

**PROGRAMMATIC AGREEMENT AMONG
THE DEPARTMENT OF DEFENSE REPRESENTATIVE
GUAM, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
FEDERATED STATES OF MICRONESIA AND REPUBLIC OF PALAU,
COMMANDER, JOINT REGION MARIANAS,
COMMANDER, 36TH WING, ANDERSEN AIR FORCE BASE,
THE GUAM HISTORIC PRESERVATION OFFICER, AND
THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
HISTORIC PRESERVATION OFFICER
REGARDING
MILITARY TRAINING IN THE MARIANAS**

WHEREAS, the U.S. Department of Defense (DoD), through the Navy as Executive Agent manages the Mariana Islands Range Complex (MIRC); and

WHEREAS the DoD Representative Guam, Commonwealth of the Northern Marianas, Federated States of Micronesia and Republic of Palau (DoD REP), as lead federal agency, has requested that the Commander Pacific Fleet and Naval Facilities Engineering Command, Pacific, coordinate the preparation of an Environmental Impact Statement (EIS)/Overseas EIS (OEIS) under the National Environmental Policy Act of 1969, as amended (P.L. 91-190) for the MIRC that includes all military training in the Marianas and review proposed military training exercises under Section 106 of the National Historic Preservation Act of 1966, as amended (16 United States Code [U.S.C.] 470f) hereinafter Section 106 and Section 110 of the same Act (16 U.S.C. 470h-2(f)); and

WHEREAS, "undertaking" in this document refers to all existing and proposed DoD training exercises in the Marianas as described as the Preferred Alternative in the MIRC EIS/OEIS and which will be stated in the Record of Decision and published in the Federal Register; and

WHEREAS, the MIRC includes property and land under the jurisdiction of the DoD and other entities, including 450,187 nautical miles² of open ocean and littorals; and

WHEREAS, the MIRC is currently operating under an existing 1999 Programmatic Agreement (PA) between the DoD REP, the Advisory Council on Historic Preservation (ACHP), and the Commonwealth of the Northern Mariana Islands (CNMI) Historic Preservation Officer (HPO) for military training on Tinian; and

WHEREAS, the MIRC is currently operating under an existing 1999 Memorandum of Agreement (MOA) between the DoD REP, 36 Air Base Wing (now known as 36th Wing), the Guam HPO, and the ACHP for military training on Guam; and

WHEREAS, the DoD REP has determined that the military training program may have an effect upon the Tinian Landing Beaches, Ushi Point Field, and North Field, Tinian Island National Historic Landmark (Tinian NHL) and other historic properties determined eligible for inclusion

in the National Register of Historic Places (NRHP) on Guam and Tinian, and has consulted with the ACHP, the Guam HPO, the CNMI HPO, and the National Park Service (NPS) pursuant to 36 Code of Federal Regulations (CFR) §800.3, implementing Section 106; and

WHEREAS, the public has been notified of the proposed military training program and views were solicited through the EIS/OEIS scoping meetings and associated public hearings held on the islands of Guam, Tinian, Saipan, and Rota, and through a public comment period; and

NOW, THEREFORE, the DoD REP, Commander, Joint Region Marianas (Joint Region Marianas), Commander, 36th Wing (36th Wing), the Guam HPO, and the CNMI HPO agree that military training in the Marianas shall be administered in accordance with the following stipulations to satisfy the requirements of Section 106 responsibility for all actions undertaken as part of the proposed military training activities analyzed in the MIRC EIS/OEIS.

STIPULATIONS

The DoD will ensure that the following measures are carried out:

I. APPLICABILITY AND DEFINITIONS

- A. This PA applies to all undertakings discussed within the MIRC EIS/OEIS.
- B. Unless otherwise noted, this PA will utilize the definitions found at 36 CFR §800.16. All acronyms used in this PA are defined in Appendix A.
- C. This PA negates and supersedes the 1999 PA and 1999 MOA pertaining to military training in the Marianas.
- D. All signatories will be responsible for complying with the general provisions of this PA. In contrast, each of the following agencies shall be responsible for carrying out specific stipulations relating to historic resources under their jurisdiction.
 1. On DoD leased land, Navy installations, and Air Force installations the DoD REP as Joint Region Marianas¹ is responsible.
 2. The DoD REP, 36th Wing, and any other DoD units training within the MIRC are responsible for complying with Stipulation III.A regarding military training operations and the training constraint maps.

¹ Joint Region Marianas - Under the 2005 Base Realignment and Closure report, the establishment of a Joint Region was recommended for military installations in the Marianas. Thus, the Navy and the Air Force are in the process of becoming a “Joint Region.” Military (training) operations will remain at their respective Commands but installation management responsibilities will now fall under the “Joint Region.”

- E. Any construction or modification of training areas as proposed within the MIRC EIS/OEIS on property of Naval Base Guam is subjected to the stipulations contained within the 2008 PA among the Commander, Navy Region Marianas, the Advisory Council on Historic Preservation, and the Guam Historic Preservation Officer Regarding Navy Undertakings on the Island of Guam. For all other areas, on Guam and the Northern Mariana Islands, the stipulations in this PA will be followed.

II. PROFESSIONAL STANDARDS

- A. All surveys, testing, and mitigation regarding archaeological resources will be carried out by, or under the oversight or supervision of a person or persons meeting the professional qualification for Archaeologist found in “The Secretary of the Interior’s (SOI) Historic Preservation Professional Qualification Standards” (SOI Qualification Standards), 62 Federal Register 33712.
- B. All historic property surveys for historic buildings and structures will be carried out by, or under the oversight or supervision of, a person or persons meeting the professional qualifications for Historical Architect under Standard a or b found in SOI Qualification Standards, 62 Federal Register 33719 or Architectural Historian under Standard a or b found in SOI Qualification Standards, 62 Federal Register 33713-4 or Historic Landscape Architect under Standard a or b found in SOI Qualification Standards, 62 Federal Register 33720 or Historian under Standard a or b found in the SOI Qualification Standards, 62 Federal Register 33722.
- C. Where Joint Region Marianas utilizes contracts that involve work governed by this PA that may affect historic properties, Joint Region Marianas will use appropriate contract performance requirements, and/or appropriate source selection criteria which shall include minimum qualifications for historic preservation experience and satisfactory prior performance, as appropriate to the nature of the work and the type of procurement, developed with the participation of professionals meeting the standards of Stipulation II.B, for projects involving historic buildings and structures, or II.A, for projects involving archaeological sites.

III. GENERAL STIPULATIONS:

A. TRAINING CONSTRAINT MAPS

- 1. For areas with training constraints due to the presence of historic properties, training constraint maps have been developed. These maps show the locations of off-limits or No Training (NT) areas and Limited Training (LT) areas.
 - a. NT areas are to be avoided, and no training exercises shall occur within these areas.

- b. LT areas are primarily designated as pedestrian traffic areas with vehicular access limited to designated roadways and/or with the use of rubber-tired vehicles. However, no pyrotechnics, demolition, or digging is allowed without prior consultation with the appropriate HPO.
2. Training constraint maps will be updated by the respective cultural resource managers (CRM) for each property based on consultation with the appropriate HPO on a yearly basis so that these maps remain current as new information becomes available through planned cultural resource studies or inadvertent finds. Areas defined as NT or LT can change based on the new data and consultation. Similarly, training activities may be eliminated, reduced, or expand based on the new data. However, any major changes to this PA must comply with Stipulation VIII.
3. Training constraint maps shall be disseminated and made available to military planners who coordinate and execute training exercises so that they are aware of the constraints.

B. TRAINING PROGRAM REVISIONS

The DoD REP, 36th Wing, and any other DoD units training within the MIRC will notify, coordinate, and consult with the appropriate HPO(s) and the NPS (if a NHL is involved) on a case-by-case basis for any new introduction of forces and maneuvers that do not comply with the general or area-specific stipulations of this PA.

IV. AGENCY- AREA – SPECIFIC STIPULATIONS

A. GUAM

1. Main Base / Waterfront Annex

Training will be limited per the Main Base training constraints map (see Appendix B).

2. Ordnance Annex

- a. The appropriate CRM will verify that pop-up targets for the Sniper Range at Ordnance Annex are situated so that no historic properties are in the ballistic trajectory.
- b. Training will be limited per the training constraints map for the Ordnance Annex in Appendix B.

3. Northwest Field

- a. As part of the Northwest Field Beddown Initiatives, the 36th Wing has conducted Historic American Building Survey/Historic American Engineering Record (commonly referred to as HABS/HAER) recordation and supplementary documentation of the Northwest Field runway complex and previously existing facilities as mitigation for any potential adverse effect of military training and support activities in the Northwest Field area.
- b. Any area of Northwest Field that has not been previously surveyed and involves construction or ground disturbing activities will be surveyed and inventoried for cultural resources. Any cultural resource within the affected area will be evaluated for inclusion on the NRHP. Any resource(s) determined eligible for the NRHP, which cannot be avoided, will be subjected to data recovery.
- c. Appendix B contains the Northwest Field training map. Training is currently constrained within these areas.

4. Tarague

Training at Tarague will be confined to the existing Combat Arms Training and Maintenance (also known as CATM) range as shown in Appendix B.

5. Andersen South

This area is designated as an unconstrained training area (see Appendix B).

B. TINIAN

1. Unai Chulu

- a. The Center Access Road (CAR): The back beach area of Unai Chulu is designated as a no training area except for the CAR. The entire length and width of the CAR is currently capped with a layer of crushed coral. The crushed coral cap is approximately 20 centimeters thick and 3 meters wide. The road cap covers the access road from the Dyckman Road intersection to the intersection with the existing beach access road that parallels the beach.
- b. Road Fencing: To keep vehicles on the CAR, fencing was installed running parallel to the road on both shoulders for the entire length of the road. Archaeological testing of Site TN-73 has revealed intact deposits lie below one meter of disturbed stratigraphy.
- c. Maintenance: The CRM designated by Joint Region Marianas will monitor the condition of the capped road and fence on a quarterly basis (if any training has

occurred during that time period) by conducting a field visit and site check of the CAR and fencing per Stipulation V. Any deterioration of the road surface or the fence will be repaired.

- d. To ensure vehicles and pedestrians remain on designated ingress and egress paths and comply with NT and LT constraints, the CRM designated by the Joint Region Marianas will, on a quarterly basis (if any training has occurred during that time period) conduct a field visit and site check of Unai Chulu (see Stipulation V).
 - e. Training will be limited per the Unai Chulu training constraints map (see Appendix B).
2. Unai Dankulo
 - a. Training will be limited per the Unai Dankulo training constraints map (see Appendix B).
 - b. To ensure vehicles and pedestrians remain on designated ingress and egress paths and comply with NT and LT constraints, the CRM designated by the Joint Region Marianas will, on a quarterly basis (if any training has occurred during that time period) conduct a field visit and site check of Unai Dankulo (see Stipulation V).
3. Unai Masalok
 - a. An area of the Unai Masalok has been designated a LT area (see Appendix B). In general, military training operations at Unai Masalok will consist of low density training (pedestrian traffic).
 - b. The CRM designated by the Joint Region Marianas will, on a quarterly basis (if any training has occurred during that time period) conduct a field visit and site check of Unai Masalok (see Stipulation V).
4. Tinian – DoD Leased Lands
 - a. The DOD leased lands on Tinian include the Exclusive Military Use Area (EMUA) and the Leased-Back Area (LBA). The Tinian NHL comprises a large portion of the EMUA (see Appendix B).
 - b. Training in the EMUA and LBA will be consistent with the Tinian constraints map as shown in Appendix B.

c. Historic Building and Structures

1. Bullet traps will be installed behind temporary targets within historic buildings and structures to stop the trajectory and ricochet of bullets. Previous field monitoring and visual inspections by the CRM designated by the Joint Region Marianas and CNMI HPO staff show that use of these bullet traps adequately mitigates any impacts that this type of activity may have had to historic buildings and structures.
2. After each exercise, shell casings and targets will be removed.
3. Baseline digital photo documentation of the building shall also be conducted to show the current state of the building. The CRM designated by the Joint Region Marianas shall continue to digitally photo-document the structure on a quarterly basis (if any training has occurred during that time period) as evidence that the bullet traps have successfully mitigated the potential adverse affect of this undertaking. These photos shall be submitted to the CNMI HPO and NPS via e-mail. A site visit by the CNMI HPO or NPS may be conducted in lieu of photo documentation as stated in Stipulation V.D.

d. Tinian National Historic Landmark²

1. The CRM designated by the Joint Region Marianas will ensure that there is ongoing documentation, survey, evaluation and assessment of the cumulative effects of training on the Tinian NHL, including its historic character and setting.
2. The CRM designated by the Joint Region Marianas will assess the cumulative effects and determine the appropriate actions associated with them, according to the Secretary of the Interior's Standards, in an annual report provided to the NPS and the CNMI HPO. The report will describe how the responsibilities are being carried out under this PA pertaining to the Tinian NHL.
3. The report will be submitted to the NPS and CNMI HPO, in addition to other interested parties who request a copy of this report.

² The DOD recognizes and acknowledges that 16 USC §470h-2(f) mandates that “[P]rior to approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark.” The DOD shall ensure that the military training activities included in the undertaking are carried out in a manner that is consistent with this legal mandate.

4. Upon termination of this PA under Stipulation IX or XI, the CRM designated by the DoD shall provide a report to the NPS and the CNMI HPO. This report shall summarize the following (for the time period that this PA has been in effect):
 - a. The training activities that have occurred and their effects on the Tinian NHL.
 - b. Steps taken to respond to those effects.
 - c. List any newly identified cultural resources.
 - d. NRHP eligibility evaluations completed for any newly identified cultural resources.

V. FIELD MONITORING AND REPORT SUBMISSION

- A. Certain training areas will require field monitoring and report submission. See Agency-Area – Specific Stipulations (Stipulation IV).
- B. Schedule: The CRM designated by the Joint Region Marianas shall conduct quarterly site checks (if any training has occurred within that time period) and shall submit a report to the appropriate HPO and NPS if applicable.
- C. Field Report Contents: These reports will, at a minimum, include the following information:
 1. Digital photographs of a selection of historic properties within the affected area after completion of training exercises to show the general status of the historic properties in the area.
 2. If applicable, a description of any adverse effects that the training activities may have had on an historic property.
- D. Review by the appropriate HPO: The HPO will review each report and provide the appropriate CRM with comments, if any. The HPO or the appropriate CRM may request a site visit by the appropriate HPO in lieu of photo documentation and a report.
- E. See Stipulation IV.B.4.c regarding a special NHL assessment report to be submitted by the CRM designated by Joint Region Marianas to the NPS and the CNMI HPO upon the termination of this PA.

VI. DISCOVERIES AND EMERGENCIES

- A. If during the performance of an undertaking, previously unknown cultural resources are discovered, the appropriate CRM shall be notified.
1. Reasonable measures to avoid or minimize impacts to the cultural resource will be undertaken.
 2. Once notified, the appropriate CRM shall inspect the discovery and determine whether it is eligible for listing on the NRHP.
 - a. If the discovery is not eligible for the NRHP, then the relevant agency will proceed.
 - b. If it is determined that the cultural resource is eligible for the NRHP, the appropriate CRM will notify the applicable HPO via telephone, fax or e-mail, request concurrence for the determination, and document this discovery. The CRM will begin consultation with the HPO on how to mitigate the impacts or document the newly discovered historic property. If the Tinian NHL is involved, the NPS will also be notified and consulted.
- B. If human burials are discovered during the performance of an undertaking, the appropriate CRM shall follow the applicable Standard Operating Procedure (commonly referred to as SOPs) specified in Appendix C. Different areas have different SOPs depending on the land managing agency and local regulations of each area.
- C. In the event that natural disasters (such as typhoons or tsunamis), fires, sudden disruptions of utilities service, spill events or other emergency events occur, the particular DoD agency affected may take immediate actions to preserve life and property without having to undergo Section 106 review. However, emergency response work will take into consideration that historic properties may be affected by recovery or emergency efforts. When possible, such emergency actions will be undertaken in a manner that does not foreclose future preservation or restoration of historic properties. The appropriate CRM will notify the particular HPO by telephone of the emergency (if possible) and will follow up with written documentation if any historic properties were discovered or disturbed during the emergency events. Consultation with the appropriate HPO will be conducted as soon as practical based on the emergency circumstances.

VII. RESOLVING OBJECTIONS

- A. Should any signatory to this PA object in writing regarding any actions carried out or proposed with respect to the implementation of this PA, the appropriate agency shall consult with the objecting party. All other signatories should be notified in writing

that one of signatories is objecting to a specific action in this PA. The objecting party shall do the notifications.

- B. If after initiating such consultation, the agency conducting the action determines that the objection cannot be resolved through consultation, it shall forward all documentation relevant to the objection to the ACHP, including the agency's proposed response to the objection.
- C. Within 30 calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - 1. Concur with the agency's proposed response;
 - 2. Provide the agency with recommendations on the proposed response. The agency shall take into account such recommendations before making a final decision on the matter and proceeding accordingly;
 - 3. Notify the agency that the objection will be referred to the ACHP membership for formal comment per 36 CFR §800.7(c). The resulting formal comment shall be taken into account by the agency in accordance with 36 CFR §800.7(c). If the ACHP has not responded within the allotted time, the agency may make a final decision on the objection and proceed accordingly.

VIII. AMENDMENT

- A. Regulatory agencies (such as the Guam HPO and CNMI HPO) may propose to amend any stipulation of this PA within their area of jurisdiction. Each landowning/managing agency will have the ability to amend their portions of the PA specifically relating to any stipulation regarding the management of historic properties on their installation(s).
- B. The amendment process starts when a signatory notifies the other signatories of this PA that it wishes to amend this agreement. A written notice must be sent to all signatories by the agency that wishes to amend the PA (or a particular portion of the PA). The requests should include the proposed amendments and the reasons for proposing them. The parties affected by these proposed amendments shall consult to consider the proposed changes to this PA.
- C. No amendment shall take effect until it has been agreed upon and executed by all signatories affected by the amendment.

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IX. TERMINATION

- A. Regulatory agencies (such as the Guam HPO and CNMI HPO) may propose to terminate any stipulation of this PA within their area of jurisdiction only after complying with Stipulation VII. Each landowning/managing agency will have the ability to terminate their portions of the PA specifically relating to any stipulation regarding the management of cultural resources on their property only after complying with Stipulation VII.
- B. The termination process starts when an agency provides in writing to other signatories of this PA, that it wishes to terminate this agreement, or a portion of the agreement applicable to them. A written notice must be sent to all signatories by the agency that wishes to terminate the PA (or their portion of the PA). The written notice must explain in detail the reasons for the proposed termination. The signatories will consult during a 30-calendar-day consultation period to seek agreement on amendments or other actions that would avoid termination. The 30-day consultation period starts when all parties have received written notification that an agency is requesting termination. If the signatory proposing the termination does not withdraw the proposal by the end of the 30-day consultation period and a longer period of arbitration is not agreed to by all signatories, then the PA or portion of the PA will be terminated.
- C. In the event of full termination of this PA, all agencies will comply with 36 CFR §800 with regard to all individual undertakings. In the event that only a portion of the PA is terminated, then the remainder of the PA and the applicable stipulations will remain in effect and the PA will be amended to reflect this change per Stipulation VIII.

X. ANTI-DEFICIENCY ACT

- A. The Anti-Deficiency Act, 31 U.S.C. §1341, prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. Accordingly, the parties agree that any requirement for obligation of funds arising from the terms of this agreement shall be subject to the availability of appropriated funds for that purpose, and that this agreement shall not be interpreted to require the obligation or expenditure of funds in violation of the Anti-Deficiency Act.
- B. If compliance with the Anti-Deficiency Act alters or impairs a specific DoD agency's ability to implement the stipulations of this PA, the DoD Agency shall consult with the signatories. If an amendment is necessary, then Stipulation VIII shall be followed.

XI. DURATION

This PA shall become effective upon execution by all signatories and shall remain in effect for a period of 10 years unless terminated prior to that in accordance with Stipulation IX.

EXECUTION AND IMPLEMENTATION of this PA evidences that DOD REP, Joint Region Marianas, and the 36th Wing have afforded the Guam HPO, CNMI HPO, ACHP, and the NPS an opportunity to comment on the undertaking and its effects on historic properties in the Marianas, and have taken into account the effects of military training in the Marianas.

Each of the undersigned certifies that they have full authority to bind the party that they represent for purposes of entering into this agreement.

SIGNATORIES

**THE DEPARTMENT OF DEFENSE REPRESENTATIVE
JOINT REGION MARIANAS**

By:  Date: 8/22/09

D. T. BIESEL
Rear Admiral, U.S. Navy
Department of Defense Representative Guam, Commonwealth of the Northern Mariana
Islands, Federated States of Micronesia and Republic of Palau;
Commander, Joint Region Marianas

COMMANDER, 36TH WING

By:  Date: 176UN09

PHILIP M. RUILMAN
Brigadier General, USAF
Commander, 36th Wing

SIGNATORIES (continued)

GUAM HISTORIC PRESERVATION OFFICER

By: 

Date: 10-2-09

JOSEPH W. DUENAS

Director

Department of Parks, Recreation & Historic Preservation

THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

HISTORIC PRESERVATION OFFICER

By: 

Date: 10/30/09

PEDRO (ROY) SABLAN

Director

Commonwealth of the Northern Mariana Islands Historic Preservation Office

INVITED SIGNATORIES

NATIONAL PARK SERVICE

By: 

Date: 12-11-09

RORY D. WESTBERG

Acting Regional Director

Pacific West Region, National Park Service