

1           Section 27. Subsection (d) of §13985.19 of the Government Code is  
2 hereby amended to read:

3           "(d) Inclusion of any historic site structure, building or object  
4 on the Guam Register of Historic Places shall be by the majority  
5 affirmative vote of the Guam Historic Preservation Review Board."

September 14, 1990

Memorandum (Opinion)

Ref: BBMR 90-1261

To: Director, Bureau of Budget and Management Research

From: Attorney General *ERD*

Subject: Guam Preservation Trust Funds

We are in receipt of your memorandum dated September 6, 1990, in which you requested information on the following:

REQUEST NO. 1: Does P.L. 20-151:13 require a legislative appropriation before Guam Preservation Trust funds can be expended?

ANSWER: No.

REQUEST NO. 2: Who is the custodian for all Guam Preservation Trust funds?

ANSWER: The Board of Directors of the Guam Preservation Trust.

REQUEST NO. 3: Is the Board of Directors of the Guam Preservation Trust authorized to expend the funds generated pursuant to P.L. 20-151:13?

ANSWER: Yes.

STATEMENT OF FACTS:

P.L. 20-151:12 enacted Government Code (GC) Section 13985.80 which established the Guam Preservation Trust (the Trust) as a nonprofit public corporation.

P.L. 20-151:8 enacted GC Section 13985.61 which provides, in part, that the Board of Directors of the Guam Historic Preservation Review Board shall also serve as the Board of Directors of the Trust.



P.L. 20-151:13 enacted GC Section 13985.82 which mandates the use of fines collected under GC Section 13985.25 and collected building permit fees for the benefit of the Trust. The fees are the main source of income for the Trust.

The Director of the Bureau of Budget and Management Research is uncertain as to whether or not a legislative appropriation is needed to authorize the expenditure of Trust funds, and he is requesting our assistance in resolving this issue.

#### DISCUSSION:

GC Section 13985.61(5) [P.L. 20-151:8] states that the Guam Historic Preservation Review Board will also serve as the Board of Directors of the Trust, a nonprofit public corporation.

GC Section 13985.80 [P.L. 20-151:12] provides that the Trust shall have the power:

[T]o seek outside grants and donations, to acquire title in fee simple, in leasehold, or by easement, through donation, transfer, dedication, purchase, and eminent domain, of threatened Guam properties for the preservation of their historical value, and support other activities directly related to increasing the public appreciation of and benefit from historical places. Expenditures by the Trust shall be limited to purposes of the Trust....

GC Section 13985.82 [P.L. 20-151:13] provides that building permit fees collected pursuant to GC Section 31047(a) and fines collected under GC §13985.25 will be sources of income for the Trust. GC Section 13985.82 further provides that "Guam Preservation Trust funds shall be maintained separate and apart from all other government funds."

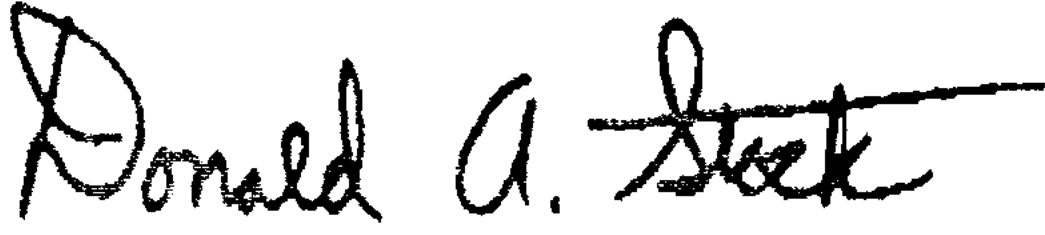
It is a well established principle of corporate law that a corporation's board of directors is solely responsible for the management and use of a corporation's assets and funds. 18B Am.Jur.2d Corporations §§ 1484 and 1495. Thus, the Trust's Board of Directors is the custodian for all income that is generated for the benefit of the Trust, and Trust funds can be expended only upon authorization of the Trust's Board of Directors.

Therefore, it is our conclusion that all income generated for the Trust, including those fees collected pursuant to GC Section 13985.82 [P.L. 20-151:13], can be expended for the purposes of the Trust only upon a duly enacted resolution of the Board of Directors of the Trust; no legislative appropriation is required for such expenditures.

Memo to Director, BBMR  
September 14, 1990  
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This memorandum is issued as an opinion of the Attorney General.  
For a faster response to any inquiry about this memorandum, please  
use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By:   
DONALD A. STOCK  
Assistant Attorney General

1 authorized to use available lapses within its current 1990 fiscal year budget  
2 to fund the position of Guam Historic Preservation Officer.

3 Section 20. Abolishment of previous board. The Guam Review Board  
4 for Historic Preservation established by Executive Order 78-46 shall be  
5 terminated ninety (90) days from the effective date of this Act. The  
6 Governor shall submit to the Legislature nominees to the Guam Historic  
7 Preservation Review Board within thirty (30) days from the effective date  
8 of this Act.

9 Section 21. §19439 is hereby added to the Government Code to read:

10 "§19439. Abatement of taxes. The Director of Revenue and  
11 Taxation shall grant an abatement of property taxes on private  
12 property which is included within a historic preservation easement  
13 executed by the private owner and approved by the Guam Preservation  
14 Trust's Board of Directors."

15 Section 22. Subsection (g) of §26003 of the Government Code is  
16 hereby amended to read:

17 "(g) to be State Liaison Officer for the Bureau of Outdoor  
18 Recreation."

19 Section 23. §26002 of the Government Code is hereby amended to  
20 read:

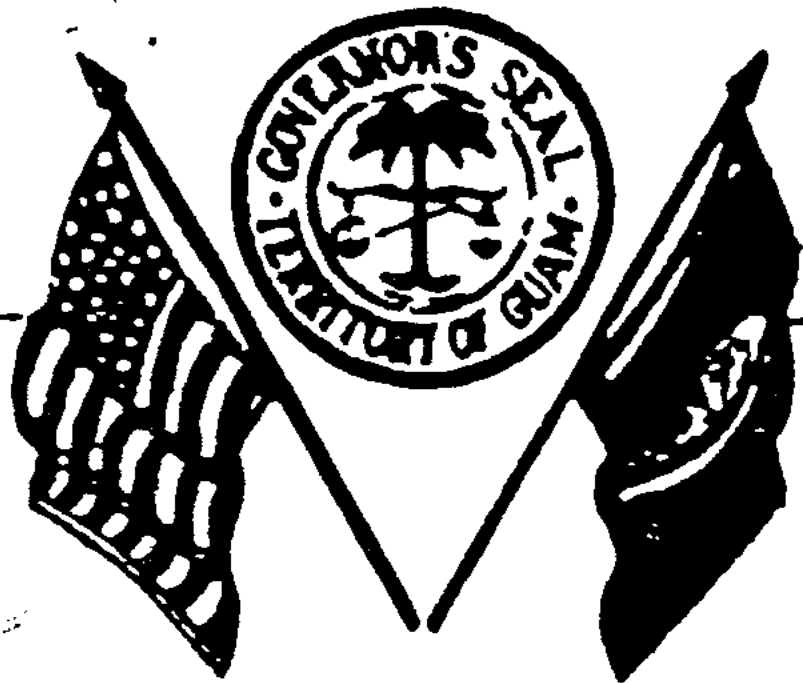
21 "§26002. The Department is divided into three divisions, to be  
22 known as the Parks Division, the Recreation Division, and the Guam  
23 Historic Resources Division."

24 Section 24. Part IV, Chapter 13, Part IV, Title XIV, Government  
25 Code, is hereby repealed.

26 Section 25. Subsections (2) and (3) of §13985.23 of the Government  
27 Code are hereby repealed.

28 Section 26. Subsection (1) of §13985.42 of the Government Code is  
29 hereby amended to read:

30 "(1) Consult the Guam Historic Preservation Officer before  
31 demolishing, altering, or transferring any property under the  
32 jurisdiction that is potentially of historical, architectural,  
33 archaeological, or cultural significance, including, but not limited to,  
34 any property listed on the territorial register."



*Territory of Guam*  
*Territorio de Guam*

OFFICE OF THE GOVERNOR  
EDFEDIAN I MACA LANE  
AGANA, GUAM 96910 U.S.A.

*Joan*  
*Cy*

MAR 21 1990

The Honorable Joe T. San Agustin  
Speaker, Twentieth Guam Legislature  
Post Office Box C8-1  
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 486, which I have signed into law this date  
as Public Law No. 20-151.

Sincerely,

*Joseph F. Ada*  
JOSEPH F. ADA  
Governor

Attachment



TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

Bill No. 486 (LS)  
As substituted by the Author  
and as amended by Committee on  
Rules

Introduced by:

E. P. Arriola  
M. Z. Bordallo  
T. S. Nelson

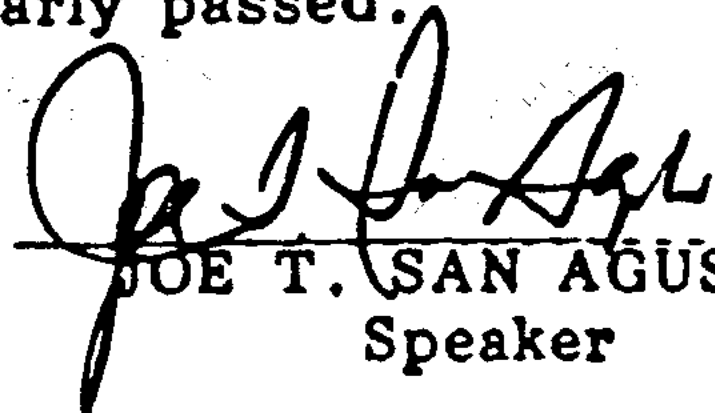
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H. D. Dierking  
J. T. San Agustin  
J. P. Aguon  
C. T. C. Gutierrez  
P. C. Lujan  
G. Mailloux  
D. Parkinson  
F. J. A. Quitugua  
E. D. Reyes  
F. R. Santos  
M. C. Ruth  
J. G. Bamba  
D. F. Brooks  
E. R. Duenas  
E. M. Espaldon  
M. D. A. Manibusan  
T. V. C. Tanaka  
A. R. Unpingco

AN ACT TO AMEND SECTIONS 13985.2, 13985.25, 13985.42, 26002, SUBSECTION (d) OF SECTION 13985.19, AND SUBSECTION (g) OF SECTION 26003, TO REPEAL AND REENACT SECTION 13985.21, TO REPEAL PART IV OF CHAPTER XIII OF TITLE XIV, AND SUBSECTIONS (2) AND (3) OF SECTION 13985.23, AND TO ADD NEW SECTIONS 13985.43, 13985.51, 13985.52, 19439, 13985.60 THROUGH 13985.62, 13985.70, AND 26039 THROUGH 26033, ALL OF THE GOVERNMENT CODE, ESTABLISHING A HISTORIC RESOURCES DIVISION WITHIN THE DEPARTMENT OF PARKS AND RECREATION, A HISTORIC PRESERVATION REVIEW BOARD, THE POSITION OF HISTORIC PRESERVATION OFFICER, AND THE GUAM PRESERVATION TRUST.

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Substitute Bill No. 486 (LS), "AN ACT TO AMEND SECTIONS 13985.2, 13985.25, 13985.42, 26002, SUBSECTION (d) OF SECTION 13985.19, AND SUBSECTION (g) OF SECTION 26003, TO REPEAL AND REENACT SECTION 13985.21, TO REPEAL PART IV OF CHAPTER XIII OF TITLE XIV, AND SUBSECTIONS (2) AND (3) OF SECTION 13985.23, AND TO ADD NEW SECTIONS 13985.43, 13985.51, 13985.52, 19439, 13985.60 THROUGH 13985.62, 13985.70, AND 26039 THROUGH 26033, ALL OF THE GOVERNMENT CODE, ESTABLISHING A HISTORIC RESOURCES DIVISION WITHIN THE DEPARTMENT OF PARKS AND RECREATION, A HISTORIC PRESERVATION REVIEW BOARD, THE POSITION OF HISTORIC PRESERVATION OFFICER, AND THE GUAM PRESERVATION TRUST," was on the 7th day of March, 1990, duly and regularly passed.

  
JOE T. SAN AGUSTIN  
Speaker


Attested:

  
PILAR C. LUJAN  
Senator and Legislative Secretary

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This Act was received by the Governor this 9th day of March, 1990,  
at 4:52 o'clock p.m.

  
Theresa J. Dumas  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
JOSEPH F. ADA  
Governor of Guam  
Date: MAR 21 1990

Public Law No. 20-151



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

2 Section 1. Legislative Intent. The Legislature has determined that  
3 the historic preservation program of Guam can be enhanced by making the  
4 Guam Historic Preservation Officer a classified position, thereby providing  
5 continuity in establishing and carrying out programs that will enrich and  
6 protect Guam's historic sites and properties. It has also been determined  
7 that the burden of actively preserving Guam's cultural resources must be  
8 shared by both government and private resources. It is therefore the  
9 purpose of this Act to provide the mechanism necessary to strengthen and  
10 improve Guam's historic preservation laws and programs for the benefit of  
11 the people of Guam.

12 Section 2. §26030 is hereby added to Chapter I, Title XXVII,  
13 Government Code, to read:

14 "§26030. Guam Historic Resources Division created. There is  
15 hereby created the Guam Historic Resources Division within the  
16 Department of Parks and Recreation, which division shall be  
17 responsible for establishing a comprehensive historic preservation  
18 program for Guam."

19 Section 3. §26031 is hereby added to Chapter I, Title XXVII,  
20 Government Code, to read:

21 "§26031. Guam Historic Preservation Officer. The position of  
22 Guam Historic Preservation Officer is hereby created in the classified  
23 service under the Department of Parks and Recreation (the  
24 "Department"), the holder of which position shall be the State Historic  
25 Preservation Officer for federal purposes. The Director of Parks and  
26 Recreation (the "Director") shall select a qualified candidate to fill the  
27 position based on training, work experience and education pertinent to  
28 cultural resources management. The Guam Historic Preservation  
29 Officer shall be under the supervision of the Director and shall be the  
30 head of the Historical Resources Division of the Department and  
31 Executive Director for the Guam Preservation Trust Fund."

32 Section 4. §26032 is hereby added to Chapter I, Title XXVII,  
33 Government Code, to read:

1           "§26032. Guam Historic Preservation Officer: Duties. The Guam  
2 Historic Preservation Officer shall administer the comprehensive  
3 program for historic preservation, restoration and presentation  
4 prescribed by §13985.2 of Chapter XIII of Title XIV of this Code."

5           Section 5. §26033 is hereby added to Chapter I, Title XXVII,  
6 Government Code, to read:

7           "§26033. Guam Historic Preservation Officer: Compensation.  
8 The Civil Service Commission shall establish the necessary  
9 qualifications and wage standards of the Guam Historic Preservation  
10 Officer."

11          Section 6. §13985.2 of the Government Code is hereby amended to  
12 read:

13           "§13985.2 The Department in cooperation with the Territorial  
14 Planning Commission and the Territorial Seashore Protection Commission  
15 shall establish a comprehensive program for historic preservation,  
16 restoration, and presentation, which shall include but not be limited to  
17 the following:

18           (1) Plans to acquire, restore, and preserve historic areas,  
19 buildings, and site significant to Guam's past;

20           (2) Establish and maintain the Guam Register of Historic  
21 Places;

22           (3) Establish regulations on the uses of such areas;

23           (4) Develop a territory wide survey of historic areas,  
24 buildings, and sites with a phased preservation and restoration  
25 development plan and accompanying budget and land use  
26 recommendations;

27           (5) Provide for matching grants-in-aid to private agencies  
28 for projects which will fulfill the purposes of this Chapter;

29           (6) Seek assistance for the territorial historic preservation  
30 and restoration program by applying for technical assistance and  
31 funds from the federal government and private agencies and  
32 foundations for the purposes of this Chapter;

33           (7) Employ sufficient professional and technical staff for the  
34 purposes of this Chapter;

1           (8) Advise and cooperate with other public and private  
2 agencies engaged in similar work;

3           (9) Submit an annual report and budget to the Governor  
4 and the Legislature by February 1st of each year, with  
5 recommendations for programs of historic preservation and  
6 restoration."

7       Section 7. §13985.60 is hereby added to Chapter XIII, Title XIV,  
8 Government Code, to read:

9       "§13985.60. Guam Historic Preservation Review Board  
10 established. There is hereby created a Guam Historic Preservation  
11 Review Board (the "Board"), which Board shall consist of five (5)  
12 members, and five (5) alternates appointed by the Governor with the  
13 consent of the Legislature. At least one (1) member of the Board  
14 shall be knowledgeable in historic preservation and a majority shall be  
15 recognized professionals in the disciplines of history, prehistoric and  
16 historic archeology, or architecture. At least one (1) member must be  
17 knowledgeable of traditional Chamorro society and culture."

18       Section 8. §13985.61 is hereby added to Chapter XIII, Title XIV,  
19 Government Code, to read:

20       "§13985.61 Guam Historic Preservation Review Board: Duties.

21       It shall be the duty of the Board to:

22           (1) Enter historic properties into the Guam Register of  
23 Historic Places;

24           (2) Evaluate applications for nominating properties to the  
25 National Register of Historic Places;

26           (3) Review the Guam survey of the Guam Historic  
27 Properties;

28           (4) Review the content of the comprehensive preservation  
29 plan established pursuant to §13985.2 of this Code;

30           (5) Serve as the Board of Directors of the Guam  
31 Preservation Trust Fund;

32           (6) Serve as the State Historic Review Board for purposes  
33 related to the National Historic Preservation Act, Public Law  
34 89-665."

1 Trust (the "Trust"). The Trust shall have as its purpose and within  
2 its power to seek outside grants and donations, to acquire title in fee  
3 simple, in leasehold, or by easement, through donation, transfer,  
4 dedication, purchase, and eminent domain, of threatened Guam  
5 properties for the preservation of their historical value, and support  
6 other activities directly related to increasing the public appreciation of  
7 and benefit from historical places. Expenditures by the Trust shall be  
8 limited to purposes of the Trust and may not be used for any  
9 operations of the Department."

10 Section 13. §13985.82 is hereby added to Chapter XIII, Title XIV,  
11 Government Code, to read:

12 "§13985.82. Guam Preservation Trust income. Fees collected  
13 pursuant to Subsection (a) of §31047 of this Code shall be deposited in  
14 the Guam Preservation Trust Fund. Fines collected under §13985.25 of  
15 this Code shall be deposited in the Guam Preservation Trust Fund.  
16 Guam Preservation Trust funds shall be maintained separate and apart  
17 from all other government funds.

18 Section 14. §13985.25 of the Government Code is hereby amended to  
19 read:

20 "§13985.25. Vandalism and unlawful taking of historic properties  
21 and sites. It shall be unlawful for any person to take, appropriate,  
22 evacuate, injure, or destroy any prehistoric or historic ruin or  
23 monument or object of antiquity situated on lands owned or controlled  
24 by the territory without the permission of the Department. Any  
25 person, firm or contractor who violates this Section shall be guilty of  
26 a petty misdemeanor and shall be fined not more than Five Thousand  
27 Dollars (\$5,000) or imprisoned not more than sixty (60) days or both.  
28 Any prehistorical and historical objects and remains which have been  
29 taken without a permit shall be seized, deposited, and preserved in  
30 public museums by the Department."

31 Section 15. §13985.51 is hereby added to Chapter XIII, Title XIV,  
32 Government Code, to read:

33 "§13985.51. Enforcement and power of arrest. The Director, the  
34 Guam Historic Preservation Officer and other designated employees of

1 the Department shall have arresting and citation powers over persons,  
2 firms and contractors who are in violation of any of the provisions of  
3 this Chapter."

4 Section 16. §13985.70 is hereby added to Chapter XIII, Title XIV,  
5 Government Code, to read:

6 "§13985.70. Certificate of approval. (a) A certificate of  
7 approval must be issued by the Guam Historic Preservation Officer  
8 before any action affecting potential historic sites or objects is  
9 undertaken, including, but not limited to:

- 10 (1) Building permits;
- 11 (2) Grading permits;
- 12 (3) Clearing permits;
- 13 (4) Foundation permits;
- 14 (5) Leases and lease renewals of government land;
- 15 (6) Application for surplus federal real estate;
- 16 (7) Government infrastructure improvement projects;
- 17 (8) Government construction, including clearing and  
18 grading;
- 19 (9) Submittal of federal grant applications for construction,  
20 land use or improvements; and
- 21 (10) Applications to Territorial Planning Commission and  
22 Territorial Seashore Protection Commission.

23 (b) The Guam Historic Preservation Officer shall have the  
24 authority to prohibit activities listed in subsection (a) and may issue  
25 cease work orders on projects when there is evidence of adverse  
26 impact or potential destruction of cultural or historical features on the  
27 property. In the event that there is no alternate recourse in  
28 protecting or salvaging the cultural or historical significance of the  
29 property, the decision of the Guam Historic Preservation Officer to  
30 deny issuance of a permit or to cease work on projects shall prevail.

31 (c) Higher authority shall not override the decision of the Guam  
32 Historic Preservation Officer, except through procedures adopted  
33 pursuant to Subsection (d) of this Section. If work has already  
34 begun where items of cultural or historical significance have been

1 disturbed, the developer shall be responsible for the restoration of the  
2 property to its original form and the burden of expense shall be on  
3 the developer.

4 (d) The problems of projects with potential impact on cultural or  
5 historic features may be resolved by the Guam Historic Preservation  
6 Officer through agreement or mitigation. Such resolution may include,  
7 but need not be limited to, project redesign, relocation, curation and  
8 display of cultural resources, and land dedication to the Guam  
9 Preservation Trust. The Guam Historic Preservation Review Board  
10 shall develop the criteria for resolution of any controversial finding in  
11 accordance with the Administrative Adjudication Law."

12 Section 17. §13985.62 is hereby added to Chapter XIII, Title XIV,

13 Government Code, to read:

14 "§13985.62. Historic district zones. The Territorial Planning  
15 Commission and the Guam Historic Preservation Review Board shall  
16 jointly establish zoning controls for all registered historic properties,  
17 including but not limited to the Agana Historic District and the  
18 Inarajan Architectural Historic District. Nothing in this Section shall  
19 affect the powers given the Guam Historic Preservation Review Board  
20 in subsection (c) of §13985.19 of this Code."

21 Section 18. §13985.43 is hereby added to Chapter XIII, Title XIV,

22 Government Code, to read:

23 "§13985.43. Treatment of human remains. Human remains shall  
24 receive respect and consideration when discovered. Disturbance of  
25 burials shall be avoided when possible, but when necessary shall be at  
26 the expense of the developers, using procedures and standards  
27 acceptable to the Guam Historic Preservation Officer. Anthropological  
28 review of human remains shall be at a minimal level and only for the  
29 time authorized by the Guam Historic Preservation Officer prior to  
30 reburial."

31 Section 19. New position. Upon the effective date of this Act, the  
32 full-time equivalency positions of the Department of Parks and Recreation  
33 shall be increased by one (1) to include the position of Guam Historic  
34 Preservation Officer. The Department of Parks and Recreation is