

18 GAR - LAND MANAGEMENT
CH. 3 - TERRITORIAL PLANNING COMMISSION

Article 5
Wetland Areas

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NOTE: Rule-making authority cited for formulation of regulations governing Wetland Areas by the Territorial Planning Commission, 21 GCA §60405.

§3501. Authority. These Rules and Regulations are promulgated by the Territorial Planning Commission under authority of 21 GCA Chapter 60 and Chapter 61, and Executive Order No. 78-21.

§3502. Purpose. The purpose of these Rules and Regulations is to establish procedural guidelines and performance standards for development and conservation of wetland areas pursuant to Executive Order No. 78-21.

§3503. Intent. These Rules and Regulations apply to those land and water areas delineated as Wetland Areas of Particular Concern on an official map of wetlands as approved by the Territorial Planning Commission and retained by the Departments of Land Management, Parks and Recreation, Public Works, Agriculture, the Bureau of Planning, the Guam Environmental Protection Agency and Public Utilities Agency of Guam, government of Guam. Those wetland areas too small to be precisely delineated on the official map of wetlands shall be listed and at the request of SDRC, verified by on-site field inspection by the Department of Agriculture's Division of Aquatic and Wildlife Resources or other government agencies, as determined appropriate by the SDRC. If there is question as to whether a proposed development or activity is within an officially designated wetland and therefore subject to these Rules and Regulations, the Director of the Department of Agriculture shall determine if the developments occurring only partially within a designated or recognized wetland APC shall be subject to these Rules and Regulations. These Rules and Regulations supplement all other provisions of law relating to land use and shall remain in effect until such time as amended by the Territorial Planning Commission. These Rules and Regulations shall apply to all developments on government of Guam or private lands. Compliance with these Rules and Regulations should precede submittal of applications for permits from the U.S. Army Corps of Engineers for development within wetlands. However, issuance of a permit for development within a wetland by the Territorial Planning Commission shall not preclude the U.S. Army Corps of Engineers from denying an application for development within such wetland area under §404 of the Federal Water Pollution Control Act, as amended.

§3504. Definitions.

(a). *Area of Particular Concern (APC):* A specifically designated geographic area where the presence of unique or significant natural resources, geologic constraints, hazards or other exceptional geographic characteristics warrants and requires the application of extraordinary

regulatory or management measures in order to insure the retention of such exceptional qualities or to insure the health, safety and welfare of the general public.

(b) *Wetland*: Those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, mangroves, natural ponds, surface springs, estuaries and similar such areas.

© *Development*: Means the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid or thermal waste; grading, removing, dredging, mining or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision of land and any other division of land including lot parcelling; change in the intensity of use of water, ecology related thereto or of access thereto; construction or reconstruction, demolition or alteration of the size of any structure, including any facility of any private, public or municipal utility, and the removal of significant vegetation.

(d) *Environmental Impact Assessment (EIA)*: A detailed description of a proposed action including: Information and technical data adequate to permit a careful analysis of environmental, economic and social impacts; discussion of the probable impact on the environment and any direct or indirect consequences that may result from the action; any adverse effects that cannot be avoided; alternatives to the proposed action that might avoid some or all of the adverse environmental effects; assessment of the cumulative long-term effects of the proposed action including its relationship to short-term use of the environment in comparison with long-term productivity and irreversible or irretrievable commitments of resources.

(e) *Aquaculture Facility*: A facility for the culture or commercial production of aquatic plants and animals for food sales and distribution.

(f) *Threatened and Endangered Wildlife*: Species of plants and animals:

(1) determined by the Department of Agriculture's Division of Aquatic and Wildlife Resources to be of such limited numbers as to be in immediate danger of extinction or reduction to a critically low population level on Guam if faced with continued habitat reduction or alteration; or

(2) so designated by the U.S. Department of Interior's Fish and Wildlife Service on the latest list of "Endangered and Threatened Wildlife and Plants." (g) *Commission*: Means the Territorial Planning Commission.

(h) *Industrial, Commercial and Residential Development*: Means such development as described under the Zoning Law, Title XVIII, Government Code of Guam as permissible uses under, respectively, the "M1" and "M2," "C" and "R1 and R2" zones.

§3505. Procedures for Development Within Designated Wetland Areas of Particular Concern.

(a). Before issuance of any permit for development within a wetland APC, a tentative plan for the proposed development shall be submitted to the Territorial Planner including a thorough description of the proposed development and the following specific information:

(1) The name and address of the owner or owners of record, of the developer and of the person preparing the map.

- (2) Date, north arrow and scale.
- (3) A key map locating the development in relation to surrounding areas.
- (4) The exact length and bearing of the exterior boundaries of the development which data shall be referenced to the "Guam Geodetic Triangulation Control Network" or such alternative system of triangulation control as the Territorial Surveyor may direct.
- (5) The accurate placement and outline of structures existing on the site.
- (6) The location, names and existing widths of adjacent street right-of-way.
- (7) Topography with contour intervals of two (2) feet.
- (8) The location and dimensions of all known existing easements and reservations.
- (9) The location of existing utilities and drainage facilities located within or adjacent to the proposed development.
- (10) The approximate layout and approximate dimensions of each structure, facility or use proposed within the development.
- (11) Areas intended to be reserved for public use.

(b) A tentative plan of the proposed development shall be prepared in sufficient detail so as to permit its complete analysis by the Commission. The tentative plan for any project other than a single-family dwelling unit shall include a schedule indicating the approximate dates when construction or development stages are planned to begin and be completed. The Commission or Territorial Planner at the request of another government agency or department may require submittal of detailed construction drawings and/or preparation of an EIA for analysis prior to issuance of any clearing, grading, building or other permits.

© A performance bond or undertaking may be required by the Commission for any development undertaken pursuant to an approved tentative plan within a wetland. The amount of the bond shall be one hundred ten percent (110%) of the infrastructure costs of the project, and not less than Two Thousand Dollars (\$2,000.00). The entire bond or any undertaking of any portion thereof shall be forfeited as determined by the Commission for failure to comply with any applicable wetland, water quality or zoning regulation except as allowed for under a variance or other legal exception from such requirements. The entire bond or any portion thereof shall be forfeited as is required to complete the site preparation and infrastructure features or restoration of the project should these not be completed by the developer.

(d) Upon certification by the Territorial Planner that such complete and accurate information as required and requested has been provided, such documents shall be submitted to the Subdivision and Development Review Committee as established under Executive Order No. 78-2, and the Department of Agriculture, Division of Aquatic and Wildlife Resources.

(e) The Subdivision and Development Review Committee shall receive comments from the Bureau of Planning, Department of Public Works, Department of Land Management, Department of Parks and Recreation, Guam Environmental Protection Agency, Department of Agriculture's Division of Aquatic and Wildlife Resources and other agencies indicating interest in a particular development proposal, prior to submittal of recommendations to the Commission. Comments should be submitted before or on the date of the schedule SDRC meeting when the development proposal is to be reviewed, but will be accepted up until the time of the scheduled Commission meeting in which the project is to be presented for review.

(f) The Commission shall either approve, including approval with conditions, or disapprove in whole or in part the proposed tentative development plan. Upon receipt of approval by the Commission for development within the wetland, the applicant should apply for such other permits as may be required by the Federal government.

(g) If a field inspection by relevant local or federal agencies concludes that the development has not adhered to all applicable rules and regulations, or conditions imposed by the Commission, the Attorney General shall take such action as necessary to ensure compliance with such requirements. Penalties for violation of these Regulations shall be the same as for violations of the Seashore Protection Act, 21 GCA Chapter 63.

(h) Any expansion or alteration of an approved project, which exceeds fifty percent (50%) of the physical value of the original structure or development, shall require application for a new Wetland Permit from the Commission.

(i) Upon Commission approval of an EIA or tentative plan for a proposed commercial development within a wetland APC, the developer may be requested to demonstrate that sufficient funding is available for the project, prior to issuance of a Wetland Permit.

(j) During all phases of a proposed development project and application for permit, the land area shall be open for inspection by all interested agencies or parties.

(k) If a development project is not completed or operations totally cease within a prescribed time period, if any, indicated on the approved permit, the developer shall be required to restore the natural appearance and biological character of the wetland to its condition prior to institution of the development to the maximum extent practicable.

(l) The comments submitted to the Commission, by government of Guam agencies, on requests for development within wetlands, as summarized by the Executive Secretary of the Commission shall constitute the government of Guam's position on such projects for the purpose of providing comment to the U.S. Army Corps of Engineers under their permit process for wetland development.

(m) Variances to such procedures and standards as outlined in these Rules and Regulations may be granted by the Commission only upon written findings that the applicant satisfies all of the four (4) criteria for granting of zoning variances under 21 GCA §616§7 (a)-(d).

§3506. Standards for Development and Conservation of Wetland APCS.

(a) All development within a wetland APC shall comply with all air and water quality, erosion and sedimentation control standards and other applicable pollution standards as promulgated by the Guam Environmental Protection Agency.

(b) Wetland acreage shall not be reduced by filling or dumping material over submerged areas unless issued a Wetland Permit by the Commission.

(c) Wetlands shall not be graded, dredged or subject to removal of large areas of productive plant life unless issued a Wetland Permit by the Commission.

(d) The flow of water within or into wetlands shall not be altered so as to adversely affect the wetland by blocking or channelizing rivers (within or upstream from the wetland) or tidal flow, or reducing natural spring discharge unless issued a Wetland Permit by the Commission

(e) Any development which substantially increases the potential for damaging flooding of properties within or adjacent to the wetland shall not be permitted within a wetland APC.

(f) Development of any structure subject to damage, or posing a health or safety threat to the public or the wetland environment, due to flooding of the wetland shall not be permitted within a wetland APC.

(g) Any developments, including aquaculture facilities existing within wetland APCs, at the time rules and regulations for wetland APCs are promulgated, do not require a Wetland Permit for existing use and structures, and are not subject to restoration requirements.

(h) Proposed aquaculture operations, expansion of existing aquaculture operations and/or reactivation of aquaculture sites within wetland APCs shall require preparation of an EIA prior to issuance of a Wetland Permit by the Commission.

(i) Proposed ponding or storage facilities; industrial, residential or commercial development may be permitted within wetland APCs only upon a finding by the Commission that no feasible alternative sites exist and that such development is dependent on location within a wetland.

(j) Passive recreational and educational uses and structures such as unpaved foot trails, interpretive signs, elevated walkways, portable tables, etc., within wetland APCs shall not require Wetland Permits, but shall be subject to applicable Department of Parks and Recreation rules and regulations and Department of Agriculture hunting regulations.

(k) Hunting, removing or otherwise disturbing threatened or endangered wildlife or plants within wetland APCs is prohibited unless such actions are in compliance with the rules and regulations of the Department of Agriculture and such actions are essential to the health, safety and welfare of the general public and alternative actions are not feasible. Removal of small amounts of non-threatened or non-endangered wildlife for non-commercial home consumption or medicinal use does not require issuance of a Wetland Permit.

§3507. Designation of Wetland Areas of Particular Concern.

(a) The Commission shall designate as initial wetland areas of particular concern those wetlands identified on the Bureau of Planning's Community Design Maps, as approved by the Governor, and those mangrove strands and wetlands delineated in the Army Corps of Engineers' Inventory and Mapping of Wetland Vegetation in Guam, Tinian and Saipan, June, 1977 and the Appendix of the Bureau of Planning's Atlas of the Reefs and Beaches of Guam, 1976.

(b) Subsequent proposed additions, deletions or revisions to these initial wetland APC designations shall be submitted to the Territorial Planner who shall circulate such proposed changes to SDRC member agencies, the Department of Agriculture and the U.S. Army Corps of Engineers, and other interested agencies or, upon request, private parties

(c) Upon review by all SDRC members and other interested agencies the proposed wetland APC shall be submitted to the Commission with recommendations for approval, disapproval or modification. The Commission, upon holding a public hearing in the Commissioner's Office nearest the subject wetland areas in which at least ten (10) days notice is provided in a newspaper of general circulation, shall either approve, disapprove or approve with modifications the requested wetland APC designation.

(d) All initially and subsequently approved wetland APCs shall be officially noted and recorded by the Department of Land Management and the Bureau of Planning on official wetland APC maps. Copies of such official wetland APC maps shall be available to the general public and shall be provided to and retained by all SDRC member agencies.

NOTE: Adopted and filed October 1981.