

**PROGRAMMATIC AGREEMENT AMONG  
THE DEPARTMENT OF DEFENSE<sup>1</sup>,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE GUAM STATE HISTORIC PRESERVATION OFFICER,  
COMMONWEALTH OF THE NORTHERN MARIANAS  
STATE HISTORIC PRESERVATION OFFICER, FEDERAL HIGHWAY  
ADMINISTRATION, AND THE NATIONAL PARK SERVICE  
REGARDING THE MILITARY RELOCATION TO THE ISLAND OF GUAM AND  
THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

WHEREAS, the Department of Defense (DoD), acting through the Joint Guam Program Office (JGPO) as the action proponent for the Environmental Impact Statement covering the Guam and Commonwealth of the Northern Mariana Islands (CNMI) Military Relocation, proposes to develop, construct, and operate additional facilities and infrastructure on Guam and Tinian, in order to meet national defense mission requirements associated with the relocation, as described in the Final Environmental Impact Statement (FEIS) (Undertaking); and

WHEREAS, the Undertaking comprises three primary actions as defined in the FEIS: (1) relocation of 8,600 Marine and their 9,000 dependents from Okinawa to Guam; (2) construction and operation of a transient nuclear aircraft carrier wharf; (3) establishment and deployment of an Army Air and Missile Defense Task Force, and related actions on Guam; and

WHEREAS, the DoD, in implementing the Undertaking, proposes to authorize or carry out a variety of DoD projects identified in the FEIS that are funded in whole or in part by the DoD, including those carried out by or on behalf of the DoD by authorized contractors, agencies, and individuals; those carried out by third parties with DoD financial assistance and in which the DoD has control of the expenditure of funds; and those DoD activities requiring a Federal permit, license or approval; and

WHEREAS, the projects associated with the Undertaking include, but are not limited to, constructing new training areas, base housing, and office areas; maintaining, rehabilitating, repairing, constructing, and demolishing buildings, structures, and roads; and installing, repairing, and updating utilities and infrastructure on Guam and Tinian; and

WHEREAS, the DoD has determined that the Undertaking is subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 United States Code (U.S.C.) 470f, and its implementing regulations, 36 Code of Federal Regulations (CFR) §800; and

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<sup>1</sup>DoD Representative Joint Region Marianas / United States Navy, as well as individual DoD services affected by this PA, will sign this agreement.

WHEREAS, the DoD has determined that the Undertaking will affect historic properties as defined by 36 CFR §800.16(l); and

WHEREAS, the DoD has established the Area of Potential Effect (APE) for the direct and indirect effects of the Undertaking based on the FEIS as shown and described in Appendix A; and

WHEREAS, the APE for cumulative effects on historic properties includes the entire islands of Guam and Tinian; and

WHEREAS, the DoD has determined that the effects on historic properties cannot be fully determined prior to approval of the Undertaking; and

WHEREAS, should there be changes to the projects included within the Undertaking, or new actions or projects proposed that support the Undertaking, that have potential effects on historic properties that have not been fully analyzed, the DoD will conduct supplementary consultations pursuant to the terms of this PA; and

WHEREAS, the DoD anticipates that other federal agencies, such as the Environmental Protection Agency and U.S. Army Corps of Engineers, as well as public, private, and Special Purpose Entities (SPEs) may conduct other activities<sup>2</sup> during the period of implementation of the Undertaking on the islands of Guam and Tinian that may be related to the Undertaking but that are independent of the control and authority of the DoD, and that these agencies and entities are separately responsible for ensuring compliance with Section 106 of the NHPA for those activities; and

WHEREAS, the DoD acknowledges that potential effects to historic properties may result from reasonably foreseeable activities by other federal agencies, public and private entities, and SPEs, and must be taken into account as cumulative effects of the Undertaking; and

WHEREAS, the DoD has developed this Programmatic Agreement (PA) pursuant to 36 CFR §800.14(b)(1) and in consultation with the Guam (State) Historic Preservation Officer (SHPO), the CNMI SHPO, and the Advisory Council on Historic Preservation (ACHP), Invited Signatories, and with other consulting parties (as listed in the signature section of this PA); and

WHEREAS, it is in the interests of all parties to identify means by which consultations pursuant to this PA may be streamlined in recognition of the limited staff and increased workloads of the Guam and CNMI SHPOs; and

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<sup>2</sup> Such activities include, among other things, design, finance, demolition, construction, extension, ownership, management, acquisition, lease, sale, rehabilitation, operation and maintenance of infrastructure; construction and repair of temporary worker housing, and installation, repairing, and updating off-installation utilities on Guam and Tinian. Such projects are limited to those that are reasonably foreseeable within the period of implementation of the projects comprising the Undertaking.

WHEREAS, the Tinian Landing Beaches, Ushi Point Field, and North Field, Tinian Island National Historic Landmark (Tinian NHL) are located within the APE of the Undertaking, and the DoD has notified the Secretary of the Interior (SOI), through the National Park Service (NPS), of this Undertaking pursuant to 36 CFR §800.10(c) and the SOI has elected to participate in this consultation through the NPS as an invited signatory; and

WHEREAS, in addition to the Tinian NHL, the Undertaking may have potential adverse effects to historic properties within the National Park System, including properties comprising the War in the Pacific National Historical Park and American Memorial Park. Pursuant to this PA, the DoD will consult with the Signatories, Invited Signatories, and Consulting Parties to undertake such planning and actions as may be appropriate to avoid, minimize, and/or mitigate these effects; and

WHEREAS, as part of the Undertaking, the Federal Highways Administration (FHWA) may implement the proposed realignment of a portion of Route 15 on Guam, and has been invited to be a signatory to this PA for purposes of addressing Section 106 responsibilities for that project; and

WHEREAS, the DoD has held ten public meetings to seek public comment and input under NHPA (four were held early in the process to identify historic properties, while six meetings were held after the release of the Draft EIS so that meaningful consultation on the Undertaking and the impacts that it may have on these properties could be conducted) and also has allowed for additional iterative discussions with the general public and other interested parties through a series of “Partnering Sessions,” “Scoping Meetings,” “Village Meetings,” and individual direct correspondence with persons and organizations, and has taken these comments into account while developing this PA; and

WHEREAS, the Signatories and Invited Signatories will implement this PA.

NOW, THEREFORE, the DoD, the ACHP, the Guam SHPO, the CNMI SHPO, the NPS, the FHWA, the U.S. Navy, U.S. Marine Corps, the U.S. Army, and the U.S Air Force agree that in carrying out the Undertaking in accordance with the procedures of this PA, the DoD will satisfy its Section 106 responsibilities for the Undertaking.

### **STIPULATIONS**

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

#### **I. APPLICABILITY**

- A. This PA applies to all individual projects associated with the Guam and CNMI Military Relocation Project, as identified in the FEIS and listed in Appendix A and as added or modified pursuant to Stipulation I.D. These projects are collectively referred to as “the Undertaking,” per the definition of that term in 36 CFR §800.16(y).

- B. Unless otherwise noted, this PA will utilize the definitions found at 36 CFR §800.16. A glossary of terms and acronyms is provided as Appendix B.
- C. All signatories will be responsible for complying with the general provisions of this PA. When projects associated with the Undertaking will occur on a specific DoD installation, the Installation Commanding Officer (ICO) will oversee compliance with applicable project-specific stipulations. The project proponent shall be responsible for funding and complying with the agreed upon stipulations and mitigations. The installation Cultural Resources Manager (CRM), as representative of the ICO, shall ensure that the project proponent carries out the agreed upon stipulations.
1. For specific projects within the Undertaking that are proposed on DoD leased lands, such as the northern portion of Tinian, the DoD Representative for Guam, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia and Republic of Palau (DoD), who also serves as Commander, Joint Region Marianas (CJRM), is responsible for complying with applicable project-specific stipulations.
  2. For specific projects within the Undertaking that are proposed on existing DoD installations, CJRM, as the Regional Commander responsible for all shore installation management issues on Guam, shall be responsible for complying with applicable project-specific stipulations.
  3. For specific projects within the Undertaking that are proposed on lands held by the DoD under less than fee simple ownership (i.e., lands used or controlled by the DoD under leases, licenses and easements), the project proponent, if a Signatory to this agreement, shall be entitled to utilize the streamlined procedures outlined in Stipulations IV and V for compliance with NHPA. The DoD, acting through CJRM, is responsible for ensuring NHPA compliance among project proponents for activities included within the Undertaking, regardless of the signatory status of the project proponent, if the project is carried out by or on behalf of the DoD.
  4. For specific projects associated with the Undertaking that involve improvements to any off-installation roadways, as described in the FEIS, the Department of Transportation through the Federal Highway Administration (FHWA) is separately responsible for ensuring compliance with Section 106 of the NHPA. If FHWA does not complete Section 106 consultation prior to execution of the Record of Decision for the EIS, FHWA will continue to consult with the appropriate SHPO and other consulting parties until an agreement is reached or the process is resolved in accordance with 36 CFR §800.4-7.
  5. The DoD, acting through CJRM, is responsible for ensuring that cumulative effects on historic properties of other reasonably foreseeable activities

conducted on the islands of Guam and Tinian during the period of implementation of this Undertaking are taken into account during supplementary consultations under this PA for this Undertaking, and that mitigation measures incorporated in this PA are carried out.

- D. In the future, if the DoD proposes new actions or projects on Guam or throughout the CNMI that support the Undertaking but that are not listed in Appendix D to this PA, such actions will require supplemental review in accordance with the stipulations of this PA. The DoD shall notify the Signatories, Invited Signatories, and Concurring Parties to this agreement in writing of the new project(s), then follow the procedures detailed in Stipulations IV and V of this PA. The DoD shall also notify the public and other consulting parties (as may be identified at the time) through phone calls, emails, media announcements or other appropriate forms of communication of the proposed new actions or projects to resolve potential effects to historic properties. Agreements developed through supplemental consultation under this PA will be reported in the Annual Report as required by Stipulation XI.

## II. PROFESSIONAL STANDARDS

- A. All surveys, testing, and planning relating to archaeological resources in the form of objects, sites, structures, and districts 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 SOI’s Historic Preservation Professional Qualification Standards” (SOI Qualification Standards), 62 Federal Register (FR) 33712.
- B. All historic property surveys and eligibility determinations for architectural resources in the form of historic buildings, structures, sites, objects, and districts will be carried out by, or under the oversight or supervision of, a person or persons meeting the professional qualifications for Architectural Historian under Standard a or b found in SOI Qualification Standards, or Historical Architect under Standard a or b found in SOI Qualification Standards, 62 FR 33719, or 62 FR 33713-4.
- C. Traditional Cultural Property (TCP) studies and eligibility determinations will be carried out by, or under the oversight or supervision of, a person or persons having a Master’s Degree in Anthropology, History, or related field with documented experience or expertise involving Pacific Island cultures, and previous experience conducting TCP studies and evaluations.
- D. All historic property surveys and eligibility determinations for historic or cultural landscapes will be carried out by, or under the supervision of, a person meeting the professional qualifications for Historic Landscape Architect under Standard a or b found in SOI Qualification Standards, 62 FR 33720 or Historian under Standard a or b found in the SOI Qualification Standards, 62 FR 33722 or related field.
- E. Where the DoD enters into a contract that involves a project for the Undertaking covered by this PA that may affect historic properties, a copy of this PA will be

included as an enforceable part of the underlying contract consistent with the Federal Acquisition Regulations (FAR). The DoD will also use appropriate contract performance requirements, and/or appropriate source selection criteria that shall include, but not necessarily be limited to, 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 DoD professionals meeting the standards of Stipulation II.B, for projects involving historic buildings, structures, and landscapes; Stipulation II.A, for projects involving archaeological resources; Stipulation II.C for projects involving TCPs; and Stipulation II.D for projects involving historic or cultural landscapes.

### III. OTHER AGREEMENTS

- A. The DoD recognizes that the following agreement documents have been previously executed for DoD actions on the islands of Guam and Tinian. These agreement documents shall continue to apply for the circumstances for which they were developed until they should either expire or be terminated, and are not in any way superseded or invalidated by the stipulations related to the Undertaking contained herein. Similarly, the DoD recognizes that the stipulations of the agreement documents listed below will not apply to the review or implementation of the projects comprising the Undertaking that is the subject of this PA.
1. 2008 Programmatic Agreement 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.
  2. 2009 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.
  3. 2006 Memorandum of Agreement Between the United States Air Force and the Guam State Historic Preservation Officer Regarding the Northwest Field Beddown Initiatives at Andersen Air Force Base.

### IV. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

- A. In planning for the Undertaking, the DoD has conducted extensive survey and evaluation, and applied the results to the siting/lay down of individual projects to avoid effects to historic properties. The DoD has provided documentation of these efforts to the Signatories and Invited Signatories.

- B. DoD surveys and evaluations have focused on the APE, which is defined consistent with 36 CFR §800.16(d) to include those portions of the islands of Guam and Tinian subject to direct and indirect effects of the Undertaking based on the current FEIS as shown and described in Appendix D. The DoD has also established the APE for cumulative effects to include the entire islands of Guam and Tinian. Where necessary to address potential direct and indirect effects, additional project-specific APEs will be defined consistent with the NHPA regulations for individual projects associated with the Undertaking.
- C. The DoD has completed extensive archaeological and architectural surveys, archival research, and oral history studies and interviews, and has identified historic properties and culturally important natural resources such as the donni sali, nunu, da'ok, dukduk, or ifit trees or medicinal plants. The majority of project areas with known potential direct and indirect effects were surveyed for historic properties. Appendix C provides an overview of completed surveys, areas of known sensitivity, and identified historic properties.
- D. For the majority of projects included within the Undertaking, the DoD has summarized in Appendix D and provided documentation of identification efforts and determinations of eligibility to the Signatories and Invited Signatories, as applicable, consistent with 36 CFR §800.4(b)(2) and §800.11.
- E. Additional identification efforts and supplementary consultation under this PA may be required when a project listed in Appendix D does not have a specific effect determination, when new projects are introduced, or when project changes result in a potential change to the effects determination for a project.
1. In conducting additional identification and evaluation efforts to support supplementary consultation under this PA on the effects of specific projects, the DoD will ensure that documentation consistent with 36 CFR §800.11 is submitted prior to project execution. The level of effort for identification of historic properties will be consistent with 36 CFR §800.4(b)(1) and published SHPO survey guidelines where these do not conflict with applicable federal guidelines.
  2. If supplemental identification and evaluation efforts are required, the DoD shall submit a work plan to the appropriate SHPO prior to conducting field investigations, such as archaeological testing, architectural surveys, other data collection, or ethnographic interviews.
    - i. The DoD will take into account and respond to all relevant comments on work plans submitted by the SHPO and received by DoD within thirty (30) calendar days of the date such documentation is received by SHPO. Upon request, other Signatories and Concurring Parties may review work plans; however, data subject to Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470 Section 9(a)(2)) and NHPA (16 U.S.C. 470w-3(a)) will be

restricted consistent with those statutes. If the SHPO disagrees with the plan, the SHPO shall advise the CRM of the reasons for the disagreement in writing within 30 calendar days from receipt of the plan. If the DoD has received no comments within 30 calendar days after submission of the plan to the SHPO, the DoD may assume concurrence and proceed. If the SHPO provides comments disagreeing with the work plan, the DoD shall conduct supplementary consultation under this PA with the SHPO for an additional fifteen (15) calendar days. If such consultation fails, the parties shall address the dispute in accordance with Stipulation XII (Resolving Objections).

- ii. When new project reviews are comparable in scope and type of properties affected to a work plan previously approved by the SHPO, the DoD may propose utilizing the previously approved work plan, subject to supplementary consultation under this PA with the SHPO, consistent with Stipulation IV.E.2.i and subject to the written approval of the appropriate SHPO.
  3. The results of supplemental identification and evaluation efforts, if such efforts are required, will be submitted to the appropriate SHPO for review. DoD will take into account and respond to all relevant comments received within thirty (30) calendar days of the date such documentation is received by SHPO. Disagreements on the identification and evaluation of historic properties will be addressed in accordance with Stipulation XII (Resolving Objections).
- F. In accordance with 36 CFR §800.11(c), the DoD will provide data produced as part of identification and evaluation efforts for this Undertaking, to include reports, official site/structure recordation forms, and Geographic Information System (GIS) shapefiles, to the appropriate SHPO, ACHP, and the NPS (if a property is an NHL or if an NPS site is within the APE for direct and indirect effects for the project). The SHPOs, ACHP, and the NPS recognize that these layers may contain sensitive information and are subject to the confidentiality restrictions imposed by ARPA (16 U.S.C. 470 Section 9(a)(2)) and NHPA (16 U.S.C. 470w-3(a)) and any other applicable Federal law or regulation.
1. The DoD will submit historic property inventory forms consistent with applicable federal law and SHPO standards to the appropriate SHPO and designated repository, as applicable. If any previously identified historic properties within the APE being investigated have been re-surveyed or additional information gathered, then forms for these properties shall be updated consistent with the appropriate SHPO standards.
- G. The DoD will retain a full-time Archaeologist throughout the life of the construction program of this undertaking to provide site checks, oversee coordination and execution of the archaeological mitigation measures in the PA and to provide quality control. This person shall be responsible for responding to and



reporting of any inadvertent discoveries to the Signatories, Invited Signatories, and Consulting Parties per Stipulation XI.

## V. ASSESSMENT OF EFFECTS

- A. For the majority of projects included within the Undertaking, the DoD has prepared and documented the results of its determinations of effect consistent with 36 CFR §800.4(d)(1), 36 CFR §800.5, and 36 CFR §800.11. Appendix D summarizes the determinations of effect concurred upon by the Signatories and Invited Signatories as of the date of execution of the PA.
- B. For projects listed in Appendix D that do not have a specific effect determination, when new projects are introduced, or when project changes result in a potential change to the effects determination for a project, the DoD will conduct supplementary consultation pursuant to this PA, consistent with Stipulation IV.E and the conditions stipulated below, to determine effects. The DoD and appropriate SHPO will update Appendix D to reflect the status of ongoing consultation on identification and evaluation of historic properties, findings of effect, and mitigation measures to be implemented for adverse effects as part of the Annual Report prepared per Stipulation XI.A.
- C. As reflected in Appendix D, three main categories address treatment for the projects comprised by the Undertaking.
  1. No Historic Properties Affected or No Adverse Effect
    - a. Projects in this category meet the following criteria and may proceed without further supplementary consultation under the PA, subject to the requirements of Stipulations X and XI.
      - i. Projects in Appendix D for which determinations of No Historic Properties Affected, consistent with 36 CFR §800.4(d)(1), or No Adverse Effect, consistent with 36 CFR §800.5(b), were concurred upon by the Signatories and Invited Signatories prior to execution of this PA.
      - ii. Projects for which determinations of No Historic Properties Affected, consistent with 36 CFR §800.4(d)(1), or No Adverse Effect, consistent with 36 CFR §800.5(b), are made as result of consultation pursuant to V.3.b.i.
  2. Adverse Effect
    - a. For those projects listed in Appendix D for which adverse effects have been determined to occur exclusively on archaeological sites designated as significant under NRHP Criterion D, and for which all effects are limited to the effects of surface ground disturbance, the mitigations and procedures

defined in Stipulations VI, VII and VIII will be considered to adequately resolve these effects, consistent with 36 CFR §800.6.

- b. The DoD shall conduct supplementary consultation under this PA with Signatories, Invited Signatories and Consulting Parties to determine if it is possible to avoid and/or minimize adverse effects to these historic properties as specifically outlined below:
    - i. For adverse effect projects for which further design is required, DoD will provide project planning documents with details of specific siting and lay downs to the Signatories, Invited Signatories, and Consulting Parties to review for the purpose of identifying modifications that would result in avoidance or minimization of adverse effects. For Traditional Cultural Properties, project details will be provided at the 30% stage of design to identify, evaluate, and analyze potential effects and maximize opportunities to resolve potential adverse effects to these resources.
    - ii. If avoidance and minimization measures are suggested by Signatories, Invited Signatories, or Consulting Parties, the DoD will give those suggestions full consideration. A summary of the avoidance or minimization measures considered, and decisions regarding implementation of them, will be provided to Signatories, Invited Signatories and Consulting Parties 15 days prior to the DoD execution of the project, and documented in the Annual Report (Stipulation XI).
    - iii. If adverse effects cannot be avoided to these historic properties, the DoD will mitigate adverse effects as specified in Stipulation VI.
3. Projects Requiring Additional Evaluation to Determine Effects
- a. For projects listed in Appendix D for which the DoD has not received concurrence regarding the anticipated effects on historic properties, when new projects are introduced, or when project changes result in a potential change to the effects determination for a project, the DoD will prepare and submit to the Signatories, Invited Signatories, and Concurring Parties:
    - i. A map showing the project APE at a scale appropriate to the effective evaluation of effects, overlain with data from previous identification and evaluation efforts and the locations and labels indicating all identified historic properties.
    - ii. Description and copies of the documentation of the potentially affected historic properties including the characteristics qualifying them for the National Register.

- iii. Evaluations supporting a determination of the effect of the project on historic properties within the APE.
- b. Upon receipt of the above documentation, Signatories, Invited Signatories and Consulting Parties shall have thirty (30) calendar days to concur or not concur with the identification of historic properties affected and determination of effect on historic properties or may request that further identification and evaluation efforts be completed consistent with 36 CFR §800.4 and 800.5. The DoD shall provide timely responses to such requests.
  - i. If further identification and evaluation efforts result in an assessment that the project will have no effect on historic properties or create no adverse effect, the DoD will follow the streamlined procedures provided in Stipulation V.C.1.
  - ii. If further identification efforts result in an assessment that the project will have an adverse effect on historic properties, the DoD will follow the procedures outlined in Stipulation V.C.2.
- c. Projects subject to supplemental consultation under this PA for a determination of effects on historic properties shall not proceed until the Signatories and Invited Signatories, as appropriate, reach consensus. If such consultation fails, the parties shall address the dispute in accordance with Stipulation XII, Resolving Objections.

## VI. GENERAL MITIGATION MEASURES

### A. Adverse Effects on Archaeological Sites

#### 1. Data Recovery

- a. Prior to conducting any archaeological data recovery, the CRM shall submit a data recovery plan to the appropriate SHPO and other consulting parties (if requested). The CRM shall, to the extent practicable, incorporate the suggestions put forth by the ACHP in their Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites per Appendix E. If the SHPO disagrees with the plan, the SHPO shall advise the CRM in writing of the reasons for the disagreement within 30 calendar days from receipt of the plan; otherwise, concurrence will be presumed 30 calendar days after submission of the plan to the SHPO. The CRM shall conduct supplementary consultation under this PA with the SHPO to attempt to resolve any disagreement. If such consultation fails and no agreement can be reached, then the CRM shall proceed in accordance with Stipulation XII.

- b. Data recovery plans will include the standard operating procedures for Inadvertent Discovery for archaeological materials and human remains included in Appendices E and F of this PA.
- c. If a data recovery plan has already been approved by the SHPO for a prior project, comparable in scope, and the current project involving similar historic properties affected in a similar way and which has been concurred in by the applicable SHPO, then the prior approved data recovery plan can be cited with a notification to the appropriate SHPO and the DoD shall be allowed to proceed in accordance with the previously approved data recovery plan.
- d. Archaeological Data Recovery Reports shall be submitted to the appropriate SHPO for a 30-calendar day review prior to finalization of the document. A hard copy of the document will be given to the appropriate SHPO to archive in their research library with the understanding that these reports may contain sensitive information and are subject to the confidentiality restrictions imposed by ARPA (16 U.S.C. 470 Section 9(a)(2)) and NHPA (16 U.S.C. 470w-3(a)).

## 2. Public Education and Interpretation

- a. To ensure that the public benefits from the information retrieved from archaeological sites during data recovery excavations, the DoD, in consultation with the Signatories, Invited Signatories, and Consulting Parties, will use the data recovered from such excavations to develop the following types of educational materials for the public:
  - i. An information package developed for use on the Internet that includes photos, a summary of the excavations, materials recovered, and significance of the site to the regional culture.
  - ii. Provide 100 copies of a fact sheet on the site, which may be distributed and reprinted by the appropriate SHPO.

## B. Indirect Effects on Historic Properties

1. As a best management practice to reduce the potential for certain types of possible indirect adverse effects on historic properties (such as increase in population or visitation in areas where historic properties are located), the DoD will conduct annual informational briefings for all DoD personnel, their families, and contractors dealing with the sensitivity of the historic properties in the area and will further conduct additional studies and management plans as indicated in Stipulations VII and VIII.

## 2. Cultural Access to Historic Properties on DoD Lands

- a. In recognition of the significance that many historic properties located within DoD installations have to various cultural and historic groups on Guam and the CNMI, DoD will afford public access to historic properties as outlined below.
    - i. Access Plans – For DoD controlled lands on Guam and Tinian, the DoD will develop access plans for historic properties in coordination with the Signatories, Invited Signatories, and Consulting Parties. Access plans will define how access to historic properties will occur on a regular basis. Access plans developed shall be consistent with current DoD and installation security instructions and guidelines.
    - ii. Input received through coordination with the public and interested parties, combined with observations of previous use/attendance of the area, will be used by the DoD to develop access plans. Factors such as special requirements or optimal times for specific activities (such as *suruhanus* collecting their medicinal plants) will be integrated into the access plan, to the maximum extent practicable.
    - iii. Once the access plan is completed, the DoD will publish the access plan(s) at local libraries and post the plans on DoD websites. Further, the DoD will notify the public of available access to DoD controlled lands through mass media (such as local newspaper, radio, television, internet) as well as through notification to specific entities known to be interested in access.
    - iv. Reasonable efforts will be made to accommodate access outside of established access hours noted in the access plans for cultural purposes and educational opportunities. Requests will be considered in light of military operational requirements, anti-terrorist/force protection security conditions, and current DoD and installation security instructions and other guidelines.
  - b. To facilitate timely responses for access requests and publications of general access notifications, the DoD will designate an individual on the staff of Joint Region Marianas to serve as Access Plan Coordinator.
3. In recognition of culturally important natural resources, highly forested areas were avoided during the early planning process for the Undertaking. However, in places where impacts could not be avoided to such resources, the DoD will coordinate with consulting parties to contact traditional artisans and provide the artisans an opportunity to safely collect these resources consistent with current DoD and installation security instructions and other safety related guidelines

4. If *suruhanus* request installation access for medicinal plant collection, the DoD will afford access for individuals that practice traditional healing methods and allow medical plant collection if the plants collected are not threatened or endangered species. All such requests for access, allowances of access, and methods or manners of access will be conducted in accordance with the access plans discussed in VI.C.2 above.
5. Cumulative Effects on Historic Properties
  - a. The DoD recognizes that the projects comprising the Undertaking, when combined with other reasonably foreseeable projects conducted by the DoD, other federal agencies, and other public, private, and SPE entities may have cumulative effects on historic properties on the islands of Guam and Tinian, inclusive of historic properties on private, public, or other federal agency lands. The specific mitigation measures are outlined in Stipulations VII and VIII below.

## VII. PROJECT OR AREA-SPECIFIC MITIGATION FOR GUAM

- A. If in its Record of Decision on the proposed action encompassed by the Undertaking, the DoD selects the preferred alternatives noted, the following mitigation will be conducted for those specific projects within the Undertaking whose effects cannot be avoided. As previously noted, the DoD will coordinate with the Signatories, Invited Signatories, and Consulting Parties to identify additional means of avoiding or minimizing adverse effects to historic properties.
- B. Mitigation for Direct and Indirect Effects for Known Historic Properties
  1. Naval Base Guam - NCTS Finegayan
    - a. Data recovery excavations will be completed for any historic property that is strictly archaeological in nature (Sites 381, 1012, 1020, 1021, 1022, 1023, 1024, 1026) and will be adversely impacted throughout NCTS Finegayan (for site descriptions see Appendix C). Procedures under Stipulation VI.A will be followed.
  2. Naval Base Guam - South Finegayan Naval Housing
    - a. Preserve and protect South Finegayan Naval Housing Latte Stone Park (Site 6608-0811) by placing informational signage within the existing interpretive kiosk located near the site. The DoD will contract the design and installation of the signage. Guam SHPO will review the contents of the signage prior to installation.

- b. Data recovery excavations will be completed for any historic properties (Sites 1063, 1678, 1681) adversely impacted by the Undertaking. Procedures under Stipulation VI.A will be followed.
3. Naval Base Guam - Ordnance Annex
  - a. Data recovery excavations will be completed for any historic properties (Sites NM1, NM2, Facility 618, 619, 620, 623, 626, 628) adversely impacted by the Undertaking. Procedures under Stipulation VI.A will be followed.
4. Andersen Air Force Base
  - a. Data recovery excavations will be completed for any historic properties (Sites 1044 and 1046) adversely impacted by the Undertaking. Procedures under Stipulation VI.A will be followed.
5. Andersen - South
  - a. Data recovery excavations will be completed for any historic properties (Site 1063, 1065) adversely impacted by the Undertaking. Procedures under Stipulation VI.A will be followed.
6. Proposed New Training Ranges
  - a. The DoD will conduct supplementary consultations under this PA with the Signatories, Invited Signatories, and Consulting Parties to address the effects on historic properties of construction and operation of new firing ranges. The results of these supplementary consultations, including determination of effects and any proposed mitigation measures, will be incorporated into a separate memorandum of agreement. Development of a memorandum of agreement would include public involvement, as well as consultation with Signatories, Invited Signatories and Consulting Parties.
7. The DoD will ensure that training activities will not change existing access routes for the Southern Mountains outside of DoD properties. Training activities will require restriction of public access to the top of Mount Lamlam and Mount Jumulong Manglo approximately one week per month. Access routes will be open to pedestrians for the annual Good Friday procession and during all other times when the route is not in use by the DoD.

#### C. Cumulative Effects Mitigation

1. In recognition that projects included within the Undertaking, combined with other DoD, federal agency, private, public, and SPE activities on the Island of Guam may have collective or cumulative effects on historic properties, the DoD

will complete as mitigation the programmatic measures listed in parts C.2-5 of this Stipulation:

2. Update of Guam Historic Preservation Plan for 2012
  - a. In lieu of previously proposed preservation plans, cultural landscape reports, or Guam Synthesis, the Guam SHPO has requested that the DoD apply the same level of effort to support the 2012 Update to the Guam Historic Preservation Plan. Specifically, the DoD will synthesize data from inventory and evaluation efforts completed for the Undertaking with existing data available in reports, recordation forms, maps, and other archival sources on Guam and provide such information to the Guam SHPO. Data provided by the DoD will supplement the existing historic and prehistoric contexts and provide baseline information on the status of identification and evaluation efforts on Guam since the previous Plan was published.
3. National Register Nominations
  - a. As part of its compliance responsibilities under Section 110 of the NHPA, the DoD will nominate one or more historic properties on DoD lands on Guam for listing on the National Register of Historic Places per year for as long as this PA is in effect per Stipulation XVI or until such time as all identified historic properties have been nominated, whichever comes first.
4. The DoD will designate an individual from the Joint Region Marianas staff to serve as the principal point of contact and liaison to the Guam SHPO for the duration of the Undertaking, to assist with coordination and communication between the DoD and the Guam SHPO.
5. Other Measures
  - a. The DoD is committed to implementing measures to mitigate cumulative effects on historic properties that may result from this Undertaking, and will implement the following measures:
    - i. The DoD recognizes that a Guam Museum and Cultural Center would provide a repository for information regarding historic properties on Guam as well as serve to highlight and educate the public on Guam history and culture. A Guam Museum and Cultural Center also could provide a central location on Guam for curation of artifacts and research and education of the public, visitors, and DoD employees and families. The parties to this PA concur that such a facility will supplement and enhance other measures set out in this document to avoid, minimize or mitigate potential adverse cumulative effects of the Undertaking. Therefore, DoD will seek Congressional authorization and appropriations to support the construction by GovGuam of a Guam



Museum and Cultural Center in the amount of \$5,000,000 (five million), or authority for DoD to transfer existing DoD MILCON funding in the amount of \$5,000,000 (five million) to another federal agency with authority to support the construction of a Guam Museum and Cultural Center.

- ii. Should Congress not authorize such an appropriation or transfer of authority in its FY 2012 budget, the DoD will reinitiate consultation with the parties to this PA to address the mitigation of cumulative effects. Within thirty (30) days of receiving confirmation that the appropriation has not been authorized, the DoD will resume consultation with the parties to this PA to consider alternate mitigation measures with the intent to resolve this issue within ninety (90) days of the start of supplemental consultation.

#### D. Guam SHPO Capacity

1. The DoD also recognizes that the current staffing and funding for the Guam SHPO are limited and that the additional workload associated with the Undertaking and its effects and with other Guam SHPO responsibilities will further reduce that office's capacity to carry out its functions under Guam law, the NHPA and this PA. The DoD has not been able to identify a means by which it can directly provide support to the Guam SHPO, but commits to continuing exploration of appropriate authorities or mechanisms to do so. The DoD also commits to supporting any request to Congress by the SOI to increase the appropriations for the Historic Preservation Fund (HPF) and encourages the NPS to review the allocation of funds from the HPF to the Guam SHPO in light of the increased workload.

#### E. National Park System on Guam

1. The DoD will continue to consult with the NPS to determine the potential indirect adverse effects associated with the Undertaking on historic properties within the National Park System on Guam, including properties comprising the War in the Pacific National Historical Park. To assess these effects, the DoD will provide NPS with the data compiled under item C.2 of this Stipulation as baseline information. If project reviews during the Annual Workshop, (XI.B.) lead to the identification of adverse effects in the future, then the DoD, in consultation with the Signatories, Invited Signatories, and Consulting Parties will develop appropriate mitigation measures based on the evaluation of the indirect effects on the historic property affected.

### VIII. PROJECT OR AREA-SPECIFIC MITIGATION FOR TINIAN

- A. The mitigation measures listed in parts B and C of this Stipulation will be implemented for those specific projects within the Undertaking for which direct and

indirect effects to historic properties cannot be avoided. As previously noted, the DoD will work with the Signatories, Invited Signatories, and Consulting Parties to identify additional means of avoiding or minimizing adverse effects to historic properties.

B. Mitigation for Direct and Indirect Effects

1. A Cultural Landscape Report (CLR) for the Tinian NHL detailing its history and significance through time has been completed. The CLR is the most recent research and analysis of the historic character of the landscape of the NHL and its larger setting, and thus will augment the existing management plan for the NHL. Recommendations from the CLR that do not conflict with current range safety, range management, or natural resources mitigation measures will be incorporated into the next Integrated Cultural Resources Management Plan (ICRMP) update for Tinian.
2. Data Recovery
  - a. Although historic records indicate that the remains in the Camp Churo “Old Village” cemetery (Site 34) were moved, a Ground Penetrating Radar study of the former cemetery will be conducted prior to range construction. The CNMI SHPO will have 30 calendar days to review the work plan prior to the start of the study. If the CNMI SHPO disagrees with the work plan, the CNMI SHPO shall advise the CRM in writing of the reasons for the disagreement within 30 calendar days from receipt of the plan; otherwise, concurrence will be presumed 30 calendar days after submission of the plan to the CNMI SHPO. If remains are discovered, then the applicable Standard Operating Procedures (SOP) specified in Appendix F will be followed. The CNMI SHPO and other interested consulting parties shall have 30 calendar days to review the report detailing the results of the study before it is finalized. If the CNMI SHPO or consulting parties disagree with the report, the CNMI SHPO shall advise the CRM in writing of the reasons for the disagreement within 30 calendar days from receipt of the report; otherwise, concurrence will be presumed 30 calendar days after submission of the report to the CNMI SHPO and consulting parties. The CNMI SHPO and the CRM for that installation will get one hard copy and one electronic copy of the report for their records.
  - b. Archaeological data recovery excavations will be completed for any historic properties (Sites 2, 30, 34, 43, 471, 477, 606, 940, 941, 942, 943, 977, 979, 984, 985, 1038, 1182) directly adversely impacted by the Undertaking (see Stipulation VI.A). These data shall be synthesized into a series of publications as agreed to in Stipulation VIII.A.3.

### 3. Publications

- a. A Thematic Synthesis will be generated from information gathered from data recovery efforts in the area of the proposed ranges on Tinian. Optimally, three thematic publications, for Camp Churo, Japanese Farmsteads, and West Field will be produced. However, if the information recovered for these properties is not sufficient for separate volumes, a single combined synthesis will be completed.
  - i. The DoD will provide copies of this document to the CNMI SHPO and other consulting parties who request to review the document. These parties shall have 60 calendar days to review the document(s) before they are finalized. If the CNMI SHPO and consulting parties disagree with the document, the CNMI SHPO and consulting parties shall advise the CRM in writing of the reasons for the disagreement within 60 calendar days from receipt of the plan; otherwise, concurrence will be presumed 60 calendar days after submission of the documents to the CNMI SHPO and consulting parties.
  - ii. The publication(s) will likely consist of a glossy soft cover booklet(s). A total of 300 hard copies will be divided between the NPS and CNMI SHPO for dissemination to various other institutions (such as local high schools or community colleges) or agencies that promote the history and culture of the CNMI. A master digital version for reprints or for posting on the Internet will be provided to both the NPS and the CNMI SHPO. The CRM in charge of an installation studied in the document will also receive 10 hard copies and an electronic copy.
- b. The Navy's Self-Guided Tour of Historic North Tinian pamphlet will be updated based on ideas and suggestions gathered during public consultation meetings held on Tinian and Saipan in 2009 and information compiled within the Tinian CLR.
  - i. The DoD will provide copies of this document to the CNMI SHPO and other consulting parties who request to review the document. These parties shall have 60 calendar days to review the document before it is finalized. If the CNMI SHPO and consulting parties disagree with the document, the CNMI SHPO and consulting parties shall advise the CRM in writing of the reasons for the disagreement within 60 calendar days from receipt of the plan; otherwise, concurrence will be presumed 60 calendar days after submission of the documents to the CNMI SHPO and consulting parties.
  - ii. A total of 1000 hard copies will be produced and provided to the NPS and CNMI SHPO for dissemination to various other institutions (such as the Visitor's Bureau) or agencies that promote the history and culture

of the CNMI. A master digital version for reprints or for posting on the Internet will be provided to both the NPS and the CNMI SHPO. The CRM in charge of an installation will receive 500 of the hard copies of the brochure.

4. Access to Military Leased Lands in North Tinian

- a. In developing the design of the proposed training ranges on Tinian, the DoD will attempt to site the ranges in such a way that would allow Eighth Avenue to remain open and drivable. This proposed range configuration will allow the public access to the historic properties located in North Tinian including the Tinian NHL even when the new ranges as described in the FEIS are in use. Broadway Avenue will remain open when the new ranges are not in use.

C. Cumulative Effects Mitigation

1. The DoD is committed to implementing measures to mitigate cumulative effects on historic properties that may result from the Undertaking. In recognition that the Undertaking, combined with other DoD, federal agency, private, and public actions on the Island of Tinian may have collective or cumulative effects on historic properties, the DoD will complete as mitigation the programmatic measures listed in parts C.2-4 of this Stipulation:
2. National Register Nominations
  - a. As part of its compliance responsibilities under Section 110 of the NHPA, the DoD will help the CNMI SHPO nominate one or more historic properties on DoD controlled lands on Tinian for listing on the National Register of Historic Places per year, as long as this PA is in effect per Stipulation XVI or until all identified historic properties are listed, whichever comes first.
3. The DoD will designate an individual from the Joint Region Marianas staff to serve as principal point of contact and liaison to the CNMI SHPO for the duration of the Undertaking to assist with coordination and communication between the DoD and the CNMI SHPO.
4. Other Measures
  - a. The DoD recognizes that Tinian will benefit from development of a museum or interpretive center to display artifacts recovered from sites on Tinian. This type of facility would provide a repository for information on historic properties and serve to highlight and educate the public on Tinian's history. The Signatories and Invited Signatories concur that such a facility will supplement and enhance other measures set out in this document to avoid,

minimize or mitigate adverse effects of the Undertaking. Therefore, the DoD will seek Congressional authorization and appropriations to support the renovation of the building selected by the Mayor of Tinian for use as a museum and interpretive center on Tinian in the amount of \$500,000 (five hundred thousand), or authority for DoD to transfer existing DoD MILCON funding in the amount of \$500,000 (five hundred thousand) to another federal agency with authority to support the renovation of this building.

- b. Should Congress not authorize such an appropriation or transfer of authority in its FY 2012 budget, the DoD will reinitiate consultation with the parties to this PA to address the mitigation of cumulative effects. Within thirty (30) days of receiving confirmation that the appropriation has not been authorized, the DoD will resume consultation with the parties to this PA to consider alternate mitigation measures with the intent to resolve this issue within ninety (90) days of the start of supplemental consultation.

## IX. CURATION

- A. Curation for those archaeological collections generated as a result of the studies completed for this Undertaking or as a result of data recovery excavations will be undertaken in compliance with 36 CFR 79 and the stipulations listed in parts B-D of this Stipulation.
- B. Curation of Materials Found in Guam: Lands Held by the DoD Under Less than Fee Simple Ownership
  1. All archaeological materials (artifacts, midden, ecofacts, manuports, etc.) collected during the course of the Undertaking from lands held by the DoD under less than fee simple ownership on Guam shall, consistent with federal law, be transferred to the Guam Museum for curation per local regulations (Guam Public Law 29-147). Should the Guam Museum be unable to accept the materials, the agreement for curation of materials collected on DoD lands (per IX.C.2.b. below) shall apply.
- C. Curation of Materials Found in Guam: Lands Owned by the DoD
  1. Curation Assessment
    - a. A project to assess the current state of DoD archaeological collections on Guam with a specific emphasis on areas that will be affected by the Undertaking has been undertaken by the DoD. A draft of the report will be provided to the Signatories, Invited Signatories and Consulting Parties in August 2010. This study will predict the amount of curation space that will be needed for the archaeological collections generated by the Undertaking, and will provide information on the condition of existing DoD collections,

the current and future capacity of curation facilities on Guam and how well those facilities meet the standards of 36 CFR 79.

## 2. Curation Facility

- a. Based on the results of the Curation Assessment completed per Stipulation IX.B.1, the DoD will identify the most appropriate repository location(s) on Guam for archaeological materials collected during the Undertaking, presuming that the repository meets the standards outlined in 36 CFR 79. Should no such repository with available capacity be identified on Guam, the DoD will either:
  - i. Provide for curation and long-term temporary storage of collections generated by the Undertaking at the NPS curation facility on the island of Guam and maintain control of the materials until such time as the Guam Museum has constructed a new curation facility that will meet the standards of 36 CFR 79. The DoD will negotiate an agreement and appropriate curation fees with NPS for the use of its facility for long-term temporary storage. When the Guam Museum has completed construction of a curation facility meeting the standards of 36 CFR 79, the DoD will transfer its collections to the Guam Museum and enter into a cooperative agreement with the Guam Museum for the purpose of curating the collections at that facility on behalf of the DoD. The DoD will negotiate an appropriate fee structure for curation of the collections.
  - ii. Construct a federal curation facility on lands in which the DoD has a real property interest to house collections from DoD lands. Depending on where it is constructed and how construction is funded, this facility could also house collections from other federal agencies. The facility would be designed and staffed to meet the standards of 36 CFR 79.

## D. Curation of Materials Found in the CNMI

### 1. Curation Assessment

A project to assess the current state of DoD archaeological collections in the CNMI with a specific emphasis on areas that will be affected by the Undertaking has been undertaken by the DoD. A draft of the report will be provided to the Signatories, Invited Signatories and Consulting Parties in August 2010. This study predicts the amount of curation space that will be needed for the archaeological collections generated by the Undertaking from lands on Tinian, the condition of DoD collections, the current and future capacity of curation facilities in the CNMI and how well those facilities meet the standards of 36 CFR 79.

2. All archaeological materials (artifacts, midden, ecofacts, manuports, etc.) collected during the course of the Undertaking from lands held by the DoD under less than fee simple ownership on Tinian shall, consistent with federal law, be transferred to the CNMI Museum for curation per local regulations. The DoD will pay that facility's standard fees for processing of the collections.
3. Under an appropriate loan agreement with the CNMI Museum, display quality artifacts will remain on Tinian for tourism displays and educational purposes.

## X. DISCOVERIES AND EMERGENCIES

A. The DoD will retain a full-time Archaeologist meeting the professional standards in Stipulation II to monitor ground disturbing projects with the potential to affect historic properties, to oversee coordination and execution of the mitigation measures outlined in the PA, and to provide quality control. This person shall be responsible for responding to and reporting of any inadvertent discoveries to the Signatories, Invited Signatories, and Consulting Parties per Stipulation XI. If during the performance of the Undertaking, previously unknown archaeological sites are discovered and are not accounted for in an archaeological monitoring plan, then:

1. Any activities within the immediate area will be halted or reasonable measures to avoid or minimize impacts to the discovery will be undertaken prior to the execution of Stipulation X.A.2.
2. The appropriate CRM will be notified. Upon notification, the CRM and the DoD Archaeologist shall make a determination of NRHP eligibility of the discovery.
  - a. If the discovery is determined not eligible for listing on the NRHP, the CRM or DoD Archaeologist shall fill out the appropriate data and site forms for submission to the appropriate SHPO, then work may resume.
  - b. If the CRM or DoD Archaeologist determines the property is eligible, the CRM will notify the appropriate SHPO via telephone, fax or e-mail and conduct supplementary consultations under this PA. Consultations shall not exceed 14 calendar days unless mutually agreed upon. Based on the agreed upon treatment procedures, the CRM shall document the discovery and file a report with the appropriate SHPO. If there is a disagreement over the determination, level of documentation, or recommended treatment actions, then the dispute will be resolved per Stipulation XII.
  - c. Work may resume in the immediate area once consultation is completed and appropriate treatment measures have been implemented.
  - d. Should any discoveries be evaluated as eligible for listing on the NRHP, management of such historic properties will be incorporated into existing

ICRMPs, or new ICRMP if developed in consultation with the appropriate SHPOs, and their locations plotted on the installation GIS. If the CRM managing that property and the SHPO do not agree on a determination of eligibility then procedures outlined in 36 CFR §800.4 (c)(2) will be followed.

- B. If during any part of the Undertaking, human remains are discovered, the applicable Standard Operating Procedures specified in Appendix F shall be followed.
- C. In the event that natural disasters (such as typhoons or tidal waves), fires, sudden disruptions of utilities service, spill events or other emergency events occur, the appropriate CRM may take immediate actions to preserve life and property without appropriate review under this PA prior to carrying out such emergency actions. However, emergency response work will take into consideration that historic properties maybe 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 CRM will notify the appropriate SHPO by telephone of the emergency and will follow up with written documentation if any historic properties were discovered or disturbed by the emergency efforts. Consultation under this PA with the appropriate SHPO will be conducted as soon as practical based on the emergency circumstances.

## XI. REVIEW

- A. In February and August of each calendar year after the PA is executed, the DoD shall prepare a report itemizing the review activities carried out pursuant to this PA. These reports shall be provided to the Signatories and Invited Signatories by February 15th and August 30th of every year, and to the Consulting Parties upon their request. The report shall consist of six sections noted as follows:
  - 1. Section I shall include a list of all individual projects (as identified in Stipulation V.A) completed within the past year that were determined to have No Effect on Historic Properties or No Adverse Effect on Historic Properties. This list shall include the date of approval by the CRM and description of the project scope.
  - 2. Section II shall include a list of all individual projects (Stipulation V.C) completed within the past years for which supplemental consultation under this PA has been conducted, including the determination of effect and any mitigation measures identified.
  - 3. Section III shall include any supplemental consultations under this PA initiated (Stipulation I.D and I.E) within the past year as a result of changes or additions to the Undertaking. The DoD shall provide a summary showing the project name, date of adverse effect notification and status of consultation.



4. Section IV will provide a summary of progress on the implementation of mitigation measures specified in Stipulations VI, VII and VIII.
  5. Section V will include a list of projects to be completed in the next calendar year, including the determination of effect and any mitigation measures required.
  6. Section VI shall include maps showing the project locations as well as any portions of the APE where sensitivity designations have been changed as a result of further identification and evaluation efforts.
- B. Annual Workshop: The DoD will conduct annual workshops on Guam and Tinian to review the documentation and projects that have been conducted during the year and to allow Signatories, Invited Signatories, and Consulting Parties as well as any additional consulting parties (as identified) to discuss the manner in which this PA has been followed. The DoD shall document these discussions in minutes distributed to invited parties, and shall take these discussions into account as appropriate and feasible. Invited parties will be provided an opportunity to participate in this meeting via conference call, video teleconference (VTC), or in person; however, the DoD will not be responsible for funding the attendance costs of any non-DoD participants.

## XII. RESOLVING OBJECTIONS

- A. Should any signatory to this PA object in writing to any actions carried out or proposed with respect to the implementation of this PA within their authority, the appropriate agency shall consult with the objecting party. All other consulting parties should be notified in writing once a signatory has lodged an objection with another signatory regarding a specific action in this PA. The objecting party shall provide the notifications.
- B. If after initiating such notification, the agency conducting the action determines that the objection cannot be resolved through consultation, it shall forward all documentation relevant to the matter raised 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; or
  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. If the ACHP has not responded within the allotted time, the agency may make a final decision on the objection and proceed accordingly.

### XIII. AMENDMENT

- A. The Guam and CNMI SHPOs may propose to amend any stipulation of this PA within their authority. The ACHP, in conjunction with the appropriate SHPO, may also propose to amend any stipulation. Each land-owning or land-managing agency will have the ability to amend their portions of the PA specifically relating to any stipulation regarding the historic properties on their property in accordance with federal policies or local laws, as appropriate. The project proponent may alter any stipulation affecting their specific project within the Undertaking, subject to the process defined below (Stipulation XIII.B-C).
- B. The amendment process starts when an agency 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 their portion of the PA). The requests will include the proposed amendments and the reasons for proposing them. The parties involved shall consult to consider the proposed amendment.
- C. No amendment shall take effect until it has been agreed upon by all signatories affected by the amendment.

### XIV. TERMINATION

- A. Any of the Signatories may propose to terminate any stipulation of this PA within their authority. The ACHP may propose to terminate any portion of this PA in conjunction with the appropriate SHPO. Each landowning/managing agency will have the ability to terminate their portions of the PA specifically relating to any stipulation regarding the historic properties under their management.
- B. The termination process starts when a Signatory provides in writing to other signatories of this PA that it wishes to terminate their portion of this agreement. A written notice must be sent to all signatories by the Signatory that wishes to terminate their portion of the PA at least 30 calendar days prior to termination. The written notice must explain in detail the reasons for the proposed termination. The Signatories involved will consult during this period to seek agreement on amendments or other actions that would avoid termination. If the Signatory proposing the termination does not withdraw the proposal by the end of the 30 day period and a longer period of arbitration is not agreed to by the Signatories involved, then that portion of the PA will be terminated.
- C. In the event of full termination, all Signatories will comply with 36 CFR §800 with regard to all individual projects included in the Undertaking, or shall revert to any existing agreement documents as mentioned in Stipulation III. In the event that only

a portion of the PA is terminated, then the remainder of the stipulations will remain in effect and the PA will be amended to reflect this change per Stipulation XIII.

#### XV. 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 the DoD's ability to implement the stipulations of this PA, the DoD shall conduct supplementary consultation under the PA with the signatories. If an amendment is necessary, then Stipulation XIII shall be followed.

#### XVI. DURATION

- A. This PA shall become effective upon execution by all signatories and shall remain in effect until all projects associated with the Undertaking are completed or within 20 years from the date of execution (whichever is less), unless the PA is terminated prior to that in accordance with Stipulation XIV.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that the DoD has satisfied its Section 106 responsibilities, and has afforded the Signatories (Guam SHPO, CNMI SHPO, ACHP, U.S. Marine Corps), Invited Signatories (U.S. Army, U.S. Air Force, FHWA, and NPS) and Concurring Parties an opportunity to comment on the Undertaking and its effects on historic properties in the APE and has taken into account the direct, indirect and cumulative effects of the Undertaking to historic properties in Guam and the CNMI.

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

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**LIST OF APPENDICES**

Appendix A - Maps of Guam and Tinian Showing the Areas of Potential Effect (APEs) for Direct and Indirect Effects

Appendix B - Glossary and Acronyms

Appendix C - Summary of Identification and Evaluation Efforts, including information on identified Archaeological Sites

Appendix D - List of Projects included in the Undertaking with Assessment of Effects

Appendix E - ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites

Appendix F - Standard Operating Procedures

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