiring [REDACTED] to comply with arbitrary and burdensome conditions for many of the projects which are not authorized or required by law. For example, GHPO is requiring [REDACTED] to pay for archaeological examinations, research, and fieldwork in [REDACTED] a privately owned site that is currently being developed. On the condition of permitting, [REDACTED] is required to hire an archaeological

team. The archaeologists are paid by [REDACTED] but follow the direction of GHPO. To date, [REDACTED] has paid archaeologists over \$500,000 for field research requirements directed by GHPO. GHPO controls how much money [REDACTED] spends on archaeology but there is no requirement under the law that [REDACTED] be responsible for these costs and expenses. To the contrary, the responsibility for such work is the GHPO's, pursuant to 21 G.C.A. §76512(a). This is precisely the purpose of the Historic Preservation Archaeological Mitigation Fund, which is to be used for the contracting of archaeological services, and the purchase of supplies, materials and equipment pertaining to such archaeological services. 21 G.C.A. § 76512(B)(1)(A)-(B). Another example is that, after finding some human remains at the [REDACTED] site around October 2022, GHPO [REDACTED] issued a determination that [REDACTED] must excavate a five-meter radius around two sites and that all construction must be stopped within 20 meters of each site. Further, [REDACTED] ordered that [REDACTED] should not remove any of the remains, leaving them to be exposed for nearly the past ten months to the elements and the recent typhoon, in violation of 21 G.C.A. § 76112(b).

Second, twenty-nine (29) [REDACTED] applications involve sites that have already been disturbed and have buried infrastructure that has been in place for decades. Under 21 G.C.A. § 67204, GHPO is required to locate, identify, and preserve information regarding prehistoric and historic sites, locations, and remains. GHPO has, or should have, a database or list of areas, such as roads, easements, and rights-of-way which have buried infrastructure that has been in place for years. There is no need for additional archaeological surveys or studies for areas that have already been disturbed, unless GHPO's own database, archives and records have revealed new information. GHPO has not indicated any new information. Neither [REDACTED] nor other contractors should have to pay for the work which GHPO should be doing itself. GHPO's insistence on an exhaustive work plan on project applications which are to be located in areas that have already been disturbed and where infrastructure has been in place for years, is not a basis for extra-legal requirements or delay by GHPO.

Third, GHPO's delays in acting upon [REDACTED] applications are unreasonable. The Reconnect 3 Grant project mentioned above, aims to provide underserved villagers with telephone, TV and internet service. Telephone service, in particular, is a necessity when there is an emergency or there is a life or death situation. The recent Typhoon Mawar demonstrated the great need for stable telecommunications infrastructure and telephone service, particularly after a natural disaster occurs in Guam. When GHPO fails or refuses to act upon [REDACTED] applications, these villagers are deprived of telephone and other services. [REDACTED] has been flooded with complaints by customers that it is taking too long to relocate their services. Further, with Guam's upgrade of the antiquated E911 system in the coming months, it is essential that all telecommunications carriers have updated and upgraded infrastructure to integrate and enable both [REDACTED] for both users and first responders.

For the past two years [REDACTED] has written almost monthly communications to GHPO requesting the status of its applications. [REDACTED] also met with GHPO and its staff numerous times to determine the source of the delay in GHPO's inaction on the applications. [REDACTED] has been met with oral commitments that the applications will be reviewed, but then nothing further transpires.

On April 26, 2023 [REDACTED] through its legal counsel, wrote a letter to the Guam Historic Preservation Review Board ("the Board") requesting the Board's assistance in expediting and approving [REDACTED] applications pursuant to 21 G.C.A. § 76511(a) and (d), based on the same factual background stated above. **The Board never responded.** Section 76511(a)

and (d) require the Board to issue rules and regulations pursuant to the Administrative Adjudication Law to resolve any conflicts or disputes between GHPO and applicants such as [REDACTED]. The Board is fully aware of its statutory duty to promulgate such rules and regulations, yet has never taken any action to do so.

B. GHPO's conflict of interest.

The Guam State Historic Preservation Officer in Guam is [REDACTED]. He is the owner of a private company, [REDACTED] which develops and broadcasts local sports games and events.

Sometime in June 2021 [REDACTED] approached [REDACTED] specifically then-Community Relations Manager [REDACTED] to support the 10-year anniversary of [REDACTED] and to be the main broadband and telecom sponsor for [REDACTED]. [REDACTED] sent an email and written proposal to [REDACTED] on or about June 10, 2021. [REDACTED] through [REDACTED] agreed to provide, and did provide, a wireless router and connectivity to [REDACTED] for [REDACTED] livestreaming broadcasts during COVID.

At the time that [REDACTED] sent his proposal to [REDACTED], [REDACTED] had several applications for [REDACTED] projects pending before him for approval. In addition, at the time that [REDACTED] sent his proposal to [REDACTED], [REDACTED] was a [REDACTED] customer.

In his proposal [REDACTED] asked [REDACTED] to provide cell/internet service and products for [REDACTED] staff not to exceed \$750 per month and \$750 per month cash. The [REDACTED] services sought by [REDACTED] (cell phone and internet services in the amount of \$750.00 per month) were quite expensive, considering that each line would only cost about \$85.00 per line. In addition, the \$750 per month cash contribution solicited by [REDACTED] would have amounted to \$9,000.00 per year for a two-year commitment, for a total of \$18,000.00.

In early October 2021 [REDACTED], [REDACTED] Vice President of Marketing, [REDACTED] and [REDACTED] met via zoom at approximately 3 or 4 p.m. during a business/work day. They discussed [REDACTED] proposal to [REDACTED] concerning [REDACTED] and [REDACTED] offered to provide the services and products requested in the proposal, but the meeting ended with no commitment or agreement by [REDACTED]. A few days later, on October 6, 2021, at 12:44 p.m. [REDACTED] received a text message from [REDACTED] informing her that [REDACTED] another telecommunications provider, had made a commitment to partner with [REDACTED] that "blew him out of the water" and that it was more even than what [REDACTED] was proposing to give.

On May 1, 2023, [REDACTED] sent Sunshine Act requests to the Board, [REDACTED] and Department of Parks and Recreation seeking information and documents supporting GHPO's imposition of arbitrary and illegal requirements for [REDACTED] projects. [REDACTED] also requested information from [REDACTED] regarding his private company, [REDACTED] and whether he had complied with Guam law regarding reporting disclosures of his private company. From and after [REDACTED] Sunshine Act requests, particularly those concerning [REDACTED] conflict of interest, there was a noticeable difference in the way that [REDACTED] applications were handled by [REDACTED]. More stringent and arbitrary requirements were imposed by [REDACTED] and GHPO that were not previously imposed on [REDACTED] prior applications. It is apparent that GHPO and [REDACTED] are engaging in retaliatory conduct against [REDACTED] for raising [REDACTED] conflict of interest.

C. Unlawful actions of State Archaeologist [REDACTED]

State Archaeologist [REDACTED] has no authority to issue determinations and requirements for [REDACTED] to follow for its projects. It is the Guam Historic Preservation Officer who is mandated by law to issue such requirements, not [REDACTED]. [REDACTED] is requiring [REDACTED] to produce "Research Designs" and village histories and evaluations within a quarter mile radius of the pathway [REDACTED] is seeking approval for, and

other work plans, all at [REDACTED] expense, in order to approve [REDACTED] applications. There is no statutory basis or procedure for requiring such extraneous work, much less that they should be done at [REDACTED] expense. [REDACTED] complied with the law by submitting applications containing the requisite design information relating to the proposed excavations, including the project area locations, and size (acres, length, maximum depth), and methodology. However, imposing new conditions not required by law constitutes amending the legal requirements that [REDACTED] is not authorized or empowered to do.

D. GHPO's refusal to inter remains found by [REDACTED]

[REDACTED] had an infrastructure project in [REDACTED] several years ago and, in compliance with law, held onto remains found at the project site. [REDACTED] has preserved these remains for **seven years** and has repeatedly requested for GHPO to take the remains and re-inter them. [REDACTED] and its archaeologist and staff have furnished required reports and information, including carefully and respectfully handling and packaging the remains. GHPO refuses to take any action, resulting in the disrespectful delay of re-intering these remains. GHPO is obligated to take possession of these remains and re-inter them as required by law. 21 G.C.A. §§76501, 76502, 76504.

REMEDIES SOUGHT BY [REDACTED]

Based on all of the foregoing, [REDACTED] respectfully requests that the Office of the Attorney General take action as follows:

1. That GHPO [REDACTED] disqualify himself, or if he refuses, that he be removed, from reviewing or determining any of [REDACTED] applications currently pending before the GHPO due to his conflict of interest;
2. That State Archaeologist [REDACTED] cease and desist from issuing decisions and determinations which violate Guam law, including but not limited to, requiring [REDACTED] to provide "Research Designs" and other arbitrary conditions not required by law;
3. That the Guam Historic Preservation Review Board promulgate rules and regulations as required by 21 G.C.A. § 76511(a) and (d), concerning resolution of disputes between applicants and GHPO;
4. That GHPO be required to take possession of the Ipan remains and re-inter them as required by law; and
5. That GHPO be required to act upon [REDACTED] twenty-five pending applications for certificates of approval without further delay.

[REDACTED] is aware that there are numerous other applicants seeking certificates of approval where GHPO has imposed arbitrary conditions not required by law and whose applications have been unreasonably delayed - homeowners, telecommunication providers, developers and many others. GHPO has single-handedly created a logjam of applications that prevent critical residential, commercial, infrastructure and construction works in Guam. We are hopeful that your office will intervene to require these public officials to do their job.

As a responsible corporate citizen with over 500 local employees, we have striven to do the right thing. Unfortunately, we have encountered multiple examples of GHPO overreach and shortcomings in the name of historical preservation: the extreme examples are the remains which have been housed in our office for over seven years, despite countless attempts to re-inter them, and the recently unearthed remains which remain unprotected and exposed to the elements. Both are examples of GHPO's utter failure to do their job. We are seeking immediate assistance here from your office to put a halt to the tragic disservice wreaked upon our island by a government entity which has made up "rules, policies, procedures and requirements" on the fly.

I am available to meet with you at any time at your convenience to discuss the above matters.

Sincerely, [REDACTED]

cc: [REDACTED]
Deputy Attorney General



Department of Parks and Recreation
Depattamenton Plaset yan Dibuetsion
Government of Guam



P.O. Box 2950, Hagatna, Guam 96932
No. 1 Paseo de Susana, Hagatna, Guam 96910
Director's Office,
Parks & Recreation Divisions: (671) 475-6288
Facsimile: (671) 477-0997
Guam Historic Resources Division: (671) 475-6295
Facsimile: (671) 477-2822

December 1, 2023

[Redacted]
Guam Historic Preservation Officer
Department of Parks and Recreation

Hafa Adai [Redacted]

The department has been made aware of certain requirements that the Guam Territorial Archaeologist is imposing on [Redacted] as a condition of their permit for their project at Alupang. I have reviewed some of those requirements, specifically the construction of a reburial monument, public restroom and public parking stalls. I was unable to find any legal authority for the Guam Territorial Archaeologist or the Guam State Historic Preservation Officer to mandate the construction of these things.

The only authority that the State Historic Preservation Officer or the Territorial Archaeologist has regarding the handling of historical artifacts and human remains is found in Guam law. Specifically, there are three statutes within 21 GCA Chapter 76 that relate to the excavation and removal of prehistoric human remains.

21 GCA 76112 states:

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

Subsection B of 76112 requires the removal of prehistoric or historic remains be done by the Department which is defined in 21 GCA 76102 as the Department of Parks and Recreation. While the statute authorizes the Department of Parks and Recreation or its designated representative to remove prehistoric or historic remains or objects from private property it does not authorize the agency to require the private property owner to perform the removal or impose any conditions related to the reburial of any of the remains removed. In fact, it requires that the Department compensate the private property owner for the removal of any prehistoric or historic remains or objects.

21 GCA 76208 reads:

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.

Once again, this section does not authorize the department, SHPO or territorial archaeologist to impose any reburial conditions on the private property owner and instead requires the compensation of the private property owner for the removal of any prehistoric or historic remains or objects.

The third statute deals specifically with human remains. 21 GCA 76504 reads:

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.

This section does allow the Department to determine that the disturbance of a burial may be necessary. If the Department determines it is necessary to disturb the remains it does allow the removal, but only the removal, at the expense of the developer “using procedures and standards acceptable to the Guam Historic Preservation Officer”. However, as with the other sections, it does not grant the Department of Parks and Recreation, the SHPO, or the Guam Territorial Archaeologist the authority to require any specific action regarding the reburial by any private property owner much less the requirement to construct a monument, public restroom, and public parking stalls for the reburial. The reburial of the remains is the responsibility of the SHPO.

The documents that your office provided as authority for these permit conditions were simply internal guidelines a former director of the Department developed. These were guidelines the Department was to follow when the Department reburied human remains. Legally you cannot use Department internal guidelines as the basis for permit conditions when you do not have the statutory authority to even impose such conditions. There is no evidence that these guidelines were developed pursuant to any rule making authority or that public comment was allowed on the guidelines themselves. Moreover, they have never been published as part of the Guam Administrative Rules (GAR).

Since the Department of Parks and Recreation, SHPO, and Guam Territorial Archaeologist lack the legal authority to require a private landowner to bear the responsibility and cost of the reburial of prehistoric or historic remains, specifically the construction of a monument, the construction of a public restroom or the construction of public parking stalls it is clear that you must rescind the requirements you have imposed upon [REDACTED] with regards the

project at Alupang. Legally you may require [REDACTED] to remove the remains, if you determine disturbing the remains is necessary, you may not impose any requirements beyond removal of the remains. Once the remains are removed it is the responsibility of the Department to care for the remains and to insure, they are properly reburied, at the Department's expense.

As you are aware, the Attorney General has previously issued an opinion that the SHPO was imposing requirements on GVB beyond those that you are legally allowed to impose. You have also been provided with an Attorney General's legal opinion that your office does not have the legal authority to require private landowners conduct archaeological surveys on their own property at their expense, however, you continue to ignore this opinion. Therefore, as of the date of this letter you are required to receive approval of the Office of the Attorney General for any permit conditions that you are proposing to impose on a private party beyond those which are clearly and expressly allowed by Guam law. This will ensure that the permit conditions you wish to impose are within your statutory authority. This is necessary since it is the Attorney General's Office who will be responsible for enforcing the permit conditions in court. It is not now, nor has it ever been, the policy of this Department to ignore the direction provided by the Attorney General of Guam who is the Chief Legal Officer for Guam.



Appendix 8: Compliance Testing Criteria

Category	Criteria	Compliance Determination
GSHPO/GHRD's Policy on Reviewing DPW Permit Application	Vicinity Map Provided	Vicinity Map attached to application.
	Site Plot Plan Provided	Site Plot Plan attached to application.
	Included Copies of Dept. of Land Management Recorded Property Map, Ownership Documents or Lease Agreement, Notice of Action (GLUC), If Applicable	Copy of DLM Recorded Property Map, Ownership Documents or Lease Agreement, or Notice of Action attached to application
	Copy of Contractor's License Provided	Copy of Contractor's License attached, or CLB Clearance on application
Receipt of Permit	RC No. Assigned & Stamped	GSHPO/GHRD stamp on application
Site Research	Research Conducted on Job Site (HPS, GPS, RC Site Records)	COA Pending Log, Signature of Approval/Clearance by GSHPO/GHRD
Archaeologist's Determination	No Impact	Signature of Approval/Clearance by GSHPO/GHRD
	Permit Application Signed by SA/A/HPS	Signature of State Archaeologist, Archaeologist and/or Historic Preservation Specialist.
	Was a report generated/produced?*	Archaeological report, memo, COA attachment forms, GSHPO/GHRD review, pending correspondence log, and site inspection reports.
	Impact Identified/Site Inspection Done	COA, GSHPO/GHRD review, pending correspondence log, and site inspection report notes impact and/or completion of site review.
Potential Impact Determination	Certificate of Approval Inputted Into Tracking Report	Tracking report verified in comparison to COA database (excel)
	COA Issued to Customer	A copy of COA is attached.
	Was a report generated/produced?*	Archaeological report, Archaeological Survey of Plot, COA attachment forms, GHRD review, pending correspondence log, and site inspection reports.

Appendix 9: RC Application Database¹

Category	Criteria	Procedure Not Done (A)	Compliance (B)	Incomplete Documentation (C)	Non Applicable (D)
GSHPO/GHRD's Policy on Reviewing DPW Permit Application	Vicinity Map Provided	1 (2%)	58 (95%)	2 (3%)	0 (0%)
	Site Plot Plan Provided	1 (2%)	58(95%)	2(3%)	0 (0%)
	Included Copies of Dept. of Land Management Recorded Property Map, Ownership Documents or Lease Agreement, Notice of Action (GLUC), If Applicable	3 (5%)	26 (43%)	2 (3%)	30 (49%)
	Copy of Contractor's License Provided	5 (8%)	24 (39%)	2(3%)	30 (49%)
Receipt of Permit	RC No. Assigned & Stamped	1 (2%)	58 (95%)	2 (3%)	0 (0%)
Site Research	Research Conducted on Job Site (HPS, GPS, RC Site Records)	3 (5%)	56 (92%)	2 (3%)	0 (0%)
Archaeologist's Determination	No Impact	2 (3%)	54 (89%)	2 (3%)	3(5%)
	Permit Application Signed by SA/A/HPS	2 (3%)	56 (92%)	2 (3%)	1 (2%)
	Impact Identified/Site Inspection Done	1 (2%)	4 (7%)	2 (3%)	54 (89%)
Potential Impact Determination	Certificate of Approval Inputted Into Tracking Report	3 (5%)	2 (3%)	2 (3%)	54 (89%)
	COA Issued to Customer	1 (2%)	4 (7%)	2 (3%)	54 (89%)

Criteria	Procedure Not Done (A)	Compliance (B)	Incomplete Documentation (C)	Non Applicable (D)
Was a report generated/produced? *	55 (90%)	5 (8%)	1 (2%)	0 (0%)

¹ Percentages are rounded up and, if added, may be over 100%.

Appendix 10: COA Application Database²

Category	Criteria	Procedure Not Done (A)	Compliance (B)	Incomplete Documentation (C)	Non Applicable (D)
GSHPO/GHRD's Policy on Reviewing DPW Permit Application	Vicinity Map Provided	0 (0%)	22 (100%)	0 (0%)	0(0%)
	Site Plot Plan Provided	0 (0%)	22 (100%)	0 (0%)	0 (0%)
	Included Copies of Dept. of Land Management Recorded Property Map, Ownership Documents or Lease Agreement, Notice of Action (GLUC), If Applicable	3 (14%)	17 (77%)	0 (0%)	2 (9%)
	Copy of Contractor's License Provided	4 (18%)	16 (73%)	0 (0%)	2 (9%)
Receipt of Permit	RC No. Assigned & Stamped	0 (0%)	22 (100%)	0 (0%)	0 (0%)
Site Research	Research Conducted on Job Site (HPS, GPS, RC Site Records)	1 (5%)	21 (95%)	0 (0%)	0(0%)
Archaeologist's Determination	No Impact	2 (9%)	4 (18%)	0 (0%)	16 (73%)
	Permit Application Signed by SA/A/HPS	2 (9%)	20 (91%)	0 (0%)	0 (0%)
	Impact Identified/Site Inspection Done	4 (18%)	18 (82%)	0 (0%)	0 (0%)
Potential Impact Determination	Certificate of Approval Inputted Into Tracking Report	11 (50%)	10 (45%)	0 (0%)	1 (5%)
	COA Issued to Customer	9 (41%)	12 (55%)	0 (0%)	1 (5%)

Criteria	Procedure Not Done (A)	Compliance (B)	Incomplete Documentation (C)	Non Applicable (D)
Was a report generated/produced? *	3 (14%)	19 (86%)	0 (0%)	0 (0%)

² Percentages are rounded up and, if added, may be over 100%.



Lourdes A. Leon Guerrero
Governor
Joshua F. Tenorio
Lt. Governor

Department of Parks and Recreation
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Government of Guam

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Angel R. Sablan
Acting Director
Warren Pelletier
Deputy Director

February 13, 2025

Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

Subject: Response to OPA Audit of Guam State Historic Preservation Office (GSHPO)

Hafa Adai Mr. Benjamin J. F. Cruz,

The Guam SHPO welcomes the recommendations and findings of the OPA Audit that

1. GSPHO's current operations are not in line with its codified law;
2. GSPHO Rules and regulations require adjudication process; and
3. Former State Archeologist has been imposing unauthorized requirements.

The Guam SHPO is currently working with Senator Shelley Calvo and staff to introduce and modify Guam Code in keeping with the functions of the Office. We are also concurrently working with the Governor's Office in identifying areas of the current law that need revision or clarity.

The Guam State Historic Preservation Office (GSHPO), aka Guam Historic Resources Division (GHRD), is currently a unit operating within the Department of Parks and Recreation. The confusion in name and role in Guam organizational structure illustrates the complicated and contradictory nature of the organization and its role in Territorial governance.

A State Historic Preservation Office is a federally recognized entity within a state or territory responsible for the administration of the requirements of the U.S. National Historic Preservation Act and its regulations under 36CFR Part 800. Section 106 of the code requires that federal agencies take into account the effects of their undertakings on historic properties and afford the U.S. Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. In this capacity the Guam SHPO is appointed by and acts on behalf of the Governor of the State or Territory and is thereby an Office of the Governor to review federal compliance.

In its capacity as an agency of the Government of Guam, the Guam Historic Resources Division adjudicates, enforces, and supports Guam Code Title 21 Chapters 76 and 77 and Historic Preservation within the Territory of Guam. The Guam Historic Preservation Officer is designated the administrator of the Guam Historic Resources Division serving under the Director, Parks and Recreation Department.

Recommendation a: In response to finding 1, above, this dual function of the GSHPO/GHRD requires clarification by enactment of new law, rules and regulations in the Guam Code.

Recommendation b: In response to finding 2, above, the Rules and Regulations of the GSHPO/GHRD require adjudication, and Guam SHPO is currently working with Senator Calvo and staff to introduce revised and updated rules and regulations for the AAA process.

Recommendation c: In response to finding 3, above, the role and the person of the State Archaeologist have been overtaken by events since the end of the audit period in FY 2023 and into December of 2023, FY2024. In February 2024 the State Archaeologist was suspended from duties and placed on administrative leave. Activities deemed unauthorized by the OPA led in part to this action by the Director, DPR, but have been part of a long-term abuse of the position of unauthorized actions and recommendations. In many cases ex parte communications in person, by telephone, and by email were inappropriately required by the State Archaeologist. The State Archaeologist was replaced by a temporary gubernatorial appointment in February 2024, who has served until further notice by the Governor. The position is currently in process of transfer to a permanent GHRD staff who is qualified for the position and will be appointed as State Archaeologist concurrent with the lapsed position occupied by the former State Archaeologist. The new rules and regulations under development define the role, duties, and limitations of the State Archaeologist to conform with Guam Code.

Recommendation d: In addition to the three key items identified by the OPA, some deficiencies in processing and approving applications to the GHRD were noted. GSHPO/GHRD are currently reviewing the processes, checklist, and routing and logging procedures to improve these processes. The few missing documents noted during the audit are being recovered, and all new applications will be logged and processed effectively. The current system is under review and will be modified to implement a stringent permit application review process, including a detailed checklist of requirements, documentation of project status and completion, and a systematic approach to storing and organizing application files for greater efficiency.

Recommendation e: OPA recommends that the DPW permit application form accurately reflect the roles of the relevant agencies, ensuring proper routing of applications, and clear role of GSHPO/GHRD, reflecting our office, specifically. We fully support this recommendation.

In summary, the roles and overlapping functions and responsibilities of the GSHPO and GHRD will be clarified by drafting new legislation and subjecting rules and regulations for adjudication under the sponsorship of Senator Calvo in the Guam Legislature. The position of State Archaeologist will be clarified and the position of State Archaeologist will be filled by qualified

Guam and its citizens and the preservation of historic resource, GSHPO recommends that GSHPO should be organized as a unit within the Office of the Governor and be removed from the Department of Parks and Recreation. This would strengthen and make clear the role of the GSHPO as an autonomous federal review agency and would confer authority from the Office of the Governor on the functions and responsibilities for historic preservation in Guam.

Sincerely,



Patrick Q. Lujan
State Historic Preservation Officer

3/17/25, 9:44 AM

Guam OPA Mail - Additional Finding for Management Response - GSHPO Performance Audit



Leonanie Leon Guerrero <lleonguerrero@guamopa.com>

Additional Finding for Management Response - GSHPO Performance Audit

Patrick Lujan <patrick.lujan@dpr.guam.gov> Fri, Feb 28, 2025 at 1:39 PM
To: Thomas Eladio Battung <tbattung@guamopa.com>
Cc: Michelle Yamasta <michelle.yamasta@dpr.guam.gov>, Russell Kanai <russell.kanai@dpr.guam.gov>, Jerrick Hernandez <jhernandez@guamopa.com>, Leonanie Leon Guerrero <lleonguerrero@guamopa.com>, Benjamin Cruz <bjcruz@guamopa.com>

Hafa adai Thomas,

Yes, I can confirm that despite the existing law, our office has never acquired a comprehensive, islandwide survey. Over the years, it has been built upon project by project.

On DoD property, extensive surveys have been done, and those areas that have not been extensively surveyed, there is what we call probability mapping, which helps with planning and development.

It would be ideal that we get to that level to possess an islandwide survey or at least probability mapping that mirrors DoD land. At this time, however, it would be cost prohibitive.

I agree with the recommendation that we strive to fulfill the intentions of that long-standing law.

v/r,
patrick
(Quoted text hidden)

Patrick Q. Lujan
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Department of Parks & Recreation
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The Honorable
LOURDES A. LEON GUERRERO
Maga' Håga - Governor

The Honorable
JOSHUA F. TENORIO
Sigundo Maga' Låhi - Lieutenant Governor



VINCENT P. ARRIOLA
Director
LINDA J. IBANEZ
Deputy Director
ERNEST G. CANDOLETA, JR.
Deputy Director

11 MAR 2025

Thomas Eladio M. Battung, CFE
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910
Date: March 4, 2025

Subject: DPW Exit Conference, GSHPO Audit

On February 20, 2025, the Zoom discussion was on your findings and recommendations on the following:

- DPW to revise their permit application form to accurately reflect the roles of the relevant agencies, ensuring proper routing of applications. Specifically, clearly identifying GSHPO on the form.

Mr. Thomas, the Building Permit Application form lists the Department of Parks and Recreation for clearance; the clearing agency is routed to GSHPO.

Under the 21 GCA Real Property, Ch. 66 Building Law, Article 2 Application for Permit Section §66202.1 Clearing and Grading Permit Required for Government Agencies (a) A permit for Clearing, Grading, and Construction shall be required of government, autonomous, and public entities in the same manner as private citizens.

The approval of the following agencies indicated on the application to the Department of Public Works: Department of Land Management, Zoning Division; Department of Parks and Recreation; Guam Power Authority; Guam Environmental Protection Agency; Guam Geodetic Network Survey Division; Department of Agriculture; and the Department of Public Works.

To make changes for clearances, the legislature would have to amend the removal of the Department of Parks and Recreation and replace it with GSHPO.

Sincerely,

VINCENT P. ARRIOLA
Director, Department of Public Works

Vince D.
3/11/25
1233 ✓

Appendix 13: Status of Audit Recommendations

No.	Addressee	Audit Recommendation	Status	Actions Required
1.	GSHPO/GHRD Oversight Chair Guam Legislature	Draft and implement amendments to clarify and streamline operational practices to prevent future conflicts or overreach within this legislation period	OPEN	Provide a corrective action plan with responsible official and timeline of implementation
2.	DPR GSHPO/GHRD	Update their island-wide database by surveying unassessed areas to fulfill their responsibility of creating a comprehensive island-wide record of historic and archaeological sites. Additionally, the database should be made publicly accessible to enhance transparency and informed decision-making.	OPEN	Provide a corrective action plan with responsible official and timeline of implementation
3.	GSHPO/GHRD	Adopt their drafted rules and regulations by going through the proper Administrative Adjudication Act	OPEN	Provide a corrective action plan with responsible official and timeline of implementation
4.	DPR GSHPO/GHRD	Establish procedures to ensure the agency operates within its statutory authority and obtains necessary approvals for non-standard permit conditions	OPEN	Provide a corrective action plan with responsible official and timeline of implementation
5.	GSHPO/GHRD	Implement a stringent permit application review process, including a detailed checklist of requirements, documentation of project status and completion, and a systematic approach to storing and organizing application files for greater efficiency.	OPEN	Provide a corrective action plan with responsible official and timeline of implementation
6.	DPW	Revise their permit application form to accurately reflect the roles of the relevant agencies, ensuring proper routing of applications. Specifically, clearly identifying GSHPO/GHRD on the form	OPEN	Provide a corrective action plan with responsible official and timeline of implementation

GUAM STATE HISTORIC PRESERVATION OFFICE PROGRAM AREA ON REVIEW AND COMPLIANCE Report No. 25-05, March 2025

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Leonanie Leon Guerrero, Audit Staff

Thomas Eladio Battung, CFE, Auditor-in-Charge

Jerrick Hernandez, MA, CGFM, CFE, CICA, CGAP, Audit Supervisor

Benjamin J.F. Cruz, Public Auditor

MISSION STATEMENT

We independently conduct audits and administer procurement appeals to safeguard public trust and promote good governance for the people of Guam.

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The Government of Guam is the standard of public trust and good governance.

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- Visit our website at www.opaguam.org
- Call our office at (671) 475 0390
- Fax our office at (671) 472 7951
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All information will be held in strict confidence.



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