

DRAFT CSC, Title 24. Land Management

CHAPTER 1 Tidelands

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§ 1001. Purpose.

The purpose of this Chapter is to clarify the procedure by which persons may fill, borrow and excavate tidelands in the ~~Truk District~~ Chuuk State in accordance with the provisions of ~~Section 2, Chapter 1, Title 67 of the Trust Territory Code~~ this Title.

Source: 19 TDC § 1, modified.

Case annotations:) Tidelands

The people of Chuuk have always considered themselves to have rights and ownership of the tidelands, and thereby hold the property rights in them, throughout all of the several foreign administrations. These traditional and customary claims came down from time immemorial. [Nimeisa v. Department of Public Works](#), 6 FSM Intrm. 205, 208 (Chk. S. Ct. Tr. 1993).

The Chuuk State Constitution recognizes all traditional rights and ownership over all reefs, tidelands, and other submerged lands subject to legislative regulation of their reasonable use. [Nimeisa v. Department of Public Works](#), 6 FSM Intrm. 205, 209 (Chk. S. Ct. Tr. 1993).

It was the intent of the framers of the Chuuk State Constitution to return the rights and ownership of all reefs, tidelands (all areas below the ordinary high watermark), and other submerged lands to the individual people of Chuuk State. [Nimeisa v. Department of Public Works](#), 6 FSM Intrm. 205, 210 (Chk. S. Ct. Tr. 1993).

The constitutional grant of ownership of the tidelands back to the rightful individual owners, shall be given prospective application only. [Nimeisa v. Department of Public Works](#), 6 FSM Intrm. 205, 212 (Chk. S. Ct. Tr. 1993).

The reversion of reefs, tidelands and other submerged lands to private owners granted by article IV, section 4 of the Chuuk Constitution does not apply to any tidelands that were previously filled or reclaimed. [Nena v. Walter](#), 6 FSM Intrm. 233, 236 (Chk. S. Ct. Tr. 1993).

Tideland is land below the ordinary high water mark. Filled or reclaimed land, by its nature, is not land below the ordinary high water mark, and it cannot be considered tideland or submerged land. [Nena v. Walter](#), 6 FSM Intrm. 233, 236 (Chk. S. Ct. Tr. 1993).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. [Cheni v. Ngusun](#), 6 FSM Intrm. 544, 548 (Chk. S. Ct. App. 1994).

The Chuuk State Constitution, effective on October 1, 1989, recognizes traditional rights over all reefs, tidelands, and other submerged lands. Tidelands, including man-made islands, that were filled prior to this effective date are no longer classed as tidelands and have become dry land. [Sellem v. Maras](#), 7 FSM Intrm. 1, 3-4 (Chk. S. Ct. Tr. 1995).

Tidelands traditionally are those lands from the dry land to the deep water at the edge of the reef, and must be shallow enough for Chuukese women to engage in traditional methods of fishing. [Sellem v. Maras](#), 7 FSM Intrm. 1, 4 (Chk. S. Ct. Tr. 1995).

A deep water passage through a reef too deep for Chuukese women to engage in their traditional fishing methods is not a tideland. While under Chuukese tradition and custom channels may have been owned, the constitution does not recognize traditional rights over channels. The state thus retains ownership of the channels, as was the situation prior to the adoption of the Chuuk Constitution. *Sellem v. Maras*, 7 FSM Intrm. 1, 5 & n.9 (Chk. S. Ct. Tr. 1995).

Tidelands within the meaning of article IV, section 4 of the Chuuk Constitution are those marine lands from the shore to the face of the reef that are shallow enough for traditional fishing activity by women. The constitutional recognition of traditional rights in tidelands does not include deep water channels or tidelands that have become dry land prior to the effective date of the constitution, through filling or other activity that raised the level of the marine lands above the mean high tide mark. *Sellem v. Maras*, 7 FSM Intrm. 1, 7 (Chk. S. Ct. Tr. 1995).

§ 1002. Procedure for applying.

(1) All applicants to fill, borrow and excavate tidelands shall submit their applications to the Magistrate of the municipality in which the tideland is located. The Magistrates shall consult with the chief who has traditionally administered the tideland's use. The Magistrate shall submit the applicant's request, with a sketch map of the area concerned, accompanied by the traditional chief's and his own recommendation to the ~~Truk District~~ Chuuk State Land Management Officer Chief of the Division of Land Management and Historic Preservation.

(2) The ~~Land Management Officer~~ Chief of the Division of Land Management and Historic Preservation shall review the composite application and shall be satisfied that the applicant has title to the land adjacent to where the filling, borrowing or excavating of the tideland is to take place. Before the ~~Land Management Officer~~ Chief of the Division of Land Management and Historic Preservation submits his recommendation to the ~~District Administrator~~ Governor, he shall consult with the ~~District State Director of Public Works Officer~~ on the application.

(3) Upon receipt of the application and recommendations from the ~~Land Management Officer~~ Chief of the Division of Land Management and Historic Preservation, the ~~District Administrator~~ Governor shall then render his decision.

Source: 19 TDC § 2, Section divided into Subsections and Section modified.

§ 1003. Filing of boundaries.

Following the action of the ~~District Administrator~~ Governor, the applicant whose request has been approved shall file with the ~~District Land Management Officer~~ Chief of the Division of Land Management and Historic Preservation, a record of the boundaries of his land adjacent on which, the tideland filling, borrowing or excavation is to take place. Such filing shall take place before any work on the project is begun by the applicant.

Source: 19 TDC § 3, modified.

§ 1004. Restrictions.

No tideland filling, borrowing or excavating is to be permitted wherein there is a question concerning the title to the land adjacent to which the project is to take place, or where that would be done to the detriment of navigable waters.

Source: 19 TDC § 4.