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CH. 65 PUBLIC ACCESS TO THE OCEAN SHORE

CHAPTER 65
PUBLIC ACCESS TO THE OCEAN SHORE

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NOTE: This Chapter was enacted into the Government Code by P.L. 19-5:112, as Chapter V-C of Title XIV, (§§13470-13478). The date of enactment was August 21, 1987.

§ 65101. Short Title.

This Law shall be known and may be cited as the *Ocean Shore Public Access Law of 1987*.

§ 65102. Legislative Findings and Purpose.

The Legislature finds that the ocean shore is a vital part of the patrimony of the people of Guam and is a major source of recreation and livelihood; that extensive areas of ocean shore are inaccessible to the public due to the absence of public rights-of-way; that structures and other obstructions have blocked public access through traditional rights-of-way; and that the absence of public access to ocean shores constitutes an infringement upon the fundamental right of free movement in public space and access to and use of coastal recreational areas. The purpose of this Chapter is to guarantee the right of public access to the ocean shore and to provide for the maintenance of traditional rights-of-way and the acquisition of public rights-of-way to the ocean shore.

§ 65103. Definitions.

(a) *Ocean Shore* means the land between the mean low waterline and series of lines connecting angle points located at a distance of twenty-five (25) feet inland from the two (2) feet contour line as established by the United States Coast and Geodetic Survey. The angle points shall be so

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selected as to secure maximum parallelism of the twenty-five (25) feet setback line with the two (2) feet contour.

(b) *Public Highway*. For purposes of this Chapter the term *Public Highway* means any highway, street, road, jeep trail, or any other thoroughfare intended for, or utilized by, motor vehicles and which is owned or maintained by the government of Guam or any agency or instrumentality of the United States Government as of the effective date of this Chapter.

(c) *Traditional Right-of-Way*. For the purposes of this Chapter the term *Traditional right-of-way* means any road, trail, bull cart road, easement, or right-of-way, by whatever terms known and described, title to which was held by the government of Spain by legal or ecclesiastical right as of the effective day of the Treaty of Paris; and, further, shall include any road, way, trail, bull cart road, easement, or right-of-way, by whatever term known and described, and which has been included by delineation, description, narrative, or reference in any map, report, writing, or official document produced by, for, or under the supervision of, the United States Naval Government of Guam. The term *Traditional right-of-way* shall not include any traditional right-of-way as herein described which has been the subject of a final adjudication by a court of competent jurisdiction.

§ 65104. Traditional Rights-of-Way, Vesting.

The Legislature recognizes that over the years the Public has made frequent and uninterrupted use of certain trails and bull cart roads providing access to the ocean shore and recognizes that such use has been legally sufficient to create rights or easements in the public through dedication, prescription, grant, or otherwise, and that it is in the public interest to protect and preserve such public rights or easements as a permanent part of the public domain.

§ 65105. Traditional Rights-of-Way, Maintenance.

(a) It shall be unlawful for the owner, lessee, or tenant of any lands adjacent to or abutting the ocean shore to block, impede, or interfere with the public use of any traditional right-of-way.

(b) It shall be unlawful for the Territorial Planning Commission to approve or permit any development of land which will result in the blocking, impeding, or interfering with the public use of any traditional

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right-of-way which provides public access to the ocean shore. Nothing in this Section shall prevent the Territorial Planning Commission from approving the development of land wherein an alternative perpetual right-of-way or easement in favor of the public and allowing access to the ocean shore has been duly recorded in the form and manner provided by law.

§ 65106. Rights-of-Way, Acquisition.

When the provisions of § 65105 of this Chapter are not applicable, the Department of Parks and Recreation shall purchase land for public rights-of-way between the ocean shore and the nearest public highway.

§ 65107. Criteria For Public Rights-of-Way.

All rights-of-way established under the provisions of this Chapter shall be two (2) meters in width. A distance at reasonable intervals taking into consideration the topography and physical characteristics of the land the public is desirous of reaching is established as the maximum between public rights-of-way for the purposes of this Chapter.

§ 65108. Transfer of Public Lands, Establishment of Public Rights-of-Way.

No lands, either presently or in the future, held by the government or any of its agencies or autonomous bodies and situated between the ocean shore and public highway shall be sold, exchanged, leased, or otherwise alienated unless there shall first be deeded and recorded a perpetual public right-of-way through and over the said land and connecting the ocean shore and nearest public highway. Public rights-of-way established under this Section shall conform to the requirements set forth in § 65107 of this Chapter.

§ 65109. Enforcement.

(a) Any person may maintain an action for declaratory and equitable relief to restrain violations, or enforce the provisions, of this Chapter. No bond shall be required for an action brought under this Section.

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

(c) Any person who prevails in a civil action brought under this Section to enjoin a violation, or enforce the provisions of this Chapter shall be awarded his costs, including reasonable attorney's fees.

