



**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, and Procurement

*I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÁHAN*

35<sup>TH</sup> GUAM LEGISLATURE

December 16, 2020

Carlotta Leon Guerrero  
Acting Guam State Historic Preservation Officer  
Guam State Historic Preservation Office  
Department of Parks and Recreation  
490 Chålan Palåsyo  
Agana Heights, 96910

Via email: [guamshpo@gmail.com](mailto:guamshpo@gmail.com)

**Subject: 2020 Draft Programmatic Agreement Among 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**

*Buenas yan Håfa Adai,*

While I appreciate the opportunity to comment on the draft Mariana Islands Training and Testing (MITT) Programmatic Agreement (PA), it must be stated that the document that has been presented to the public constitutes an injustice to the CHamoru people, as it will repeat the mistakes of past programmatic agreements that privilege military use of our land and water over our indigenous practices without genuinely safeguarding our historic sites, our cultural resources, and our heritage from the impacts of the federal actions, identified and unidentified, both of which are covered in the PA.

Throughout our experience, programmatic agreements have provided little to no recourse of protecting our sacred and unique heritage, as is the case with *Mågua* village, *Tailålo'*, *Litekyan*, countless burial and latte sites, and the natural landscapes that are integral to our historic sites and districts.

If we are to truly safeguard our cultural and environmental resources, the PA should not be entered into unless it can guarantee the full protection of our unique and sacred heritage. This draft PA fails to do so, especially with a massive and long-term undertaking such as the MITT.

Should the Leon Guerrero-Tenorio Administration pursue the PA, I recommend that consultations be terminated at this time to allow for broader public input to create a document that ensures preservation of our burials, historic sites and districts, cultural practices, our heritage, and mandates transparency, accountability, and restitution, not mitigation.

I would like to register the following concerns and recommendations with the draft PA.



## **OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, and Procurement

*I MINA TRENDAI SINGKO NA LIHESLATURAN GUAHAN*

35<sup>TH</sup> GUAM LEGISLATURE

### **Concerns of the Scope of PA**

Currently, the draft PA states it pertains to “DoD training and testing on Guam, and in the surrounding waters 3 nautical miles from shore baseline of Guam, including training and testing with foreign military and other personnel.” This is of serious concern, as it implies that all Department of Defense (DoD) training and testing activities are covered by this PA.

I strongly recommend the language of the PA be amended to include only the activities analyzed in the Preferred Alternatives of the 2010 Mariana Island Range Complex (MIRC) Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS), the 2015 Mariana Islands Training and Testing (MITT) EIS/OEIS, the 2020 EIS/OEIS and their respective Records of Decision (ROD). These projects should be collectively referred to as the “Undertaking,” per the definition of that term in 36 CFR §800.16(y).

### **Signatories, Consulting and Interested Parties Must Be Expanded**

In order to better strengthen the intent of the PA, I recommend a Senator with legislative oversight of Historic Preservation to be added as a signatory. In addition, meaningful inclusion of the local cultural and community organizations, individuals and/or organizations representing interests of Guam’s indigenous Chamoru population, and others as interested and/or consulting parties per 36 CFR Part 800.

### **Concern Over Lack of Expiration Date**

I do not support a PA without an expiration date. It is in the best interest for the people of Guam to require cumulative studies of the impacts of training and testing and insist on renegotiations based on data collected every five years. Training and testing activities, which include but are not limited to, detonations, sonar, live fire, helicopter training, do not occur in a bubble, but affect the daily lives of our people; from the land in which farmers use to sow their crops, to the oceans in which we depend on to fish, to the rising cost-of-living in Guam associated with the military buildup. We need all the information in order to make an informed decision, for the longevity and sustainability of our island and all her people. Further, an expiration date will better account for the evolving needs and priorities of the people of Guam.

### **The PA Affects the Mariana Islands as a Whole**

I am concerned that Guam and the Commonwealth of the Northern Mariana Islands are not included in the same PA because the MIRC and MITT include federal actions that extend throughout the Marianas.

### **Circumvents Section 106 Process**

This draft PA could circumvent the Section 106 process for unidentified historic properties. Stipulation IV.B states that “CJRM shall consult with SHPO as required by the provisions of Section 106 of the NHPA for training and testing not captured within Appendix A.” This statement could be interpreted to mean that consultation is only required with the SHPO and not with consulting, interested parties, and others per 36 CFR Part 800. The signing of this PA, as is, will privilege training and testing, undermine opportunities to document and preserve cultural sites, and worst yet, facilitate the destruction of our historic sites and the erasure of our cultural heritage without us even knowing of their existence.

### **Lacking Transparency and Accountability**

Transparency and accountability are some of the foundations of preservation. Yet, even in the simplest of requests, we have not seen good faith efforts to provide updates or follow through with questions regarding intersection and status of the myriad mitigation projects, which were conditions to the projects. We should not have to resort to securing information through the Freedom of Information Act (FOIA) and having to deal with damages after the fact. We must demand transparency and accountability up front, which this PA fails to provide.



## **OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, and Procurement

*I MINA TRENDAI SINGKO NA LIHESLATURAN GUAHAN*

35<sup>TH</sup> GUAM LEGISLATURE

### **Concern over Proposed Handling of Discoveries**

The draft PA does not adequately prevent the disturbance of ancestral artifacts and remains. The draft currently states that, upon discovery, activities within the “immediate area” will be halted. However, there is no language detailing the size or scope of the “immediate area,” and it would be in the interest of the people of Guam to quantify this detail. Additionally, barriers should be erected to protect these areas from further disturbance.

### **Lack of Involvement of SHPO**

Another item which I find concerning is the removal of a requirement to notify, coordinate, and consult with the State Historic Preservation Officer (SHPO) for any new introduction of forces and maneuvers not in compliance with the PA. I am similarly concerned by the removal of a clause spelling out the SHPO’s ability to request site visits during the review of field reports. This needs to be added back into the PA.

### **Access to Natural and Cultural Resources**

Provisions mandating Landowner access to ancestral lands, the access of Traditional Healers to medicinal plants, the access of CHamoru to ancestral burial sites should be added. Additionally, Ancestral Landowners who have a lineage to lands affected by the military should be recognized, along with their clans.

The PA must include the active involvement of Cultural Monitors and representatives appointed by community groups and Ancestral Landowners to ensure the integrity of our cultural and natural resources are preserved.

### **Appendices Require Additional and More Substantive Review**

Some appendices in the draft PA, although short, necessitate extensive review and consideration. The current draft PA states that undertakings listed in Appendix A require no further considerations or review, and that all obligations under Section 106 and Section 110(f) of the National Historic Preservation Act have been met. This is concerning, as there have not been any in-depth review processes encapsulating data collection for changes to these areas between the 2009 PA and the current proposed 2020 PA. Appendix B also proposes Standard Operating Procedures (SOPs) regarding the handling of human remains uncovered due to “any action, undertaking, or activity which includes those caused by natural occurrences on DoD-retained lands on Guam”.

It is unclear whether the language in the SOPs will be applied to all activities, including clearing or construction, and not just training and testing activities covered in this PA. Clearing and construction activities could potentially widen the scope of this proposed 2020 PA to any uncovered human remains disturbed by the military. The SOPs must be reviewed and compared to existing local reburial guidelines; they must include a stipulation in which all actions and undertakings which may be harmful to the protection and preservation of the discovery of artifacts and human remains, cease immediately, and not, as was reported in the 2009 Naval and Air Force MIRC SOPs, only “if appropriate.”

The increased number of training areas in the proposed 2020 PA which were not listed in the 2009 PA, warrant further review. It appears that nearly 20 different training areas were identified outside of Andersen Air Force Base (AAFB), to include DanDan Malojloj, Camp Blaz South, Nimitz Radio Barrigada, Piti Floating Mines, Agat Bay Mine Neutralization Site, Nearshore waters of Naval Base Guam (NBG) and other areas; while seven training areas were identified inside AAFB. The 2009 PA only listed NBG Main Base, portions of the Naval Ordinance Annex, seven training areas within AAFB, and 5 training areas in Andersen South. Maps and descriptions of possible training activities were included in



## **OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, and Procurement

*I MINA'TRENTAI SINGKO NA LIHESLATURAN GUAHAN*

35<sup>TH</sup> GUAM LEGISLATURE

Appendix A of the 2020 PA, but the maps did not include a listing of known historic sites in and around the surrounding 27 proposed training areas.

### **Government of Guam Must Have Access to Documentation Prior to Signing**

The 2020 PA requires that the agreement be signed first, before Commander, Joint Region Marianas (CJRM) provides any documentation of sites identified as eligible for listing on the National Register of Historic Properties (NRHP) and before copies of all archeological survey reports available to DoD covering the eligible sites are made accessible. (See Part A of Stipulation VII in the draft PA). CJRM has six months after the execution of the agreement to provide such information. This survey information and documentation of historic sites is crucial; it should be provided upfront and it should be made available for general public access before the Government of Guam (GovGuam) agrees to sign off on any proposed training sites. If this agreement is signed before GovGuam obtains all the information regarding historic sites, it allows for “no further review or consultations under this PA” in all 27 proposed training areas, and ultimately binds the hands of the SHPO and the community from fully protecting our historic sites.

### **Annual Meetings Should Be Made Public**

The annual meetings should be made open to the public in order to gauge the broader community impact on such large-scale activities that may be detrimental to our health and well-being.

### **Concern Over Cultural Sensitivity Training as Proposed**

While the current draft PA states DoD will conduct cultural sensitivity training for all incoming military personnel, this does not seem to include military personnel already present, nor does it seem to include any foreign military personnel that come to the island to train. In fact, the language for this stipulation remains unclear, as it merely states that “curriculum shall include awareness of the importance of recognizing sensitive cultural material and how to protect it.”

Further, the trainings should be conducted by members of the CHamoru cultural community, and not solely by DoD.

### **Concern Over Public Notices**

The current draft states DoD will provide notice only “when possible.” Public notice of major training exercises five days in advance if they are exercises “that could be noticed by the public at large.” This leaves a large window of possibility for the public to not be informed at all. The community should be informed when every training or exercise is to be scheduled, to protect the community and the surrounding areas near scheduled trainings or exercises.

Annual reports provided by DoD on post-exercise monitoring efforts, effects to historic properties, sensitivity training, should include before and after photos of areas after training and exercise events to better assess surface changes to the physical environment.

### **Lack of Analysis of Cumulative Impacts**

The draft agreement fails to acknowledge cumulative impacts from the totality of military activities on and around Guam. Even the 2011 Relocation PA acknowledged massive cumulative impacts, and included required mitigation, such as the Repository, a Museum, publication of research and assistance to the SHPO’s office. The 2009 PA required field monitoring and report submission. There have yet to be any readily-accessible reports of impacts from training under the MIRC and MITT from 2009 to 2020 and the current negotiations provide an opportunity to ensure that past obligations were met and ensure that there is a true mechanism of compliance and accountability in the future.

In the recent past, the former SHPO had ensured that meetings with DoD regarding the MITT would be open, and that the Legislature along with the Guam Preservation Trust, the Attorney General and others would work together in hopes of having a unified approach intended to collectively strengthen the



**OFFICE OF SENATOR SABINA FLORES PEREZ**

Chairperson

Committee on Environment, Revenue and Taxation, and Procurement

*I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÁHAN*

35<sup>TH</sup> GUAM LEGISLATURE

SHPO's negotiations. But in the last several months consultations stopped being public and the SHPO and DoD came to this draft agreement, and only now is it available for public comment.

The SHPO must consult with the people of Guam before negotiating for us. It is deeply disappointing and disturbing that a crucial portion of the partnership between the people of Guam and DoD has been violated. We lost our only sovereign powers in this process and deserve more.

The PA process is meant to hold federal agencies accountable to the public, and I believe that further public involvement can only help our people achieve a more equitable relationship with the Department of Defense. This is especially important as Pacific Island communities grapple with the increasing effects of climate change, and the changing geopolitical landscape of our region.

Respectfully,

*Sabina Flores Perez*

Senator Sabina Flores Perez  
35<sup>th</sup> Guam Legislature