



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.



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