

**PROGRAMMATIC AGREEMENT
BETWEEN
THE COMMANDER, JOINT REGION MARIANAS AND
THE GUAM STATE HISTORIC PRESERVATION OFFICER,
REGARDING
MILITARY TRAINING AND TESTING ON AND WITHIN
THE SURROUNDING WATERS OF THE ISLAND OF GUAM**

WHEREAS, Commander, Joint Region Marianas (CJRM) manages the Mariana Island Range Complex (MIRC) and is the executive agent for certain military training and testing conducted on, and within the surrounding waters three nautical miles from shore baseline of Guam; and

WHEREAS, the Department of Navy, pursuant to the National Environmental Policy Act (NEPA) of 1969, has analyzed the impact of military training and testing on and within the surrounding waters of Guam in various documents listed in Appendix C; and

WHEREAS, "Undertaking" in this document refers to certain Department of Defense (DoD) training and testing activities on Guam, and in the surrounding waters three nautical miles from shore baseline of Guam, including training and testing with foreign military and other personnel as set forth herein; and

WHEREAS, DoD conducts training and testing activities to ensure that military service components and the US Coast Guard meet their respective missions under Title 10 United States Code (USC) to maintain, train, and equip combat-ready military forces capable of winning wars, deterring aggression, and maintaining freedom of the seas; and

WHEREAS, the Undertaking is critical to military readiness, to personnel safety, and to the defense of the United States, including and in particular, of Guam; and

WHEREAS, documentation meeting the standards of the Historic American Building Survey/Historic American Engineering Record/Historic American Landscape Survey (HABS/HAER/HALS) has previously been completed for prior adverse effects of military training activities in the Northwest Field area on Andersen Air Force Base; and

WHEREAS, pursuant to 36 CFR 800.1, CJRM has determined that the Undertaking may potentially effect historic properties eligible for listing in the National Registry of Historic Places (NRHP); and

WHEREAS, the Undertaking includes DoD's current training and testing on the same training ranges and areas on DoD-controlled lands, many of which are similar, repetitive, and of sufficient frequency as to necessitate a Programmatic Agreement (PA); and

WHEREAS, 34 CFR 800.14(b)(1)(i), allows for PAs to govern the resolution of adverse effects from certain multiple undertakings when effects on historic properties are similar and repetitive, and the activities constituting the Undertaking are similar and repetitive in nature; and

WHEREAS, CJRM has consulted with the Governor of Guam, Guam State Historic Preservation Officer (SHPO), as well as the National Park Service (NPS) and the Guam Preservation Trust (GPT); and

WHEREAS, CJRM has notified the Advisory Council on Historic Preservation (ACHP) of its decision to develop a PA, and ACHP provided technical assistance in accordance with 36 CFR 800.2(b)(2); and

WHEREAS, pursuant to 36 CFR Part 800, which implements Section 106 of the National Historic Preservation Act (NHPA), 54 USC 306108 (formerly 16 USC 470f) and Section 110(f) of the same act, 54 USC 306107 (formerly 16 USC 470h-2(f)), the entities listed above are Signatories, Invited Signatories, or Concurring Parties to this PA; and

NOW, THEREFORE, CJRM and Guam SHPO agree that CJRM will carry out the Undertaking in accordance with the following Stipulations to satisfy its responsibilities under Section 106 and Section 110(f) of the NHPA.

STIPULATIONS

CJRM shall ensure that the following measures are carried out:

I. STANDARDS

- A. All reviews of the Undertaking regarding historic properties will be carried out by or under the oversight or supervision of a person or persons meeting the professional qualifications proscribed by Standard (a) in the Secretary of the Interior's (SOI) *Historic Preservation Professional Qualification Standards*, 62 FR 33712. Reviews will be documented by the professional making the review.
- B. All surveys and mitigation relating to historic properties will be carried out by, or under the oversight of a person or persons meeting the professional qualification (per area of

expertise) for Archaeologist, Historian, and Architectural Historian, or Historical Architect for buildings, structures, or historic properties proscribed in the SOI *Professional Qualification Standards*, 62 FR 33708 *et. seq.*

- 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 graduate degree in Anthropology, History, or closely related field; documented experience or expertise involving Pacific Island cultures; and previous experience conducting TCP studies and evaluations, consistent with National Register Bulletin 38.
- D. Where CJRM utilizes contracts that involve work governed by this PA that may affect historic properties, CJRM will use appropriate contract performance requirements and/or appropriate source selection criteria which shall include, but not be limited to, minimum qualifications for historic preservation experience and satisfactory prior performance to the nature of work and the type of procurement, developed with the participation of a qualified professional described in Stipulations I.A. and I.B. above.
- E. The Signatories will provide information and documentation to each other consistent with the *Documentation Standards* found in 36 CFR 800.11.
- F. CJRM shall insure any information and documentation provided adheres to the restrictions imposed by 36 CFR 800.11(c), Section 304 of NHPA (54 USC 307103), and the Archeological Resources Protection Act (ARPA) (16 USC 470hh). Information determined to be restricted shall be clearly identified as such, and handled in accordance with the provisions of 36 CFR 800.11(c).
- G. For the purposes of this PA, whenever the term “day” is used or reference to a number of days is made, *day or days* means consecutive calendar days inclusive of weekends and holidays.
- H. The time within which any act provided in this PA is to be done is computed by excluding the date of the action, and including the last day, unless the last day is a Saturday or holiday, then it is also excluded.

II. OTHER AGREEMENTS

- A. Appendix C is a listing of NEPA and other compliance documents that are relevant to this PA.
- B. Appendix D is a listing of the Survey Reports supporting this PA

III. AREA OF POTENTIAL EFFECTS

The area of potential effect (APE) for this PA consists of the training areas described in Appendix A.

IV. TRAINING AND TESTING REVIEWS

A. Training and Testing for which this PA fully satisfies Section 106 and Section 110(f) of the NHPA.

1. Appendix A lists and provides maps of specific training areas and describes the training conducted within each area. It also lists specific historic preservation requirements applicable to each training and testing activities listed.
2. Activities listed in Appendix A, and conducted in accordance with the specified historic preservation requirements contained therein require no further review or consultation under this PA and satisfy CJRM obligations under Section 106 and Section 110(f) of the NHPA.

B. Training and Testing requiring further consultation pursuant to Section 106 and Section 110(f) of the NHPA.

1. CJRM shall consult with SHPO as required by the provisions of Section 106 of the NHPA for training or testing not captured within Appendix A.
2. CRJM will notify SHPO in writing at least 45 days in advance of proposed training or testing not captured within Appendix A that has the potential to cause effects on historic properties. This notification does not automatically extend or modify the timelines for consultation contained within the provisions of Section 106 of the NHPA.

V. GENERAL MITIGATION MEASURES

A. Monitoring and Surveying.

CJRM will notify SHPO prior to conducting cultural resource surveys associated with training and testing activities, and will coordinate with SHPO on survey methodology and processes.

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), CJRM will conduct cultural sensitivity training for all incoming DoD military and civilian personnel, their families, contractors, and visiting foreign military personnel.
 - a. The JRM Cultural Resources Manager (CRM) will develop the training in collaboration with SHPO, to include curriculum based on the differing geographic areas and likely cultural findings in each. The curriculum shall include awareness of the importance of recognizing sensitive cultural material and how to protect it.
 - b. Cultural sensitivity training shall be conducted:
 - i. Prior to any individual's first use of a training area covered by this PA, including all US and foreign military and other personnel prior to their first use of a training area covered by this PA.
 - ii. Within 90 days of arrival for DoD military and civilian personnel not covered by B.1.b.i .
 - iii. Annually for U.S. and foreign military personnel stationed on Guam for a period of greater than one year
 - c. Cultural sensitivity training will have command emphasis.
 - d. Cultural sensitivity training shall be conducted either in person by a qualified individual or via approved electronic format.
2. As a best management practice to reduce the potential for certain types of possible indirect effects on historic properties, CJRM will provide public notice of Major Training Exercises.
 - a. A Major Training Exercise is comprised of several "unit-level" range exercises conducted by several units operating together while commanded and controlled by a single commander.

- b. Except where otherwise prohibited, CJRM shall publish a press release and notice on social media platforms and a CJRM website at least 24 hours in advance of a Major Training Exercise.
- c. When possible, public notice will be provided at least five days in advance of a Major Training Exercise that could be noticed by the public at large via press release and notice on social media platforms and a CJRM website.

VI. DOCUMENTATION

- A. CRJM shall ensure training and testing activities conducted in accordance with Stipulation IV.A. are documented and will ensure such documentation is available to SHPO upon request.
- B. CJRM shall ensure training and testing activities conducted in accordance with Stipulation IV.B. are documented.

VII. IDENTIFICATION OF HISTORIC PROPERTIES

- A. CJRM has provided SHPO an electronic copy of all archeological survey reports available to CJRM that document sites within the training areas listed in Appendix A identified by CJRM as eligible for listing on the NRHP. These survey reports contain photographic and Geographic Information System (GIS) documentation of such sites.
- B. Within six months of the execution of this PA, CJRM will supplement the previously provided archeological survey reports with additional photographic documentation of sites within the training areas listed in Appendix A identified by CJRM as eligible for listing on the NRHP where CJRM determines that updated photographic documentation will improve the record of the site.
- C. Signatories objecting to the identification provided above shall make such objection pursuant to the Objections and Resolving Objections Stipulations of this PA.

VIII. DISCOVERIES AND EMERGENCIES

- A. As listed in Appendix A, a qualified individual will monitor ground disturbing activities with the potential to affect historic properties, oversee coordination and execution of the mitigation measures outlined in Appendix A, and provide quality control. The qualified individual will be responsible for supporting CJRM in managing any discoveries and

emergencies consistent with the procedures defined below. 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, and reasonable measures will be taken to avoid or minimize impacts to the discovery pending further review under subpart 2 of this Stipulation.
2. The Qualified Individual will evaluate the discovery to assess potential effects. CJRM, via the cognizant installation CRM, will determine what actions can be taken to resolve adverse effects, if any, and notify the SHPO and ACHP within 48 hours. The notification shall describe CJRM's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects, if any are identified. The SHPO and the Council shall respond within two working days of the notification. CJRM shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. CJRM shall provide the SHPO and ACHP a report of the actions when they are completed.
3. Should any new discoveries be evaluated as eligible for listing on the NRHP and preserved in place, then management of such historic properties will be incorporated in the next annual revision of the CJRM Integrated Cultural Resources Management Plan, developed in consultation with SHPO, and their locations plotted on the installation GIS and provided for use in SHPO GIS. CJRM archaeologists or their archaeological contractors will prepare the necessary site ID forms for SHPO Guam Historic Properties Inventory for each new or altered eligible site recorded, and receive the Guam site number assigned by SHPO for new sites.
4. Should any new discoveries be evaluated as eligible for listing on the NRHP and not preserved in place, CJRM will develop a Treatment Plan, consistent with Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines, 48 FR 44716-42, and consult with SHPO on such Treatment Plan in accordance with 36 CFR Part 800. For the purposes of this PA, Treatment Plans include, but are not limited to, Data Recovery Plans. SHPO shall review the Treatment Plan and provide comment within 30 days. If a mutually agreeable Treatment Plan cannot be developed within the period of SHPO review and comment, SHPO may object in accordance with the provisions of Stipulation XI of this PA within 15 days of the expiration of the period of SHPO review and comment.

5. If, during any part of the Undertaking, human remains are discovered, the applicable Standard Operating Procedures specified in Appendix B shall be followed.

B. In the event that natural disasters, fires, sudden disruptions of utilities service, spill events or other emergency events occur, the appropriate installation CRM or the JRM 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 may be affected by recovery or emergency efforts. When possible, such emergency actions will be executed in a manner that does not foreclose future preservation or restoration of historic properties. The appropriate CRM will notify the 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 with the SHPO, if required under this PA, will be conducted as soon as practical based on the emergency circumstances.

IX. GENERAL STIPULATIONS

A. Annual Meeting

1. Beginning in 2022, CJRM shall host an Annual Meeting of the Signatories to this PA on or about April of each calendar year.
2. The Annual Meeting shall include but is not limited to:
 - a. A review of the PA by the Signatories, including any enacted or proposed amendments;
 - b. A review of the Annual Report provided in accordance with Stipulation IX B. below; and
 - c. Discussion on the implementation of the PA, including any problems or successes.

B. Reports provided by CJRM

1. CJRM will provide an Annual Report to the Signatories not less than 30 days in advance of the Annual Meeting containing:

- a. A summary of end of exercise field reports, including, at a minimum, relevant before and after photos, and aggregate training event participation data;
- b. A summary of monitoring conducted in accordance with Appendix A;
- c. A summary of discoveries or emergencies responded to pursuant to Stipulation VIII; and
- d. Summaries of the number of people who took the cultural sensitivity training specified in Stipulation V.B.1.b., including what method was used.

C. Reports provided by SHPO

1. All reports and surveys completed for private or Government of Guam entities within one quarter (¼) mile of the training areas listed in Appendix A to which CJRM has not had previous access. Reports and surveys provided pursuant to this paragraph shall include GIS location data.

X. REVIEW

SHPO may review activities carried out pursuant to this PA and will review such activities, if so requested by CJRM. CJRM will cooperate with SHPO in carrying out their reviews under this paragraph.

XI. OBJECTIONS

Signatories wishing to object to any action or failure to act by any Signatory to this PA shall provide such objection in writing to the other Signatories. Objections shall include the specific nature of the objection to the action or failure to act and a requested disposition.

XII. RESOLVING OBJECTIONS

- A. Should a Signatory make an objection in accordance with Stipulation XI, the Signatories will consult, as appropriate, for up to 45 days to resolve the objection.
 1. During the consultative process, a Signatory may provide the other Signatories with information regarding actions they believe could continue without interfering

with the dispute resolution process. Signatories may continue actions that they reasonably believe will not interfere with the dispute resolution process.

2. If agreement is reached, the CJRM will summarize the resolution and provide the information to the Signatories, Invited Signatories, and Concurring Parties.
3. If agreement is not reached, CJRM will refer the matter to ACHP consistent with subpart B of this Stipulation.

B. Objections not resolved through discussions among the Signatories within the 45-day dispute resolution process defined under subpart A above, shall be addressed as follows:

1. Disputes involving the eligibility of a property for listing on the NRHP shall be resolved in accordance with the provisions of 36 CFR Part 63.
2. Continuing Actions:
 - a. A Signatory may provide the other Signatories with information regarding actions they believe could continue without interfering with the dispute resolution process.
 - b. Signatories seeking to continue an action shall provide a plan to do so to ACHP for review and comment, with copy to the other Signatories.
 - c. ACHP shall provide comments on such plans to continue action within 15 days of receipt.
 - d. Signatories seeking to continue an action will take into account ACHP comments, provide the Signatories with the decision on continuing actions, and proceed accordingly.
3. Resolution Process:
 - a. CJRM shall forward a proposed resolution with relevant documentation to ACHP.
 - b. Within 30 days of receiving the CJRM proposed resolution, ACHP shall:
 - i. Concur with the CJRM proposed resolution; or

- ii. Provide CJRM with recommendations on the proposed resolution.
- c. Within 30 days of receiving comments from ACHP, or if ACHP has not responded within 30 days, CJRM shall:
 - i. Make a final decision on the matter, taking into account any ACHP recommendations; and
 - ii. Provide written documentation of such final decision to the Signatories, Invited Signatories, and Concurring Parties; and
 - iii. Proceed consistent with its decision.

XIII. AMENDMENT

- A. Any Signatory may request that this PA be amended by submitting in writing to the other Signatories the text of the proposed amendment and any supporting information.
 - 1. CJRM shall identify activities conducted in accordance with Stipulation IV.B. that occur with sufficient frequency as to warrant consideration for addition to Appendix A.
 - 2. Upon identification of such activities, CJRM may propose an amendment adding such activities and any related and necessary specific historic preservation requirements to Appendix A.
- B. Upon receipt of a written proposed amendment, the Signatories will consult in accordance with 36 CFR Part 800 to accept, accept with modification, or reject such amendment. Public involvement with regard to proposed amendments shall be conducted in accordance with 36 CFR Part 800. Signatories agree to make good faith efforts to consider amendments in a timely manner.
- C. No amendment shall take effect until it has been executed in writing by the Signatories. Moreover, submission of a proposed amendment shall not affect the operation of this agreement absent the express written approval of the Signatories.
- D. Upon execution of any amendment, CJRM shall make the revised PA and Appendices available to the Signatories, Invited Signatories, and Concurring Parties.

XIV. EXTENSIONS

Signatories may request extensions to any of the timeframes specified within this PA by providing such request in writing to the Signatory to whom response or action is due. Signatories making an extension request shall also provide written notice of the request to all Signatories. Request for extension shall include the specific nature of the request, including a good faith reason and explanation of why the Signatory is unable to meet the timeframe specified in this PA. Requests for extension shall be considered in good faith. Granting or denial of any requested extension is solely the purview of the Signatory to whom the request is made. The decision regarding the extension request shall be provided to all Signatories by the Signatory making the decision.

XV. TERMINATION

Any Signatory may propose in writing to terminate this PA by providing no less than 30 days' notice to the other Signatories explaining the reasons for the proposed termination. The Signatories will consult during this period to seek mutual amendment or such other action as would avoid termination. In the event of termination of this PA, CJRM will comply with 36 CFR 800.3 through 800.13 with regard to individual activities covered by this PA.

XVI. FAILURE TO CARRY OUT AGREEMENT

In the event CJRM does not carry out the terms of this PA, CJRM will comply with 36 CFR 800.3 through 800.13 with regard to individual activities covered by this PA.

XVII. DURATION

- A. This PA shall become effective upon execution by the Signatories and shall remain in effect until termination in accordance with Stipulation XV or expiration as provided in paragraph B. below.
- B. Subject to the Termination Clause in Stipulation XV, this PA shall expire five years from its effective date if all Signatories to this PA provide notice in writing of the intent to expire this PA to the other Signatories no later than 30 days prior to five years from the effective date of this PA. If such written notice is not provided by all Signatories, this PA shall continue in effect on a recurring five year basis subject to the provisions above.

XVIII. ANTI-DEFICIENCY ACT

CJRM obligations under this PA are subject to the availability of appropriated funds, and the Stipulations of this PA are subject to the provisions of the Anti-Deficiency Act (31 USC 1341).

XIV. SEVERABILITY

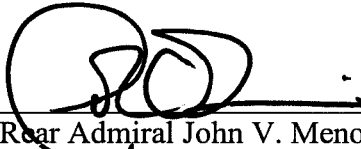
In the event any provision or part of this PA is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire PA, will be inoperative.

XX. EXECUTION OF THIS PROGRAMMATIC AGREEMENT

- A. This PA may be executed in counterparts, with a separate page for each Signatory, and CJRM will provide each Signatory, Invited Signatory, and Concurring Party with a complete copy of this PA.
- B. The effective date of this PA is the date of the signature by the last Signatory to sign.
- C. Execution and implementation of this PA demonstrates that CJRM has satisfied its Section 106 and Section 110(f) responsibilities for the Undertaking.

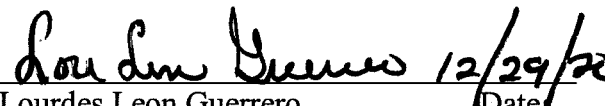
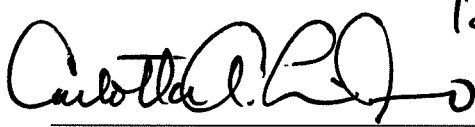
SIGNATORIES

COMMANDER JOINT REGION MARIANAS



Rear Admiral John V. Menoni, United States Navy Date
Commander, Joint Region Marianas 29DEC20

THE GOVERNMENT OF GUAM

 12/29/20  12-29-2020

Lourdes Leon Guerrero Date Carlotta Leon Guerrero Date
Governor of Guam State Historic Preservation Officer

INVITED SIGNATORIES

National Park Service Date

Advisory Council on Historic Preservation Date

CONCURRING PARTIES

Guam Preservation Trust	Date
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